ENFORCEMENT OF LAW REGARDING ENVIRONMENTAL DAMAGE DUE TO MINING ACTIVITIES

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Abstract

This research discusses law enforcement regarding environmental damage due to mining activities. The research method used is sociolegal research. Research results: Mining activities not only have a positive impact on sustainable development, but mining activities also cause environmental damage, including: river water pollution, air pollution and land pollution in mining areas. Company accountability is very necessary because environmental damage that occurs needs to be repaired through the principle of absolute responsibility in Article 88 UUPLH, but recently there has been a change in the meaning of absolute responsibility in Article 88 UUPLH where the phrase without proving fault has been deleted in Law Number 6 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law so that if environmental damage occurs, it must be proven that the damage was caused by the company's mining activities. Ideally there is enforcement of Article 88 in Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law regarding strict liability regulations that companies must be absolutely responsible to the community by providing compensation in accordance with losses suffered by the community and companies are also obliged to carry out environmental restoration.

I. Introduction

The presence of environmental laws is fundamentally the most important and decisive part of the existence and sustainability of its social, cultural, and civilizational aspects. As long as human life exists, from birth to even when in...
the womb, the environmental factor cannot be completely separated from human
life. Therefore, humans and the environment become crucial aspects of life.
Especially in the context of nationhood, the people unite in space and time,
influencing the environment in the sustainability and well-being of humans as
living beings. Meeting all human needs and sustainability requires sustainable
development. At present, the era of globalization has become a significant
opportunity with the development of infrastructure and the growth of influential
companies whose production affects the fundamental sectors of life. Based on
this, mining activities are one of the supporting activities for sustainable
development.

In addition to providing economic contributions at the local and national
levels to ensure its long-term existence, mining activities should be carried out
wisely and planned so that they can be inherited by future generations. If mining
activities are not carried out properly, they can negatively impact the
environment, especially with significant disruptions to the balance of the land
surface.1

This has significant implications for the social life of indigenous
communities. Besides the so-called "positive" aspects, in the form of revenue for
Regional Original Income (PAD), mining investments have more negative
impacts on the surrounding communities that largely depend on their
livelihoods in the agriculture and fisheries sectors.2

The environmental damage caused by pollution, particularly when not
appropriately managed, involves chemicals that can lead to harm to human
health and the environment. Therefore, supervision of environmental
management aspects is necessary and commonly carried out by Environmental
Supervision Officials (PPLH) and Regional Environmental Supervision Officials
(PPLHLD). These officials, both directly and indirectly, must protect the
surrounding community concerning environmental permits, such as
Environmental Impact Assessments (AMDAL), Environmental Management
Efforts (UKL), and Environmental Monitoring Efforts (UPL), to create a
conducive environment. These efforts are rooted in the essence of controlling
environmental management actions.3

The state, government, and all stakeholders have an obligation and
mandate to protect environmental management in their implementation,

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1 Saiful Hi. Soleman, Rusdin Alauddin, and Irham Rosyidi, ‘Efektivitas Pelaksanaan Amdal Pada
2 Muhammad Ken Maulidi and others, ‘Kajian Teknis Alat Muat Dan Alat Angkut Produksi Total
Material Movement Pada Tambang Nikel PT. Samudera Mulia Abadi, Jobsite Weda Bay Nickel,
Kabupaten Halmahera Tengah, Maluku Utara’, Jurnal Mineral, Energi, Dan Lingkungan, 6.1 (2022), 27
<https://doi.org/10.31315/jmel.v6i1.6685>.
Karawang District’, 2022, 50–58.
ensuring the resolution of issues affecting society and other living beings. This is facilitated through the application of Ministerial Regulation Number 2 of 2013 on the Guidelines for the Implementation of Administrative Sanctions in the Field of Environmental Protection and Management. This regulation addresses licensing issues, aligning with Ministerial Regulation Number 13 of 2011 on Compensation for Pollution and/or Environmental Damage, establishing the basis for corporate responsibility in causing environmental pollution. The legal framework provided by this legislation serves as a reference for natural resource management, particularly in the field of mining. Hence, law enforcement authorities can address environmental crimes, especially pollution from industrial waste, prevalent in both urban and rural areas.

Furthermore, according to environmental management laws, if environmental damage occurs due to mining activities, there is absolute liability without the need to prove fault. However, the recent enactment of Law Number 6 of 2023 Regarding the Enactment of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation has blurred the meaning of absolute liability. This law eliminates the element of fault without proof.

The success of legislation can be measured by its implementation and enforcement. If law enforcement is inadequate, even the most comprehensive legislation loses significance. Law enforcement acts as the dynamo of legislation. Based on these considerations, this research will focus on the Legal Enforcement related to Environmental Damage Caused by Mining Activities.

2. Research Method

The type of research conducted is socio-legal/empirical juridical research. Empirical juridical research is a study of socio-legal aspects. It can also be called field research or an examination of the applicable legal provisions and what occurs in the community. From another perspective, empirical juridical research involves the law's application or the implementation of normative legal aspects in action during specific legal incidents within society. Empirical research is carried out by observing the realities present in-field practices. It is also described as sociological research conducted directly in the field. Field research is undertaken to obtain primary data by immersing oneself directly in the field related to the Enforcement of Law Regarding Environmental Damage Due to Mining Activities. The types of approaches used include the legislative approach (statute approach), case approach, and conceptual approach. The legislative

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5 Bambang Waluyo, Penelitian Hukum Dalam Praktek, 20002.
approach involves a thorough examination of all laws and regulations related to the legal issues identified in the case study. Legal materials consist of primary, secondary, and tertiary legal sources. Data analysis is conducted descriptively and qualitatively, involving the categorization and selection of data obtained from the research, focusing on the issues. The results are then systematically organized to become concrete data.

3. Results and Discussion

Mining activities always have severe impacts, ranging from water pollution and air pollution to soil contamination. For example, the Nickel and Manganese mining activities in North Maluku Province have significant consequences:

2.1. River Water Pollution

It is crucial to note that water pollution indicates a deviation in the water's characteristics from its expected state, resulting not from impurities but from introducing external components, disrupting its normal functions. Environmental researcher AEER, Arfah Durahman, revealed that the decline in water quality is indicated by detecting hexavalent chromium metal ions at several surface water and sea points. Downstream of the Wosea River, which traverses the Nickel industrial zone, contains hexavalent chromium with a concentration of 0.017 mg/L, exceeding the Initiative for Responsible Mining Assurance (IRMA) standard of 0.011 mg/L. This toxic ion is also detected in various locations in the sea near industrial activities. Nickel and Manganese mining activities cause river water pollution in the mining vicinity. Mining expansion is perceived to alter the conditions of villages and surrounding areas, including river quality and seawater. According to the author, river water pollution not only harms the local community, as evidenced by field analysis and image analysis conducted by the Save Sagea Coalition but also leads to the opening of roads to mining areas, resulting in unstable soil conditions. During rainfall, the runoff from land clearing carries a large amount of sediment into the nearest river channel, potentially causing waterborne diseases that can thrive and proliferate in river water, posing risks to human consumption and impacting the entire river ecosystem, leading to the death of certain animal and plant species.7 One of the polluted rivers is the Sagea River in Central Halmahera Regency, located near nickel and manganese mining areas. The Sagea River serves various purposes, such as drinking, bathing,

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and tourism, and holds cultural values the local community practices as part of their ancestral heritage.

2.2. Air Pollution

Air pollution resulting from mining activities by PT. IWIP, which operates 30 smelters using Rotary Kiln Electric Furnace (RKEF) technology, with a total production of 300,000 tons of Nickel per year, according to the author, leads to poor air quality. For instance, the abundance of dust affects the surrounding community's health, causing respiratory infections. Logically, polluted air undoubtedly affects lung function; pollutants play a role in triggering respiratory diseases such as flu, bronchitis, and pneumonia, as well as chronic diseases like asthma and chronic bronchitis. According to WHO, respiratory tract infections are contagious diseases affecting the upper or lower respiratory tract, capable of causing asymptomatic to fatal diseases depending on the pathogen, environment, and host. Another source states that Respiratory Tract Infections are one of the health disorders resulting from the influence of mining dust, with a relatively high prevalence. Open mining activities can release N2O, CO, SO2 gases, and coal dust particles into the air, where these gases can cause respiratory tract infections. If the surrounding community inhales the particles from these gases, it will disrupt their respiratory passages. In China, cases of black lung disease correlate with the amount of pyrite in coal, and 440,000 coal mining workers suffer from black lung disease.

2.3. Soil Pollution

Soil pollution due to mining activities can lead to the degradation of soil vegetation in the surrounding environment, such as the destruction of genetic soil profiles and terrestrial animal habitats and ecosystems. Manganese and nickel mining alter land use in mining areas and have negative impacts due to the large, irrecoverable holes left by nickel mining, which can transform into artificial lakes containing highly acidic and hazardous substances. Manganese and Nickel mining activities can also generate methane gas, potentially contributing to the greenhouse effect. If not properly managed, methane gas can be released into the atmosphere, contributing to global warming. Additionally, Manganese and Nickel mining activities cause erosion, increasing the rate of soil erosion at river estuaries. Moreover, they can result in damage to the soil and roads in the Manganese and Nickel mining areas.

Environmental pollution, including water, air, and soil pollution, resulting from Manganese and Nickel mining activities in North Maluku Province, is considered a serious issue by the author. The government's ambition to make Indonesia a significant producer of Nickel-based products has led to the
deprivation of livelihoods and health disturbances for the communities in the Nickel mining areas. The direct impact of the Nickel industry’s presence, studied by the Action for Ecological Emancipation of the People (AEER) for two weeks in Central Halmahera, North Maluku, is evident. The villages of Lelilef Woebulen, Lelilef Sawai, Gemaf, and Sagea, within the concession area of PT Weda Bay Industrial Park (IWIP), were examined. Research indicates that the presence of the Nickel industry affects the surrounding community’s social, economic, and health aspects. Manganese and Nickel mining by PT Indonesia Weda Bay Industrial Park (PT. IWIP) involves the use of hazardous chemical mixtures, and its waste is discharged into the drainage that flows into the sea, posing a danger to the residents who used to rely on river water for their livelihoods. Moreover, the waste drainage passes through roads used as economical transportation links for the community. The roads around the Manganese and Nickel mining sites are also damaged, hindering the daily activities of the people passing through them. Additionally, the poor air quality due to mining activities can endanger the surrounding community's health. The continuous pollution in the Manganese and Nickel mining areas significantly impacts the declining quality of life for residents in that region.

The urgency of accountability for environmental damage is emphasized to safeguard the quality of life for the local population. Article 88 of the Environmental Management Law states, "Every person whose actions, efforts, and/or activities involve hazardous and toxic substances, and/or pose a serious threat to the environment, is responsible for the losses arising from their efforts and/or activities."

Environmental laws establish responsibility as a requirement to enforce compensation for repairing environmental damage and pollution impacts. Generally, two principles of responsibility are applied to resolving environmental issues:

1. Principle of Liability Based on Fault
2. Principle of Absolute Liability

Referring to the theory of Strict Liability, where the element of fault does not need to be proven by the plaintiff as the basis for compensation payment, the recent issuance of Law Number 11 of 2020 concerning Job Creation (Omnibus Law on Job Creation) has led to revisions in several articles of the Environmental Protection and Management Law (Law No. 32 of 2009 or UUPPLH), including Article 88 concerning the principle of strict liability. The revised Article 88 of UUPPLH now states, "Every person whose actions, business, and/or activities involve hazardous and toxic substances (B3) and/or pose a serious threat to the environment is strictly liable for the losses resulting from their business and/or activities."

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activities." The phrase "without the need for proof of fault" that was previously included in Article 88 UUPLH has been removed. As for the characteristics of this legal instrument, they include: (a) Intentional in an action, (b) Negligent in an action (negligence culpa), (c) Without justification or forgiveness elements (rechtvaardigingsgrond).

If manganese and nickel mining activities are associated with the theory of strict liability, the author argues that the local community will face difficulties in claiming their right to a healthy environment as stated in Article 28h of the 1945 Constitution. This is because the absolute liability connected with environmental damage and the burden of proving fault would make it challenging for the local community to establish corporate wrongdoing despite evident environmental damage, as there has not been a judgment declaring the company at fault.

In Indonesia, regulations regarding corporate accountability for environmental damage are outlined in Law No. 32 of 2009 (UUPLH), specifically in Article 88. The revised Article 88, through Law Number 6 of 2023 concerning the Enactment of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation, now reads: "Every person whose actions, business, and/or activities involve hazardous and toxic substances (B3), produce and/or manage B3 waste, and/or pose a serious threat to the environment is strictly liable for the losses resulting from their business and/or activities."

Based on the comparison, it is evident that the reduction and blurring of Article 88 of the Environmental Law (UU PPLH) involve the elimination of elements without the need to prove guilt in court. Law Number 6 of 2023 on the Ratification of Government Regulation instead of Law Number 2 of 2022 Concerning Job Creation amends the definition of strict liability in Article 88 of the Environmental Law, introducing changes to the article. Originally, strict liability for losses incurred without needing to prove fault became a liability for losses incurred from one's efforts and/or activities. This change is disadvantageous to the public. The phrase "without proving guilt" is moved in the explanatory article, meaning that in Law Number 6 of 2023 on the Ratification of Government Regulation instead of Law Number 2 of 2022 Concerning Job Creation, it becomes weaker as it is not explicitly explained in the main body. However, comparing it to the Environmental Impact Assessment Law of 1997, the Environmental Law of 2009 is an improvement over the previous law because proving fault is extremely difficult in cases of environmental pollution. This means that when victims of environmental pollution file lawsuits, they must prove the elements of fault in the environmental pollution, which complicates law enforcement or individuals whose rights have been violated in suing the perpetrators for their actions, whether intentional or negligent. Additionally, removing this element threatens the preservation and condition of the environment, especially with the evolving modus operandi of violators, making it seem that there is no connection between the impacts and their operational
activities. However, these actions harm the public but are challenging to prosecute by law enforcement or the public. In the principle of strict liability, this absolute responsibility lies with the business permit holder to ensure that environmental pollution and destruction do not occur in their business area.

According to Article 88 of the Environmental Law currently in force, parties causing environmental damage and losses are indeed absolutely responsible. However, there still needs to be evidence of the fault element in the actions of the defendant. Article 88 of the Environmental Law has faced criticism for weakening public access to justice. The public, previously protected from the actions of business actors damaging the environment and causing losses and the consequences of asymmetric information access, is now confronted with these problems and burdened with the obligation to prove fault.

According to the writer, the enforcement of Law Number 6 of 2023 on the Ratification of Government Regulation instead of Law Number 2 of 2022 Concerning Job Creation into law regarding the responsibility for environmental damage impacts the decrease or non-achievement of economic targets due to the magnitude of environmental threats. The creation of the Job Creation Law aimed to enhance the investment ecosystem in Indonesia. However, the goal of increasing investment potential is challenging to achieve with the significant environmental threats resulting from various changes in Law Number 6 of 2023 on the Ratification of Government Regulation instead of Law Number 2 of 2022 Concerning Job Creation. This is based on letters from dozens of global investors whose assets in Indonesia reach $4.1 trillion. These investors state that the regulations in the Job Creation Law contradict international best practices in investment. The regulations in the Job Creation Law neglect efforts for environmental preservation and protection, which are key objectives of the Sustainable Development Goals (SDGs). The regulations in the Job Creation Law also undermine environmental protection efforts, increasing reputation and operational, regulatory, and climate risks for foreign companies operating in Indonesia. Therefore, the regulations in Law Number 6 of 2023 on the Ratification of Government Regulation instead of Law Number 2 of 2022 Concerning Job Creation into law lead to a decline in the attractiveness of investment in Indonesia.

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Ideally, there is a need for a substantive update on the issues of environmental accountability in Law Number 6 of 2023 on the Ratification of Government Regulation instead of Law Number 2 of 2022 Concerning Job Creation to influence the direction and achievement of sustainable development goals in Indonesia. This could be achieved by reintroducing and incorporating the phrase "without the need for proving guilt" regarding absolute accountability in Article 22, number 33 of the Job Creation Law. This is beneficial for the following reasons:

1. Affirming the concept of absolute accountability in the law enforcement process for environmental violations that theoretically do not require proof of guilt.
2. If this element is reintroduced, it will grant the public access to sue for environmental violations or pollution in their respective areas.
3. Facilitating law enforcement in effectively and swiftly prosecuting environmental violations committed by business actors.

From the issues at hand, we can see that the causes of environmental damage due to Manganese and Nickel mining are also influenced by government policies that lack precision and attention to environmental aspects despite the substantial Regional Original Revenue (PAD) generated by the mining industry to support regional economic growth and produce Gross Regional Domestic Product (PDRB) effectively.\(^{12}\) Political factors can indeed result in environmental damage if the policies and political systems do not position the environment as an integral entity in decision-making and government political steps. Thus, the environment is only seen as an object or resource for economic growth. The relationship between law and the political system in national life and society is always an interesting topic for discussion because both variables constantly influence each other. As mentioned by Moh. Mahfud MD\(^ {13}\), the causal relationship between law and politics has three possible explanations. First, law is a determinant of politics, meaning that political activities are regulated by and must adhere to legal rules. Second, politics is a determinant of law, as the law results from the crystallization of political wills that interact and even compete. Third, politics and law as subsystems of society are in a balanced determinant position, as even though the law is a product of political decisions, once the law exists, all political activities must adhere to legal rules.

Divergent Perspectives of Experts on the Social Subsystems: Legal idealists, who view the law solely from the perspective of "das sollen" (ought to be), assert that the law should serve as a guide and a determinant in all political activities.

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According to them, the law must engineer the development of politics within society and the state. On the other hand, legal experts who adopt a "das sein" (empirical/reality-based) approach argue that legal products are always influenced by politics, from their creation to their implementation in the field. In contemporary contexts, discussions regarding the two subsystems, law and politics, often highlight the overarching influence of politics over law. Politics consistently exhibits greater determinative power compared to the law itself. This is evident when considering activities related to Nickel and Manganese mining, which contribute to economic growth and regional development. Despite its impact on the surrounding community, the political dimension is inevitably intertwined. Communities that rely on agricultural efforts find themselves compelled to comply with government decisions. Presently, these communities no longer manage their lands, and their access to land is restricted by companies operating on the lands owned by residents. The government has displaced communities directly or indirectly from their land, citing the need for the Central Halmahera Regency's Original Regional Revenue (PAD). This dilemma places local governments in a challenging situation. While they strive for economic growth and increased regional income, they simultaneously jeopardize the environmental ecosystem due to mining-related environmental degradation. Thus, government policies need to be reassessed and reorientated to mitigate and address environmental damage.

4. Conclusion

Mining activities not only generate positive impacts for sustainable development but also result in environmental damage, including river water pollution, air pollution, and soil pollution in mining areas. Corporate responsibility is crucial because environmental damage requires rectification through the principle of absolute liability stipulated in Article 88 of the Environmental Protection and Management Law (UUPLH). However, there has been a recent change in the meaning of absolute liability in Article 88 of the UUPLH, wherein the phrase "without proving fault" was removed in Law Number 6 of 2023 regarding the Enactment of Government Regulation instead of Law Number 2 of 2022 Concerning Job Creation. Consequently, in cases of environmental damage, it is now necessary to prove that the damage is a result of the mining activities of the respective company. Ideally, Article 88 in Law Number 6 of 2023 should be enforced regarding the Enactment of Government Regulation instead of Law Number 2 of 2022 Concerning Job Creation, particularly regarding the regulation of strict liability. This entails companies being responsible to the community by providing compensation commensurate with the losses suffered by the community. Moreover, companies are obligated to undertake environmental restoration efforts.
References

Bambang Waluyo, Penelitian Hukum Dalam Praktek, 20002
Bambang Waluyo, Penelitian Hukum Dalam Praktek, 20002


Bambang Waluyo, Penelitian Hukum Dalam Praktek, 20002


Saiful Hi. Soleman, Rusdin Alauddin, and Irham Rosyidi, ‘Efektivitas Pelaksanaan Amdal Pada Kegiatan Pertambangan Di Provinsi Maluku