

Buyat Case - Economic Growth versus Environment

Written by Todung Mulya Lubis



The Buyat Bay case reflects the never ending tension between the concept of economic growth on the one hand and that of environmental management on the other. This is a classical tension that can never be satisfactorily resolved, although people have, on many occasions, talked about the concept of sustainable development, which is, in essence, the blend of economic growth and environmental management.

It must be admitted, however, that this concept of sustainable development is yet to be fully accepted on the ground. Operational interpretation of this concept is always in conflict with reality, which is, unfortunately, not always in tune with the concept of sustainable development. This is particularly so in developing countries engaged in the pursuit of high rates of economic growth, though eventually at the expense of environmental management.

The ratification of Government Regulation in Lieu of Law No. 1/2004, for example, allows mining in protected forests. The Indonesian government argued that it feared it would be sued in an international court of arbitration if it prevented mining companies from pursuing their operations in protected forests. Although, obviously, the concept of economic growth played a dominant role in all of this.

In favor of and in the name of foreign investment, which will bring in capital and foreign exchange, the government gave permits to mining projects in protected forests even though they violated the prevailing laws.

Buyat Case - Economic Growth versus Environment

Written by Todung Mulya Lubis

The Buyat Bay case shows that the pendulum has swung toward environmental management, as evident from the conclusion that the police have arrived at to the effect that Buyat Bay, as a number of environmental organizations have alleged, has been contaminated.

This alleged contamination by PT Newmont Minahasa Raya has been blown up in such a way by the media so that this contamination, if it is true, has become the sole responsibility of PT Newmont Minahasa Raya.

In fact, there are also illegal miners with little awareness of the environment operating in this area. I am not saying that these illegal miners are responsible for the contamination of the bay but it is only fair, I think, if we carefully calculate the contribution of all parties involved in this contamination case.

Unfortunately, reports about the contamination of Buyat Bay, particularly after the release of a report compiled by a technical team from the Office of the State Minister for the Environment, has directly implicated PT Newmont Minahasa Raya as the culprit in this contamination.

It is only proper, therefore, that the government, despite the fact that it will still have to verify this allegation by involving many of its agencies, should file a lawsuit against PT Newmont Minahasa Raya. Such a lawsuit is a logical next step that must be pursued. This case, clearly, should not be given room for an out-of-court settlement.

I believe that taking the Buyat Bay case to court is a sound development. We need a court ruling that will truly be the fruit of a smart, careful and fervent legal fight. With the support of strong and accountable scientific and theoretical evidence, the government must present to the court this environmental contamination.

The published findings of the technical team about the contamination of Buyat Bay must be put to the test during the trial. The government has the burden of proof and it is here that this legal fight is expected to provide us with a standard reference for future environmental cases.

It is also required of PT Newmont Minahasa Raya that it should counter the government's

burden of proof and put up a legal defense against all charges.

Various studies conducted by the World Health Organization and the Commonwealth Scientific Industrial Research Organization also need the support of smart scientific evidence. It is during the legal fight in the court of law that “truth” will be put to the test, of course with reference to the prevailing international standards and jurisprudence. In this context, this legal fight should open up all avenues for proving the case, including summoning experts from home and abroad.

Arguments of the broadest scope possible must be allowed and constraints based on technical and procedural grounds must not be allowed to emerge.

These constraints could include, for example, the refusal to hear statements from foreign experts or to accept and consider affidavits. I suggest that in the court proceedings, all such constraints be removed.

If the two parties can fight it out in the court of law by exerting their best and with great fervor, and if the judges can smartly learn from this case, we can remove the perplexity on the part of the public, who seem to fail to understand the government’s lack of firmness in its attitude and its wavering stance.

Just take a look at what the Office of the State Minister for the Environment did with the release of two different reports on the same case. Was the environmental contamination standard adopted by the former state minister different from those of the new state minister?

Look at the conflicting statements several ministers made before the technical team released its report. Look at the critical note on the report given by one government agency. It sounds like dissenting opinions. All this simply proves that the fight is still far from over for us in our formulation of policies on environmental affairs.

It is only proper that all parties involved should restrain themselves and refrain from politicizing the Buyat Bay case. Let the judges make their ruling and let the parties involved and their lawyers fight with great fervor. Only then may we hope to see a court ruling that will serve as a

Buyat Case - Economic Growth versus Environment

Written by Todung Mulya Lubis

standard reference for solving environmental problems in future.

There may be some conventional wisdom that will ease the classical tension between economic growth and environmental management. Perhaps there will be a better and more definitive understanding about what is called sustainable development, a concept allowing room for all parties -- the government, businesspeople, civil society and the public -- to grow together in peace.

The Jakarta Post, Wednesday, 1 December 2004