

The Emergence of Access to Environmental Justice in Indonesia (A Case Study on Mining for Cement in Kendeng Mountains)

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Abstract— This paper aims to analyze the recognition of access to environmental justice in Indonesia with a case study on mining for cement located in Kendeng Mountains. As mining is commonly known to have significant harmful effects to rural activities, it is important to portray the current rules of public engagement in environmental decision-making. Do people have access to environmental information? Are they really involved in the process of decisionmaking? Here, we can see whether the involvement of rural communities is meaningful or not. With a case study of mining for cement in Kendeng Mountains, it can be depicted some potential injustice due to the construction of cement plant, including affected rural activities. Then, it is followed by a discussion of legal actions that can be taken by rural societies in order to find remedies for their potential losses. Subsequently, it can be seen how far people have a right to environmental remedies. The result of this case study, therefore illustrates how environmental justice is difficult to achieve in spite of the availability of access to environmental justice.

Keywords—access to justice, environmental justice, mining case, kendeng

I. INTRODUCTION

The development of mining is frequently accompanied by environmental damage. For instance, in Indonesia 70% of environmental degradation is caused by mining activities [1]. Apart of that, mining conducts are also known to have significant harmful effects to rural lives. For example, deforestation causes locals may loss access to traditional medicines, foods and cultural stuffs. The contamination of waters due to mining disposal may lead to the outbreak of certain diseases, the death of fishes, and the crippling local agricultures. Then, the utilisation of hazardous materials such as mercury can cause birth defects [2].

Despite its destructive nature, the government continues to issue mining permits because of its contribution to the state's finances and the economy. Since almost half of the state revenues from the natural resources sectors come from mining [3]. In 2017, state revenues from the mineral and coal mining sector reached 40.6 trillion. The amount of revenue realization is 25% percent higher than the target set by the Ministry of Energy and Mineral Resources [4]. It could be

said that mining sector is quite influential on macro economic development. Coupled with its labor-intensive nature that is able to absorb thousands of workers.

The need of economic development frequently clashes the need of sustainable development. Although mining has a good effect on the economy, it has long-term adverse effects, especially on the environment. As local communities are the one that will directly affected by this alteration, the life of the people surrounded by mining areas should be taken into account. Any development planned or granted by the government should not leave the people. Noting that people's right to life in a decent and healthy environment is a right protected by the Constitution.¹

In order to fulfil people's right to life in a decent and healthy environment, it is important to provide a certain room of environmental democracy by involving the members of public in the process of mining permits issuance. Subsequently, people should have an access to justice in environmental matters which not only translated to access to remedies, but also access to environmental information and , ii) the public's right to participate in environmental decision-making [5] [6] [7] [8] [9] [10].

Access to environmental information and public's right to engage in environmental decision-making are closely linked because it is hard to gain a meaningful public participation without having an open and accesible information [11]. Access to environmental information shall include information related to the mining activities to be established within the area, to what extent the activities will affect people's lives, and what efforts should be taken in order to minimize unexpected impacts. Therefore, the foreseeable injustice due to the development of mining can be prevented or minimized.

Learning from conflicts in the issuance of environmental permit for mining and construction of cement plant by PT Semen Gresik (Persero) Tbk² in Rembang Regency, Central Java Province, this paper aims to discuss the acknowledgment of access to environmental justice by rural

¹ See article 28A and 28H(1) of the 1945 Constitution of Indonesia and Article 65 Paragraph 1 of the Environmental Protection Act

² Since 20 December 2012, the name of PT Semen Gresik (Persero) Tbk changes to PT Semen Indonesia (Persero) Tbk. Hereinafter, it would be called "PT Semen Indonesia".

societies in Indonesia. How it is regulated and implemented. Then, what recourse could be done in order to defend it.

II. PUBLIC ENGAGEMENT IN ENVIRONMENTAL DECISION MAKING

As an umbrella rule, the 1945 Constitution of Indonesia, especially article 28D, paragraph 1 and 3 explicitly mentions that equality before the law and public engagement in the governance affairs are accommodated and guaranteed in Indonesia [12]. The participating rights set forth in the constitution are also spelled out specifically in various regulations to open opportunities for citizens to participate in the government. For example, Act Number 14 Year 2008 on Public Information Transparency was enacted in order to encourage checks and balances between the government and the public by disclosing public information and encouraging participation of the citizens in the formulation of public policies.

In terms of public engagement in environmental issues, Act Number 32 Year 2009 on Protection and Management of the Environment (hereinafter the Environmental Protection Act) has arranged and provided a vast space for the citizens to participate in the protection and management of the environment. Business license and/or activities can only be granted if it is accompanied by an environmental permit.³ By having an environmental permit, a proposed business activity is assumed to meet the environmental standards to operate because it has to conduct an environmental impact assessment (hereinafter "the EIA") that is conducted thoroughly in describing the real condition of the location of the disputed object, how the activities will be carried out, the impacts that will be generated, and the response to the impacts. In the case of mining for cement in Kendeng Mountains, the EIA could be considered as a required document since according to Article 23 Paragraph 2 the Environmental Protection Act every company that exploits natural resources should pass the EIA [13].

The EIA itself, based on Article 25 Paragraph C of the Environmental Protection Act should contain public recommendation [13]. The public recommendation is then specifically regulated in Government Regulation Number 27 Year 2012 on Environmental Permit (hereinafter PP 27 2012). Article 9 of the PP 27 2012 ensures that public engagement starts from the planning until the evaluation of a particular project [14].

Technical regulation of public engagement, especially in the issuance of the EIA is specifically regulated in the Regulation of the Minister of Environment of the Republic of Indonesia Number 17 Year 2012 on the Guidelines of Public Engagement in the Impact-Analysis Process of Environment and Environmental Permit (hereinafter PermenLH 17 2012). Based on the PermenLH 17 2012, there are three groups of public that should be joined in the making process of EIA, namely impacted citizens, environmentalists, and communities affected by all decisions in the EIA process. The impacted citizens in particular must be included as member of EIA appraisal commission (*Komisi Penilai EIA*). In chapter 2 the PermenLH 17 2012, the EIA appraisal

commission has a task to decide whether the document of EIA is eligible for approval or not. If it is approved, the corporations are ultimately granted natural exploitation permits. Oppositely, if the document is not agreed, there will be no permit for exploitation.

Furthermore, the key role of the citizens in environmental decision making, especially in the evaluation of the EIA document is also accommodated by the law. In fact, if the citizens believe that the EIA is likely to not reveal the real condition and harms society, people, based on Article 26, Paragraph 4 of the Environmental Protection Act can file an objection on the document [13]. Therefore, the exploitation of natural resources can eventually be stopped.

However, those rights embedded to the citizens seems to be bias, especially on the selection of who should be the representatives of the citizens. Since every person has their own perspectives, there is an opportunity that there will be different opinions on the EIA document. In a particular case, a group of impacted citizens would probably believe that the business activities damage the environment while others think otherwise. This gap of course is a challenge in the making of comprehensive EIA document, especially if there is free-riders involving there.

III. POTENTIAL INJUSTICE CAUSED BY CEMENT MINING IN KENDENG MOUNTAINS

Kendeng mountains are a part of Rembang Regency, Central Java Province, Indonesia. The mountains have an abundance of natural resources, especially in the karst area. The karst itself has a lot of benefits to many sectors. It is a giant underground-water-storage tank [15]. The water is the important springs for human needs and agricultural purposes in many areas of Java island. Moreover, the karst is the natural habitat of various types of rare flora and fauna. Recalling that human activities in Indonesia is heavily centered in Java island, the karst is important preventing the rare flora and fauna from extinction. Last but not least, the karst is rich of non-renewable minerals; things that attract many corporations to mine. Looking at those richnesses and the significant roles, therefore, any activities that may affect the condition of the karst need to assess carefully.

In terms of cement mining in the Kendeng Mountains, some potential injustice can be depicted due to the construction of cement plant, including affecting human activities as well as natural resources. Natural damage, for example, is potentially suffered by the mountains as an impact of the mining.

The springs in the mountains in total produce at least 51 million liters of water per day [16]. However, only 10% of the total water is used for human needs and the rest is flowed to agricultural activities. Recalling that the average need of water by human is approximately 15-20 liters per day per person, economically the water would offer more benefit than the mining [16].

The mining on the other hand reduces the water supply. Of course the decreasing of water supply potentially damages the quality of natural resources that are very dependent on

³ See Article 40 of the Environmental Protection Act.

water. Reduced agricultural productions, death of rare flora and fauna are two of many natural damage examples due to the mining.

Moreover, the mining also threatens people by causing more natural disaster. Java island is known to have a high risk of natural disasters, such as land sliding, flood, tornado, even drought. Deforestation of Kendeng Mountains in order to build and run mining companies will potentially make those risks even bigger [17]. The rainwater, for example, that should seep into the ground as ground water would stay at the surface of the ground as surface water (known as run off water). If the water discharge is too high, some areas around the mountains will face some disasters, such as, flood and land sliding.

The mining in Kendeng Mountains also affects human health, especially for those who is living around the mountains. Cement dust in the mountains arguably causes eye irritation, choky, even pulmonary abnormalities [18]. The pollution also affects the survival of flora and fauna. The activities of mining without considering any pollution produced would have exactly an effect on health. Academic alliance for Kendeng argues that some countries closed their destructive companies, such as cement mining because the pollution of the mining harms ecosystem [19].

Those complex impacts of cement mining are supposed to consider the issuance of mining permit to be made and assessed carefully, especially the role of impacted citizens in making the EIA. As mentioned in the previous chapter that choosing the representatives of the citizens is bias, citizens around the mountains seem to be divided into two groups. A particular group believes that the cement mining in the Kendeng Mountains provides many benefits to the citizens [20]. They argued that the cement mining will reduce unemployment rate, ease finding clean water as a result of water piping by the company and empower people by having some jobs trainings. However, another group believes that the cement mining will have some adverse impacts as mentioned in this chapter above. Thus, one of the problems in the process of making EIA document will appear in the selection which group will be involved in the EIA appraisal commission.

IV. ACTIONS TAKEN BY THE RURAL SOCIETIES

When the rules on public engagement in environmental decision-making are not enforced, the member of public has a right to challenge the issuance of environmental permits by related authorities. The lawsuit should be filed to the Administrative Court. This requirement is specified by Article 93 of the Environmental Protection Act.⁴ The administrative lawsuit should be conducted with reference to the procedural law of the Administrative Court because the

Court will only examine cases in accordance to its competence.

Even if an environmental permit is granted with a valid EIA, it is still could be challenged if it is contrary to the law. In the case of mining for cement materials in Kendeng Mountains, prior to filing the administrative lawsuit, representatives of affected societies has submitted an objection file to the related authority, which is the Governor of Central Java on June 21, 2014 and has received a receipt from the Governor. Another objection file was also submitted by an Environmental NGO (WALHI) to the Governor on 25 Agustus 2014, but those objections received no significant results. Therefore, the society brought a claim together in a class action against an environmental permit for mining activities operated by PT Semen Indonesia which is mentioned in the Decree of the Governor of Central Java Number 660.1/17 year 2012 dated June 7, 2012 to the Administrative District Court of Semarang.⁵ The permit grants permission to PT Semen Indonesia to undertake limestone mining, clay mining, constructing factories and utilities, building production roads, and constructing mining roads in Rembang Regency.

The members of public believe that the granting of environmental permits to PT Semen Indonesia is contrary to the laws because the mining exploration is being granted in the karst area that considered as protected by the law.⁶ The destruction of the groundwater basin area will lead to reduced water discharge due to the loss of water catchment function that impacts on people's lives around the mining activity. Karst landscapes and groundwater additives are geologically protected areas which should be protected as regulated in the Act Number 26 Year 2007 on Spatial Planning *Juncto* Government Regulation Number 26 Year 2008 on National Spatial Plans. Moreover, the results of underground water research at Mount Watuputih by the Mining Service Provincial Region of Central Java in March 1998 showed that Mount Watuputih and its surroundings are physiographically classified in karst landscape type. In the karst landscape there is a unique natural phenomenon with the existence of natural caves and underground rivers [16].

The previous mentioned data is obscured by the EIA document. There is a deviation of EIA data on page III-30 mentioning that the location of the plot belongs to the cultivation area, so that the location of the karst protected area is outside the plot of the mining plan; that no springs, caves, either wet or dry in the plot; that the mining area is not included in the area protective karst so that mining can be done area investigation. This is evidenced by the joint visit between the community and the Ministry of Environment team in July 2014 which has conducted field trips in Watuputih groundwater basin area, Gunem district, Rembang

⁴ See also Article 53 Paragraph 1 of Act Number 5 Year 1986 regarding to the Administrative Court, as amended by Act Number 51 Year 2009 on the Second Amendment of the Administrative Court Act (hereinafter, "the Administrative Court Act").

⁵ According to Article 54 Paragraph 1 and 2 of the Administrative Court Act, administrative lawsuits may be filed to the Court within the jurisdiction covers the place/domicile of the defendant. In this case, the Governor of Central Java Province is domiciled in Semarang City. Hence, administrative lawsuit was filed to the Administrative District Court of Semarang.

⁶ Act Number 26 Year 2007 on Spatial Planning *Juncto* Government Regulation Number 26 Year 2008 on National Spatial Planning; and Local Regulation of Central Java Province Number 6 Year 2010 concerning Spatial Planning of Central Java Province Year 2010-2030 *Juncto* Presidential Decree of the Republic of Indonesia Number 26 of 2011 on the Establishment of Groundwater Basin; as well as Local Regulation of Rembang Regency Number 14 Year 2011 concerning Spatial Planning of Rembang Regency Year 2011-2031.

regency. During the visit, the community and the Ministry of Environment found a *ponor* point⁷ within the PT Semen Indonesia Mining Business License [16].

In addition to contradictory to the law, using false data, EIA production is also contradictory to the participatory aspect as provided for in article 39 of the Environmental Protection Act which requires the relevant authorities to announce any environmental permit appeals and decisions in a manner that is easily known to the public. But in this case the hearing was not done, the announcement was not made, the public objections shown through some protests were ignored, even official objections were not taken into consideration [16].

Despite its extensive and substantial arguments, the Administrative District Court of Semarang loses the plaintiffs due to expiration reason because the lawsuit is deemed to have exceeded the 90 day deadline as determined by Article 55 of the Administrative Court Act as also required by Article 93 of the Environmental Protection Act that an environmental lawsuit has to be made under Administratives Court's procedural law [21]. The decision of the Administrative District Court of Semarang is reinforced by the Decision of the Administrative Court of Appeal of Surabaya Number 135/B/2015/PT.TUN.SBY., dated November, 3, 2015.

So then the plaintiffs filed a request for a review submitted to the Supreme Court which ultimately led to victory. Although it states that the EIA document has described the real conditions of the location of the disputed object and how the mining will be carried out and the impacts that will arise as well as the response to the impacts caused. However, the Panel of Judges sees no restrictions and procedures for mining above the groundwater basin area, so it can not be calculated that mining activities will ensure the sustainability of the aquifer system in the groundwater basin area. Mining undertaken as reflected in the EIA resulted in the collapse of underground river walls and groundwater basins that caused the concerns of some residents. By observing the principle of prudence as one of the pillars of the general principles of good governance, the Panel of Judges agree to: grant the plaintiffs' claims, cancel the disputed permit and order the Governor to revoke the disputed permit [16].

However, the Governor did everything possible to keep the construction of cement plant in Kendeng Mountains, one of them by issuing new license⁸. This is also the weakness of the EIA, although its analysis results are destructive, but it is not binding on the government for failing to grant permission. As long as it is analyzed based on the rules, involves the local community, and has utilised the best available technology [22]. Then, legitimate new licenses are launched. This is where there is a legal vacuum as to how to really get environmental justice is still hindered by less comprehensive rules.

V. CONCLUSION

Environmental justice is difficult to achieve in spite of the availability of access to environmental justice. In the case of

mining for cement in Kendeng Mountains, some legal actions has been taken by the rural societies and environmental NGOs. In reality it does not affect the decision of the authorities to continue granting environmental permits for mining activities. However, at least EIA documents can be improved and re-examined taking into consideration some environmental aspects of restrictions and procedures for mining above the groundwater basin area, hence it could be guaranteed the sustainability of the aquifer system in the groundwater basin area.

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⁷ *Ponor* point is a surface karst feature in which water can enter into subsurface water network systems.

⁸ See the Decree of Central Java Governor Number 660.1 / 6 year 2017, dated 23 February 2017.

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