



THE POLITICS OF TERRITORIAL MITIGATION LAW: RELATIONS IN POST-MINING COASTAL AREA MANAGEMENT

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Abstract. The state's orientation in coastal area management is based on the constitution. Mitigation of coastal areas is an integral part of territorial management. Policies related to environmental management are oriented towards the derivative impacts caused after mining activities in coastal areas. Problems arise when there are changes in environmental quality standards after mining. Some of the problems discussed are whether the direction of environmental policy is based on the concept of sustainable development and how is the post-mining monitoring mitigation pattern carried out by policy makers? This research uses normative juridical research methods. The results of the research conducted are legal politics related to environmental protection in coastal areas in general often changes along with changes in the power phase with legacy orientation of achieving success but not based on the root of the problem. Environmental management mitigation instruments in coastal areas are more directed towards state responsibility through the government, causing a high burden and a long range of power related to policy patterns so that it is often late in dealing with problems at the grassroots. Problems of coastal area management can be done through the concept of a comprehensive solution based on grassroots problems that can be resolved at the regional level evaluated by the central government. Environmental problem solving must be carried out based on integrative sustainable development patterns so that it will minimize the impact of derivatives on environmental quality standards.

Keywords: legal policy, environment, mining coastal area

A. Introduction

Geographically, the Indonesian archipelago is strategically located in the tropics flanked by two continents (Asia and Australia), two oceans (Pacific and India). It is the meeting point of three major plates in the world (Eurasia, India-Australia and Pacific) making the Indonesian archipelago endowed with abundant marine resources, both in the form of biological and non-living resources, as well as environmental services.(1)

According to Dahuri and Nugroho (2), ocean and coastal areas have boundaries that cannot be separated from their intended use and management. Limiting the area in management units is useful for identifying functional interactions (such as material and energy flows) between components within the unit (system) of management areas and their interactions with other management areas. Knowledge of these ecological boundaries provides the basis for planning and managing sustainable development of coastal and marine resources.(2)

Bridget Lewis (2022) in her research explains that the long history of human rights was born as a result of the interests and power of the state in the past. In addition, this type of human rights falls into the category of rights to environment, not environment's rights because, the



focus is on humans. The fulfillment of these rights tends to support efforts to realize a good life based on economic, social and cultural conditions. This method makes the fulfillment of human needs very dependent on the ability and political will of the government so that the fulfillment process often causes problems. As a result, the law often ignores the obligation to realize the rights of individual citizens to a clean, healthy and sustainable environment. Thus, justice cannot appear fully in the practice of law and policy making.(3)

Policies on coastal areas have a unity of regulation over the management of coastal areas. The basic principles related to the management of coastal areas are contained in several regulations, including: Constitution of the Republic of Indonesia 1945; Law No. 23 of 2014 concerning Regional Government, Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining; Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands; Law (UU) No. 1 of 2014 concerning Amendments to Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands; amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining to Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining, Government Regulation No. 27 of 2012 concerning Environmental Permits and Government Regulation No. 22 of 2021 concerning the Implementation of Environmental Protection and Management, and other rules that generally regulate mining.

Mining in coastal areas is also closely related to the authority of local governments and the central government. According to Mawardi Khairi, the division of authority between the Central and Regional Governments should be carried out with due regard to the rights of indigenous peoples, especially customary marine rights, which are constitutionally recognized in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, especially in its management arrangements, which are currently regulated in Article 29 paragraph (5) of Law Number 23 Year 2014. With the transfer of authority in the marine and fisheries sector to the provincial and central governments, With the transfer of authority of the marine and fisheries sector to the provincial and central governments, it also has implications for the granting of permits for the management of coastal areas and small islands as regulated in Article 6 of the Regulation of the Minister of Maritime Affairs and Fisheries of the Republic of Indonesia Number 24/PERMEN-KP/2019 concerning Procedures for Granting Water Location Permits and Water Management Permits in Coastal Areas and Small Islands paragraph (3) The Governor is authorized to grant Water Location Permits as referred to in paragraph (1) in Coastal Waters and small islands other than those under the authority of the Minister as referred to in paragraph (1) based on the Zoning Plan for coastal areas and small islands.(4)

In particular, environmental management in coastal areas is a permissible action provided that it does not damage the environment or the environmental quality standards themselves. This is also stated in Law No. 20/2007 on the Management of Coastal Areas and Small Islands Article 35 letter (k) which states that conducting mineral mining in areas that technically and/or ecologically and/or socially and/or culturally cause environmental damage and/or environmental pollution and/or harm the surrounding community. This makes it clear that all activities in coastal areas that actually cause a reduction in environmental quality standards are included in the category of environmental damage. This environmental damage occurs due to mining activities carried out in coastal areas without considering the impact of derivative damage caused.

Environmental damage is not necessarily accompanied by weaknesses on the other side, one of which is related to policies related to licensing. The management of natural resources in Indonesia is still overshadowed by the classic problem of overlapping interests in mining management. This weakness is manifested in the authority to manage coastal areas that are still



tug of war between institutions that have interests in the area, one of which is between the central government, provincial government and local government.

Examples of cases that confirm the occurrence of damage in marine and coastal areas have also been based on research from various parties. Research conducted by WALHI in 2007 in East Java, precisely in Surabaya, noted that various economic activities on the island of Java caused quite complex problems, ranging from physical damage to the environment and also the increasingly severe damage to coastal and marine ecosystems. The level of damage to the marine and coastal environment is very high, 72% of coral reef damage, 40% of mangrove forests have been damaged, pollution by industry and industrial waste and threats to various types of natural and man-made disasters. Environmental damage in marine and coastal areas is not only related to low public awareness of ecosystem conservation, but also the wrong pattern of utilization of natural potential and the weak carrying capacity of government policies, which causes damage to the coastal environment. Data from the Central Java Fisheries and Maritime Affairs Office shows that the damage to marine and coastal ecosystems in the province is quite severe. Of the 10,628.95 hectares of existing mangrove plants, 75 percent of them are damaged. Meanwhile, of the 947 hectares of coral reefs, only 6 percent are in good condition. As for the 33 remote islands (29 in Jepara, 3 in Rembang, and Nusakambangan island in Cilacap), almost all of them have not been optimally utilized. One of the things that should be a concern is that the tendency to damage the coastal and marine environment is more due to the paradigm and development practices that have been applied so far not in accordance with the principles of sustainable and integrated development. The development carried out tends to be extractive and the dominance of central economic interests is prioritized over the economy of local (coastal) communities.(5)

The presence of Law No. 1/2014 on the Amendment to Law No. 27/2007 on the Management of Coastal Areas and Small Islands is a response to the weaknesses of the previous regulation. The existence of licenses related to the Right to Cultivate Coastal Waters (HP3), the content of which was canceled by the Constitutional Court. Mohamad Mahrus Ali, et al, mentioned that although the HP3 regime from Law 27/2007 has changed to a licensing regime in Law 1/2014, but in its implementation there are still obstacles, for example related to institutions in the management of national parks, which according to Article 78A of Law 1/2014 has mandated that conservation areas in coastal areas and small islands include nature reserves and nature conservation areas located in coastal areas and small islands in the form of National Parks / Marine National Parks, Wildlife sanctuaries, etc., are transferred from the Ministry of Forestry to the Ministry of Maritime Affairs and Fisheries, but in practice they are still managed by the Directorate General of Forest Protection and Nature Conservation, Ministry of Environment and Forestry.(6)

Political and legal concepts that lead to a policy issued by stakeholders in environmental management, especially coastal areas, are an important and basic part of a legal policy. The concept of coastal area management in the absence of in-depth analysis related to the impact of environmental damage that has a large impact slowly but surely in areas that are chained to the ocean. There are studies related to environmental damage, one of which is by Rahmat Datau and Hairan entitled Legal Aspects of Coastal Area Management in the Perspective of Regional Autonomy. The focus of the research leads to the potential of natural resources as well as the potential of human resources who are directly involved in the management of coastal area resources and act as subjects not as objects. Local governments also need to pay attention to potential conflicts and customary laws that apply among coastal communities as a form of accommodation of the community's social response to existing regional regulations.(7)

In this study, as a differentiator, it focuses more on the characteristics of policies on the authority to manage sustainable mining licensing and the concept of post-mining supervision mitigation in coastal areas, by reconstructing environmental law-based legal policies based on



sustainable development with coastal area management. Based on the background of the problems in this study, the following problem formulations are: Is the direction of environmental policy based on the concept of sustainable development? and, What is the pattern of post-mining supervision mitigation carried out by policy makers?

B. Methods

This research is a normative juridical research, with data collection methods through *library research* (8). The secondary data that the author uses in this research consists of primary legal materials, namely legal materials that are binding and researched in the form of laws and regulations related to the focus of the research. Primary data will be supported by secondary data. The approaches used in this research are *statute approach* and *conceptual approach*. In general, the data collected comprehensively will be analyzed qualitatively, where all research data is processed in the process of *legal reasoning*. Means or tools for analyzing using grammatical interpretation by interpreting laws and regulations to answer existing problems, then a conclusion is drawn and submitted as suggestions.(9)

C. Results And Discussion

1. Environmental Policy Direction Based on the Concept of Sustainable Development

Weak supervision, guidance and law enforcement have triggered various environmental problems. The lack of supervision and enforcement of the implementation of the law both at the lower level (community) and the upper level (government) makes the tendency of environmental damage more severe. This can be seen from the absence of a special independent institution with full authority to supervise and enforce laws governing natural resource management. Currently in Indonesia there are many laws and regulations governing the sustainable management of coastal and marine resources. However, in reality, many of these laws and regulations are not implemented. This is due to weak law enforcement, sectoral egoism and weak coordination between sectors.(10)

Environmental policy, especially in coastal areas, is closely related to the political and legal context that leads to a policy, according to Suparman A. Diraputra explaining that the function and role of law in the management of coastal areas as follows: First, directive function, where the law must function as a planned and consistent development director so that it can achieve its goals effectively and efficiently. Second, the integrative function, meaning that there is no contradiction or inconsistency either in the formulation of the articles or in their implementation. In addition, integral also means that the law must function as a means of integrating the nation in the sense that it must be able to prevent divisions caused by the emergence of various gaps both economically and socially. Third, stabilitative function, meaning that it provides stability to social life in general. Fourth, the corrective function, which is intended to correct errors or mistakes in the determination of regulations, among others due to changes in policy choices that are feared to cause uncertainty in their implementation, and Fifth, the perfective function, which is to perfect a situation that is already good towards a situation that is close to perfection. The goal is that many members of society can feel the positive benefits of regulatory performance so that life can be enjoyed better and in an atmosphere of order and peace. Meanwhile, the role of law is to create a balance between individual interests and the interests of society in general so that social life can take place in an orderly and orderly manner; the benefits of law are highly dependent on the areas it regulates and who has an interest in these areas of regulation.(11)

Environmental policies are still oriented towards momentary gains that have a systemic impact on the environment. This is supported by mining-related regulations that often change according to interests. Changes in licensing authority often change, which was previously decentralized licensing authority, then pulled back into a centralized system. This centralization



means that all licenses use OSS (Online Single Submission), an electronically integrated business licensing system. Indirectly, this shows the dominance of the state in relation to licensing. Government policy is administrative but does not see the consequences of mining licenses that arise after the issuance of the permit. The policy indirectly shows the concept of unsustainable environmental development.

These stakeholders are important actors in implementing legal politics oriented towards sustainable environmental development, which can be done through two proposed patterns, namely Capability, and Accessibility. First, Capability, namely stakeholders have and ability in sufficient knowledge related to environmental management and utilization and the ability of the community to understand information about the environment, especially environmental quality standards. The ability of stakeholders in the field of administrative fields aims to be more selective (choosing and sorting) for the application of mining licenses. If mining indicates sustainable environmental damage, the license is reviewed or rejected in the mining license. This is important as a real step in shaping legal politics related to the environment characterized by sustainable environmental development.

Second, accessibility is related to communication channels and reports to the institutions above so that the community has a good bargaining position in environmental management. The inclusion of the community in environmental mapping as a subject in environmental management is an integral part of the concept of information-based environmental development as a form of accountability for the right to information to the community. This also affects the factual information data reported to the Ministry that takes care of coastal and marine issues as a form of responsibility for environmental management.

Article 87D number 1 of the Minerba Law Number 3 of 2020 in principle has an obligation for information disclosure. In an open and transparent manner, the Government through the Ministry of Energy and Mineral Resources periodically provides mining data and information easily and quickly by business license holders.

So in principle, the direction of the political policy of coastal area management law is more directed towards a systematized pattern of rules related to administrative management of coastal areas and small islands by resolving classic problems related to the ambiguity of coastal area management rules, conflicts over water conservation institutions in coastal areas, affirmation of the authority of local governments in empowering and managing coastal areas.

2. Mitigation Patterns of Post-mining Surveillance Conducted by Policy Makers

Article 6 of Law Number 3 of 2020 concerning Minerba states that the Central Government has the right to provide guidance and supervision on the implementation of mineral and coal mining business activities for business license holders and also provide guidance and supervision on reclamation and post-mining activities. Mining activities also have an environment social and government (ESG) paradigm as stipulated in Permen of ESDM No. 17 of 2020 concerning the Third Amendment to Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 concerning Mineral and Coal Mining Business. Resource conservation is an effort to optimize the management or utilization of mineral and coal resources in a measured, efficient, responsible, and sustainable manner.(12)

Policy makers in conducting post-mining management and supervision in coastal areas require real action that is quite large and heavy, due to the range or area of the archipelago. A monitoring mitigation is needed that can be done in several stages, namely using the GREAT concept or pattern, namely:

a. Give Provide Tiered Supervision

Tiered supervision is adjusted to the authority and functional duties of the institution. This tiered supervision minimizes environmental damage because it uses supervision from the time the mining permit appears until the permit has expired. The focal point is post-mining activities



so that district/city governments affected by mining activities can get certainty over reclamation to restore post-mining environmental quality standards carried out in their area.

b. Recovery For Environment

Understanding the importance of the environment both on land and in coastal areas is an important part of awareness of environmental aspects. The environment in coastal areas is an important part for people who make coastal and ocean areas a source of livelihood so that there will be a symbiosis of mutualism between the perpetrators of mining activities, the surrounding community and by restoring post-mining environmental quality standards. This must be done as a form of responsibility for mining activities or activities that take place.

c. Excellent Reaction for Environment

Stakeholders must be proactive when there is a potentially damaged environment due to a mining activity. Therefore, all mining activities from the issuance of the permit until the expiration of the mining permit must have monitoring and evaluation of the mining activities. This activity is carried out as an action to minimize damage or deterioration of environmental quality standards, especially those in coastal areas. Respond to existing information which is then matched with existing environmental quality standards and Environmental Impact Analysis so that damage can be prevented or minimized with a quick reaction and response to information on environmental damage.

d. Always be Professional

Stakeholders of the environment in coastal areas prioritize the availability of data and information as well as the basis of regulations as a legal umbrella in making decisions or policies related to coastal area management. Policies that are appropriate, fast, effective and in accordance with the needs are a form of professionalism of stakeholders in the management of mining-based and post-mining natural resources

e. Take a Change and Fixed It

The management of coastal areas has considerable risks, mismanagement will result in the destruction of a natural ecosystem so that environmental quality degradation occurs. The short-term consequences of coastal area management are by structuring the rules related to the authority of coastal area management so that in the future there is no overlapping authority and maximizing the potential in coastal areas and protecting the coastal area environment is something that needs to be done as early as possible.

The management of coastal areas and small islands, which includes planning, utilization, supervision and control activities, requires more efforts from stakeholders by conducting a more systematic and measurable planning pattern and encouraging improved management in order to optimize the potential of coastal areas for the welfare of the community.

D. Conclusion

Supervisory mitigation is carried out based on the authority possessed so that in stages all supervision is carried out from the regional level to the center with real data. This is important to do as a form of state responsibility. This change can be made based on the policy (legal politics) carried out by the state to manage natural resources.

The process of restoring environmental quality standards that have deteriorated due to mining can be done by involving 4 parties, namely the government, local government, licensee legal entities, and the community. The central government that grants permits, local governments as early supervision, licensee companies carry out the concept of sustainable environmental development, and the community is positioned as an actor in the field of supervision of mining implementation, both before mining is carried out, during mining, and after mining is carried out.



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