

Law Enforcement Against Illegal Mining Criminal Acts in The Jurisdiction of the North Musi Rawas Police

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Abstract. *Indonesia is a country rich in mining materials. These mining materials include gold, silver, copper, oil and natural gas, coal, and others. These mining materials are controlled by the state. The state's control rights contain the authority to regulate, manage and supervise the management or exploitation of mining materials, and contain the obligation to use them as much as possible for the prosperity of the people. This study aims to determine the Law Enforcement Against Illegal Mining Crimes in the Jurisdiction of the North Musi Rawas Police. In this study, the approach method used is: a normative legal approach (normative legal research method). library legal research conducted by examining library materials or secondary data alone. The research specification used is Analytical Descriptive, which is an effort to analyze and explain legal problems related to objects with a comprehensive and systematic description of everything related to Law Enforcement Against Illegal Mining Crimes in the Jurisdiction of the North Musi Rawas Police. Law enforcement against illegal mining practices in the jurisdiction of the North Musi Rawas Police is carried out through three main approaches, namely: Pre-emptive, Preventive, Repressive. Environmental law enforcement faces many obstacles, especially in areas such as North Musi Rawas. These obstacles include weak legal means, limited facilities and funds, problems in the licensing system, lack of number and capacity of law enforcement officers, and weaknesses in the AMDAL system. In addition, low public legal awareness and minimal public education and participation also worsen the condition.*

Keywords: *Criminal; Enforcement; Illegal; Law.*

1. Introduction

In a state of law, law is the main pillar in moving the joints of social, national,

and state life. One of the main characteristics of a state of law lies in its tendency to assess actions taken by society on the basis of legal regulations. This means that a state with the concept of a state of law always regulates every action and behavior of its people based on applicable laws.

This is done to create, maintain, and defend peaceful social life in accordance with what is mandated in Pancasila and the 1945 Constitution, namely that every citizen has the right to feel safe and free from all forms of crime. Indonesia is a country rich in mining materials. These mining materials include gold, silver, copper, oil and natural gas, coal, and others. These mining materials are controlled by the state. The state's right to control contains the authority to regulate, manage and supervise the management or business of mining materials, and contains the obligation to use them as much as possible for the prosperity of the people. Control by the state is carried out by the government. This is as emphasized in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "The earth and water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people."

The principle contained in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia contains the meaning that the government as the implementer of state policy is obliged to manage and utilize natural resources as much as possible for the prosperity of the people. Natural resources owned by the Indonesian nation, if managed properly, will contribute to the country's economic development. Mining is carried out based on procedures and prerequisites that have been set out in several laws and regulations governing mining, known as mining law. Mining law is the entire legal rules that regulate the authority of the State in managing mining materials and regulate relations between the state and individuals and/or legal entities in the management and utilization of mining materials.

Indonesia already has laws and regulations governing mining, namely Law Number 4 of 2009 concerning Mineral and Coal Mining as amended by Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Through these laws and regulations, the government regulates the management and utilization of minerals and coal optimally, effectively, and efficiently so that it can encourage and support the development and independence of national industrial development based on mineral resources and/or coal energy. In addition, mining that causes environmental damage is also regulated in Law Number 32 of 2009 concerning Environmental Protection and Management.

The state fully controls all the wealth contained in the earth and uses it as well as possible for the prosperity of the people. However, in reality, the people carry out mining activities without paying attention to important aspects in it, such as

not paying attention to the consequences caused or the influence of the mining (illegal mining). This also does not rule out the possibility that mining is also carried out by mining companies that already have official permits.

These mining activities cause many problems both for the environment and for the local community. Mining problems are not only caused by large-scale mining but also medium-scale mining and small-scale mining. This is as stated by Nandang Sudrajat who stated that small-scale mining is carried out in the form of community mining. In carrying out community mining activities, although included in small-scale mining, it does not mean that there are no problems. Although it is carried out traditionally, it sometimes covers a fairly large area, because it is carried out by the local community with business actors who are not balanced with equipment, facilities, knowledge, and capital. In addition to the limitations mentioned above, regulatory constraints also worsen the situation and conditions, so that community mining tends to be carried out without a permit or is known as illegal mining. Illegal mining is an activity carried out by people or the community without permission from authorized officials. These activities are prone to causing accidents and work safety, even uncontrolled pollution and environmental damage.

Illegal mining activities are spread across almost all regions in the Indonesian archipelago (West Java, East Java, Kalimantan, Sulawesi, Maluku and Papua, and so on), with thousands of mining locations and around 2 million people who depend on these activities for their livelihoods. Most of the perpetrators are local residents who have been doing the work for generations, in addition to those who come from other places seasonally. The miners carry out mining activities around or even within official mining areas, and on state land, including those with plantation status, conservation forests, protected forests, and production forests.

In Indonesia, illegal mining is an illegal activity, especially because the miners do not have a Mining Business Permit as a Business Entity. Miners do not pay taxes and royalties which are a source of state revenue from mining activities and these activities also often cause social unrest and environmental damage. However, in practice, law enforcement actions against illegal mining are also sometimes carried out half-heartedly, especially because of the large number of miners who have carried out these activities for generations in their ancestral locations, and also economically these activities have helped reduce poverty and unemployment which are still problems for the local economy in many areas in Indonesia. One of the areas that is rife with illegal mining activities is North Musi Rawas, South Sumatra province. Based on the data obtained, as many as 26 illegal gold mines were raided by the North Musi Rawas police in 2022.

Illegal mining is carried out without following procedures, resulting in environmental losses such as water pollution, air pollution, land pollution, and

even threatening people's lives. However, law enforcement against illegal mining is a dilemma for law enforcers because there is a clash between normative-juridical aspects and sociological and philosophical aspects. This is as stated by KLHK data which states that behind illegal mining there are significant social and economic impacts for miners, namely an increase in welfare of 77%. On the other hand, in accordance with the provisions of laws and regulations, illegal mining activities are criminal acts which from a positivistic perspective must be implemented or enforced.

2. Research methods

Research Methods, are basically a function of the problems and objectives of the research. Therefore, discussions in research methods cannot be separated and must always be closely related to the problems and objectives of the research. What is used in this research consists of approach methods, research specifications, sources and types of data, data collection techniques and data analysis techniques.

3. Results and Discussion

3.1 Law Enforcement Against Illegal Mining Crimes in the Jurisdiction of the North Musi Rawas Police

On June 21, 2023, the North Musi Rawas Police raided illegal gold mining activities in the Tumbuk River, Muara Kulam Village, Ulu Rawas District. Three suspects were arrested, namely Siswandi (34), Mulyadi (30), and Herman (42). Their modus operandi involved digging holes and spraying high-pressure water using a dompeng machine to separate the gold from the soil.

In law enforcement against perpetrators of illegal mining crimes, of course there are regulations that serve as the basis for imposing sanctions, namely Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction which carries out mining activities in forest areas without a business license from the central government in accordance with the crime committed by the perpetrator. In other words, there are no exceptions to the imposition of punishment, whether the perpetrator comes from elite corporate circles or business actors who are oriented towards improving the economy. In this case, the law carries out its duties with the existing rules and law enforcement is carried out on the basis of the rules that have been set, especially regarding illegal mining crimes which require accountability for the actions carried out, of course the judicial process must also be in line with the methods determined as stated in the Criminal Procedure Code.

An intense pattern of action is needed without being limited by the target of resolving cases, especially in handling illegal mining and tightening regulations in order to provide a deterrent effect for perpetrators where of course many losses

are felt, both in terms of state revenue and in terms of the ecosystem. Handling through the criminal justice process is one part of the form of appropriate sanctions in addition to rehabilitation and administrative sanctions. Here, more supervision is also needed by law enforcers and government officials in terms of granting permits by looking at the classification and competence of companies engaged in mining.

The public's view of the law is a binding rule that must be followed. In terms of criminalization, in principle it has the purpose of general prevention or commonly called general prevention and special prevention. General prevention here aims for criminalization to influence the behavior of others to form a society that has a character that is obedient and obedient to the law.

The philosophy that developed in law enforcement by law enforcers "Even if the sky falls, justice will still be upheld" or *fiat justitia ruat caelum* has become not only an expression but in practice society expects justice that can still be upheld with this understanding without looking at social class. Law becomes the hope of society to receive justice and get the justice they expect.

Justice becomes relative because of the nature of its acceptance and imposition where not everyone, especially justice seekers, can accept a decision on a case with the assumption that it has provided sufficient justice. The level of justice expected as an answer in the eyes of the general public will depend on the severity of the sanctions given.

Based on the theory of criminal responsibility is used to determine whether the suspect or defendant is responsible for the crime committed. In other words, criminal responsibility is a form that decides whether a person is acquitted or punished. According to Roeslan Saleh, criminal responsibility is defined as a continuous objective charge that arises in a criminal act and subjectively meets the requirements for punishment for his actions.

Criminal liability has a relationship with society, namely the relationship between responsibility and society as a function. What is meant here is that responsibility has the power to impose punishment, so responsibility here has a social control function so that crime does not occur in society. Furthermore, criminal liability is deliberately combined in the common law system.

Law enforcement steps against illegal mining cases, especially in criminal justice, are known to refer to the use of statutory regulations by law enforcement officers in dealing with illegal mining crimes. In the process, proper procedures are needed to carry out efforts to prove the fulfillment of the elements of a mining crime, including to ensure whether the suspect is legally guilty in the trial process. At this stage, the evidence and witnesses presented in the trial process ultimately make the process of proof through the disclosure of trial facts to be decided in the law enforcement process.

One of the goals of sustainable development (Sustainable Development Goals) is an effort to eradicate poverty, empower education, clothing, food, and shelter, health and proper environmental management. Sustainable management of natural resources is a major sector of regional development that aims to increase economic growth and community welfare, but not a few also cause environmental problems.

In an effort to overcome the increasing number of criminal acts in the mining sector, it is carried out through criminal law enforcement which we know as criminal law policy or criminal law politics and channels outside criminal law. Both must basically be integrated so that criminal policies for overcoming crime are at an optimal and appropriate level.

The function of forests has a positive impact not only on humans and the environment but also as an absorber of carbon dioxide caused by human activities, destroying forests or cutting down forests can have a negative impact on the surrounding ecosystem because of its vital nature so that forests become a central point for long-term preservation.

Prevention of illegal mining problems is an effort to take action against criminal acts with a criminal policy pattern (penal policy) in which there are several stages of formulation of the implementation of criminal policies, namely; the formulation, application and execution stages, only the focus is on the implementation of Law Number 3 of 2020 Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining.

Law enforcement carried out by the North Musi Rawas Police against illegal mining business actors is part of the police's duties and functions in order to create peace, order and security in society.

Basically, mining without a permit is a criminal act because considering the importance of carrying out mining activities with a valid permit from the central government, this is because the impacts that occur due to mining that does not have direct control from the government have the potential to have a negative impact on the environment and the surrounding ecosystem.

The efforts of the North Musi Rawas Police in enforcing the law against illegal mining activities in the North Musi Rawas area based on applicable regulations are a form of protection for the environment and its surroundings which have the potential to cause long-term damage when there is no affirmation of punishment for perpetrators of mining crimes.

Efforts to prevent crime include repressive, preventive and preemptive efforts. The efforts made can be explained in two details which in general are as follows:

1. Pre-emptive Efforts

Preemptive action here refers to the initial action taken to prevent a crime from occurring. This preventive action is carried out by the police to prevent a crime from occurring. Regarding the criminal provisions of Law Number 4 of 2009 concerning the Prevention and Eradication of Deforestation and Law Number 18 of 2013 concerning the Criminal Act of Mining Without a Permit in Forest Areas, preventive efforts will be carried out through counseling and legal awareness through the issuance of banners and leaflets regarding the dangers of mining installed without a permit.

2. Preventive Efforts

Preventive efforts (prevention) against the problem of mining crimes in forest areas, preventive efforts are actions taken by law enforcement officers before social deviations occur, can control or prevent violations. Where preventive steps include:

- a. Providing employment opportunities as an effort to improve community welfare to minimize crime rates.
- b. Improvement and tightening of administrative and supervisory systems and policies to prevent any form of deviation.
- c. Increasing public legal awareness by intensifying routine legal counseling activities
- d. Increasing the number of law enforcement personnel so that the law enforcement process can run optimally.
- e. Strengthening the values of professionalism and morals of law enforcement officers to ensure the transparency of law enforcement expected by the general public.
- f. Implementation of routine monitoring operations on mining activities
- g. Confiscation of equipment potentially used for mining activities

Based on the theory of law enforcement is the process of efforts to enforce or truly function a legal norm as a guideline for behavior or legal relations in social and national life. Viewed from the perspective of the subject, law enforcement can be carried out by a broad subject and can also be interpreted as an effort to enforce the law involving all legal subjects in every legal relationship.

In law, legal subjects can be interpreted as bearers of rights, namely humans and legal entities. According to law, every human being has become a legal subject by nature or naturally. According to Prof. Subekti, legal subjects are bearers of rights or subjects in law, namely people. In law enforcement, law enforcement officers are expected to function to prevent criminal acts in society. The presence of law

enforcement officers in this case is the uniformed police in society which is an effort of prevention that is expected with supervision and protection from police officers who must always be ready when a crime occurs, so that this can prevent the community from committing acts of violation of the law.

3. Repressive Efforts

After a crime has occurred, the action taken by law enforcement officers is a repressive action. This repressive effort is carried out by looking at the factors that influence the action, namely:

- a. The environment and habits around the place where the perpetrator lives or grows up
- b. The socio-economic conditions of the perpetrators
- c. The psychological condition of the perpetrator
- d. The perpetrator's family background
- e. Education or level of education

By considering the above factors by combining the ability to communicate with the perpetrator of the crime, it is hoped that the criminal acts committed by the perpetrator will not be repeated in the same or different way in the future.

Law enforcement officers often have difficulty in prosecuting criminal acts in the mineral and coal mining sector. Law enforcement officers find it difficult to distinguish between administrative, civil and criminal. Furthermore, Law Number 4 of 2009 concerning Mining and Coal Mining, Law Number 32 of 2009 concerning Environmental Protection and Management, and Law Number 18 of 2013 concerning Prevention and Eradication of Forest Damage, were issued to the Ministry of Environment by seeking a licensing decision before other permits. The obligation to obtain ministerial approval in this case is one of the things that causes panic for mining companies, because environmental permits are a prerequisite for obtaining business and/or activity permits.

In reality, even though they have been given sufficient space to manage mining, there are still many mining business actors, especially in the North Musi Rawas area, who do not take care of mining business permits. This fact has resulted in many mining crimes occurring due to the emergence of mining activities without permission from the government. The obligation to take care of mining business permits is based on the fact that mining exploration has a significant impact on environmental damage and forest areas due to mining activities that are often carried out in forest areas protected by the state.

Law enforcement is expected to be a solution to overcome crime in society. The

presence of law enforcement officers in the community is one of the efforts made by the government in supervising and protecting against potential problems in the public area of the community.

Based on the opinion of the Head of Criminal Investigation Unit of the North Musi Rawas Police, the form of law enforcement carried out by the government from the perspective of environmental protection to achieve the supremacy of law is by implementing administrative sanctions, civil sanctions and criminal sanctions. Related to law enforcement efforts for the crime of Illegal Mining in the jurisdiction of the North Musi Rawas Police. Then against mining business actors who do not have official permits from either the regional government or the central government according to the provisions of Law Number 4 of 2009 in Article 158 it is stated that "a person who carries out mining without a permit shall be subject to a maximum imprisonment of 5 years and a maximum fine of IDR 100,000,000,000" and Article 160 which reads "everyone who has an IUP at the exploration stage but carries out production operations shall be subject to imprisonment".

4. Efforts to resolve environmental problems

Continuously carried out by environmental stakeholders, both government, private sector and environmental observers to find solutions in sustainable environmental management. Law Number 32 of 2009 concerning Environmental Protection and Management has mandated stakeholders (government, private sector and community) to pay attention to aspects of environmental management and protection. The efforts to implement environmental criminal law in the crime of Illegal Mining, namely:

- a. Conduct supervision on every mining activity
- b. Providing education to communities and mining entrepreneurs about environmental awareness.
- c. Conducting outreach with NGOs about the dangers of mining without a permit
- d. Efforts to expand the evidence, namely witness statements, expert statements, letters, clues, and statements from the defendant.

The improvement of the management and protection (response) aspects is shown by the formation of environmental regulations and permits, environmental supervision, environmental law enforcement, and the existence of innovative programs related to insight, mental formation, governance and environmental preservation. Some of the approach instruments that can be carried out to maintain sustainable environmental management include the study of environmental carrying capacity and carrying capacity (D3TLH) based on

ecosystems. According to Law Number 32 of 2009 concerning Environmental Protection and Management, it is something important for local governments to do.

In addition to all parties involved, both workers and business actors, being subject to sanctions and fines, in order to feel the deterrent effect, social and environmental responsibility is also needed for companies that carry out mining businesses. Law enforcement against business actors who carry out mining businesses without official permits has been a serious concern so far, considering that the government, in this case the task of the Mining and Energy Service, is only limited to conducting supervision. While those who carry out action against violations that occur are law enforcement officers.

Then there is the settlement of environmental disputes outside the court as regulated in Article 85 of Law Number 32 of 2009 concerning environmental protection and management. This dispute resolution can be carried out by using a third party who has or does not have the authority to make decisions, and allows the community or government to create environmental service provider institutions to help resolve environmental disputes. The forms of law enforcement are:

- a. There are functions within the organization that ensure that management has run its business in accordance with the principles of healthy corporate management.
- b. The company carries out social responsibility by caring about the community and environmental sustainability, especially in the area around the company, by making adequate planning and implementation.
- c. There is a function within the organization that assesses the effectiveness of the system that functions to monitor and ensure the company's compliance with applicable rules and regulations.

3.2 What Obstacles Arise in Enforcing the Law on Illegal Mining Crimes in the Jurisdiction of the North Musi Rawas Police and How to Solve Them

Environmental law is a set of regulations that regulate people's behavior towards the environment. Enforcement of these regulations can be enforced through sanctions by the authorities. Legal action against Illegal Mining business actors who pollute and damage the environment includes criminal, civil and administrative aspects.

Law No. 32 of 2009 concerning Environmental Protection and Management, Article 76 paragraph (2) Administrative sanctions consist of: Written warning, Government coercion, Suspension of environmental permits, Revocation of environmental permits. Regarding the settlement of environmental disputes to

sue for compensation and/or environmental restoration costs, there are two paths (Article 84), namely: Settlement of environmental disputes outside the courts and Settlement of environmental disputes through the courts. If an environmental crime is committed by a business entity or company, then criminal charges and criminal sanctions are imposed on the business entity or the person who gave the order to commit the crime or the person who acted as the leader of the activities in the crime (Article 116 paragraph (1) and (2)). The criminal threat as stated in the articles is imprisonment and a fine. In addition, there are additional criminal penalties or disciplinary actions against business entities Article 119 Law No. 32 of 2009 concerning Environmental Protection and Management.

When associated with the theory of environmental protection and management, it has been stated in articles 1 to 2 of Law Number 32 of 2009 concerning Environmental Protection and Management, which states that environmental protection as a systematic and comprehensive effort to maintain environmental functions and prevent environmental pollution and destruction has the meaning of management, namely maintaining, monitoring, and enforcing the law.

The criminal threats listed in the article are imprisonment and fines as criminal threats. In addition, Article 119 of Law Number 32 of 2009 concerning Environmental Protection and Environmental Protection provides additional criminal or disciplinary actions against companies. In addition to the regulatory aspect based on the theory of law enforcement, law enforcement agencies themselves have a close relationship with law enforcement agencies.

There are three important elements that influence the working process of law enforcement officers, namely law enforcement institutions along with various supporting facilities and infrastructure and working mechanisms within their institutions, work culture related to their officers. Including the welfare of law enforcement officers, as well as regulatory instruments that support both institutional performance and those that regulate legal materials that are used as work standards, both in terms of material law and procedural law.

In addition to the factors causing the occurrence of Illegal Mining crimes in North Musi Rawas, there are also inhibiting factors in carrying out the law enforcement process against Illegal Mining crimes, obstacles in enforcing environmental law make the supporting elements of environmental law enforcement less effective. Although many regulations have been issued by the government, there are still many obstacles and barriers in their implementation in the field. These obstacles are caused by several factors such as:

1. Legal Facilities are factors and obstacles to environmental law enforcement. Various operational policies issued are often not in line with the principles of environmental protection in Law Number 32 of 2009 and other environmental

management laws. In efforts to enforce environmental law, the human factor in law enforcement has a greater impact on the success of law enforcement than the legal factor itself.

2. Facilities and means are tools to achieve the objectives of environmental law enforcement. Lack or limited facilities and supporting resources (including funding) have a significant impact on the success of environmental law enforcement. In reality, handling environmental problems requires various highly technical equipment (laboratory equipment), requires experts in its operation, and is very expensive.

3. Licensing. In fact, licensing is one of the issues that provides more opportunities to develop environmental problems than to limit them. Article 36 of Law Number 32 of 2009 can still be avoided by entrepreneurs, especially if the permit in question is issued by the Ministry of Industry after the company is ready to produce.

4. Law Enforcement Officers. Many environmental cases are complicated because the number of specialized law enforcement officers available to handle environmental cases is still very limited. In addition, law enforcement cannot be expected to be able to control various aspects of the environment. This is because the environment covers very broad and complex aspects of various fields of science. The limited knowledge and understanding of law enforcement on environmental issues is a major obstacle in efforts to create a shared understanding of environmental incident management.

5. AMDAL System. In fact, AMDAL aims to emphasize compliance with administrative regulations rather than substantive regulations. This means that the rapid need for AMDAL is seen as a link in a series of licensing obligations for a company, or as a fulfillment to obtain a credit agreement or investment approval. The transparency process and mechanism for issuing AMDAL documents to the public do not run as expected, even the public (affected) does not know for sure that the activity is taking place.

6. Environmental Legal Awareness of the Community, adequacy and compliance with environmental regulations are one of the indicators of community legal awareness. According to the Environmental Management Law, in addition to law enforcement efforts, community participation is a key element in achieving legal objectives through law enforcement efforts through environmental law enforcement. The public image of the environment and public perception of the environment can be promoted and improved through efforts such as advice, leadership, role models and community involvement in dealing with environmental problems. For this reason, strengthening law enforcement activities in the education and preventive aspects needs to be strengthened and encouraged again.

Furthermore, based on the opinion of the Head of Criminal Investigation Unit of the North Musi Rawas Police, there are various obstacles experienced by investigators in enforcing the law on illegal mining crimes in the North Musi Rawas jurisdiction, such as:

1. Lack of outreach to the community by law enforcement in the North Musi Rawas region regarding the impact of illegal mining.
2. Lack of supervision of mining areas in the North Musi Rawas region is due to a lack of personnel.
3. Lack of synergy between various related agencies.
4. Lack of public knowledge regarding mining and environmental protection.
5. Lack of public awareness to report illegal mining crimes, especially those who damage the environment.

4. Conclusion

Law enforcement against illegal mining practices in the jurisdiction of the North Musi Rawas Police is carried out through three main approaches, namely: Pre-emptive – Education and legal awareness to the public about the impacts and legal consequences of illegal mining activities, Preventive – Strengthening regulations, administrative supervision, and improving community welfare to reduce the motivation to carry out illegal mining, Repressive – Legal action by means of criminal proceedings against the perpetrators and confiscation of evidence. However, in its implementation, environmental law enforcement faces many obstacles, especially in areas such as North Musi Rawas. These obstacles include weak legal means, limited facilities and funds, problems in the licensing system, lack of number and capacity of law enforcement officers, and weaknesses in the AMDAL system. In addition, low public legal awareness and minimal public education and participation also worsen the condition.

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