

Implementation Of Criminal Sanctions Against Crime Mining Potential Effects Without Permission For Deterrent Effect (Study On Jurisdiction Central Java Regional Police)

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Abstract. This study, entitled "Implementation of Criminal Sanctions Against Crime Mining Potential Effects Without Permission For Deterrent Effect (Study In Region Central Java Regional Police)". Based on the description in this thesis, that will be examined are: 1). How does the application of criminal sanctions against the crime of mining without a license in the jurisdiction of the Central Java Regional Police? 2). Is it true that criminal sanctions against mining without permission a criminal offense can be a deterrent effect? 3). How the barriers and solutions so the application of criminal sanctions against the crime of mining can be a deterrent effect?

The study concluded that: 1). Penal provisions against the crimes mining unlicensed / illegal mining regulated in Act Number 4 of 2009 on Mineral and Coal, under Article 158, Article 160 Paragraph (1) and Paragraph (2), Article 161, Article 163 Paragraph (1) and Paragraph (2), and Article 164. 2). Act Mineral and Coal just set the maximum threat. This is impacting on the demands of the Public Prosecutor and the decision to be handed down by the judge. In the absence of a minimum penalty, the prosecutors and the judge may impose demands and the decision to a penalty is low, so it is feared not give deterrent effect to the perpetrators of illegal mining. 3). Mining Law there are four (4) weakness which some contradictory to each other, namely: a). In Article 169 (a) regarding the validity of the Contract of Work. b). Act Number 4 Of 2009 on Mineral and Coal Mining (Mining Law) are not set on the Mining Authority (KP). c). Mining Law regulates the obligation of business entities and IUPK IUP holders whose shares are owned by foreign investors to divest shares. d). Mining Law makes the shifting patterns of relationship between the government and mining entrepreneurs. Mining Law regulates the obligation of business entities and IUPK IUP holders whose shares are owned by foreign investors to divest shares. d). Mining Law makes the shifting patterns of relationship between the government and mining entrepreneurs. Mining Law regulates the obligation of business entities and IUPK IUP holders whose shares are owned by foreign investors to divest shares. d). Mining Law makes the shifting patterns of relationship between the government and mining entrepreneurs.

Keywords: Sanctions; Criminal Act; Mining.

1. Introduction

Mineral excavated material is original in its original form, which can be mined for human purposes. All minerals were controlled by the State and used for the entire nation of Indonesia, based on the five principles of Pancasila as a whole round, their

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norms or rules in Article 33 paragraph (3) of the 1945 Constitution "Earth, water and natural resources contained in it are controlled by state and used for the greatest prosperity of the people.³ Intake of natural resources found in the body of the earth has been set in Act Number 4 of 2009 on Mineral and Coal.

Mineral resources is one of the nation's natural wealth of Indonesia, if managed properly will give the contribution to the country's economic development. In the world of mining, Indonesia is known as a country rich in mineral content that is ready to be appointed anytime.⁴ Mining is a part or all phases of activities in the framework of research, management and exploitation of mineral or coal include general investigation, exploration, feasibility, construction, mining, processing and refining, transportation and sales, as well as post-mining activities.⁵

Mining law is part of the laws governing the environment. During its development, environmental crime often occurs in the society, such as mining. Mining is an attempt to explore the potential contained in the bowels of the earth.⁶Based on the type of mineral, mining in Indonesia is divided into three categories. First, Mining Group A, covering strategic minerals, such as oil, natural gas, bitumen, asphalt, natural wax, anthracite, coal, uranium and other radioactive materials, nickel and cobalt. Secondly, Mining Group B, covering the vital minerals, such as gold, silver, diamonds, copper, bauxite, lead, zinc and iron. Third, Mining Group C, generally mineral minerals that are considered to have a lower rate of interest than the two other mining groups, including various types of stone, limestone, and others.

Mine materials must be extracted from the bowels of the earth, the attempt to dig a mine material is then referred to the mining business. Mining business needed a place or a very wide area. Indonesian mining jurisdiction is over the Indonesian archipelago, the land under the waters of Indonesia, and continental areas of the Indonesian archipelago.

Each region has the potential of each. An example is in the region of Central Java which has the potential mining of sand large enough with a good quality, but can not be fully utilized. The problem is when the mining was done was mining without a license or with permission "bribe" to the relevant officials. Traditional miners (wild) is not easy to set up and directed. For example, they do mining in any part of the river with a large capacity and exceeding the boundaries that exist in Act Number 4 Of 2009 on Mineral and Coal. Mining without permission are like a fungus that thrives in the rainy season. Its presence is almost spread throughout the territory of Central Java.

³Otong Rosadi, *Pertambangan Dan Kehutanan Dalam Perspektif Cita Hukum Pancasila Dialektika Hukum Dan Sosial*, Padang, Thafa Media, 2012. 1, p. 4.

⁴Gatot Supramono, *Hukum Pertambangan Mineral dan Batubara di Indonesia*, Rineka Cipta, Jakarta, 2012, p.1.

⁵ Law of the Republic of Indonesia Number 4 of 2009 on Mineral and Coal, Article 1, figure 1. The Gazette of the Republic of Indonesia of 2009 Number 4 Gazette of the Republic of Indonesia Number 4959.

⁶Salim HS, *Hukum Pertambangan di Indonesia*. (Jakarta: RajaGrafindo Persada, 2004), p. 7.

Mining there are some important issues of the problem, namely the policy uncertainty, illegal mining, conflicts with local communities, conflicts mining sector with other sectors such as mining without a license resulting in losses both for society and the state. Mining act without permission essentially has met the elements that may be subject to criminal law. These elements are actions that absolutely have met the formal requirements, ie, to the formulation of the laws that have been established by the Code of Penal Code and other regulations that dimension criminal and has elements of material, which is contrary to the ideals of the association community or a trait unlawful or criminal acts.⁷

One part of a crime prevention policy enforcement of criminal law is not the only beacon of hope to be able to resolve the humanitarian issue or solve crimes and social problems. Crime is a social phenomenon that dynamic that is always growing and related phenomena and other social structures are very complex. Therefore, the so-called socio political problems. Crime is a social process that political criminals should be seen within the framework of social policy, namely the efforts of a community to improve the welfare of its citizens.⁸

Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 11 Of 2018 on Procedures for Granting Region, Licensing, and Reporting On Business Activities of Mineral and Coal, in Article 1, paragraph 10 stated that the Region of Mining Permit rocks hereinafter referred WIUP rock is part of WUP rocks given to enterprises, cooperatives, and individuals through a petition. So it all goes through the request in advance to obtain Regional Mining License (WIUP).

In the region of Central Java, we can see the impact of mining without a permit that with the onset of landslides, subsidence, flooding, and soil is not fertile anymore so would cause harm people, the nation and the state. Based on existing data on law enforcement officials in Indonesia, found the lack of public awareness in the field of mining. It can be seen from the number of cases of unlicensed mining that occurred in Central Java. This paper seeks to focus the study on how the legal policy of the class C mining activities without a license that occurred in Central Java.

Based on the above, the authors are interested to look into the matter more deeply by doing research for entitled: "Law Enforcement Against Crime Without Permit Class C Mining Jurisdiction In the Central Java Regional Police".

The formulation of the problem in this research: How is the application of criminal sanctions against the crime of mining without a license in the jurisdiction of the Central Java Regional Police? Is it true that criminal sanctions against mining without permission a criminal offense can be a deterrent effect? How the barriers and solutions so the application of criminal sanctions against the crime of mining can be a deterrent effect?

⁷Moeljatno, *Perbuatan Pidana dan Pertanggungjawaban dalam Hukum Pidana*, Cetakan Pertama, (Yogyakarta: Bina Aksara, 1983), p. 24-25.

⁸Muladi, *Kapita Selekta Sistem Peradilan Pidana*, (Semarang: Badan Penerbit Diponegoro, 1995), p. 18.

Research methods

The approach used in this study is a sociological juridical approach. This method is used on the grounds that in this study focused on the science of law and a review of the rules - the rule of law prevailing in the community related to criminal law policy in tackling the crime of mining without a permit

This type of research is used in completing this thesis is descriptive research method, the research done by researching library materials (secondary data) or legal research library⁹,

Types and sources of data in this research is secondary data. But also uses primary data. To obtain primary data researchers refer to data or facts and case law directly obtained through research in the field, including a description of the respondents related to the object of research and practice that can be seen and associated with the object of research. While the secondary data is done by means of a literature study. Secondary data is useful as a theoretical basis for analyzing the underlying problem issues that exist in this study. Data collection methods include Literature, Field Studies with interviews and questionnaires. Data analysis method used is descriptive analysis of the analysis, the results of the research based on the facts that exist in the field of practice which are then compared with the description obtained from the study of literature. From this analysis it can be seen the effectiveness of the criminal system that is instructive.

2. Discussion

3.1. Application of Criminal Sanctions Against Crime Without Mining Permit Jurisdiction In the Central Java Regional Police.

Crime mining unlicensed / illegal mining is a crime in mining operations carried out by an individual, group, or company / foundation legal entity in its operations did not have permission from government agencies according to regulations, the threat of criminal sanctions to any person who due to his fault abuse the ban. Penal provisions against the crimes mining unlicensed / illegal mining regulated in Act Number 4 of 2009 on Mineral and Coal, under Article 158, Article 160 Paragraph (1) and Paragraph (2), Article 161, Article 163 Paragraph (1) and Paragraph (2), and Article 164.

Crime mining without permission stipulated in Act Number 4 of 2009 on Mineral and Coal. This is set out in Chapter XXIII of the criminal provisions, namely:

Article 158

"Anyone who does mining without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or

⁹Ediwarman, *Monograf, Metodologi Penelitian Hukum*, Medan: Program Pascasarjana Universitas Muhammadiyah Sumatera Utara, Medan, 2010, p. 24

subsection (5) shall be punished with imprisonment maximum of 10 (ten) years and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiah) ";

Article 160 paragraph (1) and (2)

(1) Any person who without having IUP exploration or IUPK referred to Article 37 or Article 74 paragraph (1) shall be punished with imprisonment of 1 (one) year or a maximum fine of Rp 200,000,000.00 (two hundred million rupiah).

(2) Any person who has an Exploration IUP but perform production operations shall be punished by imprisonment of five (5) years and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiah).

Article 161

"Any person or holder of Production Operation IUP or Production Operation IUPK were accommodating, harness, performing processing and refining, transporting, selling mineral and coal instead of IUP holders, IUPK, or permit referred to in Article 37, Article 40 paragraph (3) , Article 43 paragraph (2), Article 48, Article 67 paragraph (1), Article 74 paragraph (1), Article 81 paragraph (2), Article 103 paragraph (2), Article 104 paragraph (3), or Article 105 paragraph (1) shall be punished with imprisonment of ten (10) years and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiah) ".

Article 163

(1) In the case of criminal offenses referred to in this chapter carried out by a legal entity, in addition to imprisonment and fines against the officer, the criminal can be imposed against the legal entity shall be fined with a weighting of 1/3 (one third) time of maximum addition of the fine imposed.

(2) In addition to the criminal penalties referred to in paragraph (1) a legal entity can be sentenced to an additional form of:

- a. Revocation of business license; and / or
- b. Revocation of legal status.

Article 164

"In addition to the provisions referred to in Article 158, Article 159, Article 160, Article 161 and Article 162 of the criminal can be recognized by the additional penalty in the form of:

- a. Confiscation of goods used in committing a crime;
- b. Appropriation of profits derived from the crime; and / or
- c. The obligation to pay the costs incurred as a result of a criminal act ".

3.2. Is This For Criminal Sanctions Against Crime Without Permission Mining Potential Effects Deterrent

In the framework of criminal law enforcement tackling the crime of illegal mining, in this case the police conduct raids and enforcement in each jurisdiction. In this case the police conducted a raid party and curbing illegal mining, the raid conducted with local government and confiscation of the means of operation of the mining activities to be used as evidence. After the raid, the police conducted an investigation and interrogate

suspected illegal miners. After the investigation the case file was complete (P21) is forwarded to the prosecution and the judiciary. In the prosecution of this case file handed over to the District Attorney, and in the judicial process conducted in the District Court.

The article that is applied is not a chapter of smuggling, was Article 161 of Act Number 4 of 2009 on Mineral and Coal Mining is a criminal offense any person or holder of Production Operation IUP IUPK Production operations were accommodating, do the processing and refining, transporting, selling mineral and coal not from holders of IUP, IUPK or without permission. Apart from the implementation and enforcement raids are conducted regularly by the district and provincial police, in this case the police made several efforts of law enforcement in other forms, namely:

- Law enforcement is done through a routine activity improved and illegal mining operations, either by the local police as well as the ranks of the police station.
- Suppress the use of heavy equipment for the perpetrators of illegal mining, with a target for heavy equipment users (tenants and owners).
- Pressing the distribution channels of the collector, with the goal of the sub-collector, collectors, storage sheds and house / pool which is used as a means of storage.
- Pressing the illegal fuel distribution lines that are used to conduct mining facilities, targeting the container, petrol stations, conveyance and storage sheds.
- Pressing the smuggling paths, with a target for smugglers, means of transport used, the location of smuggling and finding new modes of smuggling.

Act Mineral and Coal just set the maximum threat. This is impacting on the demands of the Public Prosecutor and the decision to be handed down by the judge. In the absence of a minimum penalty, the prosecutors and the judge may impose demands and the decision to a penalty is low, so it is feared not give deterrent effect to the perpetrators of illegal mining.

3.3. Obstacles And Solutions For Application of Criminal Sanctions Against Crime Deterrent Mining Potential Effects

The government is currently making efforts to the management arrangement. One of them is by tightening the licensing issue and coal mines. This means that the government will be more selective in giving IUP. Now the government is already making signs, even in the Mining Law no criminal provision if the license issuer publishes IUP not in accordance with its authority, then it could be subject to criminal sanctions.

Now the government's priority is the structuring and tighten existing IUP so that future mining activities and coal industries continue and the investment is not constrained. It departs from the fact that many local governments show the IUP haphazard. IUP's publishing profits go into the pockets of local government. As stated above, 50 percent of the IPU issued and registered in the Directorate General of Mineral not clear and

clean. That means, half are illegal IUP. Illegal IUP will be proof that the regional autonomy law so provides the flexibility of authority to local governments that led to the birth-IUP IUP illegal. It can be said that the regional autonomy law failed in terms of coordinating and supervising the government area.

3. Conclusion

- Crime mining unlicensed / illegal mining is a crime in mining operations carried out by an individual, group, or company / foundation legal entity in its operations did not have permission from government agencies according to regulations, the threat of criminal sanctions to any person who due to his fault abuse the ban. Penal provisions against the crimes mining unlicensed / illegal mining regulated in Act Number 4 of 2009 on Mineral and Coal, under Article 158, Article 160 Paragraph (1) and Paragraph (2), Article 161, Article 163 Paragraph (1) and Paragraph (2), and Article 164.
- Act Mineral and Coal just set the maximum threat. This is impacting on the demands of the Public Prosecutor and the decision to be handed down by the judge. In the absence of a minimum penalty, the prosecutors and the judge may impose demands and the decision to a penalty is low, so it is feared not give deterrent effect to the perpetrators of illegal mining.
- Mining Law there are four (4) barrier which some contradictory to each other, namely:
 - Article 169 point (a) above governing the enforceability of the Contract of Work (COW) or Coal Mining Agreement (PKP2B).
 - Act Number 4 Of 2009 on Mineral and Coal Mining (Mining Law) are not set on the Mining Authority (KP).
 - Mining Law regulates the obligation of business entities and IUPK IUP holders whose shares are owned by foreign investors to divest shares.
 - Mining Law makes the shifting patterns of relationship between the government and mining entrepreneurs.

The solution: Provisions criminal to crime mining unlicensed / illegal mining regulated in Act Number 4 of 2009 on Mineral and Coal, under Article 158, Article 160 Paragraph (1) and Paragraph (2), Article 161, Article 163 paragraph (1) and paragraph (2), and Article 164. in addition to punishment such as fines, sanctions would be nice if the fine is coupled with criminal penalties in order to provide a deterrent effect against perpetrators of criminal acts mining without permission.

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