



THE 3rd INTERNATIONAL CONFERENCE AND CALL FOR PAPER

“Legal Development in Various Countries”



IMAM AS SYAFEI BUILDING
Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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INFORMATION OF THE CONFERENCE AND CALL PAPER

WORLD CLASS ISLAMIC UNIVERSITY
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Welcome to Participants on International Conference

“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. And focusing on the development of law in both developed and developing countries and its role in shaping a good future.

KEYNOTE SPEAKER:
Prof. Henning Glaser
Thammasat University, Thailand

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Faculty of Law, Sultan Agung Islamic University
Jalan Raya Kaligawe, KM. 4 Semarang, Indonesia

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Indonesia, September 05th 2017

Organized by : Faculty of Law Sultan Agung Islamic University (UNISSULA) Semarang-Indonesia

WORLD CLASS ISLAMIC UNIVERSITY
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Sultan Agung Islamic University, Indonesia

5
September
2017

Organized by : Faculty of Law UNISSULA Semarang-Indonesia

FACULTY OF LAW
Sultan Agung Islamic University

This Conference And Call Paper was held by the Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on:

Day: Tuesday

Date : September 5th 2017

Time : 08:00 - 15:00 pm

Place : Imam AsSyafei Building 3rd Floor

Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Jl. Raya Kaligawe Km. 4 PO. BOX.1054 Telp. (024) 6583584 Fax.(024)6582455
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AND CALL FOR PAPER
“LEGAL DEVELOPMENT IN VARIOUS COUNTRIES”**

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PREFACE

Assalamu'alaikum, Wr. Wb

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: **Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnan, Ph.D from Sorbone University, Prof. Dr. I Gusti Ayu Ketut Rachmi Handayani, MM from Sebelas Maret University, Dr. Zaharudin from Universiti Utara Malaysia, and Dr. Anis Mashdurohatun, S.H., M.Hum from Sultan Agung Islamic University.**

This is our third International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner to be discussed as guidelines to exchange and discuss views on the most important recent on Legal Development happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

See you in our fourth International and call for paper next year.

Wassalamualaikum, Wr. Wb

Semarang, September 5th 2017

Chairman of the Committee,



Dr. Anis Mashdurohatun, S.H., M.Hum
NIDN : 06-02105-7002

GREETING FROM THE DEAN OF FACULTY OF LAW

As-salamu'alaikum Wr. Wb.

Thank to Allah SWT is an absolute act that we must say after conducting the International Conference and Call for Paper by theme: “**Legal Development in Various Countries**” which is held by Faculty of Law, Sultan Agung Islamic University (UNISSULA) Semarang, on September 5th 2017.

This conference tries to reviews different theories of legal development in order to highlight their similarities and differences. In the end, as in contract theories, no monist view of legal development possesses the explanatory power needed to understand how law has come to be and where it may take us in the future. What we do have is a foundation built on at least two millennia of legal history. The intellectual starting point for this project is Nathan Isaacs' unfinished work on a cycle theory of legal development. His view of legal development takes issue with Henry Sumner Maine's thesis that development in advanced legal systems is progressive in nature. And, more importantly for the current undertaking, that this progression is linear in nature. Instead, Isaacs' review of thousands of years of Jewish legal development indicated that legal development perpetually progressed in cycles.

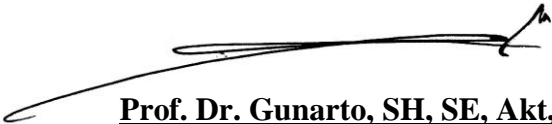
Therefore, to discuss more about legal development or law reform, Faculty of Law, Sultan Agung Islamic University is confidence to conduct a conference by the theme “**Legal Development in Various Countries**” focusing on the development of law in both developed and developing countries and its role in shaping a good future.

Finally, we thank to the presenters, article senders, and comittee who have contributed in this event, so that this international seminar ran well.

Wassalamu'alaikum Wr. Wb.

Semarang, September 5th 2017

Dean,



Prof. Dr. Gunarto, SH, SE, Akt, M.Hum
NIDN.062004670

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**SOCIAL FUNCTIONS OF POST-MINING RECLAMATION OF COAL
MINING IN SOUTH KALIMANTAN PROVINCE**

Abdul Halim Barkatullah, Syaifudin, Mahyuni, Ifrani593

INTERNATIONAL SEMINAR PHOTOS 601

SOCIAL FUNCTIONS OF POST-MINING RECLAMATION OF COAL MINING IN SOUTH KALIMANTAN PROVINCE

**¹Dr. Abdul Halim Barkatullah, S.H., M.Hum ²Mahyuni, S.H., M.H.
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ABSTRACT

The social function of post-reclamation mining activities aims to improve the social function of communities around the mine. In Indonesia coal mining practices represent the issue of regulation in the mining field, post-mining land reclamation for the restoration of the social function of the communities around the mine, which consists of: First, the issue of synchronization of material on the contents of mining, forestry legislation and regional legislation regulating the mining reclamation, secondly, the problem in the implementation of mining reclamation that not only concern the environment, but also pay attention to the welfare of the local community. The reclamation and post-mining policies of coal mines in South Kalimantan Province, still only aim to restore the environment as regulated in South Kalimantan Regional Regulation No. 1 of 2013, regulating the Post-Coal Mining Land Reclamation in South Kalimantan, This regional regulation has not yet paid attention to the social impacts of mining aimed at improving the living standards and prosperity of local producing communities.

Keyword: *Social Functions, Reclamation, Post-Mining, Coal-Mining*

INTRODUCTION

Mining reclamation is basically an effort to improve the condition of the land after mining activities are completed. As has been well understood that the nature of the mining industry is destructive because of its activities that excavate and change the landscape, micro-climate change to the environmental conditions. In addition, the mining industry also poses a positive impact as a source of foreign exchange, local revenue, job creation, economic change and act as a development agent for the region. The objective of mine land reclamation activities is to improve the ex-mining land ecosystem by improving soil fertility and planting land on the surface. Another goal is to be able to keep the land stability, more productive and

increase the productivity of the former mining land. In the end, reclamation can generate positive value for the environment and create a much better condition than it was before mining, environmental damage, and others. In addition to environmental impacts, post-mining also spawned a variety of social problems that will ultimately trigger a sustained conflict if left without handling. One of the most common social problems faced is the completion of land compensation, the loss of a number of income to the local community, especially the people who are laborers or workers in the mining company, or community sellers. Another problem is the presence of local women married by miners, who once the mining company closes its operations, is simply abandoned.

METHODOLOGY

This research uses socio-legal research method using interdisciplinary or "hybrid" approach between aspect of normative research with sociological approach using qualitative analysis method, that is by analyzing data in depth and holistic as stated by David M. Fetterman.¹ Which is for more detailed and thorough explanation of legal issues in a more meaningful way by comparing law in books with law in action.² Data analysis was done qualitatively, using analytical descriptive method.³ Analysis conducted in this research begins with data reduction, that is in the form of election activity, simplification, coding, organizing, and updating data. The collected data is then arranged in an expanded text, explained and then analyzed to draw a conclusion

LITERATURE REVIEW

A. Definition and Legal Standing of Coal Mining License

.In Act No. 4 of 2009 concerning Mineral and Coal Mining, Article 1 point (1) mentions mining is part or all of the activity steps in the research, management, and exploitation of mineral or coal covering general investigation, exploration, feasibility study, construction, processing and refining, transporting and selling, and post-mining activities. Mining business is an activity in the framework of mineral or coal exploitation covering stages of general investigation activities, exploration, feasibility study, construction, mining, processing and refining, transportation and sales, and post-mining. These mining businesses are grouped into: (1) mineral mining; and (2) Coal mining.

B. Allocation of Mining Areas

The allocation of mining areas is divided into various provisions with certain requirements, basically the license of allocation in mining areas is divided into operating mining permits, exploration mining permits and mining permits. For the phase of mineral mining exploration activities are provided with an area of at most 100,000 hectares with a maximum duration of 8 years. For the operational phase of the metal mineral mining production operation shall be provided with an area of 25,000 hectares with a maximum

¹ David M. Fetterman, *Ethnography Step by Step*, London, Sage Publishing, 1998, hlm. 19

² *Ibid*, hlm. 175.

³ Winarno Surakhmad, *Dasar dan Teknik Research*, Bandung: Tarsito, 1978, hlm. 132

period of 20 years. For the phase of exploration activities coal mining is provided with an area of at most 50,000 hectares with a maximum period of 7 years. For the operational phase of coal mining production shall be provided with a maximum area of 15,000 hectares with a maximum period of 20 years

C. Reclamation in Mining Activities

According to Act No. 4 of 2009 on Mineral and Coal Mining it is mentioned that reclamation is an activity undertaken throughout the mining business stages to organize, restore and improve the quality of the environment and ecosystem in order to function again. Post-mining activities are defined as activities after the end of part or all of the mining business activities to restore the function of the natural environment and social functions. Reclamation activities regulated in legislation emphasize on the restoration and improvement of environmental conditions without significantly touching social aspects. While the social impact suffered by the community around the mine can not be underestimated, because it will deny the meaning contained in the mandate of the UUD 1945 article 33 mentioned earlier, namely to achieve the greatest prosperity of the people. The existing reclamation model must be equipped with a reclamation model that embraces reclamation in a more comprehensive social field and is able to close the vacant space left by the mining company.

FINDING AND DISCUSSION

A. Legal Regulation of Reclamation on Coal Mining Business

The legal regulation is the activity of determining the content of the rule of law as precisely as possible. The activity establishes the content of the rule of law, that is to stipulate what is the rule of law, basically is to formulate the meaning of the rule of law or regulation.⁴

The policy regulating the excavation materials is nationally regulated in Act No. 4 of 2009, substantially in only one form, that is, business license that is very different from what is stipulated in Act No. 11 of 1967 which consists of various forms of giving authority through : KP (Mining Concession), KK (Contract of Work), PKP2B (Coal Mining Concession Working Agreement), SIPD (Regional Mining Permit) for industrial excavation materials, and IPR (Mining Permit Area) that is mining conducted by the people. Various forms of legality in the field of mining causes the coordination of supervision and control is not maximum⁵, because every legality that is passed on to a mining business activity is implemented not with a good coordination system and often found problems in the field of mining business activities issued by local governments where their duties are not performing well.

The policy of the South Kalimantan Provincial Government in the regulation of the mining system has issued Local Regulation of South Kalimantan No. 2 of 2009 on General Mining Management. This regulation is enacted on the premise of general mining management as an effort to exploit mineral resources, energy and minerals to have an impact

⁴ Teguh Prasetyo dan Abdul Halim Barkatullah, *Filsafat, Teori & Ilmu Hukum Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*. PT RajaGrafindo Persada, Jakarta, hlm. 238.

⁵ Nandang Sudrajat. *Teori dan Praktik Pertambangan Indonesia Menurut Hukum*. Yogyakarta : Pustaka Yustisia, hlm 65

on the environment on physical, social, cultural and public welfare, so that in the management it is necessary to pay attention and preserve the environment. In practice in the field of regulation in the mining, reclamation and post-mining fields, there is still overlapping authority, guidance and supervision of coal mining companies, especially in mining companies whose licenses (PKB2B) are issued by the central and provinces, this is due to the location of mining are in certain districts/municipalities but the licensing authority is central/provincial so that coordination and supervisory issues give rise to individual problems.

B. Government Policy on Social Functions of the Community Around the Post-Reclamation and Post-Coal Mines

Provincial Government of South Kalimantan policy with the enactment of Regional Regulation of South Kalimantan Province No. 1 of 2013 on Land Reclamation Post-Coal Mine in South Kalimantan. This Regulation in the effort to recover the quality of environmental supporting capacity, reclamation is a strategic step that needs to be done for the future of society and region, and therefore in its management need to pay attention and preserve the function of environmental component in it. Reclamation and Post-Mining in the Local Regulation also regulates the document of reclamation plan, which includes a range of settlement time adjusted to the mine period, land use before and after mined, land clearing plan, reclamation program on damaged land, covering ex-mining land and land in outside of temporary or permanent ex-mining, success criteria by including standard indicators of land management success, revegetation, civil works and final settlement.

In the data reclamation system, and various problems that exist in the field researchers get a lot of data from PT Adaro Indonesia. PT Adaro Indonesia is one of the contractors of Coal-Mining Concession Working Agreement (PKP2B) conducting coal exploration and mining activities in Balangan Regency and Tabalong Regency, South Kalimantan Province. Mining area of PT Adaro Indonesia Coal Mining Concession Agreement of 35,800 Ha effective on 29 April 1998.

One of the environmental management conducted by PT Adaro Indonesia is to conduct reclamation activities. Working procedures in the implementation of PT Adaro Indonesia, reclamation activities through several stages starting from the formation of disposal and surface regulation aimed at creating a stable landfill, providing suitable replanting sites for plant growth, and minimizing erosion, until monitoring activities soil fertility by taking into account the chemical and physical elements of the soil. Constraints that are often faced in the implementation of reclamation in PT Adaro Indonesia is generally present during the operational reclamation. While on the implementation method almost no problems found. The operational constraints, among others, in the dry season can not be done because the planting of newly planted plants most likely will not survive.

From the results of observations by researchers in the field on the reclamation area, that aspects of soil and plants has good result. This is result of intensive implementation of the best reclamation practices conducted by PT Adaro Indonesia, and to improve the welfare of the surrounding community is the long-term goal of reclamation, in addition to CSR which has been done by PT Adaro Indonesia.

The influence of coal-mining activities to the prosperity of the people in Tabalong district. Minerals belong to the nation or nation's rights so that any renegotiations made should be appropriate in accordance with the provisions of Article 33 of the UUD 1945 which

declare that natural resources shall be used as maximum as possible for the welfare of the people. The mandate of the Constitution should be implemented by the government, from the central government to the local government. For that, it should be noted whether the government already has an adequate or comprehensive review to renegotiate the existing contracts. The review not only covers whether mining companies meet administrative obligations, but also has to answer the question of whether mining activities have a positive impact on communities, especially communities around the mine.

The management of coal mining based on a permit in a mining areas should be benefited by the people around it in order to lead a prosperous society in line with the hope of a just and prosperous country with the development of infrastructure including the development of infrastructure and facilities that will support economic, social, governmental, culture and others. Development of infrastructure in mining areas is very important include educational facilities from various levels, health facilities (clinics and hospitals), security facilities, means of worship districts.⁶

The law must be able to regulate the impact of development in the field of mining, especially coal, concerning the environment and social welfare of the community, that is the existence of the constituent elements of the law, then any business entity that already has an IUP (mining license) in the field of coal mining management must be conscious of its duties and responsibilities to social problems and the economy around the WIUP (legal mining area). This is none other than to help the government to alleviate poverty.

The government have to create a mechanism for the welfare of the community, assisted by a private business entity that permits business, to realize the state goal, especially in the welfare, educate the nation's life means to be able to do development by directing to the substance to be aimed in an integrated and based on planning, reclamation, and post-mining activity.

This policy should be based on the welfare and prosperity of the community as well as the preservation of the environmental function which is an integral part of the implementation of the government, both central and regional.

THE CONCLUSION

A. *Conclusions*

1. In practice shows the issue of regulation in the mining field, post-mining land reclamation for the restoration of the social function of the communities around the mine, which consists of: First, the issue of material paradigm regulation of mining, forestry and local regulations regulating mining reclamation; Second, the problem in the implementation of mining reclamation that is not only concerned about the environment, but also pay attention to the welfare of the surrounding community.

⁶ Ernani Rustiadi. et.al, *Perencanaan dan Pengembangan Wilayah*, Jakarta: Pustaka Obor Indonesia, 2011, hlm 402.

2. The reclamation and post-mining policy of coal-mining in South Kalimantan Province still only aim for environmental restoration as regulated in Regional Regulation of South Kalimantan Province No. 1 of 2013, Concerning Reclamation of Coal Post-Coal Land in South Kalimantan, this regulation has not yet considered the social impact of mining aims to improve the standard of living and prosperity of the producer community.

B. Recommendations

1. In terms of addressing the problem of synchronization in the field of coal mining, land reclamation and post-mining for the restoration of the social function of communities around the mine must be returned to the principles of law and philosophical objectives of the mining sector namely Article 33 of the UUD 1945, essentially that natural resources should be managed / governed by the government to channel the results for the people's welfare
2. The government have to create mechanisms in the field of mining policy aimed at the welfare of the community, assisted by private business entities obtaining mining business licenses. This policy should be conducted jointly between the government and the private sector to realize the welfare and prosperity of society and the preservation of environmental functions comprehensively.

REFERENCES

Books

- Fetterman, David M. 1998. *Ethnography Step by Step*. London, Sage Publishing.
- Prasetyo, Teguh dan Abdul Halim Barkatullah. *Filsafat, Teori & Ilmu Hukum Pemikiran Menuju Masyarakat yang Berkeadilan dan Bermartabat*. Jakarta: PT RajaGrafindo Persada.
- Rustiadi, Ernan. et.al. 2011 *Perencanaan dan Pengembangan Wilayah*. Jakarta: Pustaka Obor Indonesia.
- Surakhmad, Winarno. 1978. *Dasar dan Teknik Research*. Bandung: Tarsito.
- Sudrajat, Nandang. *Teori dan Praktik Pertambangan Indonesia Menurut Hukum*. Yogyakarta : Pustaka Yustisia.

Constitution and Law

1. Undang-Undang Dasar 1945.
2. Undang-undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.
3. Peraturan Pemerintah Nomor 78 Tahun 2010 tentang Reklamasi dan Pascatambang.
4. Peraturan Pemerintah Nomor 24 Tahun 2012 tentang Perubahan Atas Peraturan Pemerintah Nomor 23 Tahun 2010 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral dan Batubara.
5. Peraturan Menteri ESDM No 18 Tahun 2008 tentang Reklamasi dan Penutupan Tambang;
6. Peraturan Menteri Kehutanan Nomor P.60/Menhut-II/2009 tentang Pedoman Penilaian Keberhasilan Reklamasi Hutan.
7. Peraturan Menteri Kehutanan Nomor P.4/Menhut-II/2011 tentang Pedoman Reklamasi Hutan;
8. Peraturan Menteri Energi dan Sumber Daya Mineral Nomor 02 Tahun 2013 tentang pengawasan Terhadap Penyelenggaraan Pengelolaan Usaha Pertambangan yang dilaksanakan oleh Pemerintah Provinsi dan Pemerintah Kabupaten/Kota.
9. Peraturan Menteri Energi dan Sumber Daya Mineral Republik Indonesia, Nomor: 07 Tahun 2014, tentang Pelaksanaan Reklamasi dan Pascatambang Pada Kegiatan Usaha Pertambangan Mineral dan Batubara.
10. Peraturan Daerah Provinsi Kalimantan Selatan Nomor 1 Tahun 2013, Tentang Reklamasi Lahan Pascatambang Batubara di Kalimantan Selatan.

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INTERNATIONALSEMINARPHOTOS



