

1. Artikel Legal Protection Of Communities As A Victim Of The Mining Industrial Pollution

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Legal Protection Of Communities As A Victim Of The Mining Industrial Pollution

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Abstract: Various kinds of legal protection efforts to the community around the mining area are still not qualified. Therefore this study examines the authority of stakeholders who have not fully covered the problems of the community, and the obstacles that have created a paradox in the community towards the position of the community as a victim (collective victim) marginalized because of the stakeholder's involvement in following up on violations of mining activities. The technique used in this research is Purposive Sampling, and data retrieval is done by interviewing research to several places, and library research. The results recommended some ideas in developing a model of legal protection as a first step in reforming the appropriate form of legal protection for the community as victims of pollution in the mining industry (Collective Victim).

Index Terms: Legal Protection, Society, Victim, Mining

1. INTRODUCTION

Environmental pollution caused by coal mining activities in Samarinda City has made the community occupy the top standings as victims in the most disadvantaged level of pollution in the mining industry. In this case there is an embodiment of victimization in the form of coercion of the public in directly enjoying the risk of conditions of exposure to environmental pollution. Victimization occurs since the community around the mining area cannot avoid damage to the environment around the residence, and places the community's position as an individual victim (Collective Victim). As a collective victimization of the community around the mining area of Samarinda City demands legal protection that can be provided by relevant stakeholders as a state representative, but the position of the community around the mine area as a victim makes it difficult to provide legal protection due to polemic tangled threads of mining activities that harm communities around the mining area.

In this study the discussion of legal protection of communities around the mining area as victims of mining industry pollution (Collective Victim) will be examined through the authority of relevant stakeholders who have not been able to protect the communities around the mining area as victims of mining industry pollution (Collective Victim) Samarinda City, to examine the obstacles in realizing the essence of legal protection for the community around the area of the mining land as a victim of pollution in the mining industry (Collective Victim). Therefore, the orientation of this study aims to compile a legal renewal step towards legal protection that is appropriate for people who live around the mining area as victims of mining industry pollution (Collective Victim) in Samarinda City.

2 METHOD

This research uses empirical juridical research type. This research is looking for data through primary data and secondary data. Primary data obtained through interviews with research subjects as speakers, while secondary data obtained

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through literature study. The subjects of this research are the people who are in the Harapan Baru Kelurahan area of Samarinda City, East Kalimantan, as well as related stakeholders such as the Department of Energy and Mineral Resources (ESDM) of East Kalimantan Province, and the Samarinda City Police Department, the Harapan Baru Kelurahan of Samarinda City, as one of the sample from the population in this study. Data collection is obtained by using Purposive Sampling technique, while data analysis uses descriptive qualitative research.

3 RESULT

The results of this study found a category of people including victims of the mining industry pollution (collective victim) including First, the community is a group of people gathered somewhere, who immediately felt the impact of the existence of mining activities, Second, the distance between community settlements with active mining land is very close, around less more than 100 meters radius from community settlements, Third, mining locations are in the middle of settlements, Fourth, the environmental ecosystem around the community is damaged by mining waste. The description is justified by Rashmi Nair, and Johanna Ray Vollhardt (2019: 3-4), in her journal that in collective victims (Collective Victim) the virtues of groups based on identity in the form of ethnicity, nationality, citizenship, or religion, and focus on inter-group relations, so that mutual influence group members based on an equal consequence and accepted for the existence of strong solidarity between groups on collective victims because of the similarity of perceived loss. Then Arif Gosita (1993: 46) quoted by Wessy Trisna and Ridho Mubarak stated that the definition of victim is a person both individually and collectively, suffered physical, mental suffering, economic loss, or reduction in the substance of human rights, caused by violating criminal law, whereas, the definition of victim by Van Boven quoted by Adam Chazawi (2010: 49-50) is that both individuals and groups have suffered losses, including physical or mental injury, emotional suffering, economic loss or real deprivation of basic rights. Similar to the opinion of Hibnu Nugroho (2009: 12-13), it is said that the victim if a person, both alone and jointly suffers a loss, both economic loss or basic rights to cause physical and mental injury and emotional suffering, because of unlawful acts criminal. Based on the definition of the victim, many people living in an area of Samarinda City became victims for pollution of the mining industry, one of which was a group of people living around the area of the Harapan Baru Kelurahan township in Samarinda

which was the sample of this study population. As victims of pollution in the mining industry (collective victim), Harapan Baru Kelurahan community in Samarinda City wants the realization of the reclamation program to be realized immediately, because so far the community still feels the impact because of the pollution of the former mining land environment. For this reason, the community demands the provision of optimal legal protection to relevant stakeholders as state representatives, through reports submitted by the public, but ironically the community assumes the absence of support provided by the ¹⁰ stakeholders. According to Satjipto Rahardjo (2000: 74), legal protection is providing protection to human rights that are harmed by others, and given to the com¹² munity in order to enjoy all the rights granted. Meanwhile, according to Setiono (2004: 3) legal protection is an act or an effort to protect the public from arbitrary acts by authorities who do not obey the rule of law. Faisal Khadafi (2015: 394) in his journal stressed that legal protection to the community is very important, because a group of people not only individuals can be victims. Referring to this understanding, therefore in discussing legal protection, it is necessary to study in terms of the authority granted by the legislation to the allowed stakeholders, including, First, the authority of mining management lies in the Kalimantan Provincial Energy and Mineral Resources (ESDM) Office East is only limited to preventive measures in the form of supervision, and escort of mining activities in accordance with laws related to mining, sending periodic letters to mining businesses, as well as inviting mining business actors to socialize to schools about the dangers of mining, and repressive actions in the form of sanctions that are imposed in accordance with statutory provisions related to mining. Second, the authority of the Samarinda City Police Resort is limited to criminal provisions, while the community has a false paradigm that makes the Samarinda City Police Resort report, then everything will be resolved. Responding to this paradigm, the Samarinda City Police Department uses a restorative justice system, with a benchmark if it can be resolved through consensus then it will not be forwarded to the court domain unless there is an indication of violation of criminal provisions in the legislation related to mining. This is in line with the opinion of Haryanto Ginting and Muazzul (2018: 37-38), that restorative justice is a concept of thought that is oriented towards the community and the victim because it aims to repair social damage, and develop recovery for victims and the community. Third, citing the opinion of Mohamad Saleh (2018: 163), the village is the spearhead of government in the area of public administration, so it is obliged to fulfill the rights of the community. Urban village has representative authority over community complaints. One of the wards in this study sample is Urban Village Harapan Baru Kelurahan, Samarinda City, which became the community delegation to find solutions to solve problems for the community. The biggest problem currently faced by the community of Harapan Baru Village, Samarinda City is the existence of mining in the middle of community settlements. Various efforts have been made, although they have not produced significant results ranging from checking to locations, checking permits for mining activities, and writing to all other relevant stakeholders if they find mining activities illegal. Fourth, the community really understands the social problems that occur in the community, so that the community's role is needed in every solution of social problems even more when the community has become a victim. The category of community victims is a variety of victimization, so that in typology victims are collective victims. Bintoro (1993:

14) explained that the community was categorized as a collective victim, because victims covered the entire community in a relatively large area. The definition of society itself according to Koentjaraningrat (2009: 116) is a group of people who interact with each other or interact with scientific terms. Then according to Major Polak, quoted by Abu Ahmadi (2003: 96), states that the community is a container of all social relations comprising many collectives and groups in each group consisting of better groups or subgroups. This definition reinforces the definition of the community as victims proposed by WHO (2002) as quoted by Johanna Ray Vollhardt (2012: 137) by bringing the understanding of collective victimization as a collective result of violence that is defined as a tool used in violence by individuals who identify themselves as a groups in order to achieve political, economic, and social goals. Therefore, Harapan Baru Kelurahan community can be categorized as a collective victimization, so that as victims of mining industry pollution (collective victims) who have felt immaterial losses, one of which is the loss of livelihoods because agricultural land has been polluted, and material losses, one of which is loss of access a healthy environment, the people of Harapan Baru Kelurahan make efforts in the form of submitting reports in Samarinda Kota Kelurahan and Samarinda City Police as a form of legal protection given to the community as victims of mining industry pollution (collective victims), although the results have not been maximized. The lack of results is due to obstacles that hinder the realiz¹⁴ on of legal protection including, First, the constraints faced by the Department of Energy and Mineral Resources (ESDM) of East Kalimantan Province lies in the quantity of population growth that continues to increase accompanied by geographical conditions in the region which causes inequality with mining licenses in Samarinda City, while historically ten years ago Samarinda City had a smaller quantity of population than mining activities. This is caused by the degradation of people's morality due to the effects of urbanization and transmigration in Samarinda City. Second, the obstacle faced by the Samarinda City Police Department lies in the community paradigm that the performance of the Samarinda City Police Station covers all fields including outside the criminal sphere. This is due to the lack of understanding of the community's law regarding the limitation of the authority of the Samarinda City Police Resort to the extent of the criminal provisions in accordance with mining laws and regulations. Third, the obstacle faced by Samarinda's Kota Harapan Baru Village lies in the negative stigma of the community towards the lack of role of Kota Samarinda's Harapan Baru Village due to the modus operandi that is difficult to detect and mining business operators who violate the scapegoat of Kota Harapan's Samarinda Kota Kelurahan in terms of licensing mining activities in the midst of in the midst of the community, thus causing distrust to the role of the village in protecting the community. Fourth, the obstacle felt by the Harapan Baru Kelurahan community in Samarinda as a sample of the study population lies in the lack of responsiveness of relevant stakeholders who were not responded to quickly so as to not yet have meaningful progress on the reports of communities affected by mining industry pollution (collective victims), so that people around the mining area of Harapan Baru Kelurahan, Samarinda City, are increasingly pessimistic about asking for legal protection. Based on the description of these obstacles, it is clearly illustrated that the position of the community as victims of pollution in the mining industry (collective victim) has not been properly calculated, even though

the relevant stakeholders have exercised authority in accordance with the laws and regulations related to mining. Therefore, in this study the authors explain a notion of resolution including, first, the participation of communities around the mine area as victims in the reclamation program must be prioritized. According to Canter (1977), Cormick (1979), Goulet (1989) and Wingert (1979) cited by Waluyo, (2002: 35) and quoted again by Satya Nugraha in his journal that one of the community's roles is a strategy to get community support, so that it can influence the decisions that will be taken. Second, relocation of land damaged by environmental pollution in order to ensure the welfare of the community around the mining area. Damage to a healthy environment is a threat to people's lives both directly and indirectly. That threat makes the community as a group of victims who should be protected by law. Citing the opinion of Nur Aini Fitrianti, and Nuru Laili Fadhilah, in their journal stated that the implementation of relocation is part of national development in the public interest in realizing a just and prosperous, equitable, material society based on Pancasila. Third, with the existence of more proportional law enforcement, the position of the community as victims is preferred. Proportional composition that is proclaimed is the existence of decisive action against the cessation of mining activities without going through warning letters from relevant stakeholders regarding indications of violations committed by mining businesses, as well as the use of restorative justice involving communities as victims and mining businesses. Citing the opinion of Zainab Ompu Jainah (2012: 167) in his journal stated the weak strength of law enforcement by the apparatus determines the perception of a law, if law enforcement is weak, then the public perceives the absence of law and uses the law of the jungle, but vice versa if law enforcement is strong and carried out consistently, then the perception of the legal community is strong and obedient to the law. Meanwhile, according to Arif Kristiawan, et al. (2018: 98) in its journal, the form of law enforcement carried out to solve environmental problems already exists in the legislation in order to achieve the supremacy of law, namely the application of administrative, civil and criminal sanctions. Fourth, there is guidance for mining businesses in managing post-mining land in the reclamation program. The guidance includes providing guidance in planning, organizing, and implementing as well as including supervision of the reclamation program. According to Misbakhul Munir, and RR Diah Nugraheni (2017: 11-16), reclamation activities are a necessity that needs to be done, in order to maintain more productive land, and generate added value for the environment. Reclamation can be carried out through revegetation stages in accordance with the provisions of the Decree of the Minister of Forestry and Plantations Number 146 of 1999 Concerning the guidelines for Reclamation of Former Mining in Forest Areas. According to Rr. Diah Nugraheni Setyowati, et al. (2017: 18), the success of revegetation depends on the preparation, maintenance, and monitoring of plants in accordance with mining conditions, so it is necessary to know early post-mining land conditions. In addition to the revegetation stage, the implementation of the reclamation can also be carried out through the revitalization stage. This research believes that the existence of revitalization is not only able to overcome social problems, but also able to overcome economic problems. Citing the opinion of Lutfi Zaini Hakim (2014: 117), in his journal states that the implementation of land revitalization is carried out by mining business actors.

Therefore revitalization is an effort to empower a post-mining land area that involves the community around the mining area with the aim of restoring through cultivating the area, so that revitalization is expected to be a solution that prioritizes the community as victims of pollution in the mining industry (collective victim). For this reason, in order to successfully carry out reclamation on post-mining land, it is necessary to provide guidance to mining business actors because the aim of this development is to train mining business actors to prioritize disadvantaged communities through the results of optimal reclamation implementation of post-mining land.

3 CONCLUSION

Based on the authority of each stakeholder, legal protection that can be given, including the Department of Energy and Mineral Resources of East Kalimantan Province is limited to preventive and repressive measures, Samarinda City Police Resort is limited to the realm of law enforcement if there are criminal provisions that are violated, urban village is limited to community representatives, as well as from the community side, there is a perception of impartiality giving birth to a paradigm of mistrust of the authorized stakeholders. Constraints faced by authorized stakeholders include the constraints of the Department of Energy and Mineral Resources (ESDM) of East Kalimantan Province, which lie in the geographical condition of the mining area, the constraints of the Samarinda City Police Resort, the community's assumption that all social problems must involve the Police, the negative stigma Kelurahan constraints regarding distrust of the role of urban village in protecting the community, as well as the constraints of the community who feel marginalized because of the alignments of the relevant stakeholders in mining activities, so that the community feels the loss. This paper recommends further research to formulate an MoU (Memorandum of Understanding) between the community, mining businesses, and relevant stakeholders to immediately follow up on violations of laws and regulations related to mining as a form of legal protection for the community, as well as to build a framework of advanced thinking in developing policies which is more oriented to the community as victims of the mining industry pollution (collective victim) by including a number of social ideas in the form of the priority of the community's role in the reclamation program, community land relocation, proportional law enforcement in providing legal protection, and fostering mining business actors in post mining management.

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