



Social Movement as an Organic Intellectual in Fighting for Environment Justice in East Borneo

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Abstract

Samarinda is one of areas established by Energy, Resource, and Mineral Ministry to belong to mining business region. For that reason, Samarinda City Government issues coal mining management policy according to the authority it has. This research aimed to explain organic intellectual social movement from “*Gerakan Samarinda Menggugat*” (GSM) (English: Movement of Samarinda Sue”). This study was an evaluative qualitative research, referring to Antonio Gramsci’s organic intellectual theory. Techniques of collecting data used were observation, in-depth interview, and documentation. Data validation was conducted using Triangulation, and data analysis using an interactive model. The result of research showed that the effect of coal mining license sale overlapping between population-dense areas, among others, resulted in ex-mining holes leaving poisonous water and heavy metal that has taken child life toll in Samarinda City. Departing from the situation encountered by people due to injustice and arbitrary attitude to people, *Gerakan Samarinda Menggugat* (GSM) was born. The sue was filed by 19 Samarinda City citizens affiliated with *Gerakan Samarinda Menggugat* (GSM) fighting for environment justice using Citizen Law Suit.

Keywords: Effect of Coal Mining Industry; Citizen Law Suit; Social Movement; Organic Intellectual; Environment Justice

Introduction

East Borneo is one of main provinces producing coal, in which a total of 1488 Mining Business Licenses (*Indonesian: Ijin Usaha Pertambangan*, thereafter called IUP) are published by local government, either province or regency/city. In addition to Mining Business License, there is also mining license published by central government through Ministry of Energy, Resource, and Mineral (*Indonesian: Kementerian ESDM*) called *Perjanjian Karya Pengusahaan Pertambangan Batubara* (PKP2B), in which there are 33 PKP2Bs in East Borneo. Total width for IUP is 5.4 millions Ha and that for PKP2B is 1.8 millions Ha, so that total mining lot width is 7.2 millions Ha (70%) out of 12.7 millions Ha of East Borneo Province land. It has not been accumulated with other exploitative commodity licenses such as timber concession business license (*Izin Usaha Pengusahaan Sektor Perakayuan* or IUPHHK-Kayu), Work Area (Oil and Gas), Industrial Park Forest (*Hutan Taman Industri*) and *Sawit Plantation License*, so that East Borneo’s land is replete with mining lot.

Samarinda City is one area determined by *Kementerian ESDM* to belong to mining business area, with which Samarinda City Government issued Coal Mining Management Policy according to the authority owned. Mining and Energy Service of Samarinda City reports that there are 5 PKP2Bs issued completely by Central Government 1 IUP by Province Government, and 63 IUPs by Samarinda City Government during 2014, with the width of 33.48%, 32.5%, and 38.37%, respectively. The total mining area width has been 71% out of total Samarinda City region's width. As Provincial Capital of East Borneo, Samarinda has characteristics different from other regency/city areas in East Borneo having potential coal mining (*Kementerian ESDM.*, 2013).

Samarinda's population number is the highest one in East Borneo. The result of census in 2015 shows that the population number of Samarinda is 812,597 people. The largest population number and the wide mining business area make the green public space in Samarinda City is only 5% today, while Law No.26 of 2007 about Spatial Layout mandates green public space of at least 30% of city's area. Considering this landscape and ecological condition of Samarinda, it is impossible to publish more Mining Business License that will directly expand the mining business area (BPS Kaltim., 2015).

The effects of license sale include overlapping between areas, and mining location in population-dense settlement, among others, resulting in ex-mining holes leaving poisonous water and heavy metal and having taken life toll of 28 children sunk in those holes consisting of 15 children in Samarinda City, 10 in Kutai Kertanegara, 2 in Pasir Panajem Utara, and 1 in Kutai Barat. All of life toll-taking incidence in the mining holes have never been solved completely legally, if any, the punishment imposed is too light, for example in Ema and Eza case, in which the punishment imposed is only 9 (nine)-month imprisonment, while other cases have never been followed up. The weak defense and settlement of cases related to mining hole is due to incomplete work of many stakeholders such as Police Officer, company, city government, provincial government and even ministry. The absence of good will to save environment from the effect of coal mining hazard particularly on the future of Samarinda Children is considered as the main reason of similar cases to occur repeatedly in the last 5 years (JATAM., 2017).

An attempt to be taken to demand for the people's right to the state's guarantee, in this case Samarinda City Government, over their right to good and healthy environment and environmental effect of IUP, the mining harmful to society life, the society is entitled to file lawsuit representing a group for individual's interest and/ or Living Environment Interest and/ or Damage. This people's suing right is governed in Article 91 of Living Environment and Management Law (*Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup* or UUPPLH). The requirement of people's lawsuit is that there are shared fact or event, legal foundation, and lawsuit type among group representatives and members. In this trial, essentially Samarinda City people suing should have shared legal fact, that they are the victim of environmental damage effect due to mining, for example, flood. It should explain the chronological history of Samarinda City post-mining and pre-mining, and the loss suffered from by city citizen from any aspect with calculation that can be proved in the trial later. The legal foundation required is compensation and environmental recovery referring to Article 87 of UUPPLH. Meanwhile, the citizen lawsuit procedure refers to Perma No.2 of 2002.

Article 92 clause (1) of UUPPLH mentions that (1) in the attempt of implementing of responsibility for living environment protection and management, living environment organization is entitled to file lawsuit for the sake of conserving the function of living environment. Then, in filing suit right, living environment organization is limited to a demand for taking certain action without demand for compensation, except real cost or expenditure during filing the lawsuit. So, essentially if the movement of Samarinda people suing mining conducted by NGOs such as Jatam Kaltim, it may not demand for compensation. It may demand for the attempt of recovering the damaged environment due to mining.

NGO or living environment organization in this case can file lawsuit when the following requirements are fulfilled:

1. It is a legal entity.
2. It confirms in its bylaw that the organization is established for the sake of conserving the function of living environment.
3. It has conducted actual activity according to its bylaw at least for 2 (two) years.

The requirement above becomes a NGO's main reason of filing lawsuit over living environment. The amendment to Law No. 23 of 1997 about PLH with Law No.32 of 2009 is governed in Article 90 of UUPH about Government and Local Government's lawsuit right. In this case, government and local government institutions responsible for living organism are authorized to file the lawsuit for compensation and certain action against the business and/or activity's action resulting in living environment pollution and/or damage leading to living environment loss. Actually, referring to Article 28H clause (1) of UUD 1945 (1945 Constitution), as the holder of people's mandate guaranteeing the citizens' right to healthy and good environment, Samarinda City Government should take more proactive measures. In this case, *Gerakan Samarinda Menggugat* (GSM) files lawsuit against local government to ask the mining business's accountability for the damage it results on the environment.

Antonio Gramsci's organic intellectual theory is used to be a collective awareness and good ideology, as it can accommodate other groups' interest and can attract other groups into ours. Indirectly, consciously or unconsciously Gramsci has entrapped himself into biased interest of (organic) intellectual interest. From this intellectual group, progressiveness will grow very rapidly, recalling that they have ability of organizing mass. Intellectual group consists of two areas: theory (traditional intellectual) and connects it to social reality (organic intellectual). Organic intellectual, as such, is the intellectual who is consciously capable of connecting theory to social theory existing, and it joins revolutionary groups to support and to counter hegemony in a planned transformation. It is a big awareness for the environmentalist, in this case Samarinda City people, to participate in the public, to realize sustainable action gradually. This research aims to describe the importance of Social Movement as Organic Intellectual Fighting for Environment Justice in East Borneo.

Methodology

This qualitative research with case study approach was taken place in Samarinda City, East Borneo from September 2017 to February 2018. Primary data was obtained from 17 informants consisting 2 key informants, 12 main informants, and 3 supporting informants. Data obtained from in-depth interview, observation, and written document was analyzed using typology technique of qualitative analysis. Data validation was carried out using data source triangulation by matching the result of interviews with one informant with that with others including observing the informants' behavior and studying document related to WPA (Yin., 2008; Milles et al., 2014).

Result and Discussion

The effect of Coal Mining Industry

Nearly all of Coal Mining Business Licenses (IUPs) in East Borneo are published around Local Leader Election (*Pilkada*). Having been elected, billions rupiah fund used to fund the campaign for *Pilkada* should be covered by the winners. It has been a common secret that Regent and Mayor become money source for political party. They are representatives of Political Party. It is unsurprising that IUP's recipients are those formerly constituting family, Success Team rear guard during *Pilkada*, and colleagues in Political Party.

Gerakan Samarinda Menggugat (GSM) shows the interests of mining business performers, politicians, and both local and national government that on the one hand have resulted in parasitic relationship sucking the people and state's money. It can be seen from data of Anti-Corruption Commission (2016) showing that 60 percent of 1400 mining companies in East Borneo have not paid yet reclamation guaranty fund. Moreover, 1205 IUPs in East Borneo have not paid yet the permanent due and royalty of 335 billion rupiah and 28 millions dollar.

The parasitic relationship makes Government as if entrusting development responsibility to coal mining companies. Nearly all of life need fulfillment affairs are transferred to extractive industry to imply that this industry brings about welfare. Meanwhile, actually the fulfillment of water, electricity and job opportunity needs so far is directed to cater to industry's interest. Water is replete with mining holes left without cover, electricity is prioritized to meet industry's need, and so is low-cost laborer that can work as it is subsidized with women laborer in the mining workers' family. This extractive industry keeps the state far away from its people. The relationship is getting farther between State and people, at least in the last 10 years, in which law infringement committed by mining company is ignored. As a result, the problems come alternately, without solution, around mining circle area.

Gerakan Samarinda Menggugat (GSM) Citizen Lawsuit

Social movement is born from a situation encountered by society due to injustice and arbitrariness against the people. In other words, social movement is born as reaction to something unexpected or a wish for the change of existing policy considered as injustice.

Article 28 H clause (1) of 1945 Constitution mentions that every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care. It is the most essential reason for Samarinda people to file lawsuit against local government related to negative effect of coal mining.

Thus, every citizen on behalf of public interest can sue State or government or whoever committing unlawful action, actually harming the public interest and the society's welfare. In *actio popularis*, the right to file lawsuit for citizen on behalf public interest is unconditional, so that the one taking initiative to file lawsuit should not experience the loss directly and does not need special authorization from the members of society he/she represents.

Considering the study on basic objective, definition, and limitation of Citizen Law Suit aforementioned, it can be concluded that Citizen Law Suit has the following characteristics:

1. *Citizen Law Suit* is individual's or citizen's access to filing lawsuit to the Court for and on behalf of all citizen's or public interest.

2. *Citizen Law Suit* is intended to protect citizens from the potential loss due to some action or state or state authority's negligence.
3. *Citizen Law Suit* authorizes the citizens to sue the state and governmental institution infringing the law or failing in fulfilling its obligation in implementing the law.
4. Individual citizens becoming the plaintiff in *Citizen Law Suit* should not prove the presence of real or tangible direct loss.
5. Generally, the court tends to be reluctant to the demand for compensation if *Citizen Law Suit* is filed.

Lawsuit filed by 19 Samarinda people affiliated with *Gerakan Samarinda Menggugat* (GSM) is the first Citizen Law Suit in Indonesia in living environment and climate change field. This citizen's lawsuit starts with the notification sent to the defendants through a letter No. 01/GSMNot/01/2013 dated January 31, 2013 concerning Notification about Citizen Law Suit Related to Coal Mining Licensing Policy Contributing to Climate Change and Citizen's Vulnerability due to Climate Change.

The suit is filed in the form of Citizen Law Suit against Samarinda City government for its negligence in publishing Mining Business License (IUP) before all requirements have not been fulfilled yet. Government publishes Decision before all requirements have not been fulfilled, for example, there has been no environment document such as AMDAL and RKL/UPL, truth and reclamation collaterals have not been deposited, and etc, indicating that actually many coal IUP-holding employers in Samarinda City are not feasible to run mining business and potentially result in environment damages such as flood, drought, water and air pollution, harvest failure, landslide, broken-down embankment, and even 28 children sunk in coal mining holes.

Conclusion

The absence of good will to save environment from the effect of coal mining hazard particularly on the future of Samarinda Children is considered as the main reason of similar cases to occur repeatedly in the last 6 years. Departing from the situation encountered by people due to injustice and arbitrary attitude to people, *Gerakan Samarinda Menggugat* (GSM) is born. The sue is filed by 19 Samarinda City citizens affiliated with *Gerakan Samarinda Menggugat* (GSM) fighting for environment justice using Citizen Law Suit.

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