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Criminal Law Enforcement against Illegal Nickel Ore Mining (A Case at Resort Police of Kolaka Utara)

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ABSTRACT

The crime of illegal nickel ore mining is a crime in the mining business carried out by individuals, groups of people, or companies/foundations with legal entities in which their operations do not have a legal permit from government agencies based on the applicable regulations threatened by the criminal sanctions for anyone who violates the prohibition. Article 38 of Law Number 3 of 2020 concerning Mineral and Coal Mining states that "Mining business actors include business entities, cooperatives, and Individuals." Accordingly, mining actors can be grouped with large-scale mining, medium-scale mining, and small-scale mining in the form of community mining. This research used an empirical legal research method to obtain primary data through observation and interviews in Sulawesi Tenggara related to the enforcement of criminal law against illegal nickel ore mining (a case study at the regional police of Kolaka Utara). With the change in the legislation regarding mining itself, the government with the Regional Police of Sulawesi Tenggara must have controlled and eradicated the illegal mining that occurred in Sulawesi Tenggara, included Kolaka Utara. Accordingly, the research problems are 1. What are the police efforts regarding

the law enforcement for the criminal act of illegal nickel ore mining at the regional office of Sulawesi Tenggara? 2. What are the factors that hinder the police in enforcing the criminal act of illegal nickel ore mining? Law enforcement is an attempt to bring the ideas of justice, legal certainty, and social benefits into reality. Law enforcement is essentially a process of an embodiment of ideas. Enforcement is the process of making efforts to establish or functioning the legal norms as guidelines in legal relations in social and state life.

A. Introduction

The mining sector in Indonesia is a sector functioning to earn the largest foreign exchange, but the existence of Mining business and activities in Indonesia is now being questioned by many sides. However, in its implementation, the state is often faced with a dilemma between optimal utilization and environmental and social losses. Salim HS emphasizes that: "This is because the existence of mining business activities has had a considerable impact on the exploitation of materials excavation." A bad reputation or impression that mining is a zero-value business activity resulting from the fact that the mining activities that do not meet the criteria.¹ The new Law of energy and mineral resources in addition to providing legal certainty for the extension/conversion of KK/PPK2B into Production Operation IUPK also regulates several important matters. The authority for managing minerals and coal was previously delegated by the government to local governments, while in the new Law, the authority lies with the central government.

Law Number 3 of 2020 stipulates that mineral and coal resources are national assets, therefore their management is under the control of the central government. However, regions will still benefit, even more so, from mineral and coal management after the issuance of Law Number 3 of 2020. The role of regional governments will be further regulated in a government regulation (PP) which will soon be drafted. In addition, the Law also

¹Bambang Yunianto *et.al.*, 2004, *Kebijakan Sektor Energi dan Sumber Daya Mineral dan Implikasinya terhadap Pertambangan Emas dalam Penambangan dan Pengolahan emas di Indonesia*, Puslitbang Teknologi Mineral dan Batubara, Bandung, p. 19.

introduces a new permit, namely the Rock Mining Permit (SIPB) whose authority is delegated to the provincial government. The new energy and mineral resources Law is also expected to encourage the value-added enhancement (PNT) of minerals and coal. The definition of mineral and coal is regulated separately in this new law which is different from the arrangement in the previous law. In addition, the new Law also introduces the definition of coal management and utilization. In the implementation of mineral with the value-added enhancement, the amendments to Law No. 4 of 2009 also pay attention to economic feasibility and market access (forward linkage), which were not previously regulated in Law No. 4 of 2009. However, there are more detailed rules in the government regulation (PP) that need more scrutiny so that minerals with value-added enhancement activities can be carried out properly.

Although the new Law related to mineral and energy resources or *Minerba* stipulates many positive provisions for business actors, the determination of criminal sanctions and heavier fines needs special attention for permit holders. There is a maximum imprisonment of 5 years and/or a fine of up to IDR100 billion is certainly expected to encourage compliance from business actors to the laws and regulations. Therefore, the draft legislation or draft bills (RPP) which are being prepared by the government need to receive important attention from all business actors. If the Act and its implementing regulations will positively accommodate the best practices and concerns of business actors and can be synchronized with other sectoral regulations, it is believed that the new *Minerba* Law can bring the mining industry in a better direction. With the enactment of Law Number 3 of 2020 concerning Mineral and Coal Mining, there has been a big change in the mining world and the opportunity for carrying out mining activities in the Mining Business Permit (IUP). In the law, the contract of work has been abolished and replaced with a mining business license. With this change, the government's position is elevated, so it can supervise mining activities carried out.

Article 38 of Law Number 3 of 2020 concerning Mineral and Coal Mining stated that "Mining business actors include Business Entities, Cooperatives, and Individuals." Based on that, mining actors can be grouped into large-scale mining, medium-scale mining, and also small-scale mining in the form of small-scale mining. Mining activities cause many problems both to the environment and to the local community. Mining

problems are not only caused by large-scale mining, but also medium-scale mining and small-scale mining.²

With the change in the legislation regarding mining itself, the government through the related stakeholders in this case the Resort Police of Kolaka Utara can control and take action related to illegal mining that occurs in North Kolaka. In this case, the police have a very important role in this problem and have the right to carry out their obligations by the main tasks of the police, namely based on Article 13 of Law Number 2 of 2002, namely firstly maintaining public security and order, secondly enforcing the law, thirdly providing protection and protection and service to the community. Illegal mining itself is not only related to corporations or companies but also involves the wider community who are allegedly involved in the illegal mining activities themselves.³

Police efforts in law enforcement of illegal nickel ore mining crimes in the Kolaka Utara region refer to the Criminal Code (KUHP) in force in Indonesia at this time, they do not yet recognize what is called sentencing guidelines. In connection with this, what often causes problems in practice is the judge's freedom in determining the severity of the punishment given. This is because the law only determines the maximum and minimum criminal limits. Because of this problem, there will be a thing called criminal disparity. The need for certainty in law enforcement against the criminal act of nickel ore mining by the police in Kolaka Utara is essentially important so that the duties and functions of the police are on the right path, which is to order.⁴

The Government and the House of Representatives (DPR) have ratified the Mineral and Coal Bill into Law (Mining Law) in the plenary session on Tuesday, May 12th, 2020.

²Bernadinus Steni dan Susilaningtyas, *Tindak Pidana Lingkungan Hidup dan Sumber Daya Alam dalam berbagai Undang-Undang Sektorial dan Upaya Kodifikasinya ke dalam RKUHP*, 2007, HUMA dan Aliansi Nasional Reformasi KUHP, Jakarta, p. 30.

³Abrar Saleng, 2004, *Mining Law*, UII Press, Yogyakarta, p. 219.

⁴Maizardi Mai and Ebit Bima Saputra, "Penegakan Hukum Terhadap Tindak Pidana Pertambangan Batuan Non Logam Pada Tanah Hak Milik Masyarakat (Studi Pada Satreskrim Polres Kerinci)", *Unes Law Review*, Volume 1, Nomor 1, September 2018.

B. Discussion

a. How are the police efforts in law enforcement of the illegal nickel ore mining at the resort police of Kolaka Utara?

Police efforts in law enforcement of illegal nickel ore mining crimes in Kolaka Utara refer to the Criminal Code (KUHP) in force in Indonesia at this time, they do not yet recognize what is called a sentencing guideline. In connection with this, what often causes problems in practice is the judge's freedom in determining the severity of the punishment given. This is because the law only determines the maximum and minimum criminal limits. Because of this problem, there will be a thing called criminal disparity.⁵

Crime prevention efforts are the initial effort in tackling crime. Efforts in tackling crime can be taken several steps including action (repressive) in addition to preventive measures (preventive). These preventive measures include:

1. Increase people's welfare to reduce unemployment, which in itself will reduce crime.
2. Improve administrative and supervisory systems to prevent irregularities.
3. Increase legal counseling to equalize people's legal awareness.
4. Add police personnel and other law enforcement personnel to further enhance repressive and preventive actions.
5. Increase moral toughness and professionalism for law enforcement officers.

The function of law enforcement is expected to prevent people from committing crimes. In the context of the presence of uniformed police in the community, it is intended as a prevention effort. The presence and existence of the police are considered to contain a preventive effect that has a deterrent effort for community members in committing criminal acts. Repressive actions are all actions taken by law enforcement officials after the occurrence of a criminal act. The repressive efforts by the Police are carried out by

⁵Fenty U. Puluulawa, "Penegakan Hukum Pada Pengelolaan Usaha Pertambangan Mineral dan Batubara (Tinjauan Dari Segi Mekanisme Izin)", *Jurnal Ilmu Hukum Amanna Gappa*, Volume 19, Nomor 2, September 2011, p. 20

looking at various factors that influence the perpetrators of criminal acts. These factors include:

1. The environment and habits around the place of residence grow and develops.
2. Socio-economic conditions of the perpetrators of the crime.
3. Psychology of criminals (traumatic or depressive experiences);
4. His/her family background.
5. The level of education he/she has.

By considering some of the above factors combined with communication skills and interaction with the perpetrators of criminal acts, it is hoped that there will be no crime prevention in the same or different forms.

Law enforcement carried out by the Resort Police of Kolaka Utara against the illegal nickel ore mining business is part of the duties and functions of the police to create order, order, security, and peace in social life. Mining that is carried out without permits required by the provisions of the legislation is a criminal act, but if it is seen from the intent and purpose why every mining business act requires a permit, it aims to prevent social impacts and effects on the environment which have fatal consequences for the social life of the surrounding community.

The crime of illegal nickel ore mining that occurs on community-owned land as the focus of the author's research is a different matter between illegal nickel ore mining and land ownership rights. Illegal nickel ore mining carried out by a group of people or individuals is a business motivated by economic interests and a legal action that requires a licensing process, while land ownership rights are the highest rights, because they have several privileges, such as: (continuous), can be inherited, strongest and fullest, can be transferred to other parties. And only Indonesian citizens and Indonesian legal entities (being appointed) can have it.

This right can be encumbered with Mortgage Rights (Credit Guarantee). Based on the description above, it can be understood that although the land with ownership rights is the highest right recognized in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, which is the implementation of the

provisions of Article 33 paragraph (3) of the 1945 Constitution which states 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, but every activity carried out on them must be based on the applicable legal corridors, meaning that the exploitation of the land cannot be arbitrary and must pay attention juridical aspects that regulate legal actions carried out on the land.

In the enforcement of criminal law, what must be considered, especially related to suspects in the investigation process, is the certainty of the identity of the suspect and the truth of the information he gives, and the fulfillment of the rights of the suspect.

According to the Criminal Procedure Code, before the start of the investigation process, the investigator must inform the suspect about his/her rights are during the process of the suspect. However, in practice, not all investigators tell what the suspect's rights are. This is due to the educational factor of the investigators as mentioned earlier, which causes investigators do not to understand how the proceedings are carried out.⁶ Good law enforcement is if the criminal justice system works objectively and impartially and pays attention to and considers carefully the values that live and develop in society. These values can be seen in the form of public reactions to every criminal policy that has been implemented by law enforcement officials. In the context of law enforcement using a systems approach, there is a significant reciprocal relationship between the development of multidimensional crime and criminal policies that have been implemented by law enforcement officials. The main problem in law enforcement lies in the influencing factors that have a positive or negative impact on the content of these factors. These factors according to Soerjono Soekanto,

1. The legal factor itself, namely the law.
2. Law enforcement factors, namely the parties that form and apply the law.

⁶Jerico Lavian Chandra, Jurnal Tesis, *Tindak Pidana Illegal Mining Bagi Perusahaan Yang Melakukan Pertambangan Tanpa Izin*.

3. Factors of facilities or facilities that support law enforcement.
4. Community factors, namely the environment in which the law applies.
5. Cultural factors, namely as a result of creativity and taste based on the human initiative in social life.

Among the factors mentioned above, the community factor, cultural/cultural factors, and law enforcement occupy the central point. This is because these components play an important role in law enforcement.

The law enforcement agenda also requires leadership at all levels which fulfills two conditions. First, leadership is expected to be an effective driver for definite law enforcement actions; Second, the leadership is expected to be an example for the environment they lead regarding the integrity of the personality of people who obey the rules. One important aspect in the context of law enforcement is the process of civilizing, correctional, and legal education (law socialization and law education). Without being supported by awareness, knowledge, and understanding by legal subjects in society, the sense of a legal norm can be expected to be upheld and obeyed. Therefore, the civilizing agenda,

The technical investigation that requires a lot of information from the suspect is one of the reasons why the suspect's rights are neglected. During the investigation process, it was as if the information and confessions of the suspect were the only way to find evidence that the suspect was the culprit. So that the suspect tends to be in a cornered position and is blamed, which results in the suspect is no longer free to give his statement before the investigator, moreover the suspect is not accompanied by a legal advisor and is dealing with several investigators. Such conditions have the potential for the suspect to be under pressure to testify. If it is known that to find evidence to prove the suspect guilty, other clues of evidence can also be used as a starting point to ensnare the suspect.

b. What are the factors that hinder the police in enforcing the criminal act of illegal nickel ore mining at the Resort Police of Kolaka Utara?

Law enforcement factors are as follows:

1. Sectoral ego because of power. Environmental quality control in the implementation of its activities is not integrated or lacks coordination between one sector and another.
2. Funding is still very limited for the environmental sector. The consequence of the lack of budget is that environmental institutions do not have real and strategic programs in preventing and controlling environmental damage.
3. Limited human resources assigned to environmental institutions in both the Province and the Regency/City.
4. The limited number of PPNS-LH in environmental institutions both in the Province and in the Regency/City.
5. There are no sanctions (deterrent effect) for those who violate the law.

The factors of law enforcement itself are divided into five parts, among others:

First, the legal factor itself, namely:

1. There is a formulation of the LH law that does not comply with the applicable principles
The first factor is the factor in terms of the law itself, namely, there is a formulation of environmental laws that are not followed by the principles of the enactment of the law so that it affects the factor of law enforcement on mining in terms of the law itself.
2. There are no implementing regulations that are urgently needed to implement the Law on Environment
The second is that there are no regulations in the implementation that are needed to implement environmental laws so that it becomes one of the factors that causes delays in law enforcement in terms of the law itself.
3. The unclear meaning of the words in the Law on the Environment will confuse their interpretation and application
The third factor is the lack of clarity in the meaning of the words in

the environmental law which will confuse the interpretation and application of the law so that it becomes one of the factors in law enforcement in terms of the law itself.

4. Difficulties in applying the formulation of the Law on Environment
The last factor from a legal point of view is the difficulties encountered in implementing the formulation of environmental laws.

The two factors of law enforcement are:

1. The low quality of judges, prosecutors, police, and advocates
In terms of law enforcement, there are several factors, namely, first, the lower quality of law enforcers, namely judges, prosecutors, police, and advocates, thus making it an obstacle in enforcing mining law.
2. They ignored the principle of the right man in the right place
The second is the disregard for the principle of the right man in the right place, namely placing the right person in the right place in dealing with mining crimes.
3. Their low commitment to law enforcement
The third is their very low commitment to law enforcement in the mining sector.
4. The absence of an integrated, good, and modern law enforcement mechanism
The fourth is the absence of a mechanism in law enforcement that is well integrated and modern, meaning that the legal mechanism in mining law enforcement is still not well integrated and there has been no change to advance and develop in this modern era.
5. The strong influence and intervention of politics and power into the world of the game, especially to the police, prosecutors, and judiciary
The fifth is the increasing influence and pressure or intervention from political elites and rulers who hold full power in the caturwangsa world, especially in the police, prosecutors, and judiciary so that it becomes an obstacle in law enforcement for mining crimes because of the many influences from the authorities.
6. The strong allegations of corruption and organized crime between members of law enforcement with accusations of judicial mafia

The sixth is the strong allegations of corruption and criminal organization among members of law enforcement officers with accusations of judicial mafia, this is one of the obstacles in the enforcement of mining law.

7. Lack of coordination among law enforcement police

The last factor in terms of law enforcement is the lack of coordination between law enforcers to carry out their duties and functions in law enforcement for mining crimes.

Third, the factors of facilities and facilities, namely:

1. Lack of highly educated and skilled human resources

The next factor is factors in terms of facilities and facilities, first, there is still a lack of highly educated and skilled human resources in handling mining and environmental cases, there is a lack of police personnel who are experts in their fields in law enforcement of mining crimes.

2. Functions in the organization are not going well

The following factors are important because if the functions within the organization do not run well, it will be constrained by all law enforcement implementers in eradicating illegal miners.

3. Inadequate equipment

In law enforcement, the factor of inadequate equipment becomes important, because without adequate equipment to help maximize performance in mining law enforcement.

4. Insufficient finances

The last factor in terms of facilities and facilities is inadequate to finance, thus hampering the enforcement of mining laws.

Fourth, community factors, namely:

1. Lack of knowledge about law

Factors from the community, namely the first is the lack of knowledge of the wider community about the law, thus making the community less obedient to the applicable rules which result in many violations that occur, especially in the mining sector. from illegal mining.

2. Lack of appreciation of legal functions

Next is the lack of appreciation and understanding of the function of the law itself in law enforcement.

3. Lack of compliance with the law

The community is still not obedient to the law and law enforcement so that many people still violate the rules and ignore the rules made by the government and prohibitions from law enforcement.

Fifth, cultural factors, namely:

1. Lack of community development around the nickel ore mining environment

From the cultural factors, firstly, there is still a lack of guidance to the community around the nickel ore mining environment, therefore the police must provide socialization to the community, especially the community around the nickel ore mining environment, so that if there is an action that harms the community they can immediately report to the relevant parties regarding the existence of illegal mining in the area.

2. The value of the order and the value of peace

The second factor is the factor of the value of order and peace in the community.

3. Physical/material values and spiritual/moral values

The third factor is the physical or material value and the spiritual or moral value of the community.

4. There is still customary law in effect

The last factor is the existence and strength of customary law that applies in the community in certain areas so that it becomes an obstacle.

C. Conclusion

Police Efforts in Law Enforcement of the Crime of Illegal Nickel Ore Mining at the resort police of Kolaka Utara efforts to tackle crime can be taken several steps including repressive measures in addition to preventive measures. These preventive measures include: Improving people's welfare to reduce unemployment, which in itself will reduce

crime, Improving administrative and supervisory systems to prevent irregularities, Increasing legal counseling to equalize people's legal awareness, Adding police personnel and other law enforcement personnel to further enhance repressive and preventive measures.

There are 5 (five) factors that affect law enforcement, including Legal substance, namely legislation, Legal structure factors, namely law enforcement (that applies the law), Factors of facilities or facilities that support law enforcement, Community factors, namely the environment the four laws apply or apply, and Cultural factors, namely the results of work, creativity, and taste based on the human initiative in social life.

The suggestions for the author of this research are:

1. There needs to be special attention from the local government and each relevant agency and training on how to compile and design regulations related to illegal ore mining so that it can become a legal product that can apply as it should, both juridically, politically, and sociologically.
2. Besides that, there is also a need for a forum or forum that specifically monitors the performance of the community and also certain companies so that illegal ore mining practices do not occur. So that there is continuity between the community and mining activities.

References

Books

- Saleng, Abrar, 2004, *Hukum Pertambangan*, UII Press, Yogyakarta.
- Steni, Bernadinus dan Susilaningtyas, Tindak Pidana Lingkungan Hidup dan Sumber Daya Alam dalam berbagai Undang-Undang Sektorial dan Upaya Kodifikasinya ke dalam RKUHP, 2007, HUMA dan Aliansi Nasional Reformasi KUHP, Jakarta.
- Yunianto, Bambang *et.al.*, 2004, Kebijakan Sektor Energi dan Sumber Daya Mineral dan Implikasinya terhadap Pertambangan Emas dalam Penambangan dan Pengolahan emas di Indonesia, Puslitbang Teknologi Mineral dan Batubara, Bandung.

Journal

- Ariyanto, Wisnu dan Suprpto Dibyosaputro, "Tingkat Kerusakan Lahan Akibat Penambangan Batugamping dan Prioritas Reklamasi Lahan Desa Pacarejo Kab. Gunungkidul, *Jurnal Bumi Indonesia*, Volume 1, Nomor 3, 2012.
- Aslam, Abdul Kadir Adys, Rudi Hardi, "Peranan Pemerintah dalam Penertiban Penambangan Ilegal Nikel di Kabupaten Kolaka Utara, *Otoritas Jurnal Ilmu Pemerintahan*, Volume 5, Nomor 2, Oktober 2015.
- Dara Joseph Y. A dan Agung Sugiri, "Kajian Penanganan Dampak Penambangan Pasir Besi terhadap Lingkungan FDisik Pantai Ketawang Kabupaten Purworejo, *Teknik PWK (Perencanaan Wilayah Kota)*, Volume 3, Nomor 1, Februari 2014.
- Fadlilah, Sulfatul, "Upaya Mitigasi Bencana Gerakan Tanah dalam Perspektif Islam", *El – Hayah Jurnal Biologi*, Volume 4, Nomor 2, Maret 2014.
- Ibrahim, Indra, "Dampak Penambangan Timah illegal yang Merusak Ekosistem di Bangka Belitung", *Selisik jurnal Hukum dan Bisnis*, Volume 1, Nomor 1, Juni 2015.
- Mahmud, Marike, *et.al.*, Fitoremediasi sebagai Alternatif Pengurangan Limbah Merkuri Akibat Penambangan Emas Tradisional di Ekosistem Sungai Tulabolo Kabupaten Bone Bolango, Volume 7, Nomor 2, 2013.
- Mai, Maizardi dan Ebit Bima Saputra, "Penegakan Hukum Terhadap Tindak Pidana Pertambangan Batuan Non Logam Pada Tanah Hak Milik Masyarakat (Studi Pada Satreskrim Polres Kerinci)", *Unes Law Review*, Volume 1, Nomor 1, September 2018.
- Marini dan Muhammad Iqbal Sultan, "Dampak Penambangan Pasir bagi Kerusakan Lingkungan Hidup di Kalangan Penambang Pasir Ilegal di DAS Jeneberang Kabupaten Gowa", *Kareba: Jurnal Ilmu Komunikasi*, Volume 3, Nomor 2, Juni 2014.
- Puluhulawa, Fenty U., "Penegakan Hukum Pada Pengelolaan Usaha Pertambangan Mineral dan Batubara (Tinjauan Dari Segi Mekanisme Izin)", *Jurnal Ilmu Hukum Amanna Gappa*, Volume 19, Nomor 2, September 2011.
- Widyastomo, Bhayu dan Risyanto, "Pengaruh Penambangan Pasir dan Batu terhadap Kondisi SoSial Ekonomi Penambang di Kecamatan Kemalang Kabupaten Klaten, Provinsi Jawa Tengah, *Jurnal Bumi Indonesia*, Volume 2, Nomor 3, 2013.

Thesis

- Chandra, Jerico Lavian, 2020, *Tindak Pidana Illegal Mining Bagi Perusahaan yang Melakukan Pertambangan Tanpa Izin*, Tesis, Universitas Muhammadiyah Sumatera Utara, Medan.
- Yusuf HS, Muhammad, 2016, *Penegakan Hukum terhadap Tindak Pidana Pertambangan Gol. C Tanpa Izin (Studi Kasus Tahun 2014 S/D Tahun 2016 di Kab. Gowa)*, Skripsi, Universitas Hasanuddin, Makassar.