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Arrangements for Reclamation Obligations in Mineral and Coal Mining Businesses

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Abstract. The purpose of this research is to determine how the reclamation obligations regulation in the mineral and coal mining business in Indonesia. This study uses normative legal research methods, namely research that departs from the inconsistency between common conditions (*das Sollen*) and reality (*das Sein*). The results of this study are that the government has determined mining activities starting from implementing mining business activities to reclamation and post-mining activities. Regulations regarding legal sanctions provide hope that can become a legal objective in terms of guaranteeing legal certainty, justice, and sustainable benefits for society so that the objectives of the law can be fulfilled. Construction of the substance of reclamation arrangements for mineral and coal mining businesses still needs to answer the objectives of positive law in Indonesia.

Keywords. Reclamation, Mineral Mining, Coal

Introduction

Indonesia is a country of laws. As stipulated in article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that "Indonesia is a country of law." Therefore, any use of power or authority must always be based on law. Regarding natural resources, Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that "earth, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." Coal is a natural resource with non-renewable (non-renewable) characteristics, so if it has been exploited, then coal at a mine site that has been mined cannot be found anymore. [1] Thus, when one location is no longer found coal, mining activities must explore to find new locations with coal potential. The location of the former mining activities left behind puddles and traces of other activities during the mining activities. Mine locations below the earth's surface result in mining exploitation activities reaching deep into the earth's bowels to obtain mining materials, so mining activities significantly impact the environment. [1]

This significant impact on the environment is primarily the impact of environmental pollution and damage to disturbed land in ex-mining locations. During 2014-2019, 116 mining conflicts were recorded in Indonesia, with an area of 1,640,440 hectares of conflict. In 2020,

recorded conflicts increased by 45 cases, with a conflict area of 714,692 hectares. Of the 45 cases, they consisted of cases of pollution and environmental destruction (22 cases), land grabbing (13 cases), criminalization of residents who refused to mine (eight cases), and termination of employment (two cases). [2]

In connection with efforts to minimize the impact of environmental damage, the government has made legal regulations regarding good mining operations. Regulations for good mining operations include the Laws of the Republic of Indonesia, Government Regulations, related Ministerial Regulations, and Regional Regulations. At the law level, the Government and the House of Representatives have enacted Law Number 4 of 2009 concerning Mineral and Coal Mining because Law Number 11 of 1967 concerning Basic Mining Provisions is no longer appropriate, so laws and regulations in the mining sector are needed. Minerals and coal that can manage and exploit mineral and coal potential independently, reliably, transparently, competitively, efficiently, and with an environmental perspective to guarantee sustainable national development.

In 2020, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining was enacted, taking into account that the current arrangements regarding mineral and coal mining are regulated in Law Number 4 of 2009 regarding Mineral and Coal Mining. Coal is still unable to answer developments, problems, and legal requirements in the implementation of mineral and coal mining, so it is necessary to make changes so that it can become an effective, efficient and comprehensive legal basis in the implementation of mineral and coal mining. In Law Number 3 of 2020, it states that legal sanctions are still not feared or even ignored by mineral and coal mining IUP or IUPK holders because the norms applied are lacking in power, there are problems with legal arrangements regarding post-mining reclamation obligations, their substance, and or structure (institutional authority) was reconstructed.

Problems still occur over the regulation of legal sanctions that should be given to IUP or IUPK holders who are negligent or do not carry out their reclamation obligations. Incomplete norms (incomplete norms), legal vacuum (reach vacuum), vague norms (vague normamen) are used in law enforcement against sanctions that should be given to IUP or IUPK holders in the Minerba mining business. It is necessary to regulate strict legal sanctions for IUP or IUPK holders in the Minerba Law so that law enforcement by IUP or IUPK holders who do not carry out their reclamation obligations can be carried out by law enforcers to obtain justice, legal certainty, and benefits. This negligence resulted in disturbed land and puddles left by mining business actors, causing deaths due to open pit mines.

Amendment to Law Number 4 of 2009, as amended in Law Number 3 of 2020 Concerning Mineral and Coal Mining, still leaves severe problems with the obligation to reclamation mineral and coal mining activities. This is contained in Article 100 and Article 161B, where there are still norms inconsistent with reclamation activities and the imposition of criminal sanctions for those who do not want reclamation. Philosophically this is not in line with the purpose of the law, which has justice, benefit, and legal certainty. The law should not be enforced in its most rigid, arrogant, black-and-white form. Instead, it must have a basic sense of justice and not only follow the law in the context of black legislation alone. Because the law is enforced based solely on a black-and-white context, it will only produce controversial decisions and not fulfill a true sense of justice. Philosophically this is not in line with the purpose of the law, which is to provide a sense of justice, benefit, and legal certainty. Sociologically, articles 100 and 161B do not conform with the norm (inconsistency) regarding reclamation obligations and the imposition of inappropriate criminal sanctions. The inconsistency of this

norm has an impact on not realizing a legal objective so that the above article is considered to have no imperative power or does not have guarantees in imposing reclamation obligations on IUP or IUPK holders, as well as imposing sanctions that should also be imposed on third parties appointed by the government in carrying out reclamation obligations. . The inconsistency of this norm has an impact on ex-mining lands that are not immediately reclaimed to ensure the safety of the surrounding community.

Method

Legal research is normative legal research, namely research that departs from the inconsistency between common conditions (*das sollen*) and reality (*das Sein*), thus raising the question of what happened as a result of the application of the law which turned out not to function as expected or instead caused conflict, which results in injustice, disorder, and legal uncertainty in society [3]. The approach used in a normative study allows researchers to utilize the findings of empirical law and other sciences for analysis and explanation of the law without changing the character of law as a normative science. Various empirical legal materials can be used in normative research, such as comparisons, legal history, and legal cases that have been decided [3].

Result and Discussion

Reclamation Obligation Arrangements

Mining in Indonesia changed after the reform; the 1998 reform was a new beginning to improve the governance structure in Indonesia. Not only have there been changes in mining regulations, but other regulations related to mining have also experienced changes, for example, regarding regional government. Law Number 5 of 1974 concerning Regional Government was changed to Law Number 22 of 1999 concerning Regional Government (1999 Regional Government Law); this change brought changes to broad autonomy in districts and cities. Obtaining this authority is by delegating authority to carry out government affairs with a general formulation so that districts and cities have the authority to carry out various government affairs that are not prohibited by laws and regulations or are not included in other government jurisdictions. .[4]

Besides that, there is a priority for implementing decentralization rather than deconcentration. This also brought about a change in the authority for mining affairs; previously, the authority for mining permits was in the hands of the central government, and then it was handed over to regional governments, especially districts and cities, which received the broadest possible autonomy. [5] to the regions, namely through the Regional Government Law 22/1999, mining management has yet to be carried out by the regional government. This is because this Regional Government Law regulates the authority in the utilization of natural resources, including "other sectoral authorities," which are exempt from being granted to regional governments. In the Regional Government Law regime, the regional government authority in mining is made possible through Law Number 32 of 2004 concerning the Regional Government (Regional Government Law 32/2004). Through this latest Regional Government Law, mining management is determined as part of optional affairs, which are government affairs that are the regional government's authority.

However, since 2001, it has been possible to manage mining in the local government through the mining legal regime. Government Regulation 75 of 2001 concerning the Second Amendment to Government Regulation 32 of 1969 concerning the Implementation of Law No. 11 of 1967 (PP 75/2001) gave mining management authority to local governments. In this

regulation, it is stated that governors or regents/mayors can issue Mining Authorization Decrees. Based on this Government Regulation, ministers, governors, regents/mayors can issue mining authorization decisions, which are adjusted to the mining authorization area.

Thus, there is a fundamental change in mining governance. Under the new policy, many government affairs were given authority to regional governments, including mining affairs. On the other hand, in the previous policy, mining management was under the central government's authority, especially for class A and class B minerals; the local government is only authorized for class c minerals. With the enactment of Government Regulation 75/2001, which accommodates the basic policies contained in the Regional Government Law 22/1999, the validity of the 1967 Mining Law was set aside, even though legally, the 1967 Mining Law remains in effect until it was replaced by the next Mining Law later in 2009. [5]

Along with this shift in authority, various problems occurred in granting mining permits. Indirectly, the delegation of authority impacts overlapping mining licenses vertically and horizontally. The overlap of permits for mining, forestry, and plantations is a portrait of Indonesia's flawed system of permits for land use. Overlapping licenses in the mining sector occur in mining business permits (IUP), between IUP and customary land, and between IUP and other land use areas. This overlapping of IUPs in the mining sector and across sectors has caused many losses to the state, such as social conflict, not maximizing state revenues from both tax and non-tax revenues, and hampered economic activity in these sectors (mining, forestry, plantations). This was triggered by the formation of policies at the local government level that was not in line with existing policies at the central government level. For example, the formation of regional regulations that are no longer based on the 1967 Mining Law.

This has led to further ambiguity in implementing mining activities in various regions. The issuance of Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law 4/2009) became a momentum for the renewal of Indonesian mining law. These regulations have different characteristics. It depends on the conditions at the time the regulation was formed. The legal politics of forming statutory regulations is very contextual. The influence of the political, economic, and social atmosphere will be an aspect that influences the mood for the formation of laws and regulations. [6]

With the enactment of the Minerba Law 4/2009, a new chapter was started in which mining management only adhered to the permit regime, not recognizing the contract regime as in the 1967 Mining Law. Anticipate the occurrence of various problems. Switching from the existing contract regime to the permit regime is a challenging thing to do. KK/PKP2B is still recognized until the end of the contract/agreement. In reality, after ten years of the enactment of Minerba Law 4/2009 there are still various problems related to adjustments from contracts to permit regimes. Even though Article 196 of the Minerba Law 4/2009 provides for an adjustment period of no later than one year, including regarding the certainty of extending the KK/PKP2B to a permit. Another problem, namely the various obligations of KK/PKP2B stipulated in the Minerba Law 4/2009, such as obligations to invest in stocks, process and refine minerals, shrink areas, and adjust state revenues, has not been able to be resolved transparently. KK/PKP2B business actors take refuge in the doctrine of the sanctity of contracts or *pacta sunt servanda* that the contract applies as law for the bound parties.

The problem has dragged on with the status quo position and threats of lawsuits to arbitration if the government forces KK/PKP2B holders to properly implement the Minerba Law 4/2009. However, perspectives and orientations regarding decentralization and regional autonomy, which are limited to regional government authority and income distribution, have resulted in efforts to exploit potential mineral and coal resources in the regions to obtain

additional income. On the other hand, this perspective and orientation ignore community participation, oversight, and public accountability. When the Minerba Law 4/2009 was implemented, a government policy suddenly appeared which withdrew mining management authority from the districts/cities, with the enactment of Law Number 23 of 2014 concerning the Regional Government (Pemda Law 23/2014). The arrangement and adjustment of mining management, which was initially centralized, then changed to decentralization; with this new law, it has become centralized again. The authority of the regency and city governments in implementing mining is revoked even to the authority of rock mineral management, which should be at the district/city level. Thus, Law Number 3 of 2020 concerning Minerba, which has just been in force and is running, must base and adapt its provisions to Law Number 23 of 2014 concerning Regional Governments. [6]

In 2020 there was another change in mining policy through Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 (from now on referred to as the Minerba Law). In the new law, the authority to administer mineral and coal mining, which was initially still partly with the provincial government, has shifted to the central government. Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities also emphasizes the centralization of mineral and coal authority to the central government. Even though, in fact, in Article 35 of Law Number 3 of 2020, licensing authority can be delegated to local governments through government regulation, in reality, the government regulation that delegates Law Number 3 of 2020 Concerning Minerba does not grant licensing authority to other than to the Minister of Energy and Mineral Resources.

However, Law Number 3 of 2020 concerning Minerba, requested for review by the Constitutional Court, provides new directions for developing the ex-KK/PKP2B mineral and coal business model. In Decision Number 64/PUU-XVIII/2020, the Constitutional Court stated that Article 169A Law Number 3 of 2020 concerning Minerba contradicts the 1945 Constitution. Article 169A Law Number 3 of 2020 concerning Minerba stipulates, "KK and PKP2B are given guarantees for an extension become an IUPK as a continuation of KK/PKP2B operations after fulfilling the requirements". The Constitutional Court stated that this article is contrary to the 1945 Constitution and does not have binding legal force as long as the phrase "is given a guarantee" if it does not mean "can be given." Article 169A of Law Number 3 of 2020 concerning Minerba should be read as: "KK and PKP2B can be granted an extension to become IUPK as a continuation of KK/PKP2B operations after fulfilling the requirements".

In its consideration, the Constitutional Court stated that the addition of Article 169A of Law Number 3 of 2020 concerning Minerba, which provides an opportunity for holders of KK and PKP2B permits to obtain guarantees for an extension to become a special mining business permit (IUPK) has relevance to the construction of Article 75 paragraph (3) of the Law Number 3 of 2020 concerning Mineral and Coal. Article 75 paragraph (3) of Law Number 3 of 2020 concerning Minerba stipulates that State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD) receive priority in obtaining IUPK. The provisions of Article 75 of Law Number 3 of 2020 concerning Minerba are explicit regarding granting IUPK to private entities, which must be carried out using an auction for a particular mining business permit area (WIUPK). The provisions justifying the granting of guarantees for extensions to become IUPK as a continuation of contract/agreement operations are inappropriate because KK and PKP2B, which automatically get guaranteed extensions to become IUPK, are private legal instruments, of course, must have been completed by the time the agreement expires. According to the Constitutional Court, the government should start reorganizing by manifesting state control

over natural resources, especially in granting permits, to start controlling on a priority scale as mandated in Law Number 3 of 2020 concerning Minerba.

Regardless of the existence of guarantees for KK and PKP2B given an IUPK extension after fulfilling the requirements due to historical factors regarding the history of investment, however, the provision of such guarantees will cover and distance the implementation of control over natural resources by the state. This Constitutional Court decision is a turning point in strengthening BUMN and BUMD mining to get priority over IUPK former KK and PKP2B, which is the will of Article 33 paragraph (3) of the 1945 Constitution.

Of course, giving this priority has challenges for BUMN and BUMD, such as the potential for corruption, rent-seeking, and weak governance. However, this matter of governance is the duty of the government so that BUMN and BUMD become organs of state control with good corporate governance in providing the greatest possible prosperity to the people. On the other hand, Ahmad Khoirul Umam noted several fundamental issues in the new Mining Law. [7]

First, the de-bureaucratization of permits, which can be seen from the removal of the government's obligation to consult with the House of Representatives in terms of production and export control, and the abolition of the dualism of mining business permits (IUP), which previously separated exploration and operation into only IUP. Second, the revision of the Law cut down the role and authority of the local government to become the central government's authority, which means removing the local government in the context of mineral and coal control. Third, the new Minerba Law provides an excellent opportunity for business actors to optimize the capacity of their companies, which shows that state regulations facilitate the power of capital to exploit mining wealth in a structured and massive manner. Fourth, downstream efforts in separating the activity categories for processing and refining mining products without changing their physical and chemical properties previously combined into one. [8] Fifth, the new Minerba Law opens the door for companies with foreign investment to be too large because it allows concession areas for the mines of giant foreign mining companies are converted into particular mining business areas without having to return to the country through national reserve areas and be auctioned off in advance. The description of the development of post-1998 mineral and coal mining policies shows that mining issues are part of the issues of decentralization and regional autonomy.

It can be seen from the tug-of-war of mining management as a matter of who gets what and who gets it. In the beginning, with the spirit of reform in the form of government decentralization, mining was included as part of the affairs that fell under the authority of regional governments, both provincial, district, and city, which were adjusted to the existence and size of mining areas.

Later, this authority was taken back by the central government. After the 1998 reform, mineral and coal mining policies were also characterized by introducing and enforcing permit regimes as mining instruments, which replaced contracts. Replacing mining legal instruments is essential in efforts to reform mining management in line with the mandate of the Constitution because permits are in the public legal dimension while contracts are in the private legal dimension.

Theory of Liability and Responsibility for Reclamation in the mineral and coal mining business

The field of legal science recognizes two terms that refer to accountability: liability and responsibility. Liability is a broad legal term that designates almost any character of risk or

responsibility, which is inevitable, which depends on or which may include all the character of actual or potential rights and obligations such as losses, threats, crimes, costs, or conditions that create a duty to carry out laws. -law. Responsibility means things that can be accounted for as an obligation and includes decisions, skills, abilities, and skills, including the obligation to be responsible for the implemented laws. In terms of understanding and practical use, the term liability refers to legal responsibility, namely accountability due to mistakes committed by legal subjects, while the term responsibility refers to political responsibility. [9]

This responsibility was born because of an unlawful act (*onrechtmatigedaad*). Before 1919, it was interpreted narrowly, that is, every act that is contrary to the rights of other people arising from a law or every action that is contrary to one's legal obligations that arise because of a law; After 1919, it was interpreted more broadly, namely an act or omission or contrary to the rights of other people or contrary to the legal obligations of the perpetrator or contrary to decency or propriety in society, both towards other people and objects. [10]

Kranenburg and Vegtig mention two theories of accountability: the theory of *fautes* personally and the theory of *fautes de services*. The theory of *fautes* personally, namely the theory which states that losses to third parties are borne by officials who, because of their actions, have caused losses. In this theory, the burden of responsibility is directed at humans. The theory of *fautes de services*, namely the theory, states that the agency of the official concerned bears losses to third parties. According to this theory, responsibility is assigned to positions. In practice, the losses that arise are also adjusted, whether the mistakes made are severe or minor, where a mistake's severity has implications for the responsibility that must be borne. [9]

Principles of Responsibilities of Mineral and Coal Mining Entrepreneurs

Unlawful acts can arise intentionally, due to negligence, and due to unintentional or negligent errors, so that these unlawful acts subsequently give rise to three categories of liability, namely liability with an element of error (intentional and negligent), liability with an element of error (specific negligence), and absolute responsibility (without fault). [11] E. Syaifullah Wiradipradja mentions that in law, there are several principles of responsibility [12] namely:

- a. The principle of responsibility is based on an element of error (fault liability, liability based on fault principle). This principle imposes a burden on the victim to prove that the perpetrator has committed an unlawful act detrimental to him.
- b. The responsibility principle is based on the presumption (rebuttable presumption of liability principle). This principle emphasizes that the perpetrator's responsibility can be lost if he can prove his innocence to the victim.
- c. The principle of absolute responsibility (no-fault liability, absolute or strict liability principle), namely responsibility without having to prove fault. This principle of absolute liability is generally applied to corporate criminal liability because, in criminal law, there is the principle of no crime without fault (*green straf zonder schuld*).

Problems in Regulating Reclamation Reconstruction in the Mineral and Coal Mining Business in Article 100 of the Mineral and Coal Mining Law

Every reclamation action certainly requires funds/guarantee. Hence, the concept in laws and regulations regarding implementation and funding is a reference that stipulates that the implementation of reclamation is an obligation that must be carried out by every IUP or IUPK holder who must first place a reclamation guarantee fund. This implementation can be

delegated to a third party if the reclamation is not carried out by the holder of an IUP or IUPK for mineral and coal mining. This concept contains weaknesses because it opens loopholes for IUP or IUPK holders to ignore reclamation under the pretext of placing a reclamation guarantee fund.

About funding, the principle of transparency, as accommodated in the Minerba Law, can be said to have been fulfilled because the concept in laws and regulations stipulates that guarantee funds are placed at state-owned banks to facilitate monitoring and control. However, it still opens a few loopholes because it allows bank guarantees at banks national private. Of course, this concept must be perfected or emphasized so that guarantee funds in all their forms must be placed in government banks. Mining data and information is very strategic in the management of minerals and coal because it is an instrument to carry out supervision and control in the management of minerals and coal by the central government and regional governments.

For this reason, by their authority, the Minister, governors, and regents/mayors are obliged to provide mining data and information to support the preparation of Mining Areas, development of science and technology, and transfer of mining technology. For mining data and information to be available on an ongoing and efficient basis, a particular institution is needed in the form of a mining data and information center whose shape and structure can take advantage of what is already in the Ministry or Department of Energy and Mineral Resources. If it is considered essential and state finances allow it, this institution can be formed specifically to become a body that handles explicitly mining data and information. As for the mining data and information center, it must at least contain data regarding the number and area of WP; the number of IUP, IUPK, and IPR holders; resource potential; potential distribution; the number of capital permits; production volume; reclamation and post-mining activities; geological data; mining business facilities and infrastructure; investment opportunities and challenges; and education, training, counseling, and mentoring.

Mining data and information must be up-to-date, accurate, and fast. For this reason, the relevant institutions must be obligated to report the necessary data so that the data in question can always be available and updated. In addition, mining data and information must be easily accessible to the public and mining permit holders. The type of data that can or cannot be accessed must be in accordance with the applicable laws and regulations provisions. Based on article 100 of Law Number 3 of 2020 regarding amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, it has been stated that IUP or IUPK holders are required to provide guarantee funds for reclamation and post-mining.

For IUP or IUPK holders who do not carry out reclamation by the approved plan, the Minister, Governor, or Regent/Mayor, by their authority, can appoint a third party to carry out reclamation and post-mining with a guarantee fund that has been given by the IUP or IUPK holder. The reclamation obligation regulation reflects one of the legal obligations of the holder of an IUP or IUPK for Mineral and Coal Mining to the environment, the government, and the community. As explained in Article 99 and Article 100 of Law Number 4 of 2009, which stipulates the following provisions regarding reclamation and post-mining:

Article 99

(1) Each IUP and IUPK holder must submit a reclamation plan and post-mining plan when applying for a Production Operation IUP or Production Operation IUPK.

(2) The implementation of reclamation and post-mining activities is carried out by allotment of post-mining land.

(3) The allotment of post-mining land, as referred to in paragraph (2), is included in the land use agreement between the IUP or IUPK holder and the holder of land rights.

Article 100

(1) IUP and IUPK holders are required to provide reclamation guarantee funds and post-mining guarantee funds.

(2) The minister, governor, or regent/mayor, by their authority, may appoint a third party to carry out reclamation and post-mining with the guarantee fund as referred to in paragraph (1).

(3) The provisions in paragraph (2) apply if the holder of an IUP or an IUPK does not carry out reclamation and post-mining by the approved plan.

The two articles governing reclamation and post-mining, along with reclamation guarantee funds and post-mining guarantee funds in Law Number 4 of 2009, as amended into Law Number 3 of 2020 concerning mineral and coal mining, state as follows:

Article 99

(1) IUP or IUPK holders must prepare and submit Reclamation and Postmining plans.

(2) The implementation of Reclamation and Postmining is carried out by the allotment of Postmining land.

(3) In the implementation of reclamation carried out throughout the stages of the Mining Business, the holder of IUP or IUPK is obligated to:

a. meet the balance between the land to be cleared and the land that has been reclaimed;
and

b. carry out the management of final ex-mining pits with the most expansive limits by the provisions of laws and regulations.

(4) Holders of IUP or IUPK are obligated to hand over land carried out by reclamation and Post-mining to the entitled party through the Minister by the provisions of laws and regulations.

Article 100

(1) IUP or IUPK holders must provide and place Reclamation guarantee funds and Postmining guarantee funds.

(2) The Minister may designate a third party to conduct reclamation and Post-mining with the guarantee fund as referred to in paragraph (1).

(3) The provisions in paragraph (2) apply if the holder of an IUP or an IUPK does not carry out reclamation and Postmining by the approved plan.

Article 99 paragraph (1) Law number 3 of 2020 states that IUP or IUPK holders must prepare and submit Reclamation and Postmining plans. The contents of this paragraph mean that the holder of an IUP or IUPK for Mineral and Coal Mining must prepare and submit a reclamation plan to the Government through the Ministry of Energy and Mineral Resources before starting a mining business. The Postmining land allotment implements Reclamation and Postmining, then Reclamation and Postmining Implementation are carried out by the Postmining land allotment. Article 100 paragraph (1) of Law Number 3 of 2020 Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining states that "IUP or IUPK holders are required to provide and place Reclamation guarantee funds and Postmining guarantee funds."

Article 99 and article 100 of Law Number 3 of 2020 Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining indicate that reclamation is part of mining activities which has become the concern of the Government and is one of the obligations of IUP holders or Mineral and Coal Mining IUPK to be one of the priorities that is consistently implemented.

This means that the holder of an IUP or IUPK for mineral and coal mining is a party that is obliged to comply with applicable laws and regulations regarding reclamation obligations, including the provision and placement of reclamation guarantee funds, and is responsible for the legal obligations of every action taken by the holder of an IUP or IUPK for mineral and coal mining in particular reclamation obligations. Reclamation fund guarantee and Post-mining guarantee fund. Article 100 paragraph (2) of Law Number 3 of 2020 states "The Minister can designate a third party to carry out reclamation and/or post-mining with the guarantee fund as referred to in paragraph (1), sentences can determine a third party to carry out reclamation, as for the legal ratio sentence arrangement as follows: "can appoint a third party" in Article 100 paragraph (2) of Law Number 3 of 2020 which has the following meaning; Mineral and Batunara mining IUP or IUPK holders no longer have post-mining reclamation obligations because the Government appoints a third party to carry out the reclamation obligations, because the IUP or IUPK holders have placed a reclamation guarantee fund with a bank appointed by the Government before carrying out mining activities, article 100 of the Law Law Number 3 of 2020 regarding amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining shows that reclamation is part of mining activities which has indeed become a reflection of the Government.

This means that the holder of an IUP or IUPK for mineral and coal mining is a party that has complied with the applicable laws and regulations regarding reclamation obligations, including the provision and placement of reclamation guarantee funds, and is responsible for the legal obligations of every action taken by the holder of an IUP or IUPK for mineral and coal mining. Especially Reclamation. With mineral and coal mining IUP or IUPK holders placing reclamation guarantee funds with the Government, and the Government can appoint a third party to carry out Reclamation, mineral and coal mining IUP or IUPK holders are no longer obliged to carry out reclamation obligations, the Government should be obliged to carry out reclamation obligations. By appointing a third party. In this case, the Government has to bear the damage to the ecosystem, and the environment, which has been damaged by mineral and coal mining.

In every amendment to the article or the insertion of a new article, namely article 100, it states the following:

(1) IUP or IUPK holders must provide and place Reclamation guarantee funds and Postmining guarantee funds.

(2) The Minister may designate a third party to carry out Reclamation and Post-mining with the guarantee fund as referred to in paragraph (1).

(3) The provisions referred to in paragraph (2) apply if the holder of an IUP or an IUPK does not carry out Reclamation and Post-mining by the approved plan.

Conclusion

Based on the formulation of the problem and description related to the results of the research and analysis presented, the government has determined mining activities starting from the implementation of mining business activities to reclamation and post-mining activities. Regulations regarding legal sanctions provide hope that can become a legal objective in terms

of guaranteeing legal certainty, justice, and sustainable benefits for society so that the objectives of the law can be fulfilled. Construction of the substance of reclamation arrangements for mineral and coal mining businesses still needs to answer the objectives of positive law in Indonesia. As a result of incomplete norms in mineral and coal mining reclamation activities, this has not provided a sense of justice because reclamation activities are not borne directly by the IUP or IUPK holders as the executors of the reclamation. In addition, criminal sanctions given to IUP or IUPK holders who do not carry out reclamation obligations are feeble, which can make IUP or IUPK holders no longer need to carry out reclamation obligations for mineral mining. Regarding the incomplete norms regarding reclamation obligations that should be carried out by IUP or IUPK holders, as well as the weak criminal sanctions stipulated in Law Number 3 of 2020 amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, it is considered that they have not yet provided legal certainty, justice and the benefits of the law itself.

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