



THE IMPLEMENTATION OF REGIONAL REGULATION NUMBER 8 YEAR 2013 REGARDING THE IMPLEMENTATION OF RECLAMATION AND POST-MINING IN EAST KALIMANTAN PROVINCE

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Abstract

In East Kalimantan Province many coal exploitation activities are causing environmental damage, the current reclamation and post mining arrangements are not effective so that environmental damage continues to spread, the research aims to analyze the Policy of Local Regulation No. 8 of 2013 on the Implementation of Reclamation and Post-mines in East Kalimantan Province, obstacles and supporting factors. Research method with sociological juridical approach, using primary data obtained by conducting interviews with legislative members and communities around the mine. The result of this research is that the policy of Regional Regulation Number 8 Year 2013 on Reclamation and Post-Mining Operation in East Kalimantan Province is determined through a process of mutual agreement between the Governor and East Kalimantan Provincial DPRD, the substance and scope of the policy of reclamation and post-mining activities covering reclamation and post mining assurance as well as Commission Supervisor of Reclamation and Post-Mining Area. Supporting factors include the communication made by the Mining and Energy Agency of East Kalimantan Province well, the policy executor attitude is maintained despite the limited budget, facilities and infrastructure. Inhibiting factors are very limited resources of both human resources, budgetary means and infrastructure, bureaucratic structures between the Regional Post and Regional Reclamation Commission with the mine inspectors often lead to overlapping tasks; and interest group support has not been as expected, let alone the permit holder of mining category of Mining Business License. Suggestion Required revision of Regional Regulation Number 8 Year 2013 on Reclamation and Post-Minerals Implementation in accordance with the principles and harmonization of legislation, Increase the budget allocation of reclamation and post-mining activities and the need for additional personnel of mining inspectors in accordance with the ratio established by the Ministry of Energy and Mineral Resources by considering background and competence.

Keywords : Regional Regulation, Reclamation, Post-mining

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1. Introduction

God Almighty blesses Indonesia with the richness of natural resources, whether in the form of oil, natural gas, coal, copper, gold and others which is to be grateful for (Global, On, Investment, & Resources, 2002). The natural wealth has an important role for national development, the aim is to the realize prosperous for Indonesian people, just and welfare inside and outside. In Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is also mentioned that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people (Wahyuningsih, 2017). It is clear that the state of the Republic of Indonesia is a state of law aimed at realizing the common good and establishing a just and prosperous society based on Pancasila (state law and welfare state) (Wahyuningsih, n.d.).

The understanding of the rule of law can not be separated from popular ideology. Laws that regulate and limit state power (government) is defined as laws made on the basis of power or sovereignty of the people. In relation to the rule of law, the sovereignty of the people is a material element of the rule of law, in addition to people's welfare issues (Cao & Heberton, 2018). In a state of law, any state or governmental activity shall be subject to the applicable rules of law. These legal rules guarantee and protect the rights of their citizens, in the civil and political fields as well as in the social, economic, and cultural fields. The law is placed as the rule of the game in the administration of state and government to organize peaceful, just, and prosperous society. Therefore, any state or governmental activity should be seen as a form of public service provision that emanates from the rights of the community to be served and protected, so that the concept of a state of law is

always linked to the concept of a state of welfare (Qi & Oberwittler, 2009).

As in mining activities conducted in East Kalimantan Province, it directly and indirectly will have an impact on the environment, of course, it requires proper regulation so that activities carried out do not adversely affect the community and surrounding environment, although the activity aims to fulfill the livelihood of the people. Law No. 4 year 2009 on Mineral and Coal Mining also stipulates that the minerals and coal contained within Indonesia's mining legal territory have an important role in meeting the needs of the livelihood of many people. Therefore, the management must be controlled by the state to provide significant added value for national economic growth and sustainable regional development. Subsequently, in the context of the control of minerals and coal by the state organized by the government and/or local government, which has the authority to grant mining business permits to investors either business entities, cooperatives, groups or individuals (Levi & Dorn, 2006).

No mining activity is environmentally friendly. Mining is an activity that is a condition with risks of pollution and/or environmental damage. Mineral resource activity affects all environmental media, ie land, air, water, and fauna flora, as well as human environment, individual health and safety, lifestyle of local people, cultural continuity, social order and economic life. Mining can cause environmental problems nationally, cross-border, and even global. In view of this, it is necessary to have permission to conduct mining activities (Nur & Koike, 2015). The definition of licensing is one form of implementation of regulatory and controlling functions that are owned by the government against activities undertaken by the community. Licensing may be in the form of registration, recommendation, certification, quota determination and permission to undertake a business which

normally must be owned or acquired by a company or a person before the person can perform an activity or action (Button, Shepherd, & Blackburn, 2018).

Environmental permit is licensing in the framework of environmental protection and management based on the law on environmental protection and management. In environmental management, licensing is aimed at preserving the function of the environment and preventing and preventing environmental pollution and destruction. In Law Number 32 Year 2009 on Environmental Protection and Management, every business and/or activity with a significant impact on the environment is required to have an Environmental Impact Assessment (AMDAL). Reinforced again about the AMDAL, the government issued the Government Regulation (PP) No. 27 of 1999 on AMDAL. With the document of study of the significant impact of a business and/or activity planned on the environment, it will facilitate the decision making of business and/or activity. In other words, the AMDAL document is the basis for determining the environmental decisions of the environment.

Then Article 99 and Article 100 of Law Number 4 Year 2009 mandate every Mining Permit Holders (IUP) and Special Mining Business License (IUPK) must submit the reclamation plan and post-mining plan when applying for permit. It is also required that the license holder to provide reclamation and post-mining guarantee funds. These obligations in order to ensure the sincerity of the reclamation and post-mining activities take place in a planned, systematic and sustainable planning. The implementation is also confirmed by careful planning and commitment of all levels and classes of mining companies at all stages of mining. Affirmed again about the reclamation and post-mining in Article 101 of Law Number 4 Year 2009 with the issuance of

Government Regulation No. 78 of 2010 on Reclamation and Post-mining.

For the East Kalimantan Province, the reclamation and post-mining programs are very relevant and urgent to be done. Given the large number of coal permits in this area. During this time, the implementation of reclamation and post-mining programs that refer to the regulation of the Center has not been able to keep pace with the mining activities that are pursuing production targets. The extent of land disturbed increasingly added without being able to offset the success of increasing the reclaimed land area, re-vegetation and post mining. Threats of flooding, erosion, landslides, declining quality of surface water and ground water, and destruction of biodiversity continue. The average coal company in East Kalimantan has not done reclamation and post-mining as the existing provisions (Tjaden, 2009).

Departing from concerns about the situation, and the desire to improve post-mining environment, the East Kalimantan Provincial Legislative Council has initiated the establishment of East Kalimantan Provincial Regulation No. 8 of 2013 on Reclamation and Post-Minerals Implementation which was ratified on 25 November 2013 (Kalimantan, Singh, Singh, Singh, & Arora, 2010). Local regulation is a legal framework for the implementation of regional autonomy. Therefore the substance of regional regulations should be able to accommodate the needs of local communities, in the sense that the regional regulations do not impede investment in the regions.

As a policy, the Provincial Regulation of East Kalimantan No. 8 of 2013 is expected to show the most important option in resolving reclamation and post-mining issues in East Kalimantan. In addition, the spirit of regulatory also strengthens regional authority in the era of decentralization, the elaboration of higher legislation and at the same time strengthening local content in the

improvement of reclamation and post-mining programs. Provincial and district/municipal governments are given the authority in the formation of policies in the drafting of regional legislation, guidance and supervision (Article 7 and Article 8 of Law Number 4 Year 2009). This policy needs to be established to further promote and ensure the effectiveness of reclamation and post-mining in East Kalimantan. With the issuance of the regulation, it is expected that companies conducting mining activities can be more responsible to the environment after mining activities (Ronco, 2018).

In addition, the issuance of Regional Regulations on Reclamation and Post-mining is also part of the form of community and environmental protection from the impact of mining activities which also encourage the acceleration of the implementation of good mining practices in East Kalimantan. The system is a process that must be done from the beginning to the end must be done well following the established standards, following the prevailing norms and regulations so as to achieve the objectives of mining in an efficient and effective and sustainable development (sustainable development). However, the implementation of Regional Regulations on Reclamation and Post-mining Regulation in East Kalimantan is less effective.

2. Research Methods

The type of research used in this research was empirical law research. Empirical law is a legal research method that seeks to see the law in a real sense and to examine how the law works in society. The research approach used was a socio-legal research approach, which means that in this study, an assessment of the rules, norms that apply in society and research is directed to the function of law in society associated

with the positive national law that applies in Indonesia. Data source used in this research was primary and secondary data. Data collection techniques used in this study was conducted through field studies with interviews and literature study. Data analysis used in this research was qualitative data analysis. The data obtained then arranged systematically which then analyzed qualitatively to reach clarity of problem discussed. The data in this research were then analyzed by using descriptive qualitative method, where the analysis is done together with the process of data collection, then continue up to the time of writing the report by describing the data obtained based on legal norms or rules of law and legal facts to be linked with this problem.

3. Results and Discussion

Implementation of Regional Regulation Policy Number 8 Year 2013 on Reclamation and Post-mine Implementation in East Kalimantan Province;

Policy is a fixed decision characterized by the consistency and repetition of the behavior of those who make and from those who comply with the decision or pointed out that the Policy is the principle or way of acting chosen to direct decision-making. (Wahyuningsih, n.d.) Reclamation and post-mining policy which is the mandate of Government Regulation Number 78 Year 2010 on Reclamation and Post-Mining, is in the form of Local Regulation (Perda). East Kalimantan Province stipulates Local Regulation No. 8 of 2013 on Reclamation and Post-Mining Operations in East Kalimantan Province. Thus, from the juridical aspects of reclamation and post-mining operations is in accordance with the existing legal basis. The principle of reclamation and post-mining as stipulated in the law is based on the principle of an ecological protection entity of the province of East Kalimantan

in providing protection to the interests of the environment and the community. Holders of Mining Permits (IPR), Exploration Mining Licenses (IUP), Special Mining Business Licenses (IUPK) Exploration and Production Operation IUP, and Production Operation IUPK, including license holders issued by the government shall fulfill the principles of environmental protection and management. Implementation of the reclamation and post-mining policies referred to in this regional regulation is valid and binding for all licensing companies operating in the territory of East Kalimantan Province. The holders of the mining permit include: Mining Permit (IPR), Mining Business License (IUP) Exploration, Special Mining Business License (IUPK) Exploration, Production Operation IUP and Production Operation IUPK, including license holders issued by the government ie Contract of Work Coal Mining Business (PKP2B).

In relation to the reclamation and post-mining operations, the Head of East Kalimantan Province Mining and Energy Agency explained that the reclamation and post-mining must be implemented by every mining permit holder. It has been regulated in Law Number 4 Year 2009, Government Regulation Number 78 Year 2010 on Reclamation and Post-Mining, Ministry of Energy and Mineral Resources No. 18 of 2008 on Reclamation and Closure of Mining. With the issuance of Local Regulation No. 8 of 2013 is as a booster in the region in accordance with mining conditions in East Kalimantan. The spirit of the birth of local regulations to further encourage and ensure the effectiveness of reclamation and post-mining activities in East Kalimantan. A more technical objective is to organize, restore and improve the quality of the environment and ecosystem to function again. In addition, also to restore the function of natural environment and social functions according to local conditions

throughout the mining region in this area in a planned, systematic and sustainable manner.

Head of General Mining Division of Mining and Energy Office of East Kalimantan Province explained about the principle of environmental protection and management, which also became an emphasis in the regional regulations of reclamation and post-mining activities that reclamation and post-mining activities must fulfill the principles of environmental protection and management in mining areas, affected areas and take into account ecological boundaries through reclamation and post-mining activities. Water, land and air quality must be considered. In addition, the stability and security of heap overburden, tailings ponds, mining land and other artificial structures. Equally important is the protection and restoration of biodiversity, the utilization of mining land in accordance with the allocation, also taking into account the social, cultural and economic aspects as well as local wisdom of the local community. All contained in the local regulations as the basis for our supervision ".

The reclamation process consists of planning, implementation and reporting phases. Each stage is full of obligations that must be met and implemented mining permit. In fact, at all three stages, transparency, participation and accountability are required to enable the implementation of the policy to be implemented properly. However, it is unfortunate in its implementation has not been as expected. There are still many companies that have not complied with the stages and requirements outlined in Local Regulation No. 8 of 2013.

Supporting and inhibiting factors in the implementation of policy of Regional Regulation Number 8 Year 2013 on Reclamation and Post-Mining Implementation in East Kalimantan Province.

Successful implementation of the policy will be determined by various variables or factors, and each of these variables is related to each other. Similarly, in the implementation of reclamation and post-mining policies in East Kalimantan Province, it is not apart from these matters. In this study, these factors refer to the George C. Edwards III Policy Implementation model, which was elaborated with the implementation model of Donald P. Warwick. These factors include: Communications by the Mining and Energy Office of East Kalimantan Province are relatively good which includes both internal and external communications as well as direct and indirect communication. Therefore, communication becomes a supporting factor in the implementation of Local Regulation No. 8 of 2013.

The disposition of policy implementers in the implementation of reclamation and post-mining in East Kalimantan Province should be able to translate the making of related regional regulations, from the philosophical aspect, the juridical aspect and the sociological aspects. The challenges faced can be from the structural, institutional, and division of personnel tasks. In view of the issuance of the Regional Regulation on the Reclamation and Post-Mining Operations, the consequences of the establishment of the Regional Reclamation and Post-Mining Committee, while previously supervisory objects are carried out by the functional personnel of the mining inspector. While the inhibiting factors in the implementation of policy of Regional Regulation No. 8 of 2013 on Reclamation and Post-Mining Operations in East Kalimantan Province, among others:

Implementer resources in Regional Regulation No. 8 of 2013 in the Mining and Energy Office of East Kalimantan Province have a very important role in the implementation of policies. Although in terms of adequate regulations, without the

support of qualified resources, a policy is difficult to successfully implement. Resources referred to in this study concerning human resources (quality and quantity of staff), budget and facilities and infrastructure. Human resources, especially those related to the reclamation and post-mining programs, have become a constraining factor in policy implementation both in terms of quantity and quality. In detail from the side of the number of mine inspectors who have not met the balance ratio, also from the educational background side of most of the general mining. In addition to the mine inspector, the personnel of the Regional Reclamation and Post-Mining Supervisory Commission are also limited, still 4 personnel out of 7 personnel.

The budget constraint is arguably complete in all parties responsible for overseeing the reclamation and post-mining operations. It starts from the Department of Mining and Energy of East Kalimantan Province with inadequate budget. Similarly, the Regional Reclamation and Post-Mining Supervisory Committees and mine inspectors are the mainstay actors that determine the maximum or absence of policy oversight.

4. Conclusion

The result of policy implementation of Regional Regulation Number 8 Year 2013 on Reclamation and Post-Mining Operation in East Kalimantan Province has not been running as expected. Implementation of Regional Regulation Number 8 Year 2013 on Reclamation and Post-Mining Implementation in East Kalimantan Province, covering: (1) form and process of policy of reclamation and post-mining implementation stipulated as a regional regulation through joint agreement between Governor and East Kalimantan Province DPRD; substance and scope of the policy of reclamation and post-mining activities including reclamation and post-mining guarantee as

well as the Regional Reclamation and Post-Mining Supervisory Commission; Factors supporting and obstacles in the implementation of Regional Regulation Number 8 Year 2013 on Reclamation and Post-Minerals Recovery are: (1) supporting factors, consisting of: (i) communication conducted by Mining and Energy Office of East Kalimantan Province, directly with relative good, internally or externally, formally or informally and directly or indirectly; (ii) as well as the disposition or tendency or attitude of the policy implementers, ie the attitude and consistency of the implementer is maintained despite the existence of budget constraints, facilities and infrastructure; (2) inhibiting factors consist of: (i) resources are very limited in terms of human resources, budget and facilities and infrastructure, (ii) bureaucratic structures between the Regional Post-Reforestation Supervisory and Reclamation Commission with mine inspectors often causing overlapping task assignments; and (iii) interest group support has not provided support as expected, let alone the holders of mining permit category of Mining Business License (IUP).

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