

Seminar Nasional
**DEMOKRATISASI PENGELOLAAN
SUMBER DAYA ALAM**

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National Seminar Report

DEMOCRATIZATION OF NATURAL RESOURCES MANAGEMENT

Decentralization and regional autonomy was designed to bring the citizens closer to the government ever since the beginning of Reformasi by the third President of the Republic of Indonesia, Bacharuddin Jusuf Habibie. In relation to that, the implementation of direct local elections (Pilkada) has since made it possible for citizens to have the right to democratically choose their own local leaders. However, there has frequently been dramatic transfer of power over the control of land, mines, and other natural resources to local political elites. Several serious consequences have resulted from the confusion in managing the natural resources sector, among others horizontal conflict, environmental disasters, threats to national sovereignty, minimal economic income from the aforementioned sectors, and financial losses for the state. Therefore, the issue of the democratization of natural resources management is important to be raised and discussed openly in the public space. This seminar was organized as a result of cooperation between The Habibie Center (THC) and Hans Seidel Foundation (HSF).

Speakers:

- Komaidi Notonegoro, SE., ME. – Executive Director, Research Institute for Mining and Energy Economics (ReforMiner Institute)
- Mohammad Hasan Ansori, PhD. – Director for Program and Research, The Habibie Center
- Drs. Faisal Basri, MA. - Economist, Universitas Indonesia
- Laode Muhammad Syarif, SH., LL.M., PhD. – Deputy Chair, Komisi Pemberantasan Korupsi (KPK)

Moderator:

- Dr. Zamroni Salim, SE., M.Appl.Econ., PhD. – Expert Staff, The Habibie Center



Ir. Hadi Kuntjara, MEngSc., PhD.



Dr. Daniel Heilmann

OPENING REMARKS

The first opening remarks was given by the Executive Director of The Habibie Center, Ir. Hadi Kuntjara, MEngSc., PhD., who underlined the importance of involving the public in overseeing the management of natural resources in Indonesia. "The land, water and all the richness that can be found there are controlled by the state and to be used for the prosperity of the people," is stated by Article 33 Point 3 of the Constitution of 1945 that serves as the key guidance for the Indonesian nation. However, it is very unfortunate that the introduction of regional autonomy which was originally intended so that the management of natural resources could directly bring prosperity to the public is not always aligned with the political realities on the ground. Through direct local elections, frequently the transfer of power over the control over mining lands and other natural resources has gone from policy makers in the central government to 'local kings' in the regions.

The second speech was given by Dr. Daniel Heilmann, Head Representative of Hanss Seidel Foundation in Indonesia, who welcomed the choice of democratization of natural resources management as a topic. He viewed that the democratization of natural resources management was a challenged faced by nearly all nations in the world. The existence of good management policies towards the management of natural resources is an important issue, including in Indonesia. The presence of resource persons from various backgrounds, such as the KPK leadership, can give greater knowledge to participants of the seminar, and it is hoped that through this seminar, important solutions can be found regarding better management of natural resources for the future.



BACKGROUND

Indonesia's Reformasi of 1998 has in principle been marked by the implementation of local autonomy and decentralization that was rolled out by President Bacharuddin Jusuf Habibie. The passing of Law Number 22 Year 1999 which was later revised to become Law Number 32 Year 2004 on Local Government became the legal foundation for the birth of the era of local autonomy and decentralization in Indonesia. The policy in principle attempted to delegate authority from the central government to local governments and implicitly contained efforts to encourage the democratization of the management of natural resources. Decentralization and local autonomy were planned to make the government and its citizens closer. As such, policies produced would be more representative.

Since 2005, a major change occurred in the style of political contestation in Indonesia with the application of direct local elections. Since that time, Indonesian citizens have the right to elect directly their respective local

leaders. However, it must be admitted that the hope that Indonesian citizens would get leaders that were precise and competent through the organization of local elections because they would determine and bring the fate of their future direction often did not run in parallel with the political realities that were produced by the aforementioned contestations of local elections. It should be suspected that a number of candidates taking part in the local elections quietly 'auctioned off' certain things for corporate interests for the sake of winning the contestation of the local elections. Through direct local elections, there has been a dramatic change of power transfer in terms of control over land, mines, and other natural resources from policymakers in Jakarta to "raja-raja kecil" (small rajas) in the regions.

Due to this, the issue of the democratization of the management of natural resources becomes an important one to raise and discuss again openly in the public space. Moreover, approaching the contestation at the legislative and presidential elections that will take place on April 17, the issue of

the democratization of the management of natural resources was also raised during the second presidential debate held on February 17, such as over the issue of land ownership by presidential candidate Prabowo Subianto who has 220,000 hectares in East Timur province and 120,000 hectares in Central Aceh regency. The land ownership of Prabowo as well as other parties was regarded by some as inconsistent with the spirit of Article 33 Clause 2 of the Constitution of 1945, 'The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people' (*'Bumi dan air dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat'*).

In general, the democratization of the management of natural resources is seen as a way and process whereby the general public and local communities can also own control over the natural resources and utilize it to strengthen/enrich their communities and the public, both economically and politically. The democratization of the management of natural resources is also an important component in the agenda of democratic consolidation in Indonesia. To discuss these issues further, The Habibie Center in cooperation with the Hanns Seidel Foundation held a national seminar "The Democratization of Management of Natural Resources" (Demokratisasi Pengelolaan Sumber Daya Alam) on Thursday, March 28, 2019 at Hotel Le Meridien, Jakarta. Five resource persons were presented at the national seminar. They were La Ode Muhammad Syarif (Deputy Chair, Commission for the Eradication of Corruption or Komisi Pemberantasan Korupsi for 2015-2019), Faisal Basri (Economist at Universitas Indonesia), Komaidi Notonegoro (Executive Director at ReforMiner Institute), and Mohammad Hasan Ansori (Director for Program and Research, The Habibie Center).

SUMMARY OF SEMINAR

The national seminar began with a presentation from Komaidi Notonegoro. The Executive Director of ReforMiner Institute underlined three legal foundations for the management of natural resources. Firstly, Law Number 22 Year 2001 on Oil and Gas. Second, Law Number 4 Year 2009 on Mining of Minerals and Coal. Third, Law Number 33 Year 2004 on Financial Balance between Central Government and Local Governments.



The management of oil and gas and general mining in Indonesia since the Reformasi era has experienced several meaningful changes since the separation of the upstream and downstream as reflected in the three regulations mentioned above. Then structurally, two new institutions were created – Badan Pelaksana Migas (BP Migas/now SKK Migas) and Badan Pengatur Hilir Migas (BPH Migas) – via Law Number 4 Year 2009. In the past, all matters related to the above were under Pertamina. An interesting point can also be seen in Law Number 33 Year 2004 on Financial Balancing between the Central Government and Local Governments. This then led to a number

of new complications in the management of natural resources; mainly in terms of management licensing that has high potential to lead to abuses of powers at the local level.

In terms of cooperation with oil and gas companies in Indonesia, two main mechanisms are used in the form of Cooperation Contracts or Kontrak Kerja Sama (KKS) and Sharing Profit Contracts or Kontrak Bagi Hasil (KBH) as well as other contract forms. For the upstream oil and gas business, this is carried out by the Central Government through the Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Migas (SKK Migas). Meanwhile the downstream oil and gas business is carried out by the Central Government through the Ministry for Energy and Resources. There is also local involvement in the oil and gas business in terms of granting licenses/permits that are issued by local governments and participating interest for oil and gas blocks whose contracts have ended.

Then, in terms of the mineral and coal business, these are carried out through Mining Business Permits or Izin Usaha Pertambangan (IUP), People's Mining Permits or Izin Pertambangan Rakyat (IPR), and Special Mining Business Permits or Izin Usaha Pertambangan Khusus (IUPK). IUPs are issued by regents/mayors, governors and the minister depending on the Mining Business Territory or Wilayah Izin Usaha Pertambangan (WIUP). Meanwhile IPRs are issued by regents/mayors to individuals or a group/corporation. The authority of the regent/mayor can also be delegated to the sub-district head (camat) in matters related to the licensing process. Meanwhile, for IUPKs, the relevant party that issues the permit is the Ministry for Energy and Resources. An interesting point is that often the number of IUPs and IPRs increases whenever a local or general election is approaching.

For as long as local autonomy or decentralization has been running, obstacles in the oil and gas sector has been rising. In the past, everything was managed by Pertamina. Now, these activities are carried out via individual implementation. Non-technical problems become the main obstacle in the upstream oil and gas activities in Indonesia. A number of problems that are the same and repeating have not been resolved resulting in Indonesia being categorized in the lowest ranking in terms of conductivity for upstream oil and gas investment. Another interesting point is that since local autonomy has been in place, oil and gas exploration in Indonesia has decreased. This decrease tends to be caused by regulatory complexities. It should be noted that around 373 permits from various institutions both at the central and local levels are needed. This then results in production costs to be increasingly expensive and production activities to drop.

Further consequences include the lack of optimization in the management of oil and gas as well as the failure to meet the national oil and gas consumption. Currently, our consumption reaches 1,600,000 barrels per day. However, we are only able to produce 800,000 barrels per day. This results in a deficit in the supply, forcing us to import. This also has an impact on the value of the Rupiah which always relies on the fluctuations on the world oil price. The deficit in Indonesia's oil supply is predicted to increase as a result of a combination of decreasing ability to produce domestically on the one hand and increasing consumption on the other hand.

After Komaidi Notonegoro, Mohammad Hasan Ansori presented about democratization and the mining political economy in Indonesia. The Director for Program and Research at The Habibie Center stressed the meaning of democratizing the management of mining resources. It contains

several basic principles: (1) benefits to the public from mining resources for the local economy; (2) public understanding about their rights in relation to mining resources and living needs that is ecologically balanced; (3) urgency of local mining to strengthen the economic life and raise community development; and (4) mining resources are not purely a commodity but are controlled democratically and used as a general resource to bring prosperity to the public.



Two problematic issues emerge in the decentralization era in relation to the management of mining, namely corruption and overlapping of mining business permits. These two issues emerged as a result of the optimism and euphoria of local governments who viewed mining as the right and property of the public and local governments. Also was the lack of coordination and administrative standards as well as the lack of monitoring and technical guidance from the Central Government.

Another worrying issue in relation to the management of mining in Indonesia is the issuing of IUP that is often used in the

context of local political economy. Financial support is often given directly to certain local candidates that are considered to have potential to win in local elections. If that candidate does win, then certain mining companies will get prioritized IUPs even if other companies were already granted IUPs. In other words, it is suppressed by certain elected local leaders. It is not limited to this alone, but often financial incentives are given at each stage in order to receive a recommendation for an IUP.

The financial incentives are given directly to relevant officials, both at the executive and legislative branch as well as giving support and other direct incentives to ruling political parties in order to ensure IUPs are granted for a certain company. Other modus that are employed include when a mining company has been granted an IUP, they are expected to deposit a certain amount so that the company can continue to operate. If they do not, their daily operations will be made difficult or be disturbed with.

At the same time, Senior Economist Faisal Basri gave a presentation about the political economy of natural resources management. Faisal Basri revealed that in the discussion on managing natural resources, we will almost always refer to Article 33 of the Constitution of 1945. However, few among us truly understand the meaning of the terminology 'under the powers of the state' (*'dikuasai oleh negara'*). According to Bung Hatta, the meaning of 'under the powers of the state' as stipulated by Article 33 of the Constitution of 1945 does not mean that the state itself becomes the company, business person, or ondernemer. It is more precise, said Hatta, if it is said that under the powers of the state, policies/regulations are made that can smoothen the wheels of the economy, and policies/regulations that ban the exploitation of the weak by those with power/capital.



However, the Constitutional Court's understanding of the definition of 'under the powers of the state' is where one controls all activities from the upstream to the downstream. Beginning from the drafting of policies to its implementation and monitoring. This point is rather erroneous because the most important point is sovereignty, that the state has the authority and influence over management and where implementing parties obey the regulations so that there is benefit for the people. Everything does not have to be carried out by the state in this sense. The reason being that, if that does occur then financial losses in the management of natural resources would result in losses for the people.

In the current government practice, Faisal Basri said a good concrete example of the implementation of 'under the powers of the state' is what is being carried out by the Ministry for Maritime Affairs and Fisheries under the leadership of Susi Pudjiastuti over the last five years. There are three pillars that are put forward by the Ministry

for Maritime Affairs and Fisheries. They are sovereignty, sustainability and prosperity. Sovereignty means protecting the waters so that foreign vessels do not steal fish and conduct other illegal fishing in Indonesian waters and territory. Sustainability means managing Indonesia's sea riches so that it can be enjoyed by Indonesian fisherman and the people including their children and grandchildren. Prosperity means from the result of enforcing sovereignty and sustainability.

Above all, according to Faisal Basri, there must be a renewing of mindsets from all of us in how we look at and use natural resources and energy. These two matters should not be regarded as a commodity, a source of state income, a target for rent-seeking, and a source for foreign currency. Instead, natural resources and energy must be viewed and used as an engine for development and to accelerate industrialization, a means for inter-generation justice, development that is environmentally friendly and for sustainable and secure energy.

The last speaker was Laode Muhammad Syarif. The Deputy Chair of the Commission for the Eradication of Corruption or Komisi Pemberantasan Korupsi presented on what has been carried out by the KPK in relation to the management of natural resources. Before getting to that point, he first presented on the five key tasks of the KPK in accordance with the law, namely: (1) coordinating with authorized institutions in carrying out the eradication of criminal acts of corruption; (2) supervising authorized institutions in carrying out the eradication of criminal acts of corruption; (3) carrying out investigations and prosecutions against criminal acts of corruption; (4) carrying out preventative measures against criminal acts of corruption, and (5) monitoring the organization of the government. Why does the KPK view the management of natural



resources as an important issue? The anti-corruption institution sees natural resources as a state resource that is important and that can bring prosperity. Because of that, if there is any fraud in the management of natural resources it is the same as preventing the realization of prosperity.

The KPK's agenda is focused on preventing corruption in the sector of natural resources management. According to Laode Muhammad, the KPK has carried this out since 2008 when oil and gas became a key focus. Then in 2009 the KPK added the forestry sector as an area for monitoring. Then in 2011 the area for monitoring was widened again to include mineral and coal. Then, since five years ago the focus was also on the maritime and plantation sectors. In 2016, the area of monitoring was extended again to include water as an aspect for preventing corruption. Indeed the intervention of the KPK in the management of natural resources was strengthened through the National Movement to Save

Natural Resources or Gerakan Nasional Penyelamatan Sumber Daya Alam (GNP-SDA). This is a continuation from several activities that have been planned and carried out by the KPK.

Since the KPK has intensively carried out prevention and monitoring of the management of natural resources, it was recorded that the state's non-tax income or *Penerimaan Negara Bukan Pajak* (PNBP) from the forestry sector increased even if our forests are becoming increasingly smaller. Another matter that needs to be known by the public is that since the KPK have stepped up their preventative and monitoring efforts by 30% input, the anti-corruption institution has been responded by the government both at the central and local levels.

Local elections and corruption in the natural resources sector also has a close connection. Formal state institutions become a framework for corruption by having its own rules of the games and norms as well as the implementation of functions that are not in accordance with regulations. Then, the existence of many regulations also results in corruption. Moreover, the regulations can be categorized as systemic corruptive regulations, criminogenic regulations, and vulnerable regulations. These two issues then results in illegal funding and unreasonable exploitation of natural resources that is in the political interests of local elections.

Komisi Pemberantasan Korupsi (Corruption Eradication Commission or KPK) also opened several channels for the public to register complains such as <https://kws.kpk.go.id/> and call center 198. Aside from allowing the public to register complaints, it also provides information on gratification, LHKPN (electronic wealth report), and public information.



Q & A OF SEMINAR

Questions

Yosa (The Indonesian Institute)

1. Related to what Mr. Hasan Ansori mentioned in his presentation, have there been any findings up to now about evaluating law enforcement in the context of deposits in the natural resources sector by businesses to officials or other parties?
2. Related to what Mr. Faisal Basri mention in his presentation, traditional communities have never been given anything in terms of management of natural resources, have there been any economic studies related to measuring the profit/costs of natural resources management to the traditional communities?
3. Related to Mr. La Ode Syarief's presentation, what strategies have been taken by the Corruption Eradication Commission (KPK) regarding the data of

right to cultivate permits (Hak Guna Usaha) that are not shared by National Land Agency (Badan Pertanahan Nasional)?

Answers

La Ode Syarief

Regarding the right to cultivate permits (Hak Guna Usaha) to prevent overlapping management, its important that the permits are clear. In Central Kalimantan province, they already provide transparency regarding the permits. The KPK give recommendations to mark the permit that now exist.

Faisal Basri

Democratization cannot be shared with all people. The law of the jungle is vulnerable to be exploited by big businesses. Maybe we can use certificates that uses the communities' names so that it can be managed and loaned to businesses.

Hasan Ansori

The Government in 2012 through the Presidential Working Unit for Supervision and Control of Development Affairs (Unit Kerja Presiden Bidang Pengawasan dan Pengendalian Pembangunan or UKP4) have already been looking into the issue of those deposits and indeed there have already been some solutions. Further, the One-Map policy has also been recommended. Regarding legal monitoring, actually there is monitoring of business permits. However its not enough because corruption is very difficult to overcome without the wider public role. Corruption in the natural resources sector is worst because the social cost is very big.



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