

Implementasi Asas Restitutio In Integrum Dalam Sistem Pidanaan Pertambangan Tanpa Izin Sebagai Perwujudan Keadilan Sosial = Implementation of the principle of Restitutio In Integrum in the unlicensed mining penal system as a manifestation of social justice

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Abstrak

Pasal 33 Ayat (3) UUD NRI 1945 menyatakan menyatakan bahwa bumi, air, dan Kekayaan alam yang terkandung didalamnya dikuasai negara, digunakan untuk sebesar-besarnya kemakmuran rakyat. Atas hal tersebut, negara diberi kewajiban untuk mengurus dan mengelola kekayaan alam, termasuk pemanfaatannya, dan bertanggung jawab meningkatkan kesejahteraan rakyat. Namun demikian banyak kegiatan pengambilan kekayaan alam melalui pertambangan tanpa izin, sehingga menimbulkan kerugian bagi negara, rakyat dan lingkungan. ketentuan sanksi pidana dan denda sebagaimana diatur dalam Pasal 158 UU No. 3 Tahun 2020 belum efektif dalam kerangka memenuhi keadilan sosial yang menjamin pengembalian atas hak negara dan masyarakat untuk memperoleh manfaat atas kekayaan alam. Merujuk 3 (tiga) tujuan hukum, maka ketentuan tersebut telah memberikan kepastian hukum, namun belum dapat memenuhi rasa keadilan bagi negara dan masyarakat atas haknya yang hilang. Upaya yang dapat dilakukan adalah melalui kewajiban pemulihan dan perbaikan atas dampak yang ditimbulkan oleh pertambangan tanpa izin. Asas restitutio in integrum merupakan salah satu asas hukum umum yang memiliki arti pemulihan pada kondisi semula. Kewajiban pengembalian ini harus diatur secara normatif dalam undang-undang pertambangan mineral dan batubara, sehingga dapat menjadi dasar legalitas bagi penegak hukum. Penerapan asas Restitutio In Integrum dalam kaitannya dengan keadilan sosial bagi seluruh rakyat Indonesia sangat penting. Penerapan asas restitutio in integrum akan membuka jalan bagi terciptanya keadilan sosial. Rumusan keadilan sosial dalam pembukaan UUD 1945 pasca perubahan menjadi terwujud secara tegas sebagai “suatu” yang sifatnya konkrit.

.....Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the land, water and natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people. For this reason, the state is given the obligation to administer and manage natural resources, including their utilization, and is responsible for improving the welfare of the people. However, there are many activities to extract natural resources through mining without a license, causing losses to the state, people and the environment. the provisions of criminal sanctions and fines as stipulated in Article 158 of Law No. 3 of 2020 have not been effective in fulfilling social justice that guarantees the return of the rights of the state and society to benefit from natural resources. Referring to the 3 (three) objectives of law, these provisions have provided legal certainty, but have not been able to fulfill a sense of justice for the state and society for their lost rights. Efforts that can be made are through the obligation to restore and repair the impacts caused by unlicensed mining. The principle of restitutio in integrum is one of the general legal principles that means restoration to its original condition. This return obligation must be normatively regulated in the mineral and coal mining law, so that it can be the basis of legality for law enforcement. The application of the Restitutio In Integrum principle in relation to social justice for all Indonesian people is very important. The application of the principle of restitutio in integrum will pave the way for the creation of social justice. The formulation of social justice in the preamble of the 1945

Constitution after the amendment becomes explicitly realized as a concrete "something".