

## **Criminal Liability for Corporations Carrying Out Mining Activities**

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**Abstract.** *In Indonesia itself, corporate crimes in the mining sector still often occur empirical facts, problems related to mining, many mining efforts are carried out illegally (without permission). The purpose of the study in this study: 1). to find out how criminal liability is imposed on corporations carrying out mining activities today; 2). to find out what are the weaknesses of criminal liability for corporations carrying out mining activities today. This study uses a normative legal approach, with a descriptive analytical research method. The data used are primary and secondary data that will be analyzed qualitatively. Research problems are analyzed using the theory of legal objectives and the theory of corporate responsibility. The results of the study concluded that: 1) Criminal liability for corporations carrying out mining activities currently has several forms, namely criminal fines, additional criminal penalties, and administrative sanctions, which have the aim of law enforcement where corporate crimes can be assessed as causing large-scale losses, for both society and the state; 2) The weakness of criminal liability for corporations carrying out mining activities is that the weakness of the Laws and Regulations in the mining sector, which among other things is reflected in the lack of support for the interests of the wider community and the absence of warnings to official or licensed mining that does not utilize its business area (idle land), Weaknesses in law enforcement and supervision, law enforcement officers have not firmly sanctioned perpetrators of corporate crimes that carry out mining, there has been no socialization regarding corporate criminal liability in illegal mining cases to the community so that the rights of the community are guaranteed by the Mining Law.*

**Keywords:** *Accountability; Corporations; Mining.*

## **1. Introduction**

Mining problems do not only arise from official mining activities, but also touch on unofficial mining activities (unlicensed/illegal) or commonly called illegal mining. Even mining activities without permits are a factor in the emergence of uncontrolled environmental damage and other problems. The rise of mining activities without permits/illegal mining is inseparable from several factors underlying its existence. The development of mining activities without permits has reached a very worrying stage because it has also led to the growth of mining product trade in black markets which can be categorized as a violation of official tax avoidance of mining material sales.

Mining is also a sector that receives serious attention from the government, considering that mining business activities provide a significant contribution to the inflow of state foreign exchange, this can be seen from the many mining permits in the regions. On the other hand, with the increasing number of mining business activities involving both foreign and national investments, it has caused massive exploitation and resulted in pollution and environmental damage. In addition, various problems have arisen, especially the use of land for mining activities, which has caused friction between mining business actors, local communities and local governments where the business activities are carried out.

Robert cooter<sup>1</sup>stated that the actions of the company's management contained elements of mens rea, namely containing elements of error or criminal intent<sup>2</sup>. In the modern era, the ideal existence of corporations aims to play a role in national development. Corporations with various forms and businesses can make extraordinary contributions in the midst of society. However, besides many law-abiding corporations, there are also many who try and dare to break the law by committing violations and crimes, including corruption. The ideal existence of corporations aims to play a role in national development. Corporations with various forms and businesses can make extraordinary contributions in the midst of society.

In the Mining Law there are also various other criminal acts, most of which are aimed at mining business actors, including the following:<sup>3</sup>

1. Criminal Act of Mining Without a Permit

2. Criminal Act of Conducting Exploration Without Rights

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<sup>1</sup>Robert cooter, et al, law Economics (Addison-Wesley, An imprint of Addison Wesley Longman, Inc), 3 Edition, 2000, p 437.s

<sup>2</sup>Henry Campbell Black, op, cit, p 985.

<sup>3</sup>Bahasan.id, "Types of Criminal Acts in the Mining Sector", May 20, 2019, accessed from <https://bahasan.id/macam-macam-tindak-pidana-dibidang-pertambangan//>, on November 23, 2024

### 3. Criminal Acts as an Exploration IUP Holder Not Carrying Out Production Operation Activities.

With the existence of Law Number 3 of 2020 concerning mineral and coal mining, the government has accommodated mining activities by issuing Mining Permits (IUP) carried out in a mining area. Article 1 of Law Number 3 of 2020 explains 3 (three) types of permits used in the mining sector, namely:

1. Mining Business Permit, hereinafter referred to as IUP, is a permit to carry out Mining Business.
2. People's Mining Permit, hereinafter referred to as IPR, is a permit to carry out Mining Business in a people's mining area with limited area and investment.
3. Special Mining Business Permit, hereinafter referred to as IUPK, is a permit to carry out Mining Business in a special mining business permit area.

In realizing law enforcement aimed at minimizing the negative impacts caused, Law Number 3 of 2020 concerning Mineral and Coal Mining stipulates the principles and objectives of mineral and coal mining management, namely:<sup>4</sup>

1. Benefits, justice and balance
2. Participation in the interests of the nation
3. Participatory, transparency and accountability
4. Sustainable and environmentally friendly

In Indonesia itself, corporate crimes in the mining sector still often occur empirical facts, problems related to mining, many mining businesses are carried out illegally (without permits). Mining that is carried out illegally has the potential to cause various problems such as criminal acts, land use conflicts, and even the potential for pollution and environmental damage that results in the destruction of the future of the environment. The meaning of the permits that must be owned by corporations in carrying out mining businesses with reference to Law Number 4 of 2009 which has been amended and added to Law Number 3 of 2020, where initially the authority was held by the provincial government, now it has shifted to the central government.

## **2. Research Methods**

The approach method in this research is to use a normative legal approach, namely a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced.<sup>5</sup>In this type of legal research, law is conceptualized

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<sup>4</sup>Nicodemus Wisnu Pratama & Ismunarno, Loc.,cit.

<sup>5</sup>Peter Mahmud Marzuki, 2010, Legal Research, Jakarta: Kencana Prenada, p. 35.

as what is written in statutory regulations or law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate.<sup>6</sup> The type of research used in completing this thesis is a descriptive research method, namely research conducted by examining library materials (secondary data) or library law research.<sup>7</sup>

### **3. Results and Discussion**

#### **3.1. Criminal Liability for Corporations Conducting Mining Activities Currently**

Based on the regulations regarding the control and management of energy and mineral resources (natural resources), the aim is for the greatest prosperity of the people. Article 33 paragraph (3) of the Constitution of the Republic of Indonesia explains 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."<sup>8</sup>

Illegal mining activities are still a serious problem in mining activities to date, especially illegal community mining, although there is a Mineral and Coal Mining Law that regulates it, but this activity is still carried out by people who live in mining areas. Problems related to illegal community mining (without a permit) still occur even though the Mineral and Coal Mining Law itself has given authority to local governments to regulate. This condition occurs because most regions have not implemented this authority, and there are even indications of tug-of-war of interests in regulating the community mining sector. This has a negative impact on the small opportunities for mining businesses managed by the people to gain access to legitimate mining areas, so that there is a tendency to mine illegally.<sup>9</sup> Illegal mining has a large potential for various problems such as criminal acts, land use conflicts, and even the potential for pollution and environmental damage. Mining without a permit triggers internal conflicts between fellow miners at the mining site.<sup>10</sup> This condition, if left unchecked, will potentially have a negative impact on society. Therefore, it is appropriate that it should receive serious attention from the start from various parties, before a greater negative impact occurs.

Community mining activities carried out without a permit will legally cause long-term problems for the community itself, namely pollution and environmental damage. In addition, the potential for accidents caused by mining pit debris such

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<sup>6</sup>Amiruddin and H. Zainal Asikin, 2006, *Introduction to Legal Research Methods*, Jakarta: PT. Raja Grafindo Persada, p. 118

<sup>7</sup> Ediwarman, 2010, *Monograph, Legal Research Methodology*, Postgraduate Program, Muhammadiyah University of North Sumatra, Medan, p. 24.

<sup>8</sup>See Article 33 paragraph 3 of the 1945 Constitution of the Republic of Indonesia.

<sup>9</sup>Fenty U. Puluwulawa, Nirwan Junus, *Problems of Community Mining and Solutions Seen from a Legal Perspective*, Deepublish, Yogyakarta 2014, p. 2.

<sup>10</sup>*Ibid*, p. 3

as landslides, which are likely to claim more victims. This condition is the basis for consideration, the need for a legal instrument that can provide confirmation of this type of activity, so that it is expected to minimize the negative impacts caused. Mining problems should not be seen from one side, namely obtaining benefits both economically and fulfilling daily needs. As stated in the struggle for access to be able to carry out mining activities, it is done in various ways, some in accordance with laws and regulations but also some that are not in accordance with applicable laws and regulations.<sup>11</sup>

Thus, the intended explanation is that "every person" falls into the category of corporation and based on the legal facts in this case, there is no subject error (Error in Persona) so that the element of "Corporation" is fulfilled according to the law.

Corporations are new legal subjects for criminal law in Indonesia, crimes committed by corporations clearly cause greater losses compared to criminal crimes committed by individuals. The Criminal Code (KUHP) itself does not stipulate that corporations are legal subjects.<sup>12</sup>Article 59 of the Criminal Code (KUHP) clearly states that in cases where a violation is determined to be a criminal offence against the management, members of the management or commissioners who are found not to have participated in committing the violation will not be punished.

Regulations on the demand for accountability for corporations in the mining sector are regulated in Law Number 2 of 2025 concerning Mineral and Coal Mining. With Law Number 2 of 2025 concerning mineral and coal mining, the government has accommodated mining activities by issuing Mining Permits (IUP) carried out in a mining area.

1) implementing good mining engineering principles, which require IUP and IUPK holders to:

- a. provisions for mining occupational safety and health
- b. mining operation safety
- c. management and monitoring of the mining environment, including reclamation and post-mining activities
- d. efforts to conserve mineral and coal resources

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<sup>11</sup>Samsul Wahidin, *Legal Aspects of Contemporary Mining and Unlicensed Mining*, Momentum Eman Desawarsa, Yogyakarta, 2019, p. 6.

<sup>12</sup>Gilang Izzudin Amrullah, "Corporate Criminal Liability in Mining Crimes", *Jurist-Diction*, Volume 2, Number 4, July 2019, p. 1281.

e. management of mining waste from a mining business activity in solid, liquid or gas form until it meets environmental quality standards before being released into the environmental media;

2) manage finances in accordance with the Indonesian accounting system

3) increase the added value of mineral and/or coal resources

4) implementing local community development and empowerment and

5) comply with environmental carrying capacity tolerance limits.

Based on Law Number 3 of 2020 concerning Mineral and Coal Mining, there are articles that regulate criminal acts aimed at mining business actors without a mining business license, namely:<sup>13</sup>

1) Criminal act of mining without a permit (Article 158 of Law Number 3 of 2020)

2) Criminal acts of carrying out production at the exploration stage (Article 160 of Law Number 3 of 2020).

Basically, in the provisions of the article that regulates criminal acts without a mining business permit, the criminal penalties that can be imposed on perpetrators of criminal acts are only 2 (two) types, namely:<sup>14</sup>

1) Cumulative (punished with 2 (two) main sentences at once, namely imprisonment and a fine)

2) Alternative (choose one of the punishments, namely corporal punishment or imprisonment).

Criminal acts in the mining sector do not distinguish between criminal offenses and violations and the punishments imposed on the perpetrators, so there are cumulative and alternative punishments, in Article 158 of Law Number 3 of 2020 concerning Mineral and Coal Mining there are cumulative punishments. While alternative punishments are found in violation offenses, namely Article 160 of Law Number 3 of 2020 concerning Minerals and Coal.<sup>15</sup>

The form of corporate criminal liability in illegal mining crimes is in the spotlight among the public where this crime certainly has a major negative impact on society, in Article 145 of Law Number 3 of 2020 it has been regulated regarding corporate liability towards communities affected by illegal mining activities, with the following reading:<sup>16</sup>

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<sup>13</sup>Nicodemus Wisnu Pratama, Op.cit. p. 15

<sup>14</sup>Ibid.

<sup>15</sup>Ibid, p. 16

<sup>16</sup>Article 145 of Law Number 3 of 2020 concerning Mineral and Coal Mining

(1) Communities directly affected by negative impacts from mining business activities have the right to:

- a. obtain appropriate compensation for errors in the management of mining activities in accordance with the provisions of laws and regulations; and/or
- b. file a lawsuit through the courts for losses resulting from mining operations that violate provisions.

(2) Provisions regarding the rights of communities directly affected by negative impacts from Mining Business activities as referred to in paragraph (1) are implemented in accordance with the provisions of laws and regulations. According to the description above regarding corporate crimes in the mining sector, it can be understood that illegal mining activities generally occur because there is no business permit as regulated in the Law, corporations involved in illegal mining must of course be responsible for what they do.

The liability of business entities that commit any form of crime in the mining sector is regulated in Law Number 3 of 2020 concerning Mineral and Coal Mining. The following is an article that regulates the form of liability of business entities in the mining sector, namely:

- a. Article 151 of Law Number 3 of 2020 concerning Mineral and Coal Mining explains that:<sup>17</sup>

(1) The Minister has the right to impose administrative sanctions on holders of IUP, IUPK, IPR, SIPB, or IUP for Sales for violations of the provisions as referred to in Article 36A, Article 41, Article 52 paragraph (4), Article 55 paragraph (4), Article 58 paragraph (4), Article 61 paragraph (4), Article 70, Article 70A, Article 71 paragraph (1), Article 74 paragraph (4), Article 74 paragraph (6), Article 86F, Article 86G letter b, Article 91 paragraph (1), Article 93A, Article 93C, Article 95, Article 96, Article 97, Article 98, Article 99 paragraph (1), paragraph (3), and paragraph (4), Article 100 paragraph (1), Article 101A, Article 102 paragraph (1), Article 103 paragraph (1), Article 105 paragraph (1) and paragraph (4), Article 106, Article 107, Article 108 paragraph (1) and paragraph (2), Article 110, Article 111 paragraph (1), Article 112 paragraph (1), Article 112f. paragraph (1), Article 114 paragraph (2), Article 115 paragraph (2), Article 123, Article 123A paragraph (1) and paragraph (2), Article 124 paragraph (1), Article 125 paragraph (3), Article 126 paragraph (1), Article 128 paragraph (1), Article 129 paragraph (1), Article 130 paragraph (2), or Article 136 paragraph (1).

(2) Administrative sanctions as referred to in paragraph (1) include:

- a. written warning;

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<sup>17</sup>Article 151 of Law Number 3 of 2020 concerning Mineral and Coal Mining

- b. fine;
- c. temporary cessation of some or all Exploration or Production Operation activities; and/or
- d. revocation of IUP, IUPK, IPR, SIPB, or IUP for Sales.

b. Article 158 of Law Number 3 of 2020 concerning Mineral and Coal Mining explains that:<sup>18</sup>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 100,000,000,000.00 (one hundred billion rupiah).

c. Article 159 of Law Number 3 of 2020 concerning Mineral and Coal Mining explains that: Holders of IUP, IUPK, IPR, or SIPB who intentionally submit reports as referred to in Article 70 letter e, Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) incorrectly or submit false information shall be subject to a maximum imprisonment of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah).<sup>19</sup>

d. Article 160 of Law Number 3 of 2020 concerning Mineral and Coal Mining explains that:<sup>20</sup>Any person who has an IUP or IUPK at the Exploration activity stage but carries out Production Operation activities shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one hundred billion rupiah).

e. Article 161B of Law Number 3 of 2020 concerning Mineral and Coal Mining explains that:<sup>21</sup>

(1) Any person whose IUP or IUPK is revoked or expires and does not carry out:

- a. Reclamation and/or Post-mining; and/or
- b. placement of reclamation guarantee funds and/or post-mining guarantee funds, shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah).

(2) In addition to the criminal sanctions as referred to in paragraph (1), former IUP or IUPK holders may be subject to additional penalties in the form of payment of funds in the context of implementing the Reclamation and/or Post-mining obligations which are their obligations.

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<sup>18</sup>Article 158 of Law Number 3 of 2020 concerning Mineral and Coal Mining

<sup>19</sup>Article 159 of Law Number 3 of 2020 concerning Mineral and Coal Mining

<sup>20</sup>Article 160 of Law Number 3 of 2020 concerning Mineral and Coal Mining

<sup>21</sup>Article 161B of Law Number 3 of 2020 concerning Mineral and Coal Mining



f. Article 164 of Law Number 3 of 2020 concerning Mineral and Coal Mining explains that:<sup>22</sup>In addition to the provisions referred to in Article 158, Article 159, Article 160, Article 161, Article 161A, Article 161B, and Article 162, perpetrators of criminal acts may be subject to additional penalties in the form of:

- a. confiscation of goods used in committing a crime;
- b. confiscation of profits obtained from criminal acts; and/or
- c. obligation to pay costs arising from criminal acts.

Based on the explanation of the articles above, the author can understand that all mining activities are regulated. The government uses Law Number 3 of 2020 as the basis for controlling mining to minimize unlawful actions that will be carried out by corporations.

Criminal liability for corporations conducting mining activities currently that. There are several forms, namely criminal fines, additional criminal penalties, and administrative sanctions, which have the aim of law enforcement where corporate crimes can be considered to result in large-scale losses, for society and the state.

### **3.2. Weaknesses of Criminal Liability for Corporations Conducting Mining Activities**

The mining industry is one of the industries that the Indonesian government relies on to generate foreign exchange, besides absorbing employment and for districts and cities is a source of Regional Original Income (PAD). Mining activities include: exploration, exploitation, refining processing, transportation of minerals/mining materials. The mining industry, in addition to generating foreign exchange and absorbing employment, is also prone to environmental damage. Many mining activities invite public attention because they cause damage to the surrounding environment, especially mining without a permit which in addition to damaging the environment also endangers the lives of miners due to limited knowledge and the absence of supervision from related agencies.

The mining of valuable minerals from the earth's layers has been going on for a long time. Over the past 50 years, the basic concept of processing has remained relatively unchanged, what has changed is the scale of the activity. The mechanization of mining equipment has caused the scale of mining to increase. The development of processing technology has made the extraction of low-grade mineral ores more economical, so that it is increasingly widespread and reaches deeper into the layers of the earth far below the surface. This causes mining activities to have a very large environmental impact. The impact of mining

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<sup>22</sup>Article 164 of Law Number 3 of 2020 concerning Mineral and Coal Mining

activities has a very significant impact, especially in the form of water pollution and the surrounding environment. Mining in general causes pollution to both the land and its environment, and artisanal mining is often not followed by post-mining land rehabilitation. The large economic benefits of gold exploitation will not be able to cover the negative impacts caused to the environment and the health of the surrounding community if not managed properly. The process of mining and extracting minerals, especially gold, which uses various chemicals, especially Mercury (Hg) and Cyanide (CN) can damage the environment and be harmful to the health of miners and other living things. Mining near the surface of the ground (where strip mining is one form) is the process of moving cover burden such as topsoil, subsoil, rocks, and others that contain mineral deposits that can be moved. The processing process, especially in gold mining activities, is carried out by miners with an amalgamation process where the grinding process and the amalgam formation process are carried out simultaneously in an amalgamator called a roll. The roll driving media is divided into two, namely using water and electricity or diesel. Rolls that use water as the driving media are placed in a body of water or river with a certain size but only move one roll, while the time required for one gold processing process is around 12 hours. Generally, the condition of the river used to move the roll experiences a decrease in water quality, which can be seen from the change in water color to grayish cloudy, sedimentation on the banks of the river which is cloudy white as a result of tailings disposal. While rolls that use electric or diesel as the driving media are placed on land around the hole or in the residential environment, so that processing waste pollutes the surrounding environment.

Talking about the history of the concept of corporations that began to be recognized as subjects of criminal law in the present era is still a problem, from this problem there are pros and cons to corporations as subjects of criminal law. According to van Bemmelen there are several opinions and reasons from parties who disagree<sup>23</sup>:

1. Regarding the issue of errors and intent which are only possessed by natural humans.
2. Regarding material acts which are a condition for being subject to criminal penalties, there are several types of criminal acts, where these acts can only be carried out by humans (assault, theft, etc.).
3. Regarding the issue of criminal imprisonment sanctions which cannot be imposed on corporations.
4. Regarding the punishment given to corporations, it is feared that it will befall innocent people.

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<sup>23</sup>JM van Bemmelen. (1986). *Criminal Law I Material Criminal Law General Part*, Translated by Hasan. Bandung: Binacipta, p. 235.

5. Regarding who will be responsible, whether the corporation or the management or both parties.

However, in the current era of increasingly progressive criminal law developments, corporations are considered important to be able to be made subjects of criminal law so that they can be held criminally responsible. This development has stages in the process of corporate development so that it is recognized as a subject of criminal law, comprehensively sorted according to several stages, namely:

1) The first stage

The first stage begins with an intention where the nature of the Criminal Act committed by the corporation is transferred to individuals (natuurlijk person). In the situation at that time, where if the criminal act is within the scope of the corporation, so that the criminal act is considered to be made by the corporate administrators who are human beings. Such a situation exists because the corporation gives "the task of managing" (zorgplicht) to its administrators. Based on this, this understanding is the basis of Article 51 of the Dutch WvS or Article 59 of the Criminal Code.<sup>24</sup>

2) Second Stage

The second stage, where in this situation the corporation is considered capable of committing criminal acts. However, those responsible are the managers who are the leaders or policy makers of the corporation.<sup>25</sup> An example of a statutory regulation that regulates this matter is Law Number 12/Drt/1951 concerning firearms, which is contained in Article 4 paragraph (1) and (2), which more or less explains that if the act is carried out in the name of a legal entity, then the management is the one who is asked to be responsible.

3) The third stage

The third stage is where the initial stage of criminal liability can be imposed on corporations, this situation began after World War II. At that time it was possible to directly sue corporations and impose criminal liability on corporations. The argument for the possibility of direct corporate liability is because the crimes that are usually committed by corporations are economic crimes where the profit obtained from the act is very large so that it also causes great losses to society, therefore the liability will not be balanced if it is only given to the management and another reason is if only the management can be held accountable it will not have a deterrent effect on the corporation. By imposing

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<sup>24</sup>Ruslan Renggong. (2018). *Environmental Criminal Law*. Jakarta: Prenadamedia Group, p. 116

<sup>25</sup>Dwidja Priyatno, Kristian (2020). *Corporate Criminal Liability System*. Jakarta: Prenadamedia Group, p. 12

criminal penalties on corporations according to the form and severity that are relevant to the nature of the corporation, it is hoped that it can have a deterrent effect on the corporation and the corporation can be forced to obey the laws and regulations.<sup>26</sup>As stated in Law 7 of 1955 concerning Economic Crimes in Article 15 and Law 6 of 1984 concerning post, and in Article 19 paragraph (3).<sup>27</sup>

Based on the explanation above, starting with corporations as subjects of criminal law, there are 3 models of Corporate Criminal Liability in accordance with several existing laws and regulations, namely:

1. Managers who act are managers who are responsible for their own actions.
2. The corporation commits a criminal act and the management is the one who is charged with criminal responsibility.
3. Corporations commit criminal acts and are also legal subjects who are subject to criminal responsibility.<sup>28</sup>

When we discuss corporate criminal liability, we are expected to also understand several developing doctrines regarding corporate criminal liability, including:

#### 1) Doctrine of Strict Liability

According to Sutan Remy Sjahdeini, this doctrine teaches that corporations can be charged with criminal liability for criminal acts committed by managers without proving an element of guilt. This doctrine is also called absolute liability or we know in Indonesian absolute liability. Where we know together that criminal law recognizes the doctrine of *actus non facit reum, nisi mens sit rea* or there is no crime without fault, but the development of criminal law today has also introduced crimes that do not require the perpetrator to have sufficient *mens rea*, as with the perpetrator having committed *actus reus* which means having committed an act that is prohibited in positive law.<sup>29</sup>From the description above, we understand that in this doctrine there is no need to look at *mens rea* anymore, because corporations are not natural human beings who have evil intentions, but the *mens rea* must be seen from the actions of the management who are natural human beings, an example of this absolute responsibility is in Article 88 of Law Number 32 of 2009 concerning Environmental Protection and Management.

#### 2) Doctrine of Vicarious Liability

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<sup>26</sup>Dwidja Priyatno and Kristian, Op.cit, p. 13

<sup>27</sup>Mardjono Reksodiputro (1989). Corporate Liability in Corporate Crimes. Semarang: FH. UNDIP.

<sup>28</sup>Sutan Remy Sjahdeini, Op.cit, Pl. 151

<sup>29</sup>Sutan Remy Sjahdeini, Op.cit, Pl. 151

According to Didik Endro Purwoleksono, there are several notes about this doctrine, including:<sup>30</sup>

- a. That criminal responsibility can be imposed for a criminal act committed by another person.
- b. That this doctrine initially originated from civil law which was then adopted in corporate criminal law, this doctrine is known as the doctrine of respondeat superior.
- c. That a corporation can be held accountable for actions carried out by employees, managers or their agents who are responsible for the corporation.

### 3) Doctrine of Identification

This doctrine states that in order to identify who is responsible for corporate crimes, between the parties who committed the crime, the public prosecutor is required to identify if the act was committed by parties who are the "directing minds" in a corporation, then responsibility for the criminal act can be placed on the corporation.<sup>31</sup> Direct Liability Doctrine or Identification Theory, the mistakes/actions of "senior officers" are identified as corporate mistakes/actions. Also called the "alter ego" theory/doctrine or "organ theory".<sup>32</sup> From the description above, this doctrine teaches that if the act is carried out by the management and in the name of the corporation, then the act must be considered a corporate act because the management of the corporation here is seen as the captain of the corporation, just like a ship without a captain to run it, the ship will not be able to sail.

### 4) Doctrine of Delegation

This doctrine teaches that criminal liability can be imposed on corporations, where the crime is committed by employees. This doctrine stipulates that in order to impose criminal liability on a corporation, there must be a delegation of authority from one person to another to carry out the authority he has. A person who receives delegation of authority from the corporation's board of directors to be able to work on behalf of the corporation, then if the person commits a crime, the corporation as the grantor of the authority is obliged to be responsible for the actions taken by the recipient of the delegation of authority.<sup>33</sup>

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<sup>30</sup>9 Didik Endro P. (2019). Criminal Law: A Strand of Thoughts. Surabaya: Airlangga University Press, p. 116.

<sup>31</sup>,Ibid, p. 114.

<sup>32</sup>Barda Nawawi Arief. (2013). Selected Chapters on Criminal Law. Bandung: Citra Aditya Bakti, p. 193

<sup>33</sup>Sutan Remy Sjahdeini, Op.cit, p 170

Corporate liability itself is regulated in Article 20 which more or less explains that related to corporate criminal liability, it can be imposed on the management or the corporation, in the case of the corporation being imposed with criminal liability, it is represented by the management, Corruption crimes committed by corporations occur based on employment relationships and/or other relationships that act within the corporate environment either alone or together, the main punishment that can be given to the corporation is a fine, with the provision that the maximum punishment is increased by 1/3.

From article 20, it is indeed explained in several ways, but of course there are still many who are confused because of the lack of explanation. According to Adami Chazawi, there are more or less three things that need special attention related to the lack of explanation, especially by law enforcement in determining corporations as perpetrators of corruption, these problems include:<sup>34</sup>

1. That the benchmark for when the crime was committed by a corporation is still not explained specifically, especially in the sentence "other relationships", this is still very confusing, therefore it is hoped that legal practitioners, in this case judges, must then play an active role in interpreting this meaning.
2. That the Corruption Law itself still very minimally regulates the procedural law for corporate legal subjects, but there is already a little description of it. This needs to be considered because the characteristics of corporations are different from natural humans, so it is important to provide clear procedural law regulations so that there are no difficulties in handling perpetrators of corruption who are corporations, this is important because our Criminal Code and Criminal Procedure Code have not recognized corporations as legal subjects.
3. That related to criminal sanctions must be adjusted to the characteristics of the corporation, corporations can only be given the main penalty in the form of a fine and it is possible to be aggravated by adding 1/3 of the maximum threat. The witness is the most appropriate because in the case of corporations it is not possible to be given the death penalty or imprisonment due to the characteristics of the corporation.

Based on the problems above, efforts have been made to overcome them by issuing several regulations as an effort to fill the gaps that exist, including the issuance of Perma 13 of 2016 concerning procedures for handling criminal cases by corporations and Perja No. 028/a/JA/10/2014 concerning Guidelines for Handling Criminal Cases with Corporate Legal Subjects. The issuance of this Perma and Perja is a breath of fresh air and can be used to process corporations that commit criminal acts.

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<sup>34</sup>Adami Chazawi (2017). *Criminal Law on Corruption in Indonesia*, Jakarta: Rajawali Pers, pp. 321-322

Mining criminal provisions, in addition to mentioning "humans as legal subjects, also mention corporations as legal subjects. Corporate crimes are a new dimension of crime, very dangerous and cause much greater and more widespread victims. Such as crimes that threaten the sustainability of the environment, energy sources. "The regulation regarding corporate responsibility "in mining crimes must be formulated better so that in the future it can be a guideline for law enforcers, in this case judges to provide ideal decisions in mining crimes committed by corporations." In relation to "law enforcement against corporate crimes, there is a dilemma between the interests of criminalization and maintaining the survival of corporations. Criminalization of corporations is not merely a legal issue, but also a social issue." Criminalization "which prioritizes a retributive approach (revenge) will have more negative impacts, especially on innocent people who depend on corporations for their livelihoods. Therefore, criminalization of corporations, especially sanctions for closing corporations, should be carried out carefully, precisely and wisely because the impact is very broad, do not let innocent people such as workers, shareholders, consumers and parties who depend on corporations including the government become victims as the disadvantaged party.<sup>35</sup>

For example, disciplinary actions in the form of: partial or complete closure of mining companies; revocation of mining business permits; and reparations for criminal acts." The regulation of "mining crimes determines that if a mining crime is committed by a corporation, in addition to imprisonment and fines for its management, the punishment that can be imposed on the legal entity is a fine with an increase plus 1/3 (one third) of the maximum provisions of the fine imposed." If mining without regard to reclamation can be prevented if law enforcement officers, the government, and the community work together to enforce the law against miners who damage the environment. Meanwhile, judges must be committed and brave in making legal breakthroughs in handling various mining cases.<sup>36</sup>

For corporations, the application of criminal sanctions that are threatened is indeed quite high, but there is no regulation regarding substitute penalties. To make the regulation of mining crimes ideal in the future, it is better to also regulate substitute penalties if the corporation or legal entity is unable to pay the fine imposed. "Sembiring, Rusmiati & Imamulhadi in their article explain that it is

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<sup>35</sup>Arief, Barda N.(2014). Anthology of Criminal Law Policy (Development of Drafting of New Criminal Code). Jakarta: Kencana

<sup>36</sup>Purnomo, Dwi Edy., & Wahyuningsih, Sri Endah. (2017). Criminal Law Policy in Handling Mineral and Coal Crimes (Case Study of Central Java Regional Police). Khaira Ummah Law Journal, Vol.12, (No.2, June), pp.127–138. <http://jurnal.unissula.ac.id/index.php/jhku/article/view/1845>

necessary to increase legal awareness for the community in the context of law enforcement through non-penal means to support efforts to combat crime.<sup>37</sup>

The Minerba Law is a real example of a law outside the Criminal Code that does not determine the qualification of the offense whether it is included in the crime or violation offense. The qualification of the offense is important to regulate because it is related to the Criminal Procedure Law in the future, whether it meets the criteria of error with an act that is intentional or negligent of the perpetrator, both in criminal acts and in violations.

The “criminal justice system, as part of the judicial power in Indonesia, has the function of enforcing material legal rules. Thus, in carrying out its function, the guidelines in the provisions of material criminal law must be applied, namely in relation to the repetition of criminal acts (recidive).”

Repetition of “criminal acts (recidive) occurs when someone who commits a criminal act and has been sentenced to a sentence with a final and binding judge's decision then commits another criminal act, recidivating is a reason to increase the punishment.” With no regulation of the repetition of criminal acts “in the field of mineral and coal mining, the legal consequence is that there is no legal basis, especially for law enforcers (judges) to increase the punishment imposed. This is because, if we pay attention to the repetition of criminal acts or recidivating in the Criminal Code, it is not regulated in Book I of the Criminal Code concerning General Rules, but is regulated in Book II and Book III of the Criminal Code, then there are the terms recidivating crimes and recidivating violations. Therefore, the consequence of not regulating the repetition of criminal acts in Book I is that criminal provisions outside the Criminal Code must make their own arrangements, so as not to cause legal problems.”<sup>38</sup>

#### 1) Implementation of criminal fines

Criminal fines were originally a civil relationship, namely when someone suffers a loss, they may demand compensation for the damage, the amount of which depends on the extent of the loss suffered, as well as the social position of the person who suffered the loss.

#### 2. Application of Additional Criminal Sanctions

In addition to criminal fines, corporate crimes are also subject to additional penalties. Additional penalties are penalties that are additional to the principal

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<sup>37</sup>Sembiring, Shafira Nadira Rahmayani., Rusmiati, Elis., & Imamulhadi. (2020). Mining Law Enforcement. *Jurist-Diction*, Vol. 2, (No. 4), pp. 1275–1286. <http://dx.doi.org/10.20473/jd.v2i4.14491>

<sup>38</sup>Arief, Barda N.(2014). *Anthology of Criminal Law Policy (Development of Drafting of New Criminal Code)*. Jakarta: Kencana



penalty imposed, and cannot stand alone except in certain cases in the confiscation of certain goods.

## 2) Implementation of Administrative Sanctions

The application of other sanctions against corporate crimes is administrative sanctions. The application of administrative sanctions cannot be separated from general policies, which aim to realize order, provide legal certainty and guarantee protection of the rights of every person from any disturbance. In its implementation, every mining activity must be accounted for by religious community organizations (ormas), in accordance with Article 74 Paragraph (1) of the UUPT which requires companies to carry out social and environmental responsibilities. This is further regulated in the Regulation of the Minister of Energy and Mineral Resources Number 26 of 2018, which includes the implementation of good mining principles and supervision of mining business management. If religious organizations can fulfill these provisions, the potential negative impacts of mining activities can be minimized.

The weakness of criminal liability for corporations carrying out mining activities is that the weakness of the Laws and Regulations in the mining sector, which among other things is reflected in the lack of support for the interests of the wider community and the absence of warnings to official or licensed mining that does not utilize its business area (idle land), Weaknesses in law enforcement and supervision, law enforcement officers have not firmly imposed sanctions on perpetrators of corporate crimes that carry out mining, there has been no socialization regarding criminal liability of corporations in illegal mining cases to the community so that the rights of the community are guaranteed by the Mining Law.

## 4. Conclusion

The weakness of criminal liability for corporations carrying out mining activities is that the weakness of the Laws and Regulations in the mining sector, which among other things is reflected in the lack of support for the interests of the wider community and the absence of warnings against official or licensed mining that does not utilize its business area (idle land), Weaknesses in law enforcement and supervision, law enforcement officers have not firmly imposed sanctions on perpetrators of corporate crimes that carry out mining, there has been no socialization regarding criminal liability of corporations in illegal mining cases to the community so that the rights of the community are guaranteed by the Mining Law.

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