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Comparison of Accountability of Gold Miner License Policies in Review Of Legal Perspective

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Abstract

This study aims to describe the comparison of customary and legal gold mining regulations. In terms of custom and law, there are frequent regulatory disputes in the existence of gold miners in Indonesia. This becomes a problem in the power of law for gold miners according to the portion of their work level. Many legal procedures do not need to be perfected in legal management. This type of research is normative legal research using normative case studies in the form of legal behavior products. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. Data collection is carried out by content analysis by examining legal documents, norms or rules that exist in society. This study found that prior to the implementation of criminal law and civil law which were taken from the book of laws, customary criminal law had already been implemented and even its values were more highly respected by the community.

Keywords

accountability, policy, gold miner, law

Introduction

Legal procedures are often inconsistent with the implementation of law in society (Bagley, 2019). This can be seen in the world of gold business, agreements regarding price, production, territory and other business competition agreements are often carried out implicitly (Kwan, 2019). This is where it makes it very difficult to find evidence that can directly prove the occurrence of events or actions that violate the law. If the law only relies on direct evidence, it will be very difficult to enforce the law (Shapiro, 2019; Kira, 2021).

Gold is one of the most valuable and very useful mining goods for humans which is produced from the bowels of the earth so that the amount is very limited. That is, gold is a non-renewable natural resource (Salim, 2012). If it is associated with the agreement of the Organization for Economic Cooperation and Development (OECD) to issue a policy that demands the direct approval of all parties. This proves the importance of direct and indirect evidence to establish the existence of a business agreement before the law. Direct evidence reveals that business meetings or discussions describe the parameters of the agreement of the parties (Liljebloom et al., 2019).

The basis for extracting natural wealth in Indonesia is Law Number 11 of 1967 concerning the subject of mining. All aspects relating to mineral materials such as chemical elements, minerals, gold and all kinds of rocks including precious stones are natural deposits, the extraction of which is regulated by a basic law. During the New Order government, which was the order of implementation of Indonesian development, exploitation and exploration of natural resources and mining adhered to a development paradigm which considered natural resources only as a source of income rather than as a source of capital. Achieving adequate economic growth for development, the logic of environmental sustainability as a form of sustainable development (Supramono, 2012).

The management of natural resources, which is expected to benefit all levels of Indonesian society, is in fact not in accordance with the people's expectations contained in Article 33 paragraph 3 of the 1945 Constitution to provide equity for the results of this development to the people. The state controls all the wealth contained in the earth and makes the best use of it for the prosperity of the people. However, in reality the people carry out mining activities without paying attention to the important aspects in it, such as not paying attention to the consequences caused or the influence of the mining, but it does not rule out the possibility that mining is also carried out by mining companies that already have official permits. The mining management system in Indonesia is pluralistic, this is due to the variety of contracts or mining permits currently in effect (Salim, 2014).

Problems that arise in society, the rampant illegal gold mining (without a permit). Illegal gold mining or often abbreviated as PETI (Unlicensed Gold Mining) is a mine with the highest amount of mineral pollution. Similar research was

conducted by Ju & Lin (2020), whose research results focused more on the impact of gold mining activities on water pollution and socio-economics. Unlicensed mining activities have a negative impact on ecological and socio-economic aspects for local communities. Mining activities without a permit are generally not environmentally friendly, because they only pursue short-term interests as well as to earn money. In addition to environmental problems, the existence of mining areas in a number of areas indicates a threat of poverty and potential for conflict.

Literature Review

Principle of Comparative Law

A policy established by an institution can be ascertained for the purpose of being obeyed and implemented by members of the institution and the user community, while order is the activity of complying with a set rule. Atmasasmita (2000) argues that comparative law is a science that systematically studies (criminal) law from two or more legal systems by using comparative methods. In other words, comparing refers to looking for differences and similarities by providing explanations and examining how the law functions and its juridical solutions in practice as well as which non-legal factors influence it (Hartono, 1988).

Actions that are done repeatedly become a habit that is fixed and respected by people, then that habit becomes a custom in a society. The custom will grow and be formed from a community or area that is considered to have value and is upheld and obeyed by its supporting community. In line with Sukanto's opinion (2008) that customary law is a complex of customs that are not written down (not codified) and are coercive (thus having legal consequences).

There are two ways to compare laws, namely comparing on a macro and micro basis. Macro comparison is a way to compare legal issues in general (Capobianco & Nyeso, 2018). Micro comparison is a way of comparing certain legal issues. There are no sharp boundaries between macro and micro comparisons. Laws that are known to be compared are called comparatum (Hartono, 1988). Comparing laws is not just for collecting statutory regulations, but comparing laws according to statutory regulations or unwritten rules in society. The purpose of comparing laws is an effort to collect various information about foreign law, to explore the experiences made in foreign law studies in the framework of legal reform (Fuadi, 2007).

Legal Liability of Gold Miners

The authority of the state in managing and utilizing natural resources for the prosperity of the people is contained in article 33 paragraph 3 of the 1945 Constitution which states that the land, water and the wealth contained therein shall be controlled by the state for the greatest prosperity of the people. This means that the government in principle has an obligation to act as executor of state policy

in managing and utilizing natural resources as much as possible for the prosperity of the people (Sutedi, 2012).

Laws and regulations formed by officials or positions that have the authority to make regulations that apply to the general public. Legislation is generally binding, not meant to always be binding on everyone. General binding only shows that statutory events do not apply to concrete events or certain individuals. In line with the opinion of Triwulan (2010) that accountability must have a basis, namely things that give rise to legal rights for a person to sue another person as well as things that give rise to obligations.

In other words, accountability means the obligation to provide an answer which is a calculation of all that has happened and the obligation to provide recovery for any losses that may be incurred (Istanto, 2014). Responsibility in the sense of responsibility, namely a moral attitude to carry out its obligations, while responsibility in the sense of liability is a legal attitude to account for violations of one's obligations or violations of the rights of other parties (Asikin et al, 2016).

Research Methods

This type of research is normative legal research, namely legal research conducted by examining literature or secondary data (Soekanto, 2003). Activities in normative legal research basically examine internal aspects (to solve problems that exist within) positive law (Benuf and Azhar, 2020). On the other hand, this normative legal research discusses laws and regulations both from the point of view of the hierarchy of laws and regulations (vertical), as well as the harmonious relationship of laws and regulations (horizontal) (Marzuki, 2008). The normative legal research approach leads to a normative juridical approach, namely an approach that refers to applicable laws and regulations (Suggono, 2003).

Normative legal research uses normative case studies in the form of legal behavior products. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior, so that normative legal research focuses on inventorying positive law, principles and legal doctrine, legal discovery in in concreto cases, systematic law, level of synchronization , comparative law and legal history (Kadir, 2004). Data collection techniques and tools used in this study are observation and documentation.

Results and Discussion

Referring to the problems stated above, the results of the research can be described as follows.

Mining Legal Authority in accordance with the Act

Legally, a person is said to be responsible for a certain act, if he can be subject to a sanction in the case of the opposite act. Normally, in cases where

sanctions are imposed on the perpetrator, it is because of his own actions that the person must be held responsible. Classification of mining products, that mining business permits include permits to utilize extractive mining materials such as minerals class A, class B, and class C mines. There are many types of natural resources of mining materials found in Indonesian soil. Several types mining materials are divided into three groups, namely:

1. Class A strategic minerals, consisting of petroleum, asphalt, anthracite, coal, light coal, old coal, bitumen, liquid bitumen, solid bitumen, natural gas, earth wax, radium, thorium, uranium, and radioactive minerals other.
2. Group B vital minerals, consisting of mercury, antimony, achlor, arsin, bauxite, iron, bismuth, cerium, gold, diamond, chromium, manganese, silver, plastic, rhutenium, zinc, copper, lead, titanium, vanadium, tungsten , and other rare metal materials.
3. Group C excavated materials, consisting of sand, piled up soil, and gravel. This material is a mineral that is scattered in various regions in Indonesia.

Based on the type of management, mining activities consist of two types, namely mining activities carried out by business entities directly appointed by the state through Mining Authorizations (KP) and Contracts of Work (KK), and mining carried out by the people manually. The Law of the Republic of Indonesia Number 11 of 1967 has explained that Mining Authorization (KP) is the authority given to bodies or companies to carry out mining business. After the Law of the Republic of Indonesia Number 4 of 2009 was enacted, the KP was changed to a Mining Business Permit (IUP). The KP that was put into effect before the enactment of Law no. 4 of 2009 and PP no. 23 of 2010 remains in effect until the last term, and must be adjusted to become an IUP or People's Mining Permit (IPR) in accordance with the provisions of PP No. 23 of 2010 within a period of no later than three months from the enactment of the PP. Delivering the activity plan in all KP areas until the end of the KP period. Carry out domestic processing and refining within a period of no later than five years since the enactment of Law of the Republic of Indonesia Number 4 of 2009.

As regulated in article 1 (7) of Law no. 4 of 2009 concerning mineral and coal mining (UU Minerba), Mining Business Permits (IUP) are business licenses granted for mining businesses. It is the authority of the government, in the processing of mineral and coal mining, to issue IUPs. Article 6 of government regulation Number 23 of 2010 concerning the implementation of mineral and coal mining business activities (PP 23/2010) stipulates that IUPs are granted by ministers, governors or Regents/Mayors in accordance with their authority. IUP is given to Business Entities (BU) in the form of Private Business Entities, State-Owned Enterprises. or Regional Owned Enterprises, and Cooperatives and Individuals in the form of individuals who are Indonesian citizens, firm companies, or limited companies.

The IUP will be granted after the WIUP (Mining Business Permit Area) is obtained. In one WIUP it is possible to grant one IUP or several IUPs. Article 36 of

the Minerba Law divides IUP into two stages, namely the first Exploration IUP includes general investigation activities, exploration and feasibility studies. Second, Production Operation IUP, which includes construction, mining, processing and refining as well as transportation and sales activities. The term Mining Business Permit, hereinafter referred to as IUP. The definition of IUP according to Article 1 number 7 Law 18 Number 4 of 2009 is a permit to carry out a mining business.

However, with the enactment of Law Number 23 of 2014 concerning Regional Government, the Provincial Government has the authority to grant Mining Business Permits in accordance with the authority they have. The principle of granting IUP regulated in Law Number 4 of 2009 is that one IUP is only allowed for one type of mine. One IUP is granted for one type of mineral or coal.

Prior to the enactment of Law Number 22 of 1999 concerning Regional Government, the central government had the authority to manage mining natural resources. This is because the government system prior to the enactment of Law 22 of 1999 was centralized, meaning that all kinds of matters related to mining, both related to the determination of mining authorization permits, contracts of work, work agreements, coal mining concessions, and others.

The official authorized to grant permits is the minister, in this case the Minister of Energy and Mineral Resources. However, since the enactment of Law Number 22 of 1999, authority in granting permits has been handed over to local governments (provincial, district/city) and the central government in accordance with their powers. 30 The same is true until now after the law the regional government was replaced by Law Number 32 of the Year 2004 and subsequently became Law Number 23 of 2014. In Law Number 11 of 1967 it does not stipulate the authority of the local government in mining management, but in Articles 6, 7 and 8 of Law Number 4 of 2009 concerning Mineral mining and Coal is regulated in detail by the authority of the government, provincial government and district/city government in mining management.

Mining Permit Camouflage

Based on interviews and documentation conducted by researchers, mining land permits are still camouflage. This means that some mining owners have pocketed permits through land leases, some by buying land, and paying through miners (fees). The gold mining community, land or location for dredging is very prioritized, because to obtain gold at the excavation or dredging site so that the gold debris can be retrieved. The land in question can be land or river.

Limited locations to look for gold make people think about how the mining business continues to run as it should. Previously they dredged in the middle of the river in Mandailing Natal, but increasingly the gold is depleted and cannot be renewed, so they are starting to shift to residential areas such as cliffs or empty land. To do work at that location, of course they have to deal with the landlord. An agreement between them must be established so that there is no violation of the law due to usurping other people's land. Therefore, the gold mining community

buys the land for their work activities. The land does not have a permit for mining, it is only owned as ordinary land. Therefore, even though the land has been purchased, it is not in accordance with the Minerba Law because there is no mining permit.

There are also mine owners buying land or mine sites. In this way, usually land owners offer gold miners to carry out gold dredging activities in the area. From the results of observations and interviews

conducted by researchers, it was found that the gold mining community had legal awareness relating to their activities.

Communities who do not have their own land, they do not want to carry out mining activities in locations that do not belong to them. Therefore, the residents gave permission with a predetermined agreement such as a rental system, then the miners began dredging activities in the area. Gold mining work is not an easy job, but it contains a lot of risks. Apart from the risk of accidents at work, breaking the law, there are other risks, namely bullying by irresponsible persons. The results of this study indicate that gold mine workers are very obedient to the elements playing at the mining site, they have no objection to spending money on these elements for the sake of their job security.

From this description it can be concluded that the legal awareness of the gold mining community is still constrained. On the one hand, they realize that they are mining illegally, and feel insecure in mining gold, so they make efforts such as paying levies to unscrupulous persons. On the other hand, the government itself does not provide information and limitations regarding gold mining areas. In this case, it is necessary to have legal and official control from the government so that people's legal awareness is implemented.

Legal awareness means having legal knowledge, legal understanding, legal attitude and legal behavior regarding the views that live in society about what law is and what we should do. Compliance with official government law in the procedure for excavating class C or Minerba must be based on the concept of approaches and providing solutions from the government, because the community should not be confronted with regulations that prohibit it because there is no permit, but also based on rights and obligations as citizens. in accordance with Law No. 39 1999 article 2. The Republic of Indonesia recognizes and upholds human rights and basic human freedoms as rights that are naturally inherent in and inseparable from humans, which must be protected, respected and upheld for the sake of enhancing human dignity, welfare , happiness, and intelligence and justice.

Conclusion

People's mining is a business of mining minerals for Minerba and Oil and Gas which is carried out by the local people on a small scale or in mutual cooperation with simple tools for their livelihood. People's mining is based on a people's mining permit (IPR), namely a permit to carry out a mining business in a people's mining area and limited investment. The purpose of people's mining is to

provide opportunities for the local people in the search for minerals to participate in developing the country in the mining sector with government guidance. Gold mining is said to be legal if it is based on the IPR. If done without an IPR, then the mining can be said to be illegal. Illegal mining is a mining business that is carried out by an individual, a group of people or a company/foundation with a legal entity whose operations do not have a permit from a government agency in accordance with applicable laws and regulations.

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