



LIABILITY OF MINING BUSINESS LICENSE HOLDERS FOR THE IMPLEMENTATION OF PRODUCTION OPERATIONS

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Abstract:

Coal mining is a long-term activity. The most basic characteristic of coal mining activities is clearing land and resulting in changes in shape after use. This research will discuss the liability of mining license holders and in the context of civil law, as well as post-mining reclamation guarantee funds in mining activities. The method used in this research is the normative method, which conducts research by referring to legal regulations and current legal products. Coal mining is regulated in Law Number 3 of 2020 Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining. The implementation of the Minerba Law is followed by a form of responsibility regulated in Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining, and regarding liability in civil law is regulated in Article 1365 of the Civil Code. Meanwhile, the form of post-mining reclamation guarantee funds is regulated in Article 100 of the Minerba Law. Mining business license holders in carrying out their activities cannot be separated from the existence of responsibility in carrying out production operation activities, although there are provisions that strengthen legal protection, there are still criticisms and things that weaken.

Keywords: Liability; Reclamation; Mining Business License Holder

1. Introduction

Indonesia is a country rich in natural resources, especially minerals. These include coal, gold, oil, copper, and others. The control of these natural resources is controlled by the state and organized by the government. For this reason, the community must make the best use of these natural resources and protect them according to their needs. In every mining activity, a permit must be obtained from the regional head/regional official authorized to issue the mining permit.

In the case of mining business activities carried out by mining service companies, the responsibility for all forms of consequences of mining activities remains with the holder of the mining business license based on the Minerba Law.¹ Minerba is regulated in Law Number 3 of 2020 Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

Indonesia is currently facing a major problem relating to poorly executed reclamation, caused by a number of factors. Reclamation is an action that must be taken by mining license holders to restore the quality and function of the environment in accordance with its designation before mining operations began. When reclamation activities are not carried out, the environment will become damaged and unfit for use. Moreover, the former land that has been used for mining is not far from residential areas. Although the government has established

¹ Putri Kemalasar, Nila Trisna, dan Dara Quthni Effida, "PRINSIP GOOD MINING PRACTICE (CASE STUDY OF PT. MIFA BERSAUDARA ACEH BARAT)," *JHSK* 18, no. 1 (2023), <https://ejournalunsam.id/index.php/jhsk>.



various laws and regulations that emphasize that mining license holders must carry out these obligations. However, in reality there are still many mining license holders who ignore their obligations to ensure a good and healthy environment, which is part of human rights and must be fulfilled by the state.

In the exploration and production operation stages, the government requires mining license holders to submit a guarantee fund along with the mining license application to create a sense of compliance in reclamation implementation. The value of the reclamation guarantee fund provided must be in accordance with the budget plan that has been made, this obligation is contained in Article 100 of the Minerba Law.²

Post-mining reclamation must be carried out and is the responsibility of mining license holders because it is regulated in the Minerba Law. If reclamation is not realized, it will have a negative impact on the lives around the former mining area, especially on the lives of the people. In addition, business license holders will be sanctioned if they do not carry out their responsibilities as stipulated in the Minerba Law. The government needs to increase supervision so that business license holders carry out their responsibilities in accordance with what has been determined.

From the explanation above, the purpose of this journal is to find out how the responsibility of coal mining license holders for the obligation to carry out reclamation and how the form of responsibility is assessed from civil law, as well as what form of guarantee as a form of responsibility of mining license holders for reclamation activities.

2. Research Methode

The method used in writing this journal is the normative legal approach method. The normative method is an approach to scientific research methods in the field of law that aims to find truth and better understanding that refers to current legal regulations and legal products. In addition, it analyzes certain legal issues by collecting data sourced from literature studies such as laws and regulations as primary legal materials, as well as literature such as articles and written information via the internet.

3. Discussion

3. 1 Liability in Civil Law

According to the Big Indonesian Dictionary (KBBI) responsibility is the obligation to bear everything (if anything happens, it can be demanded, blamed, estimated, and so on.³ In the legal dictionary, responsibility is an obligation for someone to carry out what has been obliged to him. In the context of liability in the civil field, it is known as *onrechmatige overheidsdaad* or unlawful acts of the government as stipulated in Article 1365 of the Civil Code which states that "every unlawful act, which brings harm to another person, obliges the person who through his fault causes the loss to compensate for the loss".⁴

² Julianus Marcos dan Dhae Ndoy, "RESPONSIBILITY OF THE MINING BUSINESS PERMIT IN THE RECLAMATION ACTIVITY OF THE MINES," n.d., <https://erepository.uwks.ac.id/17931/9/9>. ARTIKEL.pdf.

³ <https://kbbi.kemdikbud.go.id/entri/tanggung%20jawab> (accessed October 11, 2024)

⁴ Civil Code, Article 1365

From these provisions, it can be seen that the obligation of responsibility for losses caused by business actors applies to all parties without exception, including the government. Settlement of this civil action can be done in two ways, namely through settlement in court (litigation) or by settlement outside the court (non-litigation), either through mediation or arbitration.⁵ In Environmental Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) in Chapter XIII Article 84 through Article 93, where the civil aspects listed in these articles contain environmental dispute resolution that can be pursued through litigation or non-litigation based on the parties to the dispute either based on the agreement of the parties or using the services of a mediator or arbitrator.

In the civil liability of mining companies that cause environmental pollution or environmental damage to the community, causing losses and causing suffering, the people who are victims have the right to file a lawsuit for losses as a result of the pollution. Indemnity regarding the amount of liability provided by government officials civilly, according to the size of the loss received by the injured person. Compensation for damages as a result of unlawful acts can be in the form of compensation for material and immaterial losses. Usually in practice, compensation is calculated in money or equal to money in addition to the demand for replacement of objects or goods that are considered to have suffered damage as a result of unlawful acts. In the process of enforcing the rules of civil provisions, companies that do not fulfill their obligations under the Civil Code there are two types of obligations, contractual obligations and liability for illegal activities. The difference between contractual liability and liability for illegal activities of unlawful acts lies in the legal relationship or non-contractual contractual relationship.

If the environmental pollution caused by mining companies results in civil rights being harmed by one party, then the legal protection used to account for the problem is a means of civil environmental law. Environmental protection for victims of environmental pollution or damage caused by mining companies is protected through the plaintiff's right to file a lawsuit for compensation or environmental recovery actions against the company.

Losses caused by violations of the law can be divided into two categories, namely actual losses and future losses. Actual losses are losses that are easily seen physically, both material and immaterial. This loss is based on concrete things that arise as a result of the perpetrator's violation of the law. Meanwhile, losses that are in the future due to violations of the law on the part of the perpetrator. Losses that can be anticipated in the future must also be used to compensate for future losses.

Article 87 paragraph (1) of UUPPLH stipulates that, "every person responsible for a business and/or activity that commits an unlawful act in the form of pollution and/or destruction of the environment that causes harm to others or the environment is obliged to pay compensation

⁵ Elviandri, "Law Enforcement and Supervision of Post-Mining Reclamation Corporate Obligations," *UIRLawReview* 6, no. 2 (2022): 26–27, <https://journal.uir.ac.id/index.php/uirlawreview/article/download/12005/5030/42631>.

and/or take certain actions.⁶ In the provisions of the article, there are several elements, including:

- a. The existence of an unlawful act;
- b. The existence of pollution and/or destruction of the environment;
- c. The existence of harm to other people or the environment;
- d. The person responsible for the activity pays compensation and/or takes certain actions.

From the above elements, it is known that there is a tort based on fault and as a result it causes harm to another party. In principle, it is the same as the tort based on fault included in Article 1365 of the Civil Code. Article 1365 of the Civil Code states that “every unlawful act, which causes loss to another person, obliges the person who through his fault causes the loss to compensate for the loss”. To be held liable under Article 1365 of the Civil Code which fulfills the following elements:

- a. The existence of an unlawful act;
- b. The existence of an element of fault;
- c. The existence of loss;
- d. The existence of a causal relationship that shows that the loss is caused by someone's fault.

In the context of civil disputes, there are two approaches to the problem, namely on the one hand the community members around the mine are landowners who tend to be victims of the impact of mining exploitation. Mining business actors tend to be safer using civil settlements, because with the power they have, even though the dispute continues in court, business actors can still carry out their mining activities. Civil lawsuit efforts filed for mining business activities that have harmed the community clearly obtain legal space or legitimacy which emphasizes that the surrounding community who are negatively affected by mining business activities are entitled to obtain adequate compensation due to errors in the act or business of mining activities as stipulated in the provisions of laws and regulations and are entitled to file a lawsuit through the court for losses due to mining operations that clearly violate the regulated provisions.

3. 2 Responsibility of Mining Business License for Reclamation

According to Article 1 point 26 of the Minerba Law, reclamation is an activity carried out throughout the stages of the mining business to organize, restore, and improve the quality of the environment and ecosystem so that it can function again according to its designation.⁷ The new Minerba Law regulates the reclamation policy of mining companies that have Mining Business License (IUP) to conduct reclamation and post-mining with a mandatory success rate of 100%. This provision also states that mining companies that do not conduct reclamation and post-mining will be subject to sanctions. Furthermore, according to the Mining Law, mining companies are also obliged to pay a sum of money as a reclamation guarantee. Reclamation activities must be carried out by every holder of Exploration IUP and Exploration IUPK and Production IUP and Production IUPK.

⁶ Law on Environmental Protection and Management, Law Number 32 of 2009, Article 1 point 26.

⁷ Law on Mineral and Coal Mining, Law Number 3 of 2020, Article 1 paragraph (26).

Post-mining reclamation is a form of obligation and full responsibility for mining business license (IUP) holders. IUP is a business license granted by the government to parties who apply to carry out mining activities in the Mining Business License Area (WIUP). In addition to IUP, there is also a Special Mining Business License (IUPK). The Minerba Law is a legal regime that provides legality to various legal entities to conduct Coal mining. The central government grants Special Mining Permits (IUPK), while local governments have the authority to issue Mining Business Licenses (IUP). Each IUP and IUPK holder is obliged to fulfill the responsibilities for mining activities as regulated in the Minerba Law and followed by other responsibilities regulated in Law No. 78 of 2010 concerning Reclamation and Post-mining, Minister of Energy and Mineral Resources Regulation No. 7 of 2014 concerning the Implementation of Reclamation and Post-mining in Mineral and Coal Mining Business Activities, and Minister of Energy and Mineral Resources Regulation No. 26 of 2018 concerning Good Mining Practices and Mineral and Coal Mining Supervision.⁸ Mechanisms regarding the implementation of reclamation and post-mining are regulated in the Minister of Energy and Mineral Resources Decree No. 1827 K/30/MEM/2018 in Appendix VI concerning Guidelines for the Implementation of Reclamation and Post-Mining and Post-Operation in Mineral and Coal Mining Business Activities.⁹ This regulation provides a thorough explanation of how companies holding production operation IUPs conduct reclamation and post-mining. Some of the responsibilities that must be fulfilled:

- a. Preparation of reclamation plans, post-mining plans, and post-operation plans;
- b. Assessment and approval;
- c. Reclamation, post-mining and post-operation assurance;
- d. Implementation of reclamation, post-mining and post-operation;
- e. Reporting and disbursement of reclamation and post-mining guarantees;
- f. Submission of reclamation land;
- g. Submission of post-mining and post-operation land.

Article 99 of the Minerba Law stipulates that each IUP and IUPK holder is required to submit a reclamation plan and post-mining plan when applying for a production operation IUP or production operation IUPK. The implementation of this obligation is carried out in accordance with post-mining land allocation. In addition, Article 2 of Government Regulation No. 78/2010 states that exploration IUP and exploration IUPK holders are obliged to carry out reclamation and post-mining. The responsibility of IUP and IUPK holders in carrying out reclamation activities begins with the preparation, research and approval of post-mining land reclamation plans as a framework for implementing reclamation activities.

Guidelines and mechanisms on the implementation of reclamation and post-mining are not clearly stipulated in the closing provisions of the Minerba Law, so the Minerba Law does not yet have clear implementing regulations. However, in legal doctrine only equal or higher legislation can revoke it. The steps in reclamation implementation from planning to monitoring

⁸ Marcos dan Ndoj, "RESPONSIBILITY OF THE MINING BUSINESS PERMIT IN THE RECLAMATION ACTIVITY OF THE MINES."

⁹ Kemalasari, Trisna, dan Effida, "PRINSIP GOOD MINING PRACTICE (CASE STUDY OF PT. MIFA BERSAUDARA ACEH BARAT)."

and evaluation, activities and reclamation, and post-mining are thoroughly outlined. Then, reports on these activities are presented systematically, starting from reporting objectives, details of reclamation activities, monitoring and evaluation, regulatory compliance, community involvement, as well as before and after reclamation photos to provide a visual picture of what actually happened.

Impacts on the environment due to mining activities include:

- a. Decrease in land productivity;
- b. The soil becomes denser;
- c. The occurrence of erosion and sedimentation;
- d. The occurrence of landslides;
- e. Disruption of the health of people living around the mining area;
- f. Disruption of flora and fauna;
- g. Microclimate change.

IUP and IUPK holders are obliged and must be responsible for ensuring the application of environmental quality book standards in accordance with the characteristics of an area. Thus, it is necessary to carry out appropriate reclamation activities and post-mining activities that are integrated with mining activities.

3. 3 Guarantee Funds in Coal Mining

After IUP and IUPK holders carry out reclamation activities, they are then required to provide and place post-mining reclamation guarantee funds in state banks. According to Minister of Energy and Mineral Resources Regulation No. 7/2014 on the Implementation of Reclamation and Post-mining in Mineral and Coal Mining Business Activities, there are two types of guarantee funds that are obligatory and must be provided by IUP and IUPK holders, namely reclamation guarantee funds and post-mining guarantee funds. Article 1 point 16 of Ministerial Regulation No. 7/2014 states that "reclamation guarantee funds are funds provided by holders of mining business licenses and special mining business licenses as guarantees to carry out reclamation activities". Meanwhile, Article 1 point 17 states that "post-mining guarantees are funds provided by holders of mining business licenses and special mining business licenses as collateral to carry out post-mining activities". The difference between reclamation and post-mining activities lies in their implementation; if reclamation activities are carried out in stages since the land clearing process, then post-mining activities are carried out when all mining activities have been completed.

In both the exploration and production operation stages, the guarantee fund provided must be in accordance with the reclamation plan approved when applying for IUP and IUPK. As stipulated in Article 31 paragraph (1) of Minister of Energy and Mineral Resources Regulation No. 7/2014, the existence of a guarantee fund does not mean that companies do not need to carry out reclamation. However, Article 100 paragraph (2) and paragraph (3) of the Minerba Law states that the government can take over the implementation of reclamation if the company does not do it in accordance with the plan. With the existence of government guarantee funds, IUP and IUPK holders are expected to carry out reclamation activities.

Regulations regarding reclamation guarantee fund obligations can be found in Article 99 and Article 100 of the Minerba Law, Article 61 paragraph (1) letter h of Minister of Energy and Mineral Resources Regulation Number 11 of 2018 concerning Procedures for Granting Areas, Licensing, and Reporting on Mineral and Coal Mining Business Activities, Article 28 to Article 37 of Minister of Energy and Mineral Resources Regulation Number 7 of 2014 concerning the Implementation of Reclamation and Post-Mining in Mineral and Coal Mining Business Activities.

The guarantee fund as mentioned is divided into exploration and production stages. In the exploration stage, the guarantee fund must be deposited no later than thirty days after the exploration stage work plan and budget are approved. Meanwhile, in the production stage, the guarantee fund is given every five years with the provision that during the first five years the company must place the entire guarantee for a period of five years. In preparing the reclamation budget plan, there are several things that must be considered such as land stewardship costs, revegetation costs, mobilization and demobilization costs, planning costs, administrative costs, supervision costs, including applicable taxes and can be made in Rupiah or US Dollars.

Regarding the form of reclamation guarantee, it can be provided in several forms, namely time deposits placed in a state bank on behalf of the minister, governor, regent/mayor, bank guarantees issued by state banks or branches of foreign banks or government-owned guarantee institutions with a period in accordance with the reclamation schedule, insurance issued by Indonesian state banks or branches of foreign banks or government-owned guarantee institutions with a period in accordance with the reclamation schedule, and accounting reserves provided that it is a public company listed on the Indonesian or foreign stock exchange, or has a total paid-up capital of not less than USD 25,000,000.00 (twenty-five million United States Dollars). The form of reclamation guarantee cannot be determined by the company, instead the minister, governor, regent/mayor are authorized to determine it.

Once the company has carried out reclamation, the previously deposited guarantee fund can be requested for disbursement, which can be disbursed in the form of deposits, bank guarantees, insurance and accounting reserves. An annual report on reclamation implementation activities must be included with the request for reclamation fund disbursement. After 30 days and upon receipt of the report, the minister, governor, regent/mayor in accordance with their authority will evaluate the report before issuing and for the reclamation guarantee.¹⁰

¹⁰ Government Regulation on Reclamation and Post-mining, PP Number 78 of 2010, Article 30 to Article 32.

3. 4 Corporate Social Responsibility (CSR) Towards Reclamation

Reclamation itself is the responsibility of IUP and IUPK holders, which is a form of corporate social and environmental responsibility known as Corporate Social responsibility (CSR).¹¹ CSR is the company's obligation to the community and government for the disruption of environmental and social balance caused by mining production operations. In addition, CSR is an ongoing program used by mining companies to demonstrate their commitment to society, government, and the environment to carry out sustainable activities. This program also serves to balance the implementation of the company's business activities so that it will create a positive image of the company towards the community and government.

In Indonesia, CSR arrangements are listed in Article 1 number 3 of Law No. 40 of 2007 concerning Limited Liability Companies, which states that social and environmental responsibility is the Company's commitment to participate in sustainable economic development in order to improve the quality of life and the environment that is beneficial, both for the company itself, the local community, and society in general. Article 74 paragraph (1) of the Limited Liability Company Law further regulates the explanation that CSR is an activity that must be carried out by a Company that has business activities in the field of or directly related to natural resources. This is also clarified by paragraph (3) where the Company that does not carry out the obligations as referred to in paragraph (1) will be subject to sanctions in accordance with the provisions stipulated in the laws and regulations.¹²

The government also stipulates regulations regarding CSR as stipulated in Government Regulation No. 47/2012 on Social and Environmental Responsibility of Limited Liability Companies. Article 2 of the regulation stipulates that "every Company as a legal subject has social and environmental responsibilities". The regulation allows the Indonesian government to require companies operating in the territory of Indonesia to implement CSR as well as to improve welfare and sustainable development. In this case, sustainable development means trying to meet the needs of future generations to fulfill them.¹³

4. Conclusion

From the research that has been explained, it can be concluded that liability in coal mining companies when viewed in civil law is regulated in Article 1365 of the Civil Code. If a coal mining company causes environmental pollution or environmental damage during production operations and causes losses to people living in mining settlements, then the victimized community has the right to file a lawsuit to the court for the civil liability of the company. In the event that the mining company has completed production operations, holders of Mining

¹¹ Elita Rahmi, "Environmental Standardization (ISO 26000) as Harmonization of Corporate Social Responsibility and Legal Instruments in Indonesia," *Journal of Legal Science*, no. ISO26000 (2011): 1–14.

¹² Jurnal Lex Suprema et al., "Article on LEGAL LIABILITY OF COAL MINING COMPANIES RELATED TO ENVIRONMENTAL POLLUTION," n.d., <https://jurnal.law.uniba-bpn.ac.id/index.php/lexsuprema/article/view/627/pdf>.

¹³ Ni Ketut Supasti Dharmawan, Putu Tuni Caka Bawa Landra, dan Putu Aras Samsithawrati, "TRANSLATION OF TRIMS AND OECD INTERNATIONAL STANDARDS IN INDONESIA'S CAPITAL INVESTMENT LAW," *Udayana Master Law Journal* 4, no. 3 (September 30, 2015), <https://doi.org/10.24843/jmhu.2015.v04.i03.p11>.

Business License (IUP) and Special Mining Business License (IUPK) both in exploration and production must carry out reclamation as regulated in Law Number 3 of 2020 Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. After IUP and IUPK holders carry out reclamation activities, they are then required to provide and place post-mining reclamation guarantee funds in a state bank, which is regulated in Government Regulation Number 7 of 2014 concerning the Implementation of Reclamation and Post-mining in Mineral and Coal Mining Business Activities. Reclamation is also part of a company's social and environmental responsibility, known as Corporate Social responsibility (CSR). In addition, CSR is an ongoing program used by mining companies to demonstrate their commitment to society, government and the environment to carry out sustainable activities. CSR is regulated in Government Regulation No. 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies.

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