

**THE RECLAMATION OF KSU GABOKTAN  
BAROKAH OF LODAN KULON POSITIVE LAW  
PERSPECTIVE AND MASLAHAH MURSALAH**

THESIS

By:

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**SHARIA ECONOMIC LAW  
SHARIA FACULTY  
MAULANA MALIK IBRAHIM STATE ISLAMIC  
UNIVERSITY OF MALANG**

**2020**

**INSIDE COVER**

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UNIVERSITY OF MALANG**

**2020**

## STATEMENT OF THE AUTHENTICITY

In the name of Allah,

With consciousness and responsibility toward the development of science, the writer declares that thesis entitled:

**“THE RECLAMATION OF KSU GABOKTAN BAROKAH OF LODAN  
KULON POSITIVE LAW PERSPECTIVE AND MASLAHAH  
MURSALAH”**

Is truly writer’s work which can be legally justified. If this thesis in proven result of duplication or plagiarism from another scientific work, it as precondition of degree will be stated legally invalid.

Malang, 10<sup>th</sup> July of 2020

Writer



*Siti Nur Fadlilah*  
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**“THE RECLAMATION OF KSU GABOKTAN BAROKAH OF LODAN  
KULON POSITIVE LAW PERSPECTIVE AND MASLAHAH  
MURSALAH”**

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## LEGIMINATION SHEET

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## **MOTTO**

"Taking care of today's environment for a better life tomorrow"

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Malang, 10<sup>th</sup> of July 2020



Siti Nur Fadlilah  
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## TRANSLITERATION GUIDANCE

Latin Arabic Transliteration Guidelines which are the result of a joint Decree (SKB) of the Minister of Religion and Minister of Education and Culture R.I. Number: 158 of 1987 and Number: 0543b/U/1987.

### A. Consonant

The list of Arabic letters and their transliteration into Latin letters can be found on the following page:

Arabic letters	Names	Latin letters	Names
ا	Alif	Not symbolized	Not symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	S/a	S/	Es (with the above point)
ج	Jim	J	Je
ح	H[a	H[	Ha (with the above point)
خ	Kha	Kh	Ka dan Ha
د	Dal	D	De
ذ	Z/al	Z/	Zet (with the above point)
ر	Ra	R	Er
ز	Zai	Z	Zet
س	Sin	S	Es
ش	Syin	Sy	Es dan Ye
ص	S[ad	S[	Es (with the above point)
ض	D[ad	D[	De (with the above point)
ط	T[a	T[	(with the above point)
ظ	Z[a	Z[	Zet (with the above point)
ع	'Ain	'	Apostrophe upside down
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	El
م	Mim	M	Em
ن	Nun	N	En
و	Wau	W	We

هـ	Ha	H	Ha
ء / أ	Hamzah	‘	Apostrof
ي	Ya	Y	Ye

Hamzah (ء) located at the beginning of the word follows his vocals without being given any marks. If it is located in the middle or at the end, it is written with a sign (‘).

## B. Vocals

Arabic vocals, such as Indonesian vocals, consist of single or monofrong vocals and double vocals or difrong vocals.

Arabic single vowels whose emblem is a sign or harakat, transliteration as follows:

Sign	Names	Latin Letters	Names
أ	Fath[ah	A	A
إ	Kasrah	I	I
أ	D[ammah	U	U

Arabic double vowels whose emblem is a combination of harakat and letter, transliteration in the form of a combination of letters, namely:

Sign	Names	Latin Letters	Names
أ & ي	Fath[ah and ya	Ai	A dan I
أ & و	Fath[ah and wau	Au	A dan U

Example:

كَيْفَ : *kaifa*

حَوْلَ : *haulā*

## C. Maddah

Maddah or long vowels whose symbols are harakat and letters, transliteration in the form of letters and signs, namely:

Harakat and Letters	Names	Letters and Marks	Names
أ & ي / ا	Fath[ah and <i>alif</i> atau <i>ya</i>	a>	a and line above
أ & ي	<i>Kasrah</i> and <i>ya</i>	i>	i and line above

و & ُ	D]ammah and <i>wau</i>	u>	u and line above
-------	---------------------------	----	---------------------

Example:

مَاتَ : *ma>ta*

رَامَ : *ra>ma*

قِيلَ : *qi>la*

يَمُوتُ : *yamu>tu*

#### D. Ta' Marbu>t]ah

The transliteration for ta' marbu>t]ah there are two, namely ta' marbu't]ah who live or get the letters fath]ah, kasrah, and d]ammah, the transliteration is [t]. As for ta' marbu't]ah who dies or gets a sukun harakat, the transliteration is [h].

If the word that ends with ta' marbu't]ah is followed by a word that uses the word sandang al- and the word reading is separate, then ta' marbu>t]ah is transliterated with [h].

Example:

الْمَدِينَةُ : *al-madi>nah*

#### E. Shaddah (Tasydi>d)

Shaddah or tasydi>d which in the Arabic writing system is symbolized by a sign of tasydi'd (ó), in this transliteration is symbolized by the iteration of letters (double consonant) given the sign of shaddah.

Example:

رَبَّنَا : *rabbana>*

الْحَقُّ : *al-h>aqq*

If the letter ì tasydid at the end of a word and preceded by the letter kasrah (◌ِ), then it is transliterated like the letter maddah (i).

Example:

عَلِيٌّ : 'Ali> (not 'Aliyy or 'Aly)

عَرَبِيٌّ : 'Arabi> (not 'Arabiyy or 'Araby)

#### F. Word of Sandang

The word sandang in the Arabic writing system is symbolized by the letter (alif lam ma'arifah). In this transliteration guideline, the word sandang

is transliterated as usual, al-, both when it is followed by the letter al-syamsiah and the letter al-qamariah. The word sandang does not follow the sound of direct letters that follow it. The word sandang is written separately from the word that follows it and is associated with a horizontal line (-).  
Examples:

الشَّمْسُ : *al-syamsu*  
الزَّلْزَلَةُ : *al-zalزالah*  
الْفَلْسَفَةُ : *al-falsafah*  
الْبِلَادُ : *al-bila>du*

### G. Hamzah

The transliteration of the letter hamzah becomes apostrophe (') applies only to hamzah located in the middle and end of the word. However, if hamzah is located at the beginning of the word, it is not symbolized, because in Arabic it is an alif. Examples:

مُرُونٌ : *ta'muru>na*  
شَيْئٌ : *syai'un*  
أَمْرٌ : *umirtu*

### H. Arabic word writing commonly used in Indonesia Language

The word, istilah or Arabic phrase that is transliterated is a word, term or sentence that has not been dedeed in Indonesian. Words, terms or sentences that are already prevalent and become part of the Indonesian government, or have often been written in Indonesian writing, are no longer written according to the above transliteration means. For example, the word Qur'an (from the Qur'a>n), Sunnah, is special and common. However, if these words become part of a series of Arabic texts, then they must be transliterated in its entirety.

Examples:

*Fi> Z{ila>l al-Qur'a>n*  
Al-Sunnah qabl al-tadwi>n

1. Lafadz al-Jala>lah, The word Allah, preceded by particles such as jarr and other letters or positioned as mud}a>f ilaih (nominal phrase), is transposed without the letter hamzah. As for ta marbu't}ah at the end of the word that is encoded to lafz} al-Jala>lah, transliterated with the letter [t]. Examples:

دِينُ اللَّهِ : *di>>nulla>h*  
رَحْمَةُ اللَّهِ : *rahmatilla>h*

2. Capital , Although the Arabic writing system does not recognize capital letters (All Caps), in its transliteration the letters are subject to provisions on the use of capital letters based on the applicable Indonesian spelling guidelines (EYD). Capital letters, for example, are used to write the initial letter of the self-name (person, place, month) and the first letter at the beginning of the sentence. If the name of the self is preceded by the word sandang (al-), then written in capital letters remains the initial letter of the self's name, not the initial letter of the word sandangnya. If it is located at the beginning of the sentence, then the letter A of the word is capitalized (Al-). The same provision also applies to the initial letter of the reference title preceded by the word sandang al-, both when it is written in the text or in the reference notes (CK, DP, CDK, and DR). Example: Wa ma> Muh>ammdun illa> rasu>l, Inna awwala baitin wud}i'a linna>si lallaz/i> bi Bakkata muba>rakan, 'Syahru Ramad}a>n al-lazli> unzila fi>h al-Qur'a>n, Al-Munziq/ min al-D]ala>l



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## ABSTRAK

Siti Nur Fadlilah, 16220134, 2020, **Reklamasi KSU Gaboktan Barokah Desa Lodan Kulon Perspektif Hukum Positif dan Masalah Mursalah**, Skripsi, Program Studi Hukum Ekonomi Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing: Dr. H. Noer Yasin. M.HI.

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**Kata Kunci:** Reklamasi, Hukum Positif, *Masalah Mursalah*

Penelitian ini dilatarbelakangi oleh banyaknya perusahaan pemegang IUP (Izin Usaha Pertambangan) Operasi Produksi yang tidak melaksanakan reklamasi khususnya KSU Gaboktan Barokah Desa Lodan Kulon. Selanjutnya dengan adanya Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara, Peraturan Pemerintah Nomor 78 Tahun 2010 tentang Reklamasi dan Pascatambang, dan KEPMEN ESDM RI Nomor 1827K/30/MEM/2018 tentang Pedoman Pelaksanaan Kaidah Teknik Pertambangan yang Baik yang mana didalamnya mengatur tentang bagaimana pelaksanaan reklamasi yang sesuai menurut hukum positif. Kemudian dipadukan dengan analisis menurut *masalah mursalah*. Namun demikian, masih banyak kendala untuk melaksanakan reklamasi menurut standar nasional dalam Undang-Undang.

Rumusan masalah yang terdapat dalam penelitian ini adalah bagaimana reklamasi KSU Gaboktan Barokah Desa Lodan Kulon perspektif hukum positif dan bagaimana reklamasi KSU Gaboktan Barokah Desa Lodan Kulon perspektif *masalah mursalah*.

Jenis penelitian yang digunakan oleh peneliti adalah penelitian yuridis empiris dengan pendekatan yuridis sosiologis dan pendekatan perundang-undangan. Pengumpulan data dilakukan dengan wawancara dan dokumentasi. Kemudian dianalisis deskriptif kualitatif dengan menggunakan metode *editing, classifying, verifying, analyzing dan concluding*.

Hasil penelitian ini terdapat dua kesimpulan. Pertama reklamasi KSU Gaboktan Barokah Desa Lodan Kulon perspektif hukum positif bahwa belum sepenuhnya dilaksanakan reklamasi, meskipun ada beberapa yang sudah dilaksanakan. Hal ini ditandai dengan banyak kerusakan yang ditimbulkan akibat pertambangan. Kedua Reklamasi KSU Gaboktan Barokah Desa Lodan Kulon perspektif *masalah mursalah* adalah diperbolehkan hukumnya karena termasuk dalam kepentingan mayoritas orang dan masuk dalam pembahasan *al- Islah* (menjaga dan memelihara kelestarian lingkungan). Namun praktik pelaksanaan reklamasi KSU Gaboktan Barokah Desa Lodan Kulon belum memenuhi syarat-syarat dalam teori *masalah mursalah* menurut pendapat Al-Ghazali. Dikatakan *masalah mursalah* jika memberikan kemaslahatan secara umum ke masyarakat dan juga menghindarkan suatu kemadharatan.

## ABSTRACT

Siti Nur Fadlilah, 16220134, 2020, **The Reclamation of the KSU Gaboktan Barokah Village of Lodan Kulon the perspective of positive law and Maslahah Mursalah**, Thesis, Sharia Bussines Law Department, Maulana Malik Ibrahim State Islamic of Malang, Mentor: Dr. H. Noer Yasin. M.HI.

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**Keyword:** Reclamation, Positive Law, *Maslahah Mursalah*

This research is motivated by the number of companies holding IUP (*Mining Business License*) Production Operation that do not carry out reclamation, especially KSU Gaboktan Barokah of Lodan Kulon. Furthermore, with the existence of Law Number 4 of 2009 concerning Mineral and Coal Mining, Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining, and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules which are included in it. Regulates how to carry out appropriate reclamation according to positive law. Then combined with analysis according to *maslahah musalah*. However, there are still many obstacles to implement according to national standards in the law.

The formulation of the problem contained in this research is how the reclamation of KSU Gaboktan Barokah of Lodan Kulon positive law perspective and how the reclamation of KSU Gaboktan Barokah of Lodan Kulon *maslahah mursalah* perspective.

The type of research used by researchers is juridical empirical research with a sociological juridical approach and a statutory approach. Data collection was carried out by interview and documentation. Then analyzed descriptively qualitatively using the methods of editing, classifying, verifying, analyzing and concluding.

The results of this study have two conclusions. First, the reclamation of KSU Gaboktan Barokah of Lodan Kulon has a positive law perspective that reclamation has not been fully implemented, although some have been implemented. This is marked by a lot of damage caused by mining. Secondly, the reclamation of KSU Gaboktan Barokah of Lodan Kulon with the perspective of *maslahah mursalah* is legally permissible because it is included in the interests of the majority of people and is included in the discussion of *al-Islah* (protecting and preserving the environment). However, the practice of implementing the reclamation of KSU Gaboktan Barokah of Lodan Kulon has not met the requirements in the *maslahah mursalah* theory according to I-Ghazali's opinion. It is said that it is *maslahah mursalah* if it gives benefit in general to the community and also avoids any harm.

## مستخلص البحث

سيتي نور فصيلة, 2020, 16220134, استصلاح تعاونيات الأعمال ببراكة بقرية لودان كولون على نظرية القانون الإيجابي و مسلحة مرسله، بحث الجامعي، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج، المشرفة: نور يسين

### الكلمات الرئيسية: الإستصلاح، القانون الإيجابي، مسلحة مرسله

هذا البحث مدفوع بكثرة الشريكة الحامل رخصة التعدين الإنتاجية الذي لا يقوم بالاستصلاح خصوصا مرسله تعاونيات الأعمال ببراكة بقرية لودان كولون. بعد ذلك بوجود القانون نمرة 4 سنة 2009 عن تعدين المعادن والفحم، و التنظيم الحكومي نمرة 78 سنة 2010 عن الإستصلاح و بعد التعدين، قرار وزير الطاقة والثروة المعدنية بجمهورية إندونيسيا رقم 1827/ك/30/م/م/2018 بشأن المبادئ التوجيهية لتنفيذ مبادئ هندسة التعدين الجيد المضمنة فيه. الذي قد حكم فيها عن كيفية تنفض الإستصلاح على نظرية القانون الإيجابي. ثم جمع بتحليل الإسلامية في شكل مفهوم مسلحة مرسله. ولكن لا يزال كثيررا من العقوبات لقيام الإستصلاح وفق معيير الوطنية في القانون.

خلفية المشكلة في هذا البحث كيفية الإستصلاح تعاونيات الأعمال ببراكة بقرية لودان كولون على نظرية القانون الإيجابي و كيفية الإستصلاح تعاونيات الأعمال ببراكة بقرية لودان كولون على نظرية مسلحة مرسله.

نوع البحث الذي تقدم الباحثة هو بحث قانوني تجريبي مع النهج القانون الإجتماعي، والنهج المفاهيمي والنهج المفاهيمي والنهج التشريعي. يتم جمع البيانات من المقابلة والتوثيق. ثم تحلل بتحليل الوصف والنوعي وتستخدم بطريقة التحرير و التصنيف و التحقق و الحليل والإستنتاج.

نتائج هذه الدراسة لها نتيجان. أولا، الإستصلاح تعاونيات الأعمال ببراكة بقرية لودان كولون بجامعة الملك سعود له منظور قانوني إيجابي مفاده أن الاستصلاح لم يتم تنفيذه بالكامل. يتميز هذا بالكثير من الأضرار الناجمة عن التعدين، مما يغير بنية التربة والأراضي الجافة والقاحلة، ويكون منحدر التل شديدا للغاية. ثانيا، إن الإستصلاح تعاونيات الأعمال ببراكة بقرية لودان كولون بجامعة الملك سعود، من منظور مصلحة مرسله، مسموح به قانونيا لأنه يدخل في مصلحة غالبية الناس ويدخل في مناقشة الإصلاح (حماية البيئة والحافظ عليها). ومع ذلك، فإن ممارسة تنفيذ الإستصلاح تعاونيات الأعمال ببراكة بقرية لودان كولون لم تستوف متطلبات نظرية المصلحة المرسله وفقا لرأي الغزالي. يقال أن المصلحة مرسله إذا كانت تعود بالنفع على المجتمع بشكل عام وتتجنب أي ضرر.

# CHAPTER I

## INTRODUCTION

### A. Background of Research

Human beings are social beings who cannot live alone without the help of other human beings. In addition, human beings are said to be social because humans need interaction with others in their lives along with society. Aristoteles refers to the theory of "*Zoon Politicon*" which means that in socially human beings need other people and their social environment. Socialize here not only with human beings, but rather related and related to the environment and place of residence. To be able to improve welfare, people are doing social relationships by utilizing nature and the environment so that his survival can be achieved.

This environment plays an important role for people to become a source of life. Not only eating, drinking, socializing, interacting, even for the dwelling place of man in need of the environment in life. So it is not undeniable that humans should maintain a balance of nature by not damaging what is in the environment. Thus human life will be prosperous as long as the environment is fine, so there is no natural destruction.

Furthermore, human needs of natural resources that exist in the environment increasingly day is increasing. Considering the number of human populations is getting bigger and the amount of the day grows a lot. The need for natural resources from agriculture, fisheries, livestock,

plantation, forestry, marine, mining, and so forth. But the available natural resources are not comparable to the human population, so there are many environmental damage caused by human behavior that does not want to maintain the environment.

In fact many humans forget the principles that must be done to safeguard the environment. Whereas in Islam, there are several principles to maintain the environment so that human life becomes calm, peaceful and safe. The principles of maintaining the environment are respecting nature, responsible for nature, the principle of solidarity and concern for nature.

Seeing the competition to defend life among human beings with other human beings, it is not surprising if there are social problems that affect human needs itself. Sand problem is a problem that cannot be avoided, considering that sand has an important role for human beings. Sand is an example of material of high economical value, usually used as building base material, raw material of 3 dimensional artwork, ornament, health that size averages  $0,65 \text{ mm}^3$  to  $2 \text{ mm}^3$ .

As the time grows, sand mining business is increasingly marginalized with the many issuance of IUP (*Mining Business License*) stage of exploration and production operation by the government. The principle of facilities in giving permission from this government is clearly stated in Law Number 4 year 2009 Article 37. The goal is to ensure certainty in the law, the certainty in the right and facilitate providing services to the applicants IUP

(*Mining Business License*) to quickly process the mining business activities.

In order to make a big profit in the mining business, IUP (*Mining Business License*) holders mainly production operation, many of whom ignored the regulations in Law Number 4 of 2009 on Mineral and Coal Mining, Government Regulation Number 78 of 2010 on Reclamation and Post-mining, and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules. Many IUP (*Mining Business License*) holders do not carry out reclamation after mining ends. In Law Number 4 of 2009 on Mineral and Coal Mining, reclamation is defined as an activity that serves to organize, restore, and repair the environment that has been damaged by mining excavation so that the land can be used again.

Subsequently, researchers conducted research at KSU Gaboktan Barokah of Lodan Kulon as the holder of IUP production operation. The Lodan Kulon consists of 3 hamlets namely Krajan, Ropoh hamlet and Nduru hamlet with an area of 807.410 ha and a population of 3.917 inhabitants. The area of this village contains natural resources in the form of minerals instead of quartz sand. Quartz sand located in the land area of Lodan Kulon is so abundant, so there is no doubt that quartz sand mining has been around since 1996.

In 2014, the village government established a cooperative "KSU Gaboktan Barokah" which aims to help farmers and ranchers in conducting



activities related to agriculture, plantation, livestock business, agricultural tools trade, entrepreneurial activities, cooperation with government and private agencies in agriculture, conducting comparative studies, as well as providing positive activities to improve and empower the community. Members in the cooperative are farmers, ranchers and labor recruited by the village government through the village deliberations.

In the village deliberation, the village government demanded a mining business, in which the mining business is located in the village owned land with an area of 19.029 m<sup>2</sup>. Sand mining is a natural resource that is very abundant and potentially large in contributing funds to the PAD (*Indigenous Revenue Village*). Considering that it is not able to manage the mining based on LAW Number 4 of 2009 on Mineral and Coal Mining, the village government appointed KSU Gaboktan Barokah of Lodan Kulon to conduct the mining business.

After obtaining WIUP and IUP permits, KSU Gaboktan Barokah Mining operates for 3 years with open-pit mining activities. The KSU Gaboktan Barokah of Lodan Kulon appointed a KTT (*Head of Mining Engineering*) in charge of the activities of the production of the IUP in the field of direct operation. Then after obtaining approval from the Ministry of ESDM (Energy and Mineral Resources) Rembang District (now turned into the Ministry of Energy and Mineral Resources South Kendeng Branch) through its technical studies with regard to the AMDAL (*Environmental*

*Impact Analysis*) and environmental permits from Ministry of Environment and Forestry of Rembang District with the provisions obliged to submit a guarantee fund reclamation production operations in the government-owned bank.

But in practice after a quartz sand mining excavation was completed, KSU Gaboktan Barokah of Lodan Kulon has not fully done reclamation. Whereas we know that the production of mining operations must implement the regulations in the law that has been mentioned, whether it is about the technical provisions, the rights and obligations in conducting mining business activities. This includes conducting reclamation activities in the effort to keep the environment around after sand mine excavations.

Reclamation activities as a form of protection and environmental management of water quality, soil, air, biodiversity, the guarantee of stability and safety of rock heaps, utilization of former mines, and attention to local social and cultural values. Reclamation activities try to minimize the consequences of mining business itself such as avalanche, flood, erosion, flora and fauna, change the structure of the face of the earth, even the safety of the mine workers.

The former mining land managed by KSU Gaboktan Barokah of Lodan Kulon suffered many problems namely the destruction of mining land due to not yet carried out reclamation activity is not the rate of land around the quartz sand mining area, and the existence of holes of former mining

excavation. In addition, quartz sand dredge in the mining area of Lodan Kulon makes the hills split into two parts and the land structure in a former quarry land becomes mushy. Location of the sand mining area is right around the community fields, only a few meters away. Thus, making the farm owner was taken if the farm was carried away by the sand mining material resulted from high rainfall and resulted in a landslide.

Given before the sand mining managed by KSU Gaboktan Barokah of Lodan Kulon had a landslide and caused some mining workers to be buried with material when excavating quartz sand. Not only was the former quarry land which was originally a land filled with plants, turned into a minimal land of organic matter, so that the soil became barren and dry.

The former quarry land managed by KSU Gaboktan Barokah of Lodan Kulon is now used by the surrounding community to grow crops after being left two years. But plants that can grow are only grass, banana trees and only petai. Not fully able to grow throughout the mining area.

Not only the sand mining managed by KSU Gaboktan Barokah of Lodan Kulon which has not been reclaimed, but the mining companies that are out there are still many who have not done so. If this is left by the local government, the human welfare that is located around the sand mining area will be threatened, see already a lot of damaged environment.

In connection with the unimplementation of reclamation activities, it

should be a government obligation to supervise, control and follow up the matter. However, after the mining is over, no government attempts to jump in to encourage it even reminds the KSU Gaboktan Barokah to reclamation and report the reclamation result annually. As with the Ministry of Energy and Mineral Resources can not give sanctions because all policies are dependent on the government. As for the Ministry of Environment and Forestry, also can not do anything, because it is only the permission of the environmental document. While the police as law enforcement can not follow up the issue, because all authority is under the government.

Lack of government supervision will be the business of quartz sand mining in KSU Gaboktan Barokah of Lodan Kulon., this is the cause of the unperformed reclamation since the period of the IUP production operation completed. The policy of government policy contained in the law is only used as formality. The sanctioned sanctions do not give a deterrent effect to the holders of IUP so that many violations occur especially the reclamation problem. If the reclamation is carried out by an IUP holder, it will provide benefits for humans, namely the environment to be recovered as it is again, so that it can be exploited again by the community around the mining area.

Thus, based on the background above, the researchers interested in conducting a study entitled **“The Reclamation of KSU Gaboktan Barokah of Lodan Kulon Positive Law Perspective and Maslahah Mursalah”**.

## **B. Formulation of Problem**

Based on the background above, the problem formulation in this study is as follows:

1. How to Reclamation of KSU Gaboktan Barokah of Lodan Kulon Positive Law Perspective?
2. How to Reclamation of KSU Gaboktan Barokah of Lodan Kulon *Maslahah Mursalah* Perspective?

## **C. Purpose of Research**

Based on the problems above, the research objectives in this study are as follows:

1. To Know to Reclamation of KSU Gaboktan Barokah of Lodan Kulon Positive Law Perspective.
2. To Know Reclamation of KSU Gaboktan Barokah of Lodan Kulon *Maslahah Mursalah* Perspective.

## **D. Benefit of Research**

From the results of this research is expected to be obtained benefits among others:

1. Theoretical benefits

The research is expected to provide a thought donation for the development of science in the field of mining law, especially about the reclamation of quartz sand mining.

2. Practical Benefits

- a) The results of this research can be used as reference or referral by students in conducting deeper studies and further research related to quartz sand mining reclamation.
- b) The results of this research can be used as input materials and advice to the district government, Ministry of Environment and Forestry Rembang District, Ministry of Energy and Mineral South Kendeng Branch, police nest and related parties in the reclamation of quartz sand mining.

#### **E. Benefit of Problem**

As for the researchers limiting the problems in this study is about the implementation of reclamation in KSU Gaboktan Barokah of Lodan Kulon, not about reclamation plans, guarantees of reclamation or activities after reclamation. The article used in this study is article 96 (c) of Law Number 4 of 2009 on Mineral and Coal Mining, Article 20 Point (1) of Government Regulation Number 78 of 2010 on Reclamation and Post-mining, and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules. The object of this research is in the holder of IUP production operations and other parties involved in this. Meanwhile, the Law and *masalah mursalah* as a source in determining the success of reclamation.

## F. Operational Definition

To avoid any confusion, the researcher will explain the operational definition in this study as follows:

### 1. Reclamation

Reclamation activities are needed in mining business, especially for IUP (*Mining Business Licenses*) holders. The Reclamation is an activity carried out after mining, in the sense that the excavation of raw materials has been completed with the aim of restoring the former mine land in order to be used again, which can be beneficial for humans and other creatures. The reclamation seeks to safeguard mineral and coal resources against the environmental damage caused by mining. Through reclamation activities, it is hoped that there is no environmental damage resulting in the survival of human beings, animals and plants.

### 2. The Positive Law and *Maslahah Mursalah*.

The positive law used in the study located in KSU Gaboktan Barokah of Lodan Kulon is the prevailing law in Indonesia, contained in Law Number 4 of 2009 on Mineral and Coal mining, Government Regulation Number 78 year 2010 on Reclamation and Post-Mining and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules. Both regulations are agreed and approved by the house of representatives with the President, which has a point of similarity and is said to have the same size that aims

to restore the former mining such as the original condition. Furthermore, researchers are reviewing the theory that this benefit has a close connection with the positive laws. So if reclamation is implemented in accordance with the law, it can automatically be said *masalah mursalah*.

#### **G. Writing of Systematic**

The research systematics used in this study are as follows:

The first chapter contains a preliminary introduction to the fundamental reason why the study was conducted. In the introduction of background of research, formulation of problem, purpose of research, benefit of research, limit of problem, operational definition as well as the writing of systematic.

The second chapter contains a literature review showing previous research and theoretical frameworks. The framework of the theory described by researchers through the variables is positive law and *masalah mursalah*.

The third chapter contains a research methodology that explains how researchers obtain data in this study, which includes types of research, research approaches, research locations, data types and sources, method of collecting data, and methods of processing data.

The fourth chapter contains a discussion that contains analysis related to the problem formulation. This discussion presented the results of empirical research conducted by researchers and analyzed by the theory related to the



problem.

The fifth chapter contains a cover that contains conclusions and recommendation. The conclusion answered the results of the analysis to answer the problem formulation in this study. While the recommendation contains input to the related parties or the parties have more authority in accordance with the title of this research. With a purpose for the good of society and writers in the future.

## **CHAPTER II**

### **LITERATURE REVIEW**

#### **A. Previous Research**

In this study, researchers have not found a study entitled “The Reclamation of KSU Gaboktan Barokah of Lodan Kulon Positive Law Perspective and Maslahah Mursalah”. However, researchers found previous research related to reclamation. The previous research related in this study is as follows:

##### 1. Thesis of Yusticia Zahrani

Student Faculty of Law University of Hasanudin (2017), entitled Review of The Law on Implementation of Beach Reclamation in Makassar City.

In this study discusses the legal review of the beach reclamation in Makasaar, which appeared at the time before and after the issuance of reclamation permits and to know how the supervision of local governments on the implementation of reclamation in Makassar city. The conclusion in this study is the absence of the mayor regulation regarding the implementation of beach reclamation permit in Makassar city. But the reality that occurred in the city of Makassar reclamation activity is still implemented even though it has not fulfilled the requirements that have been governed by legislation. So that the supervision of reclamation activities is very important, given that many investors are granted permission to perform reclamation from the government, even though

many investors commit violations of what has been specified in the licensing provisions.

The equation in this study with the author's research is equally the same empirical research, which examines the implementation of reclamation, and legal analysis using positive laws in Indonesia. The difference in this study is that the object leads to issues of issuance of reclamation permits and regional government supervision on the implementation of coastal reclamation in Makassar city. While research researchers lead to the reclamation of sand mining is reviewed from the *masalah mursalah*, and the research site is located in KSU Gaboktan Barokah of Lodan Kulon.

## 2. Thesis of Hydrallah

Students Faculty of Law University of Pasundan Bandung (2017), entitled Criminal Liability Against Illegal Sand Mining Perpetrators in Bangka Island Who Do Not Reclamation.

In this study discusses the delic qualification, accountability to illegal tin sand mining perpetrators, and efforts undertaken by the government to avoid illegal sand mining activities in Bangka Island. The conclusion in this study is the number of illegal miners in Bangka Island who do not think about the impact of the tin sand mining activities and even many of them do not carry out reclamation so that sand miners must answer all the deeds it does.

The study of this research with the authors' research is equally

discussing on sand reclamation, then equally using the analytical descriptive research method, and the perspective of the legislation. The difference is the object of research, location of research, type of research and analysis of research. Object in the form of accountability, location in the illegal tin sand mining in Bangka Island, this type of normative juridical research, and only the analysis by law alone. Meanwhile, research conducted by researchers is about reclamation, reclamation object, location in KSU Gaboktan Barokah of Lodan Kulon, research of juridical empirical, as well as perspective of *masalah mursalah*.

### 3. Thesis of Reza Gubawan

Students of the Faculty of Social and Political Sciences of the University of Pasundan (2016), entitled Exploitation of Sand in Riau Islands for the Reclamation of Singapore and Its Influence on Boundary of RI-Singapore Region.

In this study focuses on the outcome of the exploitation of the sea Sands conducted by Singapore and its influence on the boundary of the RI-Singapore region. The conclusion of this study is reclaiming Singapore by means of the exploitation of sand in Riau Islands has an impact on the boundary of the RI-Singapore region which certainly has a negative impact to Indonesia. The equation of this research with author research is equally reviewing reclamation problems, and using a descriptive analysis research method. The difference in this research is the location of research and analysis of the research of sand mining in

Riau islands, and the analysis according to the law. While research conducted by researchers are in the sand mining managed in KSU Gaboktan Barokah of Lodan Kulon and analysis *masalah mursalah*.

**Table 1.**

Similarities and Previous Research Differences

No.	Name, college, Year	Title	Equation	Difference
1.	Yusticia Zahrani, Faculty of Law of Hasanudin University, 2017	Review of Law on Implementation of Beach Reclamation in Makassar City	Equally similar of empirical research, which examines the implementation of reclamation, and legal analysis using positive law in Indonesia	The previous research object focuses on the issuance of reclamation permit and regional government supervision on the implementation of coastal reclamation in Makassar city. While this research is leading to the reclamation of the sand mining is reviewed from the <i>masalah mursalah</i> in KSU Gaboktan Barokah of Lodan Kulon
2.	Hydrallah, Faculty of Law of Pasundan University,	Criminal Liability Against Illegal Sand Mining	The same discusses on sand reclamation, then both use a discrete	The previous research was an object of accountability,

	2017	Perpetrators in Bangka Island Who Do Not Reclamation	analytical research method, and a legal perspective	the site of illegal tin sand mining in Bangka Island, this type of normative juridical research, only the analysis by law alone. While research researchers are about reclamation, the location in KSU Gaboktan Barokah of Lodan Kulon, the type of empirical research, and the perspective of <i>masalah mursalah</i>
3.	Reza Gubawan, Faculty of Social and Political in Pasundan University, 2016	Sand Exploitation in Riau Islands for the Reclamation of Singapore and Its Influence on Borders of RI – Singapore Region	Equally examine reclamation issues, and use a descriptive analysis research method	The research and analysis location of previous research is in sand mining in Riau islands, and the analysis is according to the law. While the research of researchers is in the sand mining managed by KSU Gaboktan Barokah and the analysis of <i>masalah mursalah</i>

## B. Theoretical Framework

Each researcher must use the concept in analyzing the results of his research. As for some concepts used by researchers as follows:

### 1. Overview of Sand Mining

Nowadays mining law is very rapidly developing. Can be seen with the law stipulated by the government on mining. The start of the mining law is not derived from the Indonesian language, but comes from the English "*Mining Law*", Dutch "*Mijnrecht*", and the German language "*Bergrecht*". Mining law is the entire rule of law governing State authority in the management of minerals (mines) and governs the legal relationship between countries and persons and/or legal materials in the management and utilization of minerals (mines).<sup>1</sup> According to Law Number 4 of 2009 on Mineral and Coal Mining, mining is defined as:<sup>2</sup>

*"Some or all stages of activity in the framework of research, management, mining and coal which include general investigation, exploration, feasibility studies, construction, mining, management and refining, transportation and sales, and post-mining activities".*

As the principle of Mineral and Coal Mining in Law Number 4 of 2009, among them are:<sup>3</sup>

*"Principles of merit, fairness and balance; the principle of impartiality to the interests of the nation; participatory principles, transparency and accountability; sustainable and environmentally*

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<sup>1</sup> Salim HS, *Hukum Pertambangan di Indonesia*, (Jakarta: 2005), 8.

<sup>2</sup> Pasal 1 Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.

<sup>3</sup> Pasal 2 Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara.

*minded principles".*

While sand mining is the process of digging non-metallic mineral (sand) below the surface of land or under the flow of river which has a high economic value. Sand mining usually uses manual or machine tools.<sup>4</sup>

In the law it has been explained that sand mining activities conducted by entrepreneurs should pay attention to aspects of preserving the environment. As the principle of the mining itself is "Industry", where sand harvesting and extracting comes from the ground.

## **2. IUP Production Operation**

In this discussion, first know the permission itself. The sense of permission is widely driven by experts. And it can be concluded that the permits are:<sup>5</sup>

*"An agreement of the authority under any law or regulation to in certain circumstances deviate from the provisions of the prohibition of legislation. Permission can also be interpreted as a dispense or a waiver or exemption from a prohibition".*

While the purpose of licensing is for control of government activities in certain matters in which the terms contain the guidelines to be implemented, both the stakeholders and the competent authorities.

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<sup>4</sup> Abrar Saleng, *Hukum Pertambangan*, (Yogyakarta: UII Press, 2004), 18.

<sup>5</sup> Roby Rusma Suryana, *Perizinan Usaha Pertambangan Rakyat dan Pengawasannya di Kabupaten Pesisir Barat*, Skripsi, (Bandar Lampung: Universitas Lampung, 2017), 8.



Based on regulation of the Minister of Home Affairs Number 20 of 2008 on The Guidelines and Governance of The Regional Service Unit, the permission definitions are:<sup>6</sup>

*"Documents issued by the local government based on local regulations or other regulations that are proof of legality, state the validity or permissible of a person or entity to conduct certain business or activities. The granting of such permission is written in the form of documents, and is not granted orally".*

Since the issuance of Law Number 4 of 2009 on Mineral and Coal Mining, the legality of mining is only in one form of permit. The permit issued by the government in terms of mining production operations is the IUP (*Mining Business License*) production operation. According to article 1 point 9 Act Number 4 of 2009 on Mineral and Coal Mining, it is a prenote that:<sup>7</sup>

*"IUP Production Operations is a license to carry out mining business after completion of the implementation of IUP Exploration to conduct the stage of production operations activities".*

Article 39 paragraph (2) letter j Law Number 4 of 2009 on Mineral and Coal Mining mentioned that IUP production operation as intended in article 36 clause (1) letter b shall contain the provisions of at least:<sup>8</sup>

a) company name;

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<sup>6</sup> Peraturan Menteri Dalam Negeri Nomor 20 Tahun 2008 tentang Pedoman dan Tata Kerja Unit Pelayanan di Daerah.

<sup>7</sup> Pasal 1 poin 9 Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.

<sup>8</sup> Pasal 39 ayat (2) huruf j Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.

- b) Area areas;
- c) Mining site;
- d) Location management and purification;
- e) Carriage and sale;
- f) Investment capital;
- g) Validity period of IUP;
- h) Timeframe of the activity stage;
- i) Settlement of land problems;
- j) The environment includes reclamation and post-mining;
- k) The reclamation and postwar guarantee fund;
- l) Renewal of IUP;
- m) The rights and obligations of the IUP holders;
- n) Plan for mining and community empowerment around the mining area;
- o) Taxation;
- p) Non-tax state acceptance consisting of fixed dues and production dues;
- q) Settlement of disputes;
- r) Occupational safety and health;
- s) Mineral and coal conservation;
- t) The harvesting of goods, services and technology domestically;
- u) Determination of good mining economics and engineering rules;
- v) Development of Indonesian Labour;

- w) Management of mineral or coal data and;
- x) The Mastery, development and application of mineral and coal mining technology.

This grant of permission by the Government is not only provided by all parties who apply for IUP production operations. In order to successfully obtain permission, the government requires each IUP holder to carry out reclamation. 96 Law letter Number 4 year 2009 on Minerals and Coal Mining, which discusses the reclamation that:<sup>9</sup>

*“In the application of good mining engineering rules, IUP and IUPK holders are obliged to implement the safety and health provisions of mining work; safety of mining operations; management and monitoring of the mining environment, including reclamation and post-mining activities; conservation efforts of mineral and coal resources; management of the remaining mines from a mining business in the form of solid, liquid, or gas until it meets the standard standards of environmental quality before being released to the environmental media”.*

Not only that, in Government Regulation Number 78 year 2010 about Reclamation and Post-Mining article 20 points (1) also set about this, namely:<sup>10</sup>

*“IUP Holders of production operations and IUPK Production Operations shall carry out reclamation and post-mining in accordance with the reclamation and post-mining plan until it meets the criteria of success”.*

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<sup>9</sup> Pasal 96 huruf C Undang-Undang Nomor 4 Tahun 2009 tentang Mineral dan Batubara.

<sup>10</sup> Pasal 20 poin (1) Peraturan Pemerintah Nomor 78 tahun 2010 tentang Reklamasi dan Pascatambang.

Then this reclamation activity is very important to get an IUP production operation and be the obligation of an IUP holder to implement it.

### 3. The Reclamation

In mining business, reclaimed activities will not be able to escape. Because in the process of giving IUP should include reclamation plans, which will be useful at a later time after the mining is completed excavated. as for according to article 1 point (26) of Law Number 4 of 2009 on Mineral and Coal Mining, the notion of reclamation is as follows:<sup>11</sup>

*“Activities carried out throughout the stages of mining efforts to organize, restore, and improve the quality of the environment and ecosystem in order to function again according to its provisions”.*

To know the reclamation clearly and clearly, it is necessary to delve into what IUP holders must fulfill in carrying out. The Principles of Reclamation by IUP holders of production operations in accordance with Article 3 of Government Regulation Number 78 of 2010 on Reclamation and Post-mining must meet:<sup>12</sup>

*“First, the protection and management of mining environment which includes protection of surface water quality, groundwater, seawater, and land and air based on quality standards or standard criteria of environmental damage in accordance with the*

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<sup>11</sup> Pasal 1 poin (26) Undang-Undang Nomor 4 tahun 2009 tentang Pertambangan Mineral dan Batubara.

<sup>12</sup> Pasal 3 Peraturan Pemerintah Nomor 78 tahun 2010 tentang Reklamasi dan Pascatambang.

*provisions of the legislation; biodiversity protection and recovery; guarantee of the stability and safety of side rock deposits and/or ground/cover rocks, tailings ponds, former mine land, and other artificial structures; utilization of former mining land in accordance with its provisions; pay attention to local social and cultural values; and protection of groundwater quality in accordance with the provisions of the legislation. Second, occupational health and safety includes the protection of the safety of each worker/laborer; and protection of every worker/worker from work-related illnesses. Third, mineral and coal conservation includes optimum mining; effective use of methods and technology of processing and/or purification and efficiency; management and/or utilization of mineral reserves, low-content minerals, and participating minerals and low quality coal; data data collection of unmined mineral and coal reserves and residual processing and/or refining”.*

IUP holders of production operations shall draw up a reclamation plan as in Article 99 of Law Number 4 of 2009 on Mineral and Coal Mining mentioned:<sup>13</sup>

*"Each IUP and IUPK holder must include a reclamation and post-mining plan at the time of applying for IUP production operations or IUPK Production Operations ”.*

In addition, there is also in Article 7 of Government Regulation Number 78 of 2010 on Reclamation and Post-mining with the following provisions:<sup>14</sup>

*"Reclamation plan within 5 (five) years with annual details; in the reclamation plan, contained reclamation plans for each year; mine life is less than 5 (five) years, it is structured according to the life of the mine which includes land use before and after mining, land clearing plan, reclamation program against disturbed land which includes former mines and land outside the former mines which are temporary and /or permanent, the criteria of*

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<sup>13</sup> Pasal 99 Undang-Undang Nomor 4 tahun 2009 tentang Pertambangan Mineral dan Batubara.

<sup>14</sup> Pasal 7 Peraturan Pemerintah Nomor 78 Tahun 2010 tentang Reklamasi dan Pascatambang.

*successful reclamation of the production operations stage include the standard of successful land arrangement, revegetation, civil and final settlement work and the plan of reclamation of the operating stage consists of direct costs and indirect costs".*

Before the reclamation activity is carried out, the IUP holder of production operations must draw up a reclamation plan for the following stages of production operations:<sup>15</sup>

- a. Land use before and after the production operation phase;
- b. Land clearing plans for production operations that cause land to be disrupted;
- c. Production operation stage reclamation program;
- d. The criteria for successful reclamation of production operations in the form of revegetation include successful standards of land use, revegetation, civil servants, and final completion;
- e. Criteria for successful reclamation of production operations in forms other than revegetation (reclamation in other forms) based on the success proposed by IUP holders of production operations or IUPK production operations based on studies; and
- f. Plan the cost of reclamation of the production operation stage.

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<sup>15</sup> Pedoman Pelaksanaan Reklamasi dan Pascatambang Serta Pascaoperasi Pada Kegiatan Usaha Pertambangan Mineral dan Batubara di lampiran VI KEPMEN ESDM RI Nomor 1827K/30/MEM/2018 tentang Pedoman Pelaksanaan Kaidah Teknik Pertambangan yang Baik.

The production operation stage reclamation program can be implemented in the form of revegetation and/or other provisions consisting of:

- a. Residential areas;
- b. Tourism;
- c. Water source; and
- d. Cultivation area.

The stages of reclamation activities in the form of revegetation include land use, revegetation and maintenance activities.<sup>16</sup>

1) Land arrangements include:

- a) Land management arrangements;
- b) Distribution of the land of the bloom zone; and
- c) Erosion control and sand management

2) Revegetation includes the following activities:

- a) Planting of cover crops;
- b) Planting plants quickly grows;

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<sup>16</sup> Pedoman Pelaksanaan Reklamasi dan Pascatambang Serta Pascaoperasi Pada Kegiatan Usaha Pertambangan Mineral dan Batubara di lampiran VI KEPMEN ESDM RI Nomor 1827 K/30/MEM/2018 tentang Pedoman Pelaksanaan Kaidah Teknik Pertambangan yang Baik.

c) Planting local types of plants; and

d. Maintenance of plants.

On revegetated land must be maintained for at least 3 (three) years, which consists at least:

a) Fertilization;

b) Control of weeds, pests and diseases;

c) Counseling;

d) Maintenance of erosion and sedimentation control facilities; Dan

e) Road access.

In order to support the revegetation activities, IUP holders of production operations and IUPK of production operations who have environmental documents in the form of analysis on environmental impact make nursery facilities with facilities that include:

a) Light regulator or room;

b) Seed germination facilities;

c) Drainage line;

d) Media handling facilities are growing;

e) Warehouse of facilities and infrastructure;



f) Watering facilities; and

g) Administrative system.

In the nursery facilities carried out the treatment of seedlings include:<sup>17</sup>

a) Eradication of weeds/pests/diseases;

b) The replacement of plants whose time limit in the nursery has been exceeded; and

c) Watering and fertilization.

In the event that mining activities technically leave the former mine hole, a management plan must be made in order to use the former mine hole including:

a) Slope stabilization;

b) Safety of former mine pits (*Void*);

c) Recovery and monitoring of water quality and water management in the former mine pit (*Void*) in accordance with its provisions; and

d) Maintenance of the former mine pit (*Void*).

For IUP holders who violate the rules in the Law, administrative

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<sup>17</sup> Pedoman Pelaksanaan Reklamasi dan Pascatambang Serta Pascaoperasi Pada Kegiatan Usaha Pertambangan Mineral dan Batubara di lampiran VI KEPMEN ESDM RI Nomor 1827K/30/MEM/2018 tentang Pedoman Pelaksanaan Kaidah Teknik Pertambangan yang Baik.

sanctions will be imposed. According to Article 50 of Government Regulation Number 78 of 2010 on Reclamation and Post-mining, if IUP holders do not carry out reclamation, then administrative sanctions will be obtained in the form of:<sup>18</sup>

*"The first written warning, given at most 3 (three) times with a warning period of 30 (thirty) calendar days each; Both temporary terminations of part or all of mining activities; and/or All Three administrative sanctions are given by the Director General on behalf of the Minister, governor, or regent/mayor in accordance with his authority".*

#### 4. **Maslahah Mursalah**

*Maslahah mursalah* is one of the sources of Islamic law that is not contained in the Qur'an and al-Sunnah, including in the *Muktalif* legal sources. *Muktalif's* source of law is the source or the evidence not agreed upon by the scholars.

##### a. Understanding *Maslahah Mursalah*

*"Maslahah mursalah"* consists of 2 (two) words, namely *maslahah* (المصلحة) and *mursalah* (المرسلة). The word *maslahah* is well defined, benefiting, regardless of the damage according to the form of *Masdar*. Quoting from the opinion expressed by Imam al-Ghazali, Wahbah Zuhaili said that *maslahah mursalah* is to attract benefits (advantages) and avoid *madharat*.<sup>19</sup> While the word

<sup>18</sup> Pasal 50 Peraturan Pemerintah Nomor 78 tahun 2010 tentang Reklamasi dan Pascatambang.

<sup>19</sup> Amir Yarifuddin, *Ushul Fiqih*, ( Jakarta: Kencana, 2008), 345.

*Mursalah* (المرسلة) is interpreted as detached or free.<sup>20</sup> The following is the understanding of the *mursalah* in the opinion of the experts:<sup>21</sup>

### 1) Al-Ghazali

The meaning of Imam al-Ghazali explains the meaning of *maslahah mursalah* as follows:

مَا لَمْ يَشْهَدْ لَهُ مِنَ الشَّرْعِ بِإِبْطَالٍ وَلَا بِإِعْتِبَارِ نَصٍّ مُعَيَّنٍ

It means: "*There is no evidence for him of a certain form of nash that cancels and no one notices it*".<sup>22</sup>

### 2) Al-Shaukani in the book of Irsyaad al-Fuhul conveys his opinion, namely:<sup>23</sup>

الْمُنَا سَبُّ الَّذِي لَا يَعْلَمُ أَنَّ الشَّرْعَ أَلْغَاهُ أَوْ اعْتَبَرَاهُ

It means: "*It is not known whether the shar'i rejected it or took it into account.*"

### 3) Ibn Qudaamah of Hanbali scholars

مَا لَمْ يَشْهَدْ لَهُ إِبْطَالٌ وَلَا إِعْتِبَارٌ مُعَيَّنٌ

It means: "*There is no sign of it, nor has he seen it.*"

<sup>20</sup> Hasbiyallah, *Fiqh dan Ushul Fiqh*, (Bandung: PT Remaja Rosdakarya, 2017), 104.

<sup>21</sup> Amir Yarifuddin, *Ushul Fiqih*, 354.

<sup>22</sup> Hasbiyallah, *Fiqh dan Ushul Fiqh*, 105.

<sup>23</sup> Amir Yarifuddin, *Ushul Fiqih*, 354.

## 4) Yusuf Hamid al-Alim

مَا لَمْ يَشْهَدْ الشَّرْعُ لَا لِيُطْلَأَ نَهَا وَلَا لِاعْتِبَارِهَا

It means: *"Anything that is not guided by the sheath is not to cancel it, nor to pay attention to it".*

## 5) Jalal al-Din Abd al-Rahman

الْمَصْلِحُ الْمَأْتَمَةُ لِمَقَاصِدِ الشَّارِعِ وَلَا يَشْهَدُ لَهَا أَصْلٌ حَصٌّ بِإِعْتِبَارِ أَوْ بِالْإِلْغَابِ

It means: *"Maslahah is in accordance with the purpose of the shar'i (lawmaker) and there is no specific clue that proves his confession or his rejection".*

## 6) Abd al-Wahab al-Khallaf

إِنَّهَا مَصْلَحَةٌ لَمْ يَرِدْ عَنِ الشَّارِعِ دَلِيلٌ لِاعْتِبَارِهَا أَوْ لِالْغَاءِهَا

It means: *"Maslahah mursalah is a maslahat for which there is no evidence of syara' coming to admit it or reject it".*

## 7) Muhammad Abu Zahrah

هِيَ الْمَصْلِحُ الْمَأْتَمَةُ لِمَقَاصِدِ الشَّارِعِ الْأِسْلَامِيِّ وَلَا يَشْهَدُ لَهَا أَصْلٌ خَاصٌّ  
بِالْاعْتِبَارِ أَوْ بِالْإِلْغَاءِ

It means: *"Maslahah is in harmony with the purpose of Islamic sharia and there is no specific clue that proves his confession or his rejection".*

From some of the above definition formulas, the nature of *maslahah mursalah* is:<sup>24</sup>

- 1) It is a good thing according to reason with consideration can realize good or avoid evil for man;
- 2) What is good according to reason, also aligned and in line with the purpose of *syara'* in establishing the law;
- 3) There is no guidance from *syara'*, nor is there any guidance on it.

It is a benefit that is not established by the *syara'*, and there is no evidence of sharia ruling to pay attention or disregard. The fact that the *maslahah mursalah* is misinterpreted:<sup>25</sup>

*"Something good according to reason with consideration can manifest good or ache for man; that which is good according to reason, is also aligned and in line with the sharia's purpose in establishing the law; There is no guidance on it, nor is there any guidance from Allah."*

It can be understood that in stipulating laws according to *maslahah mursalah* the problem is only for the benefit of humans by prioritizing benefits, and avoiding harm, or eliminating difficulties for humans themselves.

#### b. Terms of *maslahah mursalah*

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<sup>24</sup> Hasbiyallah, *Fiqh dan Ushul Fiqh*, 106.

<sup>25</sup> Hasbiyallah, *Fiqh dan Ushul Fiqh*, 106.

The specific conditions contained in the *mursalah maslahah* according to Wahbah Zuhaili are as follows:<sup>26</sup>

- 1) When the deed or the act is a manifest deed (*haqiqatan*) is not just a guess (*wahmiyah*) if it can create benefits and reject *madharat*;
- 2) Nor when the work with the *maslahah* is contrary to the law or principle stipulated based on *nash* and *ijma'*;
- 3) The coverage of *maslahah mursalah* is common, which can realize benefits for many people.

The conditions of *maslahah mursalah* according to al-Ghazali are as follows:<sup>27</sup>

- 1) The *maslahah* must be in line with the purpose of Islamic law namely to preserve religion, soul, property and ancestry or honor.
- 2) It cannot be contrary to *Qu'an*, *al-Sunnah* and *Ijma'*.
- 3) The *maslahah* occupies the level of *d{oruriyah* (primary), *hajjiyah* (secondary) which is equivalent to *d{oruriyah*.
- 4) The benefit must be *qot{'i* or *z{an* that is close to *qot{'i*.

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<sup>26</sup> Wahbah Zuhaili, *Bushul Fiqh Isamy*, (Lebanon: Dar Fikr Juz 2), 78.

<sup>27</sup> Aminudin Slamet Widodo, *Konsep Maslahah Mursalah Wahbah Zuhaili di Indonesia, Skripsi*, (Malang, UIN Maulana Malik Ibrahim, 2015), 48.

5) In certain cases it must be qat{'iyyah, d{oruriyah and kulliyah.

c. Level of *maslahah mursalah*

According to Mustafa Said al-Khind, the *maslahah mursalah* based on basic needs for humans is as follows:<sup>28</sup>

- 1) *Maslahah D{oruriyat*, commonly referred to as the "Primary" level of need which is a benefit that must exist for human existence related to basic human needs or if this need is not met then human life will not be perfect. For example religion, soul, reason, offspring (self-esteem) and wealth;
- 2) *Maslahah H{ajiyat*, commonly called the need level "Secondary" which is a benefit needed for human life as a refinement of basic needs, but does not reach the level of *maslahah d{oruriyat* and aims to eliminate difficulties. If this need is not met in human life, it will not negate or damage the life of man itself.;<sup>29</sup>
- 3) *Maslahah Tahsiniyat*, commonly called the "Tertiary" level needs that are a benefit that people need as a complement to primary needs and secondary needs.

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<sup>28</sup> Hasbiyallah, *Fiqh dan Ushul Fiqh*, 122-231.

<sup>29</sup> Romli S.A, *Study Perbandingan Ushul Fiqh*, 221.

The level of *maslahah mursalah* is reviewed from the fact that directly regulates it according to Abdul Karim Zaidan as follows:<sup>30</sup>

- 1) *Al-Maslahah Mu'tabarah*, which is a *maslahah* that is expressly recognized by sharia and has been established the provisions of the law that realize it. This benefit comes from the nash of the Qur'an and the Sunnah;
- 2) *Al-Maslahah Mulghah*, which is something that is considered *maslahah* by reason, but considered incorrect because the reality is contrary to sharia provisions. A benefit contrary to the nash of the Qur'an and the Sunnah;
- 3) *Al-Maslahah Mursalah*, which is something that is considered *maslahat* by reason, but the provision is not explained according to the provisions of sharia. It is a benefit that is in line with the meaning of Islamic sharia, but no nash has commanded or forbidden it.<sup>31</sup> The scholars of Ushul Fiqh divide it into two namely *maslahah al-Ammah* (general benefit related to the penalty of the people) and *maslahah al-Khashah* (the benefit of an individual or the interests of a handful of people).<sup>32</sup>

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<sup>30</sup> Hasbiyallah, *Fiqh dan Ushul Fiqh*, 107.

<sup>31</sup> Hasbiyallah, *Fiqh dan Ushul Fiqh*, 108.

<sup>32</sup> Asnawi, *Konseptualisasi Teori Maslahah*, Skripsi, (Jakarta: UIN Syarif Hidayatullah Jakarta, 2014).



## CHAPTER III

### RESEARCH METHODS

The method of research is a procedure or steps that are carried out regularly, directed and systematic to know the information related to the things to be researched, using certain techniques.<sup>33</sup> With this method, a study can be trusted, accountable, so that there is no validity.<sup>34</sup> While research is a scientific activity which relates to analysis and construction conducted methodologically, systematically, and consistently. Thus the data and information collected by the researcher must be in accordance with the problem. The research method is a scientific way used to obtain data and information with specific objectives and usability. The methods used by researchers in this study are as follows:

#### **A. Type of Research**

The type of research used in this study is a type of field research (*Field Research*) or known as Empirical Law research (*Empirical Juridical*). Empirical law research is a study that focuses on researching a phenomenon or condition in the field and research objects in detail by collecting facts that are then examined and examined based on the concepts that exist.<sup>35</sup>

The purpose of this empirical research law is to know how the law works in society. The research aims to determine the extent of “The

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<sup>33</sup> Bahdar Johan Nasution, *Metode Penelitian Ilmu Hukum*, (Jakarta: PT.Gravindo, 2001), 3.

<sup>34</sup> Suketi dkk, *Metode Penelitian Hukum*, (Depok: Rajawali Pers, 2018), 148.

<sup>35</sup> Aminuddin Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Jakarta: Raja Grafindo, 2004), 15.

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## **B. Research Approach**

In order to do research, a research method is needed.<sup>36</sup> In this study, researchers used a statutory and *juridical approach to sociology*. It is said to use a statutory approach because in analyzing this research it uses a statutory perspective. While the *sociological juridical* approach is defined as the determination and assessment of legal aspects with non-legal aspects that occur in the community environment.<sup>37</sup> Thus *sociological juridical* research is a research conducted by jumping directly into the community environment with the aim of finding the facts that occur. Social problems that occur in society are increasingly common, so sociological approaches are needed. Researchers used a *sociological juridical* approach by interviewing several informants and speakers associated with the study to analyze the problems.

In addition, this research uses legislation so that this research uses constitutional short-circuiting namely Law Number 4 of 2009 on Mineral and Coal Mining, Government Regulation Number 78/2010 on Reclamation and Post-Mining and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules.

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<sup>36</sup> Sunarsimi Arikunto, *Prosedur Penulisan: Suatu Pendekatan Praktek*, (Jakarta: Rieneka Cipta, 2002), 23.

<sup>37</sup> Bahder Johan Nasution, *Metode Penelitian Hukum*, 123.

### C. Research Location

Researchers conducted research at KSU Gaboktan Barokah of Lodan Kulon of Sarang of Rembang District, Central Java which is a cooperative as holder of IUP (*Mining Business License*) quartz sand mining production operation.

### D. Type and Data Source

The types of data used in this study are primary data and secondary data.<sup>38</sup>

#### 1. Primary Data

That is data obtained directly from the main source either the subject or the object of a study.<sup>39</sup> In this study, researchers conducted interviews to Mr. Budi Setiawan, Mr. Godo, Mr. I Made Hartawan, Mr. Syamsudin, Mr. Abdul Wakhid, Mr. Munaji, Mr. Khusen, Mr. Wasir, Mrs. Kholisoh and related parties.

#### 2. Secondary Data

That is the supporting data from the primary data. In this study, secondary data was obtained from documents, books, journals, thesis, thesis, etc. as well as archives owned by a person or institution that was the subject of the research.<sup>40</sup> The secondary data used in this study are the law book, law, research, notary deed of the KSU Gaboktan Barokah

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<sup>38</sup> Aminuddin Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 30.

<sup>39</sup> Aminuddin Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 30.

<sup>40</sup> Amiruddin Zainal Asikin, *Pengantar Metode Penelitaian Hukum*, 30.

association, documents of agreement and employment agreement, the results of the meeting of KSU Gaboktan Barokah of Lodan Kulon, the regent's decision on WIUP, the regent's decision on IUP, and others related to reclamation.

### E. Method of Collecting Data

The way researchers use in conducting research to get this data is referred to as a technique or data research method. With this method, the achievement of a problem will be valid. The research uses two methods of data collection, namely interview/interviews and documentation.

#### 1. Interview/Interview

An interview is a technique of collecting information by asking directly to the informant or speaker.<sup>41</sup> In this study, researchers conducted interviews with several people, including:

**Table 2.**

Names of Informan

No.	Names of Information	information
1.	Mr. Budi Setiawan	Head of Section of Ministry of Energy and Mineral Resources South Kendeng Branch
2.	Mr. Godo	Head of Environmental Pollution and Destruction in the Environment and Forestry Office of Rembang District

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<sup>41</sup> Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktik*, Edisi Revisi VI Cet.13, (Jakarta: Rineka Cipta, 2006), 155.

3.	Mr. I Made Hartawan	Police Chief of The Sarang Sub-District Sector
4.	Mr. Syamsudin	Former head of Lodan Kulon (2015 – 2019)
5.	Mr. Abdul Wakhid	Manager of KSU Gaboktan Barokah of Lodan Kulon (2014 – present)
6.	Mr. Munaji	Manager of mining area KSU Gaboktan Barkah of Lodan Kulon
7.	Mr. Khusen	Chairman RW 02 RT 08 of Lodan Kulon
8.	Mr. Wasir	Residents RT 07 RW 01 Lodan Kulon
9.	Mrs. Kholisoh	Residents RT 07 RW 01 Lodan Kulon

## 2. Documentation

To be able to collect data by researching important records related to the research object, it needs documentation. The goal is to obtain clear and concrete data on the reclamation of the KSU Gaboktan Barokah of Lodan Kulon with the interview of some informant or speaker. It is then analyzed according to positive law and *maslahah mursalah*.

### F. Data Processing Methods

In managing the data, this research uses methods of qualitative descriptive analysis because researchers want to describe and analyze facts or circumstances or symptoms that appear or as is, by describing the data in the form of orderly, burst, logical, not overlapping, and effective so as to

facilitate the understanding and interpretation of data.<sup>42</sup> This research focuses analysis of the reclamation of KSU Gaboktan Barokah of Lodan Kulon positive law perspective and *masalah mursalah*. The data processing in this study is as follows:<sup>43</sup>

### 1. Editing

Editing is the re-examination of data obtained from its completeness, clarity of meaning, suitability, and relevance to other data groups. As for the purpose is to examine carefully whether the research data is enough to solve problems that exist in the problem of problems, reduce data deficiencies and improve the quality of data. In this study, the data obtained from the interviews and documentation related to the reclamation KSU Gaboktan Barokah of Lodan Kulon positive law perspective and *masalah mursalah*.

### 2. Classifying

After the data from various sources, it is classified to be obtained from the interviews and documentation of a more systematic research, so that a data that becomes valid exactly what it is. As for the classification conducted by researchers in this research is reclamation activities carried out after the excavation of quartz sand mining has been implemented or not yet by the holders of IUP (*Mining Business License*), in this case is KSU Gaboktan Barokah of Lodan Kulon. It is then analyzed according to the prevailing laws and regulations in Indonesia, and according to the

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<sup>42</sup> TIM Penyusun, *Pedoman Penulisan Skripsi*, (Malang: Fakultas Syariah, 2019), 26.

<sup>43</sup> TIM Penyusun, *Pedoman Penulisan Skripsi*, 26.

general government. Thus, if there is an impact after this quartz sand mining excavation can be overcome. So that quartz sand mining activities do not cause environmental damage and do not cause human unrest around the mining site. But it does provide benefits for humans if reclamation is actually done.

### 3. Verifying

Data verification is a step and conducted by researchers to obtain data and information from the field by checking back in order to be aware of the validity of such data, whether such data and information are fully valid and in accordance with the research expected or required by researchers in a study. In this case, the author performs a matching return of the interview results that have been obtained from the informant that relates in this study by checking the recording or short writing of the interview on how the reclamation done by KSU Gaboktan Barokah of Lodan Kulon, the reclaimed inhibitory factor that was submitted, then given to the informant to be responded whether the data is appropriate. Then the data is matched between the informant and the legal subject of research, so that the conclusion can be taken carefully and perfectly.

### 4. Analyzing

Data analysis is a process to analyze the data of the informant, then the data is displayed with words that are easily digestible and understood. Sugiyono argues that data analysis is the process of finding and structuring data systematically from the results of interviews,

observations and documentation. In this study, data analysis was obtained from the results of interviews and documentation about the reclamation of KSU Gaboktan Barokah of Lodan Kulon positive law perspective and *masalah mursalah*. The analysis used in this study is *qualitative descriptive*. *Qualitative descriptive* analysis is a technique done in digging a study by plunging in the field directly and seeing the actual state.

## 5. Concluding

Withdrawal conclusion is a process by which researchers try to draw conclusions from the steps that have been done as well as verify the data obtained, so as to break the problem of problems on how the reclamation of KSU Gaboktan Barokah of Lodan Kulon positive law perspective and *masalah mursalah*.



## CHAPTER IV

### RESULTS AND DISCUSSION

#### A. General Condition of Research Object

The research object conducted by researchers in reviewing about the reclamation of this quartz sand mine is located in Lodan Kulon. This quartz sand mining belongs to the village government of Lodan Kulon which is managed by KSU Gaboktan Barokah, where the mining ground is located about 100 meters beside Embung reservoir, and is a hill not far from the community owned farm. This quartz sand mining passes two roads, namely RT 04/RW 08 Hamlet Ropoh and RT 07/RW 01 of Lodan Kulon of Sarang District of Rembang District Central Java Province.<sup>44</sup>

##### 1. Profile of KSU Gaboktan Barokah of Lodan Kulon

The cooperative is fully responsible in the management of quartz sand mining in Lodan Kulon called KSU Gaboktan Barokah. The cooperative was established since 2014 with the legal entity number 96/BH/XIV. 22/2014, and notarial deed Number 5 dated August 14, 2015 at the notary Office of Hilyatus Sa'adah, S.H. M.Kn with the name "Gaboktan Barokah Society" with the applicant, namely Syamsudin and Ahmad Suyono, which are each domiciled as chairman and supervisor.

The establishment of KSU Gaboktan Barokah began a meeting of

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<sup>44</sup> [https://id.wikipedia.org/wiki/Lodan\\_Kulon,\\_Sarang,\\_Rembang](https://id.wikipedia.org/wiki/Lodan_Kulon,_Sarang,_Rembang) diakses pada tanggal 3 Maret 2020.

the village government who wanted a cooperative in developing agriculture and livestock business in Lodan Kulon. In 2014, the village government wanted a mining Lodan Kulon because the potential of natural resources in the form of quartz sand is so abundant, although since the year 1996 has been carried out manually mining by the surrounding community. Under the provisions of Law Number 4 of 2009 on Mineral and Coal Mining, which is entitled to IUP (*Mining Business License*) is business entity, cooperative and individual.<sup>45</sup> Thus, the Government of Lodan Kulon pointed to KSU Gaboktan Barokah as a mining manager, it is hoped that the quartz sand mining in Lodan Kulon runs safely and comfortably, unlike the previous year that ate casualties due to the retunicated rocks when digging the sand. Not only that, another purpose is for the management of sand mining can donate funds to the PAD (*Indigenous Revenue Village*) for the village government of Lodan Kulon, and can be accountable, so that there is no misuse of rights and authority of the office.

Based on meeting of KSU Gaboktan Barokahof Lodan Kulon, then on 4 September 2014 proposed WIUP (*Mining Business License Area*) to Regent Rembang. Subsequently, on September 17<sup>th</sup> of 2014, KSU Gaboktan Barokah of Lodan Kulon also filed for IUP (*Mining Business License*) of non-metallic quartz Mineral production operation to the regent of Rembang. After reviewing the Engineering and field survey by

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<sup>45</sup> Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.

the Ministry of Energy and Mineral Resources of Rembang District together with the Ministry of Environment and Forestry Rembang District, then on 22<sup>th</sup> September of 2014. The regent of Rembang gave WIUP and IUP to KSU Gaboktan Barokah of Lodan Kulon. The granting of permission by the regent of Rembang states that sand mining in Lodan Kulon is legally valid and must be responsible for all mining activities to the minister, Governor, or Regent/mayor, in this case conveyed to the Ministry of Energy and Mineral Resources of Rembang District (now moved to the Ministry of Energy and Mineral Resources South Kendeng Branch).

## **2. Status of IUP Holder of Production Operations of KSU Gaboktan Barokah**

Every company that will do mining must have a clear identity, while the identity of quartz sand mining managed by KSU Gaboktan Barokah of Lodan Kulon is as follows:<sup>46</sup>

**Table 3.**

Identity of IUP Holder of KSU Gaboktan Barokah Production Operation

No.	Status of IUP Holder	Information of Company
1.	Name of Company	KSU Gaboktan Barokah
2.	Person in charge	H. Munaji
3.	Address	Lodan Kulon of Sarang District of Rembang Regency
4.	Activities	Quartz Sand Mining

<sup>46</sup> Keputusan Bupati Rembang Nomor 545/1362/2014 tentang Pemberian Izin Usaha Pertambangan (IUP) Operasi Produksi Mineral Bukan Logam Pasir Kuarsa kepada KSU Gaboktan Barokah, 3.

5.	Number of WIUP	545/1535/2014
6.	Number of UP	5451362/2014
7.	Period of Time	3 Years
8.	Large	19.027 m <sup>2</sup>
9.	Location of Mining Activities	Lodan Kulon of Sarang District of Rembang Regency
10.	Environmental Document Approval	Environmental Permit / UKL-UPL granted by the Government of Rembang Regency Number 492 dated 26 September 2014
11.	Location of Delivery Areas	40 Km from the city center of Rembang
12.	Tools for Mining	Mechanical

**Table 4.**

The Coordinate Boundary of the IUP Production Operation KSU

Gaboktan Barokah Lodan Kulon<sup>47</sup>

No.	Geographical Coordinates		Information
	Latitude	Longitude	
1.	S 6° 47' 30.0"	E 111° 35' 35.9"	-
2.	S 6° 47' 30.0"	E 111° 35' 46.9"	-
3.	S 6° 47' 30.3"	E 111° 35' 46.9"	-
4.	S 6° 47' 30.3"	E 111° 35' 55.6"	-
5.	S 6° 47' 30.5"	E 111° 35' 55.6"	-
6.	S 6° 47' 30.5"	E 111° 36' 06.3"	-
7.	S 6° 47' 31.0"	E 111° 36' 06.3"	-
8.	S 6° 47' 31.0"	E 111° 35' 55.1"	-
9.	S 6° 47' 31.8"	E 111° 35' 55.1"	-
10.	S 6° 47' 31.8"	E 111° 35' 35.9"	-

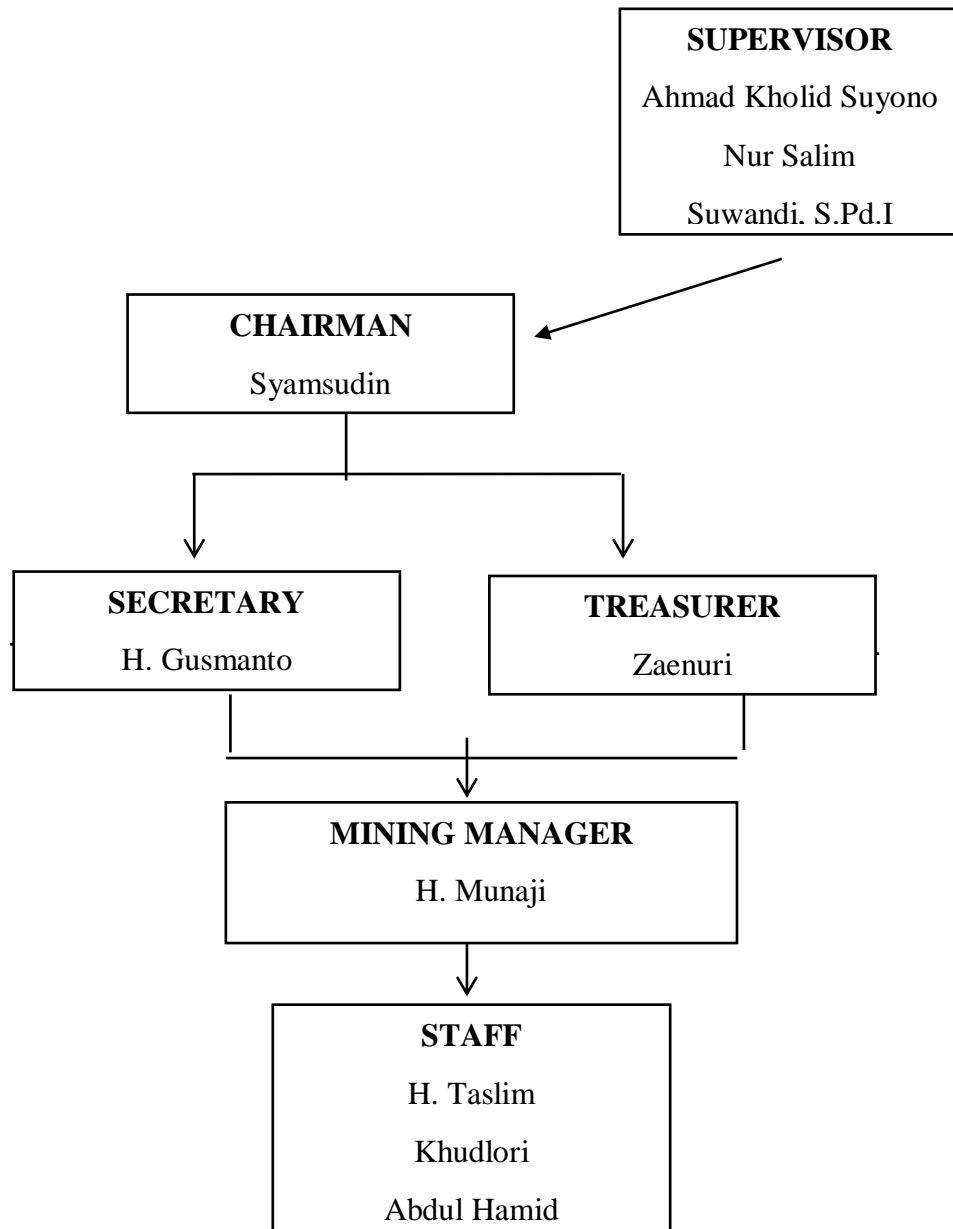
To carry out the aims and objectives of an activity, a team is needed that can be responsible for carrying out the activity itself with the

<sup>47</sup> Keputusan Bupati Rembang Nomor 545/1362/2014 tentang Pemberian Izin Usaha Pertambangan (IUP) Operasi Produksi Mineral Bukan Logam Pasir Kuarsa kepada KSU Gaboktan Barokah, Lampiran II.

aim of making these activities run smoothly. The mining organizational structure in the KSU Gaboktan Barokah of Lodan Kulon is as follows:<sup>48</sup>

**Table 5.**

Organization Structure of KSU Gaboktan Barokah of Lodan Kulon



<sup>48</sup> Rapat Pengurus Koperasi Gaboktan Barokah Desa Lodan Kulon Kecamatan Sarang Kabupaten Rembang, 2.

## **B. Results of Research and Discussion**

### **1. Analysis Reclamation of KSU Gaboktan Barokah Of Lodan Kulon**

#### **Positive Law Perspective**

Based on data obtained from field research through interviews to several sources on quartz sand mining reclamation in KSU Gaboktan Barokah of Lodan Kulon, the most basic thing is the rights and obligations of IUP holders who are conducting production operations. The rights and obligations are intended so that a company can be responsible for the activities that have been carried out under the provisions of the legislation.

The right itself is something that must be accepted, cannot be transferred to another party, and may be prosecuted by force. While liability is something that must be done, cannot be transferred to another party, and can be forcibly demanded by the interested. The rights and obligations are useful in controlling the abuse of authority granted by the government after the granting of IUP to a company. Thus, mining activities can be carried out safely, comfortably, and peacefully no one is harmed. This explanation is contained in Article 96 letter (c) of Law Number 4 of 2009 on Mineral and Coal Mining, which addresses the reclamation that:<sup>49</sup>

*"In the application of good mining engineering rules, IUP and*

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<sup>49</sup> Pasal 96 huruf (c) Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.

*IUPK holders are obliged to carry out.... management and development of the mining environment, including reclamation and post-mining activities .....*"

From the above article, it can be seen and observed that the article explains the obligation of a company as an IUP holder to conduct reclamation activities after mining is completed. The obligation to reclamation is the responsibility of a company in conducting mining activities. Nevertheless, before conducting reclamation activities, a company must include a reclamation plan and submit a reclamation guarantee to the government through the Ministry of Energy and Mineral Resources at the Government Bank. Provisions regarding the IUP's obligation to conduct more detailed reclamation have been stipulated in Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining Article 20 points (1), which reads:<sup>50</sup>

*"IUP Holders of Production Operations and Production Operations IUPK shall carry out reclamation and post-mining in accordance with the reclamation and post-mining plan until it meets the criteria of success".*

As stated by Pak Budi Santoso as Head of Mineral and Coal Geology Section of Ministry of Energy and Mineral Resources South Kendeng Branch, it is:<sup>51</sup>

*"Syarat teknis yang harus dipenuhi oleh pemegang IUP atau IUPK meliputi laporan eksplorasi atau operasi produksi, studi kelayakan, rencana reklamasi, dokumen lingkungan dan izin lingkungan" ..*

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<sup>50</sup> Pasal 20 poin (1) Peraturan Pemerintah Nomor 78 tahun 2010 tentang Reklamasi dan Pascatambang.

<sup>51</sup> Budi Santoso, Interview, (Rembang, 28 Februari 2020).

Furthermore, based on an interview from Mr. Godo as head of environmental pollution and damage at the Environment and Forestry Office of Rembang District when the author asked about what requirements should IUP and WIUP applicants meet that:<sup>52</sup>

*“Setiap perusahaan yang mengajukan permohonan IUP Operasi Produksi di Kabupaten Rembang harus menyertakan Dokumen lingkungan kepada Dinas Lingkungan Hidup dan Kehutanan Kabupaten Rembang. Dokumen lingkungan tersebut memuat AMDAL (Analisis Mengenai Dampak Lingkungan), atau Surat Pernyataan Pengelolaan lingkungan”.*

The above requirement is that the government requires the readiness of the applicant if they wish to apply for IUP. Thus mining business activities can be held accountable as per the applicable Law in Indonesia. Furthermore, the understanding of reclamation as contained in Article 1 point (26) of Law Number 4 of 2009 on Mineral and Coal Mining that reclamation is an activity carried out throughout the stages of mining efforts to organize, restore, and improve the quality of the environment and ecosystem in order to function again in accordance with its provisions.<sup>53</sup>

Furthermore, KSU Gaboktan Barokah of Lodan Kulon is a cooperative engaged in agriculture, plantation, and livestock, as well as banking. But not only has that goal, KSU Gaboktan Barokah holds IUP production operations sand quartz. This mine made a large contribution in adding PAD (*Village Original Income*) of Lodan Kulon for 3 years

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<sup>52</sup> Godo, *Interview*, (Rembang, 27 Februari 2020).

<sup>53</sup> Pasal 1 poin (26) Undang-Undang Nomor 4 tahun 2009 tentang Pertambangan Mineral dan Batubara.



from 2014 to 2017. Researchers conducted an interview with Mr. Munaji as Manager of mining KSU Gaboktan Barokah of Lodan Kulon:<sup>54</sup>

*“Biyen pas arep ndirikno tambang pasir iku kudu wenehno jaminan gae reklamasi. Lah tambang sek tak garap iki wes wenehno jaminan reklamasi ning rembang mbak (when we want to build a sand mine it must provide reclamation guarantees. as for the mine that I am working on has provided reclamation guarantee to Rembang)”.*

Furthermore, some of the things that should be contained in the reclamation plan are contained in Article 7 letter (4) of Government Regulation Number 78 of 2010 on Reclamation and Post-mining, and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules which reads:<sup>55</sup>

*“The reclamation plan as referred to in paragraphs(1), (2), and (3) contains at least: land use before and after mining; land clearing plans; a program of reclamation of disturbed land that includes former mining land and former mines that are temporary and/or permanent; success criteria include standards of successful land structuring, revegetation, civil works and final completion; and the reclamation fee plan consists of direct costs and indirect costs”.*

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<sup>54</sup> Munaji, Interview, (Rembang, 27 Februari 2020).

<sup>55</sup> Pasal 1 poin (26) Undang-Undang Nomor 4 tahun 2009 tentang Pertambangan Mineral dan Batubara.

The reclamation plan that has been carried out by KSU Gaboktan Barokah of Lodan Kulon as follows:<sup>56</sup>

a. Land use

IUP Area of production operation of Gaboktan Barokah KS amounted to 19.027 m<sup>2</sup>. From 19.027 m<sup>2</sup> it is a ramp that serves as a mining area and there is a garden. Morphological characteristics in the research area have a ramp leveling morphology that has a height of about 30 meters with the highest elevation at 300 meters and the lowest elevation at 200 meters. The slope percentage value is also about 1.5%.

b. Land use after mining

Land use when mining activities begin does not change much from the beginning because previously done mining in the same area with almost the same conditions as the following:

- 1) The mine surface is planned at an area of 19.027 m<sup>2</sup> with the highest elevation of 300 Mdpl. At the end of the mining is planned to reach tiered elevations of up to 200 Mdpl. The first year mining is carried out on the middle side with an elevation of 300 Mdpl. This is done because it starts with a high elevation contour value to the low. In addition in the central area is very close to the mine road access.

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<sup>56</sup> Rencana Reklamasi dan Pascatambang Pasir Kuarsa IUP Nomor 545/1362/2014 KSU Gaboktan Barokah Desa Lodan, Kulon Kecamatan Sarang, Kabupaten Rembang.

## 2) Mine way

The road transporting quartz sand mines is a shared mine road.

The road condition is quite good with the road width condition is about 3-4 meters. The road surface of the mine has been scattered hard material. The mine road already exists and until now it has been used also by local residents to go to dukuh mbanyu and to the community fields around the mine.

As for the reclamation program in KSU Gaboktan Barokah of Lodan Kulon as follows:<sup>57</sup>

### 1) Land Reclamation

Reclamation activities will be conducted at land sites affected by mining activities. At the time of the mine opening plan has been carried out ranging from the opening of infrastructure to support mining activities, to mining activities, so that in such activities there needs to be a land improvement to be restored to better land function.

Throughout the mining activities, places or locations that are planned to be reclaimed are mine roads, postal buildings, heavy equipment poll forgings, barracks and not mines. However, the implementation of this reclamation will be carried out as long as the

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<sup>57</sup> Rencana Reklamasi dan Pascatambang Pasir Kuarsa IUP Nomor 545/1362/2014 KSU Gaboktan Barokah Desa Lodan, Kulon Kecamatan Sarang, Kabupaten Rembang.

site is completely deused for mining activities, as there is still infrastructure still used for mining activities.

## 2) Reclamation Techniques and Equipment

The reclamation plan is based on the results of the discussion in the feasibility study document and UKL UPL so that in accordance with the plan for the final provision of IUP mine Production Operations KSU Gaboktan Barokah of Lodan Kulon, then the methods and equipment used in the implementation are:<sup>58</sup>

### a) Reclamation

The reclamation plan will be carried out in the 3rd year of mining. In year 3 the plan will be reclaimed by 7.000 m<sup>2</sup>. This reclamation follows the progress of mining. After reclamation and land arrangement, it is continued with the "scattering of the land" the size of the land to be reclaimed.

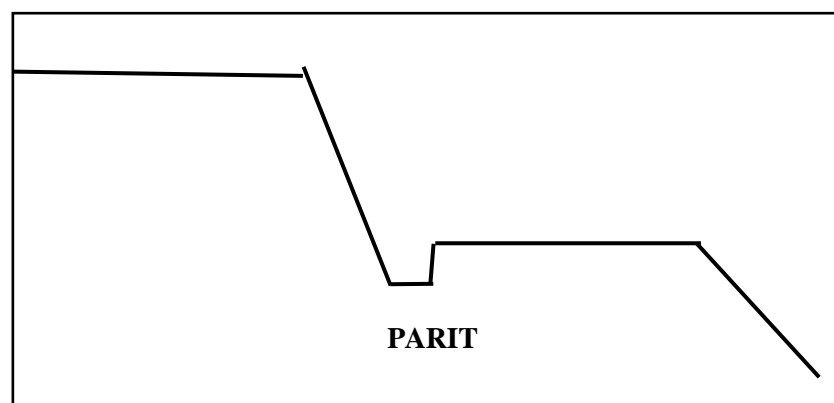
**Tabel 6.**

Reclamation Broad Plan

Reclamation plan (m <sup>2</sup> )	Year		
	1	2	3
Land openings	3.000 m <sup>2</sup>	5.000 m <sup>2</sup>	7.000 m <sup>2</sup>
Reklamation	0	0	7.000 m <sup>2</sup>

<sup>58</sup> Rencana Reklamasi dan Pascatambang Pasir Kuarsa IUP Nomor 545/1362/2014 KSU Gaboktan Barokah Desa Lodan, Kulon Kecamatan Sarang, Kabupaten Rembang.

- 1) Ground level arrangement. Ground level arrangement, done by making a terrace and setting the elevation of the surface.
- 2) Scattering of the shoots. The soil of the shoots is taken from the back filling at the time of evaporation of the soil or taken a pile of waste dump and the purchase of partial soil is then spread with a thickness of approximately 20-30 cm.
- 3) Erosion control and water management, quartz sand is porous and very easy to escape water, so rainwater will be directly passed below the surface, so the presence of runoff water is very few. Similarly, the rate of erosion is also very small due to the nature of the quartz sand. Although very few we need to anticipate with a safe level construction and equipped a kind of trench / sewer at the level so that then the surface water can be gathered and flowed safely.



**Gambar 1.** Trenches for erosion control and water management

**Table 7.**

Plan for Dissemination of Volume of The Land of The Shoot (m<sup>3</sup>)

Ground Spread (m <sup>3</sup> )	Year		
	1	2	3
	0	0	5.000 m <sup>2</sup>

b) Reclamation Equipment

The equipment used during reclamation in the IUP area of KSU Gaboktan Barokah production operation of Lodan Kulon is the same one used at the time of mining activities. The implementation of this reclamation utilizes at the time of over burden hoarding at the former mining site, which is a model of back filling mining.

**Table 8.**

Reclamation Equipment

No.	Activities	Tool	Tool Type	Unit
1.	Dozing or Spending	Buldozer	7 G (260 m <sup>3</sup> /jam)	1
2.	Removal of the land of shoots	Dump Truck	Hino FM 260 JD (25 ton)	2
3.	Removal of the land of shoots	Excavator	Sany SY 150 (115 m <sup>3</sup> / jam)	1
Amount				4

### 3) Revegetation

Revegetation is carried out on the site of former mine openings that have been in back filling and flattened and have been sprinkled with soil shoots with plant types for cover plants. The land consists of teak tree, petai and mahogany with a planting distance of 4x4 meters with an area of 7.000 m<sup>2</sup>.<sup>59</sup>

**Table 9.**

Plant Type and Number of Plants

No.	Tree	Year to 3
1.	Teak	200
2.	Petai	150
3.	Mahogany	88
Amount		438

### 4) Utilization of Used Mine Pits

The former mine hole is made tiered (terraced) with a width of 6 meters and a height of 3 meters and is scattered with plant shoots. After planting pioneer crops as well as wood crops, it is expected that the slopes are strong and the land becomes fertile so that it can be planted with production plants and even seasonal food crops.

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<sup>59</sup> Rencana Reklamasi dan Pascatambang Pasir Kuarsa IUP Nomor 545/1362/2014 KSU Gaboktan Barokah Desa Lodan, Kulon Kecamatan Sarang, Kabupaten Rembang.

## 5) Maintenance

Maintenance needs to be carried out while mining activities are still underway. This maintenance activity aims to ensure plant grows well. Maintenance activities ranging from watering, fertilization, soil removal, replacing dead plants and eradicating grasses and pests. Here are the maintenance activities:<sup>60</sup>

### a) Watering

Watering needs to be done until the seeds of trubus or new leaf shoots. This watering is carried out continuously during the dry season, to maintain soil moisture.

### b) Fertilization

Fertilization needs to be done periodically, considering the quartz sand area is a barren area very lacking nutrients. Fertilization is carried out first when it starts to grow new leaves and then fertilization is carried out every month, for 3 months.

### c) Ground eviction

After a while the planting will usually get harder and this needs to be disbursed in order for oxygen to enter the pores of the soil.

### d) Plant replacement (extension)

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<sup>60</sup> Rencana Reklamasi dan Pascatambang Pasir Kuarsa IUP Nomor 545/1362/2014 KSU Gaboktan Barokah Desa Lodan, Kulon Kecamatan Sarang, Kabupaten Rembang.



In the implementation of planting, there are times when the plant is unhealthy or the root stem is broken. then a few days after planting, the plant does not grow properly and tends to die, so it is necessary to replace the new plant (extension).

e) Weed Eradication

Usually one week after planting, starting to grow grass / weeds that interfere with the development of the parent plant, then the grass needs to be exterminated using grass remedies such as "Graphanol".

f) Giver of medicines (pests)

Administration of drugs at the time of the condition of plants is damaged by insect pests. The administration of these drugs is carried out when indicated the plant is damaged by pests in the form of leaf caterpillars, stems and root fungi. To overcome this all then use exterminating drugs such as "Kurater".

The implementation of sand mining reclamation managed by KSU Gaboktan Barokah Lodan Kulon as described by Mr. Munaji as Manager of KSU Gaboktan Mining Village Lodan Kulon as follows:<sup>61</sup>

*“Perusahaan yang kami kelola setidaknya sudah melakukan beberapa hal yang berhubungan dengan reklamasi meskipun*

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<sup>61</sup> Munaji, Interview, (Rembang, 27 Februari 2020).

*belum sepenuhnya misalnya setelah pertambangan tinggi sekitar 10 meter, setelah pertambangan elevasi tertinggi 150 meter, setelah pertambangan elevasi terendah 100 meter, setelah pertambangan kemiringan lereng 1,5%, perbaikan jalan disepanjang jalan menuju lahan bekas tambang dengan bahan aspal putih dan aspal hitam, perataan lubang dengan pasir dibebberapa 2 titik (10%) dari luas lahan tambang, penebaran tanah pucuk dan revegetasi belum dilaksanakan namun selang 2 tahun lamanya mulai tumbuh tanaman dengan luas sekitar 300 meter. Kami sebatas melakukan itu saja, mengingat biaya jaminan reklamasi hanya 5 juta, sedangkan untuk kegiatan melakukan reklamasi jauh lebih mahal”.*

To find out how the mining reclamation managed by KSU Gaboktan Barokah based on Article 7 letter (4) of Government Regulation Number 78 of 2010 on Reclamation and Post-mining and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules can be seen through the following table:

**Table 10.**

Comparison of Reclamation Plan and Implementation of Reclamation of KSU Gaboktan Barokah

No	Activities	Reclamation of Plan	Implementation of Reclamation
1.	Land use before mining	a. Mine area 19.027 m <sup>2</sup> b. Height about 30	a. - b. After mining about 10 meters

		<p>meters</p> <p>c. Highest elevation 300 meters</p> <p>d. Lowest elevation 200 meters</p> <p>e. The slope of slope is 1.5%.</p>	<p>high</p> <p>c. After mining the highest elevation of 150 meters</p> <p>d. After mining the lowest elevation of 100 meters</p> <p>e. After mining Slope of slope is 1.5%</p>
2.	Land use after mining		
	a. Mine surface	Planned to reach tiered elevation up to 200 Mdpl. First year mining is done on the middle side with elevation of 300 Mdpl. This is done because it starts with a high elevation contour value to low	-
	b. Mine road	Walk together with an area of about 3–4 meters	Repaired road damaged by mining with white asphalt base material and black asphalt
3.	Reclamation area	Mine roads, postal buildings, heavy equipment poll sites, barracks and not mines	-
	a. Ground level arrangement	Terraced and surface elevation settings.	Soil alignment with 10% quartz sand
	b. Scattering of the shoots	The soil of the shoot is taken from the back filling at the time of evaporation of the soil or taken a pile of waste dump and the purchase of partial soil is then spread with a thickness of	The spread of the shoots has not been carried out, but little by little grows plants such as petai trees, banana trees and grass

		approximately 20-30 cm	
	c. Erosion and water management	Secure level construction and equipped with a kind of trench/sewer	Not yet implemented
4.	Reclamation equipment	Buldozer Dump Truck Excavator	Implemented in accordance with reclamation equipment
5.	Revegetation	Revegetation is carried out on the site of former mine openings that have been in <i>back filling</i> and flattened and have been sprinkled with soil shoots with plant types for cover plants. The land consists of teak, petai and mahogany with a planting distance of 4x4 meters with an area of 7.000 m <sup>2</sup>	Revegetation has not been implemented, but the interval of 2 years began to grow plants with an area of about 300 meters
6.	Utilization of former mine pits	The former mine hole is made tiered (terraced) with a width of 6 meters and a height of 3 meters and is scattered with plant shoots. After planting pioneer plants as well as wood plants, it is expected that the slopes are strong and the land becomes fertile so that it can be planted with production plants even seasonal food crops	It hasn't been implemented, the former mine still exists. As for the supposed height of the slope should be trimmed

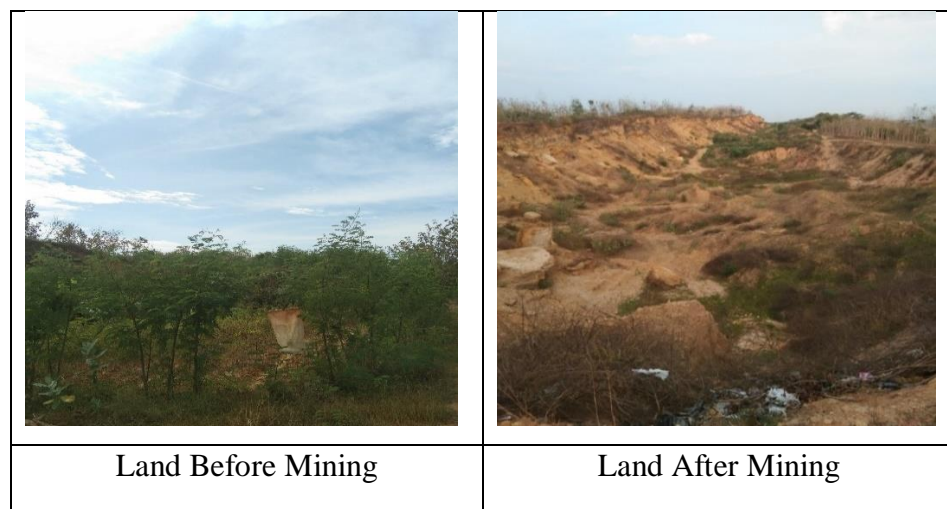
7.	Maintenance		
	a. Watering	Watering needs to be done until the seeds of trubus or new leaf shoots	Not yet implemented
	b. Fertilization	Fertilization is done first when starting to grow new leaves and then fertilization is carried out every month, for 3 months	Not yet implemented
	c. Ground bulking	Done when the soil becomes hard after a long time planted	Not yet implemented
	d. Plant replacement (extension)	Done when plants do not grow well and tend to die	Not yet implemented
	e. Weed Eradication	A week after planting, start growing grass / weeds, then it needs to be exterminated using grass remedies such as "Graphanol".	Not yet implemented
	f. Administration of medicines (pests)	Administration of drugs at the time of the condition of plants is damaged by insect pests by using exterminating drugs such as "Kurater".	Not yet implemented

The mine, managed by KSU Gaboktan Barokah, used to be a hill that was used as an alternative walkway for Lodan Kulon to get to their fields on the back side (right) of the hills. But now, the condition of the hills that have been used in sand mining is split in half, namely on the left side of the hills is lost and on the right side is still used as a field of local

people, so that the community can not pass this alternative road anymore. In addition, the condition of the hills in Lodan Kulon is not the same as the old one. As Mr. Khusen said as investigators questioned the beginning of quartz sand mining, with the statement:<sup>62</sup>

*“Mbiyen niku mbak, gunung cilik dienggo dalan wong kene nak arep moro tegal mbancang seng ono neng kidule gunung, namung sak iki wes gak iso soale gununge tugel dadi loro, bar dienggo tambang pasir. Wit witan neng kono yang gak koyo biyen seng iseh akeh, kari suket, wet gedang, pete tok (In the past, small hills were used as the way of the people here such as wanting to go to The Field of Mbancang which is in the south of the mountain, but now it can no longer be used because the mountain is split in half, after the use of sand mines. The trees there are also not like there used to be many, there are only grass, banana trees and pete trees only).*

Furthermore, after the mining is completed, the state of the land at the quartz sand mining site managed by KSU Gaboktan Barokah of Lodan Kulon as follows:



**Gambar 2.** Quartz sand mining site in Lodan Kulon

<sup>62</sup> Khusen, Interview, (Rembang, 28 Februari 2020).

The phenomena occurred at the research site, based on observations from researchers that the hills became barren even though there were some plants growing on the site of the former mine. As stated by Pak Budi Santoso (Officer of Ministry of Energy and Mineral Resources South Kendeng Branch as Head of Mineral and Coal Geology Section). With a statement:<sup>63</sup>

*“Setiap kali suatu pertambangan sudah selesai, pasti tanah menjadi tandus, kering bahkan tidak ada tumbuhan yang hidup di lokasi, itu wajar saja. Namun usaha pemerintah dalam menanganinya ini dengan mewajibkan perusahaan untuk melakukan reklamasi setelah penggalian selesai”.*

About how the impact of the mine is a statement from Mrs. Kholisoh as a citizen of RT 07 RW 02 Lodan Kulon as follows:<sup>64</sup>

*“Nak dampak iku gak ono mbak gae warga sekitar kene, soale panggon tambang adoh soko pemukiman. Ndek kene yo gak tau enek banjir, opo maneh longsor. Paling yo dalam rusak lan debune akeh goro-goro truk akeh seng lewat. Tapi angger dino enek seng nyirami mbak, gantian warga (if that impact is not there for the people around here. Because the mine site is far from residential. There has also been no flooding, let alone landslides. Most of the roads are broken and there's a lot of dust because a lot of trucks are passing by. But every day there is watering, in stead of the citizens). ...*

However, so far there has been no action from the Ministry of Energy and Mineral Resources South Kendeng Branch on this issue. Like the statement from Pak I Made Hartawan as the Police Chief of Sarang Sub-District when investigators interviewed about law enforcement, where Sarang Subdistrict Police participated in conducting live

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<sup>63</sup> Budi Santoso, Interview, (Rembang, 28 Februari 2020).

<sup>64</sup> Kholisoh, Interview, (Rembang, 26 Februari 2020).

surveillance in the field, precisely in Lodan Kulon managed by KSU

Gaboktan Barokah. The statement from Pak I Made Hartawan is:<sup>65</sup>

*“Tugas kami itu ada 2 (dua) mbak, yang pertama tugas preventif dengan melakukan patroli di lapangan setiap 2 sampai 3 minggu sekali, terkadang juga sebulan sekali. Tujuannya agar pertambangan di Kecamatan Sarang sesuai dengan peraturan yang ada. Kami juga menghimbau kepada pengelola tambang untuk memenuhi teknis lapangan misalnya dengan memasang banner, memakai helm proyek, memakai baju yang standar dan lain-lainnya. Namun mengenai hal yang berurusan dengan reklamasi kami tidak berhak menanganinya, yang berhak adalah Dinas ESDM. Kami sebatas menghibau saja. Adapun usaha represif yang menjadi wewenang kami berupa aduan dari masyarakat jika terjadi hal-hal negatif yang bisa merugikan masyarakat, kami baru bisa bertindak.”*

The statement from Pak Budi Santoso (Ministry of Energy and Mineral Resources South Kendeng Branch as Head of Mineral and Coal Geology Section) is:<sup>66</sup>

*“Masih banyak perusahaan pertambangan yang tidak melakukan reklamasi. Namun ada pula yang sudah melakukan reklamasi, bahkan berhasil. Misalnya saja PT. Sinar Asia Fortuna di Desa Tahunan Sale, kemudian Pamakarsa CV. Pasir Emas di Desa Tengger Sale Kabupaten Rembang. Alasan kita tidak menindaklanjuti mengenai tidak dilaksanakannya reklamasi adalah bukan kebijakan kami. Yang berhak memberikan sanksi seperti yang ada di undang-undang adalah pusat, dalam hal ini adalah Dinas ESDM Provinsi Jawa Tengah. Meskipun Dinas ESDM Provinsi Jawa Tengah memiliki wewenang untuk memberi sanksi kepada perusahaan, ada beberapa persyaratan yakni apabila benar-benar tanah disekitar pertambangan sama sekali tidak bisa ditumbuhi tumbuhan, misalnya saja rumput. Kemudian jika disana terjadi longsor, banjir, resapan air mempengaruhi masyarakat yang berada disekitar lokasi tambang, maka kita baru bisa menindaklanjuti. Wajar saja jika setelah tambang, tanah menjadi berlubang karena memang diambil pasirnya, dan sedikit tumbuh tanaman. Apalagi pertambangan yang dikelola oleh KSU Gaboktan ini sudah lama tidak beroperasi dan disana ditumbuhi*

<sup>65</sup> I Made Hartawan, Interview, (Rembang, 26 Februari 2020).

<sup>66</sup> Budi Santoso, Interview, (Rembang, 28 Februari 2020).



*rumput, pisang, petai dan lain-lain yang telah mbak sebutkan tadi, maka kami tidak berkewajiban menindaklanjuti masalah ini, kita masih mentoleransi. Proses agar bisa ditumbuhi tanamanpun lama mbak, bisa sampai setahun lebih, sekalipun kita menjangkaupun susah, pasti juga banyak biaya”.*

From the results of the interview conducted by the author with Mr. Budi, the author understands how the implementation of the legislation namely Law Number 4 of 2009 on Mineral and Coal Mining, Government Regulation Number 78 of 2010 on Reclamation and Post-Mining and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules from the side of law enforcement against the reclamation of KSU Gaboktan Barokah of Lodan Kulon has never been implemented after mining is completed. Seeing there are several requirements that must be met in order for enforcement by the Ministry of Energy and Mineral Resources of Central Java Province. In addition, the long distance between the of the Ministry of Energy and Mineral Resources of Central Java Province and the location of the mine managed by KSU Gaboktan Barokah of Lodan Kulon and the cost is also expensive, this is an inhibition of not implemented law enforcement.

Every time there is a problem, it needs a solution. As for the solution is not implemented the reclamation of KSU Gaboktan Barokah of Lodan Kulon based on interviews from Mr. Budi (as Head of Mineral and Coal Geology Branch of the the Ministry of Energy and Mineral

Resources South Kendeng Branch), Mr. Godo (as Head of Pollution and Environmental Damage in Rembang District Environment and Forestry Office), Pak Mr. I Made Hartawan (as Police Chief of Sarang Subdistrict), Pak Syamsudin (as Former Head of Lodan Kulon (2015 – 2019) , Pak Abdul Wakhid (as Manager of KSU Gaboktan Barokah Lodan Kulon (2014–present), Pak Munaji (as Manager of mining KSU Gaboktan Lodan Kulon), Pak Hemorrhoids (as Chairman of RT 07 RW 01 Lodan Kulon) and Mrs. Kholisoh (Citizen RT 07 RW 01 Lodan Kulon), namely preventative efforts in the form of socialization. This socialization should be done by Lodan Kulon Head and Manager of KSU Gaboktan Barokah Lodan Kulon, then in cooperation with the Ministry of Energy and Mineral Resources South Kendeng Branch section of the geology section, The Department of Environment and Forestry department of Pollution and Environmental Damage, and Sarang Police. However, this joint socialization has never been done at the site of research conducted by the authors on the prevention of environmental damage due to the unperformed reclamation. Socialization is done only once when the initial establishment of sand mining in Lodan Kulon, and not about the environmental impact if not carried out reclamation, then there is damage that results in the community.

So according to the authors, if reviewed from the positive law namely Law Number 4 of 2009 on Mineral and Coal Mining, and Government Regulation Number 78 of 2010 on Reclamation and Post-

mining, and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules, so KSU Gaboktan Barokah of Lodan Kulon has not entirely carried out reclamation. Thus, although the KSU Gaboktan Barokah has not entirely implemented reclamation, the the Ministry of Energy and Mineral Resources South Kendeng Branch Office of Central Java Province did not sanction, saw the former mining land in KSU Gaboktan Barokah of Lodan Kulon not included in the mentioned requirements, and did not cause floods or landslides that could.

## **2. The Reclamation of KSU Gaboktan Barokah of Lodan Kulon** ***Maslahah Mursalah Perspective***

As the times progressed, there were many problems that were not legal under Islamic law. But Islam responds to social life with its principles and teachings, so that the purpose of Islamic sharia is fulfilled. Basically reclamation is not mentioned at all in the Qur'an or al-Sunnah whether it is an order or a technical execution, but the determination of the law is handed over to man through *ijtihad*.

If you look at the understanding of the *maslahah mursalah* quoted from his opinion Imam al-Ghazali which means something good, benefits and regardless of damage. Therefore, the existence of this *maslahah mursalah* is very important in deciding a law to bring benefits and keep

madharat (damage).<sup>67</sup>

Reclamation activities will have a positive impact if they are actually implemented properly. Given the impact of mining exploitation that exceeds the limit, as a result natural resources are damaged and resulting in the disruption of an ecosystem and society. Seeing this, human beings must take responsibility for their actions by improving the quality of the environment such as reclamation activities when it comes to mining.

Islam as a religion that cares about human life, not only related to the world, but the hereafter as well. Islam encourages its people to do good things, which have a positive impact on themselves, as well as the environment. And if it is done regularly, it will bring good ness to those who do it. So the explanation of *maslahah mursalah* above, that the reclamation be taken legally according to the *maslahah mursalah*. The determination of the law that uses the *maslahah mursalah* occurs in the difference in using it. Some scholars have used this law, and others have refused to use this in establishing a law. Here are the differences:<sup>68</sup>

*"First, those who use and accept the maslahah mursalah in the establishing of a law, such as Imam Malik, Ahmad ibn Hanbal and Imam al-Ghazali. In making decisions as an absolute argument, only Imam Malik. To establish a law, they are very careful without concern for desire and lust. This group reasoned that the law is always evolving and must adjust the place and times". Secondly, those who refuse to use the maslahah mursalah in establishing a law, such as Imam Abu Hanifah and Imam all-Syafi'i. They say, "We are clinging to the authenticity of the nash, and that*

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<sup>67</sup> Amir Syarifuddin, *Ushul Fiqh*, 345.

<sup>68</sup> Wahbah Zuhaili, *Ushul Fiqh Islamy*, 37.

*everything must return to the original law of the Qur'an and the Sunnah*".

In establishing the law on reclamation, researchers took evidence such as the first class, namely those who received and used the *masalah mursalah*. The reclamation activities determined by the government through the Act are an attempt to restore environmental damage caused by mining excavation so that the reclaimed land can function again according to its usefulness. The reclamation program in the form of utilization of former mining land by rearranging former mining land, erosion control, ground level arrangement includes the distribution of the soil, erosion and water management; revegetation; maintenance includes watering, fertilization, soil fertilization, plant replacement (counseling), weed eradication, and the administration of medicines (pests) providing benefits to the environment and society.

In the case of mining, reclamation for environmental damage control is very beneficial for general benefit, both individually and in groups and this is very in line with the purpose of *syara'* in the form of *al-Islah* (preserving and maintaining environmental sustainability). Because basically if the environment is damaged by mining, then a life can be disrupted.

The obligation of the IUP Holder of Production Operations to reclamation after the mining is completed is based on the theory of *masalah mursalah* and is allowed because it is already in the interests of the majority of people. While in practice that occurs in the mining of

KSU Gaboktan Barokah of Lodan Kulon as the opinion of Imam al-Ghazali as follows:<sup>69</sup>

- a) The life of the people around quartz sand mining in Lodan Kulon who mostly work as farmers and planters. With mining, it will provide economic income for the community means benefiting them by doing trade around mining areas, providing jobs, and making PAD donations (*Village Native Income*). But in reality not the whole community gets that benefit, only certain people can get it. Even the collection of mining materials in Lodan Kulon is excessive, so it is said not to be in accordance with the purpose of syara'.
- b) After the mining is completed, the mining land managed by KSU Gaboktan Barokah of Lodan Kulon becomes disturbed by the absence of digging holes, the lack of plants that can live, and the height of the hill with a fairly severe slope, not and slightly overgrown plants.
- c) Activities related to reclamation such as the distribution of shoots, revegetation, erosion and water management, utilization of former mine pits and maintenance have not been implemented, so as to cause the soil to become mushy, alternative roads cut off, and hills halved so as to cause negative impacts such as floods, erosion and landslides.

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<sup>69</sup> Aminudin Slamet Widodo, *Konsep Masalah Mursalah*, 48.

From the above exposure, the reclamation of KSU Gaboktan Barokah of Lodan Kulon has not met the reclamation requirements in accordance with the *masalah mursalah* theory. So it can be concluded that it is permissive to take natural resources through mining, provided that upon completion of the take must conduct reclamation to keep the environment from damage. Which has a positive impact in the form of benefit, not harm.

## CHAPTER V

### CLOSING

#### A. Conclusion

The conclusion of the research conducted by researchers in this thesis is as follows:

1. Reclamation of KSU Gaboktan Barokah of Lodan Kulon positive law perspective in Law Number 4 year 2009 on Mineral and Coal Mining, Government Regulation Number 78 year 2010 on Reclamation and Post-Mining, and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Guidelines for Implementation of Good Mining Engineering Rules that have not been fully implemented reclamation, although some have been implemented. This is characterized by a lot of damage caused by mining, where there is a change in soil structure, dry and barren soil, the slope of the hill is quite extreme.
2. Reclamation of KSU Gaboktan Barokah of Lodan Kulon perspective of *masalah mursalah* is allowed legal because it is in the interests of the majority of people and entered into the discussion of *al-Islah* (preserving and preserving the environment). However, the practice of reclamation of the KSU Gaboktan Barokah has not met the requirements in the theory of *masalah mursalah* in the opinion of Al-Ghazali. It is said that *masalah mursalah* if it gives general benefit to the community and also avoids



harm.

## **B. Recommendation**

Any research, will not be detached from a deficiency. Therefore this suggestion is indispensable for the good of this research on its own include:

1. KSU Gaboktan Barokah of Lodan Kulon should conduct appropriate reclamation according to Law Number 4 year 2009 on Mineral and Coal Mining, Government Regulation Number 78 year 2010 on Reclamation and Post-Mining, and Decree of Minister of Energy and Mineral Resources of Republic Indonesia Number 1827K/30/MEM/2018 on Implementation Guidelines of Good Mining Engineering Rules with the aim of avoiding environmental damage.
2. KSU Gaboktan Barokah of Lodan Kulon should do reclamation in accordance with the concept of *masalah mursalah*, where by reclamation will give general benefit to the community and also avoid a harm.

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### **C. Constitution**

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Peraturan Pemerintah Nomor 78 Tahun 2010 tentang Reklamasi dan Pascatambang.

KEPMEN ESDM RI Nomor 1827K/30/MEM/2018 tentang Pedoman Pelaksanaan Kaidah Teknik Pertambangan yang Baik.

Peraturan Menteri Dalam Negeri Nomor 20 Tahun 2008 tentang Pedoman dan Tata Kerja Unit Pelayanan di Daerah.

**D. Website**

[https://id.wikipedia.org/wiki/Lodan\\_Kulon,\\_Sarang,\\_Rembang](https://id.wikipedia.org/wiki/Lodan_Kulon,_Sarang,_Rembang)

**E. Another Document**

Rapat Pengurus Koperasi Gaboktan Barokah Desa Lodan Kulon Kecamatan  
Sarang Kabupaten Rembang

Rencana Reklamasi dan Pascatambang Pasir Kuarsa IUP Nomor  
545/1362/2014 KSU Gaboktan Barokah Desa Lodan, Kulon Kecamatan  
Sarang, Kabupaten Rembang.

Keputusan Bupati Rembang Nomor 545/1362/2014 tentang Pemberian Izin  
Usaha Pertambangan (IUP) Operasi Produksi Mineral Bukan Logam  
Pasir Kuarsa kepada KSU Gaboktan Barokah.

## ATTACHMENT



Photo with Head of section of Ministry of Energy and Mineral Resources South Kendeng Branch



Photo with the Environment and Forestry Office of Rembang District



Photo with Police Chief of The Sarang Sub-District



Photo with Manager of mining area KSU Gaboktan Barokah of Lodan Kulon



Photo with Manager of KSU Gaboktan Barokah of Lodan Kulon (2014 – now)



Photo with Chairman RW 02 RT 08 of Lodan Kulon



Photo with Former head of Lodan Kulon (2015 – 2019)

## CURICULUM VITAE



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