

THE SUPERVISION EFFECTIVENESS ON THE IMPLEMENTATION OF ENVIRONMENTAL PERMIT OF SPLIT STONE AND SAND MINING IN THE PALU CITY

Insarullah

Tadulako University

JL. Soekarno Hatta KM. 9, Bumi Tadulako Tondo, Palu, Central Sulawesi, 94111, Indonesia
Telp./Fax: +62-811-455867 Email: insarullah@untad.ac.id

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Abstract

Natural resources management in mining has to be managed with environmental oriented policies. The mining split stone and sand mining business in Palu City, especially in the two kelurahan (Buluri and Watusampu) has caused environmental damage that has an impact on the lives of people in the area. This research uses socio-legal research method, research population come from the community around the mining region of split stone and sand in Palu. The sample selected randomly, there are 20 people from the two aforementioned kelurahan which became the research location in Palu. Both of the kelurahan is the center of split stone and sand mining business by the mining company. The mining site located in the fringing road area of Sulawesi main route from Palu to Donggala. Result of the research indicates that the control to environmental permit implementation at the split stone and sand mining in the Palu City is not effective. It is shown from the environmental impact that happened alongside the axis road between Palu and Donggala. There are visible environmental damage and health problem for the resident of the two kelurahan. The tenuous supervision influenced by some factor, namely: the human resource of supervising staff; allocation of control fund; and control supporting facility.

Keywords: *Control;, Environmental Permit; Mining*

INTRODUCTION

Humans as the *Khalifa* on earth have an important and huge role to preserve and maintain the sustainability of the functions and the environmental carrying capacity. Thus, efforts to preserve environmental functions are the obligation or responsibility of all human beings. To obtain great benefits from environmental functions, the environment must fulfill

good and healthy eligibility requirements to become a means of life for living beings in general and specifically for humans who administratively dwell or reside as residents and as citizens of a country.

In Indonesia, a good and healthy environment is part of human right and also at the same time a basic right of every Indonesian in the concept of economic democracy as mandated by the 1945 Consti-

tution of the Republic of Indonesia. This can be seen in Article 28H Paragraph (1) of the Constitution which affirms that “Every person is entitled to live prosperous physically and spiritually, to have a place to reside, and to require a good and healthy living environment as well as entitled to obtain health care”. Then, Article 33 Paragraph (4) emphasized that “The national economy shall be conducted by virtue of economic democracy under the principles of togetherness, the efficiency with justice, sustainability, environment insight, autonomy, as well as by safeguarding the balance of progress and national economic unity”.

The guarantee of the right to the environment as human right in Article 28H Paragraph (1), and with the adoption of the principle of sustainable development and environmental insight into the provisions of Article 33 Paragraph (4), clearly shown that the 1945 Constitution of the Republic of Indonesia supports the protection and preservation of the environment. Therefore, it can be called a “green constitution”¹.

To support the direction of achieving the welfare of the Indonesians, the natural resources found on Indonesian soil

are controlled by the state and used for the greatest prosperity of the people, by not forgetting the importance of preserving and supporting the environment as stated in Article 33 Paragraph (4) of the 1945 Constitution.

Based on Article 28H Paragraph (1) and Article 33 Paragraph (3 and 4) above, the utilization of natural resources to advance public welfare and to achieve life happiness based on the Pancasila and the 1945 Constitution, needs to be carried out in sustainable development with environmental knowledge, based on integrated and comprehensive national wisdom by taking into account the needs of the present and future generations.

Basically, sustainable management of the environment meeting the interests of the environment itself is a management based on modern Environmental Law, namely the law that is environmentally oriented. Therefore, the use of natural resources in any form must pay attention to the interests of protection and management of living environments in a sustainable manner so that they remain sustainable and can be enjoyed by the next generation.

The use of natural resources cannot be avoided because it is the supporting factor to human life in modern civilization. Because of the contradiction between

¹ Lihat, Jimly Asshiddiqie. (2010). *Green Constitution, Nuansa Hijau UUD NRI Tahun 1945*. Jakarta: RajaGrafindo Persada, p. 8-9.

environmental preservation on one hand and the needs of modern civilization on the other hand, then in the future, the use of natural resources should be based on equity, balances, democracy, and sustainability that involve inter-generation life in order to avoid problems.²

Environmental problems have threatened the survival and life of the people and other living things. To avoid the occurrence of environmental problems as happened in the past, environmental protection and management are truly and consistently carried out by all stakeholders. Therefore, the management of mining natural resources must be managed with policies that meet the interests of the environment (environment oriented), so that they are always protected from damage and decreased the environmental carrying capacity ability. But it is different from what happened in Palu City, especially in two *kelurahan*, namely Buluri and Watusampu, where the management of natural resources for split rocks and sand in the area has caused environmental damage that has an impact on people's lives in the area.

The impact of environmental damage in the two *kelurahan* is directly coherent to the increasing mining activities car-

ried out by mining companies. Mining activity has been going on for a long time and only recently has it worsened. One proof is the presence of air pollution in the area, there are many people with respiratory problems due to breathing air contained dust particles around the homes of the residents. This was revealed by a resident of Watusampu named Mr. Nandar, who admitted that he and his family were "forced" to breathe dust due to the mining business. If he protests, he will face his fellow citizens who work in the mining business, not someone who has legal authority or the government. "I once coughed up blood, as did my three-month-old child who had to breathe dust. The *Puskesmas* officer suggested that I wear a mask", he said³.

This was corroborated by the statement of Mr. Dedi, an activist, and director of the People's Education Foundation (YPR) that residents suffering from acute respiratory infections (ISPA) escalated with increasing exploitation of split rock and sand mining by several mining companies in Buluri and Watusampu. In addition to causing disease, it also causes the extinction of plants. Before the booming

² Abrar Saleng. (2013). *Kapita Selekta Hukum Sumberdaya Alam*. Makassar: Bumi, p. 3.

³ Erna Dwi Lidiawati. 2014. *Tambang Galian C, Mimpi Buruk Ribuan Warga Watusampu*. Available at: <http://www.mongabay.co.id/2014/09/18/tambang-galian-c-mimpi-buruk-ribuan-warga-watusampu/>, [Accessed on 12 July 2017].

of the mining business, the area was overgrown with custard apple plants, making it a center for custard apple production in Palu City⁴.

The phenomenon that occurs in these two *kelurahan* is a form of mining management that tends to deviate from the prevailing laws and regulations. Therefore, a problem arises about how is the supervision of environmental permits in exploiting split stone and sand mining process in Buluri and Watusampu?

METHODS

Type of Research

The type of research used is empirical research or empirical legal research (socio-juridical), namely research that views law as a social phenomenon that can be observed in people's life experiences. In order to obtain scientific answers to legal problems studied, this study uses a statutory approach rules, conceptual approaches, and sociological approaches. The choice of this type is related to the nature of the data needed to answer the problem. This study examines the effectiveness of supervision of the implementation of environmental permits in realizing mining management that supports the realization of sustainable development.

⁴ Dedi, the Director of the People's Education Foundation (YPR). Interviewed on 25 July 2017.

Research Location

This research was conducted in two *kelurahan* in the Palu City, namely Buluri and Watusampu in Ulujadi Sub-District. These areas are chosen to be the research location because there are many split stones and sand mining located there, which tend to deviate from the applicable laws and regulations. These deviations can be observed based on the adverse impacts on the environment, as described in the introduction.

Data Collection Method

The population in this study are all communities in the two *kelurahan*, especially the people around the mining areas. They were the ones who suffered the most from the exploitation of mining of split rocks and sand in their neighborhood. Of the total population, 20 people were randomly assigned to be selected as respondents.

DISCUSSION

Indonesia is classified as a follower of the welfare state concept which until now is still progressing through development carried out every year. Therefore, the government is required to actively open itself to seek welfare for the community. Welfare must continue to be pursued in order to materialize and be felt

significantly by the community, even though it is not a simple thing to make it happen, because human life continues to grow along with the development of science and technology.

To keep up with this progression, development is needed to carry out simultaneously by the regional and central government. The role of the government in regulating and maintaining harmony and balance is expected to actualize prosperous country, whether through regulation, certain policies, or through licensing (permit) instruments. Based on this description, the government is required to act proactively in order to prevent natural and humanitarian disasters caused by environmental pollution and environmental damage as a result of mining management that does not maintain a balance between economic and environmental interests.

For harmony and balance in the mining management, especially the balance of the rights of every citizen to obtain economic benefits and the rights of every citizen to have a good and healthy environment, it is necessary to have a legal regulation regarding the environment. One form of Environmental Law regulation related to mining management is through licensing in the environmental field called environmental permit.

The implementation of environmental permits is the government's responsibility to control mining businesses/mining activities that can have an important impact on the environment. This is important because if there is damage to the environment, it will indirectly affect the existence of humans as the *Khalifa* on Earth. Therefore, environmental permits as a legal instrument need supervision and compliance to keep the environment sustainable in addition to the implementation of development in order to reach the advance public welfare. It is said that the state is prosperous if the socio-economic needs of the community and the need for a good and healthy environment for the citizens are fulfilled.

Environmental permits established by the government to be applied in mining businesses/mining activities containing requirements that are expected to prevent or eliminate the occurrence of pollution and environmental damage caused by mining sector businesses/activities in the area. The management of mining in the regions is carried out with the intention of being able to improve the welfare of the community in the area and the welfare of the Indonesian people as a whole.

Supervision of the implementation of environmental permits as legal instru-

ments must be carried out as the government's main task. The government must visit the field themselves to supervise mining companies in performing their activities, companies must carry out all the conditions contained in environmental permits as company obligations. Environmental permit as a legal instrument containing the requirements in the form of AMDAL and UKL-UPL in it, as a guideline that must be implemented and adhered by the person in charge of the business/mining activity.

Concept of Environmental Licensing

In the interest of exercising government duties in the framework of carrying out development in various fields, the government or the state administration administer legal actions with the use of certain medium or instruments. Various instruments are used to regulate and engage government and community affairs, namely legislation, policy, regulations, permits, civil legal instruments and so on.

The government is given the authority to act in order to achieve the objectives of the country, as stated in the fourth paragraph of the 1945 Constitution of the Republic of Indonesia Preamble. Therefore, in this case, the local government carries out its duties, as government ac-

tions, both subject to public law rules (one-sided or two-sided) and civil law.

Related to the rules of public law, many local governments use permits as a juridical means to drive the behavior of citizens. Permission is an agreement from the authorities based on laws or government regulations for deviation of certain circumstances from the provisions of the prohibition in legislation. By giving permission, the authorities allow people who ask to do certain actions that are actually prohibited in legislation. This involves approving an action which in the public interest requires special supervision of it. Permission is one of the most widely used instruments in Administrative Law. Explained also that licensing is the term for permission in the broadest sense, while permission in the strict sense is called "permission" only. Permits (in the narrow sense) are further distinguished from other forms of licensing, dispensations, concessions, recommendations, registration marks, letters of approval and registration⁵.

⁵ N. M. Spelt and J. B. J. M. ten Berge in Insarullah. (2013). *The Law Enforcement of Environmental Permit to Realize Good Governance Principle In Mining Management*. International Journal of Scientific & Technology Research, 5(7): 238.

According to Syamsul Bachri⁶, the essence of permits is to balance between personal or agency interests and public or community interests. So according to him, every business actor and/or activity should pay attention to the public interest, not being selfish, including paying attention to the interests of the environment.

Related to the description above, the author tends to argue that the point is to balance the rights and obligations of legal subjects because everyone on the one hand certainly has the right to request and obtain permission, but on the other hand, there are obligations that must be fulfilled by the permit applicant. For example, the conditions contained in the requested permit. Furthermore, the object of permit is an act that is actually prohibited from being carried out, however, the act can still be carried out if it is approved by the government or the authorities which is none other than an official authorized to issue a permit. This means that actions that become objects of the permit need to be regulated in order to maintain public order, where there is a balance between personal and public interests. That is why environmental permits can be used as a counterweight between the economic in-

terests of mining companies and the good and healthy interests of the communities around the mining area.

The articles governing environmental permits in Act Number 32 of 2009 concerning Protection and Management of the Environment, including:

Article 36

- (1) Every business and/or activity that is required to have AMDAL or UKL-UPL must have an environmental permit.
- (2) Environmental permit as referred to in Paragraph (1) is issued based on decisions on environmental feasibility as referred to in Article 31 or UKL-UPL recommendations.
- (3) Environmental permits as referred to in Paragraph (1) must include the requirements contained in the environmental feasibility decision or UKL-UPL recommendation.
- (4) Environmental permits issued by the Minister, governor, or regent/mayor in accordance with their authority.

Article 37

- (1) The Minister, governor, or regent/mayor in accordance with his authority must refuse an environmental permit application if the permit application is not equipped with AMDAL or UKL-UPL.

⁶ Syamsul Bachri. (2009). *Materi kuliah Hukum Perizinan*. Makassar: Fakultas Hukum Universitas Hasanudin.

- (2) Environmental permits as referred to in Article 36 paragraph (4) may be canceled if:
- a. the requirements submitted in the permit application contain legal defects, errors, misuse, and untruths and/or falsification of data, documents, and/or information;
 - b. publication without fulfilling the requirements as stated in the commission's decision on environmental feasibility or UKL-UPL recommendations; or
 - c. the obligation stipulated in the AMDAL document or UKL-UPL is not carried out by the person in charge of the business and/or activity.

Article 38

In addition to the provisions referred to in Article 37 Paragraph (2), environmental permits can be canceled through the decision of the State Administrative Court.

Article 39

- (1) The Minister, governor, or regent/mayor in accordance with his authority must announce every environmental permit and decision.
- (2) The announcement, as referred to in Paragraph (1), shall be carried out in a manner that is easily known to the public.

Article 40

- (1) An environmental permit is a requirement to obtain a business permit and/or activity.
- (2) In the event that environmental permits are revoked, business licenses and/or activities are canceled.
- (3) In the event that a business and/or activity changes, the person in charge of the business and/or the activities required to renew the environmental permit.

Article 41

Further provisions regarding permits as referred to in Article 36 to Article 40 are regulated in Government Regulations.

Supervision of Environmental Permits in the Management of Split Rock and Sand Mining in Palu City

Supervision of Environmental Permits

On one hand, Administrative Law is a juridical instrument for the authorities to actively engage with society. On the other hand, Administrative Law is a law that allows members of the public to influence the authorities and provide protection to the authorities⁷.

⁷ Santi H.D. Adikancana. (2013). *Tinjauan Yuridis Kewenangan Pemerintah dalam Hal Penegakan Hukum Lingkungan dan Penerapan Sanksi Administratif*, Paper presented at Seminar Nasional Perkembangan Hukum Lingkungan Masa Kini dan Masa Depan, Bandung 28 Mei 2013, p. 9. Collection of Papers by Irwansyah. Law Faculty of Hasanuddin University.

According to J. B. J. M. ten Berge (as quoted by Ridwan H. R.), the importance of law enforcement is done because obligations arising from the legislation are not always obeyed by legal subjects. This is not a new reality. As long as there is law, there is non-compliance with the law. Therefore, it is necessary to enforce the law to overcome the non-compliance. Law enforcement can be done through supervision or the application of sanctions by using various means (Administrative, civil and Criminal Law facilities) with the intention that the applicable provisions can be adhered to. Supervision in law enforcement is a preventive step to enforce compliance, while the application of sanctions is a repressive way to enforce compliance. Sanctions are the core of Administrative Law enforcement⁸.

Regarding the importance of supervision in state Administrative Law, according to Paulus E. Lotulung, as quoted by Ridwan H. R., that there are several types of supervision, which are viewed from the standpoint of the body/organ that carries out the supervision of the controlled body/organ can be distinguished between the types of internal supervision and external supervision. Internal supervi-

sion where the supervision is carried out by an organization/structural body is still included in the government itself, while external supervision is supervision carried out by organs or institutions that are organizational/structural outside the government. Supervision which is viewed in terms of implementation time is divided into two types, namely *a-priori* supervision, and *a-posteriori* supervision. *A-priori* supervision is if the supervision is carried out before the issuance of a government decision, whereas *a-posteriori* supervision is if the supervision is carried out after the issuance of a government decision. In addition, supervision can also be viewed in terms of supervised objects, which consist of legal supervision (*rechtmatigheid*) and supervision in terms of benefits (*doelmatigheid*).

Furthermore, it is said that the supervision carried out by the judiciary in the state Administrative Law has the following characteristics: *first*, externally, because it is carried out by an agency or institution outside the government; *second*, it is a posterior supervision because it is always carried out after the act is monitored; *third*, legal oversight, namely supervision carried out only to assess the legal aspect⁹.

⁸ Ridwan H.R. (2013). *Hukum Administrasi Negara*. Edisi Revisi. Jakarta: RajaGrafindo Persada, p. 313.

⁹ *Ibid.* (2013), p. 296-297.

One management function that is very meaningful for the development and application of the objectives of an organization including regional government organizations is supervision. Once the importance of supervision, so many management experts provide views on the function and role of supervision in an organization or institution. Supervision is the final part of a series of processes of management functions, meaning that all management functions must be monitored. Supervision activities begin with planning work to be carried out by an organization or institution including the regional government in supervising the implementation of the mining business.

Implementation of Environmental Permit Supervision

One form of implementation of environmental permits through law enforcement is supervision. To find out whether the supervision has been carried out or not even, it is certainly needed a means of information or announcements that can be reached by the community. Whether enforcement of environmental permits through supervision has been carried out or not, can be seen the respondent's answers below.

Table of respondent's answers about the availability of information and funding facilities for the supervision of mining management in Palu City:

No.	Respondent Answer	Frequency	Percentage
1	Available means of information and supervision budgets	2	10
2	Unavailable means of information and supervision budgets	16	80
3	Does not know	2	10
Total		20	100

Source: Primary data (2017).

The percentage of respondent's answers stating that information is not available is very dominant, reaching 80%. If the respondent's answer stating that there is no means of information is added up with those who say they do not know it can reach 90%. This amount has a significant effect on the supervision carried out by the regional government in taking or deciding public policies related to the mining of split stones and sand in Palu City.

The reason for the respondents who answered that information and funding facilities were available in the supervision

of environmental permits in Palu City, they said that there must be an announcement because they had heard from other people talking about the issuance of mining permits in the area.

The reason for the respondents who answered was that there was no means of information for the public and funds in the supervision of mining management in Palu City, they said that we had never seen any announcement about it, especially around the mining area, even though it is very important for the public to know. The statement of respondents who answered that there was no available means of information in line with Akhdari Dj. Supu's statement¹⁰, that related to the supervision of environmental permits, to make announcements or socialization experienced obstacles, because of the lack of funds allocated by the regional government. This is what causes information sometimes does not reach the community. Then the reason for the respondents who answered they did not know, generally said they did not want to worry, "that is government affairs, the most important thing is we can live in peace".

Based on the aforementioned description, it can be stated that the envi-

¹⁰ Akhdari Dj. Supu, Former Chief of Environmental Impact Prevention and Control Division (BLHD) Palu City, interviewed 21 July 2017.

ronmental permit monitoring process in Palu City, which is examined based on indicators of availability of information facilities has not been implemented properly, so the results of environmental permits enforcement still seem to be hidden or covered up.

Regarding community access and the availability of information facilities as a manifestation of supervision, Akhdari Dj. Supu¹¹ added that the availability of information facilities can accelerate people's access to know the decisions or policies that will be made by the local government. Therefore, I hope in the future, the regional government prepares an adequate budget to support the availability of information and facilities, especially in the preparation of environmental permits. Frankly, the attention of the regional government for environmental management budgeting is very low.

Based on the processing of data and results of the interviews above, it is very convincing that the supervision of environmental permits as an instrument for enforcing environmental permits for the management of mining businesses in Palu City has not been effective.

This fact will bring the image and authority of the local government in the

¹¹ *Ibid.*

eyes of the citizens to be bad, dishonest and not democratic so that it will have a broad impact on the environment of the region itself. Because of the lack of supervision by the local government in managing mining tends to result in irregularities committed by irresponsible individuals. Meanwhile, according to Andi Rury¹², the supervision that had been carried out as he recalled in 2016 was based on the Decree of the Central Sulawesi Governor. It is not known yet what the detail of this supervision results. But according to Andi Rury, there is a company operating without IUP, even though he does not know what kind of action has been taken by the government against this finding.

CONCLUSION

The management of environmental permit supervision for split stone and sand mining in Buluri and Watusampu, Ulujadi Sub-District, Palu City has not been effective as there are two indicators for implementation condition of an effective form of supervision that has not been fulfilled based on the respondent's answers.

SUGGESTIONS

Regional governments should conduct intensive supervision of environmental permits as a form of law enforcement in mining management, by preparing adequate means of monitoring and budget information in the context of environmental protection and management and sustainable development.

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¹² Andi Rury. The Staff at Environmental Agency of Central Sulawesi Province, interviewed 15 July 2017.

Ridwan H. R. (2013). *Hukum Administrasi Negara*. Edisi Revisi. Jakarta: RajaGrafindo Persada.

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