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Role and Responsibilities of Notaries in Mining Sector Contracts: In Formal Authority and Accountability and Impact on the Environment

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Abstract: This paper examines the ambiguity of notary responsibilities in making mining sector contracts that have an impact on the environment. Through a normative legal approach, it is found that there is a gap and disharmony between notary law and environmental law and the mining sector. Notaries have a central role in the legalization of documents, but without formal obligations regarding the substance of contracts that contain ecological risks, the potential for violations of the precautionary principle increases. This study recommends the reformulation of legal norms and the improvement of ethical guidelines to clarify the accountability of the notary profession in cross-sector transactions.

Keyword: Notary Responsibilities, Mining, Contract Law, Environment.

INTRODUCTION

Contract law is regulated in Book III of the Indonesian Civil Code (KUH Perdata), which consists of 18 chapters and 631 articles. It starts from Article 1233 of the Civil Code to Article 1864. Each chapter is further divided into several sections. In the Dutch Civil Code (NBW), the regulation of contract law is found in Book IV on van Verbintenissen, starting from Article 1269 to Article 1901 NBW.

The regulatory system of contract law adopts an open system, meaning that everyone is free to make agreements, whether they are regulated by law or not. This principle is reflected in the provision of Article 1338 paragraph (1) of the Civil Code, which states: "All legally made agreements shall bind the parties as if they were laws."

Contracts that are regulated in the Civil Code include sale and purchase, exchange, lease, partnership, gift, deposit of goods, loan for use, loan for consumption, power of attorney, suretyship, aleatory contracts, and settlement agreements. Beyond the Civil Code, various new types of contracts have emerged, such as leasing, hire-purchase, franchising, surrogate motherhood, production sharing, joint ventures, and others. Although these contracts are widely used and have developed in society, they are not yet specifically regulated by statute. The only exception is leasing, which is regulated through ministerial regulations. The lack of statutory

regulation leads to legal uncertainty, particularly in the commercial sector, where parties face ambiguity in their contractual relations.

In practice, one party often prepares a standard-form contract, while the other—usually in a weaker socio-economic position—is left with no choice but to accept it. Therefore, in the future, there is a need for national legislation on contracts to replace outdated regulations. Such a law should ensure a fair balance between the rights and obligations of the contracting parties.

The term hukum kontrak is the Indonesian translation of the English term contract law, while in Dutch it is referred to as overeenkomstenrecht. Lawrence M. Friedman defines contract law as "a body of law that governs only certain aspects of the market and regulates certain types of agreements." In other words, contract law comprises legal rules that pertain to the performance of agreements made between parties. This view focuses on the execution phase of contracts, but Michael D. Bayles emphasizes that pre-contractual and contractual stages are also crucial. These stages are decisive in the formation of a contract. Contracts, once created, are to be performed by the parties themselves.

Mining contracts are complex and multidimensional legal instruments that involve economic, social, and environmental aspects. Within the Indonesian legal system, any formal agreement that carries long-term legal implications—particularly in strategic sectors such as mining—often requires the involvement of a notary as a public official authorized to draw up authentic deeds. The notary serves as a guardian of the formal legality of the document, ensuring its legal validity from both an administrative and formal perspective. (Sudikno Mertokusumo ,2011) . However, issues arise when the content of a contract—although formally valid—has implications for environmental degradation or land conflicts, which in turn lead to further legal consequences. In this context, questions emerge regarding the scope of a notary's responsibility, specifically whether that responsibility is limited to formal aspects or also extends to substantive dimensions, such as environmental protection and the sustainability of natural resources (Maria SW Sumardjono , 2008) .

Legislation governing the notarial profession, such as Law Number 2 of 2014 concerning the Office of Notary (UUJN), explicitly limits a notary's responsibility to the formal aspects of deed preparation. However, in practice, when a notarial deed serves as the legal basis for mining exploitation that results in environmental damage, moral—and even legal—demands are often directed toward the notary involved (R. Subekti, 2009) .

Furthermore, the absence of clear legal norms regarding the notary's involvement in conducting due diligence on the substance of mining contracts creates a legal vacuum that may lead to ambiguity. On one hand, a notary is required to maintain independence and refrain from interfering with the will of the parties; on the other hand, the notary is also part of a legal system that upholds the principles of prudence and the protection of public interest (Lilik Mulyadi , 2014) .

This situation indicates a tension between the formal authority of notaries as regulated by statutory law and public expectations regarding legal accountability in preventing negative environmental impacts. Therefore, an in-depth study is needed to identify the role and limits of notarial responsibility in mining contracts, particularly from the perspectives of notarial law and environmental law.

METHOD

This research employs a normative juridical method, which is based on a literature study of legislation, legal literature, as well as relevant contracts and legal doctrines. The analysis is conducted qualitatively through a systematic approach to interrelated legal norms, along with an examination of the disharmony between legal norms and the practices observed in the field.

The data collection method used is library research, which involves comprehensive inventory and exploration of literature to ensure the accuracy and relevance of the gathered information. This process includes identifying and collecting a wide range of legal materials

that cover all aspects relevant to the study. The collected data is then analyzed using a deductive method. The deductive approach is applied to develop a general understanding of mining law, which is subsequently used to draw more specific and in-depth conclusions within the context of this research.

This process involves the application of logic and reasoning, drawing from existing theories and applying relevant legal principles to construct arguments and findings grounded in established and accepted knowledge within the legal academic community. As such, this methodological approach enables the formation of sound assumptions and hypotheses, as well as a deep understanding of the legal issues being examined in the relevant field.

RESULTS AND DISCUSSION

The Limits of Notarial Formal Authority in Mining Contracts

Indonesia, as a country that adopts the Continental European legal system (civil law), generally refers to written law as its primary source of law (Mc Alinn, Gerald Paul,). One of the key written legal sources is the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata). The Civil Code serves as a material source of private law, as it governs relationships between individuals and legal entities. The areas covered under private law include, but are not limited to (Chrisstar Dhini, 2015), as it governs relationships between individuals and legal entities. The areas covered under private law include, but are not limited to, Family Law, Intellectual Property Law, and Business Law (Goldberg, John C. P, 2012). One of the legal issues governed by the Civil Code is the matter of obligations (perikatan). Obligations are regulated in Book III, spanning from Article 1233 to Article 1864. Article 1233 of the Civil Code states that an obligation arises either from an agreement or from the law. Furthermore, whether an obligation arises from an agreement or by operation of law, it is intended to give something, to do something, or to refrain from doing something (Pasal 1234 KUH Perdata).

In general, contract law in Indonesia is governed by Article 1313 of the Indonesian Civil Code (KUH Perdata). Article 1313 defines a contract as an act by which one or more persons bind themselves to one or more other persons.According to Van Dunne, a contract is a legal relationship between one or more parties based on an agreement, which subsequently gives rise to legal obligations (Van Dunne, Ibid). Furthermore, Salim HS defines a contract as: "a legal relationship between one legal subject and another in the field of property, in which one party is entitled to a performance, and the other party is obligated to fulfill that performance in accordance with what has been agreed upon (Salim H. S., et.al)."

Indonesia, as a state governed by law based on Pancasila and the 1945 Constitution (UUD 1945), guarantees legal certainty, order, and protection for all its citizens. F. J. Stahl characterizes the concept of a state governed by law with four fundamental elements:(1) recognition and protection of human rights;(2) the state is based on the doctrine of the separation of powers (trias politica);(3) governance is carried out based on laws (wetmatig bestuur); and (4) the existence of administrative courts tasked with handling cases of unlawful acts committed by the government (onrechtmatige overheidsdaad)(Stahl, F. J, 2016). One way the government implements these principles is by establishing the notarial profession as an institution entrusted with the authority to bridge the relationship between the state and society in fostering legal certainty, order, and protection—thereby supporting the realization of good governance (Hendy Sarmyendra, et.al).. One of the key instruments for achieving legal certainty is the authentic written document (akta autentik), which serves as legal evidence of actions, agreements, determinations, and legal events, made before or by an authorized public official (Dalam Konsideran Menimbang UUJN).

One way the government implements the above principles is by establishing the notarial institution as an authorized party to bridge the government and society in creating legal certainty, order, and protection, thereby supporting the realization of good governance (Ibid).

One of the instruments to achieve legal certainty is through authentic written evidence concerning actions, contracts, rulings, and legal events made before or by other authorized officials.

A notary, as a public official, is appointed by the state and serves in the interest of the state; however, a notary is not a government employee. A notary is considered a government official without receiving any salary from the government. Although a notary may be retired by the government, they do not receive a government pension (Suhrawardi K. Lubis, 1994). Since the duties carried out by a notary are essentially functions that should be performed by the government, the notary's work produces legal consequences. A notary is entrusted with a portion of the state's authority, thereby granting authentic and executorial legal force to the deeds they produce (Ibid). Given the primary duties of a notary, it can be said that the role carries significant responsibility, as a notary must place public service above all else. Therefore, it requires both individual and social accountability to the norms of positive law, as well as a commitment to comply with the professional code of ethics.

The Law on Notary Office (UUJN), as the legal basis for the delegation of authority from the state to notaries, regulates the rights and obligations of notaries in carrying out their official duties. The notary office serves as a symbol of the state, although not in the sense of a state symbol like the President or the national flag. This symbolic representation can be seen through the notary's authority to use the national emblem, namely the Garuda Pancasila, in the execution of their official duties.

Under the Law on Notary Office (UUJN), notaries are granted authority limited to formal aspects: verifying identities, the legal status of legal subjects, as well as the form and structure of the deed. However, in contracts within the mining sector—which involve land use and the exploitation of natural resources—certain clauses intersect with environmental regulations. Notaries often refrain from reviewing the substantive content of such contracts, considering it beyond the scope of their authority (Habib Adjie. 2013). .

In practice, there is a disharmony between the Law on Notary Office (UUJN), the Mineral and Coal Mining Law (Minerba Law), and the Environmental Protection and Management Law. The UUJN does not explicitly mandate notaries to examine the content of contracts related to environmental impact, whereas the Environmental Law requires the precautionary principle to be observed by all involved parties. This discrepancy creates a legal vacuum, leading to ambiguity in the allocation of responsibility (Undang-Undang Nomor 2 , 2014) .

Mining operations in Indonesia have been ongoing for a considerable period, serving as clear evidence that mineral resources are one of the fundamental assets for development aimed at achieving the greatest possible prosperity for the people (Mas Rahmah, 2013). Since the era of the Dutch East Indies government up to the present day, the mining sector in Indonesia has continued to show promising prospects. In the future, it is expected to contribute even more significantly to national economic growth. To realize this vision, an independent, professional, and resilient system is required—one that can respond effectively to the influences of regional and global environments and meet the demands of intense competition in a free market. At the same time, domestic conditions also require, among other things: a. The restructuring of legislation and its consistent enforcement;

b. Environmental awareness and protection;

c. The development of mining business models;

d. The improvement of human resources;

e. The integration of mining and industry to support one another; and

f. Efforts to alleviate poverty and reduce social inequality, particularly among communities surrounding mining areas.

Historically, the enactment of Law No. 3 of 2020, which amended Law No. 4 of 2009 concerning mineral and coal mining, has sparked conflict and controversy. As a result,

environmental activists and student movements have increasingly adopted a pessimistic outlook.

From a legal licensing perspective, the government has the authority to regulate—or at least limit—pollution and environmental degradation associated with mining activities through the licensing mechanisms it issues. In other words, the conditions and stages of obtaining a license significantly influence mining management and the fulfillment of environmental sustainability requirements.

In practice, notaries often avoid responsibility for the substantive content of contracts. However, in certain cases, notarial deeds have been used to justify activities that ultimately result in environmental damage, thereby highlighting the urgent need to evaluate ethical standards and professional accountability within the notarial profession (Undang-Undang Nomor 4, 2009) .

Urgensi Reformulasi Norma Hukum

One of the key industries that must be properly managed to ensure public welfare is the mining sector. Mining encompasses various stages of the management and exploitation of mineral or coal resources, including general survey, exploration, feasibility study, construction, mining, processing, refining, transportation, sales, and post-mining activities. This is based on both constitutional law (the 1945 Constitution of the Republic of Indonesia) and operational legislation (Law No. 4 of 2009 as amended by Law No. 3 of 2020).

Mining includes all operational phases—from research to post-mining—under Law No. 4 of 2009 concerning Mineral and Coal Mining. General survey, exploration, feasibility study, construction, mining, processing, refining, transportation, sales, and post-mining are all components of mining operations in the mineral or coal sectors. Mining is the process of producing minerals, coal, and associated materials as part of mining enterprise activities. In Indonesia, non-tax state revenues are significantly derived from the exploration of minerals and coal. These resources are non-renewable and vital to the livelihoods of many people. Therefore, to truly contribute to national economic growth and promote prosperity and equitable welfare, the state must retain authority over their governance (Subekti, 2017).

However, mining activities face numerous challenges related to environmental, social, legal, and economic issues. It is also crucial to assess how the distribution of benefits from mining activities aligns with the principle of distributive justice. According to Rawls (1999), distributive justice refers to the fair distribution of economic benefits among all members of society affected by those economic activities. In the mining sector, unequal distribution of mining revenues often leads to social injustice. Therefore, state regulation is necessary to address these obstacles and support the sustainable development of the mining industry.

Beyond legal certainty, the aspect of justice has also become a central focus in the reform of mining law. Justice in this context involves the fair distribution of economic benefits from mining operations among central government, regional governments, and local communities. In response, recent regulations have required mining permit holders to contribute fairly to regional development through taxes and levies.

This study highlights the need for a reformulation of notarial law to include at least a minimum standard of prudence regarding the substance of contracts that may impact the public interest. Alternatively, the establishment of ethical guidelines or technical regulations is proposed to strengthen the preventive role of notaries in transactions within strategic sectors such as mining (Undang-Undang Nomor 32, 2009)

CONCLUSION

This study finds that there is ambiguity surrounding the notary's responsibility in mining sector contracts that have environmental impacts. On one hand, the Law on Notary Office (UUJN) limits the notary's authority to formal administrative aspects. On the other hand, the

substance of contracts legalized by notaries may carry legal and environmental risks. The absence of clear legal norms and the disharmony between the UUJN, the Mineral and Coal Mining Law (Minerba Law), and the Environmental Protection Law further exacerbate the uncertainty regarding the position of notaries particularly in terms of accountability for the ecological consequences of contracts they authenticate.

REFERENCE

Habib Adjie. Hukum Notaris Indonesia: Tafsir Tematik terhadap UU No. 30 Tahun 2004 tentang Jabatan Notaris. Bandung: Refika Aditama, 2013.

G.H.S. Lumban Tobing. Peraturan Jabatan Notaris. Jakarta: Erlangga, 1996.

Sudikno Mertokusumo. Penemuan Hukum: Sebuah Pengantar. Yogyakarta: Liberty, 2009.

Maria SW Sumardjono. Tanah dalam Perspektif Hak Ekonomi Sosial dan Budaya. Jakarta: Kompas, 2008.

Satjipto Rahardjo. Ilmu Hukum. Bandung: Citra Aditya Bakti, 2000.

Salim H. S., (et.al.), Perancangan Kontrak dan Memorandum of Understanding (MoU), Cet. 5, Jakarta: Sinar Grafika, 2011

Abdul Ghofur Anshori. Lembaga Kenotariatan Indonesia: Perspektif Hukum dan Etika. Yogyakarta: UII Press, 2009.

Salim HS & Erlies Septiana Nurbani. Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis. Jakarta: Rajawali Press, 2013.

Mas Rahmah, Kewajiban Divestasi Saham bagi Investor Asing di Sektor Pertambangan (Surabaya: PT Revka Petra Media, 2013

Ernawati, Arita. "Peran Notaris terhadap Kewajiban Perusahaan dalam Melaksanakan Tanggung Jawab Sosial terhadap Lingkungan." Notarius, vol. 12, no. 2, 2020. DOI: 10.14710/nts.v12i2.29009.

Arsy, Eudea Adeli, et al. "Tanggung Jawab Notaris terhadap Akta yang Cacat Hukum dan Tidak Sesuai dengan Ketentuan Pembuatan Akta dalam Undang-Undang Jabatan Notaris." Jurnal Bina Mulia Hukum, vol. 6, no. 1, 2021. DOI: 10.23920/jbmh.v6i1.324.

Simbala, Yumi, et al. "Perlindungan Hukum terhadap Masyarakat di Wilayah Pertambangan dalam Penyelesaian Sengketa Pengelolaan Lingkungan Hidup." Jurnal Hukum to-ra, vol. 10, no. 2, 2024. DOI: 10.55809/tora.v10i2.368.

Pasacasarjana, Dinnie Angraeni, et al. "Analisis Yuridis Kewajiban dan Tanggung Jawab Notaris Terkait dengan Pelaksanaan Jabatannya." Jurnal Ilmiah Ecosystem, vol. 1, no. 1, 2020.

Rahmi, Elita, et al. "Klausul Tanggung Jawab Sosial dan Lingkungan dalam Akta Notaris sebagai Upaya Pengembangan Perusahaan Terbatas (PT) pada Era Globalisasi." Recital Review, vol. 1, no. 1, 2020. DOI: 10.22437/rr.v1i1.6280.

Goldberg, John C. P., “Introduction: Pragmatism and Private Law", Harvard Law Review, Vol. 125, hlm. 1640, (2012)

Stahl, F. J. dalam Yoyon Mulyana Darusman, “Kedudukan Notaris Sebagai Pejabat Pembuat Akta Otentik dan Sebagai Pejabat Pembuat Akta Tanah,” Adil: Jurnal Hukum Vol. 7 No.1, hlm. 41, (2016)

Hendy Sarmyendra, (et.al.), “Kekuatan Berlakunya Penggunaan Blanko Akta Tanah oleh Notaris/Pejabat Pembuat Akta Tanah dalam Pengalihan Hak atas Tanah di Kabupaten Malinau Kalimantan Utara.” Jurnal Beraja Niti, Vol. 4, No. 3, hlm. 25, (2014).

Suhrawardi K

Yuniarti, Fitria. Peran Notaris dalam Pengadaan Lahan Kompensasi Pinjam Pakai Kawasan Hutan yang Terkena Pembangunan Jalan Tol Semarang-Solo Wilayah II. Tesis, Universitas Gadjah Mada, 2017.

Liputan6. (2004). Hot. Retrieved from https://www.liputan6.com/hot/read/5855246/rangkuman-kasus-korupsi-timah-harvey-moeis-dari-awal-hingga-divonis-65-tahun-penjara, diakses 3 April 2025

Tribunnews. (2024). Hukum. Retrieved from https://www.tribunnews.com/nasional/2024/04/04/kronologi-lengkap-korupsi-timah-yang-seret-harvey-moeis-hingga-sandra-dewi-turut-diperiksa, diakses 3 April 2025

Kitab Undang-Undang Hukum Perdata

Kode Etik Jabatan Notaris yang ditetapkan oleh Ikatan Notaris Indonesia (INI).

Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, Lembaran Negara Republik Indonesia Nomor 3 Tahun 2014, Tambahan Lembaran Negara Republik Indonesia Nomor 5491.

Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.

Peraturan Dewan Kehormatan Pusat Ikatan Notaris Indonesia No.1 Tahun 2017

Peraturan Pemerintah Nomor 47 Tahun 2012 tentang Tanggung Jawab Sosial dan Lingkungan Perseroan Terbatas.

Perubahan Anggaran Dasar Ikatan Notaris Kongres Luar Biasa Ikatan Notaris Indonesia (INI) Banten, 29-30 Mei 2015.