

The Imposition Environmental Cost-Loading Of Companies Investing In Coal Mining

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Abstract: The instrument of environment is an effort to prevent environmental problems caused by mining activities both in forms and its nature. The aims of the study are to analyze and understanding the essence of environment cost-loading in order to restore the environment from coal mining activities, both when mining taken place and post-mining. The type of research used is a normative-legal research. This research was conducted in the province of South Kalimantan, with the consideration that the South Kalimantan is one of the largest coal-producing Provinces in Indonesia. In addition, the environment cost-loading for investor in coal mining have the same properties in all coal mining sites in Indonesia. The results of the research indicated that the imposition and environment-cost in investment activity in the field of coal mining can be seen from the two approaches, i.e the economic and legal approach. Economic approach is an approach that emphasizes the economic benefits gained by the owner of activities when they comply with the environmental requirements stipulated by laws and environmental regulations. Realizing the importance of environmental cost-loading for the company that manages the coal mining, especially for the utilization of prevention of pollution caused by coal mining activity, it is necessary to develop an institutional guarantee of recovery from the effects of pollution by establishing fund insurance for environmental restoration as a result of pollution. Thus, in order to optimize the implementation of guarantee fund for environmental restoration are specifically utilized for post-mining reclamation, then granting the status of Clean and Clear (C & C) for coal mining investor must be presupposing the proof of guarantee fund has been placed for environmental restoration post-mining.

Index Terms: Environmental Law, Legal Protection, Legal Enforcement

1 INTRODUCTION

Indonesia is a country that is known to be very rich in mining wealth. One of the mining wealth in Indonesia is coal. Coal mining has been carried out in Indonesia since the Dutch colonial era. As non-renewable natural resources, then coal is a national wealth controlled by the state for the benefit of people. The governance of coal by the state in practice managed by the central government and/or local government, as stipulated in Act No. 4 of 2009 concerns Mineral and Coal Mining. In order to support sustainable-national development, then there are at least some objectives of mineral and coal management that can be identified, includes: *first*, to ensure the effectiveness of implementation and control of mining activities are efficient, effective, and competitive; *second*, to guarantee the benefits of mineral and coal mining in a sustainable and environmentally-friendly manner; *third*, to ensure the availability of minerals and coal as raw materials and/or as a source of energy for domestic needs; *fourth*, to support and promote the national capacity in order to be able to compete at the national, regional, and international levels; *fifth*, to increase the income of local communities, regions, and countries, as well as to create jobs opportunity for the greatest welfare of people; and *finally*, to ensure legal certainty and the implementation of business activities of mineral and coal mining.

Recognizing the importance of coal as a source of energy in Indonesia, the Government through Decree of President the Republic of Indonesia No. 5 of 2006 has established a national energy policy that aims to ensure the supply of domestic energy and to support sustainable development, where coal as one a reliable energy source. The Constitution of the Republic of Indonesia 1945 (UUD NRI 1945) as the highest law itself has regulated explicitly that the environment is good and healthy is a human rights and the constitutional rights of every citizen of Indonesia. It can be found in Article 28H paragraph (1) the Constitution of the Republic of Indonesia, 1945, that "Everyone has the right to live safe in both physically and mentally, reside, and get a good environment and healthy and receive medical care." Therefore, the state, government, and all stakeholders, are obliged to do the environmental protection and management in the implementation of sustainable development, so that the Indonesian environment can remain a source and life-supporting for the people of Indonesia as well as other living creatures. Then, in the Constitution of the Republic of Indonesia 1945 is also obligate that the existing environment is used for the greatest welfare of people. It is stipulated in Article 33 paragraph (3) that: "the earth and water and natural resources contained therein shall be controlled by the State and used for the greatest prosperity of the people". People's prosperity can be enjoyed by not only the current generation, but also future generations in a sustainable manner. In an effort to realize the people's prosperity, the government must conduct sustainable development. This development is a conscious effort in processing and utilizing natural resources, including the utilization of coal to improve the welfare of people both physically and mentally. In practice, the utilization of natural resources must be harmonious and balanced with environmental functions. Sustainable development is only option for Indonesia, if want the balance between prosperity and a good living environment and sustainable development, as a country endowed with high natural conditions, has a wealth of biodiversity and natural resources are abundant. Such property needs to be protected and managed in a system of protection and integrated environmental management, both by government and public, between the

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marine environment, terrestrial and air based on Archipelago concept. Development as part of state policy for the prosperity of people, conducted by utilizing natural resources continuously. Meanwhile, the available natural resources are very limited and uneven both quantity and quality, while the demand for natural resources is increasing as a result of increased development to meet the increasing needs of population. Such development activities contain the risk of pollution and destruction of the environment. The fact shows that the development of Indonesia is rested on industry and mining among many uses various kinds of chemicals, radioactive substances and damaging natural resources. In addition to producing products that are beneficial to people's lives, the development of industry and mining in Indonesia are also produce hazardous waste and toxic materials when discharged into the environmental media and can threaten the health and survival of humans and other living creatures. The instrument of environment is an effort to prevent environmental problems caused by mining activities both in forms and its nature. Environmental protection is also getting the attention of the World Trade Organization, as in its preamble which states that every WTO's member must take into consideration the objectives of sustainable development and the achievement of protection and environmental protection. It is known that the environmental damage in Indonesia has given effect miserable for life. 34% of poverty rate, 85% of natural disasters, 3.5 million hectares of forest were destroyed and a number of violence and horizontal conflict are also caused by environmental dispute, has caused 60% of them became refugees of development. Even, in the refugee, it is not uncommon of them dealing with a new problem that causes a decreased quality of life. Various issues of mining activities that are less environmentally sound and environmental degradation need to be considered to ensure a balance between human needs and the preservation of environment and also to ensure a conducive investment climate for large-scale mining investors. Realizing the importance of balance in environmental management, then in investment activities in the field of coal mining, the environment cost-loading for companies becomes very important to do and enforced. Therefore, in this study the issue studied is the essence of environment cost-loading in order to restore the environment from coal mining activities, both when mining taken place and post-mining.

2 METHOD OF RESEARCH

The type of research used is a *normative-legal research*. This research was conducted in the province of South Kalimantan, with the consideration that the South Kalimantan is one of the largest coal-producing Provinces in Indonesia. In addition, the environment cost-loading for investor in coal mining have the same properties in all coal mining sites in Indonesia. This research approach is directed at the legal and economic approach. With this approach, this research will be directed at the legal and economic aspects. In this case, the analysis is directed to answer how the legal regulation of economic activity, particularly coal mining investment activities. Data was collected by means of literature studies and by conducting a search via Internet and also to complete the legal data is then carried out confirm with informants that determined unstructured and selected based on the functions and authority of informants.

3 RESULTS AND DISCUSSION

3.1 Economic Approach against Environmental-Cost

Economic approach is an approach that emphasizes the economic benefits gained by the owner when he comply the environmental requirements stipulated by laws and environmental regulations. It is indispensable because it is a factor that stimulates business compliance, because every owner of activities will be: a) avoid paying penalty; b) avoid paying compensation which may have to bear in the future; and c) save expense because using the cost-efficiency and environmentally friendly practices. Economic instruments is a way to change human attitudes and behavior towards the environment, the intended use of this instrument is to modify the value relative to the profit and loss for the investor by providing economic incentives-disincentives. Incentives and disincentives include market instruments which generate profit and loss in the form of money, so it is tangible. The consideration of tangible is a strong incentive for pro-environmental behavior and resistance to the anti-environmental behavior. The principle of economic instrument is the efforts to address the environmental damage preventively by limiting the use of resources or/and make it more expensive in order to encourage users to use resources more sparingly. Cost-loading is a disincentive to behave anti-environmental and otherwise incentive-economic benefits for pro-environmental behavior. Thus, the communities are encouraged to develop lifestyle and technology and energy-saving materials. Some of economic instrument that is widely used is:

1. *Environmental tax*, resource scarcity led to the applying of high taxes for limited natural resources, the high prices are expected to decrease the consumption of such goods.
2. *Performance bond* is an instrument of environmental laws ordering was developed. It is a kind of guarantee fund must be submitted by the owner of activities or investor and/or business to government.
3. *Tradable permit*, in this mechanism the government gives permits allocation to "pollute" to certain types of activities. The permit these companies can be traded between the investor of such activities.

Thus, the presence of a guarantee fund of environmental restoration for any company that manages natural resources in the mining, then the position of guarantee fund in the structure of business costing to be part of production variable in the form of environment cost. Economic approach to the environment cost-loading indicates that the environmental costs to be a production variable that is crucial for the sustainability of production activities take place. Therefore, the cost of environment from an economic perspective to be part of variable cost that would have to be directed to restore the environment in both the process of activities take place or post-mining. Environmental recovery activities undertaken by investor must consider the interests of people living around mining activities. For that, environmental restoration activities should involve the community because the community around the mine site would be directly affected by an environmental damage.

3.2 Legal Approach against the Environment Cost-Loading

Environmental law aims to regulate human behavior toward its environment, thus the arrangement of economic instrument set therein. It is essentially preventive, therefore the instrument of environmental to be a special concern. Environmental compliance goal is to prevent pollution and/or damage to the environment by applying the requirements of business activities and/or individuals. Thus, the economic instrument under the provisions of applicable law functioned as a compliance instrument in human life that interacts with the environment. Economic instruments are placed on the basic framework of law, which in this case is the legislation governing the management of natural resources in relation to the legal protection of the environment. In order the economic development that manages natural resources can operate in sustainable development, the role of law to directed investor as economic actor to be very strategic. Law functioned as an instrument to make the arrangement of the development sustainable in general and in the field of economic development environment in particular. The arrangement in the environmental law is defined as the application of environmental requirements fully. The arrangement can be said to be achieved when all environmental requirements are met or realized by the subject of environmental law. The design of environmental requirements to be very significant in the structuring of environmental laws because environmental requirements affect the success of environmental management program. Realizing the importance of sustainable development in relation to environmental protection and management in Indonesia, the Indonesian government has to reform its environmental legislation with the enacted Act No. 32 of 2009 concerns the Environment Protection and Management (UUPPLH). On the basis of consideration, UUPPLH confirms that the environment is good and healthy is a fundamental right of every citizen of Indonesia as mandated in Article 28H of the Constitution of the Republic of Indonesia 1945. Therefore, the national economic development, as mandated by the Constitution of the State Republic of Indonesia 1945 was held based on the principle of sustainable development and environmentally sound. Based on the description of environment legal aspects, as stated above, it is clear that from the legal point of view the imposition of a guarantee fund of environmental restoration to investor in the field of coal mining is an obligation for investor. For that, the guarantee fund of environmental restoration to be part of the ongoing business financing variable, so that every investor conducting coal mining must place a guarantee fund of environmental restoration as part of variable costs.

3.3 Responsibility of Investor against Environmental Restoration

Mining activity is a risky business activity and very complicated, requires high technology, large capital. Also, it is required careful planning from the beginning to the post-mining. At the time of opening the land, it must be able to understand how to close the mine in accordance with environmental legislation. In general, coal mining in South Kalimantan was done by using *open pit* mining, that is *land clearing, stripping top soil, over burden stripping*, as well as cleaning and mine coal. So, with this technique, have caused damage to the physical, chemical, and biological of mine land. Therefore, activities of repairing post-coal mining are

absolutely necessary to restore the productivity of land. Mining activities are not insightful or not consider the balance and the carrying capacity of environment, and not managed properly can have negative impacts on the environment that should mining activities will benefit will actually hurt. However, mining activities that considers environmental issues and managed properly, it is not impossible that land more useful than ever before. A problem of environmental degradation is large land degradation, which if not addressed quickly and properly will be critical land until it becomes a desert. The main causes of critical lands are:

1. Pressure and population growth
2. Improperly land area
3. Not good forest management
4. Forest burning
5. Exploitation of minerals.

The extend of critical land makes residents living in the area are relatively poor, extremely dense population levels, land area owned is narrow, very limited employment opportunities, and environmental damage. The most important of environmental change is caused by the behavior of people who are less well in the utilization of natural resources in order to meet their needs. The impact of changes in the ecosystem will be reduced if people know and understand the functioning of an ecosystem. Coal mining activities in addition to give a positive impact on the increase in national income and foreign exchange also have a negative impact on environmental degradation in the form of physical, chemical and biological. Coal mining on a large scale has caused changes in the landscape and relief, an increase in the rate of soil erosion, sedimentation, degradation of soil fertility and water quality. Ex-mine lands are likely to be left open without the restoration of land that can disrupt ecosystems balance.

3.4 Responsibility for Reclamation

Reclamation is a repairing process in a particular area (ex-mine land) as a result of mining activities so that the mines land that has managed can function again optimally. In reclamation is required careful planning for the right target. The planning must be prepared before mining activities, as has been set in the document of environment. The scope of reclamation includes land use, prevention and mitigation of mine acid water, and civil works. In the land reclamation due to mining should look at four aspects, namely: (i) technical; (ii) economic; (iii) social/environmental; and (iv) institutional. The technical aspects can be seen from the physical and chemical properties of soil, the environmental aspect can be seen from the impact of coal mining on the social, the economic aspects can be seen from the productivity of land. While the institutional aspect can be seen from the function and role of each institution in the implementation of land reclamation. In order to reinforce the principles of environmental protection and management of mining as stipulated in Government Regulation (PP) No. 78 of 2010, then the implementation of principle at least action that includes:

- a) The protection of surface water quality, ground water, sea water, and soil, and air based on the quality standards or criteria of environmental damage in accordance with the provisions of legislation;
- b) Protection and restoration of biodiversity;

- c) Ensuring the stability and security of stockpiles of overburden, tailings pond, ex-mine lands, and other artificial structures;
- d) Utilization of ex-mine land in accordance with its designation;
- e) Consider the social values and local culture; and
- f) Protection of ground water quantity in accordance with the provisions of legislation.

Based on the legislation governing coal mining as stipulated in Government Regulation No. 78 of 2010 above, then any investor that do business in the field of coal mining burdened with the obligation to perform reclamation both in the process of exploration and in the production and post-mining process.

3.5 Responsibility of Environmental Recovery Related to the Pollution

Good and healthy environment is a gift of God Almighty given to all mankind without exception. For that, the good and healthy environment is an absolute right that is given to mankind for enjoyed. Therefore, right to get a good and healthy environment is similar for all human beings in the world. A good and healthy environment is something that is very important in supporting human survival. Besides everyone is entitled to a good and healthy environment, also have an obligation to perform environmental protection and management. And as described above, good and healthy environment is not only a right, but therein also has a responsibility to maintain and protect and manage or preserve that is increasingly better and healthier and in it also created a good and healthy community. Therefore, it is clear that the environment is an important thing that should be guarded, protected, managed and preserved. In association with the above, the protection and management of environment is a human effort to interact with the environment in order to sustain life achieve prosperity and environmental sustainability. Protection and management of environmental is a systematic and integrated effort are being made to preserve the environment and prevent pollution and/or damage to the environment that includes the planning, utilization, control, maintenance, monitoring and law enforcement. Environmental protection and management in an integrated manner includes all areas of environment for sustainable environmental functions. In the protection and management of environment, not apart to do development that are sustainable to achieve the welfare of the people. In essence, sustainable development is a development that can meet the needs of present without compromising the fulfillment of rights for future generations. It is a development that is oriented to the fulfillment of human needs through the utilization of natural resources wisely, efficiently and considers the sustainability of utilization both for the present generation, and that will come. Sustainable development that puts the environment as an integral part in the dynamics of national development is increasingly crystallized in the reality of life of state. The problem of environmental pollution is an old problem that is faced by people and until now the problem is still not resolved, it is precisely the lack of concern for this problem, and this is a complex problem. Environmental pollution is the entry of hazardous substances into the environment so that the quality of environment is reduced or does not function as intended. Environmental pollution affects the survival of environment members. Companies that are sensitive and care about social

problems should prioritize maintenance and renewal of the environment. This does not mean that companies should ignore the responsibility to other stakeholders (parties interested in the business). Corporate responsibility towards stakeholders should be balanced in the sense that favors one particular party. Environmental pollution by the company may occur in the air; water and soil are all that is main part in which humans live. Therefore, every development directly related to the environment has the potential to cause environmental pollution. The instruments of prevention of pollution and/or destruction of the environment under Article 14 of Act PPLH 2009, one of them set on "Kajian Lingkungan Hidup Strategis (KLSH)". This is a new legal instrument in the environmental legal system in Indonesia. KLHS is defined as a series of systematic analysis, thorough and parti-cipative to ensure that the principles of sustainable development has been the foundation and integrated in the development of a region and/or policies, plans and/or programs. Thus, KLHS as an effort to find a breakthrough and make sure that at the early stage of policies arrangement, plans and/or programs the principles of sustainable development has been considered. The meaning of strategic contain a means act or activity since the beginning of decision-making process which resulted in significant to the final results will be achieved. In the context of KLHS, an act in question is a review process that can ensure the consideration of matters of priority starting from sustainable development aspect in the decision making process on policies, plans and/or programs. In principle, KLHS is a self-assessment to see the extent to which the policy, plan and/or program (KRP) proposed by the government and/or local government has to consider the principles of sustainable development, both for the sake of economic, and social, in addition to the environment. With this KLHS is also expected KRP resulted and set by the government and local government becomes better. KLHS is beneficial to facilitate and become media for shared learning process between actors of development, in which all parties involved the preparation and evaluation of policies, plans and/or the program can actively discuss how far the substance of policies, plans and/or programs that are formulated have considered the principles sustainable development in the management and utilization of environment in Indonesia.

4 CONCLUSION

The position and environment-cost in investment activity in the field of coal mining can be seen from the two approaches, i.e the economic and legal approach. Economic approach is an approach that emphasizes the economic benefits gained by the owner of activities when they comply with the environmental requirements stipulated by laws and environmental regulations. While the legal approach is directed to functioning the law as an instrument to make the arrangement of sustainable development in general, and economic development in the field of environmental in particular. Related to the corporate responsibility in the environmental restoration in investment activities in the field of coal mining consists of the responsibility to conduct land reclamation of mine and the responsibility for the restoration of environment in terms of pollution and/or environmental damage. Realizing the importance of environmental cost-loading for the company that manages the coal mining, especially for the utilization of prevention of pollution caused by coal mining activity, it is necessary to develop an

institutional guarantee of recovery from the effects of pollution by establishing fund insurance for environmental restoration as a result of pollution. Thus, in order to optimize the implementation of guarantee fund for environmental restoration are specifically utilized for post-mining reclamation, then granting the status of *Clean and Clear* (C & C) for coal mining investor must be pre-supposing the proof of guarantee fund has been placed for environmental restoration post-mining.

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