

Lack of Legal Certainty Regarding the Role Of Mineral and Coal Mining Taxes In Environmental Recovery

Triyono Martanto

triyono.martanto@gmail.com

Indonesian Tax Court, Indonesian Directorate General of Tax

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Abstract

Post-mining environmental recovery efforts are a must in order to realize mineral and coal mining with a sustainable development perspective as well as ecological justice, in order to realize this, the existence of a mechanism for the availability of a post-mining environmental recovery budget is needed. One of these mechanisms is through mineral and coal mining taxes as referred to in Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions, however, taxes as a mechanism for providing a post-mining environmental recovery budget have not been implemented until now. Especially Lack of Legal Certainty Regarding the Role Of Mineral and Coal Mining Taxes In Environmental Recovery. This paper uses a descriptive explanatory research method. Based on the study conducted, it can be seen that the implementation of mining taxes has not been able to realize ecological justice, this is because tax regulations have not optimally implemented coercive efforts and through criminal law channels so that the culture of tax irregularities and mining tax evasion is high, including mining taxes.

I. Introduction

In order to realize prosperity through the utilization of Natural Resources, the Republic of Indonesia as a state based on Pancasila law cannot simply hope for the effectiveness of Law Number 4 of 2009, so that other legal regulations are needed that are able to support the negative impacts of the mining industry and also participate in restoring the environment that has been damaged due to exploration and exploitation carried out by existing mining industry entrepreneurs.¹ So to make the environmental restoration efforts that have been damaged by the mining industry more effective, legal regulations in the form of regulations related to mining taxes are formed. This is clearly seen in Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions.²

¹ Sri Endah Wahyuningsih and Agus Sunaryo, THE ROLE OF PROSECUTOR OFFICE IN THE ERADICATION OF CORRUPTION CRIMINAL ACTS IN INDONESIA, Jurnal Pembaharuan Hukum Volume IV No. 2 May - August 2017, p. 248.

² Tri Wibowo, Effectiveness of Criminal Tax Sanctions in Law Number 28 of 2007 concerning General Provisions and Tax Procedures (Study at the Jakarta Tax Court), Jurnal Dinamika Hukum Vol. 9 No. 3 September 2009: p. 205.

Basically, the purpose of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions was formed to realize the principles of democracy, equality and justice, community participation, and accountability by considering regional potential. This can be seen in point e of the considerations of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions which states that "regulation of regional taxes and regional retributions is implemented based on the principles of democracy, equality and justice, community participation, and accountability by considering regional potential".

This is basically an elaboration of the mandate of the five principles of Pancasila as explained above, therefore in order to realize this goal, Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions, apart from being able to realize regional economic development in terms of the development of adequate economic facilities and infrastructure,³but must also be able to realize ecological justice for society in terms of the need for the availability, use and utilization of a healthy and decent living environment.⁴So it is clear that proportional mining levies and taxes which can then be distributed appropriately to the right targets for environmental preservation are also expected to be realized through the presence of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies.⁵This includes mining that is included in the category of non-minerals and rocks. The types of mining that are not included in rocks and minerals that can be taxed according to Article 57 of Law Number 28 of 2009 are asbestos, slate, semi-precious stones, limestone, pumice, gemstones, bentonite, dolomite, feldspar, rock salt (halite), graphite, granite/andesite, gypsum, calcite, kaolin, leucite, magnesite, mica, marble, nitrate, opsidien, ochre, sand and gravel, quartz sand, perlite, phosphate, talc, fullers earth, diatomaceous earth, clay, alum, trass, jarrosif, zeolite, basalt, trachyte, and other non-metallic and rock minerals in accordance with the provisions of laws and regulations.⁶

Then in Article 58 of Law Number 28 of 2009 it is stated that:

- (1) The subject of Non-Metallic Mineral and Rock Tax is an individual or entity that can take Non-Metallic Mineral and Rock.

³ Ivan Fauzani Raharja and Ratna Dewi, Enforcement of Administrative Sanctions Against Violations, Jambi University Research Journal, Humanities Series, II, (2013), pp. 40-41

⁴ Wan Anwar, Commercialization and Responsibility of Education: A Brief Discussion, INSANIA Journal P3M STAIN Purwokerto Volume 13 Number 3 September-December 2008, pp. 394-413.

⁵ Astrid Yulianty, Maradela Ermania Khrisnatika, and Amrie Firmansyah, "Tax Avoidance in Mining Companies in Indonesia: Profitability, Corporate Governance, Inventory Intensity, Leverage", Indonesian Tax Journal, Vol.5, No.1, 2021, pp. 21-23.

⁶ Mudzakkir, Criminal Justice Regulation In The Taxation Field Criminal And Its Relation To General And Special Criminal Law, Accessed via <http://ejurnal.peraturan.go.id/index.php/jli/article/viewFile/346/231>, on May 12, 2020.

(2) Taxpayers for Non-Metallic Minerals and Rocks are individuals or bodies that extract Non-Metallic Minerals and Rocks.

Furthermore, regarding the basis for imposing mining tax excluding minerals and rocks, this is regulated in Article 59 of Law Number 28 of 2009 which reads:

- (1) The basis for imposing Non-Metallic Mineral and Rock Tax is the Sales Value of the Results of Extraction of Non-Metallic Minerals and Rocks.
- (2) The selling value as referred to in paragraph (1) is calculated by multiplying the volume/tonnage of the extraction results by the market value or standard price of each type of Non-Metallic Mineral and Rock.
- (3) The market value as referred to in paragraph (2) is the average price applicable at the local location in the relevant area.
- (4) In the event that the market value of the production of Non-Metallic Minerals and Rocks as referred to in paragraph (3) is difficult to obtain, the standard price determined by the authorized agency in the field of Non-Metallic Minerals and Rocks mining shall be used.

Furthermore, the amount of tax on non-mineral and rock mining is regulated in Article 60 of Law Number 28 of 2009 which states that:

- (1) The Non-Metallic Mineral and Rock Tax Rate is set at a maximum of 25% (twenty five percent).
- (2) Non-Metallic Mineral and Rock Tax Rates are determined by Regional Regulations.

Even though it has been well regulated regarding mining tax excluding minerals and rocks in Article 57 of Law Number 28 of 2009, in reality the existence of this tax is not able to restore environmental damage due to non-mineral and rock mining, in other words that the amount of tax and the damage that occurs are not comparable. In addition, technically the implementation related to the restoration of damaged environments through the mining tax budget is also not clearly visible, this can be seen from the absence of regulations on institutions that are authorized to regulate and manage the realization of the mining tax budget for the restoration of the existing environment. Sri Endah Wahyuningsih stated that there needs to be good coordination between existing law enforcement agencies regarding a problem of violations of the law or existing crimes.⁷

This can be seen in the case of mining in Kendal Regency. It can be seen together that in 2019 the Kendal Regency government had income from mining

⁷ Sri Endah Wahyuningsih and Agus Sunaryo, THE ROLE OF PROSECUTOR OFFICE IN THE ERADICATION OF CORRUPTION CRIMINAL ACTS IN INDONESIA, Jurnal Pembaharuan Hukum Volume IV No. 2 May - August 2017, p. 248.

tax of C excavation of Rp. 57,275,000.00.⁸ However, in 2019 there was a case of environmental destruction due to C mining, one of which was in the case that occurred in Tunggulsari Village, Brangsong, Kendal. Where in this case, pollution in the form of dust and road damage and landslides in several areas of the village have caused local residents to be restless and ultimately take action to reject C mining in the village.⁹

This clearly contradicts the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia, which automatically also contradicts the considerations of Law Number 28 of 2009 which states that "Regional tax and regional levy regulations are implemented based on the principles of democracy, equality and justice, community participation, and accountability by taking into account regional potential."

2. Research Method

The type of legal research used is descriptive explanatory. In this non-doctrinal legal research, law is conceptualized as a manifestation of the symbolic meanings of social actors as seen in the interactions between them. That the real reality of life does not exist in the empirical world which is also the world of observation, does not appear in the form of patterned and structured behavior objectively (let alone normative) and therefore can be measured to produce quantitative data. The reality of life actually only exists in the realm of meaning which appears in the form of symbols that can only be understood after being interpreted. Such realities cannot be easily "captured" through external observation and measurement. These realities can only be "captured" through experience and internal experiences that produce a complete picture of understanding¹⁰

3. Results and Discussion

Regulations Regarding Mining Taxes as a Means of Realizing Current Environmental Ecological Sustainability

Ecological problems can be minimized by arranging a balance between the need for the use of nature for economic activities directly or indirectly with the need for environmental preservation in the context of the ecological needs of the community. According to the author, the protection of the community's

⁸<https://sigijateng.id/2019/tak-bayar-pajak-puluhan-pelaku-usaha-galian-c-di-kendal-diberi-pengarahan/>, Downloaded on June 12, 2020.

⁹<https://regional.kompas.com/read/2019/05/09/12552031/diimbang-melukis-lindungan-warga-kendal-minta-galian-c-dibuku>, Downloaded on June 12, 2020.

¹⁰Soetandyo Wignjosoebroto, Law, Paradigm, Method, and the Dynamics of the Problem, HUMA, Jakarta, 2002, p.198.

ecological rights to the environment can be seen in aspects through Environmental Utilization Permit Management Based on Sustainable Development, Environmental Recovery Activities After Environmental Utilization. the government as the authorized party in the management of environmental utilization permits in this case is mineral and coal mining must balance between economic needs, Energy Resources, and ecological justice through environmental protection from damage. This aspect is environmental protection before environmental utilization activities.¹¹

Lack of Legal Certainty Regarding the Role of Mineral and Coal Mining Tax in Environmental Recovery Following the Enactment of Law Number 1 of 2022 Financial Relations Between Central Government and Regional Government.

After the birth of Law Number 1 of 2022 Financial Relations Between the Central Government and Regional Governments, mineral and coal mining tax is known as the Non-Metallic Mineral and Rock Tax Option, hereinafter referred to as the MBLB Tax Option. Article 1 paragraph (64) Law Number 1 of 2022 Financial Relations Between the Central Government and Regional Governments. According to Article 4 of Law Number 1 of 2022 Financial Relations Between the Central Government and Regional Governments The parties authorized to collect non-metallic mineral and rock tax options are the provincial, city and district governments. The objects of the Non-Metallic Mineral and Rock Tax Options in Law Number 1 of 2022 Financial relations between the central government and regional governments are regulated in Article 71.

Law Number 1 of 2022 The Financial Relations between the Central Government and Regional Governments basically changes the profit sharing system in tax collection at the provincial level with tax options including MBLB tax options.¹² This is in line with the explanation Law Number 1 of 2022 Financial Relations Between the Central Government and Regional Governments. The option on PKB and BBNKB is actually a transfer of provincial tax revenue sharing. This can increase regional independence without increasing the burden on taxpayers, because tax revenue will be recorded as PAD, and provide certainty over tax revenue and provide flexibility in spending on such revenue at each level of government compared to the revenue sharing scheme. Meanwhile, the addition of MBLB Tax Opsen for provinces as a new source of revenue is

¹¹Ahmad Ali MD, "Legal Justice for the Poor," Journal of Law and Justice, (Yogyakarta) Edition 1, 2012, p. 132.

¹²Fence M. Wantu, "Realizing Legal Certainty, Justice and Benefit in Judges' Decisions in Civil Courts," Jurnal Dinamika Hukum, (Gorontalo) Vol. 12 Number 3, September 2012, Quoted from <http://www.academia.edu.com> accessed September 14, 2016, at 20.30 WIB, p. 483.

expected to strengthen the function of issuing permits and supervising mining activities in the region. This will support better quality regional financial management because planning, budgeting, and realization of the APBD will be better. Tax Opsen also encourages the role of the region to carry out regional tax extensification both for provincial governments and district/city governments.

Regulations regarding MBLB tax options in Law Number 1 of 2022 concerning Financial relations between the central government and regional governments can in fact be subject to criminal penalties for tax criminals who commit tax evasion and arrears, including: MBLB tax option, however, there is something vague in Article 182 of Law Number 1 of 2022 concerning Financial Relations Between Central Government and Regional Government:

Criminal acts in the field of regional taxation cannot be prosecuted if they have exceeded a period of 5 (five) years from the time the tax is owed or the tax period ends or part of the tax year ends or the relevant tax year ends.

This is clearly unrealistic, considering that the length of time for the legal process in tax crimes is quite complicated and can involve foreign corporations and large corporations which often have special treatment considering that regional and central revenue costs also come from the taxes of these corporations.¹³ The existence of established law shows how high the civilization of society is, this shows how the level of civilization of a nation greatly influences all aspects of human life including in law. In the conception of law as a result of this civilization, it can be said that law is a basic philosophy that was born and became a guide for the social order of society.

This view is in line with the view of Friederich Karl von Savigny who stated that law is the result of the expression of the people's legal consciousness or *volkgeist*.¹⁴ Then the second law is a media or instrument or tool in realizing an order in a very dynamic social nature. The hybridization of progress and the diversity of human values in a social order that is reflected in the law then makes the law a means of forming a new social order. This is in line with the opinion of Roscoe Pound who sees the law as a tool of social engineering and social control.¹⁵ From Pound's opinion, it can be seen that law is a balancing tool between the flow of social interests that are interrelated and have the potential to clash with each other. The absence of noble values in the law of mining tax

¹³Yuli Kristiyono, personal interview with the Director of Intelligence and Investigation of the Directorate General of Taxes, on December 12, 2021.

¹⁴M. Zulfa Aulia, "Friedrich Carl von Savigny on Law: Law as a Manifestation of the Soul of the Nation", *Undang: Jurnal Hukum*, Vol. 3 No. 1, 2020, pp. 203-206.

¹⁵Gisa Inggit Maulidia, Trisna Muhamad Rofiqi, Krisna Nur Fadilah WP, Gibran Aldi Nashrullah, "Law and Social Change: Roscoe Pound's Philosophical Approach", *Praxis: Journal of Applied Philosophy*, 1:2, 2022, pp. 7-9.

governance in the realm of legal application results in the law only being completed in the text area and the application of dry article elements. This opinion is true, this legal anomaly has also resulted in the injury of ecological rights and social welfare in the context of Islam. Islam teaches all humans to see the holistic dimension of the purpose of law.

The objectives of law according to Islam are basically regulated in the principle *the purpose of the Shariah*. In the principle of maqsid al-Syariah it is explained that the law must be able to protect five things, namely:¹⁶ Religion; Reason; Soul; Property; Descendants.

4. Conclusion

The implementation of mining tax has not been able to realize ecological justice, this is because tax regulations have not optimally implemented coercive efforts and through criminal law channels so that the culture of tax irregularity and mining tax evasion is high, including mining tax.

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¹⁶Sri Endah Wahyuningsih, Principles of Criminal Individualization in Islamic Law and Indonesian Legal Reform, UNDIP, Semarang, 2013, p. 48.

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