Law enforcement of environmental permit in mining management

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Abstract. The research aims to determine and understand the essence of environmental permit and legal-cultural factors that affect it in supporting the realization of the principles of transparency, participation and accountability in mining management. It was an empirical research, with a socio-juridical approach. It was conducted in Central Sulawesi Province, Indonesia. The data were analyzed qualitatively and descriptively. The results of research indicated that the realization of the principles of transparency, participation and accountability in law enforcement of environmental permits in mining management is still classified as low-category. Therefore, it does not yet reflect the realization of the principle of good governance in law enforcement of environmental permits in environmentally friendly mining management.

1. Introduction
As caliphs on earth the humans have an important and huge role to save and maintain the sustainability of the environmental functions and carrying-capacity [1]. Therefore, efforts to preserve environmental functions are the responsibility of all mankind. To get the great benefit from environmental functions, the environment must fulfill good and healthy eligibility requirements, including mining activities.

In Indonesia, a good and healthy environment is a human right and as a basic right of every Indonesian citizen and the concept of economic democracy as mandated by the 1945 Constitution of the Republic of Indonesia. The designation of the issue of the environmental right as a human right guaranteed by the constitution and the adoption of the principle of sustainable development is clearly described that the constitution of the Indonesian supports the protection and preservation of the environment. Therefore, it can be called a green constitution [2].

According to Irwansyah [3], environmental management with its natural resources should not be solely for economic interests, but must pay attention to ecological and sustainability interests. Actually, this was reversed in the early days of the New-Order government, where natural resource management was based on the interests of investment needs in the context of restoring Indonesia economic conditions. Natural resources (forests, mines, water and mineral resources) are seen and understood in the context of economic sense and have not been understood as ecological and sustainable sense. However, this condition is not much different from today. Natural resource management was based on economic and investment interest, it can be assumed that there has been an
imbalance in the utilization of natural resources between economic and ecological interests and sustainability in natural resource management.

Utilization of natural resources available and controlled by the State for the greatest prosperity of the Indonesian peoples must always refer to the principle of balance. The contradiction between environmental conservation on the one hand and the needs of modern civilization on the other hand, then in the future, the utilization of natural resources should be based on equity, balance, democracy and sustainability which involves inter generation of human life [4]. The expectation of the realization of good governance is especially directed towards the law enforcement of environmental permits for mining management in the regions as a hope of all Indonesian peoples. The implementation of mining sector, it is judged by various groups as a vulnerable matter with corruption, collusion and nepotism, so that it has a negative impact on the environment. Corruption, collusion and nepotism occur due to the weak realization of good governance in the regions related to the deviation in the management of mining businesses and/or activities.

Previously, there had been research carried out related to law enforcement, but perhaps because there were no clear rules for the government to control, therefore these illegal mining activities continued with and there was no firmness from the local government [5]. The utilization that should be done to bring prosperity caused miserable wounds for the environment. Based on the preliminary research conducted by researchers, it was found that mining management in Central Sulawesi is not much different from mining management in other regions in Indonesia, leaving environmental damage everywhere. According to him, it happened because there was no law enforcement on environmental permits or previously referred to as the Decree of Environmental Feasibility, even it can be said more likely to occurs omission by the government, especially local governments. This omission can be seen in one of the gold mining by the community in Poboya village, East Palu District, Palu City, which can be classified as illegal mining or mining without permission (unlicensed mining, so called PETI) and it has been ongoing and operate until now, even though its intensity has begun to decrease due to the losses of many entrepreneurs.

According to Ruslan and Khairuddin [6] the presence of mercury come from mining activities both traditional mining using large disks since 2007 as well as those using drum which have been taking place since August 2009 until now. The highest mercury content in river is 0.080 ppm, the lowest is 0.005 ppm and the highest river sediment is 58.000 mg/kg, the lowest is 4.000 mg/kg. Then, the highest mercury content in liquid waste using drum was 0.040 ppm, the lowest is 0.005 ppm and the highest solid waste (tailings) was 88.2 mg/kg, the lowest is 80.8 mg/kg. Mercury content around the combustion from five locations with different sampling distances between 45.5 mg/kg - 99.90 mg/kg. Partially, mercury content at some sample points has exceeded the maximum concentration limit, and holistically the condition is not safe, and it has exceeded the maximum concentration of water quality standards, sediment, liquid waste and solid waste as specified. In addition, the bad impact of mining investment management in Central Sulawesi region, on the one hand the cause of environmental damage, and on the other hand also causes a long-standing conflict of interest, so that the local government only focuses on resolving the conflict, no longer ignoring environmental interests. Conflicts that arise are usually in the form of treatment with violence, eviction, criminalization and intimidation by the investor.

Departing from the description above, it can be assumed that mining business permits which are widely issued by local governments today are not followed up with the obligation to enforce environmental permits as a condition for correct environmental management of mining businesses and/or activities in the regions, as mandated by the environmental protection and management law. As the phenomenon of air and water pollution in Palu, as well as sea water pollution and flash flooding accompanied by landslides in Morowali district, as well as a prolonged conflict related to mining management in the area, then the management and implementation of environmental law enforcement in mining sector of Central Sulawesi tend not to realize the principles of good-governance, especially 3 (three) main principles, i.e transparency, participation and accountability. This research is aimed to
determine the legal policy of local government in realizing the principles of good governance related to environmental permits in the mining sector.

2. Method
The research is an empirical research with a socio-juridical approach. It was conducted in Morowali district and Palu City, Central Sulawesi Province, Indonesia. Morowali district was chosen because it has the largest mining area in the Central Sulawesi region and also it representing elements of district government. Then, Palu was chosen to represent the elements of city government, which is also the only provincial capital in Indonesia, which has gold mining and non-metal rock mining in its territory. The population is determined using purposive sampling technique. Data were analyzed qualitatively and descriptively.

3. Relevance of Environmental-Based Mining Business Permit Issuance
Overlapping of environmental permits has become a problem that always arises in mining management. The problem is getting stronger when the enactment of laws and regulations on local government that refers to the principle of decentralization. The decentralization policy was utilized by local governments from district to provincial level, so that they competed to make profits from the natural potential, including natural resources in the form of mining products. Various methods are used to attract investors to invest their capital in the mining sector, local governments are not reluctant anymore to issues Mining Business Permit to mining companies, without considers again to the conditions that must be met. In order to obtain a large economic profit in the mining sector, the local government became the sole ruler in the area as a result of the excessive euphoria in the region due to the seizure of mining management authority.

The concerned euphoria is the authority of the local government in revoking and issuing permit so easily [7]. It usually happens when the regional leader changed. The overlapping of mining permit also arises because the lack of communication between the central-, local governments and local community. As well as, the lack of understanding and consistency of each party in implement their rights and obligations. All forms of policies, both by the central and local governments must always be implemented openly and known by the community as a manifestation of the principle of transparency. To know the realization of the principle of transparency in the regions, particularly the enforcement of environmental permits through controlling environmental impacts on mining business management, in this research two indicators were used namely community access and the availability of information facilities.

To find out what the government officials of Morowali district and Palu City have realized the principle of transparency in the issuance of mining permit or not. It can be seen by using the indicator of community access as showed in table 1.

| Table 1. Response of respondent about community access to the law enforcement of environmental permits |
|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|-------------------------------------------------|
| No. | Response | Community | Mine Employee | Regional Officials | Local Representatives | Total | % |
|-----|----------|-----------|---------------|--------------------|----------------------|-------|---|
| 1   | Access   | 35        | 13            | 20                 | 13                   | 81    | 50,62 |
| 2   | No Access| 55        | 7             | 3                  | 7                    | 72    | 45,00 |
| 3   | Do not know | 5        | 0             | 2                  | 0                    | 7     | 4,38  |
| Total |          | 95        | 20            | 25                 | 20                   | 160   | 100   |

Source: Primary data, 2015.

Based on the table 1, obtained that there were 72 respondents (45%) who responded that the community did not have access to know the environmental permit as an instrument of structuring in
the issuance process of mining permit and there were 81 respondents (50.62%) who responded that the community have access to know the environmental permit. As for those who responded not to know as many as 7 respondents (4.38%). Thus, the percentage of respondents who responded that there was public access to know the environmental permit as an instrument of structuring in the issuance process of mining permit in Morowali district and Palu City was quite high at only 50.62%, and when summed up, it is obtained slightly lower of 49.38%, so that it could be categorized as a balanced conflict between respondents who said there was no access and who said there was access to environmental permits as an instrument of structuring in the issuance process of mining permit in Morowali district and Palu City.

The reason of respondents who said that there was no access to environmental permits as instruments in the issuance process of mining permit in Morowali district and Palu City was never notified or invited to discuss plans to issue the mining permit in the area. While, the reason of respondents who said that there was to environmental permits as instruments in issuance process of mining permit in Morowali district and Palu City was certainty to access because the local government did not prohibit the community from finding out about public policy expenditure plans and without consultation with the local representatives as a community representative. Then, the reason of respondents who said did not know, generally said they did not want to interfere with government affairs; we are not disturbed in work activities.

The lack of socialization from the local government regarding mining management plans based on local government’s decisions in the form of mining permit has not been optimal. Therefore, transparency on environmental permits as instruments in issuance process of mining permit in Morowali district and Palu City, based on community access is not yet dominant in the balanced category, in other words the law enforcement of environmental permits in mining management has also not been well implemented. The impact that arises from the concealment of the local government in the issuance process of mining permit, it is impressed if there is something concealed then sometimes it causes losses to the State/region such as environmental damage. Losses incurred either directly by the community such as floods or indirectly such as infrastructure development and other forms of service are very slow, because the budget for regional development has been misused.

In addition to public access, the availability of information facilities is also an indicator of the realization of the principle of transparency. Information facilities are very important, because it is a media that is used to socialize every local government policy, and also used by the public to find out about public policies issued by local governments, especially environmental permits as instruments of structuring in the issuance process of mining permit. The issued policy will mainly affect the environment and the lives of communities around the mining area where the mining permit is applied.

As finding of the research, it can be clearly stated that in the issuance process of mining permit in Morowali district and Palu City, it has not yet realized the principle of transparency as it should be in the context of enforcing environmental permits in mining sector. Related to public access and the availability of information facilities as a manifestation of the principle of transparency, the problem of issuance of mining permit especially in Morowali district, during the administration period of the Regent of Morowali (Datlin Tamalagi), a lot of mining permit were issued without involving the community around including the Office of Energy and Mineral Resources, there is even a mining permit signed in Jakarta, so what we did not expect happened. For example, there are overlapping mining areas and some are taking protected forest areas as mining permit areas. However, if the community and related institutions are involved properly, certainly such a thing would not happen. Of course, the people who are most aware of the situation on the ground are related to the service. Therefore, for the future, all parties related to mining management in Morowali district are involved actively and effectively, in order to achieve as we expect.

For mining management in Palu City, it also happened where the local government was less care about environmental problems arising from the impacts of mining, especially mining without permit in Poboya village, Mantikulore district, Palu City. Even though there have been many studies that prove the pollution in the area. A miner explained to the author that it was true that there was environmental
pollution in the area, because he saw immediately two cows that died after drinking water from the waste disposal from drum. Water from drum is thrown away on the ground, some is accumulated in holes that have been dug a little and some are directly absorbed into the ground.

As argued above suggests that the plan and process for issuing mining permit are not known by the community and are performed in secret and closed, because instead of the community accessing them, relevant agencies that are still within the scope of local government are less involved. Thus, the local government of Morowali district and Palu City are still closed in mining management so that the impact on the non-operation of environmental permits as a good structuring instrument. This fact will bring the image and authority of the local government in the eyes of the public to be bad, dishonest, undemocratic, even more than that, local governments are less care about the environment. This will have a wide impact on the environment of the region itself. Concealment of local governments in managing mining, it tends occurs violations committed by irresponsible elements.

The local government apparatuses which have been appearing as serving authorities must be changed into the apparatuses who serve or as instruments of public service. Openness and transparency of local government in mining management must start from the planning until the implementation of each mining business in the region, because this will be a benchmark for the implementation of environmental permit as an instrument of structuring in mining management in the region, so that it can directly have a positive effect on preservation of environmental functions. The level of community participation is one aspect that can support the implementation of national development in accordance with the principles of good governance, because the community is one of the three pillars that support the enforcement of good governance.

The high percentage of respondents who answered that the community did not participate in the enforcement of environmental permits as an instrument of follow-up through the issuance process of mining permit, it can be said that Morowali district and Palu City did not optimally realize the principle of participation in the enforcement of environmental permits in the mining sector. The low realization of the principle of participation in the enforcement of environmental permits as an instrument of follow-up through the issuance process of mining permit is due to the lack of information from local governments and the lack of trust of the community in mining management performed by local governments. This is due to local governments still consider that enforcement of environmental permits as an instrument of follow-up through the issuance process of mining permit is the full rights and authority of local governments. Local governments who think so are certainly local governments that are feudal, authoritarian and far from the principles of democracy, so that the natural resources in their regions are considered to be the business of the local government itself.

Environmental pollution as happened in Morowali district, according to the NGOs of Mining Advocacy Network (JATAM – Jaringan Advokasi Tambang) of Central Sulawesi, reports that the communities of Bungku Selatan, Morowali district were “shouting”. This happens because the sea and the coast which was initially declared as a seaweed cultivation area, the water has turned to muddy, filled with mud and ore tailings waste from several mining companies operating there, including PT. Teknik Alum Service (PT. TAS) and PT. Genba. As impact of the pollution, every day the fishermen only see from a distance, because their daily activities as fishing are also difficult to do due to the activities of barges going back and forth and sea pollution.

Last but not least, the quality of human resources that will support the implementation of local government performance is formal education in general local government officials as enforcement officers for environmental permits in the mining sector in Morowali district and Palu City (Table 2). The formal education of Morowali district and Palu City government officials who responsible and related to the enforcement of environmental permits is sufficient, but those who have an adequate level of education/special training in the environmental field are very minimal, so that it will affect the implementation of its duties.
Table 2. Level of formal education of the Regional Environment Agency

| No. | Level of Education | Gender | Total |
|-----|-------------------|--------|-------|
|     |                   | Men    | Women |       |
| 1   | Elementary School | -      | -     | -     |
| 2   | Junior High School| -      | 1     | 1     |
| 3   | Senior High School| 14     | 7     | 21    |
| 4   | Academy (D1 and D3)| 1      | 1     | 2     |
| 5   | Bachelor (S1)     | 15     | 21    | 36    |
| 6   | Magister (S2)     | 3      | -     | 3     |
| 7   | Doctor (S3)       | -      | -     | -     |
|     | Total             | 33     | 30    | 63    |

Source: BLHD of Morowali District and Palu City, 2017

As a result, in relation to the human resources, each local government officials should have an adequate level of education and experience on the environment in the context of enforcing environmental permits through the issuance process of mining permit, because they must look at and assess the potential magnitude of available natural resources, the negative impacts that will arise and how much results will be obtained so that it can be said to be feasible if the project is implemented. This needs careful consideration, regarding the advantages and disadvantages, especially to the environment and economic interests, and does not conflict with applicable laws and regulations.

To operate a business or activity that can have a significant impact on the environment such as mining, it should not be done haphazardly by only calculating financial benefits for a moment or short term, as the classic reasons from the new order era until now, namely to increase local revenue. Therefore, to obtain maximum benefit in every local government policy plan such as mining management, then it must be supported by human resources officials whose competency is well-established and professional, so that they have high analytical and creative abilities and are responsible for their duties, not careless staff or only make reports that please the leader or are more familiar are called “ABS”, as long as you are happy.

The realization of the principles of transparency, participation and accountability in the context of enforcing environmental permits, through the issuance process of mining permit, it can be done well, if the quality of human resources officials understands correctly and committed to being transparent, participatory and accountable in making public decisions. Therefore, without an intelligent officials, the government organization will not be established in running the government, in which must have a professional officials in their respective fields and fully understand good governance. In such way, the wise people argue to achieve maximum benefit, give every work to experts.

Departing from this rationale, in addition to the human resource and legal-culture factors that influence the realization of the principles of transparency, participation and accountability in the context of enforcing environmental permits through the issuance process of mining permit in the regions, the facility factor also influences and is very decisive. Also, facilities are decisive in facing challenges in the era of local autonomy and globalization, because supporting facilities are tools used by government organizations in perform their roles. Therefore, government agencies must have complete facilities that meet the needs to do excellent services to the communities.

For this reason, to do sustainable and environmentally-based development [8], especially mining management, the local government must always consider the three factors, namely human resources, legal culture and supporting facilities. In general, decentralization and local autonomy policies are still the agenda of the central government which is very important to be followed up and implemented consistently and sustainably. Therefore, all Indonesian people hope that decentralization and local autonomy can realize the principles of good governance, and it always oriented to efforts to improve welfare and public services that are excellent and equitable for the people.
4. Conclusion
Environmental permit for mining management in the regions is expected to maintain a balance between economic interests and environment protection. To achieve a good mining management in the regions, management concepts are required that fulfill the principles of transparency, participation and accountability. As the realization of these principles in the enforcement of environmental permits through control, ordering, supervision and follow-up on mining management in Central Sulawesi, it is classified as low category, so that it does not yet reflect the realization of the principles of good governance in the enforcement of environmental permits in the mining sector. Hence, to achieve a good mining management, it is expected that local governments will continue to focus on the importance of enforcing environmental permits. Environmental permit is instrument that prohibits and then permits, as it has fulfilled the requirements for environmental protection and sustainable management.

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