

Criminal Responsibility of Business Actors for Illegal Mining Criminal Acts

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Abstract. *The purpose of this research is to find out and analyze the criminal liability of business actors for illegal mining crimes. To find out and analyze the weaknesses of the criminal liability of business actors for illegal mining crimes. To overcome and analyze the criminal liability of business actors for illegal mining crimes in the future. The method used by the researcher is normative legal approach. The specifications in this study include descriptive analysis. The data sources in this study are secondary data obtained from literature studies. The data is analyzed qualitatively. Based on the results of the research that based on the descriptions that the author has put forward in the discussion chapter, the author concludes that the criminal liability of business actors for illegal mining crimes is through civil sanctions and also administrative sanctions by revoking business licenses. The weakness of the criminal liability of business actors for illegal mining crimes is the difficulty of proving the element of guilt. This is because the subject of corporate law is different from humans who have reason and thoughts. The criminal liability of business actors for illegal mining crimes in the future is regulated in Article 158 of Law Number 3 of 2020, mining business actors without an IUP can be sentenced to a maximum of 10 years in prison and a maximum fine of IDR 10 billion. The application of strict and appropriate criminal sanctions can be an effort to prevent illegal mining in the future.*

Keywords: *Business; Criminal; Illegal*

1. Introduction

Life on earth is filled with a number of living creatures that interact with each other, reciprocate and adapt to each other and the objects around them, from some of these living creatures there is also one type called humans.¹ The use of natural resources, both biological and non-biological, greatly affects environmental conditions and can even disrupt the life system that is already balanced between life itself and its environment. If the impact is not considered, the consequences will be felt by future generations.

Nowadays, the implementation of mining has been very developed, the results provided are also very beneficial for miners even though the activities provided also have a detrimental

¹Moh Soerjani et al., 1987, Natural Resources Environment and Population in Development, University of Indonesia, Jakarta, p. 1

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impact on humans, both those who have mining land and the surrounding environment, mining activities carried out illegally or without permission from the party given by the authorized Official / Institution. Indonesia is one of the countries that has rich and abundant natural resources, including mining materials (mining) which include minerals and coal and is also known for its mineral content that is ready to be released at any time.²

Geochemists argue that coal is a physical and chemical sedimentary rock and heterogeneous containing elements of carbon, hydrogen, oxygen. As the first element and additional elements derived from dead plants. In overcoming these problems, the government always provides limitations in the form of regulations or other policies.³ and natural resources in this world have an important position for life and the gifts of God Almighty and are carried out correctly and in balance, based on the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. In interpreting the state's right to control all natural resources and can be used for the greatest prosperity of the people is that the Indonesian people have the right to wealth owned by the state for the management of natural resources aimed at the welfare of the people.⁴

Article 1 paragraph (1): Mining is part or all stages of activities in the context of research, management and exploitation of minerals or coal which includes general investigations, exploitation, feasibility studies, construction, mining, processing and refining, transportation and sales as well as post-mining activities.⁵

The effects of mining can also damage the environment and affect underground surface waters and can poison waters, air and soil pollution. Illegal mining, more precisely illegal, is generally carried out by people with simple equipment, without permits, without insight, environment and safety and involving investors and traders. In the provisions of the Mineral and Coal Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009 Article 158: Any person who carries out mining without a permit as referred to in Article 35 is subject to a maximum imprisonment of 5 years and a maximum fine of IDR 100,000,000.00 (one hundred billion rupiah).

Mining Business Permit (IUP), People's Mining Permit (IPR), Special Mining Business Permit (IUPK) indirectly with criminal provisions that firmly state administrative sanctions and criminal sanctions for mining without a permit or illegal mining problems do not only arise from official/unofficial activities from factors that cause environmental damage.⁶ Illegal coal mining or wild mining has grown since 2010, carried out openly and illegal miners still use simple tools, not all miners have modern tools and simple tools such as hoes, shovels, hammers, blencong, they also mine carelessly without personal protective equipment and do not use safety and SOP.

²Gatot Supramono, 2012, Mineral and Coal Mining Law in Indonesia, Rineka Cipta, Jakarta, p.1.

³Irwandy Arif, 2014, Indonesian Coal, Gramedia Pustaka Utama, Jakarta, p.3.

⁴Adrian Sutedi, 2012, Mining Law, Sinar Grafika, Jakarta, p.9

⁵Indonesia, Law on Mineral and Coal Mining. Law Number 4 of 2009. LN. No. 4 of 2009, TLN No. 4959. Article 1 paragraph (1)

⁶Dany Andhika Karya Gita and Amin Purnawan, Djauhari, 2018, "Police Authority in Handling Illegal Mining Crimes According to Law Number 4 of 2009," Jurnal Daulat Hukum, Vol.1, Unissula, p. 25.

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Based on the problems above, the objectives of this study are as follows: to determine and analyze the criminal liability of business actors for illegal mining crimes. To determine and analyze the weaknesses of the criminal liability of business actors for illegal mining crimes. To overcome and analyze the criminal liability of business actors for illegal mining crimes in the future.

2. Research methods

The problem approach used in this study is the normative legal approach itself is a study that focuses on examining the application of rules or norms in positive law. Normative legal is an approach that uses a logical positivist conception. This concept views that law is identical to written norms made and enacted by authorized institutions or officials. This concept views law as a normative system that is independent, closed and separate from real community life.⁷The research specification in this study is descriptive-analytical. To find out the problems on the topic discussed, the researcher uses qualitative data analysis techniques. The data analysis method used is data collected in the manner described above, then processed by collecting, classifying systematically, logically and legally, in order to obtain a general picture to support research material through qualitative data analysis.

2. Results and Discussion

3.1. Criminal Liability of Business Actors for Illegal Mining Crimes

Criminal liability means that anyone who commits a crime or breaks the law, as formulated in the law, then that person should be held accountable for their actions according to their mistakes. In other words, a person who commits a crime will be held accountable for that act with a criminal penalty if he has made a mistake, a person has made a mistake if at the time of committing the act, seen from the perspective of society, it shows a normative view of the mistake that the person has made.

In the context of criminal law, this error has a very fundamental meaning. Because in criminal law the principle applies: *Geen straf zonder schuld* or no crime without error. So in the context of criminal law, the problem of error without being directly related to the crime cannot be punished, a person if there is no error found in him. Thus it can also be said that error is the basis for validating the existence of a crime.

A mistake is the ability to blame the perpetrator of a crime because, from the perspective of society, he could have done something else if he did not want to commit the act.⁸A person can be said to have made a mistake if, when committing a criminal act, from the perspective of society, he can be blamed for it, that is, why did he commit an act that was detrimental to society even though he was able to understand the meaning of the act and therefore could have even avoided such an act.

Mineral resources are one of the natural resources owned by the Indonesian nation, if managed properly will contribute 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 lifted at any time.⁹Mining law is never separated from the part of the environment which is a gift from

⁷Rony Hanitojo, 1988, *Legal Research Methodology and Ministerial Policy*, Ghalia Indonesia, Jakarta, pp. 13-14

⁸Fuad Usfa and Tongat, 2004, *Introduction to Criminal Law*, UMN Press, Malang, p. 7

⁹Supramono, G, 2012, *Mineral and Coal Mining Law in Indonesia*, Rineka Cipta, Jakarta

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God Almighty which must be preserved and its capabilities developed so that it remains a source of life support for humans and other living things for the sake of the continuity and improvement of the quality of life itself. Indonesia is blessed by God with nature that contains many mining materials such as gold, copper, iron, bauxite, nickel, coal and even sand which is mined to make money.

Mining is a series of activities in the context of efforts to search, mine (excavation), processing, utilization and sale of excavated materials (minerals, coal, geothermal, oil and gas, etc.). Furthermore, the definition of iron sand mining is a series of activities in the context of efforts to search, mine (excavation), processing, utilization and sale of excavated materials, namely iron sand.¹⁰

Mining is a very promising source of income, but mining has a negative impact, especially on the environment, because almost every mining activity tends to damage the environment. Mining materials are classified into minerals and coal (minerba) and oil and natural gas (migas).¹¹

Natural resource depletion is defined as the unwise use of natural resources so that the quality and quantity of these natural resources are reduced or decreased and ultimately run out completely.¹²In particular, the problem of illegal mining. Mining is an effort to explore various potentials contained in the bowels of the earth.

In practice, mining in Indonesia causes various negative impacts, mining creates environmental disasters. Most mining operations are carried out openly, when an area has been opened for mining, the damage that occurs to the area cannot be restored, almost all mining operations dispose of waste directly into rivers, valleys or the sea.

Many mining companies in Indonesia do not have permits from the government. In addition to the many permits that take a long time, mining business permits must also be followed by environmental permits, as one of the preventive measures to prevent environmental damage caused by mining activities.

Illegal mining activities that cause environmental damage are also regulated in Law Number 32 of 2009 concerning Environmental Protection and Management. In addition, laws and regulations related to illegal mining and environmental protection include Law Number 41 of 1999 concerning Forestry which has been amended by Law Number 19 of 2004 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 concerning Forestry into Law.

Criminal liability of business actors for illegal mining crimes is through civil sanctions and also administrative sanctions by revoking business licenses. The law enforcement process against companies that have illegal mining begins with an investigation by the police, then continues to the prosecutor's office and then to the court level. The processes initiated by the police have not been optimal several times because those arrested are only miners, not capital owners or mining company owners.

¹⁰Suroto, Gunarto, 2018, The Impact of Iron Sand Mining in Bandungharjo Village, Banyumanis and Ujungwatu, Jepara Regency According to Law No. 32 of 2009 Concerning Environmental Protection and Management, in the Journal of Legal Sovereignty Vol. 1. No. 1, Unissula, p. 258

¹¹Salim, HS, 2014, Mineral and Coal Mining Law, Sinar Grafika, Jakarta

¹²Rahmadi, T., 2014, Environmental Law in Indonesia, RajaGrafindo Persada, Jakarta

3.2. Weaknesses of Criminal Liability of Business Actors for Illegal Mining Crimes

Legal rules in mining are divided into two types, written and unwritten mining laws. Written mining laws are legal rules contained in laws and regulations, treaties, and jurisprudence. Unwritten mining laws are legal provisions that develop in society.¹³

Illegal mining activities in forest areas without permits carried out by irresponsible individuals are different from people's mining because there is no permit from the local government and good mining procedures. Illegal mining has the potential to harm the environment and communities around the mine because of the non-compliance with mining procedures as stipulated. Illegal mining can also harm the state because it has the potential to eliminate sources of government revenue, both central and regional.¹⁴

Mining law is part of the law that regulates the environment, whether in the form of power, conditions, and living things, including humans and their behavior that affects nature, the continuity of life and the welfare of humans and other living things. In its development, environmental crimes often occur around the community, for example nickel mining, gold, silver, copper, coal, diamonds and others that are carried out illegally or pollute the environment by using hazardous chemicals. Lack of understanding about mining makes workers vulnerable to the risk of accidents and work safety due to inadequate mining equipment and security. On the other hand, the use of chemicals used by miners to refine gold causes environmental pollution due to waste that is disposed of carelessly.¹⁵

Mining business is one of the extractive businesses that has a high risk, because it has an impact on the surrounding environment, both biological and the community directly involved, because that is what makes the business license have a positive impact on the lives of the surrounding community and its environment, and is a guarantee that the mining activity will carry out the rehabilitation process for its damaged environment. Mining is also a sector that receives serious attention from the government, considering that mining business activities provide a significant contribution to the influx of state foreign exchange, this can be seen from the many mining authority permits in the region. On the other hand, with the increasing number of mining business activities involving both foreign and national investment, it has caused massive exploitation and resulted in pollution and environmental damage.

Another important aspect in the context of mining activities is the legality of mining permits. In a mining business activity, there are 3 (three) types of mining businesses, namely Mining Business Permit (IUP), People's Mining Business Permit (IPR), and Special Mining Business Permit (IUPK). By issuing a permit statement letter to the person concerned, it shows that the permit holder can carry out his mining business. Meanwhile, mining without a permit or commonly known as illegal mining is a mining or excavation activity carried out by actors,

¹³Arif Kristiawan, Sri Endah Wahyuningsih, Rakhmat Bowo Suharto, 2018, Perspective of Administrative Criminal Acts on Criminal Acts of Mining Without a Permit (Peti) in Law Number 4 of 2009 Concerning Minerals and Coal, in the Journal of Legal Sovereignty Vol. 1. No. 1, Unissula, p. 97,

¹⁴"Government Efforts and Strategies to Control Illegal Mining", AginCourt Resources, <https://www.agincourtresources.com/read-agincourt/pemerintah-menertibkan-tambang-ilegal>, accessed on October 11, 2024, at 21.23 WIB

¹⁵Nandang Sudrajat, 2010, Theory and Practice of Indonesian Mining According to Law, Buku Seru, Jakarta, p. 76.

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either the community or companies, who do not have a permit and do not follow the mining rules and principles correctly and properly. Through certain types of permits, mining business actors can carry out mining businesses in accordance with the business permit they want to carry out and then be approved by the authorized official to issue the permit. Without a permit, any mining business and/or activity cannot be carried out and all business actions and/or activities become mining activities without a permit or can be said to be illegal mining.¹⁶

The police have the main task contained in Law Number 2 of 2002 concerning the Indonesian National Police, one of which is to enforce the law. Law enforcement is an effort to manifest the moral image contained in the law. This moral image can be enforced through the Police as a law enforcement apparatus.¹⁷As the task of the Police in enforcing the law for the sake of maintaining security and order can be seen as a living law because the law becomes concrete or experiences manifestation in society through the hands of the Police. The Police are given authority in the form of general power in handling criminal acts (general policing in criminal matter) that are throughout the territory of the Republic of Indonesia.¹⁸The authority held by the Police also includes taking action against illegal mining activities. The role of the Police is needed in enforcing the law against illegal mining that has caused negative impacts. Law enforcement according to Andi Hamzah does not only include actions in the criminal or repressive legal field, but also includes preventive actions.¹⁹Therefore, the function of the Police is not only limited to efforts to find facts to support the occurrence of a crime in order to find the suspect, but also to act by actively preventing acts that have the potential to lead to crime.²⁰According to Sudarto, law enforcement is the attention and handling of unlawful acts that have actually occurred (*onrecht in actu*), or that will occur (*onrecht in potentie*).²¹If there is a deviant act, the officers in the field only report to the authorized officers. The report that has been submitted is responded to by the police and then conducts a field survey and follows up.

The weakness of criminal liability of business actors for illegal mining crimes is the difficulty of proving the element of guilt. This is because the subject of corporate law is different from humans who have reason and thoughts. In addition, the application of administrative sanctions can result in the closure of the company, which can lead to unemployment and crime.

¹⁶Ahmad Redi, 2016, Dilemma of Law Enforcement of Unlicensed Mineral and Coal Mining in Small-Scale Mining," *RechtsVinding* 5, no. 3, pp. 399–420.

¹⁷I Ketut Adi Purnama, 2018, *Police Law: History and Role of the Police in Law Enforcement and Human Rights Protection*, Refika Aditama, Bandung, p. 61.

¹⁸M. Yahya Harahap, 2009, *Discussion of Problems and Application of Criminal Procedure Code, Investigation and Prosecution*, Second Edition, Sinar Grafika, Jakarta, p. 91.

¹⁹Andi Hamzah, 2005, *Various Special Criminal Acts Outside the Criminal Code (KUHP)*, Remaja Rosda Karya, Bandung, p. 54

²⁰Fadhly Fadhly, Wempie Jh Kumendong, and Dani R Pinasang, 2021, "The Authority of the Police in Enforcing the Law Against Illegal Mining Activities in Indonesia Through Preventive and Repressive Efforts," *Lex Administratum* 9, no. 1, p. 110.

²¹Mahfud MD, 2014, *Law Enforcement in the Political Dimension of Indonesian Law*, Rajawali Pers, Jakarta, p. 35.

3.3. Criminal Liability of Business Actors for Illegal Mining Crimes in the Future

In a community environment, wherever it exists, there must be rules. These rules aim to regulate the behavior of community members who live in that environment. If there is a rule made to regulate the life of the community, then the rule must have clear sanctions. Because what is the use of a myriad of rules without clear sanctions where the myriad of rules are useless. The sanctions made in a rule are useful as a coercive element in implementing the rule. Community obedience to a rule is a reflection of the legal awareness possessed by the community. Where the higher the awareness of the community in an environment, the lower the level of violations in the community. Even if the awareness possessed by the community is very high, then the environment no longer needs law enforcement officers.

Humans are social creatures, and as social creatures it cannot be denied that humans live in society.²² In the life of society, humans have two aspects, namely the physical aspect and the existential aspect. In the physical aspect, humans will try to maintain their lives, where humans need food, drink and equipment to get food and drink. Humans will also procreate (marry). While in the existential aspect, humans need other physical facilities such as housing and the development of science. Given their nature as social beings, to continue their lives and existence as humans, humans develop immaterial suggestions that can be a glue in social life.

One of the functions of law is to protect human interests, where for this protection the law must be enforced. According to Sudikno Mertokusumo enforcing the law there are three elements that must always be considered, namely the elements of legal certainty, benefit and justice.²³

Criminal liability of business actors for illegal mining crimes in the future is regulated in Article 158 of Law Number 3 of 2020, mining business actors without IUP can be sentenced to a maximum of 10 years in prison and a maximum fine of IDR 10 billion. The application of strict and appropriate criminal sanctions can be an effort to prevent illegal mining in the future.

4. Conclusion

Based on the descriptions that the author has put forward in the discussion chapter, the author concludes that the criminal liability of business actors for illegal mining crimes is through civil sanctions and also administrative sanctions by revoking business licenses. The weakness of the criminal liability of business actors for illegal mining crimes is the difficulty of proving the element of guilt. This is because the subject of corporate law is different from humans who have reason and thoughts. The criminal liability of business actors for illegal mining crimes in the future is regulated in Article 158 of Law Number 3 of 2020, mining business actors without an IUP can be sentenced to a maximum of 10 years in prison and a maximum fine of IDR 10 billion. The application of strict and appropriate criminal sanctions can be an effort to prevent illegal mining in the future.

Based on the conclusions of the research results above, there are several things that can be input, including the expectation of strict control by law enforcement and related agencies so

²²Peter Mahmud, Marjuki, 2008, Introduction to Legal Science, Kencana, Jakarta, p. 40

²³Sudikno Mertokusumo, 2005, Selected Chapters on Legal Science, Alumni, Bandung, p. 105

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that there is no opportunity for miners, especially in illegal river flow areas, to carry out mining activities which in fact do not have permits from the authorities.

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