

Law Reconstruction of Public Mining Areas Gives Law Safety Guarantee of Miners Rights Based on Social Justice

Sanawiah^{1*} Rachmad Safa'at² Moh. Fadli² Moch. Bakri³

1. Doctorate Candidate of Law Faculty, Brawijaya University, Malang and Lecturer of University Muhammadiyah Palangkaraya

2. Lecturer Postgraduate Program of Law Faculty, Brawijaya University, Malang

3. Professor of Civil Law and Agrarian Law, Brawijaya University, Malang

Abstract

Management of natural resources directed to give a public prosperity. It has already been set out in the preamble constitution of the Republic of Indonesia in 1945. Mining resources owned by the public have to be organized by the country and the result must be given to the public. Instruction which tend to seek sustenance in daily life as same as the Republic of Indonesia's constitution in 1945 in the article of 27 (paragraph 2) state, "Every citizens have the rights of any job and a decent living for the people", no exception to the work of miners work. However, the constitution of minerba have not give any legal protection of the mining worker rights because of the mining areas management do not support the mining workers.

Keywords: Reconstruction, law, mining, public

1. Introduction

Legal basis protection and the natural resources management can be found in variety of legislation, including the unwritten law in the form of customary law and customs of local communities that still valid and respected by the community, as well as Islamic law.

Implementation of Islamic mining should be based on the processes and mechanisms which are determined. Mining activities starting with the feasibility study process involving community stakeholders (stakeholders) and then executed with environmentally friendly (green mining), does not cause environmental damage and pollution through surveillance (monitoring) sustainable, and continued to do reclamation, restoration and rehabilitation. In addition, the utilization of the mines should support national security and public welfare in accordance with the mandate of the Republic of Indonesia Constitution in 1945.

Mining implementation shall avoid damage (*daf'u al-mafsadah*), such as: cause damage to terrestrial and marine ecosystems, causing water pollution and destruction of the hydrologic cycle (water cycle), cause the extinction or disturbance of biodiversity in the surrounding areas, causing air pollution and participate accelerate global warming, encourage the process of impoverishment of the surrounding community, and threaten public health.

Indonesia Ulema Council (MUI) Fatwa with the Ministry of Environment in an effort to change their behavior and increase awareness of Muslims as the greatest potential of the nation, on the importance of environmental protection and management in the utilization of natural resources (especially mining) must comply with the rules of sharia. Has been agreed and signed the MUI Fatwa Indonesian Ulema Council No.22 of 2011 on Environmentally Friendly Mining. MUI Fatwa is a form of moral approach in the implementation of environmental protection and management.

Nowadays fitting Islam could be a solution for all the problems in this world, including mining. Mining Indonesia particularly artisanal mining which is now less favorable in terms of social welfare and less friendly to the environment has been duly changed Indonesia with the natural wealth of the mine should be independent, it is people prosper economically. Similarly, the management, Indonesia had to reinforce the boundary environmental damage arising from mining activities. In fact, it is fitting company to return the environmental setting that was originally green and beautiful. The government must be firm, should dare to take action against rogue companies that do not pay attention to the environmental aspects of the mining process. Islam clearly set.

While the use of natural resources is to use, manage and maintain them properly in order to use the benefit of human life. Many hadiths about the utilization of natural resources, hadith which implies recommends utilize the natural potential well without damaging the environment, or managing natural richness contained in the bowels of the earth to be taken advantage and preserve natural resources effectively in order not to damage nature. As the hadith, Hadith History, Thabrani.

Means:

"From Aisyah, may Allah pleased with her, Rasulullah SAW said: seek substance by all of you whom hidden in the ground".

The content of this hadith is Allah SWT commands mankind to cultivate and explore the wealth or the potential latent in the earth for the benefit can be utilized in the life of mankind. Utilizing the natural resources contained within the earth, nature conservation must be considered a factor, because the command seeking Reski

on the hadith must be in accordance with the rules outlined Allah SWT, among others should not make mischief on earth after repair of Allah (Qur'an, Surah Al-A'raf:56).

Requirements to obtain mining permits people set by the government regarding the artisanal mining area (WPR) in the Mining Law, an issue artisanal miners who say (PETI). When examined in connection with the provision under the Article 22 Letter F, the Mining Law of criteria artisanal mining area (WPR) no artisanal mining area set by the central Government, province and regions. It is actually turning off one of the people's rights, namely the right to manage their own forests and land, but they had to manage it for generations, even before Indonesia's independence or before the Mining Law.

2. Research Method

This study uses normative law research, with the approach of legislation, the historical approach, the conceptual approach and prophetic approach (approach to the instrument base texts derived from revelation apostles and Sunnah / hadith).

3. Mining Business Model Fulfilling Legal Protection

Article 33 paragraph (3) states that the purpose of state control over natural resources in order to organize is beneficial to the overall prosperity of society, including artisanal miners. That control by the state is intended to ensure the greatest welfare of the community and get legal certainty and not the individual prosperity. Everyone should be able to work (not to be idle), so as to live worthy of the dignity of humanity (Sumardjono, 2013).

Illegal gold miners (PETI) is not the desire of the mining community as a whole, and of course we can not generalize the overall artisanal miners did not want to be given legal protection. Here, the important national and local role governments to work together to create an integrated control system to provide protection official / legal context is no longer illegal miners but as mining becomes legally with permits artisanal mining, which is easy to be met, the terms of the mining area people (WPR) should be pro-people. So the artisanal miners were still able to get benefit from the natural wealth of Indonesia.

Therefore Muchsin states, the legal protection is an activity to protect individuals by harmonizing the relationship values or rules that manifest in attitude and actions in creating their order in social life among humans (Muchsin, 2003).

If the Mining Law has been pro-people as a logical consequence is suppose there are other unlicensed miners continue to operate and do not heed the government's rule of law, the police can engage in policing (PETI). They must support government measures to curb illegal miners/miners without the permission and supervise, develop through a step persuasive as a form of government attention to the government's pro-people program.

Therefore, as stated Satjipto Rahardjo, to achieve certain social objectives with the law in society, is covering the answers to some fundamental questions. As any purpose to be achieved under the existing system; In what ways and which is felt best to use in achieving these objectives; when it's time and by which way need to be changed; does any pattern; can a standard and well-established pattern that is formulated to assist in deciding the process of choosing a destination and ways to achieve that goal by either (Prasetyo, 2012)

The shape analysis researcher approaches offer is Hierarchy Analytical Process to combat illegal mining and most can be a persuasive approach is that local governments. The local government should made a clear regulation rules artisanal mining pro-people because the local government is considered the most understand the economy of local communities dependent on mining products.

While the benefit to provide protection to the artisanal miners:

- a. Provide legal certainty for all mining activities of society by facilitating the permit process;
- b. Provide oversight, guidance, and the provision of safe capital loans;
- c. Guaranteeing economic life was good for the community around the mining;
- d. Giving responsibility to the community to participate and contribute to the social and economic development interests in the area to support national development.
- e. Preserving the environment and reclaiming former mining pits.

Natural resource management policy has been generally done centrally, uniformity, and top down with the seepage prosperity. The development of indigenous and local communities to marginalized with a low level of welfare. Natural resources are needed like state property (ownership) that minimizes the role of the community, producing only a single piece of conglomerates. (Runggandini, 2016).

Millions of poor communities radiated in and around protected areas. Social forestry management system (social forestry) in the region, must be done comprehensively, not to change the status and functions of forests, not to give ownership of the region. But give the rights of forest designated as forest area social. Additionally formed partnership with the community at the same time a real functioning village institutions in forest management by referring to the regulations set by the local government.

Country is the first and main actors responsible to achieving the promise of prosperity to its people,

especially playing the role of social distribution (social policy) and economic investment (economic policy). The basic function of state is “set” to create law and order and “take care” to achieve welfare / welfare (Darmawan and Sugeng, 2006).

The universe and human relationships can not be separated or rather man can not escape from nature. Human’s benefit from nature and nature as a bidder in the process of their transcendence. Human nature does not make a realm of reality that stands alone, but make it as a mirror higher reality. Human rights are given by God to dominate the universe in ways that both as a representative of God’s will.

In addition, the natural goodness of man is the medium through active participation in the human sense as a natural mouth breathing and alive. Close relation between human nature and this impact on the view of internal condition of human nature. This explains why when the internal part of human (heart and mind) becomes dark and corrupted, then the regular nature beautifully also change becomes unbalanced and chaotic. (Nasr, 1968).

Artisanal miners do mine with a simple tool in accordance with our capital to get a small gold that much. However, it remains able to support the family’s daily life with the prosperity and welfare of the community and the environment according to the dose which is not broken. Unlike the big miners or foreign investors, licensed by the government to the capital and great tools, mining belly of the earth to get abundant natural resources including gold gained commensurate with the tools that are used but damage to the geological, ecological and environmental damage communities around the mine large, and require hundreds of thousands of years to restore the soil becomes fertile.

Examples of local communities in the Central of Kalimantan on do mining, either individually or in groups. They always use the traditional tools and begins by asking the owners of natural resources to pray, to be given sustenance that many mines and the miners are given health and safety. Land mines (pits former mine) are considered to have no more gold, closed and planted with trees back (Ahmad, 2016). The artisanal miners, hundreds of years of mining are hereditary never destroy nature and always get a gleam of gold, even antiquity, community miners make buying and selling groceries mean of payment in gold or barter.

According Sabran Ahmad, as a community leaders in Central Kalimantan, said the central government ministers associated with mining, forestry and the local government, Governors, Regents, Mayors, Provincial, Regency and City as watchdog, protector, adviser community, especially artisanal miners, if you want to make a people welfare should be made of clear rules about what is allowed and forbidden in mining poses of the people, and not to deceive and influence people. Land that has been managed for hundreds of years was taken over by the compensation is very cheap, the inland communities of Borneo with the things that break the rules, both formal and society’s unwritten rule of law customary (Ahmad, 2016).

According to Ali Yafie, there are two basic grounding in fiqh al-Bi’ah, first, environmental preservation and safeguarding of the damage is part of faith. The quality of one’s faith can be measured by the extent to which the sensitivity and concern for the people to environmental sustainability. Second, preserving and protecting the environment is the obligation of any reasonable person and of legal age (adults). Doing it is worship, counted as a form of human devotion to God. While the ultimate responsibility for running the maintenance obligations and prevention of environmental damage is located on the shoulders of the government. The Government has entrusted holds the power to preserve and protect the environment, not the other way exploit and ruin (Ali Yafie, 2006).

In connection with the local government authorities in the enforcement of environmental always in the mining sector, it is important to realize to provide the mining region of the People (WPR). Thus the perpetrators of illegal gold mining operations in a more coordinated and provide information for planning and environmental management counseling. For the sake of continuity of sustainable development as well as tracking environmental impairment of ecosystems.

Therefore Mochtar Kusumaatmadja said the legal policy and legislation in the context of legal reform which includes law which needs to be formed (updated, changed, or replaced) and the law which needs to be maintained in order to gradually be able to realize the goal of a country. The government should ease the process of mining licensing system through the roof, so the time and costs involved in the licensing process a bit more and brief. Provide guidance and technical assistance to the mining’s entrepreneur. Creating zoning mining areas so that there is no overlap with other sectors and the spread of environmental damage can be prevented. Another attempt to provide an alternative mining entrepreneurs by providing skills, divert the gold mining business activities to other fields, such as agriculture, social, economic and legal culture and technology.

Mining Area of the People in the Mining Law, an issue artisanal miners (PETI), which said when examined in connection with the provision under Article 22 letter F, the Mining Law on the criteria of the mining area people (WPR) there is no mining areas people are set by the government including government center, province and regions actually kills became dead that die are the rights of artisanal miners are deadly right to obtain legal protection to get job done, turn off the rights to manage forests and private land has long been managed for generations, even before Indonesia’s independence or before there is mining law.

The value of legal certainty is the value of which in principle provide legal protection for every citizen pwr of Indonesia treatment. Community participation in the management of forest resources and a mining, should have started getting recognition, formally. Be a prosperous artisanal miner's with pro-mining policy people.

4. Mining Business Fullfilling Sense of Justice

Until the current all the legislators do not understand and tried to embody the spirit of the constitution in the legislation. Change mind set is not easy, because it needs to be backed up by a willingness to change. Without a willingness to change, then there of arranging the legislation is "business as usual", or some sort of formation of legislation to "try" accompanied by the hope no cancellation petitioned the Constitutional Court (Sumardjono, 2013).

The main purpose of the law is justice, that justice meant by a thinker, a moral and political philosophy of John Rawls, understand justice as "fairness". While Amartya Sen, trying to define fairness as "a demand for impartiality" that can be achieved based on the two principles of justice, namely: (1) Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others; and (2) social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to psions and offices open to all.

The first principle is aimed at the basic freedoms of every citizen to mean as political rights. The second principle can be applied in the devided of income and wealth, in other words, economic and social rights (Sumardjono, 2013).

In the conception of the State authority on Natural Resources (SDA) there are five functions that organize, manage, create policies, manage and supervise, the emphasis on the ultimate goal is achieved the greatest prosperity of the people described in four ways, namely (1) natural resources for the benefit of the people, (2) the level of natural resources for the benefit social equalization, (3) the level of participants in determining the benefits of natural resources, and (4) respect the right of people for generations in utilizing the natural resources, (5) it is a function of the instrument / tool to achieve the goal (Sumardjono, 2013).

According to John Rawls, justice is fairness. That society should be able to show themselves as an institution of social cooperation that each party can contribute to each other and trying to advance it. Thus, an adequate theory of justice is a theory that is able to accommodate a social cooperation which in turn will support the formation of an orderly society (Andre Ata Ujan, 2001).

Autonomy is the freedom to take care of their own households, without prejudice the position of local governments as the central government apparatus to conduct the affairs assigned to him. In this regard, efforts to build a balance must be considered in relationship context between central and local power. It means the area should be viewed in two positions, namely, as an organ of the region to implement the tasks of autonomy and as agents of the central government to conduct the affairs of the central area (Mahfud MD, 2011).

According to Muhammad Hatta, the formation of regional governments (autonomous government) is one of the aspects of the implementation of the principle of popular sovereignty (democracy). Basis of popular sovereignty, people's right to self-determination not only to the very top of the country (Untung Rosidin, 2010). In the era of regional autonomy, local governments were given the freedom to take care of his own household. Included in the utilization of natural resources, local governments have the freedom in the utilization of which should involve the community is no exception the people who decide their own fate in the mining business in the region.

Mining model based on principles of justice, is the solution to the problem of artisanal mining only. This solution is not only limited to artisanal mining, but also for the large mining only. This solution is not only limited to artisanal mining, but also for the large mining. Because the real problems that arise in the form of artisanal mining problems, a small part of the actual mining problem. Model transitional solution is the solution to create conducive conditions. Transitional solutions, namely:

- a. There needs to be a policy that ordered the evaluation of the utilization of natural resources, especially mining which is the nation's wealth. This evaluation involves policies ever made an the practice is happening in the field.
- b. Need to assess the conflict and find a solution mining conflicts that lasted a long time and is not resolved. Whether it is a conflict that is rooted in properly rights claims or conflicts that arise from the impacts of mining.
- c. As soon as possible and prepare a record of illegal coaching program prepared in a participatory manner, including environmental control problems. Where the model solutions and approaches to the traditional miners (long version) should be different with the new version of the illegal miners.
- d. Temporarily suspending the granting of new mining contracts and streamline mining contracts that already exist by tightening and enhancing environmental standards.

Legislation governing the management of natural resources are far from justice as how disclosed enumerated

by Ibnu Jubayr, ignores the existence of communal rights society (especially artisanal miners) lots to accommodate the interests of the government to set policies for natural resource management is centralized, as well as protective source of natural resources. Then the value of justice should be encouraged to seek a solution to the conflict of the management of natural resources, between the interests of the local artisanal mining communities and the state. Setting and regulatory areas should promote fairness by giving the right to the protection of artisanal miners and give the right artisanal mining area.

5. Conclusion

Policy of legal protection on the rights of artisanal miners in the regulation of artisanal mining area-based social justice, can be reconstructed to (1) Provide legal certainty for all mining activities of society by setting the mining region people (WPR), simplify the permit process. (2) Provide oversight, guidance, and lending capital safe. (3) Ensure that economic life to people around the mines. (4) Giving responsibility to the community to participate and contribute to the social and economic development interests in the area to support national development. (5) Preserving the environment and reclaiming former mine pits. Natural resource management policies can be realized with the regional autonomy that is responsive and accommodating to local knowledge and recognition of the rights of indigenous peoples and local communities in Indonesia.

References

- Ahmad, Sabran Ketua Dewan Adat Dayak (DAD) Kalimantan Tengah. Wawancara
al-'Alim, Yusuf Hamid *al-Maqasid al-'Amah li al-Shari'ah al-Islamiyah* (Kairo: Dar al-Hadith, t.t)
F. Isjwara, (1963) *Pengantar Ilmu politik*, Bandung, Dhiwarantara
Muchsin, (2003) *Perlindungan dan Kepastian Hukum bagi Investor di Indonesia*. (Surakarta; Magister Ilmu Hukum Program Paskasarjana Universitas Sebelas Maret
Mahfud MD, Moh. (2011) *Politik Hukum di Indonesia*, Jakarta, Rajawali Pres
Nasr, (1968). *Man and Nature: The Spritual Crisis in Modern Man*, London: George Allen &Unwin
Ujan, Andre Ata (2001) *Keadilan dan Demokrasi, telaah terhadap Filasafat Politik Hukum Jhon Rawls*, Yogyakarta, Kanisius
Prasetyo, Dedy (2012), *Kebijakan Formulatif Penggunaan Upaya Paksa Sebagai Bentuk Diskresi Kepolisian Pada Tahap Penangkapan Tersangka Tindak Pidana Terorisme, Disertasi*, Malang: Fakultas Hukum Pascasarjana Universitas Brawijaya
T, Darmawan.. dan Sugeng.B, (2006) *Memahami Negara Kesejahteraan: Beberapa Catatan Bagi Indonesia*, JakartaJurnal Politik
Rosidin, Untung (2010, *Otonomi Daerah dan Desentralisasi*, Bandung, CV.Pustaka Setia
Rumpas, Ari,(2016) Ketua Walhi Kalimantan Tengah. Wawancara
Runggandini, Caritas Woro Murdiati, *Model Pemberdayaan Masyarakat Untuk Merevitalisasi Kearifan Lokal Dalam Pengelolaan Sumber Daya Hutan Yang Berkelanjutan*, Fakultas Hukum Universitas Atma Jaya Yogyakarta
Syaukani, Imam dan A. Ahasin Thohari, (2004) *Dasar-dasar Politik Hukum*, Jakarta; Raja Grafindo Persada.
Sumardjono, Maria S.W. (2013) *Mwwwujudkan Semangat Konstitusi Dalam Pembentukan Undang-Undang di Bidang Sumberdaya Alam (SDA)*, dalam *Pendulum Antinomi Hukum, Antologi 70 Tahun Valerine J.L. Kriehoff*, Editor: Shidarta, Jufrina Rizal Yogyakarta, Genta Publishing.
Yafie, Ali (2006). *Merintis Fiqh Lingkungan Hidup*, Jakarta: Yayasan Amanah.
Yihab, Muhammad bin Salamah Al Qadhah. Musnad Asy (1985) *Syahah Az Zarqani alal Mawahib al Laduniyyah bil Minah al Muhammadiyyah*"juz 5 hlm, 388. jilid 1,Beirut, Muassasah Arisalah
Memorandum Of Understanding (MoU) No. 14/MENLH/12/2010 dan Kep-621/MUI/XII/2010 pada tanggal 15 Desember 2010.