

Civil Liability for Mining Companies for Environmental Pollution Based on Indonesian Laws

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ABSTRACT: Environmental pollution has a broad legal dimension, in addition to criminal sanctions in various related legal regulations, there are also administrative and civil law aspects. This study aims to analyze how civil sanctions in environmental pollution are carried out by mining companies based on Indonesian legal rules. This study proves and confirms that in principle, every person in charge of a business and/or activity who commits an unlawful act in the form of pollution and/or environmental destruction that causes harm to other people or the environment is obligated to pay compensation and/or take certain actions. In addition to being required to pay compensation, the polluter and/or environmental destroyer may also be burdened by the judge to take certain legal actions, for example an order to install or repair a waste treatment unit so that the waste complies with the

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Submitted: 18/11/2021 Reviewed: 19/01/2022 Revised: 08/04/2022 Accepted: 21/06/2022

specified environmental quality standards; restore environmental functions; and/or eliminate or destroy the causes of environmental pollution and/or destruction.

KEYWORDS: Civil Liability, Environmental Pollution, Environmental Protection, Law Enforcement, Company



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How to cite:

Sarmilah, Milah, Lina Mustafidah, and Hellen George. "Civil Liability for Mining Companies for Environmental Pollution Based on Indonesian Laws". *Indonesian Journal of Environmental Law and Sustainable Development* 1, No. 2 (2022): 165-188. <https://doi.org/10.15294/ijel.v1i2.58135>.

I. INTRODUCTION

A good and healthy living environment is a gift of God Almighty given to all mankind without exception. For this reason, a good and healthy environment is an absolute right that is given to mankind to enjoy. Therefore, the right to a good and healthy living environment is the same for all humans and even living things in the world.¹

The 1945 Constitution of the Republic of Indonesia states that a good and healthy living environment is a human right and constitutional right for every Indonesian citizen. Therefore, the state, government, and all stakeholders are obliged to carry out environmental

¹ Arliman, Laurensius. "Eksistensi Hukum Lingkungan dalam Membangun Lingkungan Sehat di Indonesia." *Lex Librum: Jurnal Ilmu Hukum* 5, No. 1 (2018): 761-770; Haryanto, Budi. "Indonesia: Country report on children's environmental health." *Reviews on Environmental Health* 35, No. 1 (2020): 41-48.

protection and management in the implementation of sustainable development so that the Indonesian environment can remain a source and support for life for the Indonesian people and other living beings.

In the scope of mining, the main object is the land and all kinds of mining resources in the ground. So high is the value of land in the 1945 Constitution, one of the articles, namely article 33, it has been clearly stated that "*The earth, water and natural wealth contained therein are acquired by the state and to be used as much as possible for the prosperity of the people...*". Regulations that regulate specifically regarding the field of agriculture are natural wealth has a very broad function in an effort to meet human needs, especially in terms of economy.²

In connection with the above, environmental protection and management is a human effort to interact with the environment in order to maintain life to achieve environmental prosperity and sustainability. Environmental protection and management are a systematic and integrated effort carried out to preserve the function of the environment and prevent the occurrence of pollution and / or damage to the environment which includes planning, utilization, control, maintenance, supervision, and law enforcement. Environmental protection and management are carried out in an

² Wahanisa, Rofi. "Tinjauan Yuridis Normatif Berbagai Peraturan Tentang Alih Fungsi Tanah Pertanian di Indonesia." *Pandecta Research Law Journal* 6, No. 1 (2011). See also Drakel, Arman. "Kebijakan pengelolaan lingkungan hidup berbasis ekonomi sumberdaya di Propinsi Maluku Utara." *Agrikan: Jurnal Agribisnis Perikanan* 3, No. 1 (2010): 90-100; Akhmaddhian, Suwari. "Penegakan Hukum Lingkungan dan Pengaruhnya Terhadap Pertumbuhan Ekonomi di Indonesia (Studi Kebakaran Hutan Tahun 2015)." *UNIFIKASI: Jurnal Ilmu Hukum* 3, No. 1 (2016); Ghifary, Haikal, et al. "Studi Literatur Keterkaitan Pembangunan Ekonomi dengan Kualitas Lingkungan Hidup di Indonesia." *Jurnal Pendidikan dan Konseling (JPDK)* 4, No. 6 (2022): 4409-4414.

integrated manner covering all environmental fields for sustainable environmental functions. In an effort to protect and manage the environment, it is inseparable to carry out sustainable development to achieve the welfare of the people.

Sustainable development is essentially a development that can meet the needs of the present without compromising the fulfillment of the rights of future generations. Sustainable development is development that is oriented towards meeting human needs through the wise, efficient use of natural resources and paying attention to the sustainability of their use for both current and future generations. Sustainable development that places the environment as an integral part in the dynamics of national development is increasingly crystallizing in the realities of state life.³

According to Article 1 paragraph 3 of the PPLH Law, it is explained that sustainable development is a conscious and planned effort that integrates environmental, social, and economic aspects into development strategies to ensure the integrity of the environment as well as the safety, ability, welfare, and quality of life of current and future generations. Sustainable development requires the equitable distribution of rights to natural resources and the environment for both current and future generations. The concept of sustainable development requires development that integrates economic, social interests and the protection of environmental carrying capacity in a

³ Rosana, Mira. "Kebijakan pembangunan berkelanjutan yang berwawasan lingkungan di Indonesia." *Kelola: Jurnal Sosial Politik* 1, No. 1 (2018): 148-163; Priyanta, Maret. "Optimalisasi Fungsi Dan Kedudukan Kajian Lingkungan Hidup Strategis Dalam Penyusunan Dan Evaluasi Rencana Tata Ruang Dalam Sistem Hukum Lingkungan Indonesia Menuju Pembangunan Berkelanjutan." *Jurnal IUS Kajian Hukum dan Keadilan* 6, No. 3 (2018): 388-401.

balanced and equitable manner. The process of sustainable development relies on factors of natural resource conditions, environmental quality and population. For this reason, environmentally sound development efforts need to contain development efforts that maintain the integrity and function of the environmental order. And in this continuous development process, it is inseparable from the bad consequences on the environment, namely pollution or destruction of the environment.⁴

Environmental pollution greatly affects the survival of these environmental members. Companies that are sensitive and concerned about social issues should prioritize environmental maintenance and renewal. This does not mean that the company can neglect responsibility to other stakeholders. Quoted from an international journal on mining that: *Mining opponents in the United States say the 1872 law allows foreign companies to run roughshod over local residents and environmental protections. Another complaint is that local, state and federal government agencies don't do enough to meaningfully regulate mining by foreign companies on public and private land. Colorado attorney Roger Flynn has spent his career opposing mines on behalf of local residents, Native American tribes, and environmental groups across the American west. Flynn notes that because the 1872 law severely restricts the U.S. government's "right to say no" to mining on public land, opponents*

⁴ Santosa, Anak Agung Gede Duwira Hadi. "Pertanggungjawaban Pidana Korporasi Terhadap Pencemaran Lingkungan (Suatu Perbandingan UU PPLH Dengan Omnibus Law Kluster Lingkungan Hidup)." *Jurnal Komunikasi Hukum (JKH)* 7, No. 1 (2021): 336-344; Aprilia, Indah Siti, and Leander Elian Zunggaval. "Peran Negara Terhadap Dampak Pencemaran Air Sungai Ditinjau Dari Uu Pplh." *SUPREMASI: Jurnal Hukum* 2, No. 1 (2019): 15-30; Fahrudin, Muhammad. "Penegakan Hukum Lingkungan di Indonesia dalam Perspektif Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup." *Veritas* 5, No. 2 (2019): 81-98.

*are often relegated to trying to delay the approval process in hopes foreign mining companies will eventually decide that mining is uneconomical.*⁵

The company's responsibility to stakeholders must be balanced in the sense of not controlling one particular party. Environmental pollution by companies can occur in the air, water and soil, all of which are the main parts where humans live. Therefore, every development is directly related to the environment which is a forum for development which due to the development process results in environmental pollution.

Environmental pollution and environmental destruction are caused by human actions that intentionally or unintentionally have exceeded the limits and even the established environmental quality standards, resulting in a decrease in the quality of the environment. Environmental pollution and destruction often occur in the process of development or production of a person or corporation. A corporation or company is a business entity or legal entity that in the production process is directly related to the environment. For this reason, it is very likely that the production process can result in pollution or destruction of the environment. Therefore, the pollution and destruction of the environment is certainly very detrimental to the people living around it.⁶

⁵ Kari Lydersen, "Pacific Rim and Beyond: Global Mining, Global Resistance, and International Law", *Colorado Journal of International Environmental Law and Policy*, 23, No.2 (2012).

⁶ Andriansyah, Andriansyah, Endang Sulastri, and Evi Satispi. "The role of government policies in environmental management." *Research Horizon* 1, No. 3 (2021): 86-93; Zeng, Yiwen, et al. "Environmental destruction not avoided with the Sustainable Development Goals." *Nature Sustainability* 3, No. 10 (2020):

Environmental pollution from mining companies is certainly very detrimental both in terms of material and immaterial. Pollution or destruction of the environment is an act against the law because the act is harmful, violates the law and violates the public interest. Of course, every act that harms others must be accounted for by the perpetrators of environmental pollution or destruction. This responsibility can be given to anyone who experiences the impact due to pollution carried out by the company. The company's responsibility is in the form of civil, criminal and administrative liability and must be in accordance with the provisions of the applicable laws and regulations.

II. METHODS

This writing is normative juridical, since it is based on certain methods, systematics, and thoughts with the aim of studying one or several symptoms of a particular law and analyzing them. The methods in writing this paper are as follows:

1. Data Collection

The type of data needed in this writing is secondary data, namely using library materials. Thus, this data is sourced from literature materials, namely:

- a. Primary Legal Materials, namely binding legal materials such as the Basic Law or basic Norms, Laws and Regulations, Jurisprudence, Treaties.
- b. Secondary Legal Materials, namely legal materials that provide explanations of primary legal materials, such as the

795-798; Hill, Marquita K. *Understanding Environmental Pollution*. (Cambridge MA, Cambridge University Press, 2020).

literature of the draft law, research results, written works, and papers

2. Data Processing and Analysis Methods

The method used is qualitative analysis, namely the data collected by the provisions regarding the protection and management of the environment of life and business or production activities of a company. will be processed by systematizing legal materials, namely by making a classification of these legal materials. The processed data is then interpreted using legal interpretation and legal construction methods and then analyzed in a qualitative juridical manner, which describes the data that produces descriptive data in achieving clarity of the problem to be discussed and to reveal the truth that exists.

III. CORPORATE RESPONSIBILITY FOR ENVIRONMENTAL POLLUTION: A CIVIL LIABILITY PERSPECTIVE

A company that runs its business in the community will more or less cause various impacts. Whether it's a negative or a positive impact. And every company must have responsibility for every activity it carries out. Every company has a social responsibility to society and the environment. To realize this form of responsibility, each company has a different way.

Basically, pollution or environmental damage is a cause of environmental disputes between *polluted* (victims of pollution)

against *polluters / destroyers* (perpetrators of pollution or damage).⁷ In the event of environmental pollution by the company, the company must be able to hold accountable, therefore in an outline way of classifying the principle of a company's responsibility for environmental pollution, namely regarding the principle of corporate social responsibility, the principle of legal responsibility, and the politics of administrative responsibility (*politics*). Overall, these responsibilities will more clearly be explained through responsibilities. Everyone whose actions, businesses, and/or activities use to produce and/or manage B3 waste, and/or who pose a serious threat to the environment is absolutely responsible for losses that occur without the need to prove the element of error (*principle strict liability*). And in the principle of social responsibility, it is also known as the principle of liability by companies due to environmental pollution.

To determine an act needs to be stated *strict liability*, it is necessary to pay attention to the following things:

1. The need to observe a regulation regarding the welfare of society
2. Proof of error (*mensrea*) is very difficult
3. The high level of social danger will justify *setreat liability*.⁸

Looking at the overall provisions regulated in PPLH Law qualifies the company's general liability, namely civil liability, criminal liability and administrative liability. But what is discussed in this paper is civil liability for mining companies.

⁷ Hadin Muhdijat, *Hukum Lingkungan Sebuah Pengantar untuk Konteks Indonesia*. (Yogyakarta, GENTA Publishing, 2015), pp. 213-215.

⁸ Andi Hamzah. *Penegakan Hukum Lingkungan*. (Jakarta, Sinar Grafika, 2005), pp. 51-52.

According to Article 1 paragraph (5) of PERMEN No. 13 of 2011 concerning Compensation for Pollution and/or Environmental Damage, Compensation is the cost that must be borne by the person in charge of activities and/or businesses due to pollution and/or environmental damage. Victims of environmental pollution have the right *"to a good and healthy environment"* as formulated in article 65 paragraph 1 of Law number 32 of 2009. On this basis, victims of pollution can sue the polluters for compensation⁹

According to Article 87 paragraph (1) of Law No. 32 of 2009 concerning Environmental Protection and Management (PPLH Law): *"Every person in charge of a business and/or activity that commits unlawful acts in the form of pollution and/or destruction of the environment that causes harm to others or the environment is obliged to pay compensation and/or take certain actions."*

In civil law, it is about compensation for unlawful acts. What is meant by unlawful act is an act committed by one or more parties that has harmed the other party. Unlawful acts committed by one or more parties, whether they are done intentionally or unintentionally, will certainly harm the other party whose rights have been violated (Article 1365 BW). What is meant by an unlawful act according to Article 1365 of the Civil Code, is *"any unlawful act, which brings harm to another person, obliges the one who by his fault issued the loss, indemnifies the loss"*, an act against the law is an act that violates the law, decency, public interest, and propriety.

For this reason, every person or business entity that commits acts against the law (environmental pollution) must be responsible for

⁹ Muhdijat, 2015.

losses suffered by the community or the government and other parties. The liability is in the form of civil, criminal and administrative liability. For this reason, regarding the provision of compensation or compensation, which is related to civil liability on the basis of an unlawful act.

Furthermore, in the Regulation of the Minister of Environment Number 13 of 2012 concerning Compensation for Pollution and / or Environmental Damage, the matters regarding compensation are as follows:

Article 3

The person in charge of a business and/or activity that commits unlawful acts in the form of pollution and/or environmental damage that causes losses to other people or the community and/or the environment or the state must:

- a. perform certain actions; and/or
- b. pay indemnity.

Article 4

The obligation to perform certain actions as referred to in Article 3 letter a includes:

- a. prevention of pollution and/or destruction of the environment;
- b. mitigation of pollution and/or destruction of the environment; and/or
- c. restoration of environmental functions.

Article 5

- (1) Environmental losses as referred to in Article 3 letter b include:

- a. losses due to non-implementation of wastewater treatment obligations, emissions, and/or management of hazardous and toxic waste;
 - b. losses to replace the costs of combating pollution and/or environmental damage and environmental recovery;
 - c. losses for the replacement of the cost of verifying complaints, inventorying environmental disputes, and the cost of supervising the payment of indemnity and the execution of certain actions;
 - d. losses due to loss of biodiversity and decreased environmental function; and/or
 - e. community losses due to pollution and/or environmental damage.
- (2) Losses due to pollution and/or environmental damage as referred to in paragraph (1) are grouped into losses that:
- a. is fixed; and
 - b. is non-fixed.
- (3) Losses as referred to in paragraphs (1) of letters a to d shall constitute permanent losses.
- (4) The loss referred to in paragraph (1) point e shall be a loss of an irregular nature.

According to N.H.T. Siahaan in his book *Principles of Binding Law* his book *Environmental and Ecological Law* says since 1919 (HR 31-1-1919, Development says : principle RJ 1919, 161; Lindenbaum/ Cohen) whose wrongful liability is defined by an act of *violation (fault)* is based on the adagium that the law is to do or not to do no liability if that (1) violates the rights of others; or there is no element of guilt (*No Liability Without Fault*). elements of consent or the word agree and Liability as such, no causa is allowed under the law to be referred to as there is a realm of "*Tortious Liability*" or "*Liability Based contract. On Fault*". The elements of article 1365 of 1919 have been interpreted

by the Civil Code regarding the widest possible acts known as unlawful (*Onrechtsmatige, daad*) are:

- a. the existence of acts that must be unlawful
- b. the existence of fault in the maker or perpetrator
- c. the existence of losses for the victim and with the legal obligations of the perpetrator
- d. the existence of a causality relationship between acts of a moral nature (*geode zeden*) against the law and losses.

The existence of acts of violating the law of society is preceded by actions by the perpetrators. The intended deed is either to do something or not to do something. Example A does not do something on the thing A has a legal obligation to do, which obligation arises from the applicable law, because there is also an obligation arising from a contract.¹⁰

Any person in charge of a business and/or activity (company/legal entity) that results in pollution and/or environmental damage is considered an Unlawful Act. The person in charge of the business and/or activity has the responsibility to compensate for the losses caused to the extent that it is proven that they have committed acts of pollution and/or destruction. The proof is both the real causal relationship between error and loss (*liability based on faults*) and without the need to prove the element of error (*liability without faults / strict liability*) (Article 88 PPLH Law).

¹⁰ Patrianto, Bangun. "Tinjauan Yuridis Pertanggungjawaban Pidana Pencemar Lingkungan Hidup." *Perspektif* 10, No. 3 (2005): 202-216.

For parties who feel aggrieved by pollution due to industrial business, can complain or submit information orally or in writing to the responsible agency, regarding the alleged occurrence of pollution and/or destruction of the environment from the business and/or activities at the planning, implementation, and/or post-implementation stages as regulated in detail in Regulation of the State Minister of the Environment Number 9 of 2010 concerning Procedures for Complaints and Handling of Complaints Due to Alleged Pollution and/or Destruction of the Living Environment.

For the provision of compensation can be made after a judgment that has permanent legal force. The award of damages may be sought through the filing of a suit (in *Petitum*) to the court. The judge's ruling has binding force, evidentiary power, executory power. For this reason, the judge's decision has an executory power where the judgment can be carried out if it has permanent legal force. the executory power is the power to carry out anything stipulated in the judgment by force by the tools of the State against business actors or companies that are responsible for environmental pollution.

IV. EFFORTS TO RESOLVE ENVIRONMENTAL POLLUTION DISPUTES WERE CARRIED OUT BY THE COMPANY

Environmental problems are developing rapidly characterized by environmental pollution and destruction activities which are closely related to the development of technological advances which are the main keys to the success of multi-faceted national development activities. Access to technological advances has an impact, not only positive but also a negative impact, especially for environmental conservation.

With the occurrence of environmental pollution, of course, it has a bad impact on the survival of humans or the surrounding community. Usually, environmental pollution occurs as a result of the production process of an enterprise. Therefore, of course, every community that experiences the impact of environmental pollution raises an objection and even demands a company with that negative impact that makes discomfort to the surrounding environment.

An environmental pollution dispute is a dispute that occurs as a result of a production process from a company. Usually, a dispute occurs if one of the parties raises an objection or demand to a company be responsible for the pollution it has committed. Indonesia is a legal country whose procedures are regulated in certain regulations, including regulations regarding mechanisms, as well as efforts to resolve environmental pollution disputes whether carried out by individuals, either a corporation or a company.

According to Article 1 number (25) of Law Number 32 of 2009 concerning Environmental Protection and Management, it *explains that "An environmental dispute is a dispute between two or more parties arising from activities that have the potential and/or have an impact on the environment."*

In the event of a dispute over environmental pollution carried out by a company, in the law enforcement structure there are three instruments, namely through administrative or government instruments; civil law instruments by the aggrieved party himself or in the name of the public interest; and criminal law instruments through investigative actions. Settlement of environmental disputes can be done through the courts or out of court. Dispute resolution through the courts, namely through civil and criminal processes. Meanwhile, dispute resolution outside the court is carried out

through arbitration and deliberation, namely negotiation, mediation, and conciliation according to legal choices in the form of agreements and is *pacta sunt servanda* for the parties.

Dispute resolution efforts are closely related to law enforcement (environmental law). Law enforcement has a meaning, how the law must be implemented, so that in law enforcement must pay attention to the elements of legal certainty, legal expediency, and justice. In the process of resolving cases in court, dispute resolution through the civil instruments mentioned above can be explained as follows:

Furthermore, civil environmental law has regulated legal protection for victims of environmental pollution and/or destruction that results in loss and suffering. The purpose of resolving environmental disputes through the general (civil) judiciary is only to obtain compensation for pollution or destruction of the environment.

In the civil law system proof is charged to the suffering party (the aggrieved), the proof of guilt of an act becomes more complicated and consequently, it is not uncommon for the victim to fall on the ladder with the understanding that the victim to be able to prove it is very difficult because he does not have a deep knowledge of it, so many civil liability or civil liability is not specifically regulated in Government Regulation Number 28 of 1985, but civil responsibility has now been regulated in Article 80 of Law No. 41 of 1999 concerning Forestry, Article 1365 of the Civil Code and article 20 of Law No. 4 of 1982, concerning the basic provisions of the environment jo article 34

to article 35 of Law No. 23 of 1997 concerning Environmental Management.¹¹

The mechanism for resolving environmental pollution disputes through the general (civil) court, namely filing a lawsuit to the court. The letter of suit basically contains and is guided by Article 8 No. 3 BRv: what is demanded of the defendant, the basis of the claim and that the claim must be clear (clear) and certain: *POSITA* is: The basis of the lawsuit/de middelen van de eis (Fundamentum petendi), and-*PETITUM* is: What things are demanded/ onderwerp (*voorwerp*) van de eis (subject matter).

After the suit letter is received, the judge summons both parties to the dispute to appear in court hearing, after the plaintiff reads out his lawsuit, the judge gives the defendant an opportunity to read out the answer to his lawsuit. In general, upon the existence of a plaintiff's claim, at the beginning of the answer and the answer can be in the form of Confession of All or part of the arguments of the lawsuit, Referte: Does not refute or justify the lawsuit, so it is up to the judge, Leave it to the judge's decision, Denial / rebuttal (*verweer*), Exception, Ten principale. Replication and Duplik: However, the filing of civil lawsuits as a means of law enforcement by the authorities or the government is limited to situations when administrative law enforcement is inadequate, so in fact the use of civil lawsuits as a means of enforcing environmental laws by government agencies sourced from BW is very rare. From various complaints and lawsuits cases of pollution and environmental damage, various causes of

¹¹ Rangkuti, Ridwan. "Pertanggungjawaban Korporasi Terhadap Tindak Pidana Lingkungan Hidup Menurut Undang-Undang Nomor 23 Tahun 1997." *JUSTITIA: Jurnal Ilmu Hukum dan Humaniora* 1, No. 1 (2018): 253-270.

obstacles to the settlement of environmental disputes were found as follows:¹²

1. There is no special institution, especially at the local government level, which has a mandate to receive and follow up on community complaints against environmental cases.
2. The absence of procedures and mechanisms for complaints, research and prosecution of compensation in cases of pollution and destruction of the environment.
3. There is no forum for providing dispute services outside the court through mediation, consolidation or arbitration.
4. Limited access to victim communities and interest groups of environmental organizations to court institutions.¹³

V. EXAMPLES OF CASES OF ENVIRONMENTAL POLLUTION DISPUTES FROM MINING COMPANIES AND THEIR HANDLING: A BUYAT BAY POLLUTION

Pollution and Impact due to PT. NMR occurred from 1996–1997 with 2000–5000 cubic tons of waste daily disposed of by PT. NMR to the waters in the Bay started in March 1996. According to PT. NMR, the waste discharge is wrapped in a thermocline layer at a depth of 82 meters. Local fishermen strongly protested the waste disposal. Moreover, at the end of July 1996, fishermen found dozens of dead fish carcasses floating and stranded on the beach. The mysterious

¹² Takdir Rahmadi. *Hukum Lingkungan di Indonesia*. (Jakarta, Raja Grafindo Persada, 2015), pp. 266-267.

¹³ Supriadi. *Hukum Lingkungan di Indonesia: Sebuah Pengantar*. (Jakarta, Sinar Grafika, 2005), pp. 299-300.

death of these fish lasted until October 1996. The case was repeated in July 1997.

The mysterious deaths of the dead fish, by some fishermen and NGO activists were taken to the laboratory of Sam Ratulangi University Manado and the Manado Health Center Laboratory, but both laboratories refused to research the cause of death of the fish. Same thing PT. NMR promised to bring samples of the dead fish to Bogor and Australia for research but in reality, the cause of death and floating of hundreds of these fish has never been conveyed to the public. Even though PT. NMR itself began to conduct analyses in the meat and liver of several types of fish in the Gulf since November 1, 1995. This is routinely recorded every month. Then on June 19, 2004, the Suara Nurani Foundation (YSN) with dr. Jane Pangemanan, Msi together with 8 Postgraduate Medical students majoring in Public Health through the Women's Program, carried out free medical program activities for mining victims, especially in Buyat pante (Lakban) East Ratatotok, South Minahasa Regency, and from the results of the examination stated that 93 people studied showed complaints or diseases suffered such as illness head, cough, runny nose, fever, memory disorders, abdominal pain, stomach ulcers, shortness of breath, hives and others.

The diagnosis, which was concluded by Dr. Jane Pangemanan, was that a resident of Buyat Pantai suffered from heavy metal poisoning. The poisoning suffered by the residents of Buyat Pantai village, it turns out, has been proven by the research of a lecturer at the Faculty of Fisheries Ir. Markus Lasut MSc, where in February 2004, from the results of a study of 25 people (by taking the hair of residents) it was proven that 25 people already had mercury contamination in their bodies. This polemic about diseases caused by NMR waste has grown

sharp, because the Government and the Health Office openly defend PT. NMR by saying there is no pollution.

Then the government in it the Minister of State for the Environment resolved this problem hammering the non-litigation route against PT. NMR by seeking compensation of \$124 million in damages due to the decline in the quality of the environment and the lives of Buyat residents who were victimized by Newmont mining activities. PT. NMR was only able to pay 30 million US dollars, and settlement through these non-litigation channels was considered the right way out.

However, in 2005 the case went into criminal proceedings, where a letter of transfer of the case was from the Tondano District Attorney's Office in case No. B1436R112. TP207/2005 which was received by the Registrar of the Manado District Court on July 11, 2005 and this was in accordance with the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia No. KMA033/SK04/2005 which stated that the authority to adjudicate was delegated to the Manado District Court. The case of pollution of the waters of Buyat Bay by PT. Newmont Minahasa Raya when viewed from the aspect of administrative law, the steps that must be taken are Investigation of the case by taking samples of wastewater produced by PT. Newmont Minahasa Raya. NMR and samples in polluted waters, after which they are analyzed by the relevant departments in this case can be carried out by the Baban environmental processing area of North Sulawesi or the regional health office there.

The sample test results obtained, if the wastewater parameters in the liquid waste sample at PT. NMR is the same as the wastewater parameters in polluted water samples, the government can ensnare

PT. NMR with cases of licensing violations in the form of violations of business license requirements indicated by violations of RKL / RPL, violations of tailings processing permit as B3 waste and violations of mining waste disposal permits into the sea. From the above violations, the government is obliged to issue a penalty in the form of a written reprimand. Within a maximum period of three months if there is no improvement, the government can provide a second penalty, namely in the form of revoking the permit to operate factory equipment, and coercion to overcome pollution of the aquatic environment in Buyat Bay. Within a certain period of time if PT. NMR does not make efforts to improve the quality of the waters of Buyat Bay which is determined by the relevant government, so the government can revoke operating permits and coercion to improve the pollution of the aquatic environment in Buyat Bay as well as forced money to compensate for the health losses of the North Sulawesi minahasa community caused by PT. NMR. If PT. The NMR was still operating so this case turned into a criminal case whose name was settled in court.

VI. CONCLUSION

Based on the provisions in Article 84 of Law Number 32 of 2009 concerning Environmental Protection and Management, it multiplies the company's responsibility for environmental pollution, namely civil responsibility (compensation), administrative responsibility (revocation of business licenses, freezing of environmental permits, written reprimands, and government coercion) as well as criminal liability (closure of business activities, deprivation of profits obtained from criminal acts; improvements as a result of criminal acts; the obligation to do what is neglected without rights; and/or company placement under the custody of a maximum of 3 (three) years.) and

secara general, namely imprisonment and fines for business actors or against superiors who give orders. In Law Number 32 of 2009 concerning Environmental Protection and Management, it regulates dispute resolution efforts both inside and outside the court.

ACKNOWLEDGMENTS

None.

COMPETING INTERESTS

The Authors declared that they have no competing interests.

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