

Legal Analysis of Mineral and Coal Mining Criminal Cases (Case Study: Decision Number 26/Pid.Sus/2022/Pn.Ba)

Alvian Lotus Hidayat Priatama

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
alvianlotushidayatpriatama.std@unissula.ac.id

Abstract. *Illegal mining of soil or rocks without official permits poses a serious threat to state revenue, administrative compliance, and ecological sustainability. This study aims to analyze the judges' legal considerations in proving the elements of mineral and coal mining offenses in the Banjarnegara District Court Decision Number 26/ Pid.Sus /2022/PN Bnr, and to reflect on the values of justice, utility, and legal certainty contained within the decision. This study employed a normative juridical approach through a case study method. The primary data sources consist of secondary data derived from primary, secondary, and tertiary legal materials, focusing on the Banjarnegara District Court Decision. Data analysis was presented descriptively and qualitatively using the Sentencing Theory alongside the Theory of Justice and Law. The results indicate that: First, the judges successfully proved legally and convincingly all elements of the Prosecutor's Single Indictment, namely Article 158 juncto Article 35 of Law No. 3/2020 on Minerals and Coal Mining. The element of "mining without a permit" was fulfilled as land excavation and commercial soil sales under the guidance of "voluntary community fees" were conducted without IUP, IPR, or IUPK documents. Second, based on Radbruch and Aristotle's theories, the decision proportionally integrates legal certainty, distributive justice (forfeiture of crime proceeds to the state to correct individual greed), and environmental utility for the community. According to Sentencing Theory, the imposed sanction serves as an instrument for social conflict resolution and a preventive measure to ensure public compliance with state licensing administration.*

Keywords: *Administration; Criminal; Mineral; Mining.*

1. Introduction

Activity Mining has a strategic role in National Economic Development, but also often becomes source damage environment and state losses if done without permit (PETI).

Based on Constitution number 3 of 2020 concerning change on Invite law Number 4 of 2009 Concerning Mineral and Coal ¹Mining, Law This change various provisions, starting from authority licensing by the Central Government up to adjustment sanctions criminal so that in matter This criminal law enforcement Become Crucial Instruments,

Minerba Law is regulations that govern management, enterprise and supervision mineral and coal mining in Indonesia based on mandate of Article 33 of the 1945 Constitution. Rules This poured out in Law Number 4 of 2009 which has changed several times, last through revision of Law Number 2 of 2025.

Core Change and Authority

1) Centralization Permits:

Confirm that implementation of Mining Business based on Licensing Try from Central Government, changing previous authority Lots held by the government area.

2) Strengthening the Role of State-Owned Enterprises:

Give assignment special and priority to State-Owned Enterprises (BUMN) in do investigation and research, as well as Special Mining Business Permit Area (WIUPK)

Sanctions Criminal Mining Without Permission

Article 158 of Law No. 3 of 2020 changes provision criminal for perpetrator mining illegal be very firm:

" Everyone who does Mining without permission as intended in Article 35 shall be punished with criminal imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah).

Provision Criminal Penalties for IUP Owners Who Cause Damage

Article 161B also adds rule firm related eligibility environment. IUP or IUPK holders who carry out sales, processing and refining from activities that are not from IUP/IUPK holders are subject to criminal penalties with maximum imprisonment of 5 years and a maximum fine of IDR 100 billion.

Natural Resources in the Form of Minerals and Coal Are riches nature that is not Renewable and have strategic role in development National economy, Based on mandate Article 33 paragraph (3) of the Law law The 1945 ²Constitution of the Republic of Indonesia, Earth, Water and the Natural Resources contained therein

¹Indonesia, Law Number 3 Concerning Amendments regarding Law Number 4 of 2009 concerning Mineral and coal mining article 1 number 1

² The 1945 Constitution of the Republic of Indonesia, Article 33 Paragraph (3).

controlled by the state for prosperity The people, this matter give authority to the State to organize, manage and supervise sector mining so that its utilization No only Oriented towards short-term economic profits, but also sustainable and equitable.

In order to Strengthening Mining Governance, Government has do renewal Regulation through Invite law Number 3 of 2020 Concerning Change on law law Number 4 of 2009 Concerning Mineral and Coal Mining, This Legal Transformation aim give legal certainty and improving the licensing system, however Tightening Regulation this also brings consequence greater law enforcement Firm to Practice Illegal or unlawful mining Technical Procedures as regulated in Provision Criminal Invite law the.

Although Legal Instruments are Available, Practice Action Criminal in the Mineral sector still often occurring in various regions, violations like Mining Without Izzin (PETI), management results mine in a way Illegal until manipulation document Licensing Become Challenge Real for Apparatus Law Enforcement, Inaction obedience against Mining Law No only harm the country from sector Revenue (Royalties and Taxes), but also triggers damage permanent environment as well as conflict social in the community around the mining area.

One of Representation Law enforcement in the sector This Reflected in Decision Banjarnegara District Court in Case Number 26/ Pid.Sus /2022 / PN. Banjarnegara ³, This case is interesting For reviewed in a way deep due to Describe how the articles in Invite The Mineral and Coal Law is applied at the First Instance Court level, in matter This there is Aspect Crucial Jurisprudence for analyzed, good about Proof Element Element action Criminal by the Public Prosecutor, or Legal Reasoning of the Judge in drop Sanctions to The defendant.

Phenomenon Violation To regulations Mining This in a way Real can seen in Decision Banjarnegara District Court in Case Number 26/ Pid.Sus / 2022/ PN.Banjarnegara, Where the Panel of Judges of the Banjarnegara District Court state valid and convincing and proven defendant do Activity Mining Without Obtaining official permits from Authority Authorized and Selling Mining results, this case become representation Important For analyzed in a way Juridical in order to be able to see To what extent is the application of material legal norms and considerations of the Banjarnegara District Court panel of judges ? in Coping Criminal Acts in Mineral and Coal Mining, Where in matter This The defendant was charged with do Mining Without Permission (Illegal) Or Not own Mining Business Permit (IUP), Permit Mining People (IPR) or permission business Mining Special (IUPK) and Selling results from mining as arranged in Invite law, activities the conducted in the jurisdiction of the Banjarnegara District Court in the period time 2021 to Early 2022, in matter This is the Public Prosecutor's Charge defendant with

³Banjarnegara District Court Decision Number 26/Pid.Sus/2022/ Pn.Bnr

Article 158 of the Law of the Republic of Indonesia Number 3 of 2020 Concerning Changes to the Law Number 4 of 2009 Concerning Mineral and Coal Mining” Any person who carries out Mining Without a permit as regulated in Article 35, it is punishable by law. with Criminal Maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000. (One hundred million Rupiah)” Considerations of the Panel of Judges of the Banjarnegara District Court in cut off Case This panel of judges focuses on evidence Element The elements”Everyone” and”Doing Mining Without Permission”. Decision This Become interesting analyzed Because concerning Law Enforcement Against Exploitation Natural Resources that are not fulfil Obligation Administrative and technical To the State and to Which One the Decision Is Made Banjarnegara District Court State defendant Proven in a way valid and convincing guilty do Action Criminal Mining Without permission and sentenced sanctions Criminal (Prison and /or Fine).

2. Research Methods

The type of research used is normative legal research (*doctrinal research*). This focus study of positive norms, principles principle law as well as Synchronization of Laws both vertically and horizontally related Action Criminal Law in the Mineral and Coal Sector (Minerba). Approach Invite Statute *Approach*: Review Invite Invite Number 3 of 2020 (Amendment) on Invite Invite Number 4 of 2009 Concerning Mining minerals) and regulation implementation related see suitability between Legal rules and facts. Approach Historical (*Historical Approach*): Review background behind formation Minerba regulations for understand ratio legis (reason law) behind chapter chapter *the* crime charged. Case Approach: Do interpretation to judge's considerations in Decision Banjarnegara District Court in Case Number 26/ Pid.Sus /2022/PN Bnr in order to understand application of legal norms in case concrete. Research This drip focus on secondary data, namely data obtained from literature and documents law, not from interview field in a way direct.

3. Results and Discussion

3.1. Legal Considerations of the Council of Judges in prove Element element action Criminal Mineral and Coal Mining according to decision Banjarnegara District Court Number 26/ Pid.Sus /2022/ PN.Bnr;

Weigh That Defendant submitted to trial by prosecutor prosecutor general charged with based on letter indictment PDM-06/Eku.2/BJRNE/03/2022 Dated April 13 of the year 2022;

Weigh that to indictment prosecutor prosecutor general defendant and advisor the law No submit objections and or exception;

Weigh that prove to indictment prosecutor prosecutor general has submit witness witness;

Weigh that based on information witness witnesses and statements defendant as well as connected with goods proof as well as tool proof others submitted in court obtained fact fact law;

Weigh that next the panel of judges of the Banjarnegara District Court will consider whether based on fact fact law in court defendant can stated has do action the crime charged to him;

Weigh that defendant has charged by the prosecutor prosecutor general with Single indictment, namely Article 158 in conjunction with Article 35 of the Republic of Indonesia Law Number 4 of 2009 concerning mineral and coal mining as has changed based on law Republic of Indonesia Law Number 11 of 2020 concerning creation Work become law law number 3 of 2020 concerning change on law Republic of Indonesia Law Number 4 of 2009 concerning mining of elemental minerals and coal The elements are as follows following:

1) "Everyone" Element

2) The element of "doing" mining without permission"

Weigh that to element element the judge considered as following:

a. The element of "Everyone"

Weigh that which is meant with every person is a person or man and legal entities as subject the law that is being charged as perpetrator action the crime from which can be sued responsibility answer criminal;

Weigh that the person being accused as perpetrator action criminal in case This is the defendant DP with identity complete as in letter the charges that have been questioned by the panel of judges at the Banjarnegara District Court it turns out has confirmed by the defendant in court;

Weigh that from observation of the panel of judges of the Banjarnegara District Court it turns out defendant classified as a person who has ability responsible answer Good in a way physical both spiritually and physically, so that If later when all over element element from action the crime charged to defendant fulfilled, then defendant can accountable answer on his actions;

Weigh that from description consideration consideration in case this, then the panel of judges of the Banjarnegara District Court have an opinion element from everyone has fulfilled and complete If element other elements in chapter This fulfilled;

b. The element of "doing" mining without permission"

Weigh that understanding element second according to Article 1 number 1 of the law law number 3 of 2020 concerning mineral and coal mining is part of or all over

stages activity in frame management and control of minerals or coal which includes investigation general, exploration studies feasibility, construction, mining and or utilization, transportation and sales as well as activity post mine.

That as Article 35 of the law law number 3 of 2020 concerning mineral and coal mining if various type permission That Alone differentiated become a number of type namely:

- 1) Permission business mining (IUP)
- 2) Permission business mining Special (IUPK)

IUPK as continuation operations, contracts agreement

- 3) Permission people's mining (IPR)
- 4) License mining assistance (SIPB)
- 5) Permission mastery
- 6) Permission transportation and sales
- 7) Permission business service mining (IUJP)
- 8) Permission For sales (IUP)

That to a number of permission the on arranged in law law naturally can submitted to government center Then If possible so government center will delegate to government area in accordance with provision regulation legislation invitation;

That weigh advisor law defendant submit defense in the trial which in essence is if defendant is not guarantor answer or manager business land as accused, but defendant just worker beginning maker water sanitation at the establishment location factory porang, as well as defendant No Once sell land landfill from land defendant only receive money thank you from citizens who ask land landfill

Weigh that advisor law defendant at trial has submit tool proof;

Weigh that from description consideration consideration the panel of judges of the Banjarnegara District Court have an opinion If defense advisor law The defendant is not reasonable law furthermore to element do mining without permission has fulfilled, therefore all element from Article 158 in conjunction with Article 35 of the Law Republic of Indonesia Law Number 4 of 2009 concerning mineral and coal mining as has changed based on law Republic of Indonesia Law Number 11 of 2020 concerning creation Work become law Republic of Indonesia Law Number 4 of 2009 concerning mineral and coal mining has fulfilled, then defendant must be stated has proven in a way valid and convincing commit a criminal act do mining without permission as in prosecutor's single indictment prosecutor general.

1) Considerations of the Panel of Judges of the Banjarnegara District Court which reflect mark Justice and Benefit Law;

2) Considerations of the Panel of Judges of the Banjarnegara District Court that Reflect the Values of Justice in Aquo case

justice realized through Justice distributive and proportionality enforcement law, namely correcting individual greed to protect state and community rights

3) Application of the Principle of *Lex Specialis Derogat Legi Generali*: Judges fair and consistent release noose law criminal general (KUHP) and use Constitution sectoral criminal specifically, namely the Mining and Coal Law (Article 158 in conjunction with Article 35 of Republic of Indonesia Law No. 3 of 2020). Regulations This considered more proportional for restore loss right state control over exploitation riches natural in a way illegal.

4) Demolish The Pretext of " Voluntary Money" (Commercialization)

Defendant and Counsel The law defend self with state that the money is Rp. 25,000.00 per trip from inhabitant is "money received" love / voluntary" and the Defendant just worker begisting. However, the Judge considered in a way logical that giving money with exact nominal amount the same in a way in succession for 3 days by different people is the impossible For A willingness. The judge assessed magnitude price the determined unilaterally by the Defendant. Refused defense This reflect a sense of justice Because crack down on obscure modus operandi essence sale commercial.

5) Balance Condition Relieve:

Justice subjective is also reflected from mitigating factors considered by the judge sanctions Because Defendant behave polite, promise No repeat his actions and status as bone back family.

6) Considerations that Reflect the Value of Legal Benefit

Benefits law (effectiveness and benefit) is shown through protection environment life and function sanctions as instrument preventive social:

7) Rescue Environment from Degradation Ecology:

The judge considered that mining land fill (commodity mining rocks) wildy without document licensing official (IUP, IPR, or IUPK) has the potential threaten sustainability ecology public around. Sanctions criminal This give benefits in the form of guarantee protection room life public from threat damage structure land or degradation environment.

8) Status of Evidence (Confiscation) for the State):

The panel of judges determined goods proof in the form of cash results sale land landfill IDR 1,005,000.00 was confiscated for the country because own mark economical and sourced from action criminal. This is give benefits direct for state revenue at once confirm principle that profit from crime No may enjoyed by the perpetrator.

9) Function Ultimate Remedies and Education Preventive:

Drop sanctions functioning as instrument resolution conflict social. Consideration This give benefits law in the form of effect deterrent effect for public wide to comply to orderly administration state licensing, as well as confirm that dredging land with objective commercial No Can take cover behind pretext cleaning land private (land clearing).

Panel of Judges of the Banjarnegara District Court succeed integrate certainty text Constitution with mark justice for recovery state rights, as well as give benefits in the form of protection environment for Depok/ Gumiwang Village community from impact exploitation mine illegal.

10) T a review of Islamic Law Regarding Action Criminal Mining Without Permission in the Case Aquo;

Classification Mining Commodities as Public Ownership (*Al- Milkiyyah al-Ammah*) If case mining rock without permission in the Banjarnegara District Court Decision Number 26/ Pid.Sus /2022/ PN.Bnr reviewed from Islamic Law perspective (Siyasah Sharia and Fiqh of Muamalah), then commodities mines (including rocks, soil landfill, minerals, and coal) enter to in category *Al- Ma'adin* (goods) mine).

Islam divides draft ownership become three clusters: individual, state, and general. The mining sector, the number of which is abundant and dominant desire life public categorized as Public Ownership (*Al- Milkiyyah al-Ammah*), based on the khithah Hadith of the Prophet Muhammad SAW: "*Muslims unite in three case: field grass, water, and fire (energy)*." (HR. Abu Dawud).

Consequence law from ownership status general This is individual or private in a way absolute forbidden control, exploit and trade commodities the for profit personal in a way unilateral without existence regulations and permits officially issued by *the Imam* (government). Government act as the party holding authority management (*waliyyul amri*) who distributes results riches natural for the benefit of general (*Mashlahah Mursalah*).

Therefore that, action Defendant in case *a quo* that does dredging and sales land landfill in a way illegal without permission authority official, according to Islamic law is categorized as acts that are false and haram because has rob rights public (*syirkah al- ammah*).

1) Violation To Rules Environmental Fiqh (*Al-Fiqh al- Bi'ah*)

Mining without permission made by the Defendant use tool heavy *excavator* in Gumiwang Village proven ignore obligation technical management environment live, like absence document environmental impact analysis, guarantee reclamation and restoration post-mining. In the corner view jurisprudence environment, action This violate rules very fundamental Islamic law:

“Lā dharara wa la dhirāra” (It is not permissible) bring in danger / damage for self alone and not may bring in danger / damage for others).

Exploitation rock wildly potential create damage structure land, trigger land landslides and damage the surrounding ecosystem area settlement residents of Gumiwang Village. Islamic law views actions ignore sustainability nature for material profit moment This as form action *mufsid fi al- ardh* (doing) vandalism on the face earth). Actions the forbidden in a way stated firmly by Allah SWT in the Al-Qur'an Surah Al- A'raf verse 56:

“And do not You make facial damage the earth, after (Allah) has set it in order ...”

With thus, the dropping sanctions criminal by the Panel of Judges at the Banjarnegara District Court to Defendant No only in harmony with law positive national (Minerba Law), but also very much in line with principles maqasid sharia in frame protection to soul (*hifzh an- nafs*), protection to treasure public (*hifzh al- mal*), and protection to sustainability environment life (*hifzh al- bi'ah*).

3.2. Research Results

Based on facts the law revealed in court Banjarnegara District Court, Defendant charged by the Public Prosecutor with Single Charge, namely violates Article 158 in conjunction with Article 35 of Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining as has changed with Republic of Indonesia Law Number 3 of 2020 concerning Change on Republic of Indonesia Law Number 4 of 2009 concerning Mineral and Coal Mining.

Value of justice in law No solely interpreted as similarities treatment (arithmetic), but rather A proportionality (distributive) that balances state rights, interests society, and the personal responsibility of the defendant. In the decision Banjarnegara District Court Number 26/ Pid.Sus /2022/ PN.Bnr, embodiment mark justice substantive reflected through a number of indicator law following:

1) Application of the Principle of Proportionality of Law through Lex Specialis

a. Justice Legal:

The panel of judges appropriate apply reasoning legal reasoning with release noose law criminal general (KUHP) and switched to the application of Article 158 in conjunction with Article 35 of Law of the Republic of Indonesia No. 3 of 2020

concerning Change regarding Law No. 4 of 2009 concerning Mineral and Coal Mining.

b. Analysis Theoretical:

Election instrument law special This reflect justice distributive (Aristotle), where the state through institutions justice restore right state control over riches nature that has exploited in a way illegal. To prosecute action criminal mine with Constitution sectoral is form proportional justice for perpetrator business illegal.

2) Unveiling of Legal Facts on Excuse Circumstances (*Rejection of Bad Faith Claim*)

3) Trial Facts:

Defendant through Advisor The law submit defense (plea) that the money amounting to Rp. 25,000.00 per trip was collected from inhabitant is" voluntary money" or money received love, and claim himself only worker beginning.

4) Rationality Judge:

The panel of judges ruled pretext the with consideration logical: collecting money in the exact nominal amount same, done in a way consecutive during three day, and involves subject different laws, in particular sociological impossible born from A willingness pure.

5) Analysis Justice:

The judge's considerations are very fair for public wide Because reject manipulation term economy (from commercialization to be" voluntary"). The judge looks on existence intention the defendant's mental state (mens rea) For determine price one-sided for profit personal.

3) Justice Subjective through Evaluation Condition Relieve

Aspect Humanist:

The judge did not close eye to condition socio-economic defendant. Sentencing sanctions criminal participate consider things relieve, such as attitude polite Defendant in court, promises No repeat actions, and his status as bone back family. This is show that justice in decision This No stiff, but rather adopt approach individualization criminal.

That to goods proof letter The statements of HS, M and Ratim Syarifudin as known to the person who made the statement have been submitted in court by the Public Prosecutor as a witness, so that as stipulated in Article 185 paragraph (1) of the Criminal Procedure Code, witness testimony is what a witness states in court, for that reason the evidence The statements of the witnesses contained in the statement should be disregarded.

That based on the statement of expert Dwi Yuda Wahyu Setya Pambudi, ST in court If based on Regulation Government Number 96 of 2021 concerning the Implementation of Mining Business Activities, Mineral and Coal Mining if the fill soil is included in the mineral and coal category in accordance with Article 2 paragraph (1) letter d.

That based on the understanding of Article 1 number 1 of the Law Number 3 Year 2020 About Mining Mineral And Coal is if one form of mining activity is the management and exploitation of minerals (including sand) with a series of transportation and sales, then based on the considerations of the Panel of Judges above, if the Defendant has carried out business activities by selling mineral mining products (sand/fill soil) where the Defendant received a profit of Rp. 25,000.00 (twenty five thousand rupiah) per trip which was recorded in the Defendant's records, then based on the Defendant's own statement, if the mining was carried out without a permit from the authorities or related agencies, for that reason The Defendant's mining activities can be said to be mining without a permit. Considering, that from description consideration the, Therefore, the Panel of Judges is of the opinion that if the Defendant's Legal Counsel's defense is without legal basis, the element of carrying out mining without a permit has been fulfilled.

Considering, that because all the elements of Article 158 in conjunction with Article 35 Constitution Republic of Indonesia Number 4 Year 2009 about Mining Mineral and Coal as amended by Law of the Republic of Indonesia Number 11 of 2020 about Creation Work become law Number 3 2020 About Change On Republic of Indonesia Law Number 4 year 2009 About Mineral and Coal Mining has been fulfilled, then the Defendant must be declared to have been legally and convincingly proven to have committed criminal act of carrying out mining without a permit as in single indictment of the Public Prosecutor.

Considering, that in the trial the Panel of Judges did not If he finds things that can eliminate criminal responsibility, either as a justification or excuse, then the Defendant must be held responsible for his actions.

Considering, that because the Defendant is capable of being responsible, he must be declared guilty and sentenced to a criminal penalty.

Considering, that in this case regarding If the defendant has been legally detained, the period of detention must be deducted in full from the sentence imposed.

Considering that the Defendant was detained and the detention of the Defendant was based on sufficient grounds, it is necessary to determine that the Defendant remains in detention.

Considering, that the evidence in the form of 1 (one) Excavator Unit, HITACHI ZAXIS 210 brand, orange color, 1 (one) Wheel Loader unit, LIU GONG brand, orange color yellow known owned by from witness HS Bin Alm. S. M, then to goods the evidence

is returned to those entitled namely witness HS Bin Alm. S. MINARTO.

Considering, that the evidence in the form of 1 (one) unit of Mitsubishi brand Dump truck, type FE119 (6B) yellow combination color, year 1994, Police number: AA-1476-KD Engine number: 4D34C499745, Number Frame: FE119E029743, including ignition key, 1 (one) sheet of STNK for Mitsubishi brand Dump truck, type FE119 (6B) Yellow Combination color, year 1994, Police number: AA-1476-KD, Engine number: 4D34C499745, Number Frame: FE119E029743, on Name: HS Semanding Village address Rt. 002 / 002 Gombong District Kebumen Regency because of known in court owned by from witness RS then to goods the evidence is returned to The person entitled is the witness Ratim Syarifudin Bin Alm. Sulyan, then regarding the evidence in the form of 1 (one) unit of Mitsubishi brand Dump truck, type Colt Dsl FE74 HDV MT, yellow, year 2011, Police number: R-1643-NC, Engine number: 4D34TG39064, Chassis number: MHMF74P5BK047258, along with the ignition key and 1 (one) sheet of STNK for the Dump Truck Vehicle Mitsubishi brand, type Colt Dsl FE74 HDV MT, yellow color, year 2011, Police number: R-1643-NC, Engine number: 4D34TG39064, Chassis number: MHMF74P5BK047258, in the name of: R, address: Kalitenggar Village, Rt. 003 / 002, Padamara District, Purbalingga Regency, therefore known in court owned by from witness M then to goods the evidence is returned to those entitled namely witness M.

Weigh, that to goods proof in the form of 2 (two) bag fill soil from elimination 2 (two) rit fill soil, 1 (one) book Sinar brand World cartoon animal motif, bear, green and brown combination, 1 (one) piece New Vision Design brand book motif picture of a person using a trail motorbike color chocolate, 7 (seven) sheet notes paper HVS color white by because of the results of criminal acts and there are The evidence used by the Defendant to support his criminal acts was determined to be destroyed.

Considering, that the evidence in the form of cash amounting to Rp. 1,005,000.00 (one million five thousand rupiah) because it is known to be the result of a criminal act and has economic value, it is confiscated for the State.

Taking into account, Article 158 in conjunction with Article 35 of the Republic of Indonesia Law Number 4 of 2009 concerning Mineral and Coal Mining as has changed based on Republic of Indonesia Law Number 11 of 2020 concerning Job Creation becomes Constitution Number 3 2020 About Changes to the Law Republic of Indonesia Number 4 of 2009 Concerning Mineral and Coal Mining and the Law Number 8 of 1981 concerning Criminal Procedure Law, as well as regulation other relevant legislation;

Can be analyzed Application of Material Law to Element Action Criminal Law Reviewed from the Theory of Punishment

Proof element criminal and sentencing sanctions by the Panel of Judges in case

mining illegal This in a way substantial can dissected using Andi Hamzah's Theory of Punishment and Theory of Punishment Sudarto.

a. Andi Hamzah's Criminal Theory Perspective

Andi Hamzah looked criminalization as something unity a system that includes law criminal substantive, formal, and implementation criminal law that represents social values culture public about what is prohibited and considered immoral. The mineral mining sector is regulated in a way strict Because is riches natural No renewable energy that dominates desire the lives of many people (Article 33 paragraph 3 of the 1945 Constitution).

In the case of In this case, the enforcement of Article 158 of the Minerba Law by the judge reflects operationalization law criminal in a way concrete For protect orderly social and ecological. The judge's efforts to paralyze action illegal Defendant through criminal prison / fine as well as robbery profit economy in line with Andi Hamzah's thoughts that criminalization functioning get rid of or stop disturbance perpetrators so as not to repeat his crimes in the future.

b. Criminal Theory Perspective Sudarto

Prof. Sudarto define criminal as deliberate misery imposed by the state on offender Constitution with two goals main: influence behavior conduct and complete conflict.

In the decision case this, the imposition misery to Defendant is form manifest from function preventive and repressive law. Conflict sociological in the form of illegal mining without detrimental permits income areas and damage spatial planning completed through provisions law in the form of verdict guilty. The judge applied sanctions criminal This No just as revenge, but rather for influence behavior in demand public broad (general preventive) to comply to instrument licensing administrative that has been determined by the state before do exploitation nature.

Evaluation To Legal Considerations of Judges Reviewed from the Theory of Justice and Benefit;

Consideration legal reasoning the panel of judges rejected the pretext of "dredging" For sanitation factory porang" and "money received love citizens" become point crucial thing that must be done tested using Gustav Radbruch and Aristotle's Theory of Justice.

c. Perspective (Three Basic Legal Values)

Radbruch submit thesis that law must integrate three mark base in a way proportional: Justice, Utility, and Legal Certainty;

1) Certainty Law:

The judge's considerations in prove absence IUP, IPR, or IUPK documents rigidly fulfill mark certainty law. In normative- dogmatic, whoever mines without permission written must convicted based on Article 158 of the Minerba Law. The judge was consistent apply text Constitution without gap compromise administrative.

2) Justice Distributive and Commutative:

Radbruch share justice become distributive (domain public /state provides right in a way proportional) and commutative (equality) between individuals). Exploitation land landfill in a way illegal without pay royalty or tax to the state is violation to justice distributive. The judge's firm action confiscated the proceeds crime amounting to Rp. 1,005,000.00 to return balance justice the Because Defendant No entitled enrich self Alone from room public in a way oppose law.

3) Benefits:

From the side Benefit, decision This protect environment living in Banjarnegara from potential damage permanent (environmental degradation) due to illegal mining. Although Legal Counsel argued that dredging beneficial For development factory porang supported locales citizens, the judge saw benefits term longer big, namely enforcement governance law sustainable environment. Benefits destructive moment must set aside for the sake of expediency law an informed public environment.

d. Perspective of Aristotle's Theory of Justice

Aristotle stated that justice is perfect virtue in the relationship with other people inside community. Someone considered No fair if He prioritize self Alone with * taking more Lots from the part that should be (*pleonexia*).

In the case a quo, the Defendant dredge commodities rock in the form of land landfill controlled by the state and utilize it interest economy personal through scheme sale disguised using the" price money" mode. Based on Aristotle's view, Defendant has actions that are not fair Because rob right owned by social / community without go through legal procedures that guarantee compensation for the state and society around. The judge's careful consideration see reality business behind under the guise of" help" citizens" are form real enforcement justice law in correcting inequality social consequence *pleonexia* behavior or neglectful individual greed safety ecological together.

At the trial, the defendant try blur characteristic commercial from his activities with quibble that He just worker beginning regular and money amounting to Rp. 25,000.00 per trip received from drivers truck is" voluntary money" or money received love.

The panel of judges ruled defense the with reasoning very objective legal reasoning

Withdraw funds with the same nominal amount exactly in a way in succession for 3 days in succession from subject different laws (people/ drivers), in general sociological remove element voluntariness, so the Judge assesses There is intention clear mind (*mens rea*) from Defendant For set rates in a way unilaterally in order to seek profit economy personal. Refuse this" voluntary money" argument reflect justice for society, because the judge succeeded reveal curtain manipulation term frequent economic used perpetrator mine illegal For avoid snare law.

4. Conclusion

Effectiveness enforcement law in case This if dissected using Soerjono's Theory Soekanto show that synergy between factor apparatus enforcer laws and factors facilities has walk optimally. Investigator performance in do catch hands and seizure goods proof tool heavy as *corpus delicti*, as well as support logistics security, to be key the success of the Public Prosecutor in break defense The defendant at the trial. The Banjarnegara District Court has also implementing the principle of *Lex Specialis Derogat Legi Generali* in a way consistent with put aside law criminal general and apply sanctions criminal special nature cumulatively to provide effect deterrent *effect*. This is in line with Doctrine *Primum Remedium*, which positions law criminal as instrument main No Again effort final remember Power damaged exploitation illegal mining is massive and irreversible to environment live. In a way in harmony, the perspective of Islamic Law provides strong moral - religious legitimacy to decision Based on that. draft ownership (*Al-Milkiyyah*), mineral and coal commodities classified as Public Ownership (*Al-Milkiyyah al-Ammah*) or *Al-Ma'adin*) whose management absolute be under authority government (*Waliyyul Amri*) for the sake of public interest public (*Mashlahah Mursaya*). The act of doing illegal mining without permission in a way sharia is haram because classified as as actions take right public in a way void at a time manifestation from action *mufsid fi al- ardh* (destruction in the face) earth) which violates rules jurisprudence environment *la dharara wa la dhirāra*. With thus, the dropping sanctions criminal by the panel of judges not only fulfil mark justice law positive, but also realizing essence *maqasid sharia* in protect soul, property public, and sustainability environment life for generation upcoming.

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