

Legal Consequences Due to Environmental Damage: A Study on Material Excavation and Processing Done by PT Tukad Mas in Bima City

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Abstract— Any person or company that excavates and processes materials that cause pollution or environmental damage can result in legal issues and one of the companies in this case is PT Tukad Mas in Bima in which its material excavation and processing have a negative effect on environmental damage in East Rasa Nae in Bima. The purpose of this study was to determine the form of legal liability for environmental damage due to excavation and processing of materials by PT Tukad Mas. This study used empirical legal research method with conceptual and sociological approaches, while data collection was done through interviews and documentation. The findings of this study indicated that legally criminal liability can be imposed if an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions are imposed on the business entity; and/or on the person giving the order to commit the criminal act or the person acting as the leader in the criminal act. In civil terms, companies can be subject to fines but it can be applied if they cannot carry out government coercion. Meanwhile, administrative sanctions consist of written warnings, government coercion, and terminating or revoking environmental permits. However, field findings show that until now Bima City Government has only given a written warning to PT Tukad Mas for the waste disposal which has resulted in pollution and natural damage and this is due to the excavation carried out.

Keywords— *Legal Consequences, Environmental damage*

I. INTRODUCTION

The excavation and processing of materials by PT Tukad Mas Kota Bima, received a lot of attention from the community. This happened because it had negative impacts, such as natural damage, environmental pollution and damage to the environment around the excavation and material processing site. Some natural disasters have occurred and this can be assumed that those natural disasters were due to the bad community behavior, exploiting the nature illegally [1].

Any person or company that pollutes or destroys the environment can be punished under criminal, civil and

administrative laws. Concerning the environmental law, in general, can be described that *first*, environmental crime is committed by, for, or on behalf of a business entity, criminal prosecution and criminal sanctions are imposed on the business entity and/or person giving orders to commit a criminal act or the leader of the activity in the criminal act. *Second*, the person in charge of a business and/or activity that has committed an unlawful act in the form of pollution and/or damage to the environment which causes harm to other people or the environment is obliged to pay compensation, and *third*, administrative sanction consists of written warning, government coercion, terminating or relocating environmental permit [2].

PT Tukad Mas in Bima city, which has been operating for decades and located in the East Rasa Nae District in Bima, has had a negative effect on environmental damage, however it is only given an administrative sanction in the form of a written warning. Whereas in this case, corporations can become perpetrators of environmental crimes in which individuals, and/or groups of people, and/or legal entities (corporations) as subjects of criminal acts can be convicted based on a corporate law [3].

The research questions of this study are: *First*, how is the form of responsibility of PT Tukad Mas for the environmental damage it created? *Second*, how is the role of the community in environmental protection due to the excavation and processing of materials from PT Tukad Mas. While, the purpose of this study was to determine the legal consequences of environmental damage, the form of responsibility of PT Tukad Mas and the role of the community in protecting and managing the environment in the area of excavation and material processing done by PT Tukad Mas.

II. METHODS

This research applied a normative juridical approach (positive law), an approach based on prevailing laws and regulations, court decisions and legal norms that exist in society [4] and a statute approach, an approach used to review and analyze statutory regulations and arrangements

that are related to the legal issue being handled [5]. In connection with problems resulting from the law on environmental damage, this research applied, *first*, the conceptual approach, an approach that is carried out by examining concepts, theories and opinions of experts that are related to the object under study, such as protecting the community from environmental pollution due to excavation and processing of materials and *second*, the law sociological approach which analyzes the reactions and interactions that occur when the norm system works in society. This approach is constructed as a social behavior that is institutionalized and socially legitimated and in this case that is related to the legal consequences of extracting and processing materials conducted by PT Tukad Mas.

This research is located in Kodo East Rasa Nae in Bima city, as an operation site for excavation and processing of materials by PT Tukad Mas. This research used primary or main data, such as the results of interviews with respondents, namely the local government staff, PT Tukad Mas people, groups of people or the community regarding the legal consequences of environmental damage in the operational area of PT Tukad Mas. While secondary data were only as supporting data from primary data, such as legal concepts, library data, expert views, and other sources such as legal environment journals. Data collection techniques were interviews and documentation. Interviews were by conducting direct questions and answers to respondents about the problems under study, direct and face-to-face contact between interviewers and interviewees. Meanwhile, the instrument used to conduct the interview was the interview guide prepared by the researcher and it was about the legal consequences of environmental damage due to the excavation and processing of materials by PT Tukad Mas. Having been collected using the above techniques, the data were analyzed out using qualitative and quantitative methods. The qualitative method is where data analysis, both library and field data, is assessed for quality in accordance with the issues to be discussed in this research. Meanwhile quantitative data analysis was an analysis on data based on the appropriate amount of data obtained to determine the percentage of the obtained data.

III. RESULT AND DISCUSSION

A. *Forms of Responsibility of PT Tukad Mas Due to Environmental Damage in Bima city*

Environmental damage is always a threat in social life, this happens because the increasing implementation of building construction causes an increasing impact on the environment [6]. Recently there have been more and more environmental cases emerging in the community, along with the rapid dynamics of activities in the community, such as in the fields of industry, agricultural business (agriculture, plantation and fishery), agroforestry (forestry commodity business), property, construction and so on. Environmental cases, do not only occur between business people and the community, but also among business people within business interactions that have an impact on environment and resource, between business people and the government/policy makers, and also between the community and the government [7].

Everyone is prohibited from any actions that cause pollution and/or damage to the environment [8]. Based on various legal products, environmental protection can be divided into three aspects. *First*, environmental pollution viewing from material elements that must be fulfilled in environmental criminal liability is corporate/business entity and person based on work relations or other relationships which can be accounted for [2]. If an environmental crime is committed by, for, or on behalf of a business entity, the criminal prosecution and criminal sanction are imposed on the business entity; and/or the person giving the order to commit the criminal act or the person acting as the activity leader in the criminal act. Whereas if an environmental crime is committed by a person, who is based on a work relationship or based on other relationships acting within the scope of work of a business entity, the criminal sanction is imposed on the person who gave the order or the leader of the crime without paying attention to the criminal act being committed individually or collectively [9].

Criminal liability for environmental pollution is corporate or individual, as what is stated in Law Number 32 of 2009 concerning Environmental Protection and Management Article 98, namely: (1) Anyone who deliberately commits an act that results in exceeding ambient air quality standards, water quality standard, seawater quality standard, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp.3,000,000,000 (three billion rupiah) and a maximum of Rp.10,000,000,000 (ten billion rupiah); (2) If the act as referred to in paragraph (1) results in a person being injured and/or a danger to human health, the punishment shall be imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp.4,000,000,000 (four billion rupiah) and a maximum of Rp12,000,000,000 (twelve billion rupiah).

Meanwhile Article 99 states that (1) Anyone who due to his negligence results in exceeding ambient air quality standards, water quality standards, sea water quality standards, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp1,000,000,000 (one billion rupiah) and a maximum of Rp3,000,000,000 (three billion rupiah); (2) If the act as referred to in paragraph (1) results in injury to the person and/or danger to human health, the punishment shall be imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least Rp 2,000,000,000 (two billion rupiah) and a maximum of Rp. 6,000,000,000 (six billion rupiah).

Criminal liability for environmental damage made by PT Tukad Mas has never been noticed and this is due to the fact that PT Tukad Mas only has a special mining business license. In addition, criminal liability becomes difficult to be requested because of complicated procedure, such as corporate crime (Interview Results with Taufikurrahman as Head of Sub-Division of Environmental Impact Assessment for the Environmental Service of the City of Bima on 27 August 2020)

Second, every person in charge of a business and/or activity that does not implement government coercion can

be subject to fines for any delay in implementing government coercive sanctions, however these fines can be applied if they cannot carry out government coercion (Article 76 (2) Law 32/2009) In addition, civil sanctions can also be applied due to stagnation of companies in not paying taxes as described in the Regulation of the Mayor of Bima city Number 36 of 2016 concerning guidelines for implementing taxes for Non-Metal Mineral and Rock in Bima City.

Third, concerning administrative sanctions for companies, Article 76 of Law 32/2009 states (1) the Minister, governors, or regents/mayors apply administrative sanctions to those in charge of businesses and/or activities in which the supervisors find violations of environmental permits; (2) administrative sanctions consist of written warnings, government coercion, license suspension or revocation of environmental permits. The operation of PT Tukad Mas in the field of excavating and processing gravel into concrete, etc., has been permitted but there are still various problems in which PT Tukad Mas might be reprimanded verbally and in writing. In this case, the City Government of Bima has made several written warnings on processing and extracting materials that make people feel restless (Interview Results with Drs. Syarifudin, M.Ap, a Head of the Department of capital investment and one stop services of Bima city on August 27, 2020). On the other hand, administrative sanctions for environmental damage due to material excavation and processing are also regulated in the Regulation of the Mayor of Bima Number 36 of 2016 concerning the guidelines for the tax of the Non-Metal Mineral and Rock, in which it states that the tax on non-metal minerals and rocks is a tax on non-metal mineral and rock extraction activities either from natural sources in or on the earth's surface to be utilized.

In the field of administrative sanctions, the Bima City government through the new environmental service gave a written warning to PT Tukad Mas. This could be due to PT Tukad Mas which only processed materials brought by the community, such as gravel material which is processed into concrete, etc. This written warning was issued because of the community complaints about waste disposal and also because PT Tukad Mas did not fulfil the obligation to submit a 6 months period report, such as being late and not delivering the report can be subject to a written warning sanction. Until now, it is found that there is no government coercion, suspension or revocation of environmental permits given to PT Tukad Mas (Results of Interview with Taufikurrahman as Head of Sub-Division of Environmental Impact Assessment for the Environmental Service of the City of Bima on August 27, 2020).

B. The Role of Community in Environmental Protection Due to Excavation and Material Processing of PT Tukad Mas

The Law of the Republic of Indonesia Number 32 of 2009 concerning Protection and Management of the Environment Article 70 states that (1) The community has equal rights and opportunities as widely as possible to play an active role in environmental protection and management. (2) The role of the community can be in the form of social supervision, giving suggestions, opinions, suggestions, objections, complaints; and/or giving information and/or

reports. (3) The role of the community is carried out to increase awareness in environmental protection and management, independence, community empowerment, and partnerships, to develop community capacity, leadership, and responsiveness to carry out social supervision; and to develop and maintain local culture and wisdom in order to preserve environmental functions.

The existence of permit of PT Tukad Mas at this time is no longer under the authority of the local government or the Bima city government. This is due to the division of authority after the issue of Law 23 of 2014 as amended to Law Number 9 of 2015 concerning regional government, but even though it was taken over or under the authority of the province government. a recommendation from the Regional Spatial Monitoring Coordination Team is still needed to grant the permit, and thus, there is no problem with the licensing aspect of PT Tukad Mas (Interview Results with Drs. Syarifudin, M.Ap, the Head of the Department of capital investment and one stop services of Bima city on August 27, 2020). Meanwhile, concerning spatial suitability, problems cannot be found if it is analyzed based on Regional Regulation Number 4 of 2012 concerning Spatial Planning and Regional Layout, but based on the new draft of local government regulation dealing with regional spatial arrangements in Bima City, the existence of PT Mas can be considered problematic (Results of Interview with Ririn Kurniawan, a Head of Spatial Planning in the Department of Public Works and Spatial Planning for the Bima city on August 27, 2020)

Investment can be manifested in various ways, one of them is through multinational companies, foreign investment through multinational companies turns out to not only have a positive impact but also a negative impact on the country where the company operates, in particular contributing to pollution and environmental damage that threatens the human life security. Environmental damage is a threat to the life of people who should live safely and well. Government policy in dealing with the environment must receive more attention and serious action from the state because this is related to the life of the community and as a matter of fact, the state is responsible in guaranteeing the basic life rights of its citizens [10].

The community has the right to file a lawsuit for their own benefit and/or for the benefit of the community if they experience losses due to pollution and/or environmental damage (Article 91 of Law 32/2009). PT. Tukad Mas is one of the big companies and almost never has any defects. Thus, it is not surprising that this company often wins Project Packages at the local and national level. Unfortunately, its reputation lately tends to degenerate because of its small project, i.e., the dredging that causes environmental damage in Oimbo Village, Bima City in which it carries waste that causes disease to the local people (Interview with Mr. Ruslan BP as Community Leader of Oimbo Village Bima City on 26 August 2020).

IV. CONCLUSION

The form of legal liability for the environmental damage made by, for, or on behalf of the business entity is that criminal charges and criminal sanctions are imposed on the business entity, and/or the person giving the order to commit

the criminal act or the person acting as the activity leader in the criminal act. In civil terms, companies can be subject to fines but this can be applied if they cannot carry out government coercion. Meanwhile, administrative sanctions consist of written warnings, government coercion, suspension or revocation of environmental permits. However, field findings show that until now the Bima city government has only given a written warning to PT Tukad Mas due to waste disposal for the excavation carried out which resulted in pollution and natural damage. In addition, PT Tukad Mas only carries out processing of goods or materials taken from the community because its permit is for a Special Mining Business. However, empirical facts show that operational practices such as rock exploration and others are always carried out by PT Tukad Mas and this is also supported by several views of the community regarding the existence of PT Tukad Mas. The excavation and processing of material such as stone into concrete has caused quite severe environmental damage problems, and thus the legal consequences in the form a written warning is not enough.

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