ALTERNATIVE DISPUTE RESOLUTION OF PEOPLE'S MINING (STUDY IN WEST LOMBOK REGENCY)

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Abstract

The Law on mineral and coal mining provides opportunity to carry out mining business activities. To do mining out by the people by using the people suggest. In practice, causes problem in the form of vertical and horizontal conflicts society in west Lombok district. people's mining conflict were caused by uncontrolled mining activities and mining land ownership dispute. In the above issues, alternatives are needed in resolving disputes that occur, so that conflicts that occur can be resolved. This study empirical law research to understand that the law is not only a normative legal regulation. The data in this study were obtained from literature studies and field research, using a sociological juridical approach, the result prove that alternative mechanism of settlement of mining disputes based on the good faith of the parties in the conflict, to reach an agreement that can provide a sense of justice.

Keywords: *Dispute Resolution; Community Mining*

INTRODUCTION

Mining is an activity to manage and utilize the proceeds of mining. Mining is one of the country's largest foreign exchange producers. As a country that has a constitution, Indonesia must be able to guarantee the welfare of its people. To ensure the welfare of the people, then in the management of resources in Indonesia must be used properly and optimally.

To be able to realize the utilization and management of mining that is the welfare of the people of all forms of mining arrangements is stipulated in Law No. 11 of 1967 on The Basic Provisions of Mining, Law No. 4 of 2009 on Mineral and Coal Mining, Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining.

"Mining is part or all of the stages of activities in the framework, management and management of minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, management and/or refining or development, and/or utilization, transportation, and sales, and post-mining

activities”¹

Based on the type of management mining is grouped into 3, namely mining in general, mining people, and special mining. To be able to run a mining business, a mining business license (MBL) is required, a people's mining business license (PBL), and a special mining business license (IUPK). Related mining business license people are classified as the power to be able to run mining business.

Mining people in article 1 letter n Law No. 11 of 1967 on The Basic Provisions of Mining explains that mining people is a mining business of mining materials from a group a,b, and c as referred to in article 3 paragraph (1) conducted by the local people in small or mutual cooperation with simple tools for their search.²

One of the mining areas of the people is located in Sekotong Village, West Lombok Regency. The area of West Lombok Regency is not only known for its natural beauty that attracts tourists both local and foreign but also stores abundant natural wealth including mining in the form of gold and other mining objects. Based on the results of research conducted by the local government, Sekotong Region west Lombok district has very large potential mining results in the form of gold. the beginning of the mining business in West Lombok occurred in 2008. Many miners from various regions such as West Java, East Java, Kalimantan, and Sulawesi came to conduct mining business activities.³

The existence of mining business activities in West Lombok regency can benefit the surrounding community as well as the local government in developing the economy. In practice, the mining business of the people that occur West Lombok Regency causes environmental damage and causes problems in the mining area in the form of disputes or vertical conflicts and horizontal conflicts in the territory of trade, in addition, there are conflicts of interest that are to be achieved by certain parties to gain an advantage in mining business in West Lombok Regency.⁴

Disputes or conflicts that occur in the mining area of the people can be caused by several factors, including the conflict of ownership of mining land between the immigrant community and the local community, conflicts of interest between miners and the community around the mining area, conflicts between the community and the government related to the permit management of mining areas.

To resolve the issue of disputes or conflicts in the community requires a cyclical approach and resolution so as not to cause prolonged disputes or conflicts in the community. to be able to resolve disputes or conflicts in the community can be done through litigation and non-litigation. Litigation means the settlement of disputes or

¹ Law Number 3 Of 2020 On Amendments To Law Number 4 of 2009 On Mineral and Coal Mining. State Gazette Of The Republic Of Indonesia Of 2020 Number 147, Article 1 Paragraph (1)

² Salim H.S. (2014), *Hukum Pertambangan di Indonesia*, Rajawali Pers, Jakarta, , pg. 115

³ <https://www.mongabay.co.id/2019/09/26/bertaruh-nyawa-demi-emas-di-lombok-1/>, accessed on 28th, 2020

⁴ Dwi Prilmilono Adi, Ahmad Zuhairi, (2016), *Konsep Hukum Pertambangan Rakyat (Studi di Kabupaten Lombok Barat)*, Jurnal Kajian Hukum dan Keadilan, Vol IV Nomor 1, Mataram, pg. 182

conflicts through the courts, while non-litigation is a settlement of conflicts not through the court's channels that is through alternative dispute resolution that is agreed by the parties to the conflict. Disputes or conflicts that occur in the mining area of the people in settlement through non-litigation channels are required mechanisms or alternative dispute resolution which is the agreement of the parties in resolving the dispute. Alternative dispute resolution can be consultation, negotiation, and mediation of the parties in a dispute or conflict. This should be focussing the alternative settlement of mining disputes of the people in the West Lombok Regency.

From the background of the above problems, there are two problems in this study, namely: how effective the mining arrangements of the people in the west Lombok regency, and how alternative dispute resolution in mining people in the region of West Lombok Regency.

This research is empirical legal research that is legal research with primary data or data obtained directly from the source through interview results⁵.to analyzed discussing issues related to alternative dispute resolution in the mining area of the people to understand that the law is not only as normative legislation. The data in this study is obtained from literature studies and field research, literature data can be primary, secondary, and tertiary data. This study uses a sociological juridical approach. The data obtained in the later research dialysis qualitatively descriptively that is describing the data that has been obtained both the data and field data in the form of interview results to be able to obtain conclusions from the problems in this study.

DISCUSSION

Effectiveness of People's Mining Arrangements in West Lombok Regency

The mining sector is one of the sources of the natural wealth of the country of Indonesia. In its business, all forms of regulation on the utilization and management of mining in Indonesia are regulated by law by not contrary to the Constitution of the Republic of Indonesia year 1945 as the basis of the constitution in Indonesia.

In article 33 paragraph (2) of the Constitution of the Republic of Indonesia year, 1945 explains that the production branches that are important for the state and control the lives of many people are controlled by the state, and paragraph (3) states that the provisions on the management and utilization of natural resources both mineral and coal that can provide welfare to the people.

The state can control natural resources and be given the authority to utilize and manage them. The meaning of state control is that the state has the freedom or full authority (*VolldigeBevoegdheid*) to determine the necessary policies in the form of

⁵ Ronny HanitjoSoemitro, (2010), *Dualisme Penelitian Hukum (Normatif dan Empiris)*, Yogyakarta : Pustaka Pelajar, pg. 154

regulating (*regelen*), managing (*busturen*) and supervising (*toezichthouden*) the use and utilization of national natural resources.⁶

The Law on minerals and coal governs the form of mining business. The mining business is grouped into mineral and coal mining business and people's mining business. People's mining is a mining business carried out by the people traditionally. In article 1 of the Regulation of the Minister of Mining and Energy number: 01P/201/M.PE/1986 concerning Guidelines for Mining Management of People's Strategic and Vital Mining Materials (Go-metal A and B) explains about mining the people are "Strategic excavation efforts conducted by local people residing in the area for their own daily livelihoods are carried out simply."⁷

In the mining practice of the people that occurs in Sekotong West Lombok Regency the mining community is not only a community of Lombok island, but also comes from outside the island of Lombok such as East Java, West Java, Sulawesi, and Kalimantan. Determination of people's mining area is not an easy thing to implement required several stages such as mining research and investigation, among others:⁸

- a. Identification of areas that geologically contain indications and deposits of minerals or coal;
- b. Information on geography conditions, land use, and regional accessibility;
- c. Geological environmental conditions;
- d. Social, economic, and cultural aspects of society;
- e. Legality status;
- f. Environment.

Before it was designated as a people's mining area investigation and research were conducted by PT. INDOTAN the resulting data is used as a reference in determining the mining area namely G. Simba located $\pm$ 5 Km south of Pelangan Village, in the area of Mecangguh Hamlet, Central Sekotong District, West Lombok Regency. The attitude of people who are reluctant to take care of PBL after the determination of WPR by the government is unfortunate considering the time and effort required in the determination of WPR is not easy. The reluctance of the community has an impact on the government's difficulty in regulating and supervising mining activities in the region.

The government has lost control of mining supervision that should be managed with good synergy between citizens and miners as well as the relevant government. The absence of this synergy causes difficulties in the event of things such as disputes or conflicts between local miners and migrant miners from outside the region that do not end in physical fights and cause casualties, prone to mining accidents caused by

⁶ Abrar Saleng, (2004), *Hukum Pertambangan*, UII Pers, Yogyakarta, pg. 219

⁷ *Opcit.* Pg. 115

⁸ Regency Regulation West Lombok Number 6 Of 2010 On Mineral and Coal Mining Management. West Lombok Regency Gazette Of 2010 Number 6, Article 1 Paragraph (4)

inadequate equipment and capabilities, as well as environmental damage due to pollution of mine waste that impacts public health.

As already explained that the State can control natural resources and be given the authority to utilize and manage then anyone who violates or carries out mining activities without permission may be penalized as stated in the relevant regulations that: ⁹

“Every person who commits mining without permission as referred to in Article 35 shall be penalized with a maximum imprisonment of 5 (five) years and a maximum fine of Rp100,000,000,000.00 (one hundred billion rupiahs)”

From the article, it can be understood that the government provides sanctions so that it can give a deterrent effect and become a tool to regulate the behavior of the community (law as a tool of social engineering).¹⁰ Although the legislation has not been able to bring the public to the legal behavior that should be applied by the community, the government must continue to try to educate more in counseling and other ways that are considered active, so that miners can follow the rules whose purpose is for mutual benefit.

Based on the results of the author's interview with the community and the government of Sekotong Sub-District Customer Village,¹¹ the government has appealed so that the community no longer does mining traditionally and take care of permits to have legal standing to do mining but there is a rejection by the community. As a result, the mining area was forcibly closed so that there was a clash between the community and the Pamong Praja unit that governed the people's mining area. The Local Government and The Village Government have taken preventive measures ranging from counseling, subtle reprimands to the control and even closure of mine areas. But the community continues to do illegal mining. This is what underlies the government finally set the people's mining area (PM) located in mount Simba Pelangan Village Sekotong District West Lombok Regency. However, the community is still reluctant to take care of people's mining licenses (PBL). The government hopes that the existence of people's mining areas (PM) can dampen disputes or conflicts that exist in the community. Mining activities are expected to be conducted in an orderly manner and minimize the impacts that will arise in the future.

From the results of the above exposure can be seen that the mining activities of the people in Sekotong Subdistrict, West Lombok Regency has not achieved the desired effectiveness considering the underachievers of synergy between normative regulations from the government and its implementation in the field. Thus giving rise to inevitable

⁹ Law Number 3 Of 2020 On Amendments To Law Number 4 of 2009 On Mineral and Coal Mining. State Gazette Of The Republic Of Indonesia Of 2020 Number 147, Article 158

¹⁰ Lily Rasjidi, (1990), *Dasar-Dasar Filsafat Hukum*, Citra Aditya, Bandung, , pg. 47.

¹¹ Interview with Mr. Sarim, Secretary Of Pelamgan Village, Sekotong District, West Lombok Regency, West Nusa Tenggara Province, Thursday 29 April 2021 at 09.00-12.00 WITA.

disputes or conflicts. If talking about disputes or conflicts, it will not be separated from people's lives, especially if it is stuck in strategic aspects such as mining.

According to the Wirawan, "Conflict is defined as the process of conflict expressed between two or more parties that are interdependent regarding the object of conflict, using patterns of behavior and conflict interactions that result in conflict output¹²." In relation to this study the author sees that the conflicts that arise are:

a. Horizontal Conflict

Horizontal conflict is a conflict between miners and other miners. This conflict may occur due to the seizure of mining land by one of the parties who feel entitled to the land. In the mining area of the people if the mining area has not been mined then who mines first then he owns the land. In the event of a mining dispute or conflict then who is strong will win.

b. Vertical conflicts

Vertical conflicts in people's mining areas often occur between miners and local governments. The bad consequences of environmental pollution and the amount of criminality that occurs in the mining area of the people cause the government to want to close the mining area. However, there is a rejection by the community because mining activities are the main livelihood of the community. if the mining area of the people is closed then the livelihoods of the people will be lost.

c. conflicts of interest

This conflict can occur due to the different interests of the parties in this regard: the community, miners, the government, and the owners of capital. Each party has different interests. for example, owners of capital and miners want economic benefits, people want to improve welfare without neglecting the environment in which they live and the government benefits income through taxes while carrying out the function of managing and supervising the owned.

In the steam of resolving disputes or conflicts in the mining business area of the people, there are two ways of resolving, namely litigation and non-litigation. Settlement of disputes or conflicts through litigation channels is the settlement of disputes through the court channels, while the settlement of disputes through non-litigation channels is the settlement of disputes or conflicts not through the path of the court or alternative dispute resolution agreed by the parties to the conflict. Resolving disputes through alternative channels of dispute resolution is the first step used in resolving disputes or conflicts in society.

Alternative Settlement of People's Mining Disputes In West Lombok Regency

Alternatif Dispute Resolution (ADR) was first applied in the United States, which is a form of dissatisfaction with the United States community with the court system applied

¹² Wirawan, (2010), *Konflik Dan Manajemen Konflik, Teori Aplikasi Dan Penelitian*, Salemba Humanika, Jakarta, pg. 1

in their country, then expanded to countries in Southeast Asia, including Indonesia.¹³ Alternative dispute resolution (ADR) is an option used in dispute resolution not through a court line, but is the resolution of a dispute through an out-of-court channel on the basis of the agreement of the parties to the dispute or conflict.

Article 1 number 10 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution explains that: "Alternative Dispute resolution is an institution of dispute resolution or dissent through the procedure agreed by the parties i.e. out-of-court settlement by means of consultation, negotiation, mediation, conciliation or expert assessment¹⁴." Based on the above article it can be concluded that alternative forms of dispute resolution consist of:

a. consultation

"Consultation is an action that is professional between one particular party (Client) and the other party who is a consultant, where the consultant gives an opinion to the client in accordance with the needs and needs of his client."¹⁵ Consultation can be concluded is a request for exchange of opinions to third parties who are not parties to the conflict related to the dispute at hand.

b. Negotiation

Negotiation is the resolution of a dispute or conflict through the deliberations or negotiations of the parties without involving third parties. Article 6 paragraph (2) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution explains that the resolution of the dispute can be resolved in a direct meeting by the parties within a maximum of 14 days and the result is set forth in a written agreement.¹⁶

c. Mediation

Mediation is the resolution of disputes through negotiations assisted by third parties called mediators. The Mediator acts as an intermediary, impartial to either party, helping to resolve disputes or conflicts by providing alternative dispute resolution which is further determined by the conflicting parties themselves¹⁷. Settlement of disputes hammering mediation is stipulated in article 6 paragraph (3) of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

d. Conciliation

Conciliation is the resolution of disputes with the help of third-party interventions (Conciliators). Conciliators play a more active role in formulating and formulating settlement measures, then offered to the parties to the dispute. If the parties are unable

¹³ Nyoman Satya Yudha Dananjaya, Putu Rasmadi Arsha Putra, dan Kadek Agus Sudiarawan, *Penyelesaian Sengketa Alternatif (Alternatif Dispute Resolution)*, Fakultas Hukum Universitas Udayana, Denpasar, 2017, pg. 14.

¹⁴ Law Number 30 of 1999 On Arbitration and Alternative Dispute Resolution, State Gazette Of The Republic Of Indonesia Of 1999 Number 138, Article 1 Point 10

¹⁵ Frans Hendra Winarta, (2011), *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional*, Sinar Grafika, Jakarta, , pg. 7

¹⁶ Law Number 30 of 1999 On Arbitration and Alternative Dispute Resolution, State Gazette Of The Republic Of Indonesia Of 1999 Number 138, Article 6 paragraph (2)

¹⁷ Frans Hendra, *Ibid*

to reach an agreement, the third party will formulate a proposal to be used in dispute resolution. the conciliator does not have the authority to make decisions in resolving disputes but only recommends how to resolve disputes based on the agreement of the parties in a dispute or conflict.¹⁸

e. Expert Assessment

Expert assessment is a way of resolving disputes by the parties by requesting the assessment or opinion of experts by their areas of expertise. The opinions of experts are only opinions on disputes or conflicts that occur, for the resolution of disputes or conflicts remains the agreement of the parties.

In mining practice, people often occur disputes or conflicts in mining areas. Based on the results of interviews and observations of the author on the mining of the people in Sekotong village, West Lombok regency in resolving disputes or conflicts in the mining area of the people using alternative dispute resolution, citing low costs and a quick and easy process of resolving disputes. Forms of dispute resolution in mining people in Sekotong Village, West Lombok Regency put forward negotiations and mediation between the parties in disputes or conflicts.

Miners in the people's mining area formed a people's mining group consisting of the chairman, secretary, treasurer, and members of the miners in the mining area of the people. In the event of a dispute or conflict between miners, the first step in resolving a dispute or conflict is by negotiating with fellow miners. The negotiations are intended so that the parties can resolve disputes or conflicts in a familial manner.

According to Sahrim, in the area of mining areas of the people in the village Sekotong negotiations are conducted by means of deliberations between the parties to the dispute or conflict. Musyawarah is carried out by a common miner without any third-party interference. If the parties agree on the resolution of a dispute or conflict then the dispute or conflict is deemed resolved without any grudge between the parties.¹⁹

If the negotiations of the parties do not have a word of agreement then the alternative to resolving the dispute used is mediation. Mediation is conducted between the parties to the dispute or conflict with the chairman of the people's mining group as a third party or mediator. The chairman of the people's mining group is active in resolving disputes or conflicts by not siding with any party, must be neutral should not discriminate against the parties in the dispute or conflict.

In the event of settlement of disputes between local miners or villages, governments do not interfere in the resolution of disputes or conflicts. Only the chairman of the

¹⁸ Ros Angesti Anas Kapindha, SalvatiaDwi M., dan Winda Rizky Febrina, Efektivitas dan Efesiensi Alternatif Dispute Resolution (ADR) Sebagai salah satu Penyelesaian Sengketa Bisnis di Indonesia, Privat Law, Fakultas Hukum Sebelas Maret Surakarta, Sulo, 2014, pg. 8

¹⁹ Interview with Mr. Sarim, Secretary Of Pelamngan Village, Sekotong District, West Lombok Regency, West Nusa Tenggara Province, Thursday 29 April 2021 at 09.00-12.00 WITA.

group and the parties to a dispute or conflict can consult or mediate to resolve the conflict based on kinship.

To resolve disputes between miners and the government of the miners' people use alternative dispute resolution by means of negotiation and mediation. Negotiations and mediation were conducted by the chairman of the people's mining as a representative of the miners with the government. Based on the observations of the author in negotiations and mediation between the chairman of the miners who are representatives of the miners and the government during the conflict until now no dispute or conflict leads to the disputation, negotiation, and mediation can dampen the conflict that occurs between the miners and the government.

In addition to forming a mining group of the people's mining groups formed a people's mining cooperative with a source of cooperatives based on dues from the people's mining members. People's mining cooperatives were formed on the basis of the agreement of the miners in the people's mining area in the hope that the cooperative can prosper the miners and the requirements in obtaining legal standing as miners of the people.

CONCLUSION

The regulation of mining people in the region of West Lombok regency cannot be said to be effective considering the unattainable synergy between normative regulations from the government and its implementation in the field. This can be seen from the reluctance of the community in managing the people's mining business license (PBL), and also looking at the problems that arise both socially, economically, and environmentally, which causes many disputes or conflicts in the people's mining areas. Alternative dispute resolution in people's mining areas is done by negotiation as the first step among miners in resolving disputes or conflicts. If the negotiations do not find an agreement, it will be continued by conducting mediation efforts with the chairman of the group that oversees the parties to the conflict, the chairman of the colossal group serves as a mediator. In resolving disputes that occur in the mining area of the people, it is expected that the village government or local government will not be out of hand to make efforts to resolve the dispute. Both the village and local governments have the authority in the efforts to resolve disputes in the mine area so as not to cause disputes or prolonged conflicts in the mining area of the people.

REFERENCE

A. Books

- Abrar Saleng, (2004), *Hukum Pertambangan*, UII Pers, Yogyakarta.
- Frans Hendra Winarta, (2011), *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional*, Sinar Grafika, Jakarta.
- Lily Rasjidi, (1990), *Dasar-Dasar Filsafat Hukum*, Citra Aditya, Bandung.
- Nyoman Satyayudha Dananjaya, (2017), Putu Rasmadi Arsha Putra, dan Kadek Agus Sudiarawan, *Penyelesaian Sengketa Alternatif (Alternatif Dispute Resolution)*, Fakultas Hukum Universitas Udayana, Denpasar.
- Ronny Hanitijo Soemitro, (2010), *Dualisme Penelitian Hukum (Normatif dan Empiris)*, Yogyakarta: Pustaka Pelajar.
- Salim H.S., *Hukum Pertambangan di Indonesia*, Rajawali Pers, Jakarta, 2014.
- Wirawan, *Konflik Dan Manajemen Konflik, Teori Aplikasi Dan Penelitian*, Salemba Humanika, Jakarta, 2010.

B. Literature From Article & Web

- Dwi Prilmilono Adi, Ahmad Zuhairi, (2016), Konsep Hukum Pertambangan Rakyat (Studi di Kabupaten Lombok Barat), *Jurnal Kajian Hukum dan Keadilan*, Vol IV Nomor 1, Mataram.
- Ros Angesti Anas Kapindha, Salvatia Dwi M., dan Winda Rizky Febrina, (2014), Efektivitas dan Efisiensi Alternatif Dispute Resolution (ADR) Sebagai salah satu Penyelesaian Sengketa Bisnis di Indonesia, *Privat Law*, Fakultas Hukum Sebelas Maret Surakarta, Solo
- <https://www.mongabay.co.id/2019/09/26/bertaruh-nyawa-demi-emas-di-lombok-1/>, accessed on 28th, 2020.

C. Regulation

- Law Number 30 of 1999 On Arbitration and Alternative Dispute Resolution, State Gazette of The Republic of Indonesia Of 1999 Number 138.
- Law Number 3 Of 2020 On Amendments to Law Number 4 of 2009 On Mineral and Coal Mining. State Gazette of The Republic of Indonesia Of 2020 Number 147.
- Regency Regulation West Lombok Number 6 Of 2010 On Mineral and Coal Mining Management. West Lombok Regency Gazette Of 2010 Number 6.