

The operation permit for PT. MSM and TTN – a chronology of government mal – administration, misuse of office and corruption

The EIA/AMDAL documents of the two companies, PT MSM and PT TTN, were officially rejected by the Governor of North Sulawesi on February 2nd, 2007 in his letter no: 660/209/Sekr addressed to the Ministry of Energy and Minerals (ESDM) and the Ministry For Environment (KLH)¹. The Governor with this letter made use of his right of intervention to the EIA in reply to the letter of the Department for Environment dated December 8th, 2006 no: B-8382/Dep.I/LH/12/2006. On April 11th, 2007, the Minister for Environment released his letter of rejection of the EIA/AMDAL of MSM/TTN. Both letters are according to and in fulfillment of the EIA/AMDAL regulations as stated in Government Regulation 27/1999 relating Amdal.

Still: In March 2008, two letters - no. 42 and 44.K/30/DJB/2008 dated 5 and 11 March – issued by the Ministry For Energy And Mineral Resources (ESDM), and signed by the director general, Simon Sembiring, allow the two companies to enter the construction stage of their government contract². According to the ESDM the legal period of 75 days of responding to the EIA proposal (§ 20 (1) and (2) Government Regulations PP No 27/1999) was outdated, thus the EIA has to be regarded as approved. The ESDM regards the letter of the Ministry For Environment issued on April 11th, 2007, denying AMDAL approval as of no legal relevance, neither it accepts the governor's rejection.

The permit issued by the director general of the ESDM must be seen as a serious case of government mal - administration, because it purposefully misinterprets the § 20 (1) and (2) Government Regulations PP No 27/1999 and dismisses the rejection of the Governor of the Province North Sulawesi as well as the denial of the AMDAL by the Ministry For Environment. In its letter 44.K/30/DJB/2008 it explicitly takes into account instead "the approval of eight village and community heads in the mining surroundings". As if the impact of a large scale mine like Toka Tindung was limited to a number of villages in the immediate neighbourhood!

Besides that the ESDM approval is not in accordance with the Indonesian Constitution from 1945 § 17 (3), § 18 (2), § 18.B (1), § 28.H (1), § 28.I (3) and (4), §32 (1), and § 33 (1) and (4). It is also in violation of Constitution Undang-Undang Nomor 32 regarding provincial autonomy and in violation of Constitution Undang-undang Nomor 23 regarding environment management, also in violation of the Government Regulations PP 27/1999 relating Amdal.

On the provincial level (Provinsi Sulawesi Utara) the decree of the ESDM is violating the provincial usage zone plans (Tata Ruang), as it collides with the medium term usage plans of the Province North Sulawesi which don't allow mining in the area of Toka Tindung. Furthermore the permit invites social unrest in the area concerned as there's a broad majority of coastal people who reject the mining plans of PT. MSM and TTN.

PT MSM indeed has a reputation for practising the politics of divide et impera, not only on the village level but all levels right over the district, regency, province onto the ministerial level in Jakarta. MSM has actively encouraged government officials to perform mal – administration, misuse of office and receive bribes.

The same relates to the Ministry of Energy and Minerals, which is famed in Indonesia to further enterprises destructive of the environment, violating human rights of the traditional people and bringing catastrophes over the people in the receiving areas. If it comes to the worst, like in the Sidoarjo area of East Java where Bakrie enterprise has caused a whole region to be buried under hot mud, the ministry doesn't take on responsibility for recklessly issuing operation permits.

Manado, March 23rd, 2008.

Yayasan Suara Nurani (YSN)

Aliansi Masyarakat Menolak Limbah Tambang Sulut (AMMALTA North Sulawesi)

References: ESDM Letter 44.K/30/DJB/2008, March 11th 2008, attached as a jpg – file and Governor Letter 660/209/Sekr, February 2nd 2007 attached as a pdf file

Kronologi Mal Administrasi Ijin Operasi PT MSM dan PT TTN

Dokumen Amdal PT MSM dan PT TTN, secara resmi ditolak Gubernur Sulawesi Utara tanggal 2 Februari 2007 Nomor: 660/209/Sekr. Surat Gubernur tersebut dilakukan untuk menjawab surat permintaan tanggapan dari Kementerian Negara Lingkungan Hidup tanggal 8 Desember 2006 Nomor: B-8382/Dep.I/LH/12/2006. Pada tanggal 11 April 2007, Menteri LH menerbitkan Surat tentang penolakan Amdal PT MSM/TTN. Kedua surat tersebut adalah kelengkapan untuk memenuhi ketentuan Peraturan Pemerintah Nomor 27 Tahun 1999 tentang Amdal.

Pada Maret 2008, Departemen ESDM, telah menerbitkan ijin operasi PT MSM dan PT TTN yang ditandatangani oleh Dirjen Mineral & Panas Bumi (Minerba) Simon Sembiring. Dasar hukumnya, menurut Dirjen Minerba adalah pasal 20 ayat (1) dan (2) PP Nomor 27 Tahun 1999, yaitu batas waktu selambat-lambatnya 75 hari sejak Amdal dinyatakan diterima, Surat Menteri LH sudah harus diterima oleh Dep. ESDM. Surat Menteri LH tanggal 11 April 2007, dianggap menyalahi ketentuan ini.

Ijin Dirjen Minerba ESDM adalah bentuk mal administrasi negara, karena dilakukan dengan menafsirkan secara keliru pasal 20 ayat (1) dan (2) PP Nomor 27 Tahun 1999 dan secara sengaja mengabaikan penolakan Gubernur Sulut dan penolakan Menteri Lingkungan Hidup yaitu dianggap tidak pernah ada. Amdal MSM/TTN dianggap otomatis sah jika Menteri LH terlambat memberitahu Dep ESDM (lewat 75 hari).

Selain itu, ijin Dep ESDM tersebut bertentangan dengan konstitusi negara RI yaitu Undang-undang Dasar 1945 pasal 17 ayat (3), pasal 18 ayat (2), pasal 18 ayat (2), pasal 18.B ayat (1), pasal 28.H ayat (1), pasal 28.I ayat (3) dan (4), pasal 32 ayat (1), dan pasal 33 ayat (1) dan (4). Juga bertentangan dengan Undang-Undang Nomor 32 tentang Otonomi Daerah dan Undang-undang Nomor 23 tentang Pengelolaan Lingkungan Hidup, serta bertentangan dengan jiwa dan semangat PP 27 tahun 1999 tentang Amdal.

Di tingkat daerah (Provinsi Sulawesi Utara), ijin Dep ESDM tersebut bertentangan dengan Rencana Pembangunan Sulut Jangka Menengah (RPJM), serta bertentangan dengan Tata Ruang Sulut. Selain itu, memicu instabilitas wilayah Sulut karena merupakan politik devide et impera (adu domba) ke masyarakat pro dan kontra).

PT MSM memang memiliki karakter dan reputasi yang cenderung mendorong pejabat negara di Indonesia untuk melakukan perbuatan mal administrasi dan penyalahgunaan wewenang, contohnya dermaga illegal di Teluk Rinondoran yang merampas hak atas mata pencaharian nelayan, puluhan perkara tanah di Pengadilan Negeri Manado yang timbul karena PT MSM menguasai tanah masyarakat secara melawan hukum, kriminalisasi masyarakat dan aktivis lingkungan karena menentang operasi illegal PT MSM, penganiayaan masyarakat dengan menggunakan preman sewaan, dan lain-lainnya. Bahkan ketika Komisi VII DPR RI meninjau lokasi Tokatindung (2006), MSM menyewa ratusan preman untuk menghadang rombongan Komisi VII di depan lokasi proyeknya.

Sebagai referensi, Departemen ESDM, memang terkenal di Indonesia sebagai instansi perusak lingkungan yang paling tidak bertanggung jawab. Antara lainnya, Departemen ESDM sebagai pemberi ijin PT Lapindo Brantas, ternyata sama sekali tidak menunjukkan tanggung jawab ketika lumpur panas mulai menenggelamkan Provinsi Jawa Timur dimana puluhan ribu orang kehilangan rumah, sekolah, dsb.

Manado, 23 Maret 2008.

Yayasan Suara Nurani (YSN)

Aliansi Masyarakat Menolak Limbah Tambang (Ammalta) Sulut