



ISSN 2809-672X (Online)
IUS POSITUM (Journal of Law Theory and Law Enforcement)
Vol. 2 Issue. 1, January 2023
<https://journal.jfpublisher.com/index.php/ilte>
doi.org/10.56943/ilte.v2i1.265

Criminal Law Enforcement against Perpetrators of Illegal Mining in Sukodadi Village, Kabuh, Jombang

Yudha^{1*}, Subekti², Noenik Soekorini³

¹abrianto5555@gmail.com, ²subekti@unitomo.ac.id, ³noenik.soekorini@unitomo.ac.id

Universitas Dr. Soetomo Surabaya

*Corresponding Author: Yudha

Email: abrianto5555@gmail.com

ABSTRACT

This research aims to analyze the criminal liability and law enforcement process against perpetrators who carry out unlicensed mining activities in Sukodadi village, Kabuh, Jombang. This research is included in sociological and legal research. The results indicated that the perpetrators fulfilled the elements of liability. In this case, the mistake considers intentionality and negligence, which means that the perpetrators are considered to have intentionality committed the act. Thus the perpetrators, in taking responsibility for their actions, can be subject to Article 160 paragraph 2 of the Law of the Republic Indonesia No. 4/2009 concerning Mineral and Coal Mining Jo Article 55 Paragraph 1 to (1) of the Criminal Code with a maximum imprisonment of 5 (five) years and a maximum fine of IDR. 10,000,000,000,- (ten billion rupiah). The law enforcement process against the perpetrators conducted by the East Java Police Special Criminal Investigation Unit, namely conducting, summoning, confiscation, and searches in this case, is very supportive and mutually reinforcing between witness testimony, expert testimony, clues, and the existence of evidence seized with the confession of the suspect.

Keywords: Criminal Law Enforcement, Mining, Perpetrators

INTRODUCTION

Mineral resources are one of Indonesia's natural resources, which, if managed properly, will contribute to the country's economic development. In the mining world, Indonesia is known as a country rich in mineral content, ready to be lifted at any time. Mining law is never separated from the environment, a gift from God Almighty that must be preserved and developed to remain a source of life support for humans and other living things. God blesses Indonesia with nature that contains many mining materials such as gold, copper, iron, bauxite, nickel, coal and even sand mined to produce the nation's economy.

Natural resources are so abundant that many people try to take them in ways that are not good. The 1945 Constitution of the Republic of Indonesia mandates that the earth, water and natural resources contained therein are controlled by the State and used for the most significant benefit of the people's prosperity, as stated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Mining is a promising source of income, but mining has a negative impact, especially on the environment, because almost every mining activity tends to damage the environment. Mining materials are classified into minerals and coal, and oil and gas.¹

Based on the provisions of Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the earth, water and natural resources contained within are controlled by the state and used for the greatest prosperity of the people. Based on this article, a person or legal entity is prohibited from managing natural resources, such as mineral and coal mining, except with a license or work contract. In reality, many violations occur, including mining without a license. This confirms that petroleum and other mining goods can only be controlled by the state for the prosperity of its people and for national development. National development is implemented evenly with a planning model that determines the main priorities in the implementation of development in the political and security fields and is accompanied by development in the economic field to meet the livelihoods of many people, which in fact raises various new problems that need to be addressed immediately.²

Nowadays, environmental crimes often occur around the environment, but all of them are not realized. Natural resource depletion is defined as the unwise use of natural resources so that the quality and quantity of natural resources are reduced or decreased and eventually run out entirely, especially the problem of illegal mining. Mining is an effort to explore the various potentials in the earth's bowels.³

¹ Salim HS, *Hukum Pertambangan Di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2014).

² Marjan Setiawan, "Penegakan Hukum Terhadap Tindak Pidana Eksplorasi Dan Eksploitasi Minyak Dan Gas Bumi (Studi Pada Pengadilan Negeri Blora)" (Universitas Negeri Semarang, 2013).

³ HS, *Hukum Pertambangan Di Indonesia*.

Indonesia is a country rich in mining minerals. These minerals include gold; silver; copper; oil and gas, and coal. The state controls these minerals. The state controls every wealth contained in the earth and uses it as well as possible for the prosperity of the people. However, people carry out mining activities by not paying attention to essential aspects, such as not paying attention to the consequences caused or influenced by mining. However, it does not rule out the possibility that companies with official licenses also conduct mining. The mining management system in Indonesia is pluralistic. It happens due to the variety of mining contracts or licenses currently in force.⁴

Some critical issues in mining are policy uncertainty, illegal mining, conflicts with local communities, and the mining sector conflicts with other sectors. For this reason, it is necessary to take action in all components of the nation, including criminal law enforcement. Actions that are threatened with criminal law are actions that are threatened absolutely must meet the formal requirements, which match the formulation of laws that have been determined by the Criminal Code and other regulations that have a criminal dimension and have material elements, that is, contrary to the ideals of a community association or in other words, an unlawful nature or criminal offence.

If you consider the time development, Law No.11/1967 on Basic Mining Provisions is very behind in this regard. Therefore, it is also required to develop national policies and regulations in the mining sector to optimize the exploitation of minerals and coal in the country and not forget other aspects such as the environment.⁵ Therefore, Law No. 4/2009 on Mineral and Coal Mining was created, which is now changed to Law No. 3/2020 concerning amendments to Law No. 4/2009 on Mineral and Coal Mining.

Illegal mining is any form of activity in the mining sector carried out by the community or companies/business entities without having a license. In addition, the legality and illegality of a business do not focus on the absence of a permit because illegal mining is not only defined as mining without a permit. Even with permission, illegal mining can still occur as regulated in the applicable law.

Regarding mining cases handled by the East Java Regional Police of the Republic of Indonesia, the Directorate of Special Criminal Investigation, which is on Monday, February 24, 2020 at around 15.30 p.m., members of Unit II of Sub-Directorate IV of Specific Crimes of the Directorate of Criminal Investigation of the East Java Regional Police have conducted an inspection of the mining location owned by Agus Harianto at the behest of Sri Ambar Pristiwati in Sukodadi village, Kabuh, Jombang, which allegedly has an Exploration IUP but has carried out production operations with the commodity of urug soil so that the actions of Agus Harianto and Sri Ambar Pristiwati are suspected of violating Article 160 paragraph 2 of the Law of the Republic of Indonesia No. 4/2009 concerning Mineral and Coal

⁴ Ibid.

⁵ Ibid.

Mining Jo Article 55 paragraph 1 to (1) of the Criminal Code. 4/2009 concerning Mineral and Coal Mining Jo Article 55 Paragraph 1 to (1) of the Criminal Code and Article 160 Paragraph 2 of the Law of the Republic of Indonesia No. 4/2009 concerning Mineral and Coal Mining, which states that every person who has an Exploration IUP but carries out production operation activities shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of IDR. 10,000,000,000, - (ten billion rupiah). Meanwhile, Article 55 paragraph 1 to (1) of the Criminal Code, which contains those who commit, order to commit, and participate in the act will be punished as perpetrators of criminal acts, namely imprisonment for a maximum of 5 (five) years and a maximum fine of IDR. 10,000,000,000,- (ten billion rupiah).

Based on the previous case examples, these community mining activities tend to be carried out without regard to the negative impacts that can occur because these activities need to follow the correct procedures and sufficient and supportive facilities. It happens because of the lack of knowledge, and capital owned by the people who conduct these illegal mining activities.

Based on these arguments, this research is related to criminal law enforcement on perpetrators who carry out mining activities without a license. The purpose of this research is to analyze the criminal liability of perpetrators who carry out illegal mining in Sukodadi Village, Kabuh, Jombang and to analyze the law enforcement process against perpetrators who carry out illegal mining activities in Sukodadi Village, Kabuh, Jombang.

RESEARCH METHODOLOGY

The type of research used in this research is sociological or empirical legal research because researchers directly observe what occurs in society. Empirical legal research is research that relates law to real human behavior.⁶ If this simple formulation can be used as a guide, then the scope of empirical legal research is the degree of legal effectiveness which means to what extent the law actually applies in the reality of living relationships.

The approach method used in this research is a qualitative approach, such as observation, interview or data review. The use of a qualitative approach in this research is to see the reality that occurs in perpetrators who carry out mining activities without a license in Sukodadi Village, Kabuh, Jombang. Data collection was conducted by literature study and field study. Data analysis is conducted qualitatively, which is a description of the data collected by not using numerical values but based on laws and regulations, views of experts and conclusions of researchers.

⁶ Felicity Bell, "Empirical Research in Law," *Griffith Law Review* 25, no. 2 (April 2, 2016): 262–282, <https://www.tandfonline.com/doi/full/10.1080/10383441.2016.1236440>.

RESULT AND DISCUSSION

Criminal Liability against Perpetrators who commit Illegal Mining in Sukodadi Village, Kabuh, Jombang

Illegal Mining (PETI) is a mining business carried out by individuals, groups of people, or incorporated foundation companies whose operations do not have permits and government agencies in accordance with applicable laws and regulations. The term PETI was originally used for illegal gold mining, but in subsequent developments the PETI problem was not only in the commodity of gold excavated materials but also applied to mining without permits for other excavated materials, both Group A, B and C (Government Regulation No. 27/1980 concerning the Classification of Excavated Materials) which is usually applied to small-scale mining (PSK). The location of PETI is generally located in forest areas both in protected forest areas and limited production forest areas (HPT) and other use areas (APL) owned by the community, in some places located in areas that have a Mining Business Permit (IUP).

Moreover, the types of excavated materials cultivated by PETI that have been successfully invested are gold, coal, and diamonds. It does not rule out the possibility of excavated material of Group A and other Group B which is also being worked on by PETI. Especially for Group C excavated materials, based on the survey results of the Center for Mineral Technology, it was revealed that more than 90% of the mining business of Group C excavated materials has unlicensed status (PETI/non SIPD), covering almost all provinces (60% are in Java Island), and covering all types of group C excavated materials (the largest is aggregate excavated materials, such as stone, sand, and lime).

Based on Law No. 4/2009 Article 1 Paragraph (7) related to business licenses, the problems that occur in Indonesia are a lot of illegal mining that does not have an operational permit. Illegal mining is carried out without permits, operational procedures, thus making losses to the state for illegally exploiting natural resources, distributing, and selling their mining products illegally. Based on Article 38 of Law No. 4/2009 concerning Minerals and Coal, it is stated that mining business actors include Private Business Entities, Cooperatives and Individuals. Meanwhile, in Law No. 11/1967 concerning the Basic Mining Provisions, it is stated that mining business actors include Government Agencies appointed by the Minister, State Companies, 3 Regional Companies, Joint Capital Companies between the State and Regions, Cooperatives, Private Entities or individuals, Companies with combined capital, and People's Mining.

Illegal mining is mining or excavation activities conducted by people or companies without having a license and not using the principles of good mining practice. Article 20, Article 66 up to Article 73 of Law No. 4/2009 on Minerals and Coal accommodates the interests of artisanal mines because in addition to solving the problems that have occurred so far, on the other hand it is concrete evidence of

recognition of the existence of artisanal mines which are well guided, are one of the local economic potentials that can drive the economy in the area. People's mining is a licensed/legal (IPR) mining activity carried out by the community with simple equipment and carried out in a People's Mining Area (WPR) as described in Law No. 4/2009 concerning Minerals and Coal. While People's Mining Activities according to the Law are legal activities, in reality, mining activities carried out by the community are almost all illegal mining (PETI).

The obligation to comply with regulations in the mining sector is a legal consequence that must be accepted by every mining business actor. One of the legal consequences of the implementation of these activities by mining business actors is conducting The mandatory nature of the implementation of post-mining land reclamation activities creates legal responsibilities that must be fulfilled by mining business actors. In this case, mining business actors are IPR holders, the obligation to carry out post-mining land reclamation activities is regulated in Regency / City Regional Regulations based on Government Regulation No. 78/2010 concerning Reclamation and Post-mining.

Responsibility is a reflection of human behavior. The appearance of human behavior related to the control of his soul is part of the form of his intellectual or mental consideration. When a decision has been made or rejected, it is part of the responsibility and consequences of its choice. There is no other reason why it is done or abandoned. The decision is considered to have been led by his intellectual awareness.⁷ The concept of legal responsibility in the field of mining business activities is defined as liability. Liability is the obligation to pay compensation suffered. In addition, liability can also be interpreted as bearing all losses that occur as a result of his actions or the actions of others acting for and on his behalf.

The emergence of liability of People's Mining Permit (IPR) holders in the right of land reclamation activities is based on their obligation to conduct post-mining land reclamation activities as stipulated in Article 44 paragraph (1) of Government Regulation No. 78/2001 on Reclamation and Post-mining. The government in each district/city before issuing an IPR in a community mining area, must first prepare a reclamation plan and post-mining plan for each community mining area. In Article 44 paragraph (2), the purpose of reclamation plans and post-mining plans as referred to in paragraph (1) are prepared based on environmental documents that have been approved by the competent authority in accordance with the provisions of laws and regulations in the field of environment and environmental management.

Once a person is known to have committed a criminal offense, then that person will be held criminally responsible. Criminal liability has two requirements, i.e. external requirements and internal requirements. The external requirement of criminal liability is committing a criminal offense, while the internal requirement

⁷ Shidarta, *Hukum Perlindungan Konsumen Indonesia* (Gramedia Widiasarana Indonesia, 2006).

of criminal liability is having guilt. Therefore, a person will be held criminally responsible not only because he/she has committed a criminal offense but also because the person has committed a mistake. Fault is a condition in which a person can be reproached because the person should have been able to do other actions, from the community's perspective. Fault is characterized by a person's consciousness and soul, for example an insane person will not be held criminally responsible because a person whose mental state is disturbed can be said to be unconscious of their actions. Criminal liability or commonly known as *teorekenbaardheid* which leads to punishment with the intention of determining whether or not a person becomes a defendant or suspect who is responsible for a criminal act that occurs.⁸

Criminal liability means that every person who commits a criminal offense or against the law, as formulated in the law, then the person should be held accountable for his actions in accordance with their guilt. On the other hand, a person who commits a criminal act will be held accountable for the act with punishment if he/she has a mistake, a person has a mistake when he/she commits an act from the perspective of the community indicates a normative view of the mistake that the person has made. According to Van Hammel, the ability to be responsible is a state of psychological normality and intelligence maturity that has 3 (three) abilities including the following:

1. Capable of understanding the value of the consequences of his/her own actions
2. Capable of realizing that his/her actions in the community perspective are not permissible.
3. Capable of determining the intention of his/her actions.

Criminal liability must first be clear who is declared as the perpetrator of a criminal offense. This issue concerns the "subject of criminal offense" that has been formulated by the relevant criminal legislator. The subjects of criminal law in the Mineral and Coal Law are humans and legal entities. In the Law, it always mentions "every person" as the legal subject, which is in Article 158, Article 160, Article 161, Article 162, and Article 165, while in Article 163 paragraph (1) it can be examined that legal entities are legal subjects in Law No. 4/2009 concerning Mineral and Coal Mining that can be held accountable. In addition, according to Roeslan Saleh, a person who commits a criminal act will be punished if he has a mistake, for the existence of a mistake that results in the punishment of the defendant, the defendant must have committed a criminal act, be able to take responsibility, intentionally or negligently and there is no excuse or justification.⁹

⁸ Chairul Huda, "*Tiada Pidana Tanpa Kesalahan*" Menuju Kepada '*Tiada Pertanggungjawaban Pidana Tanpa Kesalahan: Tinjauan Kritis Terhadap Teori Pemisahan Tindak Pidana Dan Pertanggungjawaban Pidana*' (Jakarta: Kencana Prenada Media Group, 2011).

⁹ P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: PT. Citra Aditya Bakti, 2013).

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Regarding the previous case, it can be concluded that the application of the article to the suspect has fulfilled 3 elements of a criminal act and in this case a criminal sanction can be imposed as a form of criminal liability, namely imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 10,000,000,000,- (ten billion rupiah). These elements can be described in the following explanation:

1. The element of action is fulfilled by every person who has an Exploration IUP but conducts production operation activities.
2. The element of objectively against the law on command from the suspect in accordance with the mining license he has in the form of an Exploration IUP, thus "who ordered to do."
3. The element of doing subjective law, which is responsibility and guilt. Responsibility means the ability of the perpetrators to be responsible.

Based on the case of mining with sand fill (urug) commodities in Sukodadi Village, Kabuh, Jombang, the perpetrators fulfill the elements of liability. The mistakes in this case are intentional and negligent. In addition, in this case the perpetrators were considered to have committed intentionally.

The Process of Law Enforcement against Perpetrators who commit Illegal Mining in Sukodadi Village, Kabuh, Jombang

According to Andi Hamzah, the term law enforcement is often misinterpreted, as if it is only engaged in criminal law, or only in the repressive field. The term law enforcement includes both repressive and preventive.¹⁰ Law enforcement is the process of making efforts to uphold or function legal norms in reality as a guide to behavior in legal relations in the life of society and the state. In terms of the subject, law enforcement can be implemented by broad subjects and can also be interpreted as law enforcement efforts involving all legal subjects in every legal relationship.

In law enforcement efforts in mining management, the supervision aspect is an important control function that contains dimensions of supervision and control of management in the mining sector. According to Verstedden, supervision is indicated as a means to supervise lower instruments in conducting their duties properly and within certain limits in accordance with the policies of the unitary state government needed to ensure the existence of a decentralized unitary state (*gedecentraliseerde eenheidsstaat*). In addition, supervision is also used to provide protection for citizens. Legislation that is contrary to the law usually runs parallel to violations of citizens' rights and interests.

Overcoming the prevalence of criminal acts in the mineral and coal mining sector, including mining without a license, is carried out through various facilities, such as criminal law facilities or criminal law policy (penal policy/*strafrechtspolitiek*) and facilities outside criminal law (non-penal policy). Both types need to be integrated. Therefore, criminal policy to prevent and overcome crime can be optimal or reliable.

The use of criminal law policy towards the problem of Illegal Gold Mining (PETI) is actually not a new idea. Because it has been known since the existence of Law No. 11/1967 concerning Basic Mining Provisions (Old Mining Law). In the Old Mining Law, PETI has been recognized and this is known from the editorial of Article 31 Paragraph (1) which contains an offense containing "conducting mining business without mining authorization." In this article, it is clear that one of the criminalized acts is mining without a mining authorization.

Countermeasures against events or cases related to illegal mining show efforts to take action against crimes in the field of illegal mining by using a penal policy.¹¹ Sudarto provides a definition of "penal policy" from the point of view of its purpose, namely to realize criminal legislation that is in accordance with the circumstances and situation at a time and for the future. In terms of criminal policy in the sense of penal law enforcement policy includes several stages, including the formulation stage, the application stage and the execution stage. However, the discussion will

¹⁰ Andi Hamzah, *Hukum Pidana Indonesia* (Jakarta: Sinar Grafika, 2017).

¹¹ John Kenedi, *Kebijakan Hukum Pidana (Penal Policy) Dalam Sistem Penegakan Hukum Di Indonesia*, ed. Sirajuddin, 1st ed. (Yogyakarta: Pustaka Pelajar, 2017).

focus on the application stage of Law No. 4/2009 on the eradication of illegal mining crimes that have occurred lately.

In terms of criminal justice law enforcement (investigation of illegal mining cases) refers to the operationalization of laws and regulations by criminal law enforcement officials in an effort to overcome and eradicate crimes in the field of illegal mining. The operationalization is conducted through the criminal justice process, which requires a process of the work of law enforcement officials in examining perpetrators suspected of committing crimes to ascertain the guilt or innocence of the perpetrators concerned by law. In this stage of examination, it is a whole process, such as the stages of investigation, prosecution, until the stage of determining the punishment or sentencing of the judge.

On Monday, February 24, 2020, in Sukodadi village, Kabuh, Jombang, a criminal offense has occurred, that is anyone who has an Exploration Mining Business License (IUP) but conducts production operation activities that fulfill the elements, the suspect Agus Harianto can be prosecuted as referred to in Article 160 Paragraph 2 of the Law of the Republic of Indonesia No. 4/2009 concerning Mineral and Coal Mining. The criminal act of mining activities in Sukodadi Village, Kabuh, Jombang was committed by the suspect in accordance with its mining license in the form of an Exploration Mining Business License (IUP), so that the element of "those who do" is fulfilled, therefore the suspect on behalf of Sri Ambar Pristiwati can be prosecuted as referred to in Article 55 Paragraph 1 to (1) of the Criminal Code.

CONCLUSION

The conclusion of this research such following below:

1. Criminal liability for perpetrators who conducted illegal mining in Sukodadi Village, Kabuh, Jombang proved that the perpetrators had fulfilled the elements of responsibility. The fault in this case is intentionality and negligence. In this case, the perpetrators are considered to have committed intentionally so that the perpetrators in taking responsibility for their actions can be charged with Article 160 Paragraph 2 of the Law of the Republic of Indonesia No. 4/2009 concerning Mineral and Coal Mining Jo Article 55 paragraph 1 to (1) of the Criminal Code with a maximum imprisonment of 5 (five) years and a maximum fine of IDR. 10,000,000,000,- (ten billion rupiah).
2. The law enforcement process against perpetrators who conducted illegal mining in Sukodadi Village, Kabuh, Jombang undertaken by the East Java Regional Police of the East Java Special Criminal Investigation Directorate based on the findings of the facts, then they conducted, summons, confiscation and searches in this case are very supportive and strengthen each other between the testimony of witnesses, expert testimony, clues and the existence of evidence confiscated with the confession of the suspect.

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