

Legal Policy Of People's Rights In Around Mining Corporate Post-Mining Activities

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Abstract: This study aims to gain an understanding of the essence of the rights of communities around post-mining, corporate responsibility towards the fulfillment of the rights of communities around post-mining, as well as government policies to protect the sustainability of the post-mining communities around the mining business. This type of research is a normative legal research methods using primary legal materials, secondary and tertiary. With the approach of sociolegal through down the field in Gebe to get data concrete. Data were analyzed with qualitative analysis. The results showed that the essence of the rights of communities around mining operations after the mine in the form of the right to a decent life (welfare), the right to social security in the form of employment, the guarantee of free education and healthcare for the local population as well as the right to a good environment and healthy as a guarantee of the continuity of human existence and future generations. These rights have not been fully realized post-mining. Corporate responsibility in accordance with Article 74 of Law No. 40 of 2007 on the fulfillment of the rights of communities around mining operations after the mine in the form of welfare responsibilities (clothing, food and shelter, especially electricity and water) have not been met, then the social responsibility to empower communities around the mine as stakeholders, as well as environmental responsibility. Legal policy such as the empowerment of communities around the mine in order to be self-sufficient after the post-mining, public service policies in education and health as a form of existence of government using existing programs nationally and subordinate to the PT. Antam. as well as environmental protection policies in the form of post-mining reclamation formulated in the company's liabilities.

Index Terms: Peoples' Rights, Post-Mining, Mine Closure, Legal Policy, Responsibility

1 INTRODUCTION

Main purpose of the existence of the Republic of Indonesia is to improve the people welfare. To improve the people welfare, then all the existing resources in Indonesia should be pursued and exploited optimally. In the provision of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia 1945 stipulated that "soil, water and natural resources contained in it are controlled by the state and utilized for the welfare of the people". The substance of this provision are (a) soil and water and natural resources contained in it, including objects that are in the soil and water controlled by the state; (b) the purpose of the states' control for the soil, water and natural resources contained in it is for the welfare of the people. Both of aspect as mentioned above cannot be separated from one another, both of which are a systematic unity. Right to state's control is an instrument, while utilized for the welfare of the people is an objective.

Given the mineral and coal is one of the natural resources are controlled and utilized for the welfare of the people, then the government issues Act No. 4 of 2009 on Mineral and Coal Mining. The meaning of states' control that state has the freedom or full authority (volldige bevoegdheid) to determine the necessary discretion to regulate (regelen), to administer (besturen) and to supervise (toezichhouden). The substance of states' control is authorities that includes the determination of policy on allocation setting, use and supervision and ensure mineral utilization to the overall prosperity of the people. However, the implementation of control, management and utilization of mineral and coal resources are the right of people, especially in around mining area over mining that must be met. According to Allen that the right is "the legally guaranteed power to realize an interest," the guarantee of legal power to realize the interest. If it is based on the mandate of the Constitution, the guarantees of the peoples' right protection is prevail to all field of society, nation and state. One of them is the right of people, especially in around mining area on mining in its territory, the rights attached to each stage of the mining both during the process of mining and post-mining. It is showed through experience that the excavated material in a mining area will sooner or later run out and eventually mining company should be shut down and leave the damage is not limited to the physical environment, but also the environment of economic, social-culture that often cannot be seen immediately as the physical environment. Basically, every mining was originally a non-local community interests and bring values that are also non-local. Therefore, if it is not followed certain remedial actions, mining is exploitative nature will result in the destruction or degradation of social ecosystem in the territory concerned. Mistakes in its recovery can lead to mining areas that have been drained and left abandoned. A factual case study is ex-tin mining in Bangka Belitung, once exploited for more than 90 years, and then abandoned because tin material has been eliminated and not prospective again. Today, we just watched chunks and big holes that do not promise anything more, except poverty that is ready to hit the people who do not have a future. In other cases, for more than 30 years, PT. Antam conduct mining in Gebe subdistrict, PT. Antam has not been able to operate the

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Commodity Development/Corporate Social Responsibility (CSR), which has been described in Act No. 40 of 2007 which substantially regulate the corporate social responsibility for the welfare of the people in around mining area, so that through *Himpunan Pelajar dan Maha-siswa Pulau Gebe (HPMPG)* and *Gebe Islands' communities* do huge demonstrations on 22-27 February 2010 to ask for transparency of budget Corporate Social Responsibility (CSR) is considered less in favor of the community in around mining area. The emergence of social conflicts in various parts of the mining industry, providing a new awareness especially to the government and the mining industry to create harmonization of relations between communities and mining companies through a concept of Corporate Social Responsibility (CSR) with the programs of Community Development (Comdev). In Act No.40 of 2007 on Limited Company, providing limits of CSR as defined in Article 74 states:

- (1) The company is conducting its business activities in the field and/or related to the natural resources required to implement the Social and Environmental Responsibility.
- (2) Social and Environmental Responsibility as referred to in paragraph (1) as an obligation of the company budgeted and accounted for as company's expense which are carried out with due regard to decency and fairness.

In outline, Act No. 4 of 2009 on Mineral and Coal Mining set two points related to the restoration of environment, which is reclamation and post-mining. In Article 96 letter c, Article 99, Article 100 and Article 101 are determined on the provision of guarantee funds for reclamation and post-mining with emphasis only on the restoration of the environment. The continuation of the socio-economic specifically addressed in a separate article, ie Article 145, but merely a right to redress if things go wrong in mining activities and the right to sue the mining activities which violate the provisions. In practice that occur, usually the rights of people as a whole can only be met during the mining process so companies do not get the loss, both disruption of the communities or the sanction of the government, but the rights of post-mining community is usually a problem that continues to happen. As described above, then there is a gap between what should be done in relation with the responsibility for the fulfillment of peoples' welfare and the recovery of environment in the post-mining, with the implementation of responsibility of environment recovery from mining exploration until post-mining that oriented to the recovery of sustainability environment, social and economic for the community in general, especially the community in around mining. Thus, the key issue of research that there is a tendency of mining that less attention to the essence of peoples' rights post-mining, the tendency of corporate responsibility that less on the peoples' rights post-mining and the tendency of roles that less carried out by the government in the form of a policy on the fulfillment of the peoples' rights post-mining to support the achievement of good and healthy environmental recovery, both physical, social, and economy recoveries in a sustainable manner.

2 METHOD OF RESEARCH

2.1 Type of Research

This research is a normative- or dogmatic law research. As a normative law research, the approach used to address research issues through statutory approach, conceptual

approach, case approach by using deductive reasoning and/or inductive in order to get or find the objective validity. Normative law research is used focused on law inter-pretation and construction to get norms of law, concepts of law, and in inventory the rule of law.

2.2 Location of Research

This research was conducted in North Maluku Province of Central Halmahera districts Gebe sub-district as sample location with the consideration that the area as mining activities that have been performed or post-mining. Considerations for setting this location is assumed that in this location there are mining exploitation which its essence there are peoples' rights in around mining, the responsibility of mining companies as well as the existence of the state through policies on mine both since exploitation and post-exploitation of mine.

2.3 Data Analysis

Both primary and secondary data were compiled and analyzed qualitatively by interpret, explain, and develop systematically in accordance with the objective of research.

3 ANALYSIS AND DISCUSSION

3.1 The Essence of Peoples' Rights in Around Mining Corporate Post-Mining

a. Right to the Life Eligible (Welfare)

The right to the life eligible is a first and primary right for the people in around the mining corporate that must be met by the mining companies and the government as a consequence of the use of land, sea and air for generations occupied, possessed and utilized by communities to sustain their lives. But for the sake of people prosper, the government gave permission to the mining company for business and certainly have a direct impact to the community over the exploited area. It is certainly affect the life cycle of the local community to survive. Therefore, the peoples' right to the life eligible is being the main focus to all stakeholders. Moreover, these rights have been guaranteed by the Constitution of the Republic of Indonesia 1945 as the constitutional rights of citizens that must be realized. Decent life for all citizens or the social welfare especially those around mining area as the permission given by the government is the essence of nation and state. So that, the united nations has long set the social welfare issues. The UN provides limits of social welfare as organized activities aimed to help individuals or communities to meet their basic needs and improve well-being in harmony with the interests of the family and society. The involvement of the state for the welfare of its citizen is known as the Welfare State. In Black's Law Dictionary explains that "Welfare state is a nation in which the government undertakes various social insurance programs, such as unemployment compensation, old-age pensions, family allowances, food stamps, and aid to the blind or deaf." In outline, the welfare state refers to an ideal model of development that is focused on improving the well-being through the provision of a more important role to the State in providing social services universally and comprehensive to its citizens. Therefore, economic sector of mining activities as an excellent sector in some areas because it is due to faster increase the budget (Revenue Income and Expenditure Budgets) and PAD (Regional Income). On this

basis, a number of local governments, particularly local governments of Central Halmahera campaign the existing mineral potential, to attract a number of businessmen / corporate to invest. Based on the data obtained the number of mining business permit in Central Halmahera is 34 based on data obtained from the Ministry of Energy and Mineral Resources, total permit in North Maluku is 228 permit (2010). Gebe Island is very important role in the improvement and economic welfare of society. Where a number of support infrastructures for economic improvement were made and held largely by coal mining companies, in this case PT. Antam. Like the market, access to transportation (road), airports, seaports, not only that PT. Antam brings a lot of employees that have an impact on the velocity of faster exchange (money). It can be seen from the witness of villagers, when the mining activity is still running are acted by PT. Antam, the crowd met during a visit to the market it happens during the morning until afternoon, even the night. Crowds of people in the market are almost dominated by the employees of the mine or immigrants who came in Gebe island to just make a living, mostly ethnic arriving from Sulawesi and Java. As revealed by Idris Zakaria, as the Head of Kacepi village:

“Clearly the economic changes are felt on Gebe Island, different when there are still many people as there are activities of mining companies, I am sure people on Gebe Island has money in enough. But, population is reduced post-mining and economy in Gebe Island began to weaken. For example, in the market, when there is a company, there are many people, many people make us jostling when walk but now the market is already a few people who sell and very quiet.”

Agricultural and fisheries productivity are smoothly managed by local communities, particularly on productivity and marketing, the result of agriculture and fisheries sold easily, so that farmers and fishermen are optimistic manage the sector. The advantage gained by the community can reach millions of rupiah per month. However, after post-mining and accompanied by a reduced number of population, monthly income of farmers and fishermen began to decline even far from decent living income. Thus, PT. Antam in Gebe Island post-mining is only leave economic uncertainty, previously Kacepo market is dense and now it is quiet, vegetables and fish sellers are now beginning to decline, the market space is occupied only half of the market space. Several shop houses used as sales of home appliances and office begin to leave by owner, even some shopkeepers complain about the purchasing power of people in Gebe began to decline. Conditions that occur as a consequence of global trends and strengthening the ideology of neo-liberalism today is the emergence of a critique of the welfare state system which is deemed no longer appropriate as the approach applied in the development of a country. State welfare system is undergoing reformulation and adjustment in line with the changing demands, but it is a blunder to assume that the welfare state has met the end of its history. Therefore, the presence of PT. Antam so expected the existence back to Gebe Island by community, because its presence is to support the course of economy. PT Antam post-mining has impact on economic sectors, which it is expected to support community welfare. Even to meet the needs of society, not least the remaining goods were looted by local community, such cable and a

number of iron and steel. To ensure the continuity of money flow in Gebe Island, in addition to post-mining program of PT Antam, through economic empowerment. Some assets of the former PT. Antam (scrap iron) are then sold and the result of selling given to villages, one village gets 30 - 50 million/village.

b. Right for Social Security

Social security is a form of social protection systems. Rys stated social security is typically understood as an intervention integrated by various parties to protect individuals, families, or communities from the risks of everyday life that may occur, or to overcome the impact of economic shocks, or to provide support for vulnerable groups in society. Social security systems that are formal can be grouped in several forms: (i) social assistance, (ii) provident fund, (iii) social assurance, (iv) employer's liability. Each country usually use one or more of these forms of social security. Spicker and MHLW give boundaries and explanation of social security that, the term “social security” is mainly now related to financial assistance but the general sense of term is much wider and it is still used in many countries to refer to provisions for health care as well as income. Social security systems provide countermeasures against the causes for needy circumstances including illness, injury, childbirth, disablement, death old age, unemployment and having a lot of children by implementing economic security measures through insurance or by direct public spending.” In the context of this study, the presence of PT. Aneka Tambang as implementer of nickel mining in Gebe Island, certainly bring changes to peoples' lives in Gebe Island. Post-signing of contract between the Government of Indonesia and PT. Antara, Tbk (Persero) in 1979, for example, PT. Antam began to establish adequate infrastructure of public services such as road transport, airports, electricity, education, health, clean water and economic development for Gebes' community and build a variety of other public facilities to serve the interests of thousands of its workforce (which can also be used by Gebes' community). Various developments undertaken by PT. Antam, is very useful and profitable Gebe Island community. For people living in the outer islands of Halmahera Islands cluster or as people who live in areas that are farthest from the center of the district, Gebes' community still enjoy various infrastructure facilities that are needed by Gebes' community. It is a concrete form of social security as the rights of communities in around the mine. Unfortunately, the poor condition of education which is seen began to change when PT. Antam began to pay great attention to this sector. The company's concern for the development of the education sector is shown in several. Ranging from the improvement of school buildings to scholarships and teacher welfare fund. All of schools building from elementary school (SD), and junior high school (SMP) are modified to better meet the standard procedure for teaching and learning in the classroom. Similarly, the supporting infrastructure such as tables, benches and blackboard, which have been unsuitable everything changed, even its number added. In addition to paying attention to the education sector, the health sector is one sector that gets serious attention of PT Aneka Tambang. Before the presence of PT. Antam in Gebe, Gebe Islands' community experience difficulties in accessing health services, for example, there is only one midwife serving the whole community when Gebe is still a village. (Midwife of this village is the only medical personnel who provide health care to Gebes' community) Ironically, worse condition can be seen in

the results of an interview with Mr. Kade Hanafi. According to him that health services in Gebe is very bad, before the presence of PT. Antam, in Gebe. For example, related to health facilities and health personnel, which presented it as health care is often known as mantri. Mantri is health professionals prepared by the government to serve the public health in Gebe. Based on the interview with Mr. Kade Hanafi (one community leader at the time), Mantri have task to providing health services in Gebe, usually come in 2 (two) or 3 (three) months to provide health care. The condition of health care is so poor in Gebe Island, then change when PT. Antam is present as a mining company that manages mine in Gebe Island. When PT. Antam is present in Gebe, PT. Antam provides a company clinic that is open 24 hours to serve the needs of the company and the local community. Health services are provided free of charge and directly handled by a company-owned doctor that is always ready to serve the public for 24 hours. With the presence of health clinics owned by PT. Antam, the need for public health services in Gebe certainly begin to be overcome. Moreover, the conditions of Gebe Island are very less medical personnel; the presence of the company clinic has really assisted the local community to get health care. On the other hand, with the expiration of contract, the development of education in Gebe decline. Since the expiration of contract of PT. Antam, attention to education in Gebe decline. If former, PT. Antam provides a variety of assistance in the form of scholarships for students who performing and incapable. So, when PT. Antam leaves Gebe is no more scholarships or free school for the poor. This indicates that there has been injustice in Gebes' community post-mining, that its territory both land and sea has been damaged, its natural resources have been exploited yet become a threat to the next generation of Gebe do not receive social security, especially education and health. Therefore, at this point we can see clearly the impact of state injustice of the state in Gebe peoples' lives. Lack of involvement of countries both in the first period, the second and third have an impact on peoples' lives in real terms. Both in terms of economy, education and health, the absence of state in providing public services have a direct impact to Gebe peoples' lives.

c. Right for Good and Healthy Environment

Everyone has the right to live physical and spiritual prosperity, reside, and get a good and healthy environment and receive medical care. The right of communities to get good and healthy environmental as a human right is a necessity for the people that are around the mining corporate, it is more important than the right to a good and healthy environment are the property of future generations. Therefore, the right to a sustainable environment has become a particular concern for any given mining permit. The right to a good and healthy environment as one of the rights guaranteed by the Constitution also defined in the Act on the Environmental Protection and Management and the Act on Mineral and Coal Mining. As in the preamble Act on Environmental Protection and Management, considering: (a) that the good and healthy environment is a fundamental right of every citizen of Indonesia as stipulated in Article 28H of the Constitution of the Republic of Indonesia 1945; (b) that the national economic development, as mandated by the 1945 Constitution of the Republic of Indonesia is organized by the principles of sustainable development and environmentally friendly. Everyone is entitled to a good and healthy environment as part

of human rights, especially those of the community around the mining corporate. More significant the current environmental especially for future generations, so any use of natural resources needs to be attention to the environment. So that, the environmental protection and management is always paired with sustainable development. Post-mining conditions of PT. Antam in Gebe Island leaving a number of fundamental problems of community needs, including the need for energy/electricity and clean water. Earlier when PT. Antam still active, these basic needs are met optimally in the local community, but after post-mining began having problems because of the destruction caused by the supporters of the engine power and water supplies to the people who are no longer considered by the company. It should be recognized that the concept of sustainability is a concept that is simple yet complex, so the meaning of continuity is very multidimensional and multi-interpretation. In addition, the environmental conditions on Gebe Island is concerned especially E'bule bay, on air views are visible only waterside red sea and some hills denuded due to the destructive exploitation of the hilly landscape. E'bule bay is the location of mining activity. PT. Antam, after post-mining at E'bule bay followed by PT. Bhakti Fajar Lintas Nusantara, which according to some sources is planning to build a smelter (nickel processing plant into ferronickel). From existing sources, E'bule bay originally is an old settlement in Gebe Island, because it is set as the mining site of PT. Antam, an old settlement was then moved to the southern island of Gebe is now referred to as Kacepo village. Environmental damage caused by the exploitation of mineral resources on Gebe Island is not pay attention to the value of sustainability, so that prosperity only momentarily and there is still exploitation activities, while post-mining occur panic and helplessness caused by the absence of the sustainable development concept. Talking about sustainable development, is talking about "development today for tomorrow". Development is done at this time is not expected to negatively impact or losses in the field of socio-economic society, moreover, a negative impact on the environment. Conversely, with sustainable development can contribute useful or positive impact for future generations.

3.2 Government Policies to Protect Peoples Life Sustainability in Around Mining Corporate Post-Mining

a. Community Empowerment Policy

Community empowerment in accordance with Article 1 paragraph 28 of Act No. 4 of 2009 on Mineral and Coal provides definitions of community empowerment is an attempt to improve the ability of people, both individually and collectively, in order to become a better level of life. Community empowerment is an economic development concept that includes the social values. This concept reflects the new paradigm of development, ie, that is people-centered, participatory, and sustainable. This concept is broader than merely basic needs or provides a mechanism to prevent further poverty processes. This idea was born with the ultimate aim is societies' independence, enable and develop the ability to advance themselves toward a better life in balance. At the time PT. Antam still exploited in Gebe Island, economic income of communities in Gebe subdistrict ranges from 1.5 to 2 million per month, post-mining PT. Antam, local community economic income is also decreased dramatically. At least six

villages in Gebe Island, economic conditions began to be threatened, post-mining PT. Antam. The six villages in question are Yuimial, Umere, Sanaf Paceko, Sanafi, Kaceti and Tapaleo. The majority of people of six villages, dependent as a field worker in PT. Antam Company for approximately 15 years. Mardian, Umere villagers claimed that community economic income last year after being leaved PT. Antam has declined by 50 percent. A month average population of Gebe Island is only able to obtain a range of income eight hundred until one million, while there is still PT. Antam incomes of population can reach 1,5–2 million per month. The government should pay more attention to the general interest generally as farmer than emphasize on business people who generally prosperous. Indeed, more profitable for government officers when policies are made profitable businesspeople. However, such a policy is in addition to not populist is also contrary to empowering state, where the government is expected to focus on elevating the welfare of society. Therefore, the government in the concept of empowering state must constantly attempt to (1) access to information, (2) access to capital (3) access to market, (4) access to training, and other access to farmers as well as small and medium enterprises so that they can survive and enjoy better welfare. In this case the state has authority over mined materials, and mined material are controlled by the state is only used for the welfare of people. The state power in the context of right to control the country was in a political context. Here, the country utilizing mined materials through exploitation of mined minerals to the private sector is regulated through legal instruments. Utilized for the welfare of the people is one of the basic rights of the people related to economic interests as citizens. This means that in the context of exploitation of minerals, the right to control as state power is concluded in the political aspect, the legitimacy of minerals exploitation is based on the rules and the welfare of the people as economic aspect that leads to the ideals of social and economic justice. Relevance of three aspects ie politics, legal and economics by Bagir Manan is a concept of a modern constitutional state that contains three main aspects, the political aspect, as restrictions of state power; the legal aspect, as the rule of law, the principle of legality and the rule of law, while socio-economic aspects as social justice and public justice.

Table 1. Government policy on community empowerment In Gebe Island

Project Brief Community Empowerment Program in Gebe Island	
Program	Community Economic Empowerment Program in Gebe Sub-district.
Period	Cooperation Agreement 1, 36 months (30 September 2011 - 29 September 2014) Amendment 1, extension until 29 June 2015 Plan Amendment 2, extension until 31 December 2015
Partner of Organizer	Local Government of Central Halmahera, LPPM Khairun University and LPPM IPB.
Site of activity	All villages in Gebe sub-district, eight villages is Kapaleo, Sanafi Mamin, Sanaf Kacepo, Kacepi, Umera, Umiyal, Yam and Elfanun.
Type of activity	Include fishery, agriculture, plantation and institutional
Fund of Program	Total allocation of empowerment program for 36 month provided a maximum of Rp.27.012.900.000 billion. In the Cooperation Agreement being agreed, cost allocation plus budget for the procurement of electric network non-power a maximum of Rp. 6.653.350.000 billion. So that the total cost of Cooperation Agreement between the four parties a

	maximum of Rp. 33.666.250.000 billion.
Approach	Studies and surveys, capacity building in the field of technical skill and motivation, provision of facilities and infrastructure, working capital, strengthening local institutions and cooperatives as well as assistance (there are 9 companion, and 8 local companion).
Target of Activity	Groups of people who have been divided into groups based on their areas, namely: 6 groups of fields of aquaculture, 40 groups of field of fisheries, 6 groups of field of agricultural, 21 groups of field of livestock, and 6 groups of field of fish processing and 8 groups of field of agricultural and plantation.

Source: Primary data, 2015

Table 2. Forms of activities undertaken in partnership with the local authorities in Gebe Island

Fisheries	Agricultural & Plantation	Livestock	Food Processing	Institutional
Capture fisheries	Food agricultural	Stock of beef	Fish-based processing product	Basic food cooperation
Aquaculture	Plantation of nutmeg, patchouli, coconut	Supplying of cage	Banana-based processing product	Partnership cooperation of product marketing
Seagrass, lobster, grouper	Patchouli distillation development	Procurement of HMT, health appliance and medicines	Sago-based processing product	Division of fisheries

Source: Primary data, 2015

Related to the concept of community empowerment by implementer of mining activities, as an effort and processes in order to encourage social equality, people independence and welfare, so it can close to the ideals or ideas of socio-economic justice. In the Act of Mineral and Coal Mining, there are obligations for companies that must apply the concept of post-mining to the permit giver as their authorities, so that the program of development and community empowerment are integral to the concept of post-mining. Development and empowerment program should be forward, within the framework of preparing the public in around mining corporate into an independent community to develop toward independence. The concept of Corporate Social Responsibility (CSR) is often identified with the method of Community Development are lately widely adopted by the Company with the term Comdev. Seen from the motivation and CSR paradigm above, then Comdev Approach is one form of CSR is more driven by the motivation of citizenship, although on some other aspects are still characterized by philanthropic motivation. As an illustration, Comdev coming from the utilization of development characterized by proactive measures some parties and their ability to manage the program to respond to the needs of community. When reviewed exactly, the main purpose of Comdev approach is not just to help or to give the goods to the recipient. But trying to keep the recipient has the capability or capacity to be able to help their selves. The main spirit of Comdev is Community Empowerment. So, through training programs, provision of venture capital, expansion of access to social services, and increased self-reliance, empowerment process is directed to the vulnerable groups that has capability or empowerment.

b. Public Services Policy

The enactment of Act No. 32 of 2004 on Regional Government, authorizes the management of natural resources, especially mining to each area. As well as the authority for the management of mining from the central level to the district/city has been regulated in Act No. 4 of 2009 on Mineral and Coal Mining. With two of these regulations should further strengthen the position of local government in this case the district/city level for the welfare of people. Unfortunately, district/city government has not maximized the force of law in serving the community. The presence of mining companies in a region will bring progress towards the surrounding community. Standing or operation of a mine in an area will bring a more prosperous life, guaranteed security, and a better social life. Thus, based on the opinion that mining company as agent of social and economic changes for communities around the mine. The assumption is that the mining company will bring the flow of investment, disclose the isolation of citizens, and open public access to the outside world. With the presence of mining company, will build the necessary public infrastructure, such as roads, electricity, clean water, transportation, and communication networks. For 25 years (1979 - 2004) PT. Aneka Tambang provide various forms of public service for free and build a variety of public service infrastructure (road transport, electricity, education, health and water) required by Gebes' community. In addition, the state is obliged to serve all citizens and residents to meet their basic needs rights and within the framework of public service which is mandated by the Constitution of the Republic of Indonesia 1945. As a supreme institution, a state (in this case the central and local governments) have the right to manage the entire life of community or its citizens. But behind the right are so large, the state also has a responsibility to give the various forms of public service and meet all the needs of their community or country. The responsibility for providing public services may include the development and provision of education, health, transport, water and electricity that is needed by the community. Look at the role and function of state is so large, it becomes interesting if see (and compare) the role and functions of state in providing public servants in Gebe Island. Especially when compared Gebe Island condition since the presence of PT. Antam as the company that manages nickel mining in Gebe Island. When the first PT. Antam is present in Gebe Island in 1979, Gebe Island classified as a very underdeveloped area. Located in the outermost regions of province and district centers, Gebe classified as uncharted territory and away from the attention of state and government (central and local). This condition is an instant change when PT. Antam is present to manage the wealth of nickel the earth of Gebe. Since the presence of PT. Antam, infrastructure is built, all the needs of people are met and the various forms of public service required are provided by PT. Antam. As described before, since the presence of PT. Antam in Gebe various transportation is build, health care and education are given maximally, and also clean water and electricity are free. This dependence can be seen clearly when PT. Antam began to leave Gebe in 2004. With no operation of PT. Antam on Gebe Island, people life has experienced turning point, they do not seem ready to post-mining conditions. Society was formerly treated with a variety of service and attention that are so big and are free are required to have to change the pattern of their life to become more independent in so quickly. No more public services for free. To enjoy the needs of education,

health, electricity and water, the community must pay their own costs. But the government's policy post-mining does not pay attention to public services, especially education guarantee. Along with the expiration of contract, the development of education in Gebe Island is decline. Since the expiration of contract of PT. Antam, attention to the education in Gebe Island is decline. The former, PT. Antam provide a variety of assistance in the form of scholarships for students who performing and inability. So, when PT. Antam leaving Gebe Island is no more scholarships or free school for the poor. Should post-mining without PT. Antam. Communities get free health services by the national health insurance system for poor people. Similarly, the presence of Health Indonesian Card should be able to minimize the poor quality of health. Development of health services developed so rapidly during the presence of PT. Antam in Gebe Island, contradictory when compared to the period after the expiration of contract. This shows that the community depends on PT. Antam.

c. Environmental Conservation Policy

The condition of environment was so bad after PT. Aneka Tambang would directly affect Gebes' people lives. In 2004, PT. Aneka Tambang had to leave Gebe Island, along with the community of Gebe Island entered into a new life dynamics. Therefore, the economic approach is a variation of the environmental regulatory instruments. The principle of economic approach in the regulation of environment is giving incentive-disincentive, which provides benefits for the reduction of pollution and sanction over pollution. This approach appears, according to Otto Soemarwoto as a result of failure of command and control approach that tends to result in high costs. For businesses in general, comply with the legislation is not simply because they love the environment, but because they want to benefit, e.g tax reductions or subsidies. Thus, the adherence of motivation to legislation is decided based on cost-benefit analysis. Economic Analysis of Law, developed by Richard A. Posner stated that the basis of Economic Analysis of Law is the notion of efficiency in resource allocation. This approach adopts the Coase theorem which assumes that the transaction does not require a fee and that there is a perfect market competition where individuals acting on their own interest. According to Ronald H. Coase this theory is very helpful to solve the problems of negative external effects of party's activities on the satisfaction of other party. Furthermore, the economy is the science of rational use of scarce resources. An analysis of the use of resources is a very important step today and in the future. Basis of Economic Analysis of Law is the notion of efficiency in resource allocation. Posner seeks to use economic theory to reconstruct a market transaction in a situation where the exchange occurs involuntarily. This theory has positive and normative elements. Although Posner asserts that his work emphasizes the positive analysis, normative elements also exist as a theory of how the law should be. Posner embraced normative directive that the law should promote efficiency. Normative aspects of Economic Analysis of Law found that social wealth maximization is a useful target. The government should create a system to protect these rights.

4 CONCLUSION

The essence of the peoples' rights in around mining corporate post-mining in the form of the right to a decent life (welfare) as a consequence of a given mining permit in realizing the

welfare state, the rights to social security in the form of employment, the guarantee of free education and healthcare for people in around the mining corporate, as well as the right to a good and healthy environment as a guarantee of the continuity of human existence and future generations on sustainable development. The third of these rights have not been fully realized post-mining. It is expected that the fulfillment of the peoples' rights of post-mining are prioritized the rights of decent life, the right to social security and the right to a good and healthy environment as a measure of success of any post-mining program. In relation with corporate responsibility related to the welfare of communities in around the mine, the authors build a concept in terms of sustainable welfare.

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