

Formulation of Legal Politic on Environment Permit Management in Protection Forest Area That Accommodates Conservation and Sustainable Principle

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ABSTRACT

Protection forest based on article 1 paragraph f Law number 41 on 1999 on Forestry said "Protection forest means a forest area having the main function of protecting life-supporting systems for hydrology, preventing floods, controlling erosion, preventing sea water intrusion and maintaining soil fertility." Protection forest may used to obtain non-timber forest products. Utilization is implemented through the licensing of utilization area, environmental services utilization license, and permits the collection of non-timber forest products. One of the forest damage factors related with the mining activities that conduct in forestry area, especially protection forest area. In its development, there is national development demand, where forest area is not only use as forestry sector development that has strategic value that cannot set aside. Yet, mining is considered as the ringleader of environment damage includes also deforestation.

Keywords: Legal politic formulation, environment permit management, protection forest area, conservation and sustainable principle

INTRODUCTION

The issue of mining activity in protection forest area not only happens in Indonesia, yet it also happens in many other countries. The reason behind forestry damages due to mining activity that conduct in forestry area, specially protection forest area in Indonesia has gain many negative impact such as : (1) Mining creates environment disaster (for an open mining area); (2) Mining less increase community development. Mining company operational has not involved society around forestry; (3) Mining brings damages to society sources of life (4) Mining may start human rights violation.

In Indonesia, up to 2012 Indonesia forestry and water area width cover ±134.275.567,98 ha, with the width of forestry area as it is based on Landsat satellite imagery interpretation as 98.56 million ha or 52.4% from Indonesia entire territory.

Meanwhile, based on Director General of Forest Utilization Planning Ministry of Forestry data and information in 2010, all forests in Indonesia reached 133,300,543.98 ha include natural spaces, protected forest and production forest. Provinces with a various width of forest area spread over Papua province with an area of 40.5 million ha followed by the province of Central Kalimantan covering an area of 15.3 million hectares and an area of 14.6 million ha in East Kalimantan province. Above all width in entire forest area in Indonesia, the protected forest area width is 32.211,814,72 ha. According to the Indonesian Forestry Statistics Report of 2012 states that the rate of protected forest area deforestation are 67,329,5 ha / year.

As an ecosystem, Indonesia forest not only consist of natural resources like wood, but also it consist of non wood resources such as flora and fauna. Amazingly, in some part of the forest area, there are many high valuable mining material, and with this kind of various mining material and various volume in many area in the forest, has place forest in a strategic position in national development context, so in it regulation refer to the ideological control of

management and use of natural resources as reflected in Article 33 paragraph (3) 1945 Constitution : The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.

Above regulation is goes along with article 4 paragraph (1) Law number 41 year 1999 on Forestry: “All forests within the territory of the Republic of Indonesia including all the richness contained therein are under the state's control for people's maximum welfare.”

In its position as one of the determinants of life support systems, forest has been offer significant benefits to mankind. Therefore, it must be preserved. Forests have a role as balancer of global environment, so its association with the international community is very important, to support the national interest.

Forest in its juridical conception formulated on article 1 paragraph (1) Law number 41 year 1999 on Forestry, “Forestry means a system of management pertaining to forests, forest area, forest products to be undertaken in an integrated way”.

In its development, there is demand of national development, where forestry area not only use as forestry sector development, but also other non forestry sector that has strategic purpose that use to fulfill the demand of forestry area for the purpose of production and protection function as it is regulates in article 38 paragraph 1 Law number 41 year 1999 on Forestry: “Use of forest area for development needs for non-forestry purposes can only be made in production and protection forest areas.”

The next issue regulates in article 4 paragraph 2 Ministry of Forestry Regulation number P.18/Menhut-II/2011 on Guidelines for forest use, including for the purpose of religion, defense, mining, electricity and installation of renewable energy technologies, the development of telecommunications networks and so on, in which the most dominant is currently mining activity. Conversion of the forest area is allowable by Law, since it is regulates in article 19 paragraph 1 Law number 41 year 1999 on Forestry: Government shall stipulate and maintain the adequacy of forest area and forest cover for each watershed and or island in order to optimise the environmental, social and economic benefits of local communities. But the conversion of the forest area must not conduct in uncontrollable way, if the conversion of the forest area has an important impact and may bring wide affect and has strategic value, it must assign government with the approval of House of Representatives.

What means by important impact, wide scope and strategic value are related to the changes that has impact on biofisic condition such as climate change; ecosystem and water flow disturbance and social society impact toward nowadays generation and future generation, yet in its fact there are lot of protection forest area use as mining activity.

Protection forest based on article 1 paragraph f Law number 41 on 1999 on Forestry said “Protection forest means a forest area having the main function of protecting life-supporting systems for hydrology, preventing floods, controlling erosion, preventing sea water intrusion and maintaining soil fertility.” Related with the use of protection forest, based on article 26 paragraph 1 Law number 41 year 1999 on forestry: Use of protection forest can be in the form of utilizing its area, environmental services, and collection of non-timber forest products

Along with the implementation of decentralization principle through local autonomy related with natural resources management, include also forest has show that some part of the management system is handle to the local government, Handle of above authority is by implementing operational forest management. Such as procedures and organizational structure, mechanisms of accountability, management and control system.

Forest damages due to mining activity due to Ministry of Forestry stated that based on Ministry of Energy and Mineral Sources in 2011, there are 8 thousand mining company in small and large scale, about 3 thousand that has license and 5 thousand un-license. This condition will bring threat on forestry violation. This condition show that such activities related with mining field has cause damages and degradation in forestry field in Indonesia.

As an example PT Freeport Indonesia has conduct open mining operations in the protection forest area of 10,000 ha in Mimika plus 202 980 ha are also in Mimika, Papua's Paniai and Jaya Wijaya. Related with forest use permit, PT Freeport Indonesia has not yet obtain a Borrow and Use Right of Forest Area Permit (IPPKH), additionally to the direct benefits and impact of the existence of PT Freeport Indonesia that operates in Papua has not appeared for the local community, especially in improvement of human resources (HR) and the local economy around the mining area is still poor, environmental issues affected by waste from the Freeport also lead to the loss of vegetation and biodiversity or biodiversity in the protected areas which are exploited, river pollution, declining water quality and environment, as well as the destruction of mangrove forests in the lower reaches of the river.

Forest damages are an unpleasant fact for Indonesia, since forest itself consider as an invaluable resources. Yet, mining is considered as the ringleader of environment damage includes also deforestation.

The applicative of article 38 paragraph 4 Law number 41 of 1999 on Forestry: Open-cast mining is prohibited in protection forest. Yet this regulation considers bringing loss for the mining investor in Indonesia. This condition has made legal uncertainty in mining area of forestry area, since many investors has permission or agreement before the establishment of Law number 41 of 1999 on Forestry. This condition has put government in a difficult situation to develop investment climate. Yet, to avoid excessive demand on international arbitration and to provide legal certainty to invest in Indonesia, the former president Megawati established Perpu No 1 of 2004 on the amendment of Law number 1 of 1999 on Forestry. This Perpu establish with Law number 19, year 2004 on the establishment of Perpu number 1 of 2004 on the amendment of Law number 1 of 1999 on Forestry.

STATE SOVEREIGNTY ABOVE MINING MATERIAL

Article 33 paragraph 3 1945 Constitution mentioned “The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people. “ State has absolute sovereign nation over natural resources wealth. Used to the greatest benefit of the people understood as the legitimate ownership rights over natural resources are the people of Indonesia. The second meaning is unity. State tenure is an instrument, while the greatest benefit of the people is the ultimate goal of the management of natural resources.

Indonesia's natural wealth belongs to the people who are authorized to state mandated managed to achieve the goal of the state of Indonesia. As a representation of the State Government granted the right to manage (rights management) of natural resource wealth that is enjoyed by many people who is equal and equitable. Furthermore, the prosperity of the people is the spirit and ideals of the welfare state and should be fulfilled by the Indonesian government. Natural resource management is one of the instruments to achieve.

In accordance with State development policy as stipulated in Law No..17 of 2007 on the Long Term Development Plan (RPJP) from 2005 to 2025, it appears that the purpose of the construction of phase II (2010-2014) devoted to many matters related to environment and natural resources. Moreover, it should not set aside to relate with human resources, defense and state security, as well as law enforcement. Brundt land identified several critical issues

that need to be used as a basis for environmental policy concept of sustainable development, namely:

1. To encourage growth and improve the quality,
2. Obtain staples supply on jobs, energy food, water and sanitation,
3. Ensure the population growth rate that support sustainability;
4. Conducting conservation and resource capability,
5. orientation technology and managing risk oriented;
6. Integrate environmental considerations in economic decision-making process.

It is an interesting issue to explore in Indonesia, that there is a separation between the regulation of natural resources that are in the "underground" or in the "center of earth" in the form of mining excavation with plants that are exist on the surface of the earth or soil in the jurisdiction of the Republic of Indonesia. Minerals mining also distinguished between minerals derived from the carbon content of oil and gas or mineral common in a hard form. Interestingly there is natural wealth which is derived from geothermal steam or "geothermal" that can use as a means to rotate the turbine power which is regulated separately. But the arrangement between hard minerals eg nickel, copper, tin and others with mineral oil, gas, carbon, and geothermal or water vapor arranged in different regulations.

PUBLIC POLICY IN MINING FIELD

Mining has several characteristics, which is not renewable to have a relative higher relative risk and enterprise have impacts both physical and social environment that is relatively higher than other commodity exploitation. Basically, because it is related to the non renewable nature of the mining entrepreneurs who are always looking for new reserves. By reducing the production, has proved that reserves increase. There are some risks in mining geology, geology risk (exploration) uncertainties associated with the discovery of reserves (production), technology risk associated with cost uncertainty, risks associated with changes in market prices , and government policy risks associated with changes in taxes and domestic prices. The risks associated with the magnitude in the influence of business profits, in example production, price, costs and taxes. Businesses that have a higher risk require higher returns.

The environmental impact of mining is different between each type of mine than other mines. There are mines located far below the surface, such as oil and gas mining, so that its extraction is conduct by creating wells. Therefore, mining require relatively large areas on the surface. No mines were excavated in the surfaces such as coal, copper, gold, etc., so it requires a relatively large areas on the surface as a result a result of physical and social environmental impact greater. Moreover, the mine had been the livelihood of local residents.

Sustainable human development requires maintenance and preservation of environment. Visibly, mining activity carried out by mining companies always cause environmental damage. Many people consider that the existence of mining activity bring more harm than its benefit. Generally, they assume that the benefits of mining activity is not comparable to the emergence of a variety of issues, ranging from environmental degradation to social and cultural issues related to mining activities.

Many of the criticisms and protests emerged against government's seriousness in managing forests. This is due to various policies and legislations that are actually members of legitimacy exploitation of natural resources on a large scale. It appears that various policies

bring favor for foreign investors and an elite group of entrepreneurs who are close to power despite existing legal tools which function is to maintain environmental sustainability.

Basic public policy in the field of mining is Article 33 paragraph (3) of the Constitution of NRI 1945; the implementation may be considered the following matters:

1. We will not invite foreign companies if the Indonesian people do not dare to take risks or do not master the technology for the mining industry. The reason is if the funds are issued by foreign businessmen, of course, the funds will back to the country where the entrepreneurs come from, but it would be more profitable if conduct by Indonesian businessman;
2. If the risk is not great as well and the problem is only mastered the technology capital, the funds can collected;
3. Both aspect of physical and social environment must be considered in every mining contract mining and mining employers must provide costs for addressing environmental problems;
4. If the sharing contract production for general mining is more profitable than work contract (with the understanding also does not make the contractor a deterrent), then surely it will be more favorable for public need to be applied.

Yet, the mining operations are expected to boost economic activity in order to achieve the welfare of the community, as a function of economic activity which is to utilize the environment for the welfare of society.

Observing the fact that the demand for minerals continues to increase for the foreseeable future, then the predicted quantity of mining operations will increase as well. It departs from the fact that the world's electricity needs are supplied almost 65% of mining products such as oil, gas and coal. Need for electricity in the Indonesia supplied 80% of the mining products such as geothermal, oil, gas and coal.

LEGAL POLITIC IN ENVIRONMENT PERMIT SYSTEM MANAGEMENT

One of government authorities in the framework of environmental protection and management is implementing a license environment. Permit only a monopoly of authority and government. No other institution outside the government who could give permission environmental management, and related to the principle of state power over all natural resources for the sake of livelihood of many people.

Environmental permitting judicial administration is a means to prevent and cope with (control) environmental pollution. In other words, permission is an allowance of a restriction. Actions control through a licensing system (environment), the authorities can pursue a wide variety of common goals. According to M.Splet and J.B.J.M. Ten Berge, this argument utilized for a system of licensing by state authorities which is often conduct on motivation in the form of:

(1)A will to direct (control) certain activities (eg building permits), (2) prevent harm to the environment (environmental permits), (3) a will to protect certain objects (felling licenses, permits dismantle monuments), (4) permit occupants in densely populated areas, (5) Directing, by selecting people and activities, which the board must meet certain requirements.

Good governance will determine the success of the integration of sustainable development principles in the environmental permitting system. Likewise, if the environmental permitting

system has been to integrate the principles of sustainable development means reflects the implementation of good governance.

if observed the meaning of each sector (natural resources) are included in the definition on the Law of environment Protection and management Law As a positive legal environment sector, the entire management of a substance of field must not conflict with the Law on Protection and Environmental Management. This includes setting up and operation of the licensing system that called a system of environmental permitting. Permissions in Law-PPLH consists of 2 (two) types namely, environmental permitting and business licensing and / or activities. Environmental permit is a requirement to obtain a business license and / or activities. To obtain an environmental permit applicant must have an AMDAL.

Instruments of environmental licensing system are: (1) Strategic Environmental Assessment (SEA) SEA is an instrument to integrate environmental considerations in decision-making at this stage of the policy , plan or program , to ensure the sustainable development as early as possible, (2), Spatial Planning space is a process that includes planning , utilization and control of space utilization, (3) environmental Quality Standard is a technical instrument to determine the occurrence of environmental pollution resulting from the implementation of business and / or activity; (4) Protection Plan and Environmental Management is an instrumental in order of planning and management of environmental protection; (5) environmental legislation is based on a legal perspective, environmental damage caused by laws and regulations which are not in favor of the environment. Rules and regulations for legislation which is likely to show the characteristics that are exploitative, centralized, and sectoral; (6) Environmental Impact Assessment which is, development pose negative effect to environment. Relating to the negative impact itself, it needs to follow with such activities that may cause large and significant impact on the environment.

Management of Permit System in Environmental Aspect in Law Number 41 of 1999 on Forestry

Related with forestry sector licensing, in order to obtain optimal benefits from forests and forests for public welfare, in principle, all forests and forest areas can be utilized with regard to the nature, characteristics, and its vulnerabilities, as far as not allowed to change the function. It means forest uses must be adapted to the nature of the function, for example its protection functions.

Forest utilization of forest is conduct with licensing, in addition to have the right to utilize the permit holder shall be responsible for all sorts of disturbances on forests and forest areas entrusted to the license holder. Use of forests for the benefit of the people's welfare should remain positive based on the applicable legal framework. It cannot conduct without the use of forests based on the applicable law as it is also applies to anyone. Forest utilization for outdoor activities such as mining forestry activities carried out by coordination between relevant agencies, of course according to the ability of forest area itself. Currently regulations that used as guidelines in granting permission to use the forest area are Forestry Minister Regulation No. P.18/Menhut-II/2011 dated March 30, 2011 establishes that , mining by open pit mining patterns can only conduct in production forests , while for protected forest region , mining activity can permitted as a mining pattern with underground mining , as far as not violate specified provisions and limitations.

forestry management in the Indonesia state system still have to refer to the entire land, water and natural resources belong to the Indonesia which is dedicated to the welfare of the Indonesian people. As it is referred to iArticle 33 paragraph (2) of the 1945 Constitution that, Sectors of production which are important for the country and affect the life of the people

shall be under the powers of the State.” And in article 33 paragraph 3 1945 Constitution which is : he land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.

Ideally forestry management based on the conception of Indonesia property rights and arrangement based on the conception of forestry in Indonesian Nation Property Rights and state possessing right is a concept that regulate in article 33 1945 Constitution. So forest belong to Indonesia, and the control of the forestry sector belong to state government to submit the (decentralized) or delegate (deconcentration) to the provincial and / or district / city governments. While possessing right as well as forest concession located at PT.Perhutani, Community, Cooperatives and Private Companies.

CONCLUSION

The formulation of legal politic that regulates on environment permit management on protection forest area that accommodates conservation and sustainable principles are:

Ideally forestry management based on the conception of Indonesia property rights and arrangement based on the conception of forestry in Indonesian Nation Property Rights and state possessing right is a concept that regulate in article 33 1945 Constitution. So forest belong to Indonesia, and the control of the forestry sector belong to state government to submit the (decentralized) or delegate (deco centration) to the provincial and / or district / city governments. While possessing right as well as forest concession located at PT.Perhutani, Community, Cooperatives and Private Companies. Meanwhile, forest use that aims to the purpose of people wealth must base on current positive law. It cannot set apart on the forest use without being based on applicable law and applies to everyone.

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