

Responsibilities of Mining Entrepreneurs for Losses from Mining Activities in Indonesia (Case Study in Samarinda Province of East Kalimantan)

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Abstract— - Indonesia is a country that is rich in natural resources, both natural resources that are above the surface of the earth and which are below the surface of the earth. One of them is coal which is located below the surface of the earth. Coal can be found in several regions in Indonesia, including in Sumatra, Java, Kalimantan, Sulawesi, Maluku and even Papua. Kalimantan Island is the island most widely carried out by coal mining, one of which is in Samarinda, East Kalimantan Province, which has an impact on many former mining pits left by the company and not closed again. Not only that, the mining location is very close to residential areas which certainly has an impact on the residents themselves. Therefore this study aims to find out and analyze the responsibility of coal mining entrepreneurs to the former mining pit and the location of the mines that are close to residential areas in terms of regional spatial planning, laws and regulations related to coal, and legislation related to the environment . This research uses the normative legal research method and uses the case approach method. The results of this study indicate that there are violations committed by mining entrepreneurs related to the distance of mining with residential areas and areas of the former mining excavation that are not closed or reclaimed. The results of the analysis after the analysis found the low awareness of mining entrepreneurs to comply with existing laws and regulations as well as weak supervision and sanctions from the central and regional government to mining entrepreneurs who commit violations.

Keywords— *Mining, Coal, Reclamation and Mining Distance*

I. INTRODUCTION

Indonesia is blessed with abundant natural and energy resources so that it becomes a special attraction for business people. Indonesia is known to be rich in minerals (mining) which includes gold, silver, copper, oil and gas, coal and others. Potential natural resources are spread throughout Indonesia such as copper and gold in Papua, gold in Nusa Tenggara, nickel in Sulawesi and the Eastern Indonesian Archipelago, bauxite and coal in Kalimantan, and other minerals that are scattered in several places.

These natural resources are controlled by the state where the state's control rights contain the authority to regulate, manage and supervise the management or exploitation of minerals, and contain the obligation to use them as much as possible the prosperity of the people. This is as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia which states:

1. The economy is structured as a Joint venture based on family principles;
2. Production branches which are important for the State and which control the livelihoods of the public are controlled by the state;
3. The earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people;
4. The national economy is carried out with the principle of democracy with the principles of togetherness, fair efficiency, sustainable, environmentally friendly,

independent, and by maintaining a balance of progress and national economic unity; and

5. Further provisions regarding the implementation of this article are regulated in the law.

State control is held by the government in which one of Indonesia's natural resources is mineral resources. Through the existing potential, the government is developing to increase state revenue.

The aim is to develop the state revenue to make the government open mineral mining which is spread all over Indonesia. Where the government is mining in areas in Indonesia one of which is in Samarinda, East Kalimantan Province.

Based on Article 1 number 1 of Law Number 4 of 2009 concerning Mineral and Coal Mining, Mining is part or all of the stages of activities within the framework of research, management and exploitation of minerals or coal which includes general investigations of exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-mining activities.

In mining operations, the government can implement itself and/or appoint contractors. If carried out by the contractor, the position of the government is to grant permits in the form of mining rights, work contracts, coal mining concessions, and production sharing contracts.

Mining authority is an authority granted to an agency / individual to carry out mining business and is divided into five types, namely general investigation mining authority, exploration mining authority, exploitation mining authority,

processing and refining mining authority, and transportation and sales mining authority.

Indonesia's coal reserves which are currently recorded are 8.26 billion tons. Annual coal production reaches 400 million tons, so that coal reserves are estimated to be sufficient for the next 20 years. This has become a special attraction for mining businesses. Where many coal companies want to invest in mining and mining or exploitation in various areas, especially in Samarinda, East Kalimantan Province. So this makes the government try to maintain the existence of mining in Indonesia because the existence of coal mining alone will increase PAD (local original income) of an area. However, besides that there are things that are ignored namely the government often forgets the impact of mining on the environment and surrounding communities.

Mining activities carried out by excavation into the ground clearly damage the environment and therefore when mining activities have been completed are required to restore the environment, but this is still often ignored by mining entrepreneurs and also by the government. Can be proven by the existence of a former mining pit in several areas in Samarinda, East Kalimantan Province. This is in line with previous research conducted by Robert Siburian related to Coal Mining: Between Increasing Rupiah and Spreading Potential Conflict, which explains about mining activities in East Kalimantan causing environmental damage and the community has felt the impact of flooding. In addition, mining exploitation has the potential to cause conflicts both horizontally, namely conflicts between communities, and vertically, namely conflicts between residents and the state or companies resulting from limited physical and social environmental support for mining activities as well as economic inequality between people working in the mining industry and the sector agriculture (Robert Siburian: 89-90: 2016).

Furthermore, the research was conducted by Rahmat Budi Suharto who explained about Natural Resources for the Welfare of Local Residents: Study on the Impact Analysis of Coal Mining in the Four District Areas of East Kalimantan. Which describes the response of the population to mining activities. From the results of the study, local residents felt more negative impacts than positive impacts. The negative impact caused by the decline in current conditions compared to before the coal mine. While the positive impact is the existence of livelihoods and income, but its nature is an indirect effect and is also temporary (Rahmat Budi Suharto: 136: 2017).

Then the research was also conducted by Samuel Risal who explained about the Analysis of the Impact of Mining Policies on the Socio-Economic Life of Communities in Makroman Village. Which describes the impact of mining policies on the socio-economic life of the community in Kelurahan Makroman. From the results of the study, the presence of coal mining companies in the Makroman Kelurahan area had a positive impact on a small portion of the community who work as traders and rented houses, Makroman community employment opportunities in the mining sector are very small because coal mining does not absorb much of the local workforce, mining which so far operating in Makroman

has brought damage to the socio-economic life of the community on a large scale, the company's concern for the community is very low, the presence of the mining industry does not bring changes to the economic situation of the community where economically mining in Makroman does not provide benefits but instead brings huge losses to the community, and mining policy is more in favor of the interests of capital owners and ignores renewable natural resources above (Semuel Risal: 528: 2013)

Based on the background description above, the problem statement is drawn: What is the Government's Role in Mining Entrepreneurs Responsibility for Losses Due to Mining Activities in Samarinda, East Kalimantan Province?

II. RESEARCH METHOD

This research uses the normative legal research method and uses the case approach method. Through the method of gathering legislation as primary writing material and data related to Mineral and Coal Mining and Samarinda Regional Spatial Planning in East Kalimantan Province.

III. RESULT AND DISCUSSION

A. MINING BUSINESS (PRINCIPLES AND TYPES)

Mining is a valuable natural resource in a country. Considering the amount of income obtained by the state in mining management, the mining potentials in every region in Indonesia are then mapped and opened to investors in managing the mining.

Mining business is an activity in the context of exploiting minerals or coal which includes the stages of general investigation, exploration, feasibility study of construction, mining, processing and refining, transportation and sales, and post-mining (Gatot Supramono: 15: 2012).

The main principle in mining activities is to seek profits with capital from investors. Mining sites are generally far from community settlements and should take into account the distance of the mine from the surrounding people's homes. In addition, mining activities are closely related to environmental issues because mining work is no more than the activity of excavating land / earth to retrieve mining objects and when it is completed, it is obligatory to restore the land to its original state and not leave the soil so hollow that it cannot be utilized and cause environmental damage. Mining business is divided into 2 types, namely:

1. Mineral mining

Mining collection of minerals in the form of ore or rock, outside geothermal energy, oil and gas, and ground water. There are 4 groups, namely radioactive mineral mining, metal mineral mining, non-metal mineral mining, and rock mining

2. Coal Mining

Mining of carbon deposits contained in the earth, including dense bitumen, peat and asphalt.

B. PRINCIPLE IN MINERAL AND COAL MINING

Based on Article 2 of Law Number 4 of 2009 concerning Mineral and Coal Mining, mineral and / or coal mining is managed on the basis of:

- a) Benefits, fairness, and balance
 1. The principle of benefit is to be able to provide maximum benefits and benefits for increasing the prosperity and welfare of the people.
 2. The principle of justice is that the people without exception must get equal opportunities and opportunities proportionally.
 3. The principle of balance must pay attention to other fields, especially those directly related to their impact.
- b) Siding with the interests of the nation

Mining activities although using foreign capital, foreign workers, and foreign planning, but the activities and results are in the national interest.
- c) Participatory, transparency and accountability
 1. The participatory principle requires community participation in the formulation of policies, management, monitoring and supervision of the implementation of mining activities.
 2. The principle of transparency is that mining activities must be open so that people can access information and provide input to the government.
 3. The principle of accountability is that mining activities must be accountable to the state and the community.
- d) Sustainable and environmentally friendly

The principle that has planned to integrate the economic, environmental and social cultural dimensions in the overall mineral and coal mining business to realize present and future prosperity.

C. MINING AREA

Mining areas are areas that have mineral and / or coal potential and are not bound by government administrative boundaries that are part of national spatial planning, because mining areas do not follow government administrative areas (provincial, district / city) so coordination and cooperation between governments is needed area if mining occurs across regional government boundaries. (Gatot Supramono: 11: 2012)

Mining areas have three forms, namely Mining Business Areas (WUP), People's Mining Areas (WPR), and State Reserves Areas.

D. COAL

Coal is one of the many riches of the earth that has a strong appeal for investors because of the many uses of coal, among others, producing gas products, fuel supporting the aluminum industry to as a source of power generation. The use of coal as a power plant is a lot of things we visit, considering the calculation of the use of coal is considered much cheaper when using other materials.

One type of mine is coal. In Law Number 4 of 2009 concerning Mineral and Coal Mining Article 3 states that coal

is a deposition of carbon organic compounds which are formed naturally from the remnants of plants.

Coal is a mixture of heterogeneous solids and is present in nature at different levels from lignite, subbitumine, between parasites. Coal can be classified according to its quality and nature. Based on the quality is based on the level of good or bad quality of the coal. There are two kinds, namely high quality and low quality. High quality coal has a calorific value above 5,000 kcal / kg while low quality coal (lignite) has a calorific value below 5,000 kcal / kg. Coal reserves in Indonesia are 43.6 billion tons and 58.6% of these reserves are low quality coal (Salim HS: 191: 2005).

The 1945 Constitution of the Republic of Indonesia Article 33 Paragraph (3) states that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Considering minerals and coal as natural resources contained in the earth are non-renewable resources, the management needs to be carried out as optimal as possible, efficient, transparent, sustainable and environmentally sound, and fair in order to obtain the maximum benefit for the prosperity of the people in a sustainable manner.

Some coal production is used to meet export needs to various countries, especially in the Asia Pacific region such as Japan, Taiwan, Korea and other ASEAN countries for domestic purposes. The use of coal is to:

1. Power plants;
2. Cement factory;
3. The pulp industry;
4. And others.

The highest use is by the power plant and the cement industry because the use of coal has advantages, namely:

1. Emphasis on operating costs caused by coal prices which are cheaper than other types of energy;
2. The role of coal compared to the role of other energy sources is still low.

Based on Law Number 4 of 2009 Article 3 In order to support sustainable national development, the objectives of mineral and coal management are:

1. guaranteeing the effectiveness of the implementation and control of mining business activities in an efficient, effective, and competitive manner;
2. guarantee the benefits of mineral and coal mining in a sustainable and environmentally friendly manner;
3. guarantee the availability of minerals and coal as raw materials and / or as energy sources for domestic needs;
4. support and develop national capabilities to be more able to compete at the national, regional and international levels;
5. increase the income of local, regional and state communities, as well as create jobs for the maximum welfare of the people; and;
6. guarantee legal certainty in conducting mineral and coal mining business activities.

Besides having benefits, coal also has obstacles in its use, namely:

1. Limited supporting infrastructure, especially in terms of transportation and distribution
2. Domestic coal selling prices are lower than prices on the international market

Although coal has strategic uses, mining industry activities have several positive and negative impacts. Positive impact is the effect of coal mining on things that are practical (real) and constructive (constructive). Positive impacts include:

1. Open an isolated area with the construction of mining roads and ports;
2. Sources of state foreign exchange;
3. Source of Local Own Revenue (PAD);
4. Alternative energy sources (for local communities);
5. Accommodating labor.

Syafruddin Karimi (2005, pp. 195-196) argues that there are three factors that cause coal to become a very strategic commodity for the economy of a region including:

1. Coal is the result of mining which contributes to the region's original income;
2. Mining is the dominant income for the regional government and for the community;
3. Coal is a foreign exchange earner.

In addition to positive impacts, coal mining also has negative impacts, including:

1. Some mining companies do not pay attention to environmental sustainability;
2. Deforestation for mining activities;
3. Waste from mining activities pollutes the environment;
4. Ex-mining area is not closed again;
5. Harm the surrounding community;
6. Mining land disputes with surrounding communities;
7. Contribution to the surrounding community is lacking;
8. Relationship and involvement of local government in mining activities is still lacking especially in the supervision section.

E. ENVIRONMENTAL ASPECTS IN THE MINING SECTOR

Based on Article 1 number 1 of Law Number 32 Year 2009 concerning Environmental Protection and Management, the environment is a unity of space with all objects, power, conditions, and living things, including humans and their behavior, which affect nature itself, the survival of life, and the welfare of humans and other living things.

The environment has limitations and the ability to cope with the process of balance, which is commonly called environmental carrying capacity. The environment as a resource is an asset that can be needed for the welfare of the community in accordance with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the earth, water, and natural resources contained therein are used for the greatest prosperity of the people.

Mining activities must have an impact on the environment, the land cannot be returned to normal even after reclamation has been carried out. The land is difficult to plant because the land resources are no longer available and become infertile. This will cause floods and landslides which will impact the community.

Based on Article 36 of Law Number 32 Year 2009 concerning Environmental Protection and Management requires every company to have an environmental permit.

Where in article 40, environmental permits become the basis for companies to obtain business licenses. An environmental permit is a permit for a company so that each company in carrying out its activities has environmental attention and responsibility. An environmental permit is given to everyone who conducts businesses and / or activities that are required to be AMDAL or UKL-UPL.

Amdal is a study of the significant impacts of a planned business and / or activity on the environment required for the decision making process regarding the conduct of a business and / or activity (Ahmad Redi: 38: 2017).

Ahmad Redi (2017, pp. 39-40) determines that the preparation of EIA includes the following:

1. Environmental Impact Assessment is prepared by the proponent at the planning stage of a business and / or activity;
2. The location of the business and / or activity must be in accordance with the spatial plan;
3. If the business location and / or activity is not in accordance with the spatial plan, the EIA document cannot be assessed and returned to the proponent;
4. Compilation of EIA is poured into EIA documents consisting of terms of reference, EIA (environmental impact analysis), and RKL-RPL
5. In preparing Amdal, the proponent is obliged to involve the community:
 - a. Affected
 - b. Environmentalists
 - c. Who is affected by all forms of decisions in the EIA process
6. Community participation is carried out through announcements of business plans and / or activities and public consultations carried out before the preparation of the terms of reference
7. Initiator in compiling EIA can be done alone or ask for help from other parties who must have a competency certificate for EIA drafting
8. The proponent prepares a terms of reference before drafting EIAs
9. The terms of reference are assessed by KPA
10. Based on the railway, the initiator prepares an AMDAL
11. KPA conducts an AMDAL assessment
12. KPA submit recommendations to the Minister of Environment, governor, or regent / mayor in accordance with their authority
13. Recommendations on the results of an environmental impact assessment can be:
 - a. Recommended environmental feasibility
 - b. Recommendations for environmental inadequacy.

Whereas UKL-UPL is the management and monitoring of businesses and / or activities that do not have an important impact on the environment required for the decision making process regarding the conduct of businesses and / or activities. Business and / or activity is a form of activity that can cause changes to the environment and cause impacts on the environment. Businesses and / or activities must be carried out through a business permit and / or activity such as a mining business permit (IUP), plantation business permit, and building construction permit (IMB) (Ahmad Redi: 38-39: 2017).

Ahmad Redi (2017, pp. 40-41) determines the preparation of UKL-UPL including as follows:

1. UKL-UPL is prepared by the proponent at the planning stage of a business and / or activity;
2. The location of the plan must be in accordance with the spatial plan;
3. If the business location and / or activity is not in accordance with the spatial plan, the UKL-UPL cannot be assessed and returned to the proponent;
4. The proponent must prepare a terms of reference before preparing the RKL-RPL;
5. The Environmental Impact Assessment Commission (KPA) provides an assessment of the terms of reference;
6. Terms of reference that have been assessed if they meet technical requirements, KPA issues approval of terms of reference;
7. Within a maximum period of three years, the proponent is required to prepare RKL-RPL;
8. RKL-RPL is revalued by KPA;
9. Upon the evaluation of the RKL-RPL, KPA holds a KPA meeting;
10. KPA submits recommendations to the Minister of Environment, governors, or regents / mayors in accordance with their authority;
11. Recommendations on RKL-RPL results can be in the form of:
 - a. Recommended environmental feasibility
 - b. Recommendations for environmental inadequacy
12. In the case that the RPA states that the RKL-RPL document needs to be improved, KPA returns the RKL-RPL document to the initiator for repair;
13. The Minister, governor, or regent / mayor determines the Decree of Feasibility or Decentralization of the Environment;
14. After obtaining a Feasibility Decision, the proponent fills out the UKL-UPL form;
15. If the administrative requirements are declared complete, the Minister, governor, or regent / mayor issues the UKL-UPL Recommendation; and
16. The recommendation is in the form of approval or rejection of the UKL-UPL.

In addition to environmental permits, there are environmental quality standards. Article 1 number 13 of Law Number 32 Year 2009 concerning Environmental Protection and Management states that the environmental quality standard is a measure of the limits or levels of living things, substances, energy, or components that exist or must be present and / or pollutants that are tolerated in a certain resource as an element of the environment.

The environmental quality standard has a function to determine whether environmental pollution has occurred or not in accordance with Article 1 number 14 of Law Number 32 of 2009 concerning Environmental Protection and Management, environmental pollution is the entry or entry of living things, substances, energy, and / or other components into the environment by human activities so that they exceed the established environmental quality standards. In addition, also in Article 20 paragraph (1) of Law Number 32 Year 2009 concerning Environmental Protection and Management, the

determination of the occurrence of environmental pollution is measured through environmental quality standards.

Article 20 paragraph (2) of Law Number 32 Year 2009 concerning Environmental Protection and Management determines environmental quality standards including:

1. Water quality standard
2. Wastewater quality standards
3. Sea water quality standard
4. Ambient air quality standard
5. Emission quality standard
6. Quality standard of disturbance
7. Other quality standards are in accordance with the development of science and technology

Jean-Philippe Barde (2018, p. 174) divides environmental quality standards into four categories, namely:

1. Ambient quality standard or ambient quality standard, which is to determine the nature of environmental ambient, for example the maximum amount of nitrate concentration in drinking water, or sulfur dioxide in the air, or the maximum amount of noise level in the housing sector;
2. Emission or discharge standards or emission quality standards, namely the maximum limit of pollutants allowed to be released into the environment, for example the maximum limit of BOD released into water, the maximum limit of emissions into the air by industry;
3. Process standard or process quality standard, which is to determine the type of production process or the reduction in the release of polluting industrial equipment, for example, special types of scrapers, pipes, water purification equipment, and others; and
4. Product standards determine the nature of potential pollution by products such as chemicals, detergents, fertilizers, cars, fuels, and others.

F. SAMARINDA REGIONAL REGULATIONS RELATED TO MINING

Samarinda Regional Regulations related to mining namely Samarinda City Regional Regulation Number 12 of 2013 concerning Mineral and Coal Mining within the City of Samarinda. Article 33 Paragraph (1) states that to guarantee public safety from various impacts resulting from mining activities in the form of noise disturbance, dust particles, mud flooding, mining waste (B3) and others which cause damage to agricultural lands, plantations, livestock (ponds) and other businesses as well as to reduce the loss of human lives, the distance of mining activities in each mining business permit area with settlements and public facilities is at least 500 meters. In paragraph (2) the distance referred to in paragraph (1) also aims to provide and fulfill 30% of green open space for the City of Samarinda.

Furthermore, pursuant to Article 1 number 31 of Law Number 26 of 2007 concerning Spatial Planning states that green open space is an elongated area / path and / or grouped, the use of which is more open, place to grow plants, both those that grow naturally and intentionally planted.

Green open space is divided into two namely natural green open space and green open space because it is man-made.

There are several types of green open spaces, including urban park green areas, urban forest green areas, recreation areas, green areas for sports activities, green areas for cemeteries, green areas for agricultural areas, green areas for yards, green areas for green lines, and green areas commensurate with beaches and rivers and lakes. Green open space has several functions such as:

1. Edhapis function, as a place to live animals and other microorganisms, for example trees whose fruit or seeds or insects that live on their leaves, are favored by birds.
2. The function of hydro-orology as protection of soil and water conservation, is realized by not leaving open land without cover crops causing erosion, as well as increasing water infiltration into the soil through the mechanism of tree roots and water absorption from humus.
3. Climatological function, the creation of a microclimate as a result of photosynthesis and plant respiration.
4. Protective function, protecting from wind, noise and blazing sun through the density and shade of plants.
5. Hygienic function, the ability to reduce pollutants both in air and water, by selecting plants that have the ability to absorb SO_x, NO_x or other heavy metals.
6. Educative function, a source of community knowledge by providing information boards on each particular type of plant.
7. Aesthetic function, beautifying the surrounding environment either through color, shape, texture combination, smells or sounds of the wildlife that inhabit it.
8. Socio-economic function, green open space as a place for various social activities and may have economic value such as ornamental plant traders or seasonal traders.

However, the reality is that there are still many mines that violate the provisions of the Article. In Samarinda, East Kalimantan Province, there are still many mines that are located close to residential areas and even the distance is less than 500 meters so that the community directly feels the negative impacts of the mining activities.

East Kalimantan is full of open pit mining which carelessly excavates vegetation on the surface and topsoil before extracting coal and sending it using heavy equipment, so the impact of damage to the environment multiplies. Damages include dust, loud noise (from equipment and explosions), water pollution and disturbance to the surface of the water, subsidence and acid pollution, as well as massive biodiversity erosion and physical damage to the expanse of nature (The Asia Foundation: 2: 2016).

Another negative impact is felt that many residents' houses were damaged due to vibrations caused by mining activities, many houses have cracked walls. Not only that, there are also many people who suffer from diseases caused by smoke and dust from the mine and until someone dies.

Mining entrepreneurs do not stop there, they even expand the mining area by buying residents' land starting from plantation land, agricultural land, and many residents' settlements that have been lost and turned into mining areas.

Green open space that should be provided is ignored by mining entrepreneurs. Even if the entrepreneurs do greening, then it is certain that the plant will not flourish because the soil conditions are different from before.

Article 78 Regional Regulation of the City of Samarinda Number 12 of 2013 concerning Mineral and Coal Mining in the City of Samarinda concerning the recalamation of the former quarry where land should be disturbed due to the recalamation mining business, but in reality only a few have been carried out.

The miners should pay more attention to the effects of mining activities, especially those that have an impact on the environment and the people directly, not just concerned with profit. The government should also be more assertive in cracking down on miners who are proven to have violated regulations related to mining so as not to incur losses later. And the miners must be responsible for the recalamation of ex-mining land, so that in the end does not disturb the environmental balance.

Weak supervision from the government has resulted in mine owners being free to carry out mining activities, and this must begin to be handled appropriately and quickly.

Research conducted by Muhamad Muhdar that explains the Legal Aspects of Reclamation of Coal Mining in Forest Areas in East Kalimantan concluded that regulations in 2015 including those issued by the Government of East Kalimantan regarding reclamation obligations do not conform to forest protection principles because there are no regulations regarding the obligations of miners since the planning, implementation and reclamation phases so that forest damage cannot be avoided because the regulation includes the exclamation of reclamation obligations including the decision of the Regional Government to issue regulations that do not support the reclamation activities of ex-coal mine excavations. In addition, the implementation of laws and regulations regarding the reclamation of coal mines in the area of forest areas in East Kalimantan is not good due to the choice of reclamation obligations that have consequences of forest loss and the Provincial Government of East Kalimantan has not made efforts to improve the rules including weak supervision of coal mining companies. The practice of reclamation as an obligation is not carried out properly and occurs in almost all districts / cities that have coal mining areas in the forest area (Muhamad Muhdar: 485: 2015).

IV. CONCLUSION

Based on the description above, it can be concluded that the mines in Samarinda, East Kalimantan Province, there are many violations of statutory provisions, including Article 33 paragraph (1) of Samarinda City Regional Regulation Number 12 of 2013 concerning Mineral and Coal Mining in Samarinda City, namely the distance mines with settlements and public facilities of at least 500 meters but in reality they are not.

Then Article 78 of Samarinda City Regional Regulation Number 12 of 2013 concerning Mineral and Coal Mining in the Samarinda City area concerning the recalamation of ex-mining where land should be disturbed due to the recalamation mining business, but in reality only a few were done.

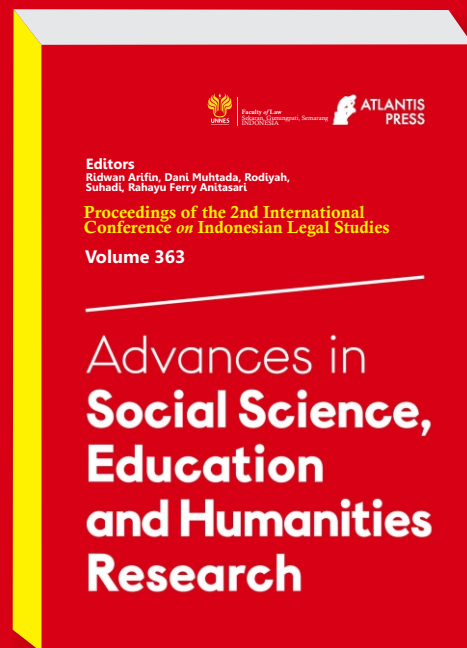
Supervision carried out by the provincial government is still very low because there are still many former mining excavations that have not been reclaimed, and this has made coal mining entrepreneurs more free to do mining regardless

of the consequences for both the community and the environment around the mining area.

Samarinda City Government of East Kalimantan Province, should be able to apply more firmly to coal miners and focus on natural damage that has occurred, given the many laws and regulations that serve as regional references and those made by the regions themselves related to coal mining. The government should not look at just one aspect, namely the increase in Local Revenue, environmental and community aspects are the main things that need to be considered at this time. In order to create a balanced and harmonious life continuity.

V. REFERENCE

- [1] Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara
- [2] Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup
- [3] Peraturan Daerah Kota Samarinda Nomor 12 Tahun 2013 tentang Pertambangan Mineral dan Batu bara dalam wilayah Kota Samarinda
- [4] Arba. 2017. *Hukum Tata Ruang dan Tata Guna Tanah Prinsip-Prinsip Hukum Perencanaan Penataan Ruang dan Penatagunaan Tanah*. Jakarta Timur: Sinar Grafika Offset.
- [5] Efendi. 2018. A'an. *Hukum Pengelolaan Lingkungan*. Jakarta: Indeks Jakarta.
- [6] Husin, Sukanda. 2009. *Penegakan Hukum Lingkungan Indonesia*. Jakarta : Sinar Grafika.
- [7] HS, Salim. 2005. *Hukum Pertambangan di Indonesia*. Jakarta: PT Raja Grafindo Persada.
- [8] Makarao, Mohammad Taufik. 2006. *Aspek-Aspek Hukum Lingkungan*. Jakarta: PT Indeks Kelompok Gramedia.
- [9] Supramono, Gatot. 2012. *Hukum Pertambangan Mineral dan Batubara di Indonesia*. Jakarta: PT Rineka Cipta.
- [10] Supriadi. 2006. *Hukum Lingkungan di Indonesia*. Jakarta: Sinar Grafika Offset.
- [11] Sutedi, Adrian. 2012. *Hukum Pertambangan* (Cetakan kedua). Jakarta: Sinar Grafika.
- [12] Redi, Ahmad. 2014. *Hukum Pertambangan*. Bekasi: Gramata Publishing.
- [13] Redi, Ahmad. 2017. *Hukum Penyelesaian Sengketa Pertambangan Mineral dan Batubara*. Jakarta: Sinar Grafika.
- [14] Robert Siburian, *Pertambangan Batubara : Antara Mendulang Rupiah dan Menebar Potensi Konflik*, Jurnal LIPI, 2016. pp 89-90.
- [15] RBS, RH, dan RY, *Sumber Daya Alam untuk Kesejahteraan Penduduk Lokal : Studi Analisis Dampak Pertambangan Batu Bara Di Empat Kecamatan Area Kalimantan Timur, Indonesia*, Vol. 11, No. 2, 2017. p 136.
The Asia Foundation, *Mereklamasi Lahan Bekas Tambang di Kalimantan Timur*, Program Setapak, 2016. p 2.
- [16] SR, DB. P, dan SD, *Analisis Dampak Kebijakan Pertambangan Terhadap Kehidupan Sosial Ekonomi Masyarakat di Kelurahan Makroman*, Jurnal Administrative Reform, Vol. 1, No. 3, 2013. p 528.
- [17] Muhamad Muhdar, *Aspek Hukum Reklamasi Pertambangan Batubara pada Kawasan Hutan di Kalimantan Timur*, Jurnal UGM, Vol. 27, No. 3, 2015. p 485.



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Proceedings of the 2nd International Conference *on* Indonesian Legal Studies

Editors
Ridwan Arifin, Dani Muhtada, Rodiyah,
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Advances in Social Science, Education and Humanities Research

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PREFACE

AFTER successfully organizing the 1st International Conference on Indonesian Legal Studies (ICILS) in July 2018, the Faculty of Law, Universitas Negeri Semarang (UNNES), Indonesia, came back again this year to organize the 2nd International Conference on Indonesian Legal Studies (ICILS 2019). The conference of this year carried the big theme of '*Utilizing Local Wisdom for Stronger Democracy and Sustainable Development*' to address the challenges of global development. The theme was chosen to reaffirm the important role of local wisdom, which not only grows and develops in Indonesia and Southeast Asia, but also around the world on strengthening the system of democracy and maintaining sustainable development. The role of local wisdoms originating from local communities, whether in law, social, political or other fields, inspired widespread legal developments both domestically and internationally. In the context of international law, for example, customary international law as manifestation of local wisdoms values is one of the sources of international law recognized by international law regimes, and many developments in this law are also inspired by various international customary values. In other legal contexts, it is undeniable that the development of national law in almost all countries is always inspired by the legal values of local communities in the country.

Democracy and Sustainable Development are two important issues that concern the international community. Not only the problem of creating a good civil society but also maintaining the future. These two issues are not only closely related to law, but also other fields of science, such as social, political, economic, cultural and even environmental science. How to bridge democracy with the values of local wisdom in the national and international context is a challenge especially in the era of globalization and the development of information and technology as it is today.

The 2nd ICILS 2019 is committed to being one of the gathering places for experts, academicians, and community to support the issue of democracy and the environment on a global scale. This forum is expected to provide concrete solutions in supporting the strengthening of democracy on a global scale and sustainable environment to guarantee a better future.

This present volume of proceedings contains selected papers of the International Conference on Indonesian Legal Studies (ICILS) held on September 4, 2019 in Semarang, Central Java, Indonesia, and it had successfully invited almost two hundreds researchers, academicians, and legal practitioners to disseminate their researches and send their abstracts to this conference. There were about 100 abstracts reviewed, and 44 abstracts were selected and then presented in the conference. The scope of the conference had made participants enthusiastically submit their full paper, and the papers came from various countries beside Indonesia, such as Malaysia, Australia, The Netherlands, and Thailand.

Regarding the publication, we would like to express our great thankfulness to the whole publication team that had full support for making this publication possible. The 2nd ICILS 2019 Proceedings are dedicated to all: readers, the team, authors, the faculty member, and the Faculty of Law Universitas Negeri Semarang (UNNES) who commemorate the 12th Dies Natalis (Anniversary) at this November.

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