



## The liability of nickel mining companies for losses suffered by the community due to waste pollution

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### Abstract

Article 67 (1) of Law No. 32 of 2009 on Environmental Protection and Management stipulates that every person has the right to a good and healthy environment. In accordance with this provision, mining companies are required to organize their operations in a manner that protects the community and prevents waste pollution. Nevertheless, instances of environmental pollution and degradation that impact the community are still found. One such activity is nickel mining and processing in the IWIP area, which also causes waste pollution leading to a decline in water quality and adversely affecting the health of communities surrounding the mining operations. The research method employed is normative legal research, which involves an approach based on legislation and a conceptual approach that examines legal principles and legal doctrines. The purpose of this study is to examine the liability of nickel mining companies for waste pollution and the legal actions taken by communities affected by such pollution. The results of the study indicate that nickel mining companies are liable for waste pollution and the losses suffered by communities based on liability for fault whether due to negligence or willful misconduct through obligations for compensation and environmental restoration. Affected communities may pursue non-litigation measures or file civil lawsuits under the Environmental Protection and Management Law (UU PPLH) and Article 1365 of the Civil Code, either individually, through a class action, or via environmental organizations. Therefore, it is crucial for the government to conduct oversight and enforce the law, as well as to enhance supervision of waste management by companies.

**Keywords:** Responsibility, nickel mining, community rights, pollution

### Introduction

Pursuant to Article 1(1) of the Mining Law, mining refers to some or all stages of activities related to the research, management, and exploitation of minerals or coal, including general surveys, exploration, feasibility studies, construction, mining, processing and refining, transportation, and post-mining activities. Nickel mining is considered a critical activity in the transition from fossil fuels to renewable energy in the transportation sector. Current global discourse highlights that large-scale nickel supply is a key requirement for modern societies transitioning to electric vehicles. However, on the other hand, nickel mining activities have negative impacts on the environmental and social conditions surrounding mining sites. Environmental degradation often occurs, and certain communities are forced to bear the brunt of the consequences. In today's world, companies are no longer judged solely on their financial performance, but also on the extent to which they take responsibility for the social and environmental impacts of their operations.

For some communities, the presence of mining companies has a positive impact on increasing income and improving the well-being of the community; however, for other groups, particularly those who work as fishermen, these mines are harmful and cause hardship due to environmental damage and seawater pollution. Waste from nickel mining activities has a significant impact on the environment. The nickel mining and processing operations produce heavy metal residues such as cobalt, iron, and nickel that can contaminate water sources, both surface and groundwater. The location of mines near coastal areas exacerbates the situation because the waste flows directly into the sea. In the

water, this pollution leads to coral reef damage, a decline in fish populations, and threatens marine biodiversity.

Every mining company is required to obtain a permit from the relevant authorities before conducting mining operations. Indonesian law explicitly requires mining corporations, including those involved in nickel mining, to prevent or mitigate pollution, restore the environment, and compensate affected communities. The obligations of nickel mining companies extend beyond simply conducting operations in accordance with the granted permits; they also include a legal duty to avoid unlawful acts and to provide compensation if communities suffer harm due to the direct or indirect impacts of mining activities.

One of the largest areas of nickel mining activity in Indonesia is Central Halmahera, particularly the industrial zone of PT Indonesia Weda Bay Industrial Park (IWIP). Although the presence of this mining industry has brought investment and infrastructure development, these activities have also caused environmental damage. According to WALHI North Maluku, nickel mining in Central Halmahera has cleared 26,100 hectares of primary forest over the past decade. This deforestation has disrupted the functions of the upstream ecosystem, ultimately leading to flooding and water pollution in Weda Bay. According to Kompas.id, fishermen in Weda Bay have seen a decline in their catch, while public confidence in fishery products from North Maluku has fallen following the discovery of heavy metals in the region's marine fish. Nickel mining and processing activities in the IWIP area have also led to a reduction in fishing grounds and damage to mangroves, seagrass beds, and coral reefs due to sedimentation and land-use conversion.

This is inconsistent with Article 65(1) of the Environmental Protection and Management Law, which stipulates that “Every person has the right to a good and healthy environment as part of their human rights.” It is also enshrined in Article 65 Paragraph (2) of the Environmental Protection and Management Law, which states: “Every person has the right to environmental education, access to information, access to participation, and access to justice in fulfilling the right to a good and healthy environment.” Therefore, communities that have suffered losses may potentially seek accountability for the losses incurred, as well as for the negative impacts of mining caused by the relevant company, as the company is deemed negligent in fulfilling the rights of the surrounding community in accordance with the Environmental Protection and Management Law.

### **Research Method**

The research method used in this paper is normative legal research, conducted through a review of literature or secondary data. This study aims to analyze the liability of nickel mining companies for the impacts of mining, as well as the legal remedies available to communities that have suffered losses as a result of these activities. The approaches used are the statutory approach and the conceptual approach. The legal sources consist of primary, secondary, and tertiary legal materials collected through a literature review by tracing and examining legal materials relevant to the research problem.

### **Discussion**

#### **a. Regulations on Corporate Legal Liability for Nickel Mining Activities**

Natural resources play a strategic role in supporting economic growth. Indonesia, endowed with strategically valuable mineral resources, possesses significant potential in the mining sector. Nickel, in particular, has garnered attention in recent years due to a sharp increase in export volumes. Given the significant potential in the mining sector, an understanding of mining law is essential as the normative foundation governing the entire spectrum of mining activities. As an effort to ensure legal certainty and the orderly conduct of mining activities, the state’s involvement is manifested through regulation and the issuance of permits as a form of legal legitimacy for mining business activities carried out by business entities. The government, through the Minister of Energy and Mineral Resources, also grants Special Mining Business Licenses (IUPK) to business entities incorporated under Indonesian law, including state-owned enterprises, regionally-owned enterprises, and private enterprises. In this context, the term “private enterprise” encompasses both entities established under domestic investment frameworks and those operating under foreign investment frameworks.

The enactment of the Mineral and Coal Law brought about fundamental changes in mining licensing, including the introduction of the Mining Business License (IUP) issued for Mining Business License Areas (WIUP), as well as the abolition of the contract of work mechanism for investors applying for general mining activities. In addition, the regulation also governs the existence of the Community Mining Permit (IPR) as the legal basis for conducting mining activities in Community Mining Areas (WPR), as well as the Special Mining Business Permit (IUPK), which

is intended for the conduct of mining activities in Special Mining Business Permit Areas (WIUPK). Before obtaining a mining business permit, companies must meet various administrative and environmental requirements, including the preparation of an Environmental Impact Analysis (AMDAL).

The regulations governing various mining licensing schemes require specific legal entities to hold the licenses, making the classification of business entities based on their legal form a fundamental aspect of mining law. From the perspective of legal form, companies or business entities can be divided into two categories: business entities with legal personality and business entities without legal personality. Business entities with legal personality include entities owned by the private sector, such as Limited Liability Companies (PT) and cooperatives, as well as entities owned by the state, including state-owned enterprises (Perum) and state-owned limited liability companies (Persero).

In addition to environmental permitting requirements, nickel mining activities also require clarity regarding the legal form and status of business entities as legal persons. Under Indonesian mining law, companies as legal entities must comply with the provisions of the Limited Liability Companies Act (UU PT). Furthermore, the Limited Liability Companies Act provides a legal basis regarding corporate responsibility toward the environment. In accordance with Article 74(1) of the Limited Liability Companies Act, which stipulates that “A company conducting business activities in the field of and/or related to natural resources is obligated to fulfill its Social and Environmental Responsibilities.” This provision is reinforced by Article 2 of Government Regulation No. 47 of 2012 on the Social and Environmental Responsibility of Limited Liability Companies, which affirms that every company, as a legal entity, has an obligation to fulfill its environmental responsibilities. If these obligations are not met, the company may be subject to sanctions in accordance with applicable laws and regulations.

It must be emphasized that in the management of mining materials, legal provisions must serve as the primary guideline and be consistently enforced, so that the law can function effectively in preventing pollution and environmental damage. This is the situation faced by coastal communities in Weda Bay, which is adjacent to nickel industry development areas, including facilities within the Indonesia Weda Bay Industrial Park (IWIP). Field reports and laboratory tests released by independent research institutions indicate a pattern of increasing water turbidity, changes in water color, and the detection of metal concentrations (mercury, arsenic) in fish samples collected by local fishermen. These reports link these findings to dredging activities, coastal reclamation, waste disposal, and sediment runoff from mining and processing operations. They demonstrate that these activities (mining and processing) have caused tangible harm to the community. These facts point to potential negligence in waste management and operational oversight, thereby giving rise to the company’s legal liability.

#### **b. The Responsibility of Nickel Companies Toward the Community Due to Waste Pollution**

Corporate responsibility is a consequence of every action and policy implemented in a company’s business operations, which must align with moral values, ethics, and

applicable legal provisions. Responsibility arises from legal rules that impose obligations on legal entities, with the threat of sanctions if those obligations are not fulfilled.

Corporate responsibility, as stipulated in the Limited Liability Companies Act (UU PT), defines the form of corporate responsibility toward the communities surrounding the company's operational sites. This applies particularly to companies operating in sectors related to natural resources, as regulated in Article 74(1) of the Limited Liability Companies Act. Regarding environmental matters, the Environmental Protection and Management Act (UU PPLH) provides a more comprehensive legal framework regarding liability for environmental pollution and damage. Based on the provisions of Article 87(1) of the Environmental Protection and Management Law.

The person in charge of a business and/or activity that commits an unlawful act in the form of environmental pollution and/or destruction, resulting in harm to others or the environment, is required to pay compensation and/or take specific remedial actions. The payment of compensation to the affected parties does not mean that the owner of the business or activity is exempt from the obligation to take specific legal actions to restore the environment that has been polluted by their actions. Such specific legal actions may include:

- a. Installing or repairing wastewater treatment units so that the wastewater meets the specified environmental quality standards.
- b. Restoring environmental functions.
- c. Eliminating or removing the causes of environmental pollution and/or damage.

Nickel mining companies are legally obligated to manage waste responsibly in accordance with applicable laws and regulations. This is to prevent waste pollution that causes harm to the community. Pursuant to Article 1365 of the Civil Code, any unlawful act that causes harm to another party imposes a duty on the perpetrator to provide compensation for such harm. Furthermore, civil liability in cases of environmental pollution focuses on the relationship between the business operator and the community affected by the pollution. The company is obligated to pay compensation for both material and immaterial damages caused by mining waste.

### **c. The Impact of Nickel Mining Waste Pollution on the Community**

Provisions regarding the types and forms of environmental damage are set forth in greater detail in Article 3 of Regulation of the Minister of Environment of the Republic of Indonesia No. 7 of 2014 on Environmental Damage Resulting from Pollution and/or Environmental Degradation.

According to Muhammad Erwin, environmental pollution causes damage that can take the form of:

- a. Economic and social losses
- b. Health problems.

Often, the damage caused by pollution results from the discharge of liquid waste, tailings, and hazardous chemicals such as mercury and cyanide into water bodies, turning sources of clean water into vectors for disease. Nickel mining operations that lack proper waste management have the potential to cause environmental pollution. Such

pollution has a direct impact on the lives of communities living near mining areas, resulting in both material and immaterial losses.

Material damages may consist of actual losses suffered and lost profits. For example, loss of income for fishermen due to reduced catches, costs of purchasing clean water as a substitute, medical treatment for pollution-related illnesses, or replacement of damaged fishing gear or irrigation equipment. Non-material damages may include fear, pain, loss of enjoyment of the environment (loss of amenity), and the right to a healthy environment. These losses arise from the actions or negligence of business operators who violate their legal obligations to preserve and protect the environment. Therefore, the relevant basis for liability is an unlawful act as stipulated in Article 1365 of the Civil Code, which allows affected communities to file claims for compensation for the resulting environmental pollution and damage.

According to Munir Fuady, there are three concepts of compensation for unlawful acts recognized by law, as follows:

- a. Nominal damages, if there is a serious unlawful act such as one involving an element of intent but it does not result in actual harm to the victim, the victim is awarded a specific sum of money in accordance with the principles of justice, without calculating the actual amount of the loss.
- b. Compensatory damages are damages in the form of a payment to the victim for the actual losses that the victim has actually suffered as a result of an unlawful act. This type of damages is referred to as actual damages.
- c. Punitive damages are a form of compensation awarded in a large amount that exceeds the actual amount of the loss. The large amount of such compensation is intended as a punishment for the perpetrator.

### **d. Legal Action Taken by the Community in Response to Waste Pollution Caused by a Nickel Mining Company**

The law provides mechanisms for affected communities to mount a legal challenge and hold companies accountable. Furthermore, the mechanisms available to communities for mounting a legal challenge, or the legal remedies that may be pursued, are set forth in Article 84 of the Environmental Protection and Management Law:

1. Environmental disputes can be resolved through the courts or through alternative dispute resolution.
2. The choice of method for resolving environmental disputes is made voluntarily by the disputing parties.
3. Legal action may only be pursued if the chosen alternative dispute resolution process is deemed unsuccessful by one or more of the disputing parties."

It is further explained that civil enforcement of environmental law is pursued when the plaintiff suffers economic losses and environmental damage that directly impact the area where they reside. Under the civil enforcement mechanism for environmental law, if efforts to resolve the dispute out of court fail to reach an agreement, one or more parties have the right to file a lawsuit through the judicial process. Environmental law enforcement under civil law can be pursued through two mechanisms: out-of-court (non-litigation) and through the courts (litigation).

### Mediation (Non-litigation)

Out of court resolution of environmental disputes may be pursued through consultation, mediation (using the services of a mediator), and arbitration (using the services of an arbitrator) in order to reach an agreement regarding::

1. The form and amount of compensation;
2. Remedial measures for pollution and/or damage;
3. Specific measures to ensure that pollution and/or damage does not recur; and/or
4. Measures to prevent the occurrence of negative impacts on the environment (Article 85, Paragraphs (1) and (3) of the Environmental Protection and Management Law)

The choice of environmental dispute resolution is made voluntarily by the disputing parties (Article 84(2) of the Environmental Protection and Management Law). As an effort to resolve environmental disputes out of court, the public may establish dispute resolution service providers as stipulated in Article 86 of the Environmental Protection and Management Law, which states:

1. The public may establish independent and impartial institutions to provide environmental dispute resolution services.
2. The national government and local governments may facilitate the establishment of independent and impartial institutions that provide environmental dispute resolution services.
3. Further provisions regarding institutions that provide environmental dispute resolution services are set forth in a Government Regulation.

### Court (Litigation)

Resolving environmental cases through the court system is a last resort when out-of-court settlements (consultation, mediation, arbitration) have failed (Article 84 (3) of the Environmental Protection and Management Law). In this environmental dispute resolution process, judges are still expected to act as mediators. Thus, in their primary duty to examine and adjudicate cases, judges have two main functions: the judicial function and the role of mediator.

### Conclusion

The liability of nickel mining companies for waste pollution is enforced through compensation and environmental restoration obligations based on fault-based liability. Companies are liable for any unlawful acts, whether committed intentionally or through negligence, that result in environmental pollution and harm to the community. Communities affected by nickel mining waste pollution may pursue legal remedies through non-litigation or litigation channels, such as civil lawsuits, the application of strict liability, and class actions. Environmental law provides a strong legal basis for communities to seek compensation and environmental restoration due to nickel mining waste pollution.

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