THE POLITICS OF MINING LAW IN ENVIRONMENTAL LAW ENFORCEMENT SYSTEM IN REGIONAL AUTONOMY ERA

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Abstract

The politics of mining law plays an important role in the management of mining business in the region. In addition, local government have the authority in the environmental management to support the environmental laws enforced optimally in the area. The problem is, the politics of mining law affects the environmental law enforcement in the mineral and coal mining management. This condition is an issue of the environmental law enforcement in the field of coal mining business in enforcing the regional autonomy. It seems that some of the central authorities are delegated to the regions by which the position of local chiefs becomes very powerful. Meanwhile, the application of legal norms in the environmental law enforcement is still ambiguous in terms that the Minerba law does not clearly regulate the responsibility of administrative law and criminal law. This condition is caused by the change of centralized government system to be decentralized government system which then has implication on the environmental law enforcement in the field of coal mining in the region.

Keywords: mining; environmental law, regional autonomy.

Abstrak

Politik hukum pertambangan mempunyai peranan penting dalam pengelolaan usaha pertambangan di daerah. Selain itu pemerintah daerah juga mempunyai wewenang dalam pengelolaan lingkungan hidup, sehingga dapat mendukung penegakan hukum lingkungan secara optimal di daerah. Permasalahannya, politik hukum pertambangan mempengaruhi penegakan hukum lingkungan dalam pengelolaan pertambangan mineral dan batubara. Kondisi ini merupakan permasalahan penegakan hukum lingkungan bidang usaha pertambangan batubara dalam penyelegaraan otonomi daerah. Hal ini terlihat sebagian kewenangan pusat didelegasikan kepada daerah dan menempatkan posisi kepala daerah menjadi sangat berkuasa. Sementara itu penerapan norma hukum dalam penegakan hukum lingkungan masih rancu, dimana undang-undang Minerba tidak mengatur secara jelas tentang pertanggungan jawaban hukum administratif dan hukum pidana. Kondisi ini akibat perubahan sistem pemerintahan daerah sentralistik menjadi desentralistik berimplikasi pada penegakan hukum lingkungan bidang pertambangan batubara di daerah.

Kata kunci: pertambangan, hukum lingkungan, otonomi daerah.

Introduction

Since the existence of Law Number 4 Year 2009 on Mineral and Coal Mining, mining is expected to be a natural wealth contained in the earth which improves people's prosperity sustainability, environmental sound, and fair. Remembering that mineral and coal as the natural wealth contained in the earth is non-renewable resources, the management must be as optimal, efficient, transparent, sustainable and environmental sound and fair as it could be in order to gain as much as benefits for people's sustainable prosperity.

Therefore, the mining management should consider environmental insight aspect in sustainable development. In case of politics of mining law, local government has an important law in the management of mining business. Besides, they also have an authority in the management of environment. Thus, in mining mana-

agement, they should prioritize environmental impacts aspect caused by mining business.[1]

In field of mineral and coal mining, pollution and environmental damage impacts does not only influence human survival in the present but also in the future. Hence, the protection and management for environment are necessary things to do. The protection is a systematic and integrated effort through the local supervision and environmental law enforcement to prevent pollution or environmental damage.[2]

In Jambi province, the impacts of environmental damage due to the coal exploitation currently takes place in Leban village, Rantau Pandan district, Bungo regency. The Environment and Hygiene Agency (BLHK) of Bungo regency is questioning the coal exploitation besides there is no significant contribution from that mining activity. Eventually, the Bungo government cooperates with agents of Ministry of Energy and Mineral Resources (ESDM) from Jambi to discuss the effect of environmental damage caused by coal exploration activity. As known, chemical material is used in coal mining, so the puddle in the excavation is colored green and contains B3 waste yet environmental law enforcement is still not manifested.

Concerning with regional autonomy, the mining law problems in environmental law enforcement is based on political decentralization which delegates half of central government's authority to local government which puts the local chief as someone who has full authority. This phenomenon is not obviously seen in granting mining concession in each region and the occurrence such as canny cooperation with basis of symbiotic mutualism in maximizing natural resources potentials in the region.[3] This condition is a problem of post-reformation of the regional autonomy implementation in environmental law enforcement framework for coal mining business in a region.

Discussion

Politics of Mining Law in Indonesian Environmental Law System

In Indonesia, politics of mining law has existed prior to the revolution in which Dutch colonial government succeeded to stipulate *Indische Mijnwet (Staatblad 1889-213)* which ruled the classification of minerals and mining business.[4] The mining law product from Dutch colonization era was valid until the issuance of Law Number 11 Year 1967 on Provisions of Mining Principle in new order government.

Mining law which was stipulated in new order government based on Law Number 11 Year 1967 have caused a polemic since it was created upon open door policy. It can be seen from the influx of foreign investors in a form of Contract of Work (KK) through Grant of Mining (KP). Government in this era considered mining as something which makes a great contribution from economical aspect in nation and local's income but on the other hand it causes environmental damage and poverty in the region.

Along with demands of reformation in every aspect, it includes mining in the change of centralized paradigm to regional autonomy comprehensively based on Law Number 32 Year 2004 on Local Government. In politics of mining law, recollection data of mineral and coal exploration management is needed as steps for mining law renewal. It is by issuing Law Number 4 Year 2009 on Minerals and Coal Mining (Mining Law).

In environmental law system, mining law is closely related to environmental law. Since every effort of mining especially minerals and coals is required to preserve environmental sup-

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1 Martha Pigome, "Politik Hukum Pertambangan Indonesia dan Pengaruhnya Pada Pengelolaan Lingkungan Hidup di Era Otonomi Daerah", *Jurnal Masalah-Masalah Hukum*, Vol. 40 No. 2, April 2011, p. 213.

2 Adytia Syaprilah, "Penegakan Hukum Administrasi Lingkungan Melalui Instrumen Pengawasan". *Jurnal, Bina Hukum Lingkungan*, Vol. 1 No. 1, October 2016, p.100. Compare this with law enforcement in the fisheries sector at Agus Raharjo, et.al., "The sinking ship policy to the perpetrator of illegal, unregulated and unreported fishing in criminal law perspective", *E3S Web Conf. 2nd Scientific Communication in Fisheries and Marine Sciences (SciFi-MaS 2018)*. Vol. 47. 2018. Pp. 1-10. DOI: 10.1051/e3sconf/20184706002.

3 Hartati, "Reformasi Pengelolaan Pertambangan Mineral dan Batubara Dalam Pemerintahan Otonomi Daerah". *Jurnal Konstitusi Puasat Kajian Konstitusi dan Kebijakan Publik*, Vol. IV No. 1, June 2011, p. 68.

4 Abrar Saleng, 2008, *Hukum Pertambangan*, Yokyakarta: UII Press, p. 64.

porting and carrying capacity.[5] In minerals and coal mining, environment-related issues are quite actual to talk about. The reason is the mining business has a potential to cause land use conflict and overlapping mining areas with other resource management areas.[6]

Meanwhile natural resources utilization including mining develops through issue Mining Permits which is issued by regional government. Although it is limited by Ministry of Energy and Mineral Resources's letter of publication in 2012 on area with no spatial plans is not allowed to issue issue Mining Permits and the local government can issue issue Mining Permits to area that spatial plans has a potential in mining resources.[7] In this regard, the supervision of min-ing management is a part of environmental law enforcement system. [8]

The politics of mining law is oriented to natural resources management, holistic-ecologically need yet provokes environment issues. Empirical fact shows that a tendency of low supervision integrity is caused by environmental law enforcement which has not yet realized.[9] This condition can be seen in environmental law enforcement system which is able to be paid towards administrative sanctions through some fine on government coercion.

Therefore, paradigm of environmental law enforcement has shifted to natural resources as an object. From this point of view, environment is not rationally functioned. This condition is caused by law political influence of Dutch colonization era until regional authority effecting environmental law enforcement as well. At last, the environmental law enforcement through sustainable development principles is hard to be realized in Indonesia.

Environmental Law Enforcement System in Mining in Regional Autonomy Era

The definition of environmental law till present has not achieved shared perception between certain parties and institution even some people assume that it is the government's duty. In this context, the writer concludes that environmental law enforcement is related to rights and obligations which the supervision is done by government through the administrative law emphasis, criminal and civil. The administrative law is the first step through supervision in environmental law enforcement.

In Indonesia, the environmental law enforcement includes compliance and enforcement while in a broader definition it includes preventive and repressive act. The definition of preventive is related to negotiation whereas the repressive is related to enforcement.[10] The pro-blem is about minerals and coals mining. Em-pirical facts shows that mining licensing mech-anism is still based on regional government re-gulations (Perda) that is on regional autonomy law. It is where local chief has an authority to issue Coal Mining Permits (IUP Batubara) and su-pervise the minerals and coals mining activity.[11]

Along with the issuance of Law Number 4 Year 2009 on Minerals and Coals, there is a law confusion in environmental law enforcement. The regional authority is so extent as it is regulated in Article 8 Number 4 Year 2009, although the authority is limited in the second section, yet it is not substantially binding. This condition is used by the regent as the local chief as the first step in regional autonomy framework in which the regional government can identify all mining potency which exist in the area. Yet in the process, the euphoria of coal mining happens, the governments compete to issue Mining

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5 Salim HS, 2007, *Hukum Pertambangan Indonesia*. Jakarta: Raja Grafindo Persada, p. 29.

6 Fenty U Puluhuwala, "Penegakan Hukum Lingkungan Pada Pengelolaan Usaha Pertambangan Mineral dan Batubara", *Jurnal Ilmu Hukum Amanna Gappa,* Vol. 19 No. 2, June 2011, p. 179.

7 Marheni Ria Siombo, "Tanggung Jawab Pemda Terhadap Kerusakan Lingkungan Hidup Kaitannyan Dengan Kewenangan Perizinan Di Bidang Kehutanan dan Pertambangan", *Jurnal Dinamika Hukum,* Vol. 14 No. 3, September 2014, p. 398.

8 Frangky Butar-Butar, Penegakan Hukum Lingkungan Bidang Pertambangan. *Jurnal Yuridika*, Vol. 25 No. 2, May-August 2010, p. 192

9 Fenty U Puluhuwala, "Pengawasan Sebagai Instrumen Penegakan Hukum Pada Pengelolaan Usaha Pertambangan Mineral dan Batubara", *Jurnal Dinamika Hukum,* Vol 11 No. 2, May 2011, p. 307.

10 So Woong Kim, "Kebijakan Hukum Pidana dalam Upaya Penegakan Hukum Lingkungan", *Jurnal Dinamika Hukum*, Vol 13, No.3, September 2013, p. 418.

11 Fenty U. Puluhuwala, "Penegakan Hukum", *op.cit.*, p. 181

Permits (IUP) and Mining Permits Area (WIUP) and what makes it more ironic is that forest is a target in the name of increasing the region's regional generated revenues (PAD).

By the enactment of Law Number 23 Year 2014 on Local Government, there is a significant change in the management of mineral and coal mining. Based on Law Number 23 Year 2014, the regency government does not have the authority anymore on the coal issue Mining Permits (IUP)/Mining Permits Area (WIUP) after issued of Government Regulation in Lieu of Law Number 2 Year 2014 which then accomplished by Law Number 9 Year 2015 on the local government. Consequently, all minerals and coal mining activities under issue Mining Permits (IUP)/ Mining Permits Area (WIUP) which were previously the authority of the district government are now owned by the governor and the central government.

Constitutionally there has been a change in the environmental law enforcement in the mining sector based on Law Number 23 Year 2014 in the regions by which the province regions has right to regulate their own area in the environmental management. It can also be interpreted that the politics of mining law can affect the environmental law enforcement due to the decentralization politics. It delegates some central government authority to the province region by which the region becomes powerful though there is revocation of the regency government authority for mining based on Law Number 23 Year 2014 and Law Number 9 Year 2015 on Local Government.

In regional autonomy framework, the environmental law enforcement is expected both through administrative and criminal sanctions. The problem is that the application of legal norms in the environmental law enforcement is still ambiguous, in which the Minerals and Coals mining law does not manage clearly the administrative and criminal responsibility. This condition is due to the change of centralized government system to be decentralized government system that has implications for the enforcement of environmental law in the mining sector.

Since the mining activity and environment are inseparable even there is an expression "no mining activities without environmental destruction and pollution".[12] Above all, the regulations for those things are separated and even spread in various laws and regulations, such as Law Number 23 Year 2014 on local government.

Related to the environmental law enforcement, it can only succeed in supporting development if the government functions effectively and integrated.[13] In line with this opinion, the issue of environmental law enforcement implementation often leads to overlap between central and local government policies. This ultimately leads to the uncertainty of environmental law enforcement in the mining sector in the local government system.

Although Law Number 23 Year 2014 on Local Government has restricted the authority of the regency government but the province government is limited to matters related to the regulation of mining business. Meanwhile, the implementation of state control over Minerals and Coals mining is still carried out by the central government. This means that the provincial government is authorized by the central government to regulate the mining business and in case of *a contrario,* the implementation of state control over mining remains the authority of the central government.

In the politics of mining law, the environmental law enforcement system has been shifted based on Law Number 23 Years 2014. Based on the principle of preference, the new provision will override the old legal provision. Otherwise, Law Number 23 Year 2014 overrides the *Minerba* Law that specifically regulates the minerals and coal natural resources management. This condition has brought us back to the New Order era and the enactment of Law Number 11 Year 1967 on Basic Provisions on Mining.

In the regional autonomy era, this phenomenon will certainly bring us back to the centralized atmosphere of Minerals and Coals mining management which focuses on the central and provincial governments in the management of mining business. This policy is a political op-

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[12] Abrar Saleng, 2008, Hukum Pertambangan, *op.cit.*, p. 111.

[13] Fenty U. Puluhuwala, "Pengawasan Sebagai Instrumen Penegakan Hukum Pada Pengelolaan Usaha Pertambangan Mineral dan Batubara". *Jurnal Dinamika Hukum,* Vol. 11 No. 2, May 2011, p. 304.

tion that is expected to maintain the sustainability of natural resources.[14] The previous centralized government system had destroyed the natural resources of the mining field to realize the people's prosperity.

Conclusion

The environmental law enforcement paradigm has shifted to the perspective of natural resources as an object. In this perspective, the environmental law is lack of functions rationally. This condition is due to the influence of the mining law politics in the Dutch East Indies era until the local autonomy era which affected the environmental law enforcement. Finally, the environmental law enforcement through the principles of sustainable development in the mining sector is difficult to be implemented in Indonesia.

The environmental law enforcement system in the mining sector has shifted based on Law Number 23 Year 2014, in which the new provision will override the old provision. In other words, Law Number 23 Year 2014 overrides the Mineral and Coal Mining Law that specifically regulates the management of minerals and coal natural resources. This condition has brought us back to the New Order era and the enactment of Law Number 11 Year 1967 on Basic Provisions on Mining.

Thus, with the enactment of Law Number 23 Year 2014 on Local Government, the government is suggested to enforce the environmental law for the mineral mining and coal through criminal law in the future if the legal instrument of administrative law does not work. Yet, it is not *ultimum remidium* or the last effort in enforcing the environmental law of coal mining business in the region.

References

Butar-Butar, Franky. "Penegakan Hukum Lingkungan Bidang Pertambangan". *Jurnal Yuridika*. Vol. 25 No. 2 May-August. 2010. Pp. 151-158. DOI: 10.20473/ydk.v25i2. 252;

Effendi. "Kewenangan Pengelolaan Sumber Daya Alam Pada Era Otonomi Daerah di Aceh". *Jurnal Yustisia*. Vol. 3 No. 2. May-August 2014. Pp. 108-117. DOI: 10.20961/yustisia.v3i2.11104;

Salim HS. 2012. *Hukum Pertambangan Mineral & Batubara*. Jakarta: Sinar Grafika;

Hartati. "Reformasi Pengelolaan Pertambangan Mineral dan Batubara Dalam Pemerintahan Otonomi Daerah". *Jurnal Konstitusi*. Vol. IV No. 1. June 2011. Without Page;

Kim, So Woong. "Kebijakan Hukum Pidana Dalam Upaya Penegakan Hukum Lingkungan". *Jurnal Dinamika Hukum*. Vol. 13 No. 3. September 2013. Pp. 415-427. DOI: 10.20884/1.jdh.2013.13.3.247;

Puluhulawa, Fenty U. "Pengawasan Sebagai Instrumen Penegakan Hukum Pada Pengelolaan Usaha Pertambangan Mineral dan Batubara". *Jurnal Dinamika Hukum*. Vol. 11, No. 2, September, 2011. Pp. 306-316. DOI: 10.20884/1.jdh.2011.11.2.189;

-------. "Penegakan Hukum Lingkungan Pada Pengelolaan Usaha Pertambangan Mineral dan Batubara". *Jurnal Ilmu Hukum Amanna Gappa*. Vol. 19 No. 2. June. 2011. Pp. 176-184;

Pigome, Martha. "Politik Hukum Pertambangan Indonesia dan Pengaruhnya Pada Pengelolaan Lingkungan Hidup di Era Otonomi Daerah". *Jurnal Masalah-Masalah Hukum*. Vol. 40 No. 2. April 2011. Pp. 212-219. DOI: 10.14710/mmh.40.2.2011.213-219;

Raharjo, Agus. Et.al., "The sinking ship policy to the perpetrator of illegal, unregulated and unreported fishing in criminal law perspective", *E3S Web Conf. 2nd Scientific Communication in Fisheries and Marine Sciences (SciFi-MaS 2018)*. Vol. 47. 2018. Pp. 1-10. DOI: 10.1051/e3sconf/20184706002;

Saleng, Abrar. 2007. *Hukum Pertambangan*. Yogyakarta: UII Press;

Syaprilah, Adytia. "Penegakan Hukum Administrasi Lingkungan Melalui Instrumen Pengawasan". *Jurnal Bina Hukum Lingkungan*. Vol. 1 No. 01. October 2016. Pp. 99-113. DOI: 10.24970/jbhl.v1n1.8;

Siombo, Marheni Ria. "Tanggung Jawab Pemda Terhadap Kerusakan Lingkungan Hidup Kaitannya Dengan Kewenangan Perizinan Di Bidang Kehutanan dan Pertambangan". *Jurnal Dinamika Hukum*. Vol. 14 No. 3. September 2014. Pp. 394-405. DOI: 10.20884/1.jdh.2014.14.3.306

[14] Effendi, "Kewenangan Pengelolaan Sumber Daya Alam Pada Era Otonomi Daerah di Aceh", *Jurnal Yustisia,* Vol. 89 May-August 2014, p. 109.