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RESEARCH ARTICLE

SYNCHRONIZATION OF ENVIRONMENTAL LAW TO MINING LAW IN SUSTAINABLE ENVIRONMENTAL MINING GOVERNANCE IN INDONESIA'S LEGAL SYSTEM

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Abstract

Mining management in Indonesia, should pay attention to aspects of environmental sustainability. The facts show that most of the mining management in Indonesia does not pay attention to aspects of environmental sustainability. For this reason, based on legal norms, mining regulations in Indonesia should be synchronized with environmental regulations. This is the issue of research articles written. Based on the results of research using normative research methods, environmental law norms and mining legal norms synergize where mining law has a very close relationship with environmental law, because every business and mining activity, whether it is related to mineral and coal mining or oil mining and natural gas are required to maintain the continuity of the carrying capacity and capacity of the environment and the preservation of environmental functions. Kata

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Introduction:-

The good and healthy environment is the basic right of every Indonesian citizen.¹ a derivative of this right is regulated in RI Law of 32 of 2009 on the Protection and Management of the Environment, that "everyone has the right to a good and healthy environment as part of human rights"; and "Everyone has the right to environmental education, access to information, access to participation, and access to justice in fulfilling the right to a good and healthy environment".

The right to a good and healthy environment and the right to environmental information are part of the objectives of environmental protection and management, and are also in accordance with the principle of "principle of state responsibility", namely: a. the state guarantees that the utilization of natural resources will provide maximum benefits for the welfare and quality of life of the people, both the present and future generations; b. the state guarantees the rights of citizens to a good and healthy environment; and c. the state prevents activities from exploiting natural resources that cause environmental pollution and/or damage. This principle emphasizes the importance of environmentally sustainable mining development, namely a conscious and planned effort that integrates environmental, social and economic aspects into a mining development strategy to ensure the integrity of the environment, as well as the safety, capability, welfare and quality of life of the current generation and future generation.

Utilization of the environment, including mineral and coal natural resources, must be in accordance with environmental functions. As a consequence of the mining business policy, plans to determine mining areas. It must

¹Article 28H of the 1945 Constitution of the Republic of Indonesia

be imbued with the obligation to preserve environmental functions for the realization of environmental awareness. The principle of sustainable development is the basis that integrates the development of a region. This is used as the basis for every development policy, plan and program for a region.²

Mining law as a field of legal science has various dimensions, one of which is in the environmental field because mining objects and activities are the environment. Mining law places environmental aspects as an important aspect, so that special treatment is required for the environment, aiming to preserve the environment.

The field of environmental law and mining law is a synergy between aspects of environmental law and mining activities. Comprehensive integration between the two aspects results in an ideal blend so as to create an effective and efficient environmental friendly sustainable mining norm. Regulations regarding the environment in the mining sector are one of a series of legal norms that contain legal mechanisms that must be obeyed by mining business initiators. Consistent integration and integration of environmental law norms and mining law norms in the mining business. This is what is meant by Environmentally Friendly Sustainable Mining Governance. It means, that "environmentally friendly sustainable mining governance", is a mining business by utilizing mineral and coal natural resources while maintaining the preservation of sustainable environmental functions.

Research Method:-

Legal issues on the background of the problem, this study uses the type of "normative legal research". The approach used in this legal research is: a. Legal approach (statute approach), an approach to review both hierarchically and according to the principles of laws and regulations relating to the protection and management of the environment and mining management; b. Case Approach, this approach is used to answer the problem of "Synchronization of environmental law with mining law in environmentally sustainable mining governance; and c. Conceptual approach, used to find solutions to research problems.

Discussion:-

Synchronization of Environmental Legal Norm and Mining Legal Norm in the Indonesia's Legal System

In Indonesia, legal arrangements for environmental management are an integrated effort to preserve environmental functions which include policies for managing, utilizing, developing, maintaining, restoring, monitoring, and controlling the environment. Environmental management is a chain of all phases consisting of: "legislation", regulation, setting standards"; "issuing permits", handing out permits"; Implementation, implementing regulations and permits"; "enforcement"; and "planning"³.

In environmental management, besides functioning as protection and certainty for the community (social control), law is also a means of development (a tool of social engineering) with a role as an agent of development or agent of change. In its function as a means of development, law legitimizes policy instruments in environmental management, namely Environmental Quality Standards, Environmental Impact Analysis, and Environmental Licensing.

The substance of law and regulation for environmental management, it must contain environmental policy principles to be set forth in rules containing legal norms as follows: a. Countermeasures at the source, b. The best available technology. c. The polluter pays principle, d. Principle of deterrence; e. The principle of regional differences, f. The burden of proof is reversed.⁴

These environmental policy principles underlie the establishment of legal instruments for environmental management as a means of preventing environmental pollution and damage, is one of the keys to successful

²Franky ButarButar, Environmental Law Enforcement in the Mining Sector, Yuridika Journal Vol. 25 No. 2, May-August, Faculty of Law Airlangga University, Surabaya, 2010, page. 155.

³Siti Kotijah, Legal Arrangements for Sustainable Coal Mining Management in Samarinda City, Yuridika Journal: Volume 27 No.1, January-April 2012, page 56

⁴Siti SundariRangkuti, Environmental Law Instruments: From Ius Constitutum, Again, To Ius Constituendum, delivered at the "Good Governance and Good Environmental Governance" Seminar, organized by the Faculty of Law, Airlangga University, February 28, 2008, Surabaya, p. 5

environmental management. Important principles in environmental protection and management, according to Law of 32 of 2009, include⁵:

- 1) Everyone's right to a good and healthy environment.
- 2) Everyone's right to participate in every decision-making process.
- 3) Obligation to carry out an Environmental Impact Analysis for activities that generate large and significant impacts;
- 4) It is the obligation of the permit issuing institution for activities that have a large and significant impact to include environmental requirements in the issuance of the permit.
- 5) Recognition of mediation and arbitration as options in environmental dispute resolution;
- 6) Recognition of Strict Liability in civil aspects for compensation.
- 7) Recognition of Legal Standing of Environmental Organizations.
- 8) Presence of environmental investigators; And
- 9) Confession of criminal acts and corporate responsibility.

The principles of environmental protection and management in the Indonesian legal system have provided guidelines for sustainable mining management with an environmental perspective, especially in the use of land, water and natural resources in harmony, harmony and harmony with environmental management and mining management. in realizing environmentally sound sustainable mining governance.

Philosophically, there are 2 (two) foundations that serve as guidelines in the management of natural wealth, especially in the mining sector based on the 1945 Constitution of the Republic of Indonesia, namely:

- 1) Integrating regulations guaranteeing the protection of the right to a good and healthy environment in mining governance activities;
- 2) The implementation of mining must be based on the philosophy of fair efficiency, sustainability, and environmental awareness.

The basis for the recognition of the right to a good and healthy environment implies that the political direction of mining law in Indonesia aims to provide protection for the environment, especially for humans. Considering that humans are both perpetrators and victims of environmental damage due to mining activities. Therefore the mining legal norms (Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerba) must be used as one of the sectoral laws in the environmental field which must be able to integrate environmental protection in an effort to realize sustainable mining governance with an environmental perspective to support the sustainability of human life and other living things.

Therefore Law Number 4 of 2009 Jo. Law Number 3 of 2020 (Mining Law) has the dimension of environmental protection, so mining governance must integrate the principles of fair efficiency, sustainability and environmental insight. For this reason, the Mining Law is obliged to adopt and apply legal principles (principles) of environmental protection and management into the material of the Mining Law. These principles (principles) at least consist of: the precautionary principle; the polluter pays principle; the principle of prevention (prevention principle); the principle of community participation and recognition of the existence of customary law communities; the principle of strict liability, as a form of legal accountability mechanism from business actors in the mining sector; see the following table:

Table 1:- Synchronization of the Dimensions of the Law on Environmental Protection and Management in the Law on Mineral and Coal Mining in Indonesia.

No	Law Number 32 of 2009 On Environment	Law Number 4 of 2009 Jo. Law Number 3 of 2020 On Mineral and Coal Mining
1	Precautionary principle, Article 2 letter f, and Article 5 letter b, and Article 7	Determination of mining areas in an integrated manner by taking into account the opinions of relevant government agencies, affected communities and taking into account ecological, economic, socio-cultural and environmentally sound aspects (Article 10 paragraph (2) letter b)
2	Prevention principle Article 13 paragraph (2) letter a, and Article 14	Determination of the mining business licensing system with the requirement to contain: Obligation to prepare

⁵Author's review of Law Number 32 of 2009 concerning Environmental Protection and Management

		environmental documents (documents prepared to carry out the Production Operation stage); and Obligation to carry out Reclamation and Postmining (Article 39 letter k and letter i); Permit holders are required to ensure the application of environmental standards and quality standards in accordance with regional characteristics (Article 97)
3	Polluter pays principle, Article 2 letter j, Article 53, and Article 54	The permit holder is required to provide and place a Reclamation guarantee fund and/or a Postmining guarantee fund (Article 100 paragraph (1); and Communities that are directly negatively affected by mining business activities are entitled to: a. obtain proper compensation as a result of mistakes in the exploitation of mining activities in accordance with the provisions of laws and regulations, and/or b. file a lawsuit through the court against losses due to mining exploitation that violates the provisions (Article 145)
4	Polluter pays principle, Article 2 letter j, Article 53, and Article 54	Determination of mining areas is carried out in a transparent, participatory (community participation) and responsible manner (Article 10 paragraph (2) letter a.); Permit holders prior to Production Operation activities must comply with environmental requirements.
5	Strict liability principle, article 88	Not regulated but using an interpretation approach in the construction of the concept of strict liability for mining activities which are activities abnormally dangerous, potential harmful.

In table 1 of the synchronization/synergy, it appears that the principles (principles) of protecting and managing the environment are synergistic in the substance of the Mineral and Coal Mining Law, but there are still many principles contained in the Law for oil that are disharmonious. For example, in terms of modifying the internalization of the polluter pays principle in the mining business licensing system. This is caused by the absence of legal consequences, both administratively, for business actors who did not submit guarantees for reclamation and post-mining activities from the start when arranging permits. In such a situation, the government should have the authority to directly revoke permits that are not accompanied by reclamation guarantee funds.

In addition, the absence of criminal sanctions for disobedience to fulfilling the required documents in obtaining permits greatly affects the frequency of the level of environmental damage after mining activities. This means that the guarantee fund for a reclamation and post-mining activity plan ranges from data manipulation and there is a high chance of corrupt practices involving government institutions related to business actors which in the end can be detrimental to state finances. This is based on findings of violations by the State Audit Board committed by 73 Production Operation permit holders in the Kalimantan Region (including in Southeast Sulawesi) who have not placed post-mining reclamation guarantee obligations of 2.45 billion⁶.

In relation to the synchronization and/or synergy of environmental law norms (Law of 32 of 2009) with mining law norms (Law of 4 of 2009 in conjunction with Law of 3 of 2020), where mining law has a clear relationship very closely related to environmental law, because every business mining activity, whether it is related to mineral and coal mining activities (general) or oil and gas mining, is required to maintain the continuity of the carrying capacity and carrying capacity of the environment. In this case it is commonly referred to as the preservation of environmental functions.

Mining law as a field of legal science has various dimensions, one of which is in the environmental field because the object of mining activities is the environment. In this case the environment in question is both biotic and abiotic. Mining law places environmental aspects as an important aspect because of the dynamics and changes in the nature and physical changes of the environment so that special treatment is required for the environment so that it is hoped that the environment managed as a result of mining activities will always have environmental functions and power that are maintained or even possibly increased.

⁶The Supreme Audit Agency of the Republic of Indonesia, "The Audit Board Finds Irregularities in Mining Sector Tax Management", In AchmadHaris January, Op., Cit., page. 58

Environmental regulation in the mining sector is one of a series of legal norms that contain legal mechanisms that are absolutely obeyed by the perpetrators of activities and their law enforcement.

In the process of adopting policies in the mining sector carried out by the legislators together with the government, they have included and synergized environmental law norms as an environmental requirement that must be fulfilled into mining law norms as a process that cannot be ignored by the initiators of mining activities. This can be studied in the implementation of environmentally sound sustainable mining.

In table 1 of the Synchronization, it appears that the principles of environmental protection and management are synergistic in the material content of the Mineral and Coal Mining Law, but there are still many principles contained in the law that are not in harmony. For example, in terms of modifying the internalization of the polluter pays principle in the mining business licensing system. This is caused by the absence of legal consequences, both administratively, for business actors who did not submit guarantees for reclamation and post-mining activities from the start when arranging permits. In such a situation, the government should have the authority to directly revoke the permit that is not accompanied by the reclamation guarantee fund.

In addition, the absence of criminal sanctions for non-compliance with the document requirements in obtaining permits greatly affects the frequency of the level of environmental damage after mining activities. This means that the guarantee fund for a reclamation and post-mining activity plan is prone to manipulative data and there is a high chance of corrupt practices involving government institutions related to business actors which in the end can be detrimental to state finances. This is based on findings of violations by the Examining Agency committed by 73 Production Operation permit holders in the Kalimantan Region (including in Southeast Sulawesi) who have not placed post-mining reclamation guarantee obligations of 2.45 billion⁷.

In relation to the synchronization and/or synergy of environmental law norms with mining law norms, where mining law has a very close relationship with environmental law, because every business and/or mining activity, whether it is related to mineral and coal mining activities or oil mining and natural gas is required to maintain the continuity of the carrying capacity and capacity of the environment (preservation of environmental functions).

Mining law as a field of legal science has various dimensions, one of which is in the environmental field because the object of mining activities is the environment, both biotic and abiotic. Mining law places environmental aspects as an important aspect because of the dynamics and changes in the nature and physical changes of the environment so that special treatment is required for the environment so that it is hoped that the environment managed as a result of mining activities will always have environmental functions and power that are maintained or even possibly increased.

Environmental regulation in the mining sector is one of a series of legal norms containing legal mechanisms that are absolutely obeyed by the initiator of a business and/or activity along with its law enforcement.

In the process of adopting a policy in the mining sector carried out by the Legislators together with the Government, it has included and/or synergized Environmental Law norms as an environmental requirement that absolutely must be fulfilled into Mining Law norms as a process that cannot be ignored by the initiators. mining activities. This can be studied in the implementation of environmentally sustainable mining, see the following table:

Table 2:- Synchronizing Environmental Requirements Into Environmentally Sustainable Mining Management in the Indonesian Legal System.

No.	Type of activity	Law of 32 of 2009 (Environmental Requirements)	Law of 4 of 2009 Jo. Act of 3 of 2020
1	Exploration	Required information about the social environment and the environment.	As a stage of mining business activities to obtain information.
	Feasibility study	Require Permissions	To obtain detailed information on all aspects, including permits and post-mining planning.

⁷Siti SundariRangkuti, *Loc.cit.*, p. 58

3	Production operation	Environmental impact control facilities are in accordance with the results of the feasibility study.	Stages of activities which include mining construction, processing/refining and/or development and utilization, including transportation and sales.
4	reclamation	Manage, restore and improve the quality of the environment and ecosystem so that they can function again according to their designation.	Activities carried out throughout the stages of mining.
5	Post Mining Activities	To restore the functions of the natural environment and social functions according to local conditions throughout the mining area.	An activity in a planned, systematic and continuing manner after the end of some or all of the mining business activities.
6	Granting of Oil and Gas Mining Business Permit Areas and State Reserved Areas.	For conservation purposes in order to maintain the balance of the ecosystem and the environment.	National mineral and coal management plan.
7	Exploration Seriousness Guarantee	Environmental costs resulting from exploration activities are a requirement for obtaining permits	In addition to permits, the holders are also required to comply with tolerance limits and environmental carrying capacity.
8	Mining Rules	Holders of mining permits are required to carry out environmental management and monitoring, including reclamation and post-mining activities.	Conserving mineral and coal resources and managing mine residue from a mining business activity in solid, liquid or gas form until it meets environmental quality standards before being released into environmental media.
9	Mining permit holder	Obligated to guarantee the application of environmental standards and quality standards in accordance with the characteristics of an area and maintain the preservation of the function and carrying capacity of the water resources in question in accordance with the provisions of laws and regulations.	Obligation to prepare and submit a reclamation plan and mining plan. Reclamation and post-mining implementation is carried out in accordance with the allotment of post-mining land.
10	Cessation of Mining Activities	If the condition of the region's carrying capacity does not interfere with the burden of mineral and coal production operations carried out in the area.	Can be given to holders of mining permits, if they meet the requirements referred to in number 10, column 2 (environmental requirements).
11	Supervision	Supervision from the authorized apparatus includes; environmental management, reclamation and post-mining.	Supervision in point 11, column 2 (environmental requirements) is carried out by the mine inspector in accordance with statutory provisions.

Synchronization of Environmental Permits (Approvals) with Mining Business Permits in Environmentally Friendly Sustainable Mining Governance

Permits are government tools that are preventive juridical in nature, and are used as administrative instruments to control the behavior of the community (mining entrepreneurs). In addition, permits can also function as an instrument to deal with environmental problems caused by human activities that are inherent in the basis of licensing. That is, a business that obtains a permit for environmental management and/or mining is burdened with the obligation to deal with environmental damage arising from the consequences of a mining business.

The implementation of environmental permits (approvals) is an effort to preserve environmental functions. Environmental resource management takes into account the carrying capacity and carrying capacity of the environment. Licensing in Law Number 32 of 2009 concerning Environmental Protection and Management, is a new chapter in the licensing system, because the previous law was not regulated. This is referred to in Article 1 number 35 of Law of 32 of 2009, "Environmental permits are permits granted to everyone who carries out businesses and activities that are required to have an Amdal in the context of protecting and managing the environment as a prerequisite for obtaining business and activity permits". An environmental permit is an absolute requirement that must be met (to have) in order to obtain a mining business and activity permit, such as: Mining Business Permits consist of two phases of activity: Exploration permits and Production Operation permits; or Special Mining Business Permit, also consisting of two phases of activity: an Exploration permit and a Production Operation permit.

Regarding "environmental permit" changed to "environmental agreement"; with the enactment of Law of 11 of 2020 Concerning Job Creation. Article 1 point 35 "Environmental approval is a decision on environmental feasibility or a statement of ability to manage the environment that has received approval from the Central Government and Regional Governments".

The Job Creation Law simplifies the licensing process by integrating a risk-based "Environmental Permit into a Business Licensing". Business Licensing is the legality granted to business actors to start and run their businesses and/or activities. This means that every business and/or activity in any field must be preceded by environmental principles and documents, the packaging of which is environmental approval. By integrating Environmental Licensing into Business Licensing, if there is a violation, for example in terms of environmental management standards and processes, the main Permit, namely Business Licensing, will be affected.

Integrating environmental permits into Business Licensing means that business actors (mining) do not need to take care of many permits which are sometimes very complex and difficult, even for people who are going to do business in a simple business and whose activities do not have a significant impact on the environment, no need for environmental approval.

The implementation of the provisions of Article 22 of Law 11 of 2020 is further regulated in the Government Regulation of the Republic of Indonesia of 22 of 2021 concerning the Implementation of Environmental Protection and Management. In this Government Regulation of the Republic of Indonesia of 22 of 2021, it no longer uses the term "Environmental Permit", but uses the term "Environmental Agreement".

The elements of the environmental approval consist of: Decision on environmental feasibility; or Statement of ability to manage the environment; and Approval of Central Government and Local Government. Decision on environmental feasibility, referred to as a decision declaring the environmental feasibility of a planned business and activity that must be accompanied by an EIA; whereas Statement of Commitment to Management of the Environment is a standard for environmental management and environmental monitoring from the party responsible for a business and/or activity that has obtained approval from the Central Government or Regional Government for businesses and activities that require permits; hereinafter Government Approval is a form of decision issued by the Central Government or regional Government as the basis for the implementation of activities carried out by Government Agencies.

Environmental approval must be owned by every business and/or activity that has a significant or insignificant impact on the environment. This means that environmental approval is a prerequisite for issuing (granting) business permits or government approval. Environmental approval is carried out through: a. preparation of EIA and EIA

feasibility test; or b. preparation of mining permit forms and inspection of mining permit forms. The validity period of the environmental approval ends together with the expiry of the business permit or government approval.

Synchronization of Environmental Permits with Mining Business Permits in environmentally sustainable mining governance is an absolute requirement. Where the environmental permit is the main prerequisite that must be met in order to issue a Mining Business Permit, namely a permit to carry out a mining business. Mining business is carried out based on Business Licensing from the Central Government. The mining business referred to is an activity within the framework of mineral or coal exploitation which includes the stages of general investigation, exploration, feasibility study, construction, mining, management and/or refining or development and/or utilization, transportation and sales as well as post-mining. Business Licensing is the legality granted to business actors to start and run businesses and activities.

The synergy of environmental permits with mining business permits in sustainable mining management with an environmental perspective has been integrated into business permits as regulated in Article 12 of Law 11 of 2020 concerning Job Creation. The implementation arrangements are regulated in Government Regulation Number 5 of 2021 on Implementation of Risk-Based Business Licensing.

The relationship between environmental permits (approvals) and Mining Business Permits in the governance of environmentally sustainable mining is a licensing system that is complementary and interdependent with one another to maintain the preservation of environmental functions in the framework of realizing environmentally sustainable mining. As previously described, synchronization (synergy) of environmental permits (approvals) with mining business permits are two things that cannot be separated from one another. Because environmental approval is a prerequisite for issuing business permits or government approval; where environmental approval must be owned by every business and/or activity that has significant or insignificant impacts.

Closing

Synchronization of environmental law with mining law in sustainable mining governance with an environmental perspective, in the Indonesian legal system, that environmental law norms with mining legal norms are synergistic where mining law has a very close relationship with environmental law, because every business and mining activity, whether it is relating to mineral and coal mining activities as well as oil and gas mining activities are required to maintain the continuity of the carrying capacity and capacity of the environment and/or preservation of environmental functions. Synchronization (synergy) of Environmental Approval with Mining Business Permits is an absolute requirement; where environmental approval is the main prerequisite that must be met in order to issue a Mining Business Permit. Therefore, mining legal norms are used as one of the sectoral laws in the environmental sector which must be able to integrate environmental protection in an effort to realize sustainable mining governance with an environmental perspective to support the sustainability of human life and living things.

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