

LEGAL PROTECTION FOR THE COMMUNITY VICTIMS OF ENVIRONMENTAL DAMAGE FROM ILLEGAL MINERS C MINERALS IN WIDODAREN AND KENDAL SIDOREJO THE NGAWI REGENCY

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ABSTRACT

This Study aims to determine "the mining excavation C in accordance with the principles of local wisdom stipulated in law No. 32 of 2009 on the environment and to determine the legal protection for the community against victims of environmental damage from illegal mining in Ngawi. The research method used in writing this thesis is empirical legal research. This study is descriptive analysis. The data types are primary data and secondary data. Observational notitia collectio modos; Conloquia et documentum review. The results of this study indicate that mining in Widodaren and Kendal Sidorejo districts is in accordance with the..Principles of local wisdom set forth in law no. 32 Of 2009 article. 2 paragraph 1 on the environment. The miners have complied with all the values / rules published by the local government and carried out licensing before mining. They always explain that in carrying out their mining activities in accordance with the procedures so that it will not cause environmental damage. Miners always keep environmental damage alive. Mutual cooperation is national cultural value also known as Ngawi people. The Environmental Agency seeks to take precautions by making a direct and written appeal to the sand miners to take care of the people's mining business license to the authorities and not to mine illegally. Una forma preventative, legis praesidium quod est quia regimen concedere, qui communitatem circa mea dispensatione iura, ita ut communitas et mining redemptores potest operari simul et pede se. The illegal mining Of Galian C in Widodaren and Kendal sub-districts Of Ngawi Regency claimed that they (miners) had partially obtained permits from local governments to carry out mining Activities. The mining Of C in Widodaren and Kendal Ngawi also has an economic and social impact on the surrounding community. So AS to reduce the number of unemployed. With mining activities, the income of the surrounding community has increased.

Keywords: Legal Protection, Environmental Damage, Illegal Mining C

INTRODUCTION

In Indonesia, mining activities cause many problems, because mining activities not only benefit the government and but on the other hand mining activities are at the expense of the environment and the communities around mining , (Muskibah *et al.*, 2021). "Meanwhile, according to Salim, mining activities have caused a negative impact in the mining business". The negative impact that is in the environment in the mine ring area becomes damaged, river waters becomes polluted, people living in the mine ring area are infected with many diseases and pollution, and conflicts between people around the mine and mine entrepreneurship (Salim HS, 2010).

In its implementation, the implementation of community mining cannot support sustainable development as stipulated in Law No. 32 Of 2009 On Environmental Protection & management. The use of the river as a mining site for sand, contained in C-class minerals, by citizens as a livelihood to dissolve citizens; The economy negatively impacts the Bengawan Basin". Minerals are classified into 3 types of groups, including minerals of groups A, B and C (in accordance with law no. 11 year 1967. Group C minerals are mining businesses in the form of soil, sand, gravel, marble, kaolin, granite and several other types. Mining business activities carried out without a permit may be subject to criminal penalties as contained in the provisions of Article 158 of Law No. 4 year '09 on Mineral and Coal Mining, with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiah). Legislation As a basis in excavation C is in Ngawi Regulation No. 29 of 2011 concerning mineral, nonmetal and rock tax. While Ngawi District Regulation No. 4 of 2008 on Environmental Management. Legislation as a basis in excavation C is in Ngawi Regulation Number 29 of 2011 concerning mineral, nonmetal and rock tax. While Ngawi District Regulation Number 4 of 2008 on Environmental Management."The implementation of development related to the environment end spatial planning that tends to be unplanned end unsustainable has had an impact on the decline in the quality end function of the environment including natural resources in it", (Mina, 2016).

Community mining is an activity managed by the local community in a simple, because outsiders can not be allowed to mine and in its management using traditional tools such as crowbars, shovels, pans, and trays. Mining law is never separated from the Environmental part. Environmental crime often occurs around our environment, but all of it without us knowing. For example, is a crime in the field of mining such as mining business activities without having a permit C (Nurwanti *et al.*, 2022). With an environmental permit, it is expected that the business activity and/or development will still be subject to standards of environmental protection AND management in accordance with the Protection and Conservation Act No. 32 of 2009. The state of Indonesia is one of the countries based on its governing constitution related to the environment. In Article 28h paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that everyone has the right to live in prosperity, live and get a good and healthy living environment and are entitled to health services". From the 1945 NRI Constitution, it is implied that the Indonesian people have protection for a prosperous life based on the environment (Anwar & Sari, 2021).

People mining activities are carried out within a people mining area or WPR. The legal basis that can be used in dealing with illegal mining. Natural damage occurs as a result of mining also leaves physical traces in the former mining area, mining companies that have completed exploitation should reclaim the area. Although potentially damaging to environmental sustainability, mining activities are still free in Ngawi, according to local villagers who did not want to be named, said that illegal sand mining activities in the area is a land owned by a local resident. Meanwhile, since the operation of the illegal sand mine start to have an impact on damage in a number of roads around. In fact, a number of workers seem to repair damaged roads. It can be formulated the problem in this study as follow: (1) whether the mining excavator C in accordance with the principles of local wisdom set out in law No. 32 Of 2009 On The Environment; (2) How legal tutela pro communitate contra victimas aliquam damnum Ex Illegal Mineralis Fossore In Ngawi.

RESEARCH METHODS

The research method used in the preparation of this work is empirical legal research. Empirical Legal Research is a legal research method that uses empirical evidence taken from a person's behavior, both verbal behavior obtained from interviews and actual behavior that is driven by direct observation. (Mukti Fajar dan Yulianto Achmad, 2010). This study is descriptive analysis.

Data types are primary data and secondary data." primary data is data obtained directly from the field; while the primary data is by studying and collecting data related to the object of research. These data are obtained from literature books, legislation, internet browsing, and other documents. Secondary legal material consisting of primary legal sources, secondary legal, and tertiary legal material. Methods of data collection through observation, interviews and document studies. Location of research in Widodaren and Kendal Sidorejo Ngawi. The methods of data analysis are data collection, data reduction, data presentation and conclusion.

RESEARCH RESULTS AND DISCUSSION

Mining excavation C in accordance with the principle of local wisdom set forth in law No. 32 Of 2009 On The Environment

The environment has a very important life support function. The diversity of human adaptation patterns to the environment, sometimes not easily understood by third parties who have different social and cultural backgrounds. However, the diversity of adaptation patterns to the environment is a factor that must be taken into account in the planning and implementation of sustainable development while maintaining environmental sustainability. National culture groups also known as the Ngawi people.

Following the opinion (Bruce Mitchell, B. Setiawan, 2007) that local knowledge is inseparable from elements of local regulations; local traditions; customs or cultural values that reflect the harmonious relationship between society and environment. Local wisdom in managing the environment; contained in law No. 32 of 2009 on Environmental Protection and management (hereinafter using the term UUPPLH). Article 1 point 30 UUPPLH describes local wisdom is noble values that are valid in the governance of society to shelter and manage the environment in a sustainable manner, which then local wisdom is also one of the principles in managing and environmental management contained in Article 2 letter (l) UUPPLH and clarified in the explanatory note; what is meant by the principle of local wisdom is that in the protection and management of the environment attention should be paid to the noble values prevailing in the governance of society. The principle of local wisdom is found in law no. 32 of 2009 article 2 Paragraph 12, states "Environmental Protection and Management" is carried out based on the principles: 1) state responsibility; 2) sustainability and sustainability; 3) Harmoni and balance; 4),Integration; 5),Benefits; 6) Prudence; 7) Justice; 8) Ecoregion; 9) biodiversity; 10) polluters pay; 11) participatory; 12) local wisdom; 13) Good Governance; and 14) regional autonomy.

Based on the results of research conducted, there are provisions from the local government for the existing local wisdom as identified in the background of this study where there are several areas, among others, Widodaren and Kendal. The results of the study also explained that mining in the Widodaren and Kendal areas was in accordance with the principles of local wisdom set forth in law No. 32 Of 2009 On The environment. Gotong royong as a national culture is also known by Ngawi. The values local wisdom mutual cooperation as a form of community empowerment in the context to foster community participation towards prosperity. The miners have complied with all the values / rules published by the local government and perform licensing before mining. Communities in Widodaren and Kendal Ngawi in environmental management using local wisdom approach. The principles of local wisdom have The principles of environmental Management that comes from the legal ideals of the community to produce voluntary law-abiding. In conclusion, local wisdom is implemented in the framework of Community Life Management in the Widodaren and Kendal Ngawi areas to protect and manage the environment sustainably and cooperation. Thus, the people in Widodaren and Kendal Ngawi are able to act as people who live in unity with nature and play a role in Environmental Protection & Management.

Legal protection for they community against victims of environmental damage from illegal C minerals mineres in Ngawi

Legal protection theory is one of the important theories to study because the focus of studying this theory is on legal protection given to people who are in a weak position both economically and legally. The existence of law in society among them is to integrate and coordinate the interests of people in society. Interests that cause conflicts of interest are integrated in such a way that can be suppressed to a small extent (Prianto et al., 2019). Environmental Protection and Management in Indonesia is a long journey in line with the development of global environmental management thinking. The idea of establishing environmental law in Indonesia has a long journey that began in the 1970s (Halomoan, 2021). Legal protection against, residents is a concrete

manifestation of the recognition of mining activities that have several characteristics, namely not able to be renewed, has a relatively high risk, and its business has a relatively high area of impact, both physical and social.

In terms of Human Rights, mining activities in the Ngawi region have a destructive impact on the environment. With the mining activities carried out by companies and even legally or have permission from the government that not only cause environmental damage, but also pollution and waste that are a source of disease, threatening the lives of people around the mining area. One of them has a meaning as a rule giver of all kinds of actions, especially in maintaining the human rights of the people of the country. Protection in legislation that broadly, provides protection of human rights, where, preventing conflicts directly related to threats either directly or indirectly, to any human society, it is the essence of the matter, (Pradiatmika *et al.*, 2020).

“The environment is one of the natural resources that has a very valuable role in the existence of God's creatures, including humans”. Therefore, humans as subjects of the environment also have a very important role for the survival of the environment (Supriadi, 2010). Obligations of a person to the environment in Article 67 of the law. No. 32 year 2009:

- a. Provide information on environmental protection and management in a correct, accurate, open and timely manner;
- b. Maintain the sustainability of environmental functions; And
- c. Comply with the provisions on environmental quality standards or standard criteria for environmental damage.

Mining activities where previously will be carried out or have been carried out required a permit in the mining business, especially mining where this business involves many parties and these activities are directly involved with natural resources. Especially if the mining activities are illegal activities without a mining business license, then it is definitely an act of fraud.” Mining activities have a number of characteristics, namely: non-renewable,; has a relatively high risk; its business has a relatively high physical & social environmental impact”.

In order to provide protection to the community related to mining activities, the state has its own ways and mechanisms. The provision of protection to the community is based on Pancasila which is an Indonesian ideology. Therefore, the form of legal protection for the community related to mining activities must be in line with the objectives and duties of the law. The purpose of law can be seen from three points of view, namely: first, to the point of view of positive-normative legal science or juridical dogmatic, they purpose of law focuses on terms of legal certainty. Second, the philosophy of law, the purpose of law focuses on the aspect of Justice. Third, The sociology of law, the purpose of law is to emphasize its usefulness.

According to Philipus M. Hadjon, legal protection is divided into two, namely preventive and repressive legal protection. Preventive legal protection aims to prevent disputes that lead to government action to be careful in making decisions based on discretion. Meanwhile, repressive legal protection, namely legal protection that aims to resolve disputes (Philipus M. Hadjon, 1987). Forms of legal protection of the community related to mining activities must be in line with the objectives and duties of the law. The purpose of law can be seen from three points of view, namely: first, from the point of view of the science of positive law-normative or dogmatic jurisprudence, the purpose of law focuses on terms of legal certainty. Second, ‘To the point of view of the philosophy of law’, the purpose of law focuses on the aspect of Justice. Thirdly, to the point of view of the sociology of law, the purpose of law is focused on its expediency. In the context of mining activities that cause losses to the people of Ngawi regency, it can be said to be an unlawful act. Elements against the law because the Act violates the law and public interest, and cause harm. Any unlawful act that causes harm must be accounted for by the perpetrator of the unlawful act.

Legal protection and guarantee of legal certainty for the community on minerals, entrepreneurs as business executors, and the government as supervisors and regulators are contained in legal instruments that are able to contain the principles of justice, social, balance, good corporate governance, and others so as to create general welfare and prosperity for the people. The purpose of law can be seen from three points of view; namely: first, from the point of view of positive-normative legal science or juridical dogmatic, the purpose of law focuses on terms of legal certainty. Second, from the perspective of legal philosophy, the purpose of law focuses on the aspect of justice. Thirdly, from the corner of sociology of law, the purpose of law is to emphasize its expediency. Sand mining activities in the districts of Widodaren and Kendal Ngawi resulted in environmental pollution. That they are affected by sand mining is an environmental impact. In addition to causing a negative impact, this activity also has a positive impact such as employment opportunities for unemployed people, that's one of the advantages, if the loss is probably only a small part.

In the districts of Widodaren and Kendal, illegal mining activities seemed to run smoothly, safely, and without any obstacles. In fact, impressed off the watchful eye of law enforcement officers. According to a villager who asked not to be named; he said the illegal sand mining activities in the area belonged to a local resident. Meanwhile, since the operation of the illegal sand mine began to have an impact on damage in a number of roads around. In fact, a number of workers seem to repair damaged roads. Mining in Widodaren district since 2016 and 2017/2018 has only been carried out mining activities in Kendal.

Prevention of environmental damage caused by the excavation of sand is taken the dirt ground, which will be reclaimed until it can be planted with crops such as rice, because in the region Widodaren many rice fields, until it can be replanted. While Damage Prevention in Kendal, for smooth stone sand mining after excavation reclamation was carried out, after that it was reburied and replanted. The presence of sand mining provides many advantages for the local community, but also provides few disadvantages. The advantages they can facilitate the development of the community itself, while the losses may only be a small part, because some communities with the excavation of sand, residents are compensated. In order not to damage the environment for sand mining in a row, miners in the river, it could result in losses of the mine itself or the environment, but here the miners do not dig up the bottom of the river, must be above it so that later if there is water it can be thrown into the river.

In contrast to sand mining in Widodaren, mining in the Kendal Sidorejo Ngawi area is Urog land. By renting land to the community, quite a lot of mining field of activities (heap), sand and stone. In Law No. 4 of 2009, the definition of mining business is an activity of mining business to conduct mineral and coal production. So digging and selling land is included in the category of mining business. This means that there must be an official mining business license. The head of the Environment Office appealed to the community/miners that the community/miners to take care of official mining permits. "as a result otherwise there are strict sanctions on illegal mining entrepreneurs".

So it can be concluded that with the mining activities carried out by fodinis in the Widodaren and Kendal areas that already have permits from legally miners, most of them in Ngawi are partially licensed, because the permits are directly from the province. The permit process, the provincial government always coordinate first with the district, especially in Ngawi. If the province has not allowed Regency can give mining permits, later it can be penalized if there is no permit. Miners who not only cause environmental damage, but also dust pollution that threatens the health of the community around the mining area.

CONCLUSION

Mining in Widodaren and Kendal is in accordance with the principle of local wisdom stated in law No. 32 of 2009 article 2 paragraph 1 on the environment". The miners have complied with all the values / rules published by the local government and perform licensing before mining. Mining in Widodaren and Kendal sub-districts of Ngawi Regency claimed that they (miners) had partially obtained permits from the local government to carry out mining activities. They always explain that in carrying out mining activities; they have been in accordance with procedures so that it will not cause environmental damage. Miners always keep the damage to the environment. The role of local governments to preserve the environment is seen from the issuance of legislation as the basis for excavation C in Ngawi regional Regulation Number 29 of 2011 concerning mineral, nonmetallic and rock Tax Taxes. Meanwhile, Ngawi Regency Regulation Number 4 of 2008 concerning Environmental Management. Vice versa, the central government issued Law No. 32 of 2009 on the environment which aims to invite the public to care about the good and bad or the various impacts that will occur when ignoring environmental conditions without being balanced with recovery. With the issuance of this authority, local governments have a responsibility to participate in protecting environmental damage. This responsibility aims to reduce the risk of environmental damage.

The Environmental Agency seeks to take precautions by making a direct and written appeal to the sand miners to take care of the people's mining business license to the authorities and not to mine illegally. One form of preventive legal protection is for the state to grant rights to the population around the mine so that it is managed properly, so that the community and the mining operators can cooperate and supervise each other. With They existence of sand miners provide many benefits for the community, namely for the development of local villages. The mining Of C in Widodaren and Kendal Ngawi also has an economic and social impact on the surrounding community. "The mining of C in Widodaren and Kendal Ngawi has its own benefits for the surrounding community. Therefore; easy absorption of labor for local residents;. So as to reduce the number of unemployed".

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