

Revitalization of Supervision against Local Government Policy in the Protection and Environmental Management

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Abstract: Normatively, the law of environmental protection and management (UUPPLH) had regulated of supervision, but its definition does not include both in general requirement of UUPPLH or in another article that regulate about supervision in deep, it is article 71 until 75 UUPPLH. The supervision of environment management is a consequence of license issued by government or local government based on its an authority. In the mineral and coal mining, a supervision is a preventive action to evaluate of mining activities with its own license. In article 141 paragraph 1 the law Number 4 in 2009 (Gazette Republic of Indonesia Number 157 in 2009) on Minerals and coals (law of mineral and coal) reveal that one of element which supervised by central government or regional government is environmental management. The supervision was done by mining inspector to mining activities that has IUP, IPR or IUPK, with its an authority. The study aims to find the integration supervised concept. The method of research is conceptual research by study of laws of environment and mining. The study conclude that the integration supervised is required for sustainable environment and should be enacted in law.

1 INTRODUCTION

Based on the term of environment in article 1 paragraph 1 UUPPLH (Anon., 2009), the coal resource is kind of that environment, and should obedient to the regulation of law in UUPPLH, one of the is regulation of supervised and management environment. In UUPPLH established that the even organizer of supervision in obedience from miners to regulation of law is environmental monitoring officer. (Listiyani, 2017) But in sectoral, mineral and coal law establish that the supervision of managing environment performed by mining inspector. In the principle the state administration of law, reveal that every the competent authority to issue such permission, and then obliged to supervise the obedience of the licensee.

UUPPLH (5) reveal that preventive action in controlling environment impact have to performed by utilizing supervision and licensing instrument maximally. Based on it explained, conclude that the supervision has same of position with the licensing as element to prevent environment damage and pollute. The formula of supervision do not find in general requirements of UUPPLH, but in article 5 of

law Number 12 in 2001 on Establishment of Legislation compelled the principle of clarity on its formula. (Anon., 2011) It means that the regulation of law must consist of the technical requirements for the preparation of legislation, systematic, choice of words or terms, as well as clear and understandable legal language so as to not result in various interpretations in the implementation. In other words by clarity of formula and integrated with supervision environment concept, so the integration of supervision will progress maximally.

2 RESEARCH OF METHOD

We The study of law from this research use normative juridical study or doctrinal. According Peter Mahmud Marzuki, the study of law is a process finding regulation of law, the principle of law, and the doctrine of law in order to answer the issue of law (Marzuki, 2013). The study use three linked approach, law approach, conceptual approach, and philosophies approach. The law resources are the primary, secondary and tarsier of law (Wignjosoebroto, 2013). The primaries of law

include the Constitution of Republic Indonesia 1945, 4th post-amendment, Decision of the People's Consultative Assembly (MPR) Number IX/MPR/2001 about agrarian reformation and management natural resources. Primary law instrument of the laws that deal specifically with the environment, first Laws Number 32 in 2009, about protection and management environment (State Gazette of the Republic of Indonesia Year 2009 Number 140, Supplement to State Gazette of the Republic of Indonesia Number 5059).

Then, laws of mining, the Laws number 4 in 2009, on Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2009 Number 4, Supplement to the State Gazette of the Republic of Indonesia Number 4959). Other legal substances that are the primary legal materials in reviewing legal issues are Academic Paper and minutes of the meeting of the making of Law Number 32 Year 2009 on Environmental Protection and Management, Academic Paper and minutes of the meeting on the enactment of Law Number 4 Year 2009 regarding Minerals and Coal and other laws and regulations that are closely related to the legal issues studied. The secondary data include articles and law journals, published papers, news both electronic or mass media. Tarsier resources use of Indonesian language big dictionary, websites closed by laws research.

The collection technically of law resources use literate of study. Literate of study is collecting law resources through written resources by using content analyze. It used for getting background of theory, by study and learn of books, regulations, documents, reported letters, and another studies both print or electronic media, that linked with protection and supervision the management of environment in coal mining. (Kurnia, 2013)

The analyzes of law resources use order of logic paradigm. It expand mindset based on the most fundamental and essential analysis and to material analysis. The basic research steps are to reflect on the principles and legal values contained in the law to find the concept of integrated environmental management control

3 FINDING AND DISCUSSION

3.1 Reconstruction of Supervision Regulation in Management Coal Mining

The construction of natural resource utilize show that the management natural resource was regulated

in many of law and differs in formula. Natural resource management that typically includes planning, organizing, actualing, can be viewed as a stakeholder aspiration in natural resource management. The activities in its management can used for means of interpreting laws, legal reasoning, and rational arguments against management formulas in each law. The result interpretation of law and argument the rational of law will be used to the harmony of law. Similar perceived to harmony of law is the foundation for the realization of legal unification, or in this study use setting integration phrase.

3.1.1 Law of Environment Become Umbrella Act for Regulation Sector Related Environment

The environment object is very wide and impossible to regulate in a law completely, but required a set of regulation of law with the same of with. Therefore law of environment just regulate subject matters from management environment, it contain of environment policy which be foundation frame work for compile regulation of law in other environment sector, one of them is coal mining sector. (Fachlevi, et al., 2015)

UUPPLH as legal norm regulates of management environment has a function to summarize all environmental legislation into Indonesian system of environment, in order to become a series of systematic environmental management arrangements both vertical or horizontal arrangements, synchronization and coordination, to prevent the duplicative rules and or to prevent of contradictive between one regulation sector with the others, related the environment. UUPPLH reveal clearly in article 44: "Every compiles a regulation of law on national and regional level, must pay attention in protection and managing the environment accordance with the regulation that it had been set in its law".

The legislation in question at article 44 UUPPLH does not describe further in general requirement or in UUPPLH explained. But if referring for law Number 12 in 2011 on formulation of legislation, so the question about regulation of law is the written rule which consist of legal norms that generally binding and formed or established by state institution or legal person through established procedure accordance the regulation of law. In other words, every established regulation which related with environment must guided of UUPPLH.

UUPPLH is very important to become umbrella acts in regulation of environment. General explaining in UUPPLH reveal that required a system of law of protection and management environment clear, firm and comprehensive in order to guarantee legal certainty as rule of protection and management natural resources and other development activities.

3.1.2 Integrated Principle Become Guiding Concept of Integration Rule for Supervising Coal Mining Management

Integration come from English, its means perfection or whole. In the Indonesian big dictionary, integration means assimilation into a unified whole and round (Nasional, 2012). According Achmad Maulana (Maulana, 2004), integration has two meaning, first, controlling conflict and other current deviation. second making a whole and integrate certain elements.

In Rio Declaration, Principle of Integration reveal that environmental protection shall constitute an integral part of development process and can not be considered in isolation from it. an integrated linked with planning, implementing, and supervising. An integrated also include spatial, protection for environment resources, and integration of management in government level.

Conceptually, the term of integration show that the scope of environment is integrity. It has consequences to environment scopes, include supervision system scope of management environment. In the Academic Draft Bill of protection and management environment (RUUPPLH) formulate that the managing environment performed base on principle state's responsibility, the principle of continuity and sustainability, utilize, equity, and participative. In other words in academic papers of (RUUPPLH) does not entering the integrity concept in implementing environmental management, but it published implicit in law Number 32 in 2009 on UUPPLH, and it expanded in academic papers as follow:

"The legal of environmental management is a legal norm which must guided in every activities that will give environmental impact. Thus, its have other laws which regulate on its activities, including mining, gardening, foresting, fishing, industrializing, transportating, and the others, must formulated and performed with legal environment harmony, otherwise the formula and using of legal environmental management must consider the other

context, so it will be created the sustainable development.

Based on explanation above, it concluded that what containing in Academic Papers RUUPPLH, is link with law number 32 in 2009 on Protection and Environmental Management. Explained in articles of UUPPLH reveal that the integration principles means that the protection and environmental management performed by combine from other components or synergy the linked component". Furthermore in general requirements UUPPLH, implies of integrity : need to establish a legal of protection and environmental management clearly, firmly, and comprehensive, guarantee legal certainty as foundation of protection and natural resources management or the other activities.

And based on that concept, UUPPLH is comprehensive and integrative legal environment for whole protection and environmental management system in Indonesia. And all of sector and institution should obey to the UUPPLH, include coal mining that have relation in environmental management.

3.2 Supervision Become One of Environmental Law Enforcement Form

Law environment enforcement through legal administration instruments is the first step and the basic step to get compliance of rules. it was the first step because of environment cases will not happen if legal administration instruments applied and run well. As the basic step, because of legal environment enforcement principally is not punish to the actors, but to prevent and repair environment in quality and its encouragement (Santosa, 2001).

There are advantages of applied legal administration environment in the legal environment enforcement than criminal and civil law instruments. The advantages reveal by Mas Ahmad Santosa as follow : first, legal administration enforcement in environment matters become preventive instrument optimally; second, legal administration enforcement (preventively), more efficiently from other finance both criminal or civil law. The finance of legal administration enforcement include field supervisor finance performed frequently, and lab exam cheaper than collecting evidence, field investigation, hire witness to prove of causality as like criminal and civil law; third legal administration enforcement have more ability inviting people participation. People participation has hold since license process, monitoring, arrangement, supervision, and participation to propose objection and ask state

administrative officers to impose administration sanction.

He said that law enforcement devices in a law system and government must include; license that it used as supervision and control devices; environmental standard, regulation and amdal as requirements getting license; the supervision compliance mekanisme; quality, quantity and sufficient supervisor; administration sanction.

Accordance Berge reveal that there are two administration enforcement, those are supervision and administration sanction. Supervision is preventive way to insist obedience, then administration sanction is repressive to compel obedience (Berge, 1994). On the legal administration perspective, there is general principle that always being subject guiding, that authorized officials who issued license must responsible to perform supervision. The permit that has been granted is not merely a formal requirement to be fulfilled by the business actor, but substantially also must be fulfilled in accordance with the requirements required in the given permit.

To doing supervision, the official must consist of three principles, ie authorities, substantive, and procedure. In UUPPLH regulates that the official who has an authorized doing supervision against obedience from responsible person are minister, governor, leader local government, accordance its authorities, as regulated in article 72 UUPPLH. Then, law of mineral and coal in article 140, regulates that the supervision was done by minister, governor, and local government for implementation mining business activities by holders of Mining Business License (IUP), Mining Permit (IPR), or Special Mining Business License (IUPK) (Anon., 2009).

In conducting supervision environment, minister, governor or leader local government appoint the official supervisor environment by its authority. The official supervisor or local supervisor has authority to perform obedience supervision from responsible person against regulation of environment license. The supervision objects has similarities with supervision objects that regulated in law of mineral and coal, where in article 141 paragraph (1) reveal that the supervision that hold by minister, governor, or leader local is kind of supervision to environmental management, reclamation, and post mining. Despite if in article 141 law of mineral and mining does not explained further, but in article 28 paragraph (1) government regulation Number 55 in 2010 reveals that supervision environmental management, reclamation and post mining at least

include management and monitoring environment based on environmental management documents or the own license environment and had been agreed.

Environment license is also the object of supervision in government regulation number 55 in 2010 kind of applied rule from article 144 law mineral and coal, and it is requirement needed from responsible person in business in getting license. In other words, to get that, a business or mining should have environmental appropriate decree that published depend on environmental impact analyze.

Based on those descriptions, conclude that environmental management become supervision object as well as be regulated in law of mineral and coal mining. It has same substantial by environment license on supervision objects in UUPPLH.

3.3 The Authority for the Supervision of Environmental Management in Coal Mining

The authority for supervision environmental management is regulated in legal sectoral. In coal mining, there are two kind of authorities for doing the supervision of the obedience from the responsible person to legalization, and obedience of environment license. UUPPLH regulates for the official be authorized to perform supervision is official environmental supervisor, while law of mineral and coal regulates that the official be authorized to perform supervision is mining inspector.

Based on legal administration of state, principally that the official who has authorized to propose of license, that have compulsory to doing supervision. Environment license is one of supervision object to manage coal mining, and it published by minister, governor, and leader local government with its authorities as well as regulated in article 36 paragraph (4) UUPPLH. To perform that supervision, then minister, governor and subdistrict leader determine the official supervisor of environment.

Depend on principal of legal administration, mining inspector is supervisor of environmental management as it is regulated in law Number 4 in 2009 on mineral and coal mining. He actually does not have an authority to doing regulation and obedience for environment license, because of the official that determined by minister, governor, or other local leader to perform supervisor of published environment license is the official of environmental supervisor.

3.4 The Regulation of Supervision based on Protection and Environmental Management

Conceptually, the essence of supervision environment concept that involve sectoral institutions is formulated in legalization clearly and integrated, especially in the UUPPLH as umbrella act. Coal mining as one of utilize natural resources activities regulated in law Number 4 in 2009 as factually has not contradictive with UUPPLH.

According Katili (Katili, 2007), the differ natural resources, the management policy separately but the diversity of these natural resources should be considered in formulating integrated and comprehensive policies, including in conducting oversight involving sector agencies. In the Academic Papers the Law of Protection and Environmental Management, reveal that one of caused of natural resources and environment conflict is unharmony of regulation.

In regular explanation of UUPPLH (5) reveals that preventive effort in controlling environment impact needed by utilize supervision and licensing maximally. It can describes that the supervision has similarities subjects with the licensing, as same as the element to prevent damaging or polluting environment. The formula from supervision concept as one of instrument that undecided in general regulation in UUPPLH, and licensing formula publish in general regulation in article 2 paragraph 35 and 36. But, in article 5 the law Number 12 in 2011 on established regulation reveal that the basic principle to create a regulate is principles of formula clarity. The principle of clarity of the formulation is intended that any Legislation must meet the technical requirements of the preparation of legislation, systematic, election words or terms, as well as clear and understandable legal language so as not to cause various interpretations in the implementation.

3.4.1 The Norms of Supervision Environmental Management Reviewed from Legal Theories

In the state of law, supervision against government acts meant that the government in doing the activities should accordance with legal norm, as preventive effort. In addition it meant to backward of time before deviation of legal norm, as repressive effort. I conclude that the aim of supervision is pointed to give legal protection to people. The norm concept of supervision in law Number 32 in 2009,

on protection and environmental management regulate in material and formal. In material, will se in article 71 paragraph 75 UUPPLH, and in formal it determined by giving administrative sanction to responsible person and his deviation. It consist of written warning, compelling from state, freezing permits, or retraction it (Anon., 2009).

Conducting formal, the norm legal enforcement not only contain legal preventive, but also contain legal repressive. In other word, it is special authority of minister to perform second line enforcement. In other words the minister could applied of administration sanction to responsible person with its deviation. In addition of administration, in formal UUPPLH is also regulate criminal and civil law against deviation of environment.

3.4.2 Regulation and Supervision Revise based on Protection and Environmental Management

The sustainable protection and environmental management must be implemented through revise of articles linked with supervision of environmental obedience by responsible person or activities. It will be preventive, to prevent of multiviews about supervision and overlapping conducting for the same objects, ie the obedience from responsible person in business. related in this case about environment license is done together by ministry of environment and forest wiht regional environment agencies and ministry of energy and mineral mining with energy and mineral agencies (Listiyani, 2017).

In UUPPLH, required formula to revise in general requirements article 1, by adding supervision definition. It should be in general requirements of legal environment, with the aims to emphasize ascension of supervision that regulates in legal environment. Technique in arranging regulation of law (Anon., 2011), has regulated that put general requirement in chapter 1, and if the legislation do not perform of grouping chapter, so the general requirement placed in article or some early chapters. General requirements consist; boundary of definition; shorts or acronym poured in boundary definition and or other matters of a general nature applicable to the following chapters or articles, including those that reflect principles, objectives, and objectives without being formulated separately in chapters or article.

Then in number 102 on technically of arranging legislation established that words or term used repeating in article or some next article. Supervision words in UUPPLH used in some different articles

and be repeated in similar article, both in special article which set supervision (article 71-75 UUPPLH), or another article in UUPPLH has supervision linked.

Linked with supervision to obedience of person in charge of business or activities had been regulated in law Number 32 in 2009 on protection and environmental management, and the same object supervised was regulated in law number 4 in 2009 on mineral and coal. Article 141 of law Mineral and coal regulate that one of step in mining need to supervise are environmental management, reclamation, and post-mining. Furthermore, in the Implementing Ordinance in the form of Government Regulation No. 55/2010 concerning the Development and Supervision of Business Management of Mineral and Coal Mining Article 28 explained that: The supervision of environmental management, reclamation and post mining as referred to in Article 16 letter h covers the management and monitoring of the environment accordingly approved environmental and environmental approval documents.

When referring to the provisions of the technical arrangement law in Attachment II of Law Number 12/2011 stated that : “If formulation the definition of the Law is reformulated in the law to be determined, its definition shall be the same as the definition in the applicable Laws and Regulations”.

Furthermore in number 104 the techniques of arrangement law reaffirm that formula of definition limits from a legislation could be different with the others because of it adjusted the needs related to the material content to be arranged. If based on the legislation above, UUPPLH and law of mineral and coal, have similarities in supervision of obedience from person in charge.

There is no definition of supervision clearly in UUPPLH and law of mineral and coal can creates of multiviews and misunderstood, and it is ignore the principle of clarity. every legislation must meet the technical requirements of the preparation of legislation, systematic, choice of words or terms, as well as clear and understandable legal language so as not to cause a variety of interpretations in the implementation (Anon., 2011).

The concept of supervision refers to supervision theory from Terry. He reveal that supervision is focused on evaluation actions and correction of outcomes that have been achieved. Fayol said that the essence of supervision is assessment of something that have been working accordance with planned. Supervised find out mistakes, and it will repaired and it does not repeated (Huda, 2013).

In legal perspective, as preventive and repressive, the supervision pointed to avoid of mistakes, repair it, and not repeated. In other words the preventive supervision is supervised to prevent, and repressive supervision is suspension or cancellation of determined (related with utilize natural resources, so repressive function are suspension or cancellation of environment license for protected and environmental management)

Supervision concept will added in general requirement in UUPPLH, as follow; “The supervision is a series of activities conducted with integrated done by the official environmental supervisor and or local official environmental supervisor to see, to confirm, and to establish the level of obedience from the person in charge in business or activities for established regulation in environment license and legislation to protect and to manage environment, and coordinate with the official sectoral supervisor”.

The define of supervision above, describes that supervision environmental management, encompass of the elements as follows; first, the same object supervision, ie supervision for environment license that published by ministry of environment and forestry, governor and the leader of local government; involve sectoral agencies, that is The Ministry of Environment and Forestry, and the Ministry of Energy and Mineral Resources; the same goal, to ensure that environmental management of coal mining is compliance with the environmental permit that issued; the coordination between the authority institution to supervise.

The formula of supervision concept that written has conform of integrated principle. It include environmental elements, managing and integrating stakeholders. In addition, integrated concept has meet of supervision as revealed by Van and Berg (Rangkuti, 2005), those are integration of legal authority, and coordination. The integration of supervision in managing coal mining has means fusion of competences, while the coordination is working together in the exertion of autonomous competences.

According Van Wijk and Willen Konijnenbelt, there are three of submission of authority models, those are attribution, delegation, and mandate. The authority is obtained by attribution is pure come from the formulation of law. This model, giver and receiver could creates the new an authority, or expand it. Attribution is the authority to make decision referring to the law. The formation of authority and distribution authority established by legalization (Likman, 2016).

Furthermore, the sectoral revision required to perform in law of mineral and coal, especially linked with the authority of mineral and coal management that has changed in law Number 23 in 2004 on Regional Government. Related the article which rule the supervision, so the law Mineral and Coal must assertive to regulate environmental management as it meant in article 141 (1) letter h the law Number 4 in 2009, reveal that the authority of supervision not more mining inspector on duty, but it is the official supervisor of environment that chosen by minister, governor and regent.

4 CONCLUSIONS

Based on the analyze of law that have been explained, the study conclude that UUPPLH is legal environment positively, comprehensive and integrated for whole system of protection and environmental management in Indonesia. All of competence agencies that perform of protection and environmental management be based on UUPPLH, including the coal mining. In article 1 (2) UUPPLH reveal that one of the preventive effort is performing supervision integrated and systematically. The pointed supervision is to prevent the deviations to avoid the worst impact.

There is not supervision definition in UUPPLH and Law of Mineral and Coal is a weakness. Depend on the principle of clarity of formulation on a regulation submitted in article 2 letter G the Law Number 12 in 2011 on Formulation of Legislation, and without any firm and clear of definition, the contents of material contained in the law will result in various interpretations in the implementation. Therefore, it is necessary to establish a clear and firm definition of integrated environmental management control.

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