

Implementation Of Mining Management And Enterprise Policies Based On The Principles Of Social Justice And Community Welfare

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Abstract

This research aims to find out and understand the management and exploitation policies of mining natural resources, as well as to know and understand the application of the concept of community-based justice in the management of mining natural resources. Using a socio-cultural juridical approach, that law cannot be separated from people's lives. Data collection techniques were carried out by means of interviews, distributing questionnaires and observation. The results of the research reveal that constitutionally the management and exploitation of mines based on community justice has been carried out in three ways, namely regulation, management and supervision. Mining industry practices in Bogobaida District, Noumowodide Village, Paniai Regency, found illegal gold mining practices carried out by mining companies and the community around the mining area itself, they did not apply the principles of gold mining work that were good and beneficial for future generations. Therefore, to maximize legal protection and apply the concept of local community-based justice in a number of mining areas, the Paniai Regency Government has issued Paniai Regent Decree Number 14 of 2014 concerning the termination of Unlicensed Gold Mining Activities (PETI) in the Bogobaida District, Noumowodide Village. Regency/City Regional Governments must be proactive in mapping mineral potential in their areas and must pay attention to licensing provisions regulated by government policies in the mining, mineral and coal sectors.

I. Introduction

Indonesia is a country rich in natural resources. The management of natural resources is regulated in Article 33 paragraph (3) of the 1945 Constitution which confirms that the earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. The explanation of this article means that the people as citizens have the right and obligation to defend the territory, dignity and honor of the nation, then the people have the first and foremost opportunity to enjoy the results of natural wealth for their welfare.

However, it turns out that Indonesia's abundant natural wealth is inversely proportional to the condition of the nation which is still not independent. One indicator that this nation is not yet independent can be seen from the configuration of the State Revenue and Expenditure Budget (APBN), which is still in deficit, so that it still depends on borrowed funds to cover the budget deficit. The lack of correlation between Indonesia's abundance of wealth and the welfare of its people is an anomaly. From this anomaly, we came to a conclusion, namely that there was something wrong in the management of mining wealth in Indonesia. But where does the error lie? From the results of observations, there are indeed several mistakes that this nation has made in managing its wealth of mining resources. These errors, if traced, are complex and systematic. The complexity and systematicity of the error in question is because it originates from the policies made in carrying out mining management and companies so far. The legal basis for mining business activities that was previously in effect was Law no. 11 of 1967, has no bias at all towards the people. The greed of mining business actors and government officials has been going on for decades.

The journey and long wait regarding the conditions of management and exploitation of mining materials that have occurred so far have been relieved for the time being, in line with the enactment of Law no. 4 of 2009 concerning Mineral and Coal Mining. In substance, this law is sufficient to accommodate the turmoil and anxiety of some citizens of this nation, we just have to wait for its implementation. The forms of accommodation referred to are the inclusion of several regulations which legally take sides, both towards the interests of local people and national interests, such as: proportional accommodation of community mining; the existence of a state/government control function in the management and exploitation of mining materials; delegation of management and exploitation of mining materials is carried out fairly, namely through an auction mechanism; The authority of each administrative region over the management of minerals is clearly regulated.

In managing natural resources in Papua Province, customary law communities have to deal with companies that are increasingly coming from within and outside the country. The traditional land which Papuans believe in their traditional rituals to be the "Birth Mother" is busy being encroached upon by capital owners only with the power of permits from the central government, the profits achieved by investors and investments for the state are not small in number. However, the community as the owner of customary rights can only reap violence and various types of human rights violations in their lives.

In relation to traditional management rights, traditional law communities in Papua have for generations since their ancestors, long before the existence of the Indonesian state or government, have had their own customary law, which also includes rules and management systems. rights to natural resources and land held by certain tribal community groups within a customary legal area of that community. Customary law and natural resource management rules including land and community customary law are verbal or oral rules, but have absolute legal force and are binding

on every individual or customary law community living in an existing customary community legal area, in the Indonesian legal system the rights This is called customary rights.

The map of conflicts in the management of mining natural resources above explains the legal issues that can be stated that the processing of mining natural resources in Indonesia, including Papua Province, has not brought prosperity to the Indonesian people, in particular the customary law communities who own customary rights in mining areas. It is strongly suspected that this wrong mining management policy has caused injustice and poverty, as well as the emergence of violence which has escalated. Based on the background description above, this research aims to find out and understand the management and exploitation policies of mining natural resources, as well as to know and understand the application of the concept of community-based justice in the management of mining natural resources.

Basic framework of the Act. Before 2009, mining in Indonesia used Law 11 of 1967 concerning mining, then switched to using Law no. 4 of 2009. The basic differences with the changes to this law are: 1) there are auctions in areas of additional potential, with this auction it can reduce the mining mafia and can provide additional income for the state, 2) it is more in favor of the interests of the people, 3) there are integrated management efforts, starting from exploration to post-mining handling. UU no. 4 of 2009 concerning Mineral and Coal Mining which is currently in effect, provides guidance that the management and exploitation of minerals is carried out systematically since the determination of mining areas which are part of the national spatial planning. The process of implementing the determination of mining areas, mining business areas or special mining business areas and community mining areas, is carried out using a transparent, accountable mechanism, involving all elements, namely the central government/regional government, the People's Representative Council (DPR)/Regional People's Representative Council (DPRD); and society.

Welfare State Theory. Along with the development of statehood and government based on the concept of a welfare state, the government is required to carry out government to promote general welfare. As a consequence of the objectives of the welfare state, the government intervenes in various government actions for the benefit of the people. With regard to government intervention, there are 3 (three) main tasks of the state (government), namely: 1) the task of maintaining security and order; 2) the task of upholding justice (justice enforcement); and 3) the task of building public facilities and infrastructure (public infrastructure development). Furthermore, Friedman (1971) stated that as a matter of legal state and mixed economy, the state has 4 (four) functions, namely: (1) provider function; (2) regulatory function; (3) entrepreneur function; and (4) referee function (empire).

Justice Theory. Justice is a value to create an ideal relationship between humans as individuals, as members of society, and as part of nature, by giving humans their rights and freedoms in accordance with their achievements and enforcing their obligations according to the law. and morals, which if necessary must be enforced by the state by treating the same things equally and treating different things differently (Pelupessy, 2023).

2. Research Method

This research is classified as a type of empirical legal research which is based on the management and exploitation policies of natural mining resources in Papua Province. Using a socio-cultural juridical approach which is motivated by the idea that law cannot be separated from

people's lives in the form of values and attitudes/behavior carried out. The research location was carried out in the Papua Province area, with a focus on Paniai Regency where there is quite a high level of community mining activities for mining natural resources. Data collection techniques were carried out by means of interviews, distributing questionnaires and observation. The total sample was 37 people selected by purposive sampling consisting of personnel from the Provincial Mining Service, Provincial Regional Investment Coordinating Board (BKPMMD), Paniai Regency Mining Service, Paniai Regency BKPMMD, Non-Governmental Organizations (NGOs), community leaders, miners, and mining company.

3. Results and Discussion

Mining Conditions in Papua

The real gold panning area is in Nomouwodide Village, Bogobaida District, Paniai Regency. The gold mining location that has been carried out since 2003 is located in the upstream to downstream areas of the Degeuwo river, the upstream of the river is located in Sugapa District (Intan Jaya Regency) and Bogobaida, while the downstream area passes along the border of Siriwo District, Nabire Regency. Degeuwo was proposed as a People's Mining Area (WPR), for several reasons by the community, including: the emergence of Regional Entrepreneurs, discovered by the community, Population, Social Relations, Prone to Conflict, as well as slow handling by the regional government. The Paniai Regional Government seems slow and indecisive in providing legal guarantees for miners. Even though there has been guidance from the Papua Province Mining Service to propose that Degeuwo be designated as a WPR since 2004. The Regent of Nabire issued a permit after there was a complaint from the Siriwo community on January 30 2005, then several entrepreneurs in Nabire applied for a Gold Mining Permit (SIPE) from the Department. Nabire Mining is based on Nabire Regency Regional Regulation Number 14 of 2003.

Mining Natural Resources Management and Exploitation Policy

Mining is a natural resource that cannot be renewed, therefore business actors will look for new places when the mining materials in the previous place run out. This of course has several risks, namely geological risk (exploration) which is related to uncertainty in the discovery of reserves (production), technological risk which is related to uncertainty in costs, market risk which is related to price changes, and government policy risk which is related to changes in taxes and domestic prices. . These risks are related to quantities that affect business profits, namely production, prices, costs and taxes. Apart from the risks mentioned above, of course there are large environmental impacts such as deforestation, air pollution, water pollution and so on.

The basis of public policy in the mining sector is the 1945 Constitution, Article 33 paragraph (3), which states that the earth and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people. The implementation of this article can consider the following things: Indonesia should only invite foreign companies if they do not dare to take risks or do not master the technology for the mining sector; if the risk is not large, and the technology is mastered and the problem is only capital, then funds can be raised through government revenues, national private companies, and public shares; Providing funds to address environmental problems.

Mining policy should cover all important issues in the development of the mining sector, including filling gaps in the legal framework regarding the authority of national and subnational

governments, establishing profitable land uses, improving environmental protection and making the fiscal regime more competitive. This problem must be resolved at cabinet level, considering that this concerns various different authorities.

If discussions at cabinet level can be held, priorities in policy formulation must reflect the level of authority of the Ministry of Energy and Mineral Resources (ESDM). So, the first priority is to complete the draft law regarding mining and submit it to the DPR. The second priority is to build cooperation between the Ministry of Energy and Mineral Resources and various other government institutions to resolve various problems. Land use issues can be negotiated with the Ministry of Forestry, while environmental protection issues can be designed with the Ministry of Environment (KLH), and fiscal regime issues for mineral products can be formulated with the Ministry of Finance. The third priority is to resolve the problem of illegal mining which involves governments at the national, regional and local levels.

Application of the Community-Based Justice Concept in Natural Resource Management

If seen from the enactment of Law no. 11 of 1967 concerning Mining until the enactment of Law no. 4 of 2009 concerning Mineral and Coal Mining which is the basis for contracts of work and other contracts in the mining sector, in essence the justice achieved by this law is only formal justice or procedural justice, meaning that if the government is the manager of natural resources mining and mining entrepreneurs have carried out mining laws and agreed contracts or agreements, then they are declared to have carried out fair actions.

Justice is an irrational ideal which is not an object of knowledge from the point of view of rational knowledge. There are only interests, and therefore conflicts of interest are resolved through a rule that satisfies one interest by sacrificing other interests or trying to reach a compromise. between conflicting interests.

Claims against the economic rights of local communities or communities around mining areas are normal and must be fulfilled by the state. The constitutional mandate that the management of earth, water and natural resources must ensure the prosperity of the people is something that must be implemented by the state.

Further confirmation of the rights of local communities that must be taken into account by anyone who utilizes natural resources is very firmly stated in the principle of state responsibility in Law no. 32 of 2009 concerning Environmental Protection and Management, which states that the use of natural resources must provide maximum prosperity for the people, both current and future generations. However, in Law no. 4 of 2009 did not find a single article that guaranteed special allocations for communities at mining locations for the development of community economic sustainability after their economic resources, including land, forests, agricultural land, rivers and sea, were made mining business objects.

Law No. 4. of 2009 should regulate more clearly the allocation of public funds, both for environmental restoration (reclamation) purposes, as well as for post-mining activities related to economic and social environmental restoration, which currently all only come from mining companies. . Law no. 4 of 2009 does not at all accommodate the rights of indigenous peoples or even local communities. The community is only given a passive position in Article 145, namely in the case of the community being directly negatively impacted by mining business activities, the community has the right to receive appropriate compensation due to errors in the mining business operation.

In the author's understanding, the mining concept should take into account the principles of justice by placing indigenous communities and local communities as partners in the

implementation of mining activities, including respecting social conditions that must remain respected during the mining period.

For gold mining in Paniai Regency, many illegal mining practices (PETI) are found, so in accordance with Law Number 4 of 2009, it is necessary to regulate and determine community mining related to determining locations and mining business permits by the government. As a response to the above conditions, and to maximize legal protection and the application of the concept of community-based justice in the management of natural resources for local communities around the mining area, the Paniai Regency government has issued Paniai Regent Decree Number 15 of 2014 concerning the Termination of Gold Mining Activities Without a Permit (PETI) in Bogobaida District, Noumowodide Village.

4. Conclusion

Constitutionally, the management and exploitation of mines based on community justice has been carried out in three ways, namely regulation, management and supervision. The regulatory aspect is an absolute state right that cannot be handed over to the private sector and is the most important aspect played by the State among other aspects.

Mining industry practices in Bogobaida District, Noumowodide Village, Paniai Regency, found illegal gold mining practices carried out by mining companies and communities around the mining area itself, where companies and communities around the mining area no longer apply the principles of good and beneficial gold mining work. for future generations. To maximize legal protection and apply the concept of community-based justice in the management of natural resources for local communities around mining areas, the Paniai Regency government has issued Paniai Regent Decree Number 15 of 2014 concerning the Termination of Unlicensed Gold Mining Activities (PETI) in the Bogobaida District of Noumowodide Village .

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