

Law Enforcement and Public Information Transparency in the Management of Reclamation Lands Post-Mining by the IUP Holders in Belitung Regency

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Abstract. This research aims to analyze law enforcement and public information disclosure of post-mining reclamation land management of IUP holders in the Belitung district area. This research uses normative method. The result of this research is law enforcement for corporations that do not carry out post-mining reclamation, then the application of the criminal law enforcement model must be carried out as a form of legal consequences for the non-performance of an obligation carried out by the IUP holder. In addition, reclamation activities with public information disclosure by the government to the public as social control of whether or not reclamation activities are carried out by IUP holders, so that the government and mining business actors must require good cooperation in a transparent and accountable public information disclosure situation as the intent and purpose of Law Number 14 of 2008 concerning Public Information Disclosure.

Keywords: Law Enforcement, Reclamation, Public Information Disclosure

1 Introduction

Indonesia is a nation endowed with abundant natural resources, making it one of the countries with extensive mining land.[1] These mining lands are distributed across various islands in Indonesia, where natural resources are explored to meet human needs. The abundant natural resources should ideally make Indonesia a country capable of providing prosperity for its people. Exploration and exploitation of natural resources are carried out throughout the nation, all aimed at harnessing the available bounty of the earth to achieve the utmost prosperity for the population.

However, in reality, various issues arise due to mining activities, ranging from the emergence of various diseases resulting from uncontrolled mining waste to pollution that leads to deteriorating environmental quality and the extinction of local flora and fauna. The presence of mining enterprises contributes significantly to the country's economy, from small-scale quarrying operations with limited areas and volumes to large-scale contract of work (CoW) enterprises producing millions of tons of minerals and occupying hundreds of thousands of hectares of land and forests. Numerous regions in Indonesia are rich in mineral mining resources

such as gold, coal, tin, and various other minerals. Examples include regions in Sulawesi, Kalimantan, Nusa Tenggara, Papua, Sumatra, and even the Bangka Belitung Islands, which are among the largest mining areas in Indonesia.

One logical consequence of mining activities is the degraded former mining lands resulting from the earth-turning activities that often strip away the topsoil layer. With the rapid advancement of technology and the prevalence of tin mining, both by those holding Mining Business Permits (IUP) and by unauthorized, unlicensed miners engaged in illegal and often open-pit mining, forest lands are frequently damaged. This type of mining leads to the mixing of the upper and lower soil layers, causing the oxidation of sulfur-bearing minerals and the release of sulfate, which adversely affects soil chemistry. This results in the soil's pH becoming acidic to extremely acidic, and an increase in the solubility of metals. Furthermore, some miners employ chemical substances for ore purification, such as cyanide (CN) for gold mining, and arsenic (As) and mercury (Hg), which are commonly used in gold mining. These chemicals are highly hazardous environmental pollutants due to their toxic nature.[2]

Given the vast expanse of former mining areas in Indonesia, owing to its abundant natural resources, it is not surprising that many of these abandoned mining sites in various regions have not undergone reclamation efforts.[3] Recognizing this, the government has formulated policies to reclaim these former mining lands, transforming them into environmentally sustainable areas that benefit a broad spectrum of stakeholders. The aim of reclamation activities is not solely land restoration; it also seeks to boost the economy and the social life of the communities surrounding these areas following the cessation of mining operations. Several measures can be undertaken to convert former mining lands into useful locations.[4]

One such area of focus is the Province of Bangka Belitung Islands, an active mining region, particularly for tin mining. The author's investigation pertains to the region within Belitung Regency, as this commodity holds substantial profit potential for companies with mining permits. Given this immense potential, due attention is required concerning reclamation activities to mitigate adverse environmental impacts after active mining operations have ceased. However, the reality in the field reveals suboptimal practices, particularly during the final stages of tin mining activities, where abandoned mining pits are left behind.[5] The multitude of these pits has detrimental consequences for both the community and the environment and poses potential risks to human life, as reclamation efforts have not been executed for these abandoned mining pits. The mining activities, which involve the excavation of soil to extract minerals, invariably alter the landscape of the mined area. Vegetation is uprooted, resulting in a significant shift from lush greenery to barren land. Such transformations must be addressed, with reclamation being a legal obligation for companies operating in specific areas following mining activities.[6]

Belitung Island, as part of the largest tin-producing province in Indonesia, has been exploited since the 18th century and has encountered environmental crises, akin to other mining regions in Indonesia.[7] In 2018, the Ministry of Environment and Forestry of the Republic of Indonesia declared 275,500 hectares of land in the Bangka Belitung Islands Province as environmentally critical due to tin ore mining. Much earlier, the Critical Land Review Report for Belitung Regency outlined that the critical land area covered 13,258 hectares, highly critical land spanned 20,364 hectares, somewhat critical land extended over 145,987 hectares, and potentially critical land amounted to 116,167 hectares. In Belitung Timur Regency, the highly critical land area

reached 7,337 hectares, highly critical land spanned 48,074 hectares, somewhat critical land covered 187,099 hectares, and potentially critical land comprised 9,950 hectares.[8]

The existing conditions are clearly incongruent with the provisions of Article 98 of Law Number 4 of 2009 on Mineral and Coal Mining, which stipulates that "IUP and IUPK holders are obligated to maintain the sustainability of the functions and carrying capacity of the relevant water resources in accordance with the provisions of the legislation." This includes holders of permits for community mining (IPR), Exploration Mining Business Permits (IUP Eksplorasi), Special Mining Business Permits for Exploration (IUPK Eksplorasi), as well as permits for Mining Business Operations (IUP Operasi Produksi) and Special Mining Business Permits for Operations (IUPK Operasi Produksi) issued by the government. They are obliged to adhere to the principles of environmental protection and management within mining areas, taking into account ecological limits through post-mining reclamation activities.

Given the existing facts, this writing is focused on reclamation within the realm of regulations, implementation, and the examination of the issues at hand. This is essential because, in addition to economic benefits, mining activities must also prioritize environmental preservation. Furthermore, since tin is no longer designated as a strategic commodity by the government, it can now be mined not only by the state but also by the public. Based on the above considerations, this article aims to formulate two key problem statements: First, what is the mechanism for law enforcement and corporate oversight of IUP holders concerning post-mining reclamation activities? Second, how is the implementation of public information transparency regarding post-mining reclamation activities in accordance with Law Number 14 of 2008 on Public Information Transparency? This writing seeks to uncover the mechanisms for law enforcement and corporate oversight of IUP holders concerning post-mining reclamation activities and examine the implementation of public information transparency regarding post-mining reclamation activities in accordance with Law Number 14 of 2008 on Public Information Transparency.

2 Method

Metode penelitian ini menggunakan penelitian normatif dengan cara studi dokumen dengan menitikberatkan kepada asas-asas hukum atau lebih dikenal dengan penelitian hukum normatif (*normative legal research*).[9] Adapun pendekatan penelitian ini menggunakan pendekatan perundang-undangan dan pendekatan konsep, berdasarkan fakta dua kasus yang berkaitan dengan hukum perdata tentang perjanjian kerjasama menyangkut implementasi keterbukaan informasi publik.[10] Setelah itu akan dilakukan klasifikasi agar data yang dikumpulkan selaras dengan lingkup penulisan penelitian secara menyeluruh. Data yang telah terklasifikasi kemudian akan dianalisis secara deskriptif kualitatif. Dengan teknik analisis deskriptif kualitatif, data yang telah terkumpul, akan dipilah dan dianalisis secara logis dan runtun sehingga diharapkan dapat menghasilkan suatu kesimpulan valid yang memiliki korelasi dengan isu yang diangkat oleh penulis dalam penelitian ini.

3 Result and Discussion

3.1 Enforcement Mechanisms and Corporate Oversight of IUP Holders Regarding Post-Mining Reclamation

Law enforcement is essentially an effort to bridge the gap between abstract ideas and reality.[11] Within the realm of abstraction, it encompasses principles of justice, legal certainty, and social benefit. Justice, legal certainty, and social benefit are elements that should be part of the framework for law enforcement.[12] It is the process of turning abstract ideas into reality.[6] The core of law enforcement lies in the concept of discretion, which pertains to decision-making behavior not strictly regulated by legal norms but reliant on personal (spiritual) judgment to harmonize life proportionally. Law enforcement is often referred to as "law enforcement" in English and "*rechtshandaving*" in Dutch. The term law enforcement is commonly understood by the general public to involve the use of force, with the assumption that enforcement is only within the context of criminal law.[13] While this perception is not entirely incorrect, it cannot be fully justified. In reality, law enforcement relies on the formal legal text, in the form of regulations and legislation, which becomes rigidly structured when formalized, as the language conforms to a particular system.

In a broader context, law enforcement also includes state officials whose roles and functions are those of law enforcement, particularly administrative officials.[14] It aligns with the idea that law enforcement is the process of efforts to ensure the functioning of legal norms as behavioral guidelines in societal and state interactions. In the context of mining law, if we examine it from the perspective of subjects and objects, it falls under the broader definition of law.[15] It encompasses various aspects of law enforcement, including administrative law, civil law, and criminal law. However, in this context, the researcher focuses on the mechanisms of criminal law enforcement. Criminal law has distinct characteristics compared to other legal fields, particularly concerning the imposition of criminal sanctions enforced by the state.[16]

The implementation of criminal sanctions in cases of criminal disputes is related to the existence of a criminal act, a criminal act, or a criminal event that occurs in mining activities. These disputes are linked to the criminal elements specified in the legal regulations governing mineral and coal mining, whether in the law itself or in other regulations.[17] These regulations allow for criminal elements to be consistently established in the legal instruments. Legal sanctions can be applied to both individuals and mining companies, as stipulated in Law No. 3 of 2020, which amends Law No. 4 of 2009 concerning Mineral and Coal Mining. The criteria for criminal law sanctions are considered as the last resort (*ultimum remedium*) in the effort to enforce mining legal obligations in carrying out reclamation and post-mining activities.[18]

The criminal sanctions mentioned in Article 161B of Law No. 3 of 2020 state: "Anyone whose IUP or IUPK is revoked or terminated and fails to carry out (a) reclamation and/or post-mining; and/or (b) placement of reclamation guarantee funds and/or post-mining guarantee funds shall be punished with imprisonment of up to 5 (five) years and a fine of up to IDR 100,000,000,000 (one hundred billion rupiahs)." In addition to the criminal sanctions as mentioned in paragraph (1), former IUP or IUPK holders may also be subject to additional penalties, such as the payment of funds for the implementation of reclamation and/or post-mining obligations. Referring to Article 10 of the Criminal Code, this constitutes an additional penalty involving the revocation of certain rights, confiscation of specific property, and the announcement of the judge's decision.

Subsequently, the term "additional penalties," as stipulated in Article 164 of Law Number 3 of 2020, includes: a. Confiscation of property used in the commission of a criminal act; b. Confiscation of profits obtained from a criminal act; and/or c. The obligation to pay costs resulting from a criminal act. However, the sanctions more commonly applied to resolve reclamation and post-mining disputes thus far are administrative sanctions.

Generally, the criminal provisions in Law Number 3 of 2020 include: a. Increased amount of criminal fines; b. Addition of new criminal acts; c. Retention of criminalization of the public; and d. Removal of criminal acts for officials. These changes in the Mining Law (UU Minerba) are neither entirely good nor bad.[19] In the latest Mining Law, there is an emphasis on corporate criminal liability with the addition of a significant increase in criminal fines, changing from IDR 10 billion to IDR 100 billion. Furthermore, the law reduces the prison sentence, as specified in Article 158, 159, and 160 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 on Mineral and Coal Mining. This aligns with the views of criminal law experts who assert that the appropriate penalty for corporations is financial, in the form of fines. Additionally, Law Number 3 of 2020 introduces a prohibition on the transfer of IUPs as a criminal offense (Article 161A of Law Number 3 of 2020). Previously, this prohibition had no associated sanctions under Law No. 4 of 2009. Criminal sanctions are imposed when administrative sanctions are deemed insufficient to address violations that involve elements of criminal conduct.[20]

The criminal sanctions within UU Minerba are regulated from Article 158 to Article 165, which contain two types of criminal penalties: imprisonment and detention. Both types of penalties are accompanied by fines. Article 158 states: "Anyone who conducts mining activities without an IUP, IPR, and IUPK, as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1), or paragraph (5), shall be sentenced to a maximum of 10 (ten) years in prison and a fine of up to IDR 10,000,000,000.00 (ten billion rupiahs)." Subsequently, Article 159 of UU Minerba states: "Holders of IUP, IPR, or IUPK who intentionally submit reports as referred to in Article 43 paragraph (1), Article 70 letter e, Article 81 paragraph (1), Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) with incorrect information or false information shall be sentenced to a maximum of 10 (ten) years in prison and a fine of up to IDR 10,000,000.00 (ten billion rupiahs)."

Article 162 of the Mining Law states: "Anyone who hinders or disrupts mining operations of IUP or IUPK holders who have met the requirements as referred to in Article 136 paragraph (2) shall be sentenced to a maximum of 1 (one) year of detention or a fine of up to IDR 100,000,000.00 (one hundred million rupiahs)." Furthermore, criminal penalties for legal entities that commit violations are also imposed on their management. As specified in Article 163, there are several criminal penalties. First, in the form of a fine with an increase of 1/3 (one-third) times the maximum fine imposed. Second, additional penalties in the form of revocation of business permits and/or revocation of legal entity status. Article 164 of UU Minerba governs provisions for perpetrators of criminal acts violating the provisions of Article 158, Article 159, Article 160, Article 161, and Article 162, which can be subject to additional penalties such as the confiscation of property not used in the commission of the criminal act, the confiscation of profits obtained from the criminal act, and/or the obligation to pay costs resulting from the criminal act.

Furthermore, Article 165 provides provisions regarding criminal sanctions related to the abuse

of authority by state administrative officials, which state: "Anyone who issues IUP, IPR, or IUPK contrary to the Minerba Law and abuses their authority shall be subject to a maximum of two years in prison and a fine of up to IDR 200,000,000.00 (two hundred million rupiahs)."

Law Number 3 of 2020 also introduces criminal offenses related to reclamation and/or post-mining activities and/or the placement of reclamation and/or post-mining guarantee funds when an IUP or IUPK is revoked or expires and not carried out by the mining business operator (Article 161B of Law Number 3 of 2020). In reality, in areas surrounding mines, numerous abandoned mining pits are left irresponsibly by companies, resulting in a significant loss of lives, especially among children. This situation is evident in Belitung Regency, where the holder of IUP, namely PT. Timah, consistently attempts post-mining reclamation; however, in practice, the reclamation efforts conducted by PT. Timah have not been successful.

According to data from the Indonesian Forum for the Environment (Wahana Lingkungan Hidup or Walhi), the targeted reclamation land area was 1,579.82 hectares, of which 593.22 hectares or 37.13 percent were successfully leveled, and 201.04 hectares or 12.58 percent of the target land area were utilized for planting. This indicates that the reclamation efforts emphasized by the company were far from optimal, even though every mining company is obligated to carry out post-mining reclamation in accordance with the Minister of Energy and Mineral Resources Regulation No. 34/2017 on Licensing in the Mineral and Coal Mining Sector. The shortfall in the reclaimed land area targets achieving sustainable outcomes is attributed to the high mortality of planted trees and inadequate maintenance. This implies that the on-site implementation has yet to yield significant results, highlighting the importance of ensuring that reclamation efforts are more than mere formalities. According to data from the Ministry of Environment and Forestry, the current area classified as critical due to tin mining is 275,500 hectares.[21]

2.1 The Implementation of Information Transparency In Post-Mining Reclamation

The implementation of information transparency in post-mining reclamation activities is aimed at ensuring the availability of information and clarity for the general public to understand the development of a public policy, starting from planning, preparation, drafting, and final-level discussions. All matters within the government related to public policies, public services, and development should be made known to the public.[22] In this regard, the government must be willing, open, and honest in providing information about what policies will be adopted and why. This is in line with the principle of information transparency, which is a manifestation of public ethics. As a result, those who will be affected by the policies can participate and provide input as extensively as possible, ensuring that all stakeholders' interests are accommodated.

The principle of public information transparency serves as a means to achieve transparent governance in activities involving social community engagement. To achieve the goals of reclamation, such as structuring, restoring, and enhancing the quality of the environment and ecosystems to ensure they function as intended, planned, systematically, and sustainably, even after the conclusion of some or all mining activities, it is essential that the government is more open to the public regarding matters related to collaboration in reclamation. This is part of the public's right to know, covering the process of implementation, technical aspects of reclamation project procurement, and conflict resolution procedures when discrepancies arise in line with

the agreements reached by the parties involved. The right to know about all aspects of the reclamation process in the Belitung Regency is a right guaranteed by the Law Number 14 of 2008 concerning Public Information Transparency, both for the local population and, on a broader scale, all Indonesian citizens.

Public information transparency is closely connected with human rights, as it relates to the following:

- a. The participation of the public in governance and development, oversight, and the provision of good public services is part of efforts to enlighten the nation. Therefore, the government needs to establish clean, effective, democratic, and trustworthy governance as the realization of the goals set by the Law on Public Information Transparency No. 14 of 2008, to build a new paradigm that considers all public information as open and accessible, except for a few exceptions.
- b. Before the existence of the law, public information was closed and confidential, with only very few being open and accessible to the public.

The fundamental principles of Law Number 14 of 2008 concerning Public Information Transparency include:

1. All public information is open and accessible to the public, except for exceptions.
2. Rejection of public information requests should be based on an examination of the consequences that may arise if certain public information is disclosed.
3. The period of confidentiality of public information is not permanent.
4. There is a time limit for responding to and serving public information requests.
5. Sanctions can be imposed on individuals or public bodies that obstruct the disclosure of public information not excluded by law.

In the context of post-mining reclamation activities, mining permit holders for every mining company/stakeholder are required to conduct an Environmental Impact Assessment (AMDAL), as we know that the mining industry is inevitably associated with environmental impacts. This requirement necessitates a study of the significant and essential impacts of a proposed business and/or activity on the environment. Such a study is crucial for the decision-making process concerning the implementation of businesses and activities, and it is essential to inform the public. One of the most challenging issues in the tin mining industry is the environmental damage it causes. Numerous former mining sites across various regions in Indonesia, particularly in the Belitung Regency, have been left damaged due to the lack of responsibility exhibited by some tin mining companies.

Efforts to reorganize and restore environmental quality and ecosystems in a planned, systematic, and sustainable manner are the responsibility of mining operators in the Bangka Belitung Islands Province, particularly in the Belitung Regency. These efforts are regulated by the Provincial Regulation No. 7 of 2014 on Mineral Mining Management in the Bangka Belitung Islands Province, and the Belitung Regent Regulation No. 9 of 2012 on Guidelines for Tin Mining with Production Suction Dredges. These regulations emphasize the commitment of every mining

operator to take action even before commencing mining operations to manage and restore former mining pits. This is a tangible effort to protect the environment in the Belitung Regency. Besides reclamation, some of these pits are planned to be restored for the benefit of the local community. In this regard, the community must first be educated and informed about the access to information.

The supervision of reclamation and post-mining activities is carried out for all mining operations in the region by the Department of Mining and Energy of the Bangka Belitung Islands Province. The results of supervision regarding reclamation and post-mining activities that involve administrative violations are forwarded to the relevant authorities in accordance with their jurisdiction and legal provisions. Cases with indications of criminal acts are reported to the Indonesian National Police (POLRI) investigators for examination according to legal provisions.

In legal cases that may arise, the dissemination of public information serves as a preventive measure.[23] If, in the future, mining companies intend to engage in similar mining activities, it becomes a logical consequence for the community and the government to reject them, even if the licensing is under centralized authority. Local government authorities clearly need to accommodate information about the environmental impacts on the community as part of the implementation of public information transparency in line with Law Number 14 of 2008. With the government's transparency in providing information about the reclamation process to the public, it is hoped that community engagement in social oversight of government activities and their implementation will be strong. This will ultimately lead to the realization of the goals of good governance, characterized by transparency, accountability, trustworthiness, and adherence to the principles of the 1945 Constitution, aiming to achieve justice and prosperity for all Indonesian citizens.

4 Conclusion

The enforcement of the law against corporations failing to perform post-mining reclamation can be understood in the context of criminal law enforcement as a legal consequence for the corporation's failure to fulfill its obligations. This is a repressive measure because sanctions are applied in accordance with the prevailing laws. Regarding the implementation of post-mining reclamation activities as part of the natural resource utilization process, sanctions that can be imposed involve imposing fines on mining companies that hold an IUP if post-mining reclamation activities are not carried out as planned.

In addition, through the transparency and public information provided by the government regarding the reclamation process, community engagement is expected to enable social oversight of government activities and their execution. This fosters the achievement of good governance goals, characterized by transparency, accountability, trustworthiness, and adherence to the principles of the 1945 Constitution, with the ultimate objective of realizing justice and prosperity for all Indonesian citizens.

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