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## CRIMINAL LIABILITY OF PT. AGTIKA DWISEJAHTER DUE TO THE LACK OF PERMIT RESULTING IN ENVIRONMENTAL DAMAGE IN THE PASEBAN-JEMBER AREA

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### ABSTRACT

The purpose of this study is to analyze the criminal liability that must be borne by PT. Agtika Dwisejahter as a result of conducting mining activities without the appropriate permit, which has led to environmental damage. This research also examines the impacts on the environmental and economic sectors arising from the unauthorized mining activities carried out by PT. Agtika Dwisejahter. The normative legal research method is used to analyze various legal regulations related to criminal liability in this case, including environmental protection laws and mining laws. Additionally, this research utilizes literature studies to gather relevant information and data regarding the environmental and economic impacts of illegal mining activities. The research findings indicate that PT. Agtika Dwisejahter is criminally responsible for conducting mining activities without the necessary permit, resulting in environmental damage. The study identifies various criminal sanctions that can be imposed on the company, including fines, revocation of permits, or criminal prosecution against individuals responsible within the company. Furthermore, the research reveals the negative impacts caused by PT. Agtika Dwisejahter's illegal mining activities on the environmental and economic sectors. These impacts include ecosystem destruction, land degradation, and the loss of livelihoods for local communities. Such consequences have a detrimental effect on the environmental and economic sectors, leading to a decline in the quality of natural resources and a decrease in economic development potential in the affected area. This research contributes to understanding the importance of criminal accountability for illegal mining actors in efforts to protect the environment and prevent negative impacts on the environmental and economic sectors. The resulting recommendations include stricter law enforcement against illegal mining violations, strengthening monitoring and enforcement of mining permits, as well as active participation from the community in environmental protection and monitoring of mining company activities.

**Keywords :** Criminal Liability, Lack of Permit, Environmental Damage, Paseban-Jember Area.

## INTRODUCTION

When viewed from the profile of Paseban Village which is a mining area by PT. Agtika Dwisejahtera is located at the western end of the south coast of Jember Regency which is close to Nusa Barong Island. Paseban village is a fraction of Cakru village, has 4 hamlets consisting of Bulurejo, Sidomulyo, Balekambang, and Paseban hamlets. Paseban village has administrative boundaries, namely cakru village in the north, Indonesian ocean in the south, west of Wotgalih village, and finally Kepanjen village in the east. The majority of the Paseban people on average work as fishermen, but fishermen in Paseban have their own challenges, namely waves. very high sea. Paseban Beach has very big waves because the sea breeze from the Indian Ocean does not get any obstructions so that the speed is very fast and is able to make high waves up to the Paseban beach. Even though this sometimes results in loss of life, local fishermen are reluctant to seek their fortune elsewhere.<sup>1</sup> the area will later become an area where mining activities will be carried out by PT. Agtika Dwisejahtera.

Meanwhile, if we look at the condition of the land in the Paseban area, Paseban's land is quite fertile so that residents use this as another way to collect money.<sup>2</sup> Judging from the economic potential available on the Paseban coast, there is a lot of iron sand content, there are rumors circulating in the community that there are several other mining products such as nickel, uranium and petroleum scattered in the Paseban area (Fathurrohman, 2016). Mining products are a special attraction for both local and foreign investors to invest in Paseban. But there are several obstacles for these investors to invest their capital, namely the community firmly rejects the existence of all forms of mining in the Paseban coastal area.<sup>3</sup>

Based on the description above, in carrying out mining activities carried out by PT. Agtika Dwisejahtera actually pays attention to aspects regarding the impact on the environment that will occur. Because in these mining activities later it will not only be seen from the perspective of areas that can be carried out mining activities which will become the central point in the implementation of mining by PT. Agtika Dwisejahtera. Based on this, the main problem in this study will examine how criminal responsibility towards PT. Agtika Dwisejahter Due to Lack of Permits Resulting in Environmental Damage and examines the environmental and economic sector impacts caused in carrying out mining activities by PT. Agtika Dwisejahtera.

## RESEARCH METHOD

The normative legal research method used to examine the criminal liability of PT. Agtika Dwisejahter due to the absence of permits resulting in environmental damage and the impact on the environmental and economic sectors caused by PT. Agtika Dwisejahter's mining activities involves the identification and analysis of relevant legal regulations, including environmental protection laws, mining laws, and other related regulations. It also entails analyzing the legal

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<sup>1</sup> Nurul Hidayat dan Fikri Haikal Akbar, 2017, "Perjuangan Masyarakat Paseban Dalam Menjaga Kelestarian Pesisir Ujung Barat Kabupaten Jember", *Jurnal MKG*, 18(1), 77 - 90. h. 83.

<sup>2</sup> Ma'rifah, R.S.T. Nawayanto. Endang, W.R. 2016. "Konflik Pertambangan Pasir Besi di Desa Wotgalih, Kecamatan Yosowilangun, Kabupaten Lumajang Tahun 2010-2011". *Jurnal Unej*, 2(1): 85- 92. h. 86

<sup>3</sup> *Ibid*, h, 84

norms contained in these relevant regulations, such as permit requirements, company obligations, applicable criminal sanctions, and other related aspects. Additionally, conducting a literature review is necessary to gather information and data on the environmental and economic impacts of unauthorized mining activities conducted by PT. Agtika Dwisejahter. This literature review encompasses research studies, journals, books, and other relevant sources.

## **RESULTS AND DISCUSSION**

### **A. Criminal Liability Against PT. Agtika Dwisejahter Due to Lack of Permits Resulting in Environmental Damage**

According to Law Number 32 of 2009 Concerning the Protection and Management of the Environment in Article 1 paragraph (1) it states that the environment is a spatial unit with all objects, forces, circumstances, and living things, including humans and their behavior, which affect nature itself. , continuity of life, and welfare of humans and other living things. Article 1 paragraph (2) : Protection and management of the environment are systematic and integrated efforts made to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision and law enforcement.

Criminal liability can be assigned to PT. Agtika Dwisejahtera based on the provisions of Article 116 paragraph (1) of Law no. 32 of 2009 concerning the Protection and Management of the Living Environment states that: "If an environmental crime is committed by, for, or in the name of a business entity, criminal charges and sanctions will be imposed on: a. Business entity b. The person who gives the order to commit the crime or the person who acts as the leader of the activity in the crime. based on these provisions, PT. Agtika Dwisejahtera whose mining activities involve the production of large amounts of waste, in some cases contributing significantly to the total paseban waste output. The disposal of large amounts of waste poses a tremendous challenge to the mining industry and can have a significant impact on the environment. Minimizing disturbed organic matter that ends up in nearby rivers or other aquatic ecosystems is a major challenge at many mines. Erosion of waste rock dumps or runoff after heavy rains often increases the sediment load of nearby bodies of water. In addition, mining can change the morphology of a stream by disturbing the channel, diverting the course of the stream, and changing the slope or stability of the bank of the stream. This disturbance can significantly change the characteristics of river sediments, degrading water quality. Higher sediment concentrations increase the natural turbidity of water, reducing the light available to aquatic plants for photosynthesis. Higher sediment loads can also decrease flow depth, resulting in a greater risk of flooding during high flow flows.

Criminal liability to PT. Agtika Dwisejahtera as a corporation is strengthened. Based on the strict liability doctrine, it is a teaching or doctrine that is used as a basis for justifying the imposition of criminal liability on corporations.<sup>4</sup> This doctrine does not focus on mistakes, where according to this doctrine criminal responsibility can be borne by the perpetrators of criminal

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<sup>4</sup> Salim HS, 2004, *Hukum Pertambangan Di Indonesia* Jakarta: Rajagrafindo Persada, h. 34

acts without having to prove that there was an error (intentional or negligence) on the part of the perpetrators.<sup>5</sup> It can be interpreted that if a corporation commits an act that violates the law, then it can be held responsible for that action without the need to prove again whether the corporation fulfills the element of guilt.<sup>6</sup> Impact on land in various ways. This includes expansion of the excavation site and exploitation of the paseban mining area to build access roads, pipelines, work camps to create stockpiles and processing plants and, disposal of excavated materials, waste including tailings, redundant machinery, used engine parts including tires and tools. The impact is both in the amount of available land and the quality of the existing land and the question of whether the land is able to continue food production after being contaminated by mining waste including chemicals.

The legal consequences of the absence of a permit for PT. Agtika Dwisejatera has violated Article 158 of Law Number 3 Year 2020 Concerning Amendment to Law Number 4 Year 2009 concerning Mineral and Coal Mining which states that Everyone who carries out Mining without a permit related to a mining business license shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 100,000,000,000.00 (one hundred billion rupiah). further that the license to carry out mining activities by PT. Agtika Dwisejahtera is not in accordance with the principles of environmental management as contained in Law Number 32 of 2009 concerning Protection and Management of the Environment Article 44 explains that every drafting at the national and regional levels must pay attention to the protection of environmental functions and the principles of environmental protection and management in accordance with the provisions stipulated in this law. This is based on the fact that mining activities will have a negative impact on the environment. Environmental problems that will arise in the absence of a permit to carry out mining activities carried out by PT. Agtika Dwisejahtera in Jember Paseban, specifically related to waste management issues, the Paseban mine also poses environmental and social challenges because it has the potential to disrupt ecosystems and local communities. Mining requires access to land and natural resources, such as water, which can compete with other land uses. This causes an impact on the environment which causes further erosion of natural resources and damage to natural ecosystems.<sup>7</sup>

Based on the provisions in Article 65 paragraph (1) UUPPLH, that "Every person has the right to a good and healthy environment as part of human rights", and along with this it is reaffirmed in Article 68 letter b, "Everyone who carries out business and /or activities are obliged to: maintain the sustainability of environmental functions" but this was ignored even the mining permit caused an impact on the activities of PT. Agtika Dwisejahtera on water resources is a common and almost likely impact from within the mining sector. Impact of water in quantity, quality and distribution. The scale of water consumption in extractive industry

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<sup>5</sup> Muladi dan Dwija Priyatno, 2007, *Pertanggungjawaban Pidana Korporasi*, Jakarta: Kencana Prenada Media Group, h.. 13

<sup>6</sup> Sutan Remy Sjahdeini, 2017. *Ajaran Pemidanaan Tindak Pidana korporasi dan Seluk-Beluknya*, Jakarta: Kencana, h. 151

<sup>7</sup> Sutan Remy Sjahdeini, 2007. *Pertanggungjawaban Pidana Korporasi* , Bandung: PT. Grafiti Pers, h. 27

operations can be very large depending on the type and scale of the mining operation. Water is taken from existing sources such as reservoirs and rivers or by drilling to exploit groundwater aquifers. In both cases, mining operations use large amounts of water that draws up most of the available resources including underground aquifers. Excessive use of groundwater can cause loss of water in the wells used by communities around the mine. Excessive use of water creates deficits in this essential commodity thereby jeopardizing the consumption of water by local people, animals, agriculture and other rural industries. Therefore, the need for water is why the mining permit that was given to PT. Mining Agtika Dwisejahtera causes water scarcity in the Jember Paseban area. has become a consequence in the mining industry affecting water quality physically, chemically and biologically. Heavy sediment loads due to river mining operations or the discharge of water from sediment streams back into rivers cause water pollution.

### **Environmental and Economic Sector Impacts on Mining Activities by PT. Agtika Dwisejahtera**

For a scholar of land law, it is something real, namely in the form of the physical surface of the earth and what is on it that is man-made, which are called "fixtures". Even so, his attention is more interested in the ownership and control of land and its development. The object of legal attention is not the land, but the rights and obligations regarding land owned and controlled in its various forms, including the legal and institutional framework, its transfer and supervision by the community.<sup>8</sup> Land taken by the paseban mining industry creates greater competition for remaining unmined land for the production of food, fuel, grazing and other consumer goods. Increased competition for land is a big problem in areas with higher productivity where local people who enter the paseban area in Jember use it for their subsistence / production needs.

The body of earth and water as well as the intended space does not belong to the holder of the rights over the land in question. It is only allowed to use it. And even then there are limitations as stated in Article 4 paragraph (2) that it is only necessary for interests that are directly related to the use of the land, within the limits according to this law, namely the BAL and other higher regulations.<sup>9</sup> The taking of this land by the paseban mining activities has resulted in unanticipated impacts on local communities including shortages of food, fuel and pasture. Still in other cases, tailings are dumped in rivers and other sensitive ecosystems where land is controlled by the state or tribal peoples. On the other hand, PT. Agtika Dwisejahtera mine as compensation is an issue that is praised by the local community. However, such compensation is always inadequate and local communities suffer from land taken by PT. Agtika Dwisejahtera mine. The non-payment of full compensation for land taken by the Porgera mine and the Kutubu Gas field in PNG is a longstanding problem. It should be noted that there is a lack of reported evidence on the subsequent soil impacts caused by mining activities in the paseban.

PT. Agtika Dwisejahtera's mining activities are limited by economically viable reserve locations, some of which may overlap with sensitive ecosystems or traditional indigenous

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<sup>8</sup> Harsono Boedi, 2008, *Hukum Agraria Indonesia*, Jakarta: Djambatan, h. 17.

<sup>9</sup> *Ibid.* h.19

peoples' lands. Recent concerns about the potential for conflict between mining and other land uses have prompted some communities to express disapproval of mining activities in these pasabans. Mining activities in paseban that are promised to produce regional economic growth in Jember, the benefits are not always shared fairly, and the local community is closest to the mining area. so that there is often an unfair distribution both in terms of the division of work provided by the community around the mining in paseban. usually these jobs are limited in number and duration. In addition, communities that depend on mining to sustain their economies are highly vulnerable to negative social impacts, especially when mines are closed. Mining tends to raise wage rates, leading to displacement of some existing community residents and businesses, and high expectations.<sup>10</sup> Income factor is the main advantage of all types of extractive industries. It is said that no extraction activity will occur unless it generates income for the initiator. Income generated from MI can be individual, PT. Agtika Dwisejahtera (or organization) or the country in general. Individual income takes several forms, such as salaries and wages of employees, contractor commissions and income received by local communities from the sale of food and non-food items to miners. While the extractive income received by

The extent to which mining contributes to economic development and the wise use of natural resources is highly dependent on the quality of regulations issued. Countries that do not have strong regulations and the ability to enforce the law do not have the protections that are important to ensure that mining development in Paseban does not result in damage to the important natural resources that are important to ensure the livelihoods of residents in Jember that are close to access or close to paseban mining area. but in reality the name of mining will definitely have a big impact which in the majority has an adverse effect on the environment and social culture of the people in the paseban mining area in Jember.

Increased employment is one of the important benefits of MI. This industry requires various types of workers such as unskilled, semi-skilled and professionals to carry out various activities. Many unskilled workers and some semi-skilled workers are drawn from the local labor force which is a major benefit to society. Skilled workers may come from other parts of the country or may even come from abroad, the latter in particular from abroad. It is difficult to say the proportion of different types of workers employed by type of mining because it varies by type of extraction, stage of extraction and type of processing.

It is generally believed that there is an inverse relationship between poverty and income from the mining industry. This can be explained as follows: when the revenue generated from the extraction industry increases, it enriches the government's balance sheet, putting it in a better position to invest in poverty alleviation. After all, this is only true in theory. Data 4 from several resource-rich countries (and high natural resource income) reveals that their poverty rate is very high even though income from natural resources is high because when the mining area in paseban has run out of natural resources, that's where the gap will start. Because the people of

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<sup>10</sup> Khakim, Lutfi Zaini. 2014. "Model Revitalisasi Lahan Dampak Pertambangan Pasir Besi (Perspektif Implementasi Perda Kabupaten Cilacap Nomor 17 Tahun 2010)". *Jurnal Unnes*, 9(1). h. 87

Jember who work at the Paseban mine can no longer work because they have lost their livelihood as miners.

## CONCLUSION

Criminal liability to corporations can be assigned to PT. Agtika Dwisejahtera based on the strict liability doctrine is a teaching or doctrine that is used as a basis for justifying the imposition of criminal liability on corporations as a result of violations of the law Article 158 Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Mining Coal which states that Everyone who carries out Mining without a permit related to a mining business permit is carried out intentionally in carrying out mining activities in paseban by PT. Agtika Dwisejahtera. more PT. Agtika Dwisejahtera does not pay attention to the protection of environmental functions and the principles of environmental protection and management. The impact that occurs regarding the sustainability of environmental areas that will be damaged as a result of these activities.

The impact on the environment, especially damaged land as a result of the mining activity. this will also affect the condition of the land which is getting narrower in order to expand the land area and the quality of water will be scarce because it is used up by mining needs carried out by PT. Agtika Dwisejahtera. so that in this condition in the paseban area there is a need for community participation because the environment as an object of regulation is protected from human actions so that the interaction between the two remains in an atmosphere of harmony and mutual support. The environment provides a very important and absolute function for humans. So that there is a reciprocal relationship between a good environment and humans so when the environment is good it will also have a good impact on human life activities. The Jember district government is also the official responsible for the activities organized by the company because the consequences of mining activities will have the worst impact on the paseban area in Jember so in order to provide a concrete form of concern for the community to participate in rejecting mining activities by PT. the Agtika Dwisejahtera.

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