

The Legal Aspects of Non Renewable Resources For Supporting Sustainable Development

Sunarto¹, Eta Yuni Lestari², Slamet Sumarto³
{sunarto@mail.unnes.ac.id}

^{1,2,3}Universitas Negeri Semarang, Indonesia

Abstract. Technological advancements have increased the possibility for unlimited exploitation of natural resources, while the amount of natural resources is limited. In connection with this issue, the use of natural resources especially the non-renewable resources needs to be regulated clearly. The business people and the public should create harmonious and synergic relationships to avoid the negative impacts of the using of natural resources. The previous research shows that the formulation of legal regulations recently is more exploitative and seems to be an economic instrument for exploiting natural resources. The purpose of this research is to study the basic principles of natural resource management according to the laws; consistency among the regulations of the management of natural resources; and the relevance of the regulations of natural resources to realize sustainable development. This research is normative legal research. The research is carried out with the legal approach (statute approach), and the research data was collected through documentation studies and library studies. The result of this research shows that, important principle of non-renewable resources management for development is the principle of sustainability and environmental outlook; the contents of the laws and regulations normatively have been conform with efforts to realize sustainable development, but in the implementation of these rules still there are inconsistencies

Keywords: non-renewable resources, law and regulation, sustainable development

1. Introduction

Natural resource is one of the basic capital of development. Development cannot be separated from financing problems, and natural resource is one of income to finance development. However, it is by no mean that natural resource is everything for the survival of country. The main capital is the quality of human resource. The fact shows that countries that are categorized as developed countries are not all have abundant natural resources; on the contrary there are countries with abundant natural resources but it is difficult to become a developed country, even many it's people are poor. But ownership of natural resource cannot be ignored, especially when the quality of human resource is still not reliable.

Natural resource is often divided into two types, namely renewable resources, such as plants (flora), animals (fauna); and non-renewable resource such as mining materials. Flora and fauna can be cultivated so that its availability can be maintained and renewed continuously so not to become extinct. Even though the flora and fauna which already extinct is also impossible to renew. Whereas mining materials occur through natural processes in a very long time and cannot be cultivated by humans to maintain their availability.

Renewable resources and non-renewable resources bring the different problems in their management. Non-renewable resources need to be managed more rationally and efficiently so

can be used in a longer term to support the development. It need to avoid waste in using so it can be used for the future generations and the continuity of development.

Management of natural resources cannot be given to certain parties without binding legal rules that become the guidelines. With the law regulating it, management of natural resources will be able to realize order, justice, legal certainty, and maximum benefit. It becomes very important especially for non-renewable resources that more limited availability and cannot be regenerated.

The results of previous research have shown that the formulation of current mining law is exploitative in character and appears only an economic instrument in the context of exploitation of natural resources. Various facilities for many miners are given by government in the form of the regulations having the character of "forgiveness". [1].

When we pay attention to the formulation of corporate criminal liability in the natural resources sector, there are different regulations between one and another so that they do not provide the legal certainty and in turn affect law enforcement. [2].

In this regard, this research was carried out to study the basic principles that must be a guideline for natural resource management, the relevance between the regulation and the realization of sustainable development, and the consistency of legal rules regulating the management of non-renewable resources.

The problems related to this research are:

1. How are the basic principles of managing non-renewable resources according to the laws and regulations;
2. How so far the the law and regulations concerning the management of non-renewable resources has been relevant to support the sustainable development.
3. How is the consistency between various laws and regulations concerning the management of non-renewable resources.

2. Research Method

This research is a normative juridical research. The approach used in this study is the law approach (statute approach), namely the research approach carried out by examining all laws and regulations relating to the legal issues being studied. (Marzuki, 2006: 93). By this approach, research is carried out by studying laws and regulations concerning to the management of non-renewable resources. As a complement, research is also carried out by studying literature, articles, and news.

The data source consists of legal materials in the [3]–[5]; Government Regulations and various other implementing regulations consist of Government Regulation No. 23 of 2010 concerning Mineral and Coal Mining Business Activities; Government Regulation No. 35 of 2004 concerning Upstream Oil and Gas Business Activities; Government Regulation No. 36 of 2004 concerning Downstream Oil and Gas Business Activities; and non-legal materials in the form of books, articles, news in the mass media relating to research problems [6].

The research data was collected through documentation studies and library studies. Documentation studies are carried out by researching legal materials that regulate the management of non-renewable resources, both in the form of laws and implementing regulations. While the literature study is carried out by studying non-legal materials in the reference books, journal articles, and news published in the mass media.

3. Result and Discussion

3.1 The basic principles of managing non-renewable resources according to the laws and regulations

In accordance with the provisions of the Law No. 12 of 2001 concerning Oil and Gas, the management of oil and gas resources must be based on the principles of populist economy, integration, benefits, justice, balance, equity, shared prosperity and the people's welfare, security, safety, legal certainty, and environmentally sound. In the general explanation of the law it was stated that in facing global needs and future challenges, oil and gas business are required to be able to support the sustainability of national development to increase the people prosperity.

Sustainable development is the development aimed at fulfilling the needs of the present generation without ignoring the future generation to fulfill their needs. The management principle of oil and gas according to the law has been conform with the meaning of sustainable development.

Whereas according to [3], management of mineral and coal mining must be based on the principles of benefits, justice and balance; partiality in the interests of the nation; participatory, transparency, accountability, and being sustainable and environmental outlook. What is the meaning of sustainable principles and environmental outlook is a principle that is planned to integrate the economic, environmental, and socio-cultural dimensions, in the entire mineral and coal mining business to realize the present and future prosperity.

The government provides opportunities for cooperative economic institution, individuals, and local communities to exploit minerals and coal based on permits granted by the government. Mining businesses must provide the greatest economic and social benefits for the welfare of the people. Mining businesses must be able to accelerate regional development and encourage community economic activities and the growth of industries. In order to realize sustainable development, mining business must be carried out with pay attention to environment, transparency, and community participation.

The upstream oil and gas business activities must be carried out optimally and the policy of regulation is guided by spirit of Constitution. The upstream oil and gas business aims to ensure the effectiveness of the implementation and control of exploration and exploitation business activities, effective, competitive, and sustainable through the transparent mechanism. Whereas according to General Explanation of Government Regulation No. 36 of 2004 concerning Downstream Oil and Gas Business Activities, downstream business activities are required to be able to support the continuity of national development in order to increase prosperity and people's welfare [6]. Downstream oil and gas business activities aims to support and develop national capabilities to compete, create employment, improve the environment, and increase the people welfare and prosperity.

The basic principles above are conform with the efforts to achieve sustainable development, which according to the World Commission Environmental and Development (WCED), is a development aimed at fulfilling the needs of the present generation without ignoring the ability of future generations to fulfill their own needs [7].

That basic principle is very important related to technological advances that bring problems in natural resource management, namely increasing the possibility of exploiting natural resources inlimitely, whereas both in a qualitative and quantitative natural resources are limited. Besides that the increase in population has resulted the increased demand for natural resources. [8]

Sustainable development is necessary to create possibilities for the survival of future generations by preserving the functions of ecosystems and need to exploit natural resources using technology that does not damage the environment. In addition, opportunities need to be given to the industrial sector and other businesses to develop together, enhance the ability of ecosystems to protect and support natural resources and strive for changes in ecological functions not exceeding capacity environment.

3.2 The relevance of legal aspect concerning management of non-renewable resource to support sustainable development

According to the 1945 Constitution, that the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people. With different properties of natural resources, management also requires different strategies. For non-renewable resources, the management needs to be carried out more efficiently, transparently, environmentally, and support sustainable development.

With regard to the oil and gas, considering that oil and gas is a strategic natural resource that is not renewed which is controlled by the state and is a vital commodity that plays an important role in the supply of industrial raw materials, meeting domestic energy needs, and important foreign exchange earners; so the management must be carried out optimally to utilize for the greatest prosperity and welfare of the people. In order to the government's function as a regulator and supervisor to run more efficiently, the Executing Agency is formed in the upstream business activities, while the Regulatory Agency is formed in the downstream business activities. [4].

It is important and needs to be considered, that the development carried out to develop the present life should be ensured that the future generations can also fulfill their needs. This means that the using of natural resources must always pay attention to aspects of sustainability for the future generations. In this regard, this research traced the provisions of the Law No. 21 of 2011 concerning Oil and Gas and Law, [3], and the implementation regulations.

In accordance with the the Law No. 21 of 2011, that a Business Entity or Permanent Establishment Business as an oil and gas company must guarantee safety and healthy occupation, environmental management, and obey the provisions of laws and regulations in oil and gas business activities. The environmental management is in the form of an obligation to prevent and mitigate pollution and restore environmental damage, including post-mining obligations. Business Entities or Permanent Establishments Business that carry out the oil and gas business activities must take responsibility in developing the environment and the local community. According to this provisions, oil and gas business must always pay attention to environmental development by avoiding pollution and restoring environmental damage. It is none other than the interests of future generations be able to fulfill their life needs.

In the implementation regulation, according to Government Regulation No. 35 of 2004 which regulates the upstream business in the oil and gas sector, contractors in carrying out their activities are also responsible for developing the environment and the local community. The form of responsibility is involvement of the local community by employing certain workers having competencies and developing the community to make harmony in relation between contractors and surrounding community.

According to PP. No. 36 of 2004 concerning Downstream Oil and Gas Business Activities, in carrying out activities, a business entity is obliged to guarantee occupational safety and healthy, environmental management, development of the local community, and ensure that the

final products conform with the standards and quality conform with laws and regulations [6]. Likewise, business entities in their activity must guarantee occupational safety and healthy, environmental management, and development of local communities.

In fulfilling the need of worker, business entities that carry out Downstream Businesses activities, must prioritize the use of Indonesian worker by taking the utilization of local worker in accordance with the required competency standards. Thus the law as a set of norms is one of the instruments for creating better business activities. Business community and the public should create harmonious and synergic relationships to avoid the negative impacts arise. [9].

With regard to non-renewable resources in the form of minerals and coal, Law No. 4 of 2009 concerning Mineral and Coal Mining enforce several points of mind; that in realizing of sustainable development, all mining business sector must pay attention to the environment and community.

In accordance with the provisions, management of minerals and coal should be able to ensure the effective implementation and control of mining business activities in an efficient, effective and competitive, insure the benefits of mineral and coal mining in a sustainable and environmental outlook; ensuring the fulfillment of domestic energy needs; support and develop national capabilities to be able to compete at national, regional and international levels; increasing the income of local, regional and state communities, and creating employment opportunities for the welfare; and guarantee legal certainty in the implementation of mineral and coal mining business activities.

In application of mining engineering rules, holders of Mining Business Lisence (IUP) and Special Mining Business Lisence (IPPK) are required to carry out the safety and health provisions of working; mining operations safety; mining environment management and monitoring, including reclamation and post-mining activities; efforts to conserve mineral and coal resources; management of mine waste in the form of solid, liquid or gas to fulfill the environmental quality standards. In addition, IUP and IUPK holders are obliged to preserve the function of the water resources in accordance with the law and regulation.

The holders of IUP and IUPK are also obliged to increase the added value of mineral and coal resources, processing and refining, and the utilization of minerals and coal. Holders of IUP and Production Operation IUPK are obliged to process and refine mining products in the country.

In accordance with the law, through PP. No. 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities; determined that the holder of the Production Operation IUP and the mineral Production Operation IUPK must carry out processing and refining to increase the added value of the minerals produced. Foreign capital of IUP and IUPK holders after 5 (five) years since production is obliged to divest their shares, so that at least 20% (twenty percent) of their shares are owned by Indonesian participants. Holders of IUP and IUPK are also required to implement the development programs and empower the surrounding communities by prioritizing communities directly affected by mining activities. Taking account the provisions concerning oil, gas, minerals and coal, and linking them with the concept of sustainable development, it appears that various laws and regulations require the businesses in the mining sector always pay attention to aspects of environmental management. With good environmental management in carrying out the mining activities, it will be able to insure the future generations fulfill their needs.

The next question, how is the manifestation of environmental management accordance with the laws. According to the provisions of the Law No. 32 of 2009 concerning The Environmental Protection and Management, what is meant by sustainable development is a

conscious and planned effort that integrates environmental, social, and economic aspects into development strategies to ensure the integrity of the environment and the safety, ability, welfare, and life quality of present and future generations [5].

In accordance with the law, every business or activity that has an important impact on the environment must have Environmental Impact Analyses. In addition, every business or activity that potentially have a significant impact on the environment, threats to ecosystems and life or human health and safety must carry out an analysis of environmental risks. The relevant minister needs to encourage the person in charge of the business carry out an environmental audit in order to improve environmental performance.

Every person who causes pollution or damage to the environment is obliged to control the pollution or damage. The prevention of pollution or damage as intended by providing information on warning of pollution or environmental damage to the community, isolating pollution or damage to the environment, cessation of sources of pollution or damage to the environment, or other means in accordance with the development of science and technology. In addition, every person who causes pollution or damage to the environment must hold restoration of environmental functions.

The violation of the provisions as presented above has consequences for the various of sanctions, both administrative and criminal sanctions. Administrative sanctions as stipulated in the Law No. 4 of 2009 concerning Mineral and Coal is in the form of written warnings and temporary stop of part or all of exploration or production operations; or cancellation of IUP, IPR, or IUPK. Criminal sanctions can be the form of imprisonment of up to 10 (ten) years and a fine of up to 10 billion rupiah.

While related to the Act. No. 22 of 2001 concerning Oil and Gas, violations of the law can have the consequence of imprisonment maximum 6 (six) years and maximum fine Rp. 60,000,000,000.00 (sixty billion rupiahs), including any person who imitates or falsifying fuel oil and natural gas and its processed products. In addition, it is also for people who abuse transportation or trade in subsidized fuel.

The cycle of regulation and policy regarding the environment includes the making of regulation, determining of management standards, granting of management permits, implementing of laws and regulations, and enforcing of laws regulating the environment. The fact shows that among these steps, the weakest is law enforcement. [10]. When the regulations concerning environmental management is not properly enforced, it will greatly affect the sustainability of natural resources.

3.3 Consistency between the laws and implementation

Based on the study, it can be said that between law and regulations has shown the internal and external consistency. The internal consistency referred to the consistency among article in a law or regulation, whereas external consistency is the consistency between one law or regulation and another.

However, in the implementation of the law and regulation there were still inconsistencies felt by the business actors. For example, the regulation on gross profit sharing schemes in Minister Regulation Number 8 of 2017 concerning Gross Split Production Sharing Contracts. By certain parties, the regulation is considered inconsistent with its aim, for example related to the matter of assets. Article 21 of the regulation states that all equipment used in business activities purchased by contractors are owned by the state. Even though the assets are fully funded by contractor investments and there isn't reimbursement from the government. That

is different from the Production Sharing Contract (PSC) where there is a reimbursement of costs from the government to the company.

In addition to the issue of assets, the bureaucracy aspect is also considered inconsistent in using the gross split scheme. By that scheme, the government must accept the final results without concerning to the plans for development, budget, and so on. But in fact, government still concerning to the such matter, so if the gross split scheme aims to simplify administration and bureaucracy, that is difficult to achieve the goals [11].

In relation between the contractor and the government, the contractor is often powerless. Because of Constitution provision, the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people. Thus the state has sovereignty in managing natural resources and contractors are limited by regulations of the government [12].

A number of mining regulations, namely Government Regulation No. 1 of 2017 and ESDM Ministerial Regulation Number 5 and Number 6 of 2017, are considered to cause new problems in mining investment. To guarantee legal certainty and protection for investment, the issue should be resolved by renegotiating the contract of work (KK) between the government and the company in accordance with Article 169 of Law No. 4 of 2009 concerning Mineral and Coal Mining. The provisions of several articles by certain parties are considered to be contrary and exceed the norms in the mineral and coal mining law. The ESDM Minister's regulation that change KK to become a Special Mining Business Lisence (IUPK) is considered not conform with the ease of investment deregulation package that guarantees and provides legal protection to potential investors and investors who have already invested. [13].

Likewise in its implementation, even though there has been a provision that IUP and IUPK Production Operation holders must increase added value through processing and refining domestic mining products by building smelters, this has also not been consistently implemented. For the Indonesian government, purification of mining products is important because it has added value to the country. But for companies, the main problem with the building of smelters is the energy supply problems. For this reason, the government needs to provide incentives so that investor get energy supplies. [14]

4. Conclusion

The important and very relevant principle of non-renewable resources management for development is the principle of sustainability and environmental outlook. The principle requires natural resource management planned by integrating economic, environmental and socio-cultural dimensions in the overall mining business to realize present and future prosperity. Thus the management of non-renewable resources is able to support the continuity of national development to increase prosperity and welfare, without ignoring the fulfilling of future generations need.

Contents of the laws and regulations normatively have been conform with efforts to realize sustainable development. It appear from regulations concerning the mining businesses that not only pay attention to economic interests, but also the environmental sustainability and socio-cultural aspects. The attention to environmental preservation intended to the environmental carrying capacity does not deteriorate and thus future generations can fulfill their life needs properly.

In concerning to the laws and government regulations, among one and another rules has shown consistency, both internal consistency among the articles in the rules themselves and external consistency between one and another rule. But in the implementation of these rules there are still inconsistencies. It appears from the ministerial regulations related to mining contract between the government and private companies, which are considered by the private company to be inconsistent with the rules above, or ignore the agreement between government and private company previously.

References

- [1] M. Muhdar, "Aspek Hukum Reklamasi Pertambangan Batubara pada Kawasan Hutan di Kalimantan Timur," *Mimb. Hukum-Fakultas Huk. Univ. Gadjah Mada*, vol. 27, no. 3, pp. 472–486, 2015.
- [2] H. Satria, "Pertanggungjawaban pidana korporasi dalam tindak pidana sumber daya alam," *Mimb. Hukum-Fakultas Huk. Univ. Gadjah Mada*, vol. 28, no. 2, pp. 288–300, 2016.
- [3] *Undang-undang Republik Indonesia No. 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara*. Indonesia: Lembaran Negara Republik Indonesia No. 4 Tahun 2009, 2009.
- [4] *Undang-undang No. 22 Tahun 2001 tentang Minyak dan Gas Bumi*. .
- [5] *UU. No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup*. .
- [6] *PP. 36 Tahun 2004 tentang Kegiatan Usaha Hulu Minyak dan Gas Bumi*. .
- [7] S. Soemiarno, "Buku Ajar III Bangsa, Budaya, dan Lingkungan Hidup di Indonesia," *Jakarta Balai Penerbit UI*, 2010.
- [8] E. R. Agoes, "HUKUM SUMBERDAYA ALAM: PERLUKAH SUATU PENGATURAN TERSENDIRI (Suatu Kajian Komparatif)," *Sosiohumaniora*, vol. 2, no. 3, p. 26, 2000.
- [9] M. Febrian and A. Nugraha, "Kajian Socio Legaltanggung Jawab Sosial Lingkungan Hidup Perusahaan Berdasarkan Persepsi Masyarakat," *Mimb. Hukum-Fakultas Huk. Univ. Gadjah Mada*, vol. 26, no. 3, pp. 409–427, 2014.
- [10] A. Hamzah, *Penegakan hukum lingkungan*. PT Alumni, 2016.
- [11] <https://money.kompas.com/read/2017/01/23/191839326/sejumlah.pasal.dalam.aturan.bagi.hasil.kotor.migas.dinilai.tak.konsisten>. .
- [12] "<http://vivajusticia.law.ugm.ac.id/2018/11/29/konsistensi-regulasi-dan-sanctity-of-contract- analisis-terhadap-iklim-investasi-hulu-migas-di-indonesia/>". .
- [13] "<https://www.republika.co.id/berita/ekonomi/energi/17/03/31/onou6f416-sektor-pertambangan-butuh-konsistensi-regulasi>". .
- [14] "<https://www.cnnindonesia.com/ekonomi/2017011115813-86-185533/kebijakan-hilirisasi-mineral-konsisten-untuk-tidak-konsisten>". .
- [15] Meyana. Lia dkk. 2015. "Arahan dan Strategi Pengembangan Areal Bekas Tambang Timah Sebagai Kawasan Pariwisata di Kabupaten Bangka". *Jurnal Pengelolaan Sumberdaya Alam dan Lingkungan*. Vol. 5 No. 1 Juli 2015).
- [16] Rangkuti, Zulkifli. 2011. Strategi Kebijakan Tekno Ekonomi Pengelolaan Gas Ikutan (Associated Gas)" *JPSL Vol. (1) 2 Desember 2011*.
- [17] Salim, Emil. 1993. *Pembangunan Berwawasan Lingkungan*. Jakarta: LP3ES.
- [18] Soemartono, RM Gatot P. 2004. *Hukum Lingkungan Indonesia*. Jakarta: Sinar Grafika.
- [19] Solihin, Muhammad Amin dan Sudirja, Rija. 2007. "Pengelolaan Sumberdaya Alam

Secara Terpadu untuk Memperkuat Perekonomian Lokal? Jurnal *SoilREns*. Voume 8 Nomor. 15. Juli 2007.

[20] (<http://rajawaligarudapancasila.blogspot.com/2014/05/konsep-pengelolaan-sumber-daya-alam.html>). Download: Minggu, 24 Feb. 2019 Jam: 20.55).