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Legal Responsibility of Coal Mining Companies for Environmental Damage in Lappariaja District, Bone Regency

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Abstrak: This paper aims to: 1. To determine the role of law in supervising coal mining activities in Lappariaja sub-district, Bone Regency. 2. To determine the legal responsibility of coal mining companies for environmental damage caused in Lappariaja sub-district, Bone Regency. This paper uses a descriptive empirical legal research method. This approach was chosen because it is able to provide a comprehensive picture of the phenomenon of anarchic behavior of funeral escorts on the highway, especially in the context of the application of criminal law and its causal factors. The results of the paper indicate that the Legal Regulations in Supervising Coal Mining are contained in Government Regulation No. 55 of 2010 concerning the guidance and supervision of the implementation of the management and implementation of mineral and coal mining businesses. Article 13 states that: the minister supervises the implementation of mining business management carried out by the Provincial Government and Regency/City Government in accordance with their authority. The Minister, Governor/Regent/Mayor in accordance with their authority supervise the implementation of mining business activities carried out by holders of IUP, IPR or IUPK. The Legal Responsibility of Coal Mining Companies for Environmental Damage caused is: Criminal Law Responsibility, Civil Law Responsibility and Administrative Responsibility. Writing recommendations. 1. For the government, it is expected that in issuing permits for mining businesses, they should conduct case studies on environmental impact analysis (AMDAL). 2. For mining companies, it is expected to carry out responsible waste management and carry out reforestation and greening in former mining areas.

Keywords: *Mining Companies, Corporate Responsibility, Environmental Damage*

A. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia (UUD NRI) as the constitutional basis of the state requires that Indonesia's resources be used for the greatest prosperity of the Indonesian people. This is as stated in Article 33 paragraph (3). In addition, Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia mandates that every Indonesian citizen has the right to a good and healthy environment. Indonesia has extraordinary natural resource potential. These natural resources must always be maintained and preserved so that they can support human life. Therefore, every member of society also has an obligation to maintain and protect the environment so that they can enjoy and utilize it properly.[1]

State control over mining management is exercised by the government, in this case the central government. Although the government has authority over mining management, in practice, the government itself is actually unable to conduct mining activities on these natural resources.

Therefore, to carry out these activities, the government grants authority to other parties to conduct mining activities on these natural resources. Mining regulations themselves authorize individuals or business entities to conduct mining activities on natural resources owned by the Indonesian state.[2]

The presence of Law Number 11 of 2020 concerning Job Creation presents new problems, at least there are 4 (four) problems first, All mining authorities and authorities are now under the authority of the central government which makes it impossible for regional governments to take action against mining companies that commit violations such as revoking Mining Business Permits, second, local communities who are harmed by mining company activities that damage their living space can no longer report to the regional government which is because mining authority lies with the central government, even in Article 162 which states that communities who try to disrupt mining activities in any form can be reported back by the company and subject to criminal penalties, even fines of up to 100 million rupiah. Third, If following the provisions of Law Number 4 of 2009, mining companies are required to carry out all Reclamation and Post-mining activities while depositing Reclamation and Post-mining guarantee fund.[3] Despite these regulations, numerous violations persist, including open coal mine pits that have become giant lakes, claiming lives. Rather than strengthening regulations on reclamation and post-mining activities, Law Number 11 of 2020 concerning Job Creation actually exempts companies from the obligation to rehabilitate ex-mining land, allowing them to freely choose between reclamation and post-mining activities. Fourth, the 0% royalty guarantee for coal value-added activities is considered to prioritize maximizing coal utilization over minimizing the risks of mineral and coal mining itself.[4]

Based on Article 87 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management (UUPLH) that "all parties responsible for businesses or activities that carry out unlawful actions including pollution or environmental damage that causes losses to other individuals or the environment must pay compensation or carry out special actions". The responsibility of the coal company in Lapri District, Bone Regency in this case (PT. PW) with a coal mining business does not carry out compensation or responsibility as explained in Article 87 paragraph 1 of Law No. 32 of 2009. A mining activities in the Bone Regency area can have a negative impact, especially on the sustainability of the environment. One of the real negative impacts of mining activities is environmental damage. The definition of environmental damage can be explained in Article 1 of Law No. 32 of 2009 concerning Environmental Protection and Management. Environmental damage is a direct or indirect change in the physical, chemical, or biological properties of the environment that exceeds the standard criteria for environmental damage.[5] The mining process is often associated with ecological damage. Biodiversity is disrupted, both in terms of distribution and abundance of species around mining areas. Communities have varying perceptions of mining in Bone Regency, necessitating a specific approach to addressing the issues, including an environmental impact analysis that influences public perception. This tendency can lead to conflict if the root cause is not promptly investigated.[1]

B. METHOD

This research uses qualitative legal research with a descriptive empirical legal research approach. This approach was chosen because it can provide a comprehensive picture of the phenomenon of coal mining companies' responsibility for environmental damage, particularly in the context of the application of civil law and its causal factors. This descriptive research aims to systematically analyze and describe the facts, situations, and phenomena occurring in the field related to the research object. The research location was chosen in the Lappariaja District, Bone Regency, considering that the Regency has a coal mining company and has a high level of environmental damage. The population in this study is the local government and 1-2 people affected by environmental damage, aiming to obtain a comprehensive view from various parties related to the legal responsibility of coal mining companies for environmental damage. This study uses two types of data sources: primary data and secondary data. Primary data is data collected during field research, obtained through direct observation of the phenomenon being studied. Secondary data is data collected through library research.[6] This data includes various literature sources such as laws and regulations related to this research, civil law books, scientific journals, articles, previous research results, and other documents relevant to the research topic. Data collection techniques include documentation and literature studies. This study uses a qualitative approach to data analysis. The collected data are analyzed logically and selected according to the research problem. The results of the analysis are presented descriptively, describing and explaining the legal responsibilities of coal mining companies and linking them to applicable legal provisions.[7]

C. Legal Regulations in Supervising Coal Mining in Lappariaja District, Bone Regency.

Law Number 4 of 2009 in conjunction with Law Number 3 of 2020 concerning mineral and coal mining, State Gazette of the Republic of Indonesia Year 2009 Number 4 in conjunction with Law Number 3 of 2020, Supplement to the State Gazette of the Republic of Indonesia Number 4959 as referred to as the mining law. If a mining business is carried out by a contractor, the government's position is to grant a permit to the contractor concerned. The permits granted by the government are in the form of mining authorizations, work contracts, coal mining entrepreneur work agreements, and production sharing contracts. As a consequence of the issuance of a Mining Business Permit (IUP), the next step is to conduct supervision. Supervision is one element in management activities. Supervision is principally carried out as a preventive measure whether activities are carried out in accordance with existing regulations. Supervision in the management of mining businesses is principally aimed at ensuring that IUP holders are more focused in carrying out activities in their series with mining businesses, so that they do not deviate from the orders and prohibitions stipulated in the permit.[4]

Planning is absolutely necessary to initiate the implementation of supervision to realize the legal will containing orders and prohibitions in the mining sector. In Bone Regency, one of the missions, which is an elaboration of the vision of the Bone Regency Industry Service, is to prepare plans and programs for evaluation in the mining sector. As a realization of this mission, and in conjunction with the task of mining supervision, a strategy is implemented through planning. Awaluddin, as the sub-coordinator of oil and gas control and supervision, Functional of the Bone Regency Industry Service, that supervision in mining businesses. Planning is made to prevent and anticipate pollution and/or environmental damage. This planning will then

include land use plans; environmental management methods; work implementation schedules and completion of each stage of reclamation; types of crops to be planted; and cost estimates.[8]

In addition to the planning made by mining companies, the regional government's oversight of mining activities is carried out through a planning stage. Prior to implementation of the oversight, the following steps were taken, in accordance with the planning process:

1. Provision of guidelines and standards for implementing mining business management
2. Providing guidance, supervision and consultation
3. Education and training. Furthermore, supervision is carried out through evaluations of work plans and the implementation of mining business activities, as well as direct inspections of mining sites.

However, its implementation in the field has encountered many obstacles. This is further compounded by the limited budget for on-site inspections and the remoteness of the locations to be monitored. Monitoring through field activity implementation reports is routinely conducted every three months. The above facts indicate that the planning strategy related to environmental management supervision as a realization of the issuance of Mining Business Permits (IUP) has been implemented in sectoral agencies, although in reality it has not been implemented in an integrated manner between sectoral agencies. The above facts also prove that monitoring planning is carried out independently by each sectoral agency, namely the Department of Industry and the Department of Environment. Ideally, integrated planning essentially plays a crucial role and determines the optimal implementation of supervision. Therefore, through integrated planning, a shared commitment and a shared perception are needed. Thus, it is hoped that the entire series of monitoring implementation can be carried out according to the targets set in an integrated manner through planning, thereby enabling administrative law enforcement efforts to be implemented. Through integrated supervision, it is hoped that its implementation will not deviate from the nature and essence of the objectives of supervision. Similarly, changes in legislation are not necessarily followed by changes in the system, due to the lack of implementing regulations. For example, the current Mineral and Coal Mining Law (UU MINERBA) is not yet effectively enforced in the field. According to Awaluddin, one of the theoretical reasons for conducting supervision is coordination. This reality is irrelevant to Awaluddin's opinion. Coordination should begin at the planning stage, so that its implementation can support the implementation of administrative law enforcement. Through supervision, it is hoped that a balance will be established between mining management and environmental preservation, thus achieving environmentally conscious mining management.[9]

D. Legal Responsibility of Coal Mining Companies for Environmental Damage Caused

Every mining company is required to minimize negative impacts and maximize positive ones. With technological advancements, from the Industrial Revolution to the present, industry often generates both positive and negative impacts.[10] Positive impacts include economic

development, which results in progress and increased social welfare. Negative impacts can be observed ecologically, including environmental damage caused by technology. Furthermore, socially, environmental damage has given rise to conflict within communities, ranging from small to large. These conflicts range from minor to major, such as complaints from communities living near mining areas about environmental damage caused by mining waste, to major conflicts such as clashes between the two parties.[2] As an activity related to the natural landscape, mining activities will certainly be related to the environment. Mining activities and the environment are two things that cannot be separated, there is even a saying "There is no mining activity without environmental destruction/pollution." According to the law, responsibility is a result of the consequences of a person's freedom regarding their actions related to ethics or morals in carrying out an action. Furthermore, according to Tititk Triwulan, responsibility must have a basis, namely something that gives rise to the legal right for someone to sue another person and is also something that gives rise to the legal obligation of another person to provide accountability.[4]

According to civil law, "the basis of liability is divided into two types: fault and risk. Thus, there are two types of liability based on fault (liability without fault) and liability without known fault (liability without fault), also known as risk liability or strict liability.

The basic principle of liability based on fault implies that a person is responsible for their mistake, causing harm to another person. Conversely, the principle of risk liability states that the consumer plaintiff is no longer obligated; instead, the producer defendant is directly responsible for the risk of their business. According to Article 1365 of the Civil Code, an unlawful act is defined as an unlawful act committed by a person whose fault results in harm to another person." The forms of legal liability are as follows:

Criminal liability contains the principle of fault (culpability), which is based on a monodualistic balance: the principle of fault, based on the value of justice, must be paired with the principle of legality, based on the value of certainty. Although the concept is based on the principle that criminal responsibility is based on fault, in some cases it does not rule out the possibility of vicarious liability and strict liability. The problem of error, whether error regarding the circumstances (error facti) or error regarding the law, according to the concept, is one of the reasons for forgiveness so that the perpetrator is not punished unless the error is blameworthy for him.[11]

Criminal responsibility is a mechanism for determining whether a defendant or suspect is held responsible for a criminal act. For a perpetrator to be punished, the crime must meet the elements stipulated in the law. Criminal responsibility means that anyone who commits a crime or breaks the law, as defined in the law, must be held accountable for their actions according to their fault. In other words, a person who commits a crime will be held accountable for that act with a criminal penalty if they are at fault. A person is at fault if, from the perspective of society, they perceive the act as a normative error.[12]

Criminal liability is implemented through punishment, which aims to prevent criminal acts by enforcing legal norms for the protection of society, resolving conflicts caused by criminal acts,

restoring balance, bringing a sense of peace to society, socializing convicts through providing guidance so that they become good people and freeing convicts from guilt. Criminal liability must take into account that criminal law must be used to create a just and prosperous society that is equitable, both materially and spiritually. Criminal law is used to prevent or overcome undesirable actions.[13]

1. Administrative Accountability

Like criminal law, state administrative law is an important public law instrument in legal protection. Civil and criminal legal sanctions are often less effective if not accompanied by administrative sanctions.

In Law No. 32 of 2009, in Chapter 15 concerning criminal provisions in Article 98 (1): any person who intentionally commits an act that results in exceeding ambient air quality standards, ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp 3,000,000,000.00 (three billion rupiah) and a maximum of Rp 10,000,000,000.00 (ten billion rupiah). If environmental damage that violates Article 87 occurs due to deliberate or gross negligence, the business actor can also be subject to criminal sanctions as regulated in Article 98 and Article 99 of Law Number 32 of 2009. Article 98 (2): If the act as referred to in paragraph (1) ignores injured people and/or harms human health, the punishment shall be imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 12,000,000,000.00 (twelve billion rupiah). In Article 98 (3): If the act as referred to in paragraph (1) results in serious injury or death, the punishment shall be imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).[14]

In Article 99 (1): Any person who due to negligence causes the ambient air quality standards, water quality standards, sea water quality standards or environmental damage criteria to be exceeded, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and with a minimum of Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah). In Article 99 (2): If the act as referred to in paragraph (1) results in injury and/or harm to human health, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of a minimum of Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah). In Article 99 (2): If the act as referred to in paragraph (1) results in injury and/or harm to human health, the perpetrator shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least IDR 2,000,000,000.00 (two billion rupiah) and a maximum of IDR 6,000,000,000.00 (six billion rupiah)."[15] In Article 99 (3): If the act as referred to in paragraph (1) results in serious injury or death, the perpetrator shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 9 (nine) years and a fine of at least IDR 3,000,000,000.00 billion and a maximum of IDR 9,000,000,000.00 (nine billion rupiah). And also in Article 103: Any person

who produces B3 waste and does not carry out management as referred to in Article 59, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah)."

And also in Article 103: Any person who produces B3 waste and does not manage it as referred to in Article 59, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah).

E. CONCLUSION

Legal Regulations in Supervising Coal Mining are contained in Government Regulation No. 55 of 2010 concerning the guidance and supervision of the implementation of the management and implementation of mineral and coal mining businesses. Article 13 states that: The Minister supervises the implementation of mining business management carried out by the Provincial Government and Regency/City Government in accordance with their authority. The Minister, Governor/Regent/Mayor in accordance with their authority supervises the implementation of mining business activities carried out by IUP, IPR or IUPK holders. The Legal Responsibilities of Coal Mining Companies for Environmental Damage caused are: Criminal Legal Responsibilities, Civil Legal Responsibilities and Administrative Responsibilities.

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