

# The Law Enforcement Of Environmental Permit To Realize Good Governance Principles In Mining Management

Insarullah, Irwansyah, M. Yunus Wahid, Abrar Saleng

**Abstract:** This research aims to know the implementation of transparency, participation, accountability principles, and also the influence of controlling, human resource, legal culture, and medium/infrastructure factor in the enforcement of environmental permit in the area of mining in Morowali Regency. The research method used is socio-legal research. Research population come from community of around mining region, members of Regional Legislative Council (DPRD), there is a sum of 95 people, i.e 49 people from society, 10 people of members of DPRD, 16 employees from some mining companies and 20 people from officers of local Government of Morowali. Results of research indicate that the principles of transparency, participate and accountability in the enforcement of environmental permit in the area of mining in Morowali Regency, is still considered as a low category. So that, it has not yet reflected the existing of good governance principles in the enforcement of environmental permit in the area of mining.

**Index Terms:** Environmental Law, Good Governance, Mining

## 1 INTRODUCTION

A good and health environment is a human right and it also becomes a basic right of every citizen of Indonesia, as mandated by the Constitution of the Republic of Indonesia of 1945. It can be seen in article 28H paragraph (1) which states that "Everyone shall be entitled to be prosperous, reside, and obtain proper and sound environment and medical services". Meanwhile, article 33 paragraph (4) also affirmed that "The national economy shall be held based on economic democracy with the principles of togetherness, efficiency with justice, sustainability, environmental perception, independence, and by keeping the balance of the national economic progress and unity". The issue of environmental rights as human rights guaranteed by the constitution and the adoption of sustainable development principle, clearly illustrated that the constitution of Indonesia to support the protection and preservation of the environment. Therefore, it can be called a green constitution. To support the welfare of the Indonesian people, the natural resources on earth Indonesia, controlled by the state and utilized for the benefit of the people, not forgetting the importance of conserving and environmental support. In principle, according to Irwansyah that should environmental management in natural resources should not be solely on economic interests alone, but must pay attention to the interests of ecology and sustainability. It is precisely reversed at the beginning of the New Order regime, where natural resource management is carried out based more on the interests of the investment needs in order to recover economic of Indonesian state.

Natural resources (forests, mines, water and mineral resources) is seen and understood in the context of economic sense and not understood as ecological and sustainable sense. However, the events were not much different from the current reform era, there still occurred management of natural resources to be implemented over economic interests and investment. Although, it can be assumed that there has been an imbalance in the utilization of natural resources between economic and ecology and sustainability interests in natural resource management. Basically, environmental interest is a cycle (integrated chain) between the various components of both biological and non-biological beings covered in an ecosystem. According to M. Yunus A. Wahid, that environmental problems are cyclical in the linkages and interactions between the various biotic and abiotic components, which in a broad sense includes humans with a variety of interests, can be approached through or by using ecology as a knowledge base. The use of ecology as a basic understanding of how humans should act and behave towards natural resources and the environment that is a habitat of human itself. An effort to preserve the environment in natural resources management of mines in the era of regional autonomy must be based on the political will of the regional administration itself, which promotes transparency at the level of implementation, as the competent authorities of its region, in which the natural resources of mine located. Clearly, the government closer to the ruled people (decentralization) is better than the government that far (centralization), due to decentralization, the service can be more transparent, efficient, responsible, and accountable to the problems, demands, wishes and aspirations of the people there in the area. One of the things that is very urgent at the regional administration is granting environmental permits for mining entrepreneurs in the area, as they relate to the unsustainable natural resources management. A local government exercises its authority in granting the environmental permit to the employer, must not stop until that stage, but should be followed up with the law enforcement of environmental permit in the area. So the environmental permit absolutely gives benefit, not just compliance administration. Related to the local authorities in law enforcement of mining environmental permit in the region, particularly in Central Sulawesi province, based on the obligation of control and preservation of the

- *Insarullah, is a lecturer at Faculty of Law, Tadulako University, Central Sulawesi, Indonesia. PH. +62811455867. E-mail: [insarullah.tad@gmail.com](mailto:insarullah.tad@gmail.com)*
- *Irwansyah, M. Yunus Wahid, Abrar Saleng, lecturer at Faculty of Law, Hasanuddin University, South Sulawesi, Indonesia. PH. +62411-587219*

environment by the local government. One of divergence which has been carried out by local governments, particularly in the implementation of authority that has been given to the region, since the enactment of legislation of local government is local government authority in the management and conservation of the environment, specifically related to law enforcement of environmental permit on business and/or mining activities. In its implementation in the fields of mining, is regarded by many laden with acts of corruption, collusion and nepotism, thereby impacting negatively on the environment. Corruption, collusion, and nepotism occur because the weak embodiment of good governance principles in the area. For example, the gold mining of Poboya in the gulf of Palu, Central Sulawesi, Indonesia. Based on the results of the study in 2011, showed that fish and shellfish around the mouth of Poboya river in the gulf of Bay, all of which contain mercury compounds exceeding the threshold. That means liquid waste from the processing of gold called "tromol" flows into the river which eventually came to the sea, so that the waters of the gulf of Palu were contaminated by chemicals such as heavy metals mercury. It is also stated in a study conducted by researchers from Balifokus, nongovernmental organizations (NGOs) working in the field of environment. Results of Balifokus' research declares that the city of Palu, Central Sulawesi, began contaminated by mercury wastes that threaten the health of the population in the long term. They get a number of mercury pollution in the air of Central Sulawesi, ranging from 20 to 5.900 nanograms/m<sup>3</sup> means has exceeded the threshold. The largest use of mercury in the city of Palu, located at the mine site of Poboya and its surrounding. The process of separating gold from smooth rocks in mining Poboya traditionally ensured using mercury. Then, workers remove the remaining mercury to any place so it evaporates. Based on the above description, it can be assumed that the mining permit which many local governments published today is not followed by environmental permit law enforcement obligations as a condition of proper environmental management in business and/or mining activities in the area, as mandated by the enactment protection legislation and environmental management. Related to this trend, this study leads to the authority of local governments based on the principle of decentralization and autonomy, thus allowing the realization of good governance principles in law enforcement of environmental permits optimally in the regional mining sector, particularly in Central Sulawesi, Indonesia.

## 2. METHOD OF RESEARCH

### 2.1 Type of Research

The type of research is an empirical research, with socio-juridical approach, a research that looked a legal as a social phenomenon that can be observed in the experience of peoples' life based on the legislation in force.

### 2.2 Location of Research

This research conducted in local government of Palu City and Morowali Regency, Central Sulawesi, Indonesia. The considerations for selecting this area due to the opening of mining tend to deviate from the legislation in force.

## 3. ANALYSIS AND DISCUSSION

### 3.1 The Philosophy of Environmental Permit

Indonesia as a welfare state demanded the government to play an active role in achieving the objectives of the state. Therefore, the main task of the government to realize the objectives of the state, one through service to the community and the government ought to be involved in managing the social life. In today's era of development, along with the increasing needs of development in various fields of human life, then the interference of government became more active and intensive. To carry out the tasks of government in order to carry out development in various fields, the government or the state administration to take legal action that uses means or its instruments. Various instruments are used to manage and run the affairs of government and society, such as legislation, decrees, wisdom regulation, permit, civil legal instruments and so on. Related to the rules of public law, many local governments use permit as a judicial means to drive the behavior of the citizens. Permit is one of the most widely used instruments in administrative law. N.M. Spelt and Ten Berge explained that permitting is a term for the permit in a broad sense, while in the narrow sense is called "permits" only. Permit (in narrow sense) further distinguished by other permitting forms of dispensation, concession, recommendations, list mark, approval, and registration. Meanwhile, permit in the broad sense (permitting) is an approval from the authorities under the legislation or government regulations in certain circumstances to deviate from the provisions of law prohibition. Meaning of laws that can be found in the permit according to the above opinion is their approval to do something that should be prohibited, so that will be found in many forms of permitting, such as permits, dispensations, licenses, concessions, recommendations and etc. As described previously, the author tends to argue that the point is to balance between the rights and obligations of legal subjects, as each person on one side certainly have the right to plead the permit in same time, but on the other hand there are obligations that must be met by the applicant, namely the requirements contained in the permit being applied. Then the object of permit is an act which actually forbidden to do, however, such actions can still be carried out on condition the approval of the government or ruler who is none other than the competent authority for issuing permits. This means that the act is the object of permit need to be regulated in order to maintain public order, where there is a balance between private and public interests. Based on these descriptions, it is clear that permit is governments' instrument that is juridical-preventive, and is used as an administration instrument to control the public behavior so that their actions did not deviate. Therefore, the nature of a permit is a preventive to organize and control, because in the instrument of permits, cannot be removed with commands and obligations that must be obeyed by the permit holder. In addition, as a preventive, it can also be repressive, which permit can serve as an instrument for tackling environmental problems caused by human activities based on the existing permitting. That is, an effort that received a permit for environmental management, burdened with the obligation to undertake pollution prevention or environmental damage arising from business activities and/or its activities. The basic consideration for local governments to issue permits are in order to develop, regulate, control, and supervise the activities of space utilization, the use of natural

resources, infrastructure, facilities, or certain facilities in order to protect the public interest and preserving the environment. Therefore, the technical permitting with consideration of feasibility for environmental studies is called environmental permit. The philosophy of environmental permitting as one of legal instruments of the government is to control peoples' lives in order not to deviate from the provisions of the applicable law, particularly protection and environmental management, as well as limiting community's activities that do not harm other people and the environment. Environmental permitting issues in the framework of public service and sustainable use of natural resources has been established as an issue that needs to be taken seriously, since the natural resources is not only used for the current generation, but also for future generations.

### 3.2 The Transparency Principle on Environmental Permit as a Form of Control

Basically, plan and implementation is a unity of action, although this rarely happens in practice. Control is necessary to direct an activity that has been planned, so that implementation can achieve the desired objectives. It is also used to see the extent to which the suitability of what is being planned with the results that have been achieved, whether in accordance with the plan or even a gap due to divergences. Therefore, to achieve a proper result with what is planned, it is necessary to optimally control measures to prevent divergences. So that control can be implemented optimally, we need a transparent process. This applies to any management or management of an activity, including the enforcement of environmental permits. Controlling is a form of supervision that is accompanied by follow-up so it would appear the results achieved. Control by the good government that is transparent to the people, both central and local governments, so that the people can personally know clearly without any hidden about the process of public policy formulation and implementation, particularly in the management of mining. One of consequences caused by uncontrolled mining management in a transparent manner is the emergence of overlap for region Mining Business Permit. The overlapping of mining permit has become a problem that has not ended to this day. The problem was stronger when a law on local governance enacted refers to the principle of decentralization. The decentralization policy used in good by the local government from the district to the province, so the race to cash in on the potential of natural-owned, including the natural resources of mine. Various methods are used to attract investors. In the mining sector, the local government did not reluctant to issue Mining Business Permit to mining companies, regardless of further requirements that must be met in order to issue licenses in the mining field. Deservedly, all forms of policy, both the central and local governments should always be done openly and known by the public as an embodiment of the principle of transparency. To know the embodiment of the principles of transparency in the region, particularly through enforcement of environmental permits as a control on the issuance of Mining Business Permit in Morowali and Palu, used two indicators, namely public access and availability of information. Based on table 1, gives illustration how local government Morowali and Palu in embody the principle of transparency in the enforcement of environmental permits as an instrument of control in the issuing of Mining Business Permit or not.

**Table 1.** Response of respondent on public access to the enforcement of environmental permit

Response of Respondent	Categories of Respondent				Total	%
	Community	Mine Employee	Local Officer	Legislative		
Access	44	14	23	15	96	60,00
No access	46	6	1	5	58	36,25
Do not know	5	0	1	0	6	3,75
Total	95	20	25	20	160	100

**Source:** Primary data, 2015

Based on data from Table 1, it obtained ratings of respondent's response were 96 people (60%) who answered that there is access to know the controlling process of environmental impacts of mining and no access response is 58 people or 36.25%. While, do not know is 6 people (3.75%). Thus, the percentage of respondents who stated that there is public access to know the controls in the enforcement of environmental permits on mining in Morowali and Palu is already high at 60%, and if the sum of respondents saying there is no access to the respondents who state do not to know, then will be obtained a smaller number is 40%, so it can be categorized as transparent in terms of their access to the public in the process of issuing of Mining Business Permit in Morowali and Palu. Based on the response of respondents, it appears that the government is open to receive people who want to know the issuing process of Mining Business Permit, but the lack of socialization of the local governments about mining management plan that is based on the decisions of local governments in the form of Mining Business Permit still need to be proactive government, but on the basis of respondents' reason precisely proactive community. Therefore, transparency in the process of Mining Business Permit issuing in Morowali and Palu, based on indicators of public access has been fulfilled. If local governments are not transparent in the process of Mining Business Permit issuing, the emerged impact of local government' closeness, would have caused losses for the state/regions, especially in the form of environmental damage. Losses arising both directly impacting their communities such as flooding, or indirect such as infrastructure development is slow, because the budget for the construction is abused. In addition to indicators of public access, the availability of information is also an indicator of the accomplishment of the principles of transparency in the enforcement of environmental permits as an instrument of control. The information means is very important, because it is the medium used to disseminate any local government policy, is also used by people to find out their public policies by local governments, in particular the issuance of Mining Business Permit. The policies issued primarily will affect the environment and people's lives around the mining areas in the regions where Mining Business Permit is implemented. Thus, it can be classified that local governments Morowali and Palu are still closed in the management of mining so the impact on the ineffectiveness of the enforcement of environmental permits as well. The fact it will carry the image and prestige of the local government in the public eye be bad, dishonest, and undemocratic. Even more than that will have broad impact to the local environment itself. Because closeness of local

governments empowerment in managing the mining, then it will likely lead to the occurrence of deviates committed by not responsible person. Associated with the image and authority of local government and the principle of transparency, according to Bagir Manan empowerment of local governments can be done by changing the behavior and culture of local government apparatus centralized, feudalistic and authoritarian has developed during the old order and the new order towards the behavior of officials are open, serves, and democratic. Local government officials who have been more manifest themselves as rulers who served, should be changed to guardian who serve or as an instrument of service to the public. Empowerment of local government proposed by Bagir Manan, according to the author is very appropriate, because normatively the local government accordance with the authorities are required to be transparent in the management of mining, as stipulated in article 64 of Act No. 4 of 2009 on Mineral and Coal Mining stated "the government and the local government in accordance with its authority is obliged to announce the planned mining activities.

### 3.3 The Participation Principle in Environmental Permit as a Form of Supervising

Supervision is the final part of a series of management functions process, it means to all management functions to be performed supervision. Supervision activities are closely related to the planning of work in an organization or institution, including the local government. Therefore, the supervision to be one of the critical success factors in the running of local government, particularly in relation to the enforcement of environmental permits in mining. To support the implementation of the enforcement of environmental permits as an instrument of supervision over the issuing process of Mining Business Permit, the local government should involve the community as a form of active participation. According to law sociologist Satjipto Rahardjo, as cited in Irwansyah that legal empowerment in order to be effective, it is also influenced by the role of the community or the public, as well as the following explanations: first, be aware the ability of law is limited. Entrust everything to the law is unrealistic and wrong. Therefore, need the assistance, support, additional public power; and second, actually the public to keep the autonomous power to protect and organize themselves. The power was temporarily drowned under the domination of modern law which is actually a state law. Therefore, the necessary mobilization of autonomous power that existed in society. Participation provided can in the forms of ideas, funds, manpower and other forms of development that benefit the nation. Participation of citizens do not only at the implementation stage, but the overall from the stages of planning and policy formulation, implementation, evaluation and utilization of results, community involvement is needed. The level of public participation is one aspect that can support the implementation of national development in accordance with the principles of good governance, because the community is one of the pillars that support the establishment of good governance. To determine whether local government officials in Morowali and Palu has embodied the principle of participation in the enforcement of environmental permits as an instrument of supervision over the issuing process of Mining Business Permit or not. It can be seen by using the indicator of community participation level are responded by respondents in table 2.

**Table 2.** Response of respondent on public participation level in the enforcement of environmental permit

Response of Respondent	Categories of Respondent				Total	%
	Community	Mine Employee	Local Officer	Legislative		
<b>Participation</b>	18	6	14	10	48	30,00
<b>No participation</b>	74	13	7	7	101	63,12
<b>Do not know</b>	3	1	4	3	11	6,88
Total	95	20	25	20	160	100

**Source:** Primary data, 2015

Based on the data of the response of respondents in the table, it can be seen response ratings of respondents as many 101 people (63.12%) said that in the issuing process of Mining Business Permit not involve the community, the embodiment of the principle of participation in building a mining management is not optimal, and respondents who answered that the public has participated is 48 people or 30%. The respondents who answered that it did not know about the public participation in the issuing process of Mining Business Permit are 11 people or 6.88%. The high percentage of respondents who answered that the people do not participate, in the issuing process of Mining Business Permit, it can be said that local government officials in Morowali and Palu is not optimal embodies the principle of participation in the enforcement of environmental permits as an instrument of supervision over the issuing process of Mining Business Permit in mining sector. Low embodiment of the principle of participation in the issuing process of Mining Business Permit is caused by a lack of information and dissemination of local governments and the lack of public disbelief of the management of mining by local governments. This is because local governments still think that the decision regarding the Mining Business Permit is full right and authority to local governments. Thus, there is chaos thinking of local governments, they feel they have natural resources that exist in the region, especially minerals, so there is opposition from residents in the area. Local governments certainly thought so local governments are feudal, authoritarian and far from democratic principles. In addition to indicators of community participation level, public trust is also an indicator of the accomplishment of the principle of participation in this research. The level of public confidence in seeing their environmental requirements that must be implemented by the local government is very important, because with high public trust towards each local government policy, it will create a harmonious synergy in the management set as public policy by local governments. Shifting to the research findings above, the local government is supposed to change the behavior and culture of centralized government, feudalistic and authoritarian. Local government officials who have been more manifest themselves as rulers served, must transform themselves into forces that serve and aspirations of the people, either directly or through their representatives in Parliament. Empowerment of local governments is very appropriate, as normatively, the local government accordance with its authorities is also required to open and involve the public in development. Thus, people will trust the government policy. Not just follow, but the public will have the ability to understand

the rationale and conduct of government. Therefore, the local government must announce any plans of mining business activities to the public openly, because the participation of community in the management of mining in the area, which began their plans until the implementation of the mining business, including the responsibilities of mining companies post-mine, it will have positive influence on environment conservation and community life in the area.

### 3.4 Reactualization of the Principle of Accountability on Environmental Permit

Accountability refers to the institution of checks and balances, or also referred to as the administrative system that organizes an assessment of the resources or authority that has been used. Public bureaucracy can be said to be accountable when they have been assessed objectively or have to account for all forms of action to the party giving the hold power and authority it originated (the people). Therefore, it is the people who have ultimate sovereignty in the state. Therefore, the obligation of a person or an organizational unit periodically to account for the management and control of resources and implementation of policies entrusted to it. To see the embodiment of the principle of account-ability related to the environmental permits as an instrument for controlling the management of mining in the area, will be used two indicators in this study, the accuracy of budget use and evaluation of budget use. In the context of the research object to the management of mining in Central Sulawesi province, the findings of research indicate that the response ratings of respondents as many 55 people (34.38%) answered did not know or gave no response, 13 of 55 people who did not know is a sample of self-local government officials and 74 (46.24%) who said that the use of budget is not appropriate in the context of enforcement of environmental permits through the issuing process of Mining Business Permit in Morowali and Palu. While respondents answered that the use of budget is appropriate only 31 people or 19.38%. The high percentage of respondents' response who answered that it did not know about the use of budget in every issuing process of Mining Business Permit in the enforcement of environmental permits. It shows also the influence of the principles of transparency and the principle of participation of the community to be able to know its accountable the use of budget, in order to the enforcement of environment permit through the issuing process of Mining Business Permit in Morowali and Palu. In addition, some respondents stated that the inappropriate use of budget, so that both respondent answered inappropriate and do not know if summed it will reach 129 people or 80.62%. Based on respondents' responses it appears that the use of budget for the issuing process of Mining Business Permit in the enforcement of environmental permits in the mining sector cannot be classified as use of the budget is right on target. Inappropriateness the uses of budget caused by arrogance and authoritarian as well as a lack of government oversight (leaders) and those in the secretariat. The impact caused by their arrogance and authoritarian as well as the lack of attention that is not open to staff and community leaders, so the issuing of Mining Business Permit did not make an environmental permit as a precondition that must be met. Enforcement of environmental permits may not run properly if there is no synergy between the interests of economic, protection and preservation of environmental functions, which are formulated in the form of a Mining Business Permit. Mining

Business Permit is the reference used in conducting business/mining activities, so as to obtain a profit-oriented economic interests and ecosystems, meaning that the advantages in terms of economy can support ecosystem management, ecosystem management and vice versa which would increase the economic value of the area.

## 4 CONCLUSION

The nature of environmental permit in supporting embodiment of the principles of transparency, participation and accountability in the management of mining in the area aims to provide a balance between the interests of economic and environmental protection to meet the needs of the present and future generations. To achieve good management of mining in the area, of course, requires a form of management that meets the embodiment of the principles of transparency, participation and accountability. Based on the embodiment of these principles in the enforcement of environmental permit through the control, regulation, supervision and follow-up on the management of mining in Central Sulawesi, classified in the low category, so it does not yet reflect the realization of good governance principles in the enforcement of environmental permits in mining. In order to realize the principles of transparency, participation and accountability in the enforcement of environmental permits in the mining sector, it is expected to local governments, in order to have a real firmness and commitment in the process of enforcement of environmental permits. For the issuing of effective Mining Business Permit is supporting local governments' performance in the implementation of the fundamental rights of citizens that have been guaranteed by the Constitution.

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