

# Administrative Environmental Law Enforcement Based On Transcendental Post Covid-19 Pandemic

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## Abstract

This study aims to review the role of the State in the social and economic sustainability of natural resources around mining and the role of the community in enforcing transcendental-based environmental laws after the Covid-19 pandemic. This type of research uses normative legal research. The results of the study indicate that the responsibility of the State in restoring the mining environment must be carried out in the entire process starting from the stages of fulfilling permits, planning, implementation and supervision because business entities have not regulated the responsibility for the possibility of pollution of ex-mining land after handing over to the government using the principle of kinship. Environmental restoration activities in post-mining only involve the authority of the government and mining business actors without involving the community as an important element and also parties directly related to the existence of the physical, economic and social environment of the mining environment.

**Keyword:** Law Enforcement, Environmental Law, Transcendental.

## I. INTRODUCTION

Regulations on environmental issues that exist in Indonesia have long leaps, starting with Law No. 4 of 1982 which contains several Basic Environmental Management regulations, after which it was replaced by Law No. 23 of 1997 concerning Environmental Management, and the latest is Law No. 32 of 2009 which contains the Management and Protection of the Environment. The most important thing based on the three laws is the increasingly strong role of the state in making the environment healthy and good for the lives of the Indonesian people. The 1945 Constitution states that a healthy environment and a good environment are constitutional rights and human rights for all Indonesian citizens. Based on this, the government, state, and all stakeholders must carry out environmental management and protection continuously until the environment becomes the support and source of life for all living things. Natural resources that are used must consider the impact and the goals that can be caused.

The government and society must jointly support and preserve the environment, because if there is a problem regarding this it can affect the survival of living things in a country. On the other hand, if humans can maintain and preserve the environment through preservation, use it properly without damaging the ecosystem, and improve the environment so that the environment becomes better (Suprijandi, 2019). The increasing number of natural disasters lately, should be a reference for the government to pay more attention to the problems that exist in the environment. The worst social effects caused by environmental damage are decreased quality of life, social epidemics, development of refugees, horizontal conflicts, destruction of local systems, social conflicts, ecocide symptoms, several social diseases, and biological changes. Examples of social ills are: crime, prostitution, structural poverty, domestic violence, and human rights violations. The development in the mining sector is important

for regional and national income so that national development can advance<sup>1</sup>.

Based on Law No. 32 of 2009, a healthy and good environment for guaranteeing human rights has been stated in Article 28H of the 1945 Constitution regarding obtaining a healthy and good living environment and place to live. The creation of this can be fulfilled if there is restoration and enforcement of the environment from former mining.

The Covid-19 pandemic has reduced investment activities so that the value of shares decreases and some mining company businesses cut financing, most importantly regarding environmental recovery, so that companies go bankrupt and cannot restore the environment from former mining. There are currently no specific regulations regarding environmental recovery during Covid-19. A view of environmental awareness whose quality is decreasing, thus requiring commitment from all stakeholders. Regional autonomy has an environmental influence in an area, because one of the efforts to manage and protect the environment must be carried out in each region.

Pollution of ex-mining areas can be overcome if the community and the government in the area agree to tackle it. In accordance with Law No. 4 of 2009 concerning Coal and Mineral Mining, mining activities are able to prosper the people because of the increase in the income of local and local communities, and create jobs. Based on this, mining activities aim to improve the welfare of the people, so that mining operations must comply with existing rules so that equality between communities can be realized as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia<sup>2</sup>.

Based on Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH), administrative and preventive environmental law enforcement is carried out. In a preventive way, it is carried out with supervision, while in a repressive way, it is carried out by the application of administrative sanctions. The implementation of administrative sanctions and supervision aims to make the community obey the legal norms of the administrative environment. Policies regarding

environmental management and supervision based on UUPPLH must be comprehensively regulated, including self-recording, self-monitoring, self-reporting through reporting of results to relevant agencies, and being open to the people. The first supervision is carried out by inspectors who come from the agency that has given the permit and is continued with subsequent supervision from the central agency, which is

carried out if the first agency is unable to carry out its functions. Other supervision is public supervision or external supervision.<sup>3</sup> Creating an environment that has A sustainable development base requires transparent public oversight, especially if there are administrative objections if the permit procedure and input from residents are ignored by the agency issuing the permit. The implementation of supervision to be effective requires appropriate punitive methods and strategies, starting with the application of light administrative sanctions (first to third sanctions) until the permit is revoked. This strategy is needed to avoid sanctions that are given arbitrarily (Louglin, 1976). Environmental management and supervision uses an "integrated" system in the perspective of licensing and requires "integration of policies", concepts of environmental supervision and management that the basic not reflected in an integrated manner which requires "unification" of administrative structures (institutional or authority) and law. UUPPLH uses many terms "integrated" and there are differences that are not in accordance with the theory of environmental management and supervision.

Based on the fundamental framework of integrated environmental management and supervision in continuous and sustainable development, it aims to construct integration between "institutions" and "policies". The environment if managed sectorally can weaken sustainable development. AJ Hoekema's thoughts are contrary to this, based on his view that integrated environmental control is a reflection of effective and good activities in the concept of Environmental Administration Law. This is useful for the realization of a legitimate and sustainable development (Mukhliah, 2010, p. 83). Based on UUPPLH, which has a supervisory function, not only the local

government, but the community also has the opportunity and has the right to take an active role in carrying out supervision (management and preservation of the environment).

Supervision that can be carried out by the community, namely:

- a. Giving opinions, suggestions, proposals, complaints, objections,;
- b. Social supervision; and
- c. Submitting reports and information.

Supervision of the Central or Regional Government must carry out supervision on the person in charge of activities or businesses whose rules have been regulated in law. The supervisory function from the regions or the center can delegate the authority it has to agencies or officials who have responsibilities in the field of environmental management and protection. During supervision, if things are found that are not in accordance with the permit, the regional or central government can impose administrative sanctions on the person or business group.

Restricted human activities during the Covid-19 pandemic, various economic activities that have stopped, and the cessation of some industrial sectors have contributed to the declining global emissions. According to the Center for Energy and Clean Air Research (CREA), the world's CO<sub>2</sub> emissions have fallen by 17% due to the Covid-19 outbreak as various countries have been quarantined. A total of (43%) decreased global emissions during the lockdown from the industrial and transportation sectors, mainly from factories and motor vehicles (bbc.com, May 24, 2020). Improved air quality in the city during this pandemic. The NASA Earth Observatory satellite shows that NO<sub>2</sub> air pollution in China has fallen sharply. China's air quality increased by 11.4%, New York's air pollution decreased by 50% from before, and NO<sub>2</sub> emissions in several countries also decreased, such as: Spain, Italy, and the UK<sup>4</sup>. CREA said that Indonesia experienced a reduction in emissions of up to 18.2%. NO<sub>2</sub> gas in the capital Jakarta decreased by 40%

compared to last year Emissions fell during the pandemic, but there has been no significant and widespread change in the long term.

The effects of the Covid-19 pandemic cannot yet be said to reduce global CO<sub>2</sub> emissions. Air quality may return if countries relax lockdown rules at the global and local levels.<sup>5</sup> The enactment of lockdowns and social restrictions in certain countries has a positive impact on the diversity of fauna and flora. Flowers and plants are growing more abundantly than ever before, according to a report by the non-profit organization Plantlife. The effect of this is to make more butterflies, birds, and bees in the garden. Animals that are on the verge of extinction, for example the Olive Ridley turtle from India and the leatherback turtle from Florida can lay eggs during a pandemic<sup>6</sup>.

The pandemic has the impact of increasing the amount of waste originating from medical and plastic waste. The Indonesian Institute of Sciences stated that plastic waste increased for each individual from 1-5 grams/day now to 5-10 grams/day over time. Based on the Ministry of Environment and Forestry, the increase in medical waste is 290 tons / day<sup>7</sup>. Asal sampah plastik mayoritas dari pemakaian plastik makanan kemasan sekali pakai dan sampah medis dari Alat Pelindung Diri seperti sarung tangan dan masker. Lingkungan kota membaik, namun berbeda dengan daerah yang ada di hutan tropis. Organisasi lingkungan mengemukakan bahwa terjadi peningkatan deforestasi atau penghilangan hutan selama lockdown, karena naiknya tingkat perburuan binatang liar, penyelundupan kayu, dan pertambangan liar di berbagai belahan dunia.

The perspective of justice after the classical period ended began with the emergence of new figures of medieval European thinkers such as Jeremy Bentham. Bentham's thinking is generally influenced by the spirit of resistance to the trappers of freedom. Based on this view, humans are entangled in several religious myths and destiny. This basis gave rise to a determination to liberate humans from the fear of gods, the destiny of slavery, and religious myths as has become part of the tradition of classical philosophers. Therefore this thought is called the adherents of freedom of will. This freedom is

what makes humans able to obtain happiness. It was at this time that the beginning of the separation of religion from the joints of community life. Happiness and individual freedom began to receive more attention, giving rise to a new understanding known later as utilitarianism.

The big idea of happiness eventually gave rise to the concept of the welfare state. Furthermore, Putuhena said that if the basic idea of a country's welfare began in the 18th century, at that time Jeremy Bentham gave the idea that the government was responsible and could guarantee the greatest happiness of the greatest number of their citizens. Bentham uses the term 'utility' to explain the concept of well-being or happiness. The concept of 'utility' is what finally gave birth to a theory which was then known as utilitarianism. Theory Utilitarianism argues that things can create extra happiness is a good thing and a thing that causes suffering is a bad thing. Based on this concept, the measure of the good/bad of an action can only be seen From the "results" obtained.<sup>8</sup>

Bentham started a theory that was made that applies the notion of psychological hedonism. The view that is in this understanding is that all humans always make efforts to avoid suffering (pain) and obtain pleasure (pleasure). Based on this, it is not surprising that justice based on Bentham's thinking considers that the most important benchmark for assessing something is the consequences or results of that action. However, in the end Bentham's opinion was broken. According to Mangunsong, Bentham's exaltation of justice is based on a utilitarian value system in which a quantitative measure of happiness based on the majority who enjoys, in fact does not match the minority. Minorities cannot enjoy justice or are neglected from happiness. Justice for minorities is pseudo justice, because the basis of utilitarianism emphasizes that the purpose of law is to create useful things (doelmatig) or useful, namely to create a sense of happiness for as many people as possible.

**II.** The tendency of neglected justice can be destructive because the law is synonymous with power. The two theories that have been mentioned do not touch the inner or spiritual aspects at all, because they are only based on

materiality. Observing the problems that arise above, the author tries to build a new concept as an alternative step that seeks to create a more holistic, impartial justice, paying attention to aspects that are not only visible outwardly or materially but also internally or spiritually. In this case, the researcher calls the concept as prophetic law

### III. RESEARCH OBJECTIVES

1. To study the opportunities for transcendental-based administrative environmental law enforcement after the COVID-19 pandemic

### IV. RESEARCH RESULTS

The enforcement of administrative environmental law has the aim of stopping and overcoming the directly polluted environment based on the principle of applying administrative sanctions and supervision. Periodically supervision is carried out on businesses or activities that have environmental permits. This is an effort to observe compliance with permit requirements from agencies that have the authority to issue environmental permits. The legal basis for carrying out supervision in order to control a polluted environment is Articles 71-75 of the PPLH Law. Article 74 (1) UUPPLH has established supervisory authorities, including: stating information, monitoring, copying documents, visiting certain places, taking notes, taking photos, looking for samples, audio-visual recordings, checking installations and transportation equipment, checking equipment, and stopping violations that occur. . There are no comprehensive rules for controlling environmental pollution.

This shows that the enforcement of administrative environmental law for the prevention of environmental pollution with preventive juridical means is not running optimally. Mastery of techniques and methods for controlling environmental pollution in the apparatus that enforces administrative environmental law is limited in number. There are differences (to the point of confusion) regarding the mechanism and substance of supervision of the environmental permit requirements. The administrative sanctions applied are the consequence of follow-up supervision. Administrative sanctions have an

"instrumental function": overcoming prohibited activities consisting of:

- a. Forced money ( "coercive sum" or "publiekrechtelijke dwangsom" );
- b. Government coercion or coercion ("executive coercion" or "bestuursdwang");
- c. Closing of the place of business ("sluiting van een inrichting");
- d. Permit revoked ("intrekking van een vergunning") with: government coercion, reprimand, forced money, and closure.<sup>9</sup>
- e. The company's machinery activities were discontinued ("buiten gebruik stelling van een toestel");

The legal basis for administrative sanctions in the field of environmental pollution control is in Article 76-83 of the PPLH Law, which contains administrative sanctions: government coercion, written warnings, revocation of permits, and bookkeeping of permits for business institutions that do not comply with emission quality standards or other requirements. other. This sanction must be in accordance with the economic value that the violator has enjoyed for violating the environmental permit requirements.[1] Some of the administrative sanctions found were then applied by the agency that has the authority to issue environmental permits, in the form of: summons, warning, warning, sealing, summoning and others. Based on this, it is known that the agency that is authorized to issue "environmental permits" is not well versed in the legislation on administrative sanctions. The administrative sanctions that have been applied have also not been linked to violations of environmental permit requirements and there are also those who prioritize the implementation of the Amdal.

This explanation explains the provision of limited means of law enforcement in the administrative environment, there are even errors in the formulation of regulations and ambiguous implementation. This proves that the enforced administrative environmental law has not been effective and active for legal instruments used to tackle environmental pollution. In order to guarantee compliance with laws and regulations regarding environmental

pollution control. However, the coercive sanctions applied by the government are related to civil and criminal sanctions such as the legal settlement of environmental problems. Revocation of permits is the final sanction in order to assist in complying with licensing requirements or legislation with the stages of criminal sanctions and fines. Enforced administrative environmental laws are important in controlling environmental pollution in Indonesia, for example the 1997 forest fires case that has been carried out. Based on the explanation that administrative sanctions can be subject to sanctions: revocation of permits, fines, area reduction, and cessation of activities. The administrative sanctions applied have been formulated in the Forestry Law which are cumulative in nature and their effectiveness will be tested at the practical level in cases of environmental pollution due to burned forest smoke.

The PTUN Law is the legal basis for filing administrative lawsuits for KTUN permits (for example: HO Permits, IPLM, Transportation Business Permits, Location Permits, Industrial Business Permits, Transportation Operation Permits, Route Permits, and SIMs) which are "onrechtmatig" and can cause environmental pollution. Starting from Article 1 point 4 of the Administrative Court Law and Article 53 paragraph (1): environmental permits can be sued at the Administrative Court, fill in the demands that the KTUN (environmental permit) in the dispute is invalid or canceled with the aim of tackling environmental pollution with the principle " abatement at the source."<sup>10</sup>

The Indonesian Administrative Court has not been fully utilized to resolve environmental disputes. Starting from the enactment of the Administrative Court Law until now, there are only two "monumental" environmental disputes that have been resolved by the Administrative Court mechanism, namely: the PT Freeport Indonesia Company (PT FIC) case from 1995 to 2000 and the Reforestation Fund Case from 1994 to 2000. The legal process of the second case is an appreciative step on the function of the Administrative Court and its existence.

## 2. Transcendental-Based Administrative Law Enforcement

Observing legal issues in Indonesia cannot be separated from the "actors" behind law enforcement itself. Law enforcers often get the attention of the public on a case that is being tried. Therefore, as the main "actor" in law enforcement, a law enforcer must have noble and commendable qualities. A law enforcer must have a spirit that can make his personality into an ethical and fair person, especially in solving a case. The author has the assumption that no matter how good the rules that have been made if they are not supported by sufficient human resources, that these good rules cannot run as expected and have a tendency to be violated in the future.

Therefore, the author tries to instill a spirit into law enforcers which on this occasion the author calls the prophetic spirit. This spirit was originally an encouragement for the exemplary movement in the midst of the lack of examples in this country. The exemplary crisis that occurs in this country is because people have lost role models who can be used as inspiration for behavior. Observing this, a prophetic spirit was born, this spirit tries to emulate the prophet's prophecy. This spirit is divided into 4 (four) values or spirits, respectively: the value or spirit of humanity, science, servanthood and universality. The spirit of humanity implies the nature (duties) of humans on earth. He created humans to be caliphs, to manage the earth and prosper it.

In a prophetic perspective, all activities are considered not only individually, but also socially as well as the law. Law is actually a social product that is born and develops according to the dynamics that occur in an environment. That is, the law can be shaped by a culture, customs and even religious beliefs. This spirit is a set of values that is used to determine the good and bad of ideas, activities, and in relation to their impact on fellow human beings, both in their physical, personality, social, and

cultural aspects. This spirit is expected to have a positive effect on social relations and behavior patterns, so that in the future there will be no conflicts caused by social activities, competition and disputes.

This spirit will then be applied in the realm of law. Law should be humane and can have a positive effect on individuals. Individuals who already have a humanistic soul will naturally be able to behave more humanely and have a high concern for others. The scientific spirit, awareness of the essence of science is important in law enforcement. Because law enforcers are prone to mistakes in applying their knowledge, this can be seen from mistakes and ethical dilemmas in passing sentences or sentences. Besides that, in law enforcement, a law enforcer must have sufficient insight and knowledge so that in passing a verdict he does not wrong the defendant. The universal spirit is a set of values used to determine the impact of legal ideas and activities on the situation and condition of the natural environment. Therefore, law enforcement must always think about the impact of every activity carried out, the law must be friendly to nature and not allow it to be damaged because the Creator has forbidden His servants to do damage on earth.

Ahimsa-Putra stated that universality means that legal ideas and activities that have a positive (positive) impact on the environment are good things, which must always be pursued, on the other hand those that have a negative (negative) impact are bad things and should always be avoided. In addition, the universal spirit must have an effect on environmental sustainability or changes that do not cause damage or destroy living things on earth. Sustainability of the universe can be realized if the activities and goals carried out are based on the objectives of (a) maintenance; (b) protection; (c) utilization; and (d) development; This will have an impact on the preservation of the universe.

problems occur continuously which based on the ecological side is an indication that public authorities cannot manage the environment in accordance with state policies. There are various alternatives to enforcing environmental law through criminal, administrative, and civil methods, but that does not

## V. SUMMARY / SUGGESTIONS

VI. Various problems that exist in the environment in the form of pollution or damage which is considered a natural disaster. If in realistic conditions it is a humanitarian and environmental disaster based on a policy context whose causes are clear. Environmental

mean there is a guarantee that environmental problems will be resolved. Based on the context of criminal law, it has not been able to provide significant environmental protection. Environmental crimes require several professional legal steps from the PPNS, police, judges, prosecutors who have environmental certification. Administrative Justice by forming an apparatus that enforces environmental laws who already have broad insight into the environment through increasing certification and training for environmental law enforcement so that they can overcome various environmental problems in accordance with environmental law. Environmental law enforcement institutions were created with a unified spirit for the formation of environmental crime law enforcement agencies. Integration is very important because it can open up access to justice for the people so that it can be administered properly according to the principles of good environmental governance. The author tries to build a spirit of change based on a prophetic spirit. The soul is covered by prophetic philosophical principles consisting of: humanist, emancipatory, transcendental and teleological. The soul is then wrapped in a prophetic spirit, consisting of: humanity, science, servanthood and universality. All of that ultimately leads to one goal, namely God. By internalizing this soul in legal practice, the concept of a law of justice that is peaceful and godly can be formed, so that in the end it will be able to build a legal system that supports the realization of universal justice.

## REFERENCES

### Book

- Siti Sundari Rangkuti, *Inovasi Hukum Lingkungan: Dari Ius Constitutum Ke Ius Constituendum*, Airlangga University Press, Surabaya, 1991
- Supriadi. 2008. *Hukum Lingkungan di Indonesia: Sebuah Pengantar*. Jakarta: Sinar Grafika

Soemarwoto, Otto. 2001. *Ekologi, Lingkungan Hidup dan Pembangunan*. Jakarta: Djambatan.

### Journal

- Mukhlis, 2010, *Konsep Hukum Administrasi Lingkungan Dalam Mewujudkan Pembangunan Berkelanjutan*. Jurnal Konstitusi Vol 07 No 02 2010
- Putuhena, , 2003, *Politik Hukum Perundang-Undangan : Mempertegas Reformasi Legislasi Yang Progresif*. Jurnal Rechtvinding Nomor 7 (02)
- Rudiyanto, Arifin. 2020. "Pengaruh Covid-19 terhadap Tujuan Pembangunan Berkelanjutan". *Deputi Bidang Kemaritiman dan Sumber Daya Alam, Kementerian PPN/Bappenas*. Disampaikan pada Webinar Sustainability Talk: Menjaga Momentum Pencapaian SDGs Pasca-Corona, Jakarta 8 Mei 2020

### Internet

- Bustanul Arifin, "Kepadatan Penduduk dan Kerusakan Hutan", *Suara Pembaruan*, 27 Maret 1997. Soni Sisbudi Harsono, "Etiskah Pembukaan Lahan Dengan Pembakaran?", *Jawa Pos.com*, akses internet 10 Juli 2021.
- idnfinancials.com, 8 Juni 2020 tanggal akses 20 Juli 2021

### Other Sources

- Ahmad Hafizh Kurniawan, *Strategi Pengelolaan Sampah Oleh Dinas Lingkungan Hidup Dan Kebersihan Kabupaten Sidoarjo*, Tesis, 2020
- Takdir Rahmadi, *Pengaturan Hukum Tentang Pengelolaan Bahan Berbahaya dan Beracun di Indonesia*, Disertasi, Program Pascasarjana, Universitas Airlangga, Surabaya, 1998