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COMPETITIVENESS AND EXEMPTIONS FROM ENVIRONMENTAL COST ON COAL MINING COMPANIES

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ABSTRACT: Mining investment in Indonesia has been at a standstill for a decade. Looking ahead, growing environmental concerns combined with sharp falls in coal prices. This article aims to conduct a comprehensive study of the imposition of environmental cost on companies that invest in coal mining field. This research is a normative-legal research using a statute, case, historical, comparative and conceptual approaches. The results show that the economic approach is an approach that emphasizes the economic benefits obtained by the owner of an activity if they comply with environmental requirements as governed by environmental laws and regulations. While, the economic approach is very necessary because it is a factor that stimulates business compliance. Corporate responsibility in environmental recovery in investment activities in coal mining consists of the responsibility to do reclamation of mining land and they have responsibilities to do environmental recovery due to the pollution and/or environmental damage.

KEYWORDS: Coal Mining; Corporate Responsibility; Environmental Law; Environmental Recovery

I. INTRODUCTION

Indonesia is blessed with a wealth of natural resources. One of the riches of its mining is coal. However, as a non-renewable natural resource, coal is a national wealth controlled by the State for the maximum welfare of the people. In practice, the control of coal by the State is managed by the central and local government must be based on aspects of ecosystem sustainability and sustainable development remains in line with the mandate outlined by the constitution.

Mining investment in Indonesia has been at a standstill for a decade. Clearly, international mining companies regard the country as a high-risk destination for capital. Yet Indonesia is one of the most highly mineralised countries in the world and has expressed a desire to increase investment in the sector in the coming years. Looking ahead, growing environmental concerns combined with sharp falls in coal prices. The policy-maker needs to consider measures to reduce the level of coal exploitation to save the environment and investment policies that support agricultural-based activities where the employment rate is the highest.

Conceptually, in order to support sustainable national development, there are at least a number of mineral and coal management objectives that can be identified, among others are: *firstly*, ensuring the effective implementation and control of mining activities in an efficient, effective, and competitive manner; *secondly*, guarantee the benefits of mineral and coal mining in a sustainable and environmentally-friendly manner; *thirdly*, guarantee the availability of minerals and coal as raw materials and/or as sources of energy for domestic needs; *fourthly*, supporting and developing national capabilities to be more able to compete at the national, regional and international levels; *fifthly*, increasing the income of local, regional and State communities, as well as creating jobs for the maximum welfare of the people; and finally, ensuring legal certainty and conducting mineral and coal mining business activities.

Coal is one of the most important sources of energy in human life. Coal is a combustible rock. Most power plants operating in Indonesia use coal energy sources. The presence of coal is very important for human life, therefore many mining companies have exploited coal-containing areas.

In fact, environmental damage in Indonesia has had a devastating effect on life, 34% of the poverty rate, 85% victims of natural disasters, 3.5 million hectares of destroyed forests and a number of violent and horizontal conflicts also caused by environmental disputes have caused 60% of them to become development refugees. In fact, in these refugees, it is not uncommon for them to deal with new problems that cause a decrease in their quality of life.

Data from the Directorate General of Coal Mineral and Geothermal, there are 186 active companies consisting of 15 Contract of Work, 25 Coal Work Contracts and 146 Mining Concessions, with an area of land opened 57.703, 59 ha with land area 20.826,58 have been reclaimed, the rest has not been reclaimed and the abandoned lands can easily be seen in various places in Indonesia.

Based on this reality, it is important to conduct a comprehensive study of the imposition of environmental cost on companies that invest in coal mining field. With the aim of achieving sustainable development and leading to the realization of a balance between prosperity and environment that is good and sustainable.

II. METHOD

This research is a normative-legal research using a statute, case, historical, comparative and conceptual approaches. Its data will be provided from primary and secondary legal materials. The primary legal materials resulted from some relevant laws and legislation. Those legal material collected are analysed descriptively related to the problems and prescriptively.

III. STRATEGIES AND CONCEPTS OF ENVIRONMENTAL COSTS IN INVESTMENT ACTIVITIES

The recovery of national development that orient to the utilization of natural resources is development that has dimensions on environmental issues. Conceptually, the environment is a unity of space with all objects, power, conditions and living things, including humans and their behavior that affect nature itself, the survival of life, and the well-being of humans and other living things.

Environmental protection and management is a systematic and integrated effort undertaken to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement.

The Environmental Management System cannot be separated from its management factors, namely humans. Basically, human is egoistic. Human attitudes and actions towards their environment are strongly influenced by economic considerations, both individual economics and the State economy. This excessive economic goal causes over-exploitation without adequate protection. To change it, human attitudes and actions must be changed to be environmentally friendly.

Basically, human attitudes and behaviors that cause environmental damage are caused by 2 (two) things, namely economic considerations and the lack of public understanding of the environmental benefits for humans. These attitudes and behaviors can be changed in 3 (three) ways namely: (i) regulatory and supervisory instruments; (ii) economic instruments; and (iii) persuasive instruments. These three instruments are given a place in the Environmental Protection and Management Act No. 32 of 2009. In communities whose lives are dominated by market economies, economic instruments become a very powerful tool in environmental management.

Theoretically, economic instruments promise good results against compliance with environmental law. In practice, the absence of implementing regulations related to economic instruments causes the stuttering of the government in its application and the reluctance of business actors to implement it. Efforts for environmental management are never separated from the importance of adopting various approaches in environmental management. It is known that the implementation of the reclamation in the former mining area has been carried out, but the success is still far from being expected so that it has not given optimal results in the effort to restore the function of the land in accordance with its designation.

For this reason, it is necessary to establish a control mechanism in the implementation of integrated reclamation. In addition, the government must be more assertive in implementing sanctions against mining companies that violate the obligation to conduct reclamation. So that all mining companies must use zero mining technology that is mining until it runs out and also needs to be encouraged environmentally friendly economic activities. By the existence of a guarantee fund for environmental recovery for every company that manages natural resources in the mining sector, the position of the guarantee fund in the business financing structure becomes part of the production variable in the form of environmental costs.

The economic approach to the imposition of environmental cost indicates that environmental costs are one of the production variables that are crucial for the sustainability of ongoing production activities. Therefore, environmental costs from an economic point of view become part of the variable costs which must be directed to restore the environment both in the process of ongoing and post-mining activities.

The environmental recovery activities carried out by business actors must consider the interests of the people living near the mining activities. For this reason, environmental restoration activities should involve the

community because the community surrounding the mining site will be directly affected by an environmental damage.

IV. LEGAL APPROACH TOWARDS THE IMPOSITION OF ENVIRONMENTAL COST: RESPONSIBILITIES OF BUSINESS ACTORS TOWARDS ENVIRONMENTAL RECOVERY

Environmental law aims to regulate human behavior towards their environment, thereby regulating economic instruments arranged therein. Basically, it is preventive; thus compliance instruments on the environment get special attention. The purpose of environmental compliance is to prevent pollution and/or damage by applying environmental requirements to business activities and/or individuals. Economic instruments based on the Environmental Protection and Management Act of 2009 is one of the instruments for preventing pollution and/or environmental damage which is part of the control of pollution and/or environmental damage. Thus, economic instruments based on applicable legal provisions function as instruments of compliance in the lives of people who interact with their environment. The economic instrument is placed on the basic legal framework, which in this case is the legislation governing the management of natural resources in relation to the protection of the law for the environment.

Investment activities that manage natural resources based on the Environmental Protection and Management Act of 2009 are directed to support sustainable development. Sustainable development is a development concept that was popularized through the World Commission report on Environment and Development in 1987, which has given birth to a pattern of development with a sustainability perspective. This is interpreted as the capacity for renewal and evolution in ecosystems, as well as innovation and creativity in social systems. This concept arose from a mutual agreement among Commission members that many development activities resulted in poverty and deterioration and environmental damage, so that new paths for development that would bring progress to humanity would be needed not only for a short time but for a longer period of time.

Sustainable development is related to (i) human needs in developing countries to meet their needs; and (ii) technological and social organization limitations related to environmental capacity to meet the needs of present and future generations. This results in different emphases in the application of sustainable development in developed and developing countries. Developing countries give priority to sustainable development in meeting basic human needs at the moment, as well as ensuring the continuity of economic development. This emphasis places integrated economic and environmental considerations as a sustainable development strategy.

Mining activities are risky and very-complicated business activities, requiring high technology, large capital, besides requiring a mature total planning from the beginning to post-mining. When clearing land, it must be able to understand how to close the mine accordance with environmental laws.

In general, coal mining in South Kalimantan is conducted using *open pit* mining techniques, namely by land clearing, stripping top soil, over burden stripping, as well as cleaning and mining coal. By this technique, it has caused damage to the physical, chemical, and biological conditions of the mining ground. Therefore, post-coal mining improvement activities are absolutely necessary to restore the productivity of the land.

Mining activities that do not consider the balance and carrying capacity of the environment, and are not well-managed can have a negative impact on the environment so mining activities should benefit instead. However, mining activities that pay attention to environmental problems and are well managed, it is not impossible that the land is more beneficial than before.

Also, coal mining has caused severe environmental damage both to the quality of water, soil, air and forests. Coal mining directly causes water pollution, namely from the coal washing waste in terms of separating coal from sulfur. The washing waste pollutes the river water so that the color of the river water becomes turbid, acidic, and causes river siltation due to the coal washing deposits. Coal washing waste after research contains substances that are very dangerous to human health if the water is consumed. The waste contains sulfur (S), mercury (Hg), chloric acid (HCl), manganese (Mn), sulfuric acid (H₂SO₄), and lead (Pb). Hg and Pb are heavy metals that can cause skin diseases in humans such as skin cancer.

The impact on the soil causes pollution due to coal mining, by the presence of large holes that cannot be closed again causing a pool of water with a very high acid content. The puddle water contains chemicals such as Fe, Mn, SO₄, Hg and Pb. Fe and Mn in large quantities are toxic to plants that cause plants cannot develop properly. SO₄ affects the level of soil fertility and soil pH due to soil pollution, the plants on it will die.

For the air, coal mining causes air pollution, this is caused by coal combustion. Produces nitrogen oxide gas which looks brown and also as pollution which forms acid rain and ground level ozone, which is another type of pollution that can pollute the air. Besides the dust from the removal of coal is also very dangerous for health,

which can cause respiratory infections, and in the long run if the air is inhaled will cause cancer and the possibility of birth defects.

In relation with the impact of coal mining on forests, coal mining can destroy people livelihoods because agricultural land, i.e. forests and lands has already been acquired by the company. This is due to the expansion of the mine which narrows the business land of communities, as a result of this expansion can also cause flooding because the forests in the upstream area which should have been a catchment area have been cleared. This is exacerbated by poor drainage and damage to downstream areas such as swamp forests. Not only pollution of river water but also of the sea, where pollution of sea water due to coal mining occurs during loading and unloading activities and coal hauling barges. In addition, pollution can also disrupt the life of mangrove forests and biota around the sea.

Environmental recovery is the responsibility of the person in charge of the business or activity. If the person in charge of the business or activity does not carry out environmental restoration, the local government through its authority may order the person in charge of the business or activity, perform or appoint a third party to do environmental recovery at the expense of the person responsible for the business or activity or through an environmental recovery guarantee fund. The implementation of restoring polluted environmental conditions does not release the person responsible for the business or activity to provide compensation or criminal pursuit.

Based on the Regulation of the Minister of Environment No. 15 of 2011 concerning the Guidelines for the Draft of Local Regulation in the Field of Environmental Protection and Management, it is related to environmental funds for environmental recovery in the event of environmental pollution becoming the authority of local governments to regulate it in local regulations. Therefore, based on the applicable legal regulations, business actors are burdened to provide funds to guarantee environmental recovery when the activities carried out cause pollution due to the surrounding environment.

V. CONCLUSION

The position of environmental costs in investment activities in coal mining can be seen from two approaches, namely the economic and legal approaches. The economic approach is an approach that emphasizes the economic benefits obtained by the owner of an activity if they comply with environmental requirements as governed by environmental laws and regulations. While, the economic approach are very necessary because it is a factor that stimulates business compliance. Corporate responsibility in environmental recovery in investment activities in coal mining consists of the responsibility to do reclamation of mining land and they have responsibilities to do environmental recovery due to the pollution and/or environmental damage.

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