LEGAL PROTECTION FOR COASTAL POLLUTION FROM COAL WASTE IN MAKING SUSTAINABLE DEVELOPMENT

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ABSTRACT

Bengkulu is one of the provinces in Indonesia, which has the potential of coal resource potential. In an effort to utilize these resources, the Government has issued 100 licenses to several companies to undertake exploration and exploitation. Some companies are located in Central Bengkulu district. Activity of extracting and processing coal by 7 (seven) companies in the region has caused pollution and damage around Bengkulu River watershed. Pollution not only in upstream but also downstream of Bengkulu River watershed located in the coastal region of Bengkulu. In addition to causing damage to marine ecosystems and river waters, coal waste pollution also affects the socio-economic life of communities in coastal areas that mostly fishermen. In accordance with Article 28 H of the 1945 Constitution and Article 65 (1) of Law no. 32 In 2009, efforts should be made to protect coastal communities both preventive, preemptive and repressive. Legal protection of coastal communities should be done in a comprehensive manner both from the substance, structure and legal culture. From the aspect of legal substances have to be assessed and evaluated existing regulations relating to coal mining as a preventive instrument to protect the public. The institutional structure of the legal aspects need improvement for coordination and cooperation to build both formal and informal institutions in the protection of pre-emptive and repressive. Besides the aspects of the culture of pre-emptive legal action needs to be instructive to conduct training and empowerment to be able to develop self-potential, resources and the environment autonomously. By providing a comprehensive legal protection, the coal mining investment in the Province Bengku can support the creation of sustainable economic development and environmentally sound.

Keywords: legal protection, coastal communities, pollution, sustainable development

Introduction

Coal mining is a resource with huge potential in Indonesia. According to the Resource Center of Geology, Ministry of Energy and Mineral Resources - 2007, Indonesia has the resources (resources) of coal over 93 billion tonnes (latest data put the figure at 104.8 billion tons), and reserves (reserve) 19 billion tons. Energy 'fossil' is approximately 35% are medium and high rank (above 5,500 cal / g), while the remaining 65%, including low rank (lignite or brown coal) that has not been used optimally due to technical and economical reasons.\(^\text{11}\) The potential for spread in various areas, including in Bengkulu and most widely in Borneo. Potential coal resources in Bengkulu at 198.65 million tonnes and 21.12 million tonnes of

reserves.¹² These facts indicate substantial revenue potential and opportunities for the regions in Indonesia to attract national and foreign investors to invest in coal mines.

Based on data from the World Coal Statistics (World Coal Statistics / IEA) in 2009, Indonesia is the 2nd coal exporter in the world after Australia.¹³ Relating to the management of the coal mine, the government has issued approximately 10,235 mineral and coal mining permits to corporations to mine in almost 34% of Indonesia that has the potential of coal. Amount of investment in coal mining, economic offers many advantages both at national and local levels. Coal mining or exploitation can positively open the isolation of an area, create jobs and others that may have an impact on increasing the welfare of the community. On the other hand there is no doubt also have negative impacts on the environment and harmful to society. Approximately 70% of environmental damage caused by mining activities. Exploration and exploitation of coal mines in an area can cause pollution that result not only hurt people in the region but also in other areas that are separate administration. Such as that occurred in Bengkulu province. Coal mining activities conducted by several companies in Central Bengkulu has resulted in affecting the environment and the lives of people in coastal areas of Bengkulu.

In addition to pollution and environmental damage, coal mining pose problems to the community. Coal mining company's activities in Central Bengkulu and the resulting change to the socio-economic environment that could harm the public in coastal city of Bengkulu. In general, it can also interfere with the implementation of regional and national development. Therefore the legal safeguards for the public needs to be done to achieve sustainable development aspired to achieve prosperity and welfare of the community.

Materials and Methods

The concept of Sustainable Development

Sustainable development is an evolving concept of alternative development since 1970. The term and definition of sustainable development is known in the report of The World Commission on Environment and Development (WCED) or the Brundtland Report in 1987 entitled "Our Common Future". In essence, the concept of sustainable development emphasizes that the implementation of development to meet the needs of the present generation, do not reduce the ability of future generations to meet their needs. It reflected the proficiency level in the Brundtland Report definition of "sustainable development is development that meet the needs of the present without compromising the ability of future generations to meet their own needs", contains two important concepts of sustainable development, namely the concept of 'needs' and the concept of 'limitations'.

In Indonesia, the concept was first outlined in the Guidelines (GBHN) from 1973 to 1978 as the concept of environmentally sound development. In accordance with the principles of the Rio Declaration of 1992, the application of the concept of sustainable development policies refined in 1993 and Guidelines Law No. 23 of 1997 on Environmental Management as its legal basis. Furthermore constitutionally affirmed the 1945 Constitution Article 28 and Article 33, paragraph H (4). Similarly, in Act No. 32 of 2009 on the Protection and Management of the Environment, Article 1, point (3) defined notion of sustainable development is: "a conscious and deliberate effort that integrates aspects of environmental,

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social, and economic development strategies to ensure the environmental integrity and safety ability, welfare, and quality of life of the present generation and future generations."

**Coal Mining and Environmental Pollution**

Coal mining is a very complex economic activities are simultaneously intertwined with each other. Article 1, point (1) of Law No. 4 of 2009 on Mineral and Coal Mining is mention of some or all stages in the framework of the research activities, managemen, exploitation of mineral or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and refining, transporting, and selling, and post-mining activities.

Refers to the notion that mining activities can not be separated from the economic, social and environmental. Coal mining continues to grow because of its potential is quite large and the demand for domestic and overseas continues to rise. This provides economic benefits to support national and regional economic development. Can be a solution to overcome the problem of unemployment and poverty, as it requires considerable labor, thus opening up employment opportunities for the community. It also opens the isolation area to be developed. Mining activities are efforts to use natural resources for the benefit of society, but on the other hand has an impact that can harm people and the environment itself. Coal is a type of energy that contains sulfur that is in the earth. Ecologically coal mining will lead to positive and negative impacts. Mining process, namely excavation, processing, combustion, transport and so will cause damage and pollution as generating pit (landscape shape change), tailings, acid mine drainage, sludge (waste coal washing), and air pollution, and so on. This is a negative impact of the damage and pollution that can disrupt and harm the environment and society.

**Concept of Legal Protection**

In the Indonesian context, the concept of legal protection by Philip M Hadjon termed as 'legal protection of the people', which in principle is the recognition and protection of human dignity based on Pancasila and the rule of law based on Pancasila. Legal protection is the act of giving legal protection to the subject as a supporter of the rights and obligations. Can be regarded as the embodiment of law function that can provide a justice, order, certainty, utility and peace. It can be given in the form of a legal instrument preventive and repressive.

According Soediman Kartohadiprodjo whole system of law as a positive legal system inspired by the values of all five principles of Pancasila and the so-called Law of Pancasila. Aim to realize Law of Pancasila is law and order, peace and justice are defined by the term ‘Pengayoman (Protection)’, which is to protect human good in the sense of passive and active. Passive action of preventing arbitrary and violation of rights. Actively include efforts to create conditions and encourage people to always humanize ourselves continuously.

The research method used in this paper is the doctrinal approach, by reviewing materials sourced from primary legal materials, secondary and tertiary. Collection of legal materials is done by doing a literature study.

**Results and Discussion**

**Coal Mining and Its Impact in the city of Bengkulu**

Constitutionally, the utilization of natural resources in Indonesia coal mine based on
Article 33 paragraph (3) of the Constitution 1945, and subsequently in the implementation are based on Law No. 4 of 2009 on Mineral and Coal. Subsidiaritas as defined according to the principles of Abraham Lincoln (1854), the state divides its responsibilities to private companies and cooperatives. With the private sector's role in the business of mining, the State has a role to support and complement the efforts that can be made public. In this case is based on the principle of the State Tenure (HPN), state or government has the authority to regulate, administer, and oversee the management of the coal mining business. Government as regulator (regulator) under Law No. 4 of 2009 provides an opportunity for businesses and people to do business in the mining sector through the licensing system.

Potential coal mines in the province based on data from the Department of Energy Bengkulu Province in 2009 showed 82,216,328 tons of coal reserves in the amount of mineable reserves during the production period 1989-2009 amounted to 731,328.83 tons. Greatest potential in North Bengkulu 300 million tonnes, 60 million tonnes of Central Bengkulu, Muko-Muko 10 million tons, 30 million tons Seluma, and Lebong 3 million tons. To explore and exploit this potential, the Department of Energy and Mineral Resources Bengkulu Province has issued 100 permits exploration of coal mining. Some companies located in Central Bengkulu district, in the upper watershed that runs and flows along the lower 48 miles to the coast and sea in the city of Bengkulu.

Based on the results of several research institutions and NGOs such as Walhi, Ulayat, Environment Agency Bengkulu Province, the Department of Mines and Natural Resources Bengkulu province, KPBB Team (Leaded Gasoline countermeasures Commission) instituted in collaboration with Blacksmith and the Ministry of Environment of Indonesia, to the activities of seven coal mining companies have caused damage and pollution of the watershed (Watershed) Bengkulu river. The pollution caused by coal washing waste that contain substances harmful to human health if consumed, such as sulfur (b), mercury (Hg) and others. In addition to contaminants are also a heap of coal waste that flows along the rivers causing siltation of the river even to the sea.

Bengkulu river basin covers an area of 51,500 hectares located in two regions, namely administrasi Central Bengkulu and Bengkulu City. Ecosystem damage that occurred in the watershed upstream of the region resulted in significantly hillir river, to the mouth and affect coastal ecosystems. The rest of the former coal washing waste into the River Bengkulu meet even carried down to the sea, thereby disrupting the ecosystem conditions in coastal waters. Substrate-borne coal Bengkulu waters to the coral cover so that growth will be compromised even as a die and destroy coastal spawning sites for a variety of marine life.

These conditions greatly affect the lives of coastal communities on fishing generally. Pollution that has resulted in reduced fish populations in rivers and coastal waters, resulting in reduced fishing income. Accumulation of waste coal in the bottom of the river to the sea Bengkulu also lead to changes in the pattern of the original fishing community economy became scavengers or waste coal miners in the river. Despite of the economic increase revenue from the sale of coal waste, but a variety of social problems experienced by people such as health and other people's lives is very detrimental to further both from the economic, social and environmental. There are at least three requirements that mining activities can continue to contribute to poverty reduction, reducing the potential for socio-economic conflict, and encourage sustainable growth. The three conditions are: (1) corporate governance and public governance are pro-poor, (2) social policies and an environment more effectively, (3) Respect for human rights (HAM).
Community Legal Protection of Coastal Areas

Under Article 18H and Article 33 paragraph (4) Constitution of the Republic, the preventive measures to protect and prevent the abuse and violation of rights, the state has set up a coal mining activities and environmental sustainability in the form of legislation. Law No. 4 of 2009 on Mineral and Coal and the various laws and regulations that support should be implemented in synergy. The regulations include: Law No. 19 of 2004 on Forestry Law, 32 of 2009 on the Protection and Management of the Environment (UUPLH); Government Regulation No.78 of 2010 regarding Reclamation and Post-Mining; Government Regulation No.55 of 2010 Concerning the Implementation Guidance and Supervision Management of Mineral and Coal Mining; PP. 24 of 2010 on the Use of Forest Area; Government Regulation No.23 of 2010 Concerning Implementation of Mineral and Coal Enterprises; Government Regulation No.22 of 2010 Concerning Mining Areas; Presidential Instruction No.01 of 2012 on the Implementation and Monitoring Related Operations Coal mining; Presidential Decree No.03 Year 2011 about TEAM Evaluation Adjustment Contract For work and Coal Mining Agreement; Minister of Energy and Mineral Resources Regulation No. 07 Year 2012 on Mineral Added Value Through Activity and Purification Mineral processing, and so on.

In addition to support behavior change and awareness of the importance of the Muslim community and the protection of environmental management in the utilization of natural resources (especially mining), the Indonesian Ulama Council (MUI) with the Ministry of Environment, signed a memorandum of understanding (MoU) No. 14/MENLH/12/2010 and Kep-621/MUI/XII/2010 on December 15, 2010, has been agreed with the Indonesian Ulama Council Fatwa No. 22 Year 2011 on Sustainable Mining.

All of the national legislation, so in practice in the area need to be followed up with regulations that accommodate the interests of stakeholders, including coastal communities both from the economic, social and environmental. In its implementation, especially in areas related to environmental issues that occur between administrative regions, need to be unified arrangement in the form of local regulations (laws) as a guide in providing protection to coastal communities, including communities associated with coal mining activities. For it to be done kerjasasama and coordination among related areas by ecoregion concept.

Protection active repressive in the sense that an attempt to create conditions and encourage people to humanize ourselves continuously needs to be done to the coastal communities in the city of Bengkulu. This is done to create a humane social conditions, thereby enabling social processes take place naturally, in which everyone gets a fair a chance as possible to develop the potential of humanity as a whole. Repressive protection, in addition to taking legal action against businesses, such as evaluation, a warning to revocation of the operating license, necessary measures to create conditions in the physical environment and the recovery of social environment people are harmed by the destruction and pollution of coal mining.

Active measures to restore the condition of the physical environment pollution should be done immediately following the ecosystem and environment in order to continue to function in a sustainable manner. In addition it is very important to create the conditions for the restoration of the social life of the community environment that is empowering that community members are able to develop self-potential, resources and the environment autonomously. To support the need to establish formal and informal institutions that involve various parties who have authority in the protection and empowerment. Similarly, cooperation and coordination
between relevant institutions and government.

Conclusion
Sustainable development has been committed to building the nation and state of Indonesia needs to be realized to achieve a just and prosperous society. Therefore the need to provide legal protection to the community to fulfill their right to a good environment and healthy living. One is the legal protection of communities in coastal areas due to pollution of coal waste.

Legal safeguards can be done in a preventive and repressive. Preventive action can be done by adjusting the protection of society through the establishment of local regulations can be used as a guideline. Repressive measures can be done to businesses, as well to the physical environment and social environment after the occurrence of pollution. Active measures aimed at restoring social environment, should be to provide the opportunity empowering community members are able to develop self-potential, resources and the environment autonomously. Protection both preventive and repressive in its implementation should involve all parties through cooperation among instuions, government-related.

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