

Reclamation Guarantees: May They Form Part of the Bankruptcy Estate?

By: Dedy Rizaldy Arwin Gomo, S.H. | Managing Partner, DRP Law

Where the holder of a Mining Business Licence (IUP) or Special Mining Business Licence (IUPK) is declared bankrupt, the legal status of the reclamation guarantee fund becomes a point of tension between the satisfaction of creditors' claims and the public law obligation to restore the environment.

EXECUTIVE SUMMARY: Reclamation guarantee funds should not be treated as part of the bankruptcy estate available for distribution among creditors generally. Such funds are earmarked funds arising from a public law obligation to restore the environment. This position has been strengthened by Decree of the Minister of Energy and Mineral Resources No. 344.K/MB.01/MEM.B/2025, which requires the relevant time deposit to be placed in the name of the Directorate General of Mineral and Coal or the governor, for and on behalf of the licence holder. Nevertheless, because no provision expressly excludes such funds from the bankruptcy estate, particularly in respect of placements made before the Decree came into force, the risk of divergent interpretation and dispute before the Commercial Court remains.

STRATEGIC PRINCIPLE. Reclamation guarantee funds should be treated as funds designated for a specific purpose unless and until a determination or judgment provides otherwise; a receiver should coordinate with the Ministry of Energy and Mineral Resources before including such funds in the bankruptcy estate.

Introduction

From the second half of 2025 through early 2026, mining reclamation guarantees became the subject of heightened scrutiny in Indonesia's mineral and coal mining sector. The Ministry of Energy and Mineral Resources temporarily suspended 190 Mining Business Licences (IUPs) because their holders had yet to place the required reclamation guarantee funds. Since late October 2025, the placement of such funds has formally become an absolute prerequisite to the approval of a Work Plan and Budget (RKAB). The aggregate value of reclamation guarantee funds held by Indonesian banks is estimated to amount to tens of trillions of Rupiah.

Against the backdrop of this tightened supervision, an issue that has rarely been examined comprehensively, yet carries significant potential for dispute, arises: what is the legal status of a reclamation guarantee where the IUP or IUPK holder that placed it is declared bankrupt? Does the fund form part of the bankruptcy estate available for distribution by the receiver among all creditors, or must it remain excluded and set aside exclusively for reclamation and environmental restoration?

This issue is not merely theoretical. The mining sector is capital-intensive and susceptible to fluctuations in commodity prices; consequently, bankruptcy petitions against IUP holders are not uncommon before the Commercial Court. When such circumstances arise, a conflict becomes increasingly unavoidable between two legal regimes: bankruptcy law, which is directed toward satisfying creditors' claims on a *pari passu* basis, and mining and environmental law, which is directed toward the remediation of environmental damage.

Understanding Reclamation Guarantees under Mining Law

Reclamation and post-mining obligations derive from the polluter pays principle, as incorporated into Law No. 4 of 2009 concerning Mineral and Coal Mining, as amended several times, most recently by Law No. 2 of 2025 (the "Mining Law"), and Government Regulation No. 78 of 2010 concerning Reclamation and Post-Mining Activities. Article 100 of the Mining Law requires every IUP or IUPK holder to provide and place a reclamation guarantee fund before commencing the production operation stage. It also authorises the Minister to appoint a third party to undertake reclamation using the guarantee fund if the licence holder fails to discharge its obligations. A breach of this obligation may even attract criminal sanctions under Article 161B of the Mining Law.

At the technical level, the implementing provisions have continued to evolve, from Regulation of the Minister of Energy and Mineral Resources No. 7 of 2014 and Regulation of the Minister of Energy and Mineral Resources No. 26 of 2018 concerning the Implementation of Good Mining Practices to the most recent instrument, Decree of the Minister of Energy and Mineral Resources No. 344.K/MB.01/MEM.B/2025 concerning the Technical Guidelines for the Implementation of Reclamation and Post-Mining Activities, effective from 23 October 2025. The most significant change introduced by MEMR Decree 344/2025 is the simplification of permissible forms of guarantee. Whereas a guarantee could previously take the form of a bank guarantee, joint account, or accounting reserve, it must now be placed as a time deposit with a state-owned bank affiliated with the Association of State-Owned Banks (Himbara), denominated in Rupiah or United States Dollars.

A matter warranting particular attention from bankruptcy practitioners is the manner in which such time deposits are placed. Under MEMR Decree 344/2025, reclamation and post-mining guarantee deposits are placed in the name of the Directorate General of Mineral and Coal (for matters under central government authority) or the governor (for matters under regional government authority), q.q. (for and on behalf of) the licence holder. Formally, therefore, the relevant account is no longer recorded solely in the name of the legal entity holding the IUP or IUPK. It is recorded in the name of a government authority, with the licence holder occupying only the position of the represented party within that q.q. arrangement. This structure differs from the former practice, under which reclamation guarantee funds were generally placed directly in the name of the IUP holder with a state-owned bank.

The guarantee fund, together with the capitalised interest accrued thereon, will be released and returned to the licence holder once reclamation has achieved the prescribed success threshold, which currently refers to a minimum achievement level of 60%. Conversely, if the licence holder fails to perform its obligations, the Government is authorised to draw upon the fund and appoint a third party through a tender process to carry out the reclamation works.

The Bankruptcy Estate: The Principle of a General Security over the Debtor's Assets

Under Indonesian bankruptcy law, the foundational principle is established by Articles 1131 and 1132 of the Indonesian Civil Code: all movable and immovable property of the debtor, whether

presently owned or acquired in the future, constitutes security for all of the debtor's obligations, and the proceeds of its sale are distributed proportionately among all creditors on a pari passu pro rata parte basis, unless a lawful ground for priority exists. This principle of general security is reaffirmed in Article 21 of Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations (the "Bankruptcy Law"), which provides that bankruptcy encompasses all assets of the debtor at the time the bankruptcy declaration is rendered, together with all assets acquired during the bankruptcy proceedings.

The scope of the bankruptcy estate is not, however, unlimited. Article 22 of the Bankruptcy Law expressly excludes certain categories of property. Equally importantly, legal doctrine and judicial practice consistently recognise that property which does not lawfully belong to the debtor, such as third-party property that has merely been encumbered as proprietary security for the benefit of a particular creditor, cannot automatically be drawn into the bankruptcy estate for the benefit of all creditors. The essential requirement is straightforward: the property must lawfully and validly belong to the debtor and be freely available to the debtor for the performance of its obligations.

Two Competing Lines of Argument

On the basis of the foregoing framework, two principal views may be identified regarding the status of a reclamation guarantee where the licence holder is declared bankrupt.

1. Arguments Supporting the Inclusion of Reclamation Guarantees in the Bankruptcy Estate

First, the funds formally originate from the company's own assets and are deposited in fulfilment of an administrative licensing obligation. In economic terms, they therefore remain company assets, albeit subject to contractual or administrative restrictions on their use. Second, neither the Bankruptcy Law nor the Mining Law expressly provides that reclamation guarantee funds are excluded from the bankruptcy estate. In the absence of an explicit legal basis for exclusion, a receiver may argue that the general rule under Article 21 of the Bankruptcy Law continues to apply. This absence of an express exclusion is consistent with the broader academic debate concerning the legal status of a Mining Business Licence itself as an object of the general attachment arising in bankruptcy, an issue that remains contested in the literature on mining bankruptcy law.

2. Arguments Opposing the Inclusion of Reclamation Guarantees in the Bankruptcy Estate

Conversely, several compelling grounds support exclusion. First, a reclamation guarantee is not an unrestricted asset available for the debtor's commercial purposes. It is an earmarked fund arising from a public law obligation to restore the environment, while the reclamation obligation itself attaches to the mining business licence rather than merely to the company's civil-law existence. That obligation is not extinguished by the bankruptcy of the licence-holding legal entity, as abandoned mine voids and environmental damage must still be remediated irrespective of the corporation's fate.

Second, and most significantly following the issuance of MEMR Decree 344/2025, the funds are now placed in the name of a government authority q.q. the licence holder, rather than solely in the name of the licence holder. In Indonesian banking practice, such a q.q. arrangement is commonly used precisely to indicate that the party whose name appears first, in this case the Directorate General of Mineral and Coal or the governor, holds control or authority over the account, while the party identified after q.q. is merely the party possessing the economic interest. Under such an arrangement, it becomes more difficult to sustain the proposition that the fund constitutes "property lawfully belonging to the debtor and freely available to it," as contemplated by Article 1131 of the Indonesian Civil Code, because the licence holder or bankrupt debtor is not even identified as the account holder.

Third, the authority of the Minister of Energy and Mineral Resources to appoint a third party to undertake reclamation using the guarantee fund under Article 100(2) of the Mining Law is, in substance, an autonomous administrative power of the State that does not depend upon civil bankruptcy proceedings. This authority is analogous to the State's preferential right in respect of tax claims, the existence of which continues to be recognised even after the debtor has been declared bankrupt. Such priority arises not from the conventional classification of creditors as concurrent or secured creditors, but from the State's position as guardian of a public interest that cannot simply be equated with that of a commercial creditor.

The Unresolved Legislative Gap

It must be acknowledged that neither the Bankruptcy Law nor the Mining Law, nor MEMR Decree 344/2025, contains an express *lex specialis* provision excluding reclamation guarantees from the bankruptcy estate. This legislative gap creates scope for divergent interpretations among receivers, creditors, and the Government, and may give rise to disputes analogous to the pre-existing debate concerning whether a Mining Business Licence may validly constitute an object of the receiver's general attachment.

The Author's View

Having regard to the nature of a reclamation guarantee fund as a designated environmental law instrument, the continuing reclamation obligation that attaches to the licence rather than to the company's civil-law existence, and the post-MEMR Decree 344/2025 fund-placement structure that formally designates a government authority as account holder q.q. the licence holder, the author considers that a reclamation guarantee should not be treated as part of the bankruptcy estate available for distribution among creditors generally. The fund should remain segregated and be applied for its designated purpose, namely environmental restoration, just as third-party property committed to a specified purpose does not automatically merge into the debtor's bankruptcy estate.

Nevertheless, this conclusion is derived from a systematic interpretation of the prevailing legal principles, rather than from an express statutory rule. With respect to reclamation guarantees placed before MEMR Decree 344/2025 came into force, whether in the form of bank guarantees, joint accounts, or accounting reserves more clearly recorded in the name of the IUP holder, the case for

exclusion is comparatively weaker and remains more susceptible to challenge before the Commercial Court.

The following practical measures may be considered to mitigate this uncertainty:

- A receiver administering the bankruptcy of an IUP or IUPK holder should first coordinate with the Directorate General of Mineral and Coal of the Ministry of Energy and Mineral Resources before recording a reclamation guarantee fund as part of the bankruptcy estate, having regard to the attendant environmental implications and the potential for administrative disputes.
- Creditors and financing institutions extending facilities to mining companies should refrain from treating reclamation guarantee funds as executable assets in credit risk assessments or restructuring negotiations.
- The applicable legal framework requires clarification, whether through amendments to the Bankruptcy Law or the Mining Law, or at minimum through a Regulation of the Supreme Court, expressly governing the status of reclamation guarantee funds in bankruptcy proceedings so that the matter no longer depends solely upon systematic legal interpretation.

Conclusion

The tension between the collective satisfaction of debts under bankruptcy law and the principle of environmental restoration under mining law ultimately turns on a fundamental question: whose interests should take precedence where a mining company suffers financial failure while leaving outstanding environmental obligations? Pending greater legislative clarity, a cautious approach by receivers, creditors, and the Government in interpreting the legal status of reclamation guarantees is essential to ensure that funds intended to restore former mining areas are not instead exhausted solely in the satisfaction of commercial debts.

DISCLAIMER. This article has been prepared for general legal analysis only and does not constitute legal advice in relation to any particular matter. For assistance with specific bankruptcy proceedings or mining disputes, the particular facts of the matter should be discussed with the legal counsel responsible for its conduct.

PRINCIPAL LEGAL AUTHORITIES

- Indonesian Civil Code, Articles 1131 and 1132
- Law No. 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations
- Law No. 4 of 2009 concerning Mineral and Coal Mining, as most recently amended by Law No. 2 of 2025
- Government Regulation No. 78 of 2010 concerning Reclamation and Post-Mining Activities
- Regulation of the Minister of Energy and Mineral Resources No. 26 of 2018 concerning the Implementation of Good Mining Practices
- Regulation of the Minister of Energy and Mineral Resources No. 17 of 2025
- Decree of the Minister of Energy and Mineral Resources No. 344.K/MB.01/MEM.B/2025 concerning the Technical Guidelines for the Implementation of Reclamation and Post-Mining Activities in Mineral and Coal Mining Business Activities