

Criminal Law Enforcement Against Perpetrators of Illegal Mining

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Abstract. *The problem Mining in Indonesia is currently being questioned by various groups, including in the jurisdiction of the Central Kalimantan Regional Police which has the potential for natural resources in the form of C-type mining materials such as sand and granite soil. Mining activities for C-type mining materials without a permit in the jurisdiction of the Central Kalimantan Regional Police are carried out at various locations using heavy equipment in the form of excavators. If conditions like this are allowed to continue, of course it will have a very large negative impact on the environment and the community around the mining location. The purpose of this study is to analyze the efforts to enforce criminal law against perpetrators of C mining without a permit in the jurisdiction of the Central Kalimantan Regional Police and to analyze the application of criminal sanctions against perpetrators of C mining without a permit in the jurisdiction of the Central Kalimantan Regional Police. This study uses a sociological legal approach, research specifications in the form of analytical descriptive research. The data sources used are primary data obtained through interviews. While secondary data uses books and laws related to theoretical problems as a legal basis. The results obtained from this study are (1) that law enforcement against perpetrators of illegal C mining in the jurisdiction of the Central Kalimantan Regional Police has been carried out optimally by the Special Criminal Investigation Directorate of the Central Kalimantan Regional Police, although the results are still not satisfactory. The number of cases of illegal C mining in the jurisdiction of the Central Kalimantan Regional Police has increased in the last 5 years. In 2019 there were 16 cases, in 2020 there were 23 cases, in 2021 there were 31 cases, in 2022 there were 37 cases, and in 2023 there were 49 cases. In all these cases, the perpetrators have been referred to the judicial process to be examined and tried; (2) The main obstacles to law enforcement efforts for illegal C mining in the jurisdiction of the Central Kalimantan Regional Police, namely: 1) The vast jurisdiction of the Central Kalimantan Regional Police; 2) The C mining business is a prima donna business; 3) The low*

criminal sanctions given to the perpetrators. The solutions implemented to overcome these obstacles are: 1) Striving to ensure the availability of adequate facilities and infrastructure and sufficient budget; 2) Carrying out routine control activities by cooperating with the local district government and providing counseling on the importance of managing permits in the form of People's Mining Permits (IPR); 3) Imposing criminal sanctions that are severe enough to provide a deterrent effect on those who mine Class C mining materials without a permit.

Keywords: *Enforcement; Investigation; jurisdiction; Unlicensed.*

1. Introduction

Unlicensed mining activities of C-grade materials in the jurisdiction of the Central Kalimantan Regional Police are carried out at various locations using heavy equipment in the form of excavators. These mining actors carry out their activities by making fairly deep and wide excavations on the land, where after the potential of the C-grade materials has been completely excavated, usually the mining actors simply leave the mining site without any attempt to reclaim it. If conditions like this are allowed to continue, of course it will have a very large negative impact on the environment and the community around the mining site.

The negative impacts of illegal C mining activities are very detrimental. One of the main consequences is environmental damage including deforestation, soil erosion, and water pollution. In addition, forests that function as natural habitats for flora and fauna have also experienced significant decline.¹

Mining activities of C-type materials without a permit can be prosecuted legally, in other words, law enforcement officers can carry out their duties to prosecute perpetrators of mining without a permit to be further processed and even take them to court. This is intended not only to enforce criminal law, but also to protect the sustainability of the environment itself from the dangers of damage.

The community is an important resource for environmental management purposes. Not only is it expected to be a resource that can be utilized for environmental development, but more than that, community components can also provide important alternatives for the environment as a whole, such as providing information to the government. The many reports and complaints from the community regarding illegal C mining in the jurisdiction of the Central Kalimantan Regional Police which damage the environment and disrupt

¹Freedom Zone, Allegedly Illegal C Quarry Mining Increases in East Barito Regency, downloaded from the page <https://www.zonamerdeka.com/2023/06/diduga-tambang-ilegal-galian-c.html>, accessed on January 17, 2024, at 16.33 WIB.

community activities certainly make law enforcement officers not remain silent in regulating illegal C mining activities.

The results of research conducted on illegal mining activities of Class C minerals in the jurisdiction of the Central Kalimantan Regional Police, obtained data on the number of cases of illegal mining of Class C minerals from 2019 to 2023 as follows:

Year	Case of Unlicensed Class C Mining	Number of Suspects of Illegal C Mining
2019	16	16
2020	23	23
2021	31	38
2022	37	43
2023	49	52

Source: Central Kalimantan Police, 2024

The number of cases of illegal C mining above shows that in 2019 there were 16 cases of illegal C mining and 16 people were named as suspects by the Central Kalimantan Police, in 2020 there were 23 cases of illegal C mining and 23 people were named as suspects by the Central Kalimantan Police, in 2021 there were 31 cases of illegal C mining and 38 people were named as suspects by the Central Kalimantan Police, in 2022 there were 37 cases of illegal C mining and 43 people were named as suspects by the Central Kalimantan Police, and finally in 2023 there were 49 cases of illegal C mining and 52 people were named as suspects by the Central Kalimantan Police. All cases of illegal C mining above, the perpetrators have been referred to the court to be examined and tried according to the provisions of the law.

The mining activities of C-type quarries that occur in the jurisdiction of the Central Kalimantan Regional Police have been seen to increase every year. Meanwhile, the Central Kalimantan Regional Police have made various efforts to reduce the occurrence of illegal C-type quarrying activities. Conditions like this require serious attention and handling so that C-type quarrying activities in the jurisdiction of the Central Kalimantan Regional Police do not develop further, so that environmental damage that occurs due to illegal C-type quarrying activities can be immediately controlled and resolved. Therefore, a study of criminal law enforcement against perpetrators of illegal C-type quarrying that occurs in the jurisdiction of the Central Kalimantan Regional Police is very necessary and important to be carried out so that environmental damage does not become more severe and for the sake of enforcing criminal law in the mining sector in the jurisdiction of the Central Kalimantan Regional Police.

This study aims to determine and analyze Obstacles and solutions in enforcing criminal law against perpetrators of illegal Class C mining in the jurisdiction of the Central Kalimantan Regional Police.

2. Research Methods

a. Approach Method

The approach method used in this research is sociological juridical.

b. Research Specifications

The research specifications in writing this thesis are in the form of analytical descriptive research.

c. Method of collecting data

The data collection method used is interviews.

d. Data Analysis Methods

The data analysis method used in this study is a qualitative analytical method.

3. Results and Discussion

3.1. Criminal Law Enforcement Against Perpetrators of Unlicensed Class C Mining in the Jurisdiction of the Central Kalimantan Regional Police

Based on data obtained from the office of the Energy and Mineral Resources Service of Central Kalimantan Province, currently in Central Kalimantan Province there are 63 (sixty three) companies that are registered and have received permits from the government. However, of all the mining companies for C-type minerals, there are 7 (seven) permits that are no longer valid (expired).²It is recorded that of the 7 (seven) mining companies of class C minerals whose permits are no longer valid, 5 (five) companies are no longer conducting mining activities, while the remaining 2 (two) companies are still operating even though their permits are no longer valid. Meanwhile, mining activities of class C minerals without permits carried out by individual members of the community are also quite numerous, even exceeding the number of companies that have permits.³

Regarding the impact of mining efforts, it can be studied from 2 sides, namely positive impacts and negative impacts. Positive impacts are the benefits arising from mining of C-type mining materials, namely: (1) Absorption of labor; (2) Increasing Regional Original Income (PAD) with the obligation of entrepreneurs to pay levies and other fees; (3) Facilitating transportation, because previously the local residents' roads were only footpaths, so entrepreneurs tried to make hardened roads so that they could be passed by heavy equipment and dump trucks. While the negative impact is in the form of risks due to mining of C-type mining materials. In general, entrepreneurs mining C-type mining materials without permits carry out mining activities both on land and in rivers using heavy equipment. In the use of heavy equipment, this results in the presence of large

²Results of an interview with Vent Christway, Head of the Mineral and Coal Division of the Central Kalimantan ESDM Service, conducted accessed on April 10, 2024, at 10.36 WIB.

³Ibid.

holes from C-type mining which can reach a depth of 4 to 6 meters, and if the land is not reclaimed by the mining actors, it will damage the surrounding environment.⁴

This problem will never end if illegal C mining like this is not immediately regulated. This problem is our collective obligation to always maintain a healthy, harmonious and balanced environment between humans and other living creatures. The obligation to maintain the environment is imposed on individuals, business entities and the government. Article 67 Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) states "everyone is obliged to maintain the sustainability of environmental functions and control environmental pollution and/or damage."

One form of such obligation is to pay a reclamation guarantee. Payment of the reclamation guarantee is intended so that the holes left by the C excavation after mining is carried out can be filled in back. This is done to maintain the balance of the environment which states that environmental management is an integrated effort to preserve environmental functions which include policies on arrangement, utilization, development, maintenance, restoration, supervision and control. The environment is one of the requirements in mining business permits, so the permit in question must include the requirements and obligations relating to the arrangement of environmental management provisions. Article 22 paragraph (1) of the UUPPLH states "Every business and/or activity that has a significant impact on the environment must have an Amdal".

Repressive law enforcement in the Central Kalimantan Regional Police is carried out through investigative efforts carried out based on the Criminal Procedure Code and its implementing regulations, namely Perkap Polri Number 16 of 2019 concerning Criminal Investigation. Article 10 paragraph (1) of Perkap Polri Number 16 of 2019 concerning Criminal Investigation, states that criminal investigation activities consist of investigation, commencement of investigation, coercive measures, examination, determination of suspects, filing, submission of case files, submission of suspects and evidence, and termination of investigation. The coercive measures referred to in Article 10 paragraph (1) of Perkap Polri Number 16 of 2019 include summons, arrest, detention, search, confiscation and examination of documents.

Based on the theory of law enforcement, there are factors that influence law enforcement, namely the law factor, law enforcement factor, facilities and infrastructure factor, community factor and cultural factor. In terms of the law factor, law enforcement against illegal mining crimes has been regulated in Article 158 of the Minerba Law which states that "Any person who carries out illegal mining as referred to in Article 35 shall be punished with imprisonment of a

⁴Ibid.

maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000, - (one hundred billion rupiah)."

The permits referred to in Article 35 of the Minerba Law are IUP, IUPK, IUPK as a Continuation of Contract/Agreement Operations, IPR, SIPB, Assignment Permit, Transportation and Sales Permit, IUJP and IUP for sales. Based on the provisions of the article, if there is mining activity without a permit, it can be categorized as a crime in the mining sector, so it can be punished. Thus, the law factor has supported the existence of law enforcement against criminal law enforcement.

3.2. Obstacles and Solutions in Enforcing Criminal Law Against Perpetrators of Illegal Class C Mining in the Jurisdiction of the Central Kalimantan Regional Police

According to Senior Commissioner of Police Istadi,⁵ Members of the Special Criminal Investigation Directorate of the Central Kalimantan Regional Police, the main obstacles in law enforcement efforts against perpetrators of illegal Class C mining in the jurisdiction of the Central Kalimantan Regional Police, namely:

1) The Extent of the Jurisdiction of the Central Kalimantan Regional Police

Central Kalimantan Province is the second largest province in Indonesia after Papua Province with an area of 153,564 km².⁶ Central Kalimantan Province has 11 (eleven) large rivers and no less than 33 (thirty three) small rivers/tributaries.

The vastness of the Central Kalimantan Regional Police's jurisdiction is one of the obstacles faced by the Unit. The Directorate of Special Criminal Investigation of the Central Kalimantan Regional Police to enforce the law against illegal C mining perpetrators. Not infrequently, the operational activities carried out must travel by land and/or river which is quite difficult and tiring, so that before the operational team reaches the location of the activity, the mining perpetrators have already fled.

The solution to overcome these obstacles is to strive to provide adequate facilities and infrastructure and sufficient budget. In addition, it also requires support from educated and skilled law enforcement officers so that they can carry out their duties professionally.

2) Class C Mining Business Becomes a Prima Donna Business

The large number of people who depend on their livelihoods from illegal Class C mining activities has caused mining activities to become a favorite business for local residents.

⁵Results of an interview with AKBP Istadi, Member of the Special Criminal Investigation Directorate of the Central Kalimantan Regional Police, conducted on May 27, 2024, at 15.48 WIB.

⁶Conditions in Central Kalimantan Region, <https://dishut.kalteng.go.id/page/37/ Condition-region>, accessed on April 04, 2024, at 18.31 WIB.

The people who depend on the C mining business for their livelihood are quite a lot, therefore the police also do not turn a blind eye to the condition of the people's dependency, because it has become their livelihood. While other business fields require sufficient expertise and education, which are not possessed by the people.

This certainly greatly affects the performance of the police in law enforcement efforts against perpetrators of illegal Class C mining.

The solution to overcome these obstacles is to carry out routine control activities by collaborating with the local district government and providing counseling on the importance of taking care of permits in the form of People's Mining Permits (IPR).

The light criminal sanctions imposed in the case in Central Kalimantan occurred because there was no minimum limit for judges as a basis for imposing criminal penalties on perpetrators of mining of C-type minerals without a permit. The formulation of Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining regulates criminal provisions which state:

"Any person who carries out mining without a permit as referred to in Article 35 shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000, - (One Hundred Billion Rupiah)".

The prohibited acts in the provisions of the above article are basically related to administrative violations in the form of the absence of IUP (Mining Business Permit), IPR (People's Mining Permit), or IUPK (Special Mining Business Permit) in conducting mining business. Mining referred to here is part of the mining business activity to produce minerals and/or coal and associated minerals which are carried out in the form of IUP, IPR, and IUPK.

The application of criminal sanctions against perpetrators of mining of C-type materials without a permit in the jurisdiction of the Central Kalimantan Regional Police is in accordance with the principle of legal certainty, but has not fulfilled the element of justice desired by the community. In fact, criminal sanctions function to encourage compliance with certain norms. Norms do not exist just for the sake of the norms themselves. Norms or rules are created with the aim of protecting a particular legal object. Therefore, the weight of the criminal (threatened) must reflect the value that we associate with the legal object that we want to protect. Materially, the environment as a place for humans to live should be protected by the norms contained in environmental law.⁷ With the light criminal sanctions given to perpetrators of illegal Class C mining crimes in the jurisdiction of the Central

⁷Tristam P. Moeliono, *Current Concerns: Thoughts on Environmental Criminal Law in Theory and Practice*, (Bandung: PT Citra Aditya Bakti, 1994), p. 415.

Kalimantan Regional Police, it does not have a deterrent effect on the perpetrators or prevent similar incidents from occurring in the future against new perpetrators.

Law enforcers must threaten, impose, and carry out criminal penalties in such a way as to minimize the possibility or prevent many people from committing violations of the law.⁸Law enforcers must see this case as a whole, not only justice for the perpetrators of illegal C mining, but also the impacts it causes. In addition to the impact of environmental damage due to disturbing the ecosystem around the illegal C mining (which ignores the AMDAL), the community around the mining location does not necessarily feel the benefits (including economic benefits) from the C mining, but they can become victims of its negative impacts.

4. Conclusion

Law enforcement against perpetrators of illegal mining of Class C minerals in the jurisdiction of the Central Kalimantan Regional Police has been carried out maximally by the Special Criminal Investigation Directorate of the Central Kalimantan Regional Police, although the results are still not satisfactory. The number of cases of illegal C mining in the jurisdiction of the Central Kalimantan Police has increased in the last 5 years. In 2019 there were 16 cases of illegal C mining and 16 people were named as suspects by the Central Kalimantan Police, in 2020 there were 23 cases of illegal C mining and 23 people were named as suspects by the Central Kalimantan Police, in 2021 there were 31 cases of illegal C mining and 38 people were named as suspects by the Central Kalimantan Police, in 2022 there were 37 cases of illegal C mining and 43 people were named as suspects by the Central Kalimantan Police, and finally in 2023 there were 49 cases of illegal C mining and 52 people were named as suspects by the Central Kalimantan Police. In all of the cases above, the perpetrators have been transferred to the judicial process for examination and trial.

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⁸Ibid., p. 410.

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