

Legal Protection in the Use of Land for Mining Activities

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ABSTRACT

Crime in the form of land use in the mining sector has experienced an alarming development. This study aims to reveal what legal remedies need to be done in land use. The data collected in this study used a normative juridical method. The results of the study indicate that there are strategies to overcome obstacles in the law enforcement process in mining practices, namely: First, to increase the professionalism and ability of law enforcement officials in investigating illegal mining crimes through education and training. Second, increasing the operationalization of illegal mining law enforcement by perfecting SOPs (Standard Operating Procedures), and field guidelines (Juklap) for handling illegal mining crimes. Third, increasing cooperation with related agencies by drafting an MoU (Memorandum of Understanding) and consistently and continuously coordinating efforts to optimize the synergy of illegal mining crimes. It is concluded that to protect the law against land use, of course, it is necessary to have the role of all relevant legal civil servants in directing land use properly.

KEYWORDS

legal protection; land use; mining; Indonesia

INTRODUCTION

Crimes against state assets in the use of land, one of which is illegal mining, not only harm the state and society, but also damages the environment, endangering the survival of the present, but also future generations. In every society, crime represents a critical social stakeholder, even though some countries of the developing do not consider it so (Nwanmereni, 2022). Law enforcement through wealth crimes and transnational crimes is a tangible manifestation of state wealth and a healthy business competition climate which will ultimately have an impact on the prosperity of the people and Indonesia's image in the international world.¹

The importance of law enforcement must start from reforming the law both administratively.² Because law enforcement is legal protection through the eradication of illegal mining practices which is an act to hold perpetrators accountable to save state assets which is a priority target in overcoming illegal mining crimes. According to the land

¹Markas Besar Kepolisian Negara Republik Indonesia, *perkembangan dan penanggulangan kejahatan Terhadap kekayaan negara dan Kejahatan transnasional*, Jakarta september 2008, page. 3 bahwa Polri membagi golongan Kejahatan ke dalam 4 (empat) golongan / jenis yaitu **kejahatan konvensional**, seperti kejahatan jalanan, premanisme, banditisme, perjudian dll; **kejahatan transnasional**, yaitu : *terrorism, illicit drugs trafficking, trafficking in persons, money laundering, sea piracy and armed robbery at sea, arms smuggling, cyber crime and international economic crime*; **kejahatan terhadap kekayaan negara** seperti korupsi, illegal logging, illegal fishing, illegal mining, penyelundupan, penggelapan pajak, penyelundupan BBM, dll; dan **Kejahatan yang berimplikasi kontijensi** adalah: SARA, separatisme, konflik horizontal dan vertikal, unjuk rasa anarkis, dll.

²Nagara, Grahat. "Perkembangan Sanksi Administratif Dalam Penguatan Perlindungan Lingkungan Terkait Eksploitasi Sumber Daya Alam (Studi Kasus: Sektor Perkebunan, Pertambangan, dan Kehutanan)." *Jurnal Hukum Lingkungan Indonesia* 3.2 (2017): 19-44.

acquisition law in Indonesia, everyone has rules in controlling the land.³ This is based on the consideration that currently Indonesia's land area is 191,944,000 ha, 66,891,496 ha is used for mining, 38,025,891 ha of forest ownership rights, 7,861,251 ha of industrial cutting rights, and 2,957,079 oil palm plantations. ha, Protected Forest covering an area of 31.9 million ha, with a total of 170,935,717 ha, and the remaining 21,008,283 ha. Thus, the impact of various activities which constitute the greatest exploitation is felt by the surrounding community, for example, as experienced by the Amugme and Comoros Indigenous Peoples in Papua, in this area there is long-standing gold and copper mining with large-scale exploitation, causing ecological destruction. local areas in the location of rivers and lakes, forests and biodiversity in acid rain, the effect of fertility on nature. Another thing also causes the cultural diversity of the local community due to the destruction of the environmental ecosystem.⁴

The imposition of criminal sanctions in the law enforcement process against illegal mining crimes with the *primum remedium* function compared to the *ultimum medium* because it is considered the most effective in overcoming cases of environmental destruction. The need for the use of criminal sanctions premium medium because at the time of the use of criminal sanctions side or *ultimum remedium* in solving the problem of illegal mining crimes that cause environmental damage has led to several weaknesses including:⁵ In general, the civil case process takes a long time, the recovery period is difficult to carry out immediately, it takes a long time, by not applying criminal sanctions, there is no preventive effect (preventive effect) from other sanctions cannot be expected properly and the application of sanctions can resulting in the closure of industrial enterprises resulting in workers, disasters increasing and creating other dangers and crime vulnerabilities.

RESEARCH METHODS

This research is normative legal research. This study tends to use secondary data in the form of primary legal materials and secondary legal materials. Primary legal materials are laws and regulations relating to land ownership and utilization related to mining businesses. Secondary legal materials are the views of legal experts quoted from the literature that support the framework of thought and analysis of the object of research. The secondary legal materials, in the form of reading books that are relevant to this research, the results of scientific writings such as theses, dissertations, journals, papers, and research reports that are on the topic of this research study, while supporting Tertiary Legal Materials which include materials providing instructions and explanations of primary, secondary legal materials, such as general dictionaries, legal dictionaries, scientific magazines and journals, as well as materials outside the legal field that are relevant and can be used to supplement the data needed in research.

RESULTS AND DISCUSSION

Characteristics of Land Use for Mining Activities that require Legal Protection

The *modus operandi* of illegal mining crimes has a specific nature compared to other crimes related to crimes against state assets. The *modus operandi* of the illegal mining crime is the occurrence of overlapping mining with other parties who first have rights to

³ Fatimah, Titin, and Hengki Andora. "Pola penyelesaian sengketa tanah ulayat di Sumatera Barat (sengketa antara masyarakat dengan investor)." *Jurnal Ilmu Hukum* 5.1 (2010): 11-28.

⁴ M. Ridha Saleh, *Lingkungan Hidup: Untuk Kehidupan Tidak Untuk Pembangunan*, Kertas posisi WALHI, Jakarta, Oktober 2004.

⁵ Hamdan, *Tindak Pidana Pencemaran Lingkungan Hidup*, (Bandung: Mandar Maju, 2000), p.18.

the land, including Mining Authorization with Plantation Cultivation Rights (HGU), problems that occur include: mining activities without first obtaining permission from the HGU holder (Vide: Article 31 paragraph (2) of Law No. 11 of 1967), there is no agreement on compensation for land and plants growing on the area, but the HGU holder continues to carry out mining activities. mining (Vide: Article 31 paragraph (2) of Law No. 11 of 1967), the Mining Authorization Owner has damaged the plants and assets owned by the HGU owner (Vide: Article 21 of Law No. 18 of 2004 concerning Plantations and or Article 170 KUHP), the HGU holder does not permit the Mining Authorization holder even though there has been an adjustment to compensation through the Court n (Vide: Article 32 paragraph (2) of Law No. 11 of 1967).⁶

In addition to the modus operandi of the occurrence of illegal mining crimes due to overlapping, namely mining with other parties who first have land rights, the other mode relates to the problem of mining holders with other mining authorization holders with different excavations, the problems that occur include there is no agreement from the second party on the borrow-to-use compensation and compensation for the overlapping area, but mining activities are still carried out by both parties (Vide: Article 31 paragraph (2) of Law No. 11 of 1967), the Mining Authorization Owner who first having a permit does not give an opportunity to the new Mining Authorization Holder, even though there has been a settlement of compensation through the Court (Vide: Article 32 paragraph (2) of Law No. 11 of 1967), Mining Authorization in the customary land area, the problems that occur include the community adat insists on not allowing Ku holders Mining aspirations to carry out mining business because it will eliminate opportunities for them to meet their daily needs, there is no agreement on compensation for the area of Mining Authority which is above the Customary Land area, but the owner of the Mining Authorization continues to carry out mining activities (Vide: Article 31 paragraph (2) Law No. 11/1967),⁷ The Mining Authority Area is in a Forest Area, the problems that occur include:⁸

- 1) The Mining Authority holder does not yet have a lease-to-use area permit from the Minister of Forestry but has carried out general investigation, exploration, and/or exploitation activities (Vide: Article 78 (6) of Law No. 41 of 1999).
- 2) Mining Authorization Holders conduct open-pit mining in protected forest areas (Vide: Article 78 (6) of Law No. 41 of 1999).
- 3) Mining Authorization Holders carry out mining business in nature reserves (Vide: Article 40 of Law No. 5 of 1990).
- 4) There is no compensation agreement between the Mining Authorization Holder and the Forest Utilization Permit Holder (IUPK, IUPJL, IUPHHK, IUPHHBK, IPHHK, and IPHHBK), but the Mining Authorization holder continues to carry out mining activities (Vide: Article 31 paragraph (2) of Law No. U of 1967).

The role of law enforcement officers in law enforcement of illegal mining crimes through eradication is essentially a functionalization of criminal law, meaning that functionalization plays an important role in law enforcement, Barda Nawawi Arief stated that the functionalization of criminal law can work, operate or work and be realized in real terms. The functionalization of criminal law is identical to the operationalization or concreteness of criminal law, which is essentially the same as law enforcement.⁹ The functionalization of criminal law can be interpreted as an effort to make criminal law work, operate or work and be realized in real terms. The functionalization of criminal law is

⁶ Markas Besar Kepolisian Negara Republik Indonesia, *Loc.cit*

⁷ *Ibid*

⁸ *Ibid*

⁹ Barda Nawawi Arief, *Teori-teori Kebijakan Pidana, Lo.cit*

identical to the operationalization or concretization of criminal law, which is essentially the same as law enforcement. In this functionalization, there are three stages of policy, namely the stage of policy formulation as a stage of formulation of criminal law by the legislature. The applicative policy stage is the stage of implementing criminal law by law enforcement, and the administrative policy stage, namely the implementation stage of the execution of the law.¹⁰ Nevertheless, all land disputes are relatively easier to resolve through deliberation from both parties and are open to each other and want the best solution.¹¹

It can be exemplified based on data from the Directorate of Certain Crimes, the Criminal Investigation Agency of the National Police Headquarters related to the criminal act of illegal mining carried out by the ranks of the Regional Police in Indonesia. The countermeasures carried out by the Police in their ranks are carrying out acts, investigations and investigations related to illegal mining. Based on sufficient data regarding the criminal act of illegal mining in the territory of Indonesia in 2021, it shows the required increase in the number of criminal acts (total crimes) that exist, including at the Bangka Belitung Regional Police which includes 79 cases and the number of suspects totaling 91 people. East Kalimantan Police with 27 cases and 27 suspects. West Kalimantan Police with 26 cases and 26 suspects. The Central Kalimantan Police have 21 cases with 47 suspects. Overall data on illegal mining crimes that occurred in Indonesia can be described as the number of Police Reports whose cases are still in process as many as 142 cases, Phase I as many as 17 cases, Phase II as many as 58 cases, SP3 as many as 3 cases, P.19 as many as 2 cases, investigate as many as 1 cases and transfer cases as much as 1 case.

Table 1. Data on Illegal Mining Crimes in Indonesian Territory in 2021

No.	Regional Police	Number of Cases	Number of Suspects
1.	Sumut	9	9
2.	Sumbar	21	26
3.	Riau	8	15
4.	Jambi	2	2
5.	Babel	28	41
6	Kalbar	9	17
7.	Kalsel	35	35
8.	Kalteng	3	3
9.	Sultra	1	1
10.	Bareskrim	2	2
	Amount	118	151

Based on the data on illegal mining crimes above, during the period 2021 to May 2022 in the territory of Indonesia, illegal mining often occurs. This, for example, can be exemplified by the data on illegal mining crimes in North Sumatra Province in 2021, there are about 5 cases of illegal mining crimes, while in 2022 (May) it has increased to 9 cases of illegal mining crimes, one of the cases can be described namely the handling of cases carried out by the Mandailing Natal Police of the North Sumatra Police.

Influencing Factors in Law Enforcement in Mining Practices

Indonesia is a country that is rich in natural wealth potential. Seen slightly geographically, from Sabang to Merauke there are no islands in Indonesia, ranging from large islands, such

¹⁰ Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana*, (Bandung: PT. Citra Aditya Bakti, 1998), hal. 30

¹¹ Laturette, Adonia Ivonne. "Penyelesaian Sengketa Hak Ulayat pada Kawasan Hutan." *SASI* 27.1 (2021): 102-112.

as Java, Sumatra, Kalimantan, Sulawesi, and Irian Jaya and there are many small islands. Each island in Indonesia has a very large natural wealth. One of them is mineral and coal. Mineral and coal mining activities have an important role in providing real added value to national economic growth and supporting national development. Therefore, the management of mineral and coal mining must be carried out independently, transparently, competitively, efficiently, and environmentally in order to support sustainable national development.¹²

Of course, many companies have done everything, but they are not efficient in solving it, so people also take action to fight for their rights.¹³ Based on the fields of national wealth resources, mineral and coal mining of course requires legal protection of national wealth resources. One form of legal protection in question is to carry out law enforcement against criminal acts in the mining sector which are carried out professionally and proportionally. Law enforcement is certainly influenced by several factors. The factors influencing the criminal investigation of illegal mining carried out by the National Police to reduce losses that harm state assets in supporting national development are approached both internal strengths and weaknesses as well as factors in the form of opportunities and threats. which is described as follows:

1. Internal factors which include strength, namely:¹⁴ First, Law Number 2 of 2002 concerning the Indonesian National Police, stipulates that the Police are law enforcement officers and investigators of all kinds of criminal acts, including the crime of illegal mining. Second, the Police in carrying out their duties, functions and roles always involve the relevant agencies. Third, there is a commitment from the leadership of the National Police to tackle all forms of criminal acts that disrupt domestic security and harm state assets, including the crime of illegal mining. Fourth, is the existence of a Field Manual (Bujuklap) for handling illegal mining crimes as a guide in law enforcement against illegal mining crimes. Fifth, the dedication and loyalty of Polri members (especially investigators) to carry out their duties by the job description and applicable laws and regulations. In addition, it involves internal factors in the form of weaknesses, including:¹⁵
 - a. Lack of human resource capacity of investigators in carrying out law enforcement for illegal mining crimes.
 - b. Budget support and facilities for investigating illegal mining crimes are not sufficient.
 - c. Lack of supervision and control over investigators in carrying out law enforcement/criminal investigations on illegal mining.
 - d. There are still members of the National Police who are backing the perpetrators of illegal mining crimes.
 - e. There is still intervention against investigators in carrying out the law enforcement process/investigation of illegal mining crimes.
2. External factors that affect law enforcement carried out by the police against illegal mining crimes consist of opportunities which include:¹⁶ *First, there are laws and regulations governing mining. Such as Law Number 4 of 2009 concerning Mineral and Coal*

¹² Khaidar, *Strategi Meningkatkan Sinergitas Penyidikan Tindak Pidana Illegal Mining Guna Menekan Kejahatan Yang Merugikan Kekayaan Negara Dalam Rangka Mendukung Pembangunan Nasional*, Sekolah Pimpinan Tingkat Tinggi (Sespimti) Dik Reg 22, Markas Besar Kepolisian Negara Republik Indonesia, Lembang, 2013, p. 28.

¹³ Sabilla, S. S., & Marpaung, D. S. H. (2020). Penyelesaian Sengketa Tanah Ulayat Masyarakat Di Minangkabau. *Jurnal Hukum Positum*, 5(2), 78-90.

¹⁴ *Ibid*, p. 86

¹⁵ *Ibid*

¹⁶ *Ibid*

Mining; Law Number 23 of 1997 concerning Environmental Management; Law Number 41 of 1999 concerning Forestry; etc. Second, the role of relevant agencies in handling illegal mining crimes, such as the Ministry of Energy and Mineral Resources, the Ministry of Forestry, and the Ministry of the Environment. Third, the existence of PPNS in each agency, so that it can support the investigation of illegal mining crimes. Fourth, the opening of cooperation between the Police and related agencies in handling illegal mining crimes. Fifth, the participation of the community, NGOs and so on in handling illegal mining crimes, namely by providing reports or information about illegal mining crimes. Meanwhile, the external factors that are constraining include:¹⁷

- 1) The role of PPNS is less than optimal in the process of investigating illegal mining crimes.
- 2) Lack of coordination and cooperation in the investigation of criminal acts of illegal mining, namely between the Police and the Ministry of Energy and Mineral Resources, the Ministry of Forestry, and the Ministry of the Environment in dealing with the crime of illegal mining.
- 3) Lack of legal awareness of the community and entrepreneurs/companies, so that they often commit illegal mining crimes.
- 4) Lack of public understanding of the crime of illegal mining so that it is not enough to provide information or reports in the event of a criminal act of illegal mining.
- 5) There is still the practice of levying liars in the mining permit process carried out by the Regional Government.

CONCLUSION

The non-optimal legal protection of land use for mining through law enforcement will certainly harm the country's wealth. Therefore, the form of legal protection through law enforcement is a series of investigations and investigations. To overcome obstacles in the process of law enforcement on mining practices, the strategy is formulated in several ways, namely: First, increasing law enforcement in the investigation of illegal mining crimes through education and training. Second, increasing the operationalization of illegal mining law enforcement by perfecting SOPs (Standard Operating Procedures), and field guidelines (Juklap) for handling illegal mining crimes. Third, increasing cooperation with related agencies by drafting an MoU (Memorandum of Understanding) as well as consistently and continuously coordinating efforts to optimize the synergy of illegal mining crimes.

REFERENCES

- Arman Anwar. (2021). The Cooperation Pattern Between the Maluku Provincial Government and the Private Sector in the Arrangement and Normalization of Ex-Illegal Gold Mining Allegedly Prone to Corruption, *Integritas: Jurnal Antikorupsi* 7 (1), 143-160.
- Barda Nawawi Arief. (1998) Several Aspects of Criminal Law Enforcement and Development Policies, Bandung: PT. Citra Aditya Bakti.
- Derita Prapti Rahayu. (2020). Legal of Permission Folk Mining in Indonesia, *ejurnal unsri, wacana hukum* 26 (1), 49-54.
- Fatimah, Titin, and Hengki Andora. (2010). "Patterns of settlement of customary land disputes in West Sumatra (disputes between communities and investors)." *Jurnal Ilmu Hukum* 5.1

¹⁷ *Ibid*

- Gunawan Djayaputra. (2021). Analysis of Natural Resources Management in Indonesia: Environmental Law Perspective, *International Journal* 3 (1).
- Hamdan. (2000). Environmental Pollution Crime, Bandung: Mandar Maju.
- Ismawati Septiningsih. (2021). Reformulation of Santioning Mining Acts of Individual Legal Subjects as Efforts to Improve Ecological Stability in Indonesia, *Jurnal Dinamika Hukum* 21 (2), 215-240.
- Khaidar. (2013). Strategy to Increase Synergy in Investigations of Illegal Mining Crimes to Suppress Crimes That Harm State Wealth In the Framework of Supporting National Development, High Level Leadership School (Sespimti) Dik Reg 22, Markas Besar Kepolisian Negara Republik Indonesia, Lembang.
- Keris Aji Wibisono. (2021). The Law Enforcement Against The Crime of Illegal Mining, *Law Development Journal* 3 (2), 424-430
- Laturette, Adonia Ivonne. (2021). "Settlement of Customary Rights Disputes in Forest Areas." *SASI* 27.1
- Markas Besar Kepolisian Negara Republik Indonesia. (2008). Development and Combating of Crimes Against State Assets and Transnational Crimes, Jakarta september 2008.
- M. Ridha Saleh. (2004). Environment: For Life Not For Development, WALHI position paper, Jakarta, October
- Nurhayati, Yati, Ifrani Ifrani, and M. Yasir Said. (2021). Normative and Empirical Methodology in the Perspective of Legal Studies." *Jurnal Penegakan Hukum Indonesia* 2.1
- Nagara, Grahat. (2017). "Development of Administrative Sanctions in Strengthening Environmental Protection Related to Exploitation of Natural Resources (Case Study: Plantation, Mining, and Forestry Sector)." *Jurnal Hukum Lingkungan Indonesia*, 3. 2,
- Nurmayani. (2021). The Application of The Sustainable Development Concept in Indonesia's Environmental Law, *Musamus Law Review*.
- Nwanmereni, D. (2022). Stakeholder Relations Perspectives in Managing Nigeria's Rising Crimes. *Randwick International of Social Science Journal*, 3(1), 7-21.