
The Administrative Law Enforcement on Coal Reclamation Obligations Violations in Indonesia

Muhammad Bagus Adi Wicaksono¹, I Gusti Ketut Rachmi Handayani², Lego Karjoko³

1, 2,3Universitas Sebelas Maret, Surakarta, Indonesia

Email: muhammadwicaksono96@gmail.com¹

Abstract

The objective of this study is to ascertain how administrative law is upheld in Indonesia when post-coal mining and reclamation obligations are violated. This normative legal study examines the legal requirements for reclamation under Law No. 3 of 2020. The research methodology uses a legal approach, and the way to collect legal materials is through a literature review. The results show that Indonesia's administrative law enforcement system is effective in preventing violations of postmining reclamation duties. These actions include modifying the postmining reclamation rules so that they must be fulfilled entirely inside the mining pit, enhancing the function of mining inspectors by providing them with more personnel, operational budgets, facilities, and infrastructure, and quickening document recapitulations. In addition to providing them with guidance on their responsibilities for repair activities after mining, this is done in an effort to break the harmful habits of coal mining entrepreneurs. For instance, coal mining business owners must complete postmining reclamation work while shutting mine pits. Inviting the community to oversee environmental improvement activities is another way the government can do this.

Keywords: Administrative, Coal Reclamation, Law Enforcement, Obligations Violations.

Introduction

Indonesia has a wealth of natural resources, which make it seem like a paradise on earth that the Creator has bestowed onto this motherland to be used and preserved. Indonesia's natural wealth can be found on the earth's surface, in its depths, in the sea, and in the air. Based on their availability, natural resources are divided into two categories, renewable and non-renewable. The State of Indonesia is strategically situated on three (3) plate tectonic collisions: the Pacific Ocean plate, the India-Australian continent plate, and the Eurasian continent plate. This geological structure has given rise to a wealth of potential natural resources, including mining minerals. Indonesia has an abundance of mineral resources. The country leads the world in nickel reserves, is second in tin reserves, fifth in gold reserves, sixth in bauxite reserves, sixth in coal reserves, and seventh in copper reserves. It boasts a large pool of inexpensive labour, is home to thousands of mining businesses that follow the highest safety and environmental standards, and has introduced aggressive tax incentives for mining companies that are building a downstream industry for the mined raw materials.

Artc 33 parag 3 of the 1945 Constitution of the Republic of Indonesia stipulates that the state controls natural resources and uses what is contained therein for the benefit of the people (Bapeten, 2002). Considering it necessary to fulfil the promise of the wellbeing of the Indonesian people by making use of the potential of Indonesia's great natural wealth to assist the country's economic development. One of Indonesia's natural resources, coal, a vital material, is crucial in supplying many people's requirements. As a result, the government must oversee the management of coal and mineral mining if it is to produce just prosperity and promote the welfare of its citizens. The sustainable and eco-friendly mining of coal makes a substantial contribution to regional and national economic development. As a result, in order to be environmentally responsible and sustainable, coal mining must be controlled properly.

Since 2005, when Indonesia's production exceeded Australia's, Indonesia has become a major supplier of coal. Most of the demand comes from China and India, and most of the coal exported is medium quality 5100 and 6100 cal/gram, and low quality below 5100 cal/gram. If current production levels are maintained, it is estimated that Indonesia's coal reserves will be exhausted in 83 years.

Mining is the process of obtaining and preparing solids, liquids, and gases for further processing. Finding the many potentials buried within the earth's crust requires mining or excavation. The goal of mining is to use natural resources (excavated minerals) as efficiently as possible (Hayati, 2015; Sutedi, 2022). Since ancient

times, people have been mining. The first humans to harvest flint used it to make tools and weapons because it fractures into shards with sharp edges. Copper and gold mining dates back to the Palaeolithic era. Minerals are the profitable substances that are dug up from the earth. An inorganic material known as a mineral has a distinct chemical composition and crystal structure. Although the minerals are important when they are pure, the soil mixes them with undesired rocks and minerals. Normally, this rock and mineral mixture is brought from the mine together, then it is processed and refined to remove the desired mineral. The mining industry is unique in that it requires a significant upfront investment, makes use of cutting-edge machinery, is managed by professionals, entails a high degree of risk, has a poor rate of return on investment, and is sensitive to environmental changes. In this case, the environmental conditions around the mining site will be affected if there is no law enforcement action due to the increasing number of mining business permits granted by the Government. Large-scale coal mining will result in environmental degradation, deforestation, and empty land with holes the size of large ponds. According to Law no. 32 of 2009, environmental damage is defined as a direct or indirect change in the biological aspects of the environment that exceeds the minimum limit of environmental damage (P. of R. of Indonesia, 2009).

According to Artc 33, par 4 of the Republic of Indonesia's 1945 Constitution, the country's economy should be run according to the principles of economic democracy, togetherness, justice, sustainability, environmental insight, and self-reliance, as well as maintaining a balance between progress and maintaining the country's economic unity. Coal mining activities in Indonesia that disregard environmental sustainability are in violation of this provision (Bapeten, 2002) along with Article 28H paragraph 1, which addresses the right to health care, a place to live, a decent environment in which to live, and physical and spiritual success (Bapeten, 2002). The 1945 Constitution's ideals in Articles 33 paragraph 4 and 28 H paragraph (1) are distant from reality in practice because there are still several coal mining operations in East Kalimantan Province that harm the environment and make it difficult for people to live in a healthy environment.

According to Law no. 3 of 2020, which requires the management of coal mining in a sustainable and environmentally sound manner, every business actor or coal mining activity is required to carry out postmining reclamation to restore environmental functions as they should. Reclamation is a procedure used at various stages of mining operations to organize, repair, and restore ecosystem conditions so that they can function again as they should. Post-mining activities, also called post-mining, are planned, methodical and sustainable after part or all of the mining trade activities are completed in the context of restoring the natural environment and social functions in the mining area (P. R. Indonesia, 2020).

Many ex-mining puddles or holes are still gaping and claiming lives because coal mining business actors have not fulfilled their commitments to carry out postmining reclamation. The Mining Advocacy Network estimates that there are currently 1,735 holes in Indonesia that have been left gaping as if they were no man's land. Lawmaking, law enforcement, justice, and administration of justice are only a few of the legal processes. According to Satjipto Raharjo, law enforcement is the actual implementation of the law in people's daily life. Law enforcement is the process of actually putting the law into practice in the community after it has been created. However, it is more frequently referred to as the enforcement of the law, or in other languages, *rechistoepassing* and *rechtshandhaving* (Netherlands), law enforcement (America) (Raharjo, 2000).

Monitoring and enforcing (or threatening to enforce) the use of administrative, criminal, or civil instruments to ensure compliance with the terms of general and specifically relevant laws and regulations constitutes law enforcement in the field of environmental preservation. The definition of control is the government's supervision of laws and regulations (Hardjasoemantri, 1995). As a result, law enforcement can be used both preventively and repressively. It indicates that active supervision is carried out on compliance with regulations without direct occurrences involving specific events that raise suspicions that legal regulations have been broken in preventive law enforcement (Rangkuti, 2005). The purpose of preventive administrative law facilities is to enforce legislative rules.

Preventive law enforcement through administrative legal measures is essential when it comes to addressing environmental concerns because it is founded on the concept of source reduction (Salim & Palullungan, 2021). Therefore, it is believed that the administration of environmental law serves the purpose of defending the right to a just and healthy environment as a constitutional right more effectively. Administrative law enforcement has significant potential as a preventive instrument before substantial infractions arise and have a negative influence on environmental quality. As is well recognized, if pollution and environmental degradation have occurred, recovery will be arduous and costly. The supervisory operations that administrative law enforcement uses to encourage and ensure changes and arrangements which are among the practice's most salient characteristics are what give it its preventative potential. Another potential preventive measure is the application of administrative

consequences targeted at improving noncompliance situations (Weinreb, 1987). Administrative law enforcement necessitates lower or more efficient expenses than criminal or civil law enforcement, including a duty for self-monitoring by the target of administrative law enforcement and reduced costs for obtaining legal evidence.

Research Method

This study falls under the category of doctrinal legal research. Doctrinal legal study seeks the correct solution by proving the truth sought from legal prescriptions stated in law books and doctrine (Wilson, 1990). This research method is legal in nature, as it focuses on legal products (Fajar & Achmad, 2010). Materials or data must always be sought out, processed, and analysed in order to produce the answers to the study questions that have been posed. The primary, secondary, and tertiary legal texts used in this research are used since it is doctrinal legal research (Fajar & Achmad, 2010). In this study, secondary data on legal materials were collected using literature study method. Literature research is the process of analyzing laws and regulations, law books, legal papers, legal journals, magazines, and newspapers (Budianto, 2020).

Discussion

Mechanism for Prevention of Violation of Postmining and Reclamation Obligations

Mined businesses are conducted by people who dig up the soil to collect mining minerals, which are then sold for a profit. Even though these activities have a good impact, they can also harm the ecosystem. Even after reclamation, the region cannot be returned to its pre-mining condition due to mining; it is difficult to grow plants there since the natural resources are no longer there, and the soil becomes infertile. Rainfall on bare soil may result in landslides and floods, both of which will be expensive for the neighborhood. The following is one aspect of how mining and the environment interact: Mining activities are particularly vulnerable to environmental damage if the offenders improperly manage the surrounding ecosystem (Friederich & van Leeuwen, 2017).

In order to comply with and obey the relevant legal requirements, business entities are required to carry out postmining reclamation in accordance with Law No. 3 of 2020. Additionally, business entities are required to fulfill their obligations to the country and state to uphold and preserve the environment after leaving the mining industry. In order to establish legal clarity and prevent other business entities from committing the same offense, if a business entity breaches its duty to perform postmining reclamation, sanctions must be administered against the business entity in line with the relevant laws and regulations.

A more threat-based compliance strategy is administrative law enforcement using administrative sanctions. To attain an ideal degree of compliance, administrative punishments (threat-based) should be paired with coaching activities or technical support from environmental agencies. The author divides an efficient administrative legal remedy into three elements.

Compilation of Postmining and Reclamation Regulations

Exactly if the Law of the Republic of Indonesia No. 3 of 2020, has regulated the application of the principles of good mining techniques, in which holders of mining business permits and special mining business permits are required to carry out postmining reclamation activities as an effort to manage and monitor the mining environment. The permit holder must then contribute a reclamation guarantee fund and a postmining guarantee fund.

Law No. 3 of 2020, which specifies that additional laws governing postmining reclamation, as well as reclamation guarantee funds and postmining guarantee funds, are managed by government regulations, has an issue. Entrepreneurs in the coal mining industry are able to forgo postmining reclamation because of the excessively high operating costs related to shutting mine pits. The earlier sub-chapter on challenges to administrative law enforcement discussed government rules and their derivatives.

Tanya and Parera write in *Panorama of Law and Legal Studies* that an unqualified rule of law is susceptible to anomalies in the diseased structure. He claims that since the regulation was put in place, germs of legal pathology have sprouted. A rule of law is sometimes formed from a momentary emotional reactivity without considering its application in a wider context. Even if the content of the rules is considerably wider and richer, necessitating critical examination and the engagement of as many relevant professionals as is practicable,

academic drafts are usually done in a hurry and are merely perceived as a legal writing effort (Tanya & Parera, 2018).

Meanwhile, for Indonesia to be a rule-of-law state, all aspects of life within the social, national, and state spheres, including government, must be based on laws that are in line with the national legal (Badriyah, 2011). According to Farida, the primary objective of lawmaking in a society based on modern law is no longer to codify social norms and values but to generate adjustments (modifications) or changes that occur in people's lives (Indrati, 2007). One of the special regulations issued by the Indonesian government in accordance with primary regulations is Law No. 3 of 2020, which mandates that coal mining entrepreneurs carry out postmining reclamation to prevent environmental damage.

Organize, repair, and enhance the quality of the environment and ecosystem, postmining activities that are carried out after part or all of the mining activities have been finished. If reclamation is referred to as a process carried out at various phases of the mining process, it is done so that the ecosystem and environment may once again operate as intended. All mining activities in mining areas must try to restore natural environmental and social functions based on regional characteristics (P. R. Indonesia, 2020). This agreement makes it abundantly obvious that the area affected by the former coal mining activity may only be utilized for that purpose and may not be exploited for habitation, tourism, or other uses.

According to Yuliandri, the legal policies contained in the law have been transformed into a social engineering weapon that includes the goals that the government wants to achieve to invite the public to receive new views (Yuliandri, 2013). Hattu also noted that laws and regulations must be formed in a contemporary rule of law to regulate, limit and supervise the implementation of government duties and authorities as well as to defend people's rights (Hattu, 2011). The government believes it is necessary to enact laws and regulations immediately to ensure legal clarity over Law no. 3 of 2020. The government can appoint a third party to postmining reclamation if the holder of a license or special permit does not carry it out according to the approved plan. The author also mentions that all laws are derived from Law No. 3 of 2020 does not allow coal mining entrepreneurs to leave mine pits open and the government expects mine pits to be closed 100% because the effects of uncovered ex-mine holes can cause environmental damage and loss of life.

Improving the Supervisory Role of Indonesian Mining Inspectors

In discussing the legal structure, what is meant is the management, infrastructure, and personnel of legal institutions. The study of the legal structure subsystem can also cover (1) the legal system, (2) the structure and operation of the justice system, (3) law enforcement officers, and (4) the infrastructure of the legal system (Paksy, Szabó, & Vinnai, 2020). The legal structure in this study refers to related parties involved in carrying out legal proceedings or actions taken by anyone acting within the limits of the law to direct, monitor, and impose administrative sanctions on coal mining in Indonesia.

In order to detect, respond and impose sanctions as effectively as possible, it is suggested that the Indonesian government increase the number of mining inspectors. In addition, the government should increase its budgetary capacity to enforce administrative law and build facilities and infrastructure. Administrative law enforcement must take action in order to successfully stop environmental harm caused by coal mining corporations that disregard their postmining reclamation commitments in Indonesia. It can be emphasized that in order to evaluate or recapitulate special documents related to coal mining in Indonesia between the local government and the Central Government since the enactment of Law 23 of 2014, it is necessary to evaluate or recapitulate special documents regarding coal mining in Indonesia between the regional government and the central government. This is done to provide a well-structured transfer of supervisory authority and enforcement of sanctions.

Guidelines for Reclamation and Postmining Obligations

There will undoubtedly be many difficulties in establishing and implementing law in people's lives, both due to internal and external aspects of the community itself (Liguori, Roucek, & Warren, 1951; Van Tubergen, 2020). The law will unquestionably be advantageous if people voluntarily comply with it. The law, however, is detrimental if the community rejects it because it is unable to protect the community's interests. The law was created to guard the interests of society, the law and the interests of society must be balanced.

The components of legal culture that have a substantial impact on the functioning of a vast system known as the legal system are the same in society and culture. But raising the bar for legal culture is not an easy undertaking. A challenging task because individual legal attitudes and opinions form the basis of a country's legal

consciousness. Therefore, it is necessary to make an effort to give people in Indonesian society the trust that the law is a reference point in this nation.

In addition to being wise and, of course, ethical, rulers and legislators play a key part in legal culture, although this is not the only way it exists in society. Not the other way around, but simply being an official who takes advantage of a position by neglecting his or her obligations as a public servant. Because the community's controller, the populace feels that they are just used to serving the government's objectives by serving as cash cows or objects of official attention. As a result, there is no longer any consciousness of the law in society; it is only a fleeting whim that the lowest classes do not ignore (Yunus, 2015).

Even though there are many regulations governing postmining reclamation activities, the Government of Indonesia must still comply with the Law of the Republic of Indonesia No. 3 of 2020 which requires postmining reclamation, and cannot choose other options. such as the use of former mining pits for other purposes, such as housing or tourist attractions, as required by existing regulations. In the event that local residents and coal mining business owners engage in discussions, the latter must act rapidly to respond by filing complaints with the relevant authorities.

Conclusion

Improving the rules of liability that must be met without having to leave the mine pit is an effective administrative law enforcement approach in Indonesia to stop violations of postmining reclamation regulations. Second, with the transfer of mining authority from the City, Regency, Provincial and Central levels, the function of the Indonesian Mining Inspector will be enhanced by increasing human resources, operational budgeting, facility, and infrastructure, and accelerating document recapitulation. The Mine Inspector informed that the closure of the mine pit must be carried out as a postmining reclamation, which is one of the initiatives to stop the bad habits of coal mining entrepreneurs. The Mining Inspector also involves the local community in supervising postmining reclamation activities.

Suggestion

Strong regulations, adequate human resources, a sufficient budget, adequate facilities and infrastructure, clear authority transfer, and the elimination of bad habits practiced by coal mining entrepreneurs, specifically by mining inspectors' socialization of coal mining entrepreneurs that mining pit closure must be carried out as an activity are all important factors. Environmental improvement activities can be accomplished by involving the community in overseeing the tasks that must be completed in order to successfully enforce administrative law.

Bibliography

1. Badriyah, M. (2011). *Undang-undang Republik Indonesia* (pp. 1–7). pp. 1–7.
2. Bapeten. (2002). *The 1945 Constitution of Indonesia* (Vol. 1, pp. 1–14). Vol. 1, pp. 1–14. Retrieved from <https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf>
3. Budianto, A. (2020). Legal research methodology reposition in research on social science. *International Journal of Criminology and Sociology*, 20(9). <https://doi.org/10.6000/1929-4409.2020.09.154>
4. Fajar, M., & Achmad, Y. (2010). Dualism of Normative and Empirical Legal Research. *Student Library, Yogyakarta*.
5. Friederich, M. C., & van Leeuwen, T. (2017). A review of the history of coal exploration, discovery and production in Indonesia: The interplay of legal framework, coal geology and exploration strategy. *International Journal of Coal Geology*, Vol. 178. <https://doi.org/10.1016/j.coal.2017.04.007>
6. Hardjasoemantri, K. (1995). *Pengantar Penegakan Hukum Lingkungan*. Surabaya: Fakultas Hukum Universitas Airlangga.
7. Hattu, H. (2011). Tahapan Undang-Undang Responsif. *Mimbar Hukum*, 23(2), 406–419.
8. Hayati, T. (2015). *Era Baru Hukum Pertambangan: Di Bawah Rezim UU No.4 Tahun 2009*. Retrieved from <https://books.google.co.id/books?id=vPtCDAAAQBAJ>
9. Indonesia, P. of R. of. (2009). *Law of the Republic of Indonesia Number 32 Year 2009 Concerning Protection and Management of the Environment* (Vol. 2, p. 255). Vol. 2, p. 255.
10. Indonesia, P. R. (2020). Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara. *Pemerintah Republik*

Indonesia, p. article 112. Retrieved from [https://jdih.esdm.go.id/storage/document/UU No. 3 Thn 2020.pdf](https://jdih.esdm.go.id/storage/document/UU%20No.%203%20Thn%202020.pdf)

11. Indrati, M. F. (2007). Ilmu Perundang-undangan Proses dan Teknik Pembentukannya. In *Kanisius* (2nd ed.). Yogyakarta: Kanisius.
12. Liguori, S. M., Roucek, J. S., & Warren, R. L. (1951). Sociology An Introduction. *The American Catholic Sociological Review*, 12(2). <https://doi.org/10.2307/3707829>
13. Paksy, M., Szabó, M., & Vinnai, E. (2020). Hungarian Language and Law: Developing a Grammar for Social Inclusion, a Vocabulary for Political Emancipation. Special Issue (IJS�)—Editorial Preface. *International Journal for the Semiotics of Law*, 33(3). <https://doi.org/10.1007/s11196-020-09762-1>
14. Raharjo, S. (2000). Law Science. In *PT. Citra Aditya Bakti* (Vol. 54). PT. Citra Aditya Bakti.
15. Rangkuti, S. S. (2005). *Environmental Law and National Environmental Policy*. Surabaya: Airlangga University Press.
16. Salim, A., & Palullungan, L. (2021). The challenges of environmental law enforcement to implement SDGs in Indonesia. *International Journal of Criminology and Sociology*, 10. <https://doi.org/10.6000/1929-4409.2021.10.60>
17. Sutedi, A. (2022). *Hukum Pertambangan*. Retrieved from <https://books.google.co.id/books?id=MaaBEAAQBAJ>
18. Tanya, B. L., & Parera, T. Y. (2018). Panorama Hukum Dan Ilmu Hukum. In *Genta Publishing*. Yogyakarta: Genta Publishing.
19. Van Tubergen, F. (2020). Introduction to Sociology. In *Introduction to Sociology*. <https://doi.org/10.4324/9781351134958>
20. Weinreb, L. L. (1987). *Natural Law and Justice*. Retrieved from <https://books.google.co.id/books?id=nlltkiVZlucC>
21. Wilson, E. B. (1990). *An Introduction to Scientific Research*. Retrieved from <https://books.google.co.id/books?id=rKCHDQAAQBAJ>
22. Yuliandri. (2013). *Gagasan Pembentukan Undang-Undang Berkelanjutan*. Jakarta: Rajawali Press.
23. Yunus, N. R. (2015). Menciptakan Budaya Hukum Masyarakat Dalam Dimensi Hukum Progresif. *Supremasi Hukum*, 11(1), 39–57.