

CRIMINAL APPLICATION BY THE JUDGE AGAINST DEFENDANTS FOR MINING WITHOUT PERMITS IN FOREST AREAS

Lidya Ari Vega Jacob, Ariawan Gunadi

Master of Law Study Program, Faculty of Law, Tarumanagara University

Email: lidya.207221003@stu.untar.ac.id, ariawang@fh.untar.ac.id

Abstract:

The use of criminal law in dealing with criminal acts of mining without a permit certainly does not always involve criminal sanctions, but sanctions can also be applied which have the same status as criminal sanctions. This research was conducted to determine the validity of the law related to criminal acts of mining without a permit in forest areas, to determine the criminal liability of defendants in criminal acts of mining without permits in forest areas according to Indonesian law and to find out the application of criminal penalties by judges to defendants of criminal acts of mining without permits in forest areas (Study Decision No. 53/Pid.Sus/2021/PN Wgw). This research method uses normative juridical research with a statutory approach and a case approach (the cash approach). The research results show that the legal validity related to criminal acts of mining without a permit in forest areas has been stated in Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) and other applicable legislation where perpetrators who commit violations without permits will be given administrative sanctions. in the form of compensation according to the level of damage caused to the state. As well as criminal liability for defendants of criminal acts of mining without a permit in forest areas according to Indonesian law, they will be subject to criminal action in accordance with applicable legislation, such as being subject to sanctions in the form of administrative sanctions. And the application of punishment by the judge to the defendant for the crime of mining without a permit in a forest area (Study Decision No. 53/Pid.Sus/2021/PN Wgw) has been carried out as stated in Law no. 32 of 2009 concerning Environmental Protection and Management by applying other appropriate legal bases from the laws and regulations that regulate the criminal act of mining without a permit in forest areas.

Keywords: *Crime, Mining Without Permit, Forest Area.*

INTRODUCTION

Forest is a gift and trust of God Almighty in the world and especially to the Indonesian nation. Forests can be said to be an ecosystem unit in the form of a stretch of land containing biological natural resources dominated by trees in their natural environment with each other and cannot be separated. Forests have a function as determinants of buffer systems in life, but forest conditions have tended to decline in sustainability now. Therefore, it is necessary to protect forests that are carried out fairly, wisely, openly, professionally, and have noble morals (Pakpahan et al., 2019).

One of the activities that causes the decline in forest quality sustainability is mining which is an industry where mineral minerals are processed and separated from unnecessary follower materials. In the mineral industry, the process for obtaining economical minerals usually uses the extraction method, which is the process of separating minerals from rocks from unnecessary follower minerals. Minerals that are not needed will become waste from the mining industry and have a significant contribution to pollution and environmental degradation. The mining industry as an upstream industry that produces mineral resources and is a source of raw materials for downstream industries needed by mankind throughout the world (Wijaya & Hartati, 2023).

Mining activities in Indonesia have become a topic of discussion by various groups because they carry out mining actions in forest areas that have the potential for natural resources in the form of minerals and coal of good quality. Mining activities carried out in forest areas are carried out without having permission from the Government, so this problem must be considered and resolved through legal channels to realize the prosperity of the people through the use of excavated resources and energy by taking into account the balance of the environment (Wibisono et al., 2019).

Unlicensed or illegal mining has been regulated in Law no. 4 of 2009 concerning mineral and coal mining in article 158 where everyone who conducts mining business without IUP, IPR or IUPK as referred to in article 37, article 40 paragraph 3, article 48, article 67 paragraph 1, article 74 paragraph 1 and paragraph 5 shall be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of Rp.10,000,000,000 (ten billion rupiah) (Herman et al., 2022).

That way, the form of criminal responsibility as a criminal offender is adjusted to the purpose and function of the law to provide a means of protection and welfare of the community, because the tendency to violate the law to obtain the maximum benefit has become a reality of society (Siregig et al., 2023). The use of criminal law in tackling the criminal act of mining without a permit is certainly not always by using criminal sanctions, but can also be applied sanctions whose position is the same as criminal sanctions. The sanctions system in the current criminal law places criminal sanctions as *prima donna* sanctions, so that the existence of action sanctions has become less popular than criminal sanctions (Primary, 2020).

Criminal acts against forest destruction in Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction (hereinafter abbreviated as Law P3H), include 2 (two) activities, including: a). Illegal logging, namely all organized illegal utilization of timber forest products and b). Illegal use of forest areas carried out in an organized manner, namely the illegal use of forest areas is an organized activity carried out within forest areas for plantations or mining without the permission of the Minister of Forestry (Redi, 2014).

Cases of illegal logging that occur often involve many people or are said to be criminal acts

committed together. The criminal act of illegal logging is the act of cutting or harvesting forest products in forest areas without having authorized rights or permits, as well as receiving, giving or selling, receiving exchanges, receiving deposits, storing, transporting, controlling or possessing forest products that are not equipped with a valid certificate of forest products (Lasut et al., 2021). Such as the case that occurred in Wangi-Wangi District Court in Decision No. 53/Pid.Sus/2021/Pn wgw, where Defendant Suwanto, S.T. worked on the Reconstruction Project for the Capacity Building of Jalan Pahlawan Structure from PT. Buton Construction Works that require material in the form of stone for selected stockpile purposes. Then the defendant looked for the location of land to conduct mining to meet the material needs of the stockpile and the mining location was at the location owned by witness La Moane in Kel. Mandati II Kec. Wangi Wangi Selatan. Furthermore, the defendant met witness La Moane to make an agreement to be able to carry out mining activities with witness La Moane as the owner of the land / land will get a payment of Rp. 25,000.00 (twenty five thousand rupiah) for every one ret of material cargo produced.

The defendant ordered his workers in charge of loading and transporting stockpile materials from the mining site to be delivered to the road construction site. On March 9, 2021, Wakatobi Police Reskrim Sat personnel went directly to the mining site carried out by the defendant and found rock mine openings. Then the Wakatobi Police Reskrim Sat personnel asked the defendant and witnesses for a mining license, but could not show the mining permit, IUP, IUPK, IPR, SIPB, IUJP at the location.

In relation to the description of the background above, it encourages researchers to try to research and disclose into a scientific study with the title "Criminal Application by Judges to Defendants of Mining Crimes Without Permits in Forest Areas (Study of Decision No. 53/Pid.Sus/2021/Pn Wgw)". So the formulation of the problem in this study is as follows: "How is the legal validity related to the criminal act of mining without a permit in a forest area?", "How is criminal liability for the defendant of the crime of mining without a permit in a forest area according to Indonesian law?" and "How is the criminal application by the judge against the defendant of the crime of mining without a permit in a forest area (Study of Decision No. 53/Pid.Sus/2021/PN Wgw)?"

The research aims to help broaden understanding of the law related to unlicensed mining in forest areas and provide a deeper view of the penalties applied to perpetrators of unlicensed mining crimes. As well as helping to raise awareness about the problem of illegal mining in forest areas and their consequences. This information can be used to design more effective sanctions and encourage better compliance with the law.

In this study using several theories that are certainly related to the research conducted, which are as follows:

Penal Theory

According to Bongor in (Fahrurrozi & Said, 2022), Punishment is an action against someone who commits a criminal act, can be justified normally not because it has positive consequences for the criminal offender, the victim or society. Crime is imposed not because someone does evil but crime is imposed so that the evildoer no longer does evil and others are afraid to commit crimes.

Theory of Legal Certainty

According to Kelsen (2014), pure legal theory suggests that the state, social order must be

identical to law or at least to a specific order of law that is relatively centralistic, that is, a national legal order as distinguished from the highly decentralized international legal order. Pure legal theory eliminates the dualism between justice and law, and between objective law and subjective law, just as dualism negates law and state.

Theory of Legal Justice

Natural law theories, from Socrates to Francois Geny, retained justice as the crown of law. The theory of Natural Law prioritizes "*The Search for Justice*". This theory concerns rights and freedoms, opportunities for power, income and prosperity (Teguh Prasetyo, 2019).

RESEARCH METHODS

Research methods are knowledge of systematic and logical steps in finding data related to certain problems to be processed, analyzed, then drawn or conclusions obtained (Moleong, 2017). While legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced. This type of research in legal research is normative juridical legal research or *doctrinal* that is, research that provides a systematic explanation of the rules governing a particular legal category (Marzuki, 2021).

The legal materials used in this writing obtained from literature studies include: primary legal materials, secondary legal materials and tertiary legal materials. Secondary legal materials consist of literature, legal journals and other scientific works both printed and created electronically. Tertiary legal materials are legal materials that provide guidance and explanation to primary legal materials and secondary legal materials, such as general dictionaries and legal dictionaries. Normative legal research, secondary data as sources / information materials can be primary legal material, secondary legal material (Suratman & H. Philips Dillah, 2015).

The approaches used by researchers from some of the approaches above are the statutory approach (*statute approach*) and the case approach (*the cash approach*). Data collection techniques in this study are documentation studies of various laws and regulations, legal doctrines and legal theories related to democratic regional elections, to be further analyzed using data reduction, data presentation, and conclusions.

RESULTS AND DISCUSSION

Legal Validity Related to Criminal Acts of Unlicensed Mining in Forest Areas

Criminal acts can be said to be aspects of criminal responsibility in the sense that the maker is convicted in several conditions that must be met, such as the existence of a criminal act committed by the maker. Criminal acts are acts that are contrary to the order or order required by law. The main requirement for a criminal act is the fact that there are rules prohibiting it. According to Simons, criminal acts (*strafbaarfeit*) is behavior (*Handeling*) who are threatened with criminal acts of an unlawful nature, related to wrongdoing and committed by responsible persons (Madjid & Putra, 2023).

According to Van Hammel, the first element of blame is the ability to take responsibility. Provide a measure of the ability to be responsible in the form of being able to understand the consequences of his actions, being able to realize that the actions are contrary to public order and being able to determine the will to do. All three abilities are cumulative, meaning that only one of the responsible abilities is not fulfilled, then a person is considered unaccountable

(Hiariej, 2016).

In Indonesia, the recommendation to do *Green Mining* For owners of Mining Business Permits (IUP) and Special Mining Business Permits (IUPK) have been widely socialized and become an obligation to do, one of which is by reclamation. Mining reclamation itself is regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining (Mineral and Coal Law) where this process is carried out throughout the stages of the mining business to organize, restore, and improve the quality of the environment and ecosystem so that it can function again according to its designation. The post-mining activities to restore the function of the natural environment can be carried out simultaneously or after the reclamation stage (Fahrurrozi & Said, 2022).

The subject of law that can be punished in the mining sector has been determined in Article 158 and Article 163 of Law Number 3 of 2020 amending Law Number 4 of 2009 concerning Mineral and Coal Mining. The legal subjects that can be punished include:

- Individual person
- Management of legal entities; and
- Legal entity.

In the aspects of policy, management, regulation, management, and supervision of mineral and coal listed in Law No. 23 on Local Government has a newer philosophical basis. As a legal basis, Law No. 23 of 2014 concerning Regional Government bases its legal policy on article 18 paragraph (7) of the Constitution of the Republic of Indonesia and several considerations in this Local Government Law include:

Article 18 paragraph (7) of the Constitution of the Republic of Indonesia Year 1945 the structure and procedures for the administration of local government are regulated in the Law.

The implementation of local government is directed to accelerate the realization of community welfare through improving services, empowerment, and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice, and the distinctiveness of a region in the Unitary State system of the Republic of Indonesia.

The efficiency and effectiveness of local governance needs to be improved by paying more attention to aspects of the relationship between the Central Government and regions and between regions, regional potential and diversity, as well as opportunities and challenges of global competition in the unity of the state governance system.

Rosadi in (Lasut et al., 2021) convey that the Constitution of the Republic of Indonesia in Article 33 paragraph (3) 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. This means that the State has absolute sovereignty over natural resource wealth and the legal ownership rights over natural resources are the people of Indonesia. "The right of state tenure is an instrument while the maximum of the people is the ultimate prosperity goal of natural wealth management". This provision contains a message that the Government has the right to manage natural resource wealth so that it is enjoyed by the people in a fair and equitable manner. The prosperity of the people is the spirit and ultimate ideal of the welfare state (*Welfare State*) that must be realized by the State and the government of Indonesia.

Article 1 point (1) of Law Number 4 of 2009 concerning Mineral and Coal Mining, explains

that mining is a stage of activity in the framework of research, management and exploitation of minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-mining activities. Mining in Indonesia is divided into three categories, namely group A mining in the form of strategic minerals, group B mining, in the form of vital minerals and group C mining, generally minerals that have a lower level of importance than the other two mining groups (Sudraja, 2013).

Article 37 of Law Number 4 of 2009 concerning Mineral and Coal Mining states that a Mining Business License (IUP) is granted by the Regent / Mayor if the mining area is within one Regency / City area. The Mining Business License (IUP) is granted by the Governor if the mining area is located across districts/cities in one Province. Furthermore, IUP is given by the Minister of Energy and Mineral Resources if the mining area is located across provincial areas. Article 24 paragraph (3) point b of Government Regulation Number 77 of 2014 concerning the Third Amendment to Government Regulation Number 23 of 2010 concerning the Implementation of Mining Activities, regulates permit requirements for sand miners, for natural persons including (Wibisono et al., 2019):

1. Application letter
2. Identity Card
3. Taxpayer Identification Number (NPWP)
4. Certificate of domicile

The act of mining without a permit has fulfilled the elements that can be threatened by criminal law as stipulated in Article 158 of Law Number 4 of 2009 concerning Coal and Mineral Mining, stating that: "Whoever conducts mining business without a Mining Business License, People's Mining License or Special Mining Business License as referred to in Article 37, Article 40 paragraph (3), Article 48 and Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) of this Law shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah)".

Referring to Law Number 4 of 2009 Article 158 which "Everyone who conducts mining business without IUP, IPR or IUPK shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah). It can be interpreted that whoever carries out sand mining business without contravening the laws and regulations, and for actors who carry out sand mining activities without a permit or for law enforcers who are supposed to work to create legal harmony but in this case instead cover up existing activities can be criminally punished as stipulated in the article (Surya, 2019).

Criminal liability for defendants of illegal mining in forest areas according to Indonesian legislation

According to Soekanto (2014), Law enforcement is central to all laws starting from legal planning, law formation, law enforcement and law evaluation. Law enforcement is essentially an interaction between various human behaviors that represent different interests within the framework of mutually agreed rules¹⁷. The essence of conceptual law enforcement lies in the activity of harmonizing the relationship of values described in solid rules and attitudes of action as a series of final stage value elaboration, to create, maintain and maintain social peace.

Criminal law enforcement against unlicensed mining of nickel ore minerals is an effort to realize the law that is carried out repressively through penal means. The use of penal means is intended to impose penalties on perpetrators of criminal acts in order to overcome crime. This is a legal manifestation of the act of mining in forest areas without permits in accordance with Article 158, Article 159, Article 160 a of the Mining Law and Article 3 of Law Number 8 concerning the Prevention and Eradication of Money Laundering by law enforcement officials at the application stage. The application of the above criminal sanctions by perpetrators who can also be subject to additional crimes in the form of (Darongke, 2017):

1. Used in mining must be confiscated by the authorities for committing criminal acts,
2. Taking profits obtained from the proceeds of crime and must also be subject to sanctions for payment of costs incurred as a result of criminal acts.

The State Administration Law indicates that administrative sanctions are grouped into legal acts and deeds (*Rechtshandelingen*) real/material (*feitelijkhandelingen*) which consists of (Asiyah, 2017):

3. This government coercion (*bestuursdwang*) is a form of material action,
4. The withdrawal of favorable decisions (permits, subsidies, payments, etc.) is a form of legal action,
5. This forced money (*dwangsom*) is a form of real / material act,
6. This administrative fine (*administratieve boete*) can be in the form of real / material actions or legal acts.

Administrative sanctions are actions by the Government to end a situation prohibited by the rules of administrative law or do what should be abandoned by citizens because it is contrary to the law or other legal rules. Philipus M Hadjon in Umar (2020) suggests that the authority to apply administrative sanctions as a concept of public law consists of at least three components, namely:

1. Components of influence; that the use of authority is intended to control the behavior of legal subjects.
2. Basic components of the law; that authority must always be subject to its legal basis.
3. Components of legal conformity; Contains the meaning of the existence of authority standards, namely general standards (all types of authority) and special standards (for certain types of authority).

One of the differences between administrative sanctions and sanctions according to civil law enforcement or criminal sanctions is that there is no need for the power of the court to impose these sanctions. This can be seen from Oostenbrink's view in Tjandra (2021) states that administrative sanctions are sanctions arising from the relationship between the government and citizens, which are carried out without the intercession of judicial power. The same thing was also stated by Atmosudirjo who stated that in imposing administrative sanctions by the government, TUN officials can directly impose sanctions without the need to go through the intercession of judges.

Law Number 18 of 2013 concerning the Prevention of Eradication of Forest Destruction. Article 18 paragraph:

1. In addition to criminal sanctions, violations of the provisions referred to in Article 12 letter a,

letter b, letter c, Article 17 paragraph (1) letter b, letter c, letter e, and Article 17 paragraph 2. letter b, letter c, and letter e committed by legal entities or corporations are subject to administrative sanctions in the form of:

- a. government coercion;
- b. forced money; and/or
- c. Revocation of License.

Provisions regarding the mechanisms and procedures for implementing administrative sanctions as referred to in paragraph (1) are regulated by Government Regulations.

Criminal Application by Judges Against Defendants of Mining Without Permits in Forest Areas (Study of Decision No. 53/Pid.Sus/2021/PN Wgw)

Natural resource mining activities in forest areas are a problem with the sustainability and sustainability of the forest itself. The pros and cons regarding mining activities in forest areas basically point to the point of development and environmental sustainability needs, namely on the one hand the need for natural resources as a source of state revenue for development purposes and on the other hand the need for the function of protected forests as hydro orology. The utilization and use of the forest area itself in principle can only be used for forestry sector activities that can be carried out in all areas except nature reserve forests and core zones and forest zones in national parks (Madjid & Putra, 2023).

However, Law No. 41 of 1999 concerning Forestry provides the possibility of utilizing and using forest areas for development purposes outside forestry activities with a note, it is only possible in production forest and protection forest areas without changing the main function of forest areas, through the granting of Forest Area Borrowing and Use Permits (IPPKH) from the Minister of Forestry by considering the limits of area, duration and environmental sustainability (Article 38 paragraph (3) of Law No. 41 of 1999 About Forestry).

Mining crimes are included in the special criminal section regulated outside the Criminal Code. According to Andi Hamzah, criminal law regulations listed outside the Criminal Code can be called individual (criminal) laws or also called criminal laws outside codification or non-codification. H.J.A. Nolte made a dissertation, which if translated would become a criminal law in a separate law. W.P.J. Pompe, says that Nolte began with a basic view of the philosophical and historical history of law. There is a criminal law partly within the Criminal Code (codification) and partly outside the Criminal Code or within a separate law (Aziz Syamsuddin, 2018).

Such as the case of Mining in Unlicensed Forest Areas, is in decision No. 53/Pid.Sus/2021/PN. Wgw, where the judge's consideration decided that the defendant Suwanto, S.T. Alias Wanto Bin La Hidi had been legally and conclusively proven guilty of committing the crime of mining without a permit. The Defendant receives imprisonment for 1 (one) year and a fine of Rp200,000,000.00 (two hundred million rupiah) provided that if the fine is not paid, it must be replaced with imprisonment for 3 (three) months by stipulating that the detention period that has been served by the Defendant is deducted entirely from the sentence imposed.

The prison crime does not need to be served, unless in the future there is another order in the judge's decision that has permanent legal force because the convict before passing the probation period for 1 (one) year commits a criminal act. The defendant's actions are contrary to the objectives of mineral management in the territory of the Republic of Indonesia, especially in

terms of guaranteeing the benefits of mineral mining in a sustainable and environmentally sound manner. The defendant was sentenced to a crime accompanied by evidence, so it needs to be burdened to pay the costs of the case.

The defendant's actions are listed in article 158 Jo Article 35 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining and Law Number 8 of 1981 concerning Criminal Procedure Law and other relevant laws and regulations.

The panel of judges obtained the fact that the defendant did not have a license to carry out mining business as stated in the previous evidence of the element of offense. In fulfilling this element of offense, it is necessary to prove that the criminal act was committed by more than one perpetrator and the act was carried out mutual understanding between the perpetrators and then there was cooperation between them. The mining was carried out by more than one person, namely the defendant and his workers, each of whom had a role and task as outlined.

So that the Judge's Judgment on the decision in this case is in accordance with the theory of Evidence according to law negatively (*Negatief Wettelijke Bewijstheorie*). That "Validly and conclusively proven" is a standard phrase for judges when convicting a defendant after the evidentiary process in court ends. The meaning is that the accused has been found guilty in accordance with the provisions of the Act and in accordance with the judge's conviction.

Legal Validity Related to Criminal Acts of Unlicensed Mining in Forest Areas

Based on the mining law, in addition to recognizing the existence of criminal acts *Illegal Mining*, there are also forms of criminal acts of unlicensed mining directed against mining business actors. As for the forms of criminal acts according to Supramono (2012) What mining business actors do in forest areas without permits are:

The criminal offence of mining without a permit.

If there is a mining activity the perpetrator does not have a permit, then his actions are a criminal offense regulated in Article 158 of Law No. 3 of 2020 concerning Mineral and Coal Mining which reads: "Everyone who conducts mining without a permit as referred to in Article 35 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000,000, 00 (one hundred billion rupiah)."

The crime of submitting data reports of false information.

The act of providing incorrect data or reports is actually a special regulated sanction, the perpetrators can be punished under Article 159 of the Mining Law which can be punished with a maximum imprisonment of 10 years and a maximum fine of IDR 10,000,000,000.00.

Criminal Acts of Laundering of Mining Goods in Forest Areas.

In the mining sector, there can also be laundering of mining products, illegal miners carried out in forest areas, both protected forests and production forests, can be in contact with miners who have permits to conduct transactions of mining products so that they reach the place where the seller of mining products / factories is legitimate mining goods. The crime of mining loundring can be charged with Law Number 8 of 2010 Article 3 which is punishable with a maximum imprisonment of 20 years and a maximum fine of Rp10,000,000,000,000,-.

Criminal Acts Not Reclaiming and Post-Mining.

There are severe sanctions waiting if mining entrepreneurs fail to accept this obligation. Article 161 B paragraph (1) of the Mining Law states that mining permit holders who fail from this obligation can be punished with a maximum imprisonment of 5 (five) years and a maximum

fine of IDR 100,000,000,000.00 (one hundred billion rupiah). Not only imprisonment or fines, paragraph (2) of the same article provides additional penalties in the form of forced payment of funds in the context of carrying out reclamation and/or post-mining obligations that are their obligations.

The Crime of Conducting Production Operations but Only Having an Exploration Permit.

Basically, to carry out mining business activities, it is mandatory to have a permit and every permit issued there are two activities that must be carried out, namely for exploration and exploitation. Exploration activities include general investigation, exploration and feasibility studies¹³. Because carrying out production operations based only on mining exploration permits issued by the government, production operations carried out without these permits are criminal acts that are punishable by punishment under Article 160 of Law No. 3 of 2020 punishable by imprisonment for a maximum of 5 years or a maximum fine of Rp. 100,000,000,000.

The crime of transferring permission to another person.

Licensing is the evidence underlying the implementation of mining activities. Only license owners are allowed to carry out mining activities. It is not permissible if the license that has been granted by the government is transferred to another unauthorized party without notifying the government. In this case, Article 161 A of the Mining Law states that every holder of IUP, IUPK, IPR, or SIPB who transfers IUP, IUPK, IPR, or can be sentenced to a maximum of 2 (two) years imprisonment and a maximum fine of Rp5,000,000,000.00 (five billion rupiah).

Criminal Acts Obstructing Legal Mining Activities.

When the permit has been held by the mining company, mining activities can begin. In this case, the Mining Law also provides protection for the continuity of legitimate mining activities. This is with Article 162 of the Mining Law which states that anyone who obstructs or interferes with Mining Business activities can be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp100,000,000.00 (one hundred million rupiah).

In accordance with Law Number 3 of 2020 concerning Mineral and Coal Mining, it is an important starting point in assessing the validity of laws related to the criminal act of mining without permits in forest areas. In the 7 forms of criminal acts that have been regulated, there are 4 forms that can be the legal basis related to the criminal act of mining in forest areas without permits. The existence of details related to criminal acts such as mining without permits, submitting false information report data, laundering mining products, and not carrying out reclamation and post-mining shows that there is a clear legal basis for dealing with illegal mining in forest areas.

In addition, it is important to note that this criminal act also has an impact on State losses, where the purpose of the Law is to protect the interests of the state, the environment, and society. Therefore, the law related to the criminal act of mining without permits in forest areas reflects the government's efforts to maintain justice, preserve mineral resources, and overcome severe challenges faced by the state due to the rampant illegal mining in forest areas.

Criminal liability for defendants of illegal mining in forest areas according to Indonesian legislation

Explanation of Article 18 paragraph (1) what is meant by administrative sanctions is sanctions imposed on violations without permission and against permit holders. For violations

without permits, administrative sanctions are imposed in the form of compensation according to the level of damage caused to the state in the form of rehabilitation costs, restoration of forest conditions, or other necessary actions. For permit holders, administrative sanctions are imposed in the form of fines, termination of activities, reduction of acreage, or revocation of permits.

Letter (a) What is meant by government coercion is legal action taken by the government so that companies / legal entities carry out forest restoration due to their actions in forest destruction because they do not comply with the provisions in laws and regulations. Letter (b) What is meant by "forced money" is money that must be paid in a certain amount by a legal entity or corporation that violates the provisions in laws and regulations in lieu of the implementation of government coercive sanctions.

According to Setiadi in Sergio (2021), law enforcement of a law can take various forms, one of which is outlined in the provisions of sanctions in the form of criminal sanctions, civil sanctions, or administrative sanctions. However, law enforcement of a law and regulation does not always have to be followed by the provision of sanctions in the relevant laws and regulations. Sanctions can be regulated in or referred to other laws and regulations or without even being regulated if in a law it is determined that we must meet certain conditions to obtain something (rights) but these conditions are not met, then the sanctions are that we will not get something (rights) that we should get if these conditions are met.

The inclusion of sanctions must also be adjusted to the substance stipulated in the laws and regulations. In some laws and regulations, the imposition of sanctions, especially criminal sanctions, looks very forced. Inappropriate sanctions will result in the laws and regulations formed being ineffective or have no power / use. This is in accordance with one of the principles that must be fulfilled in the formation of laws and regulations, namely the principle of usability and usability. That is, every law and regulation is made because it is really needed and useful in regulating the life of society, nation, and state. Another result, in practice, sanctions regulated in these laws and regulations because they are not in accordance with the scope of the substance become very difficult to apply (Maulana & Arif Firmansyah, 2023).

Civil sanctions are applied if the enforcement of laws and regulations causes harm to people affected by the provisions of the laws and regulations. In principle, whoever incurs losses will compensate them according to the losses suffered. Losses incurred as a result of the implementation of laws and regulations can be resolved both through court and non-court channels.

While administrative sanctions can be applied both through court and non-court channels, namely by administrative officials. Administrative sanctions outlined in laws and regulations are mostly related to licensing issues and are implemented by administrative officials (bodies) authorized to issue these permits. Administrative sanctions imposed by administrative officials are often associated with violations of licensing requirements. Because it does not require a third party (court) to impose it, administrative sanctions are considered easier to impose and manage compared to other sanctions (Kristiawan et al., 2018).

Criminal Application by Judges Against Defendants of Mining Without Permits in Forest Areas (Study of Decision No. 53/Pid.Sus/2021/PN Wgw)

Unlicensed mining activities that result in environmental damage have been regulated in Law No. 32 of 2009 concerning Environmental Protection and Management. In addition, the laws and regulations related to unlicensed mining and environmental protection are Law No. 41 of 1999 concerning Forestry which has been amended by Law No. 19 of 2004 concerning the Stipulation of Government Regulations in Lieu of Law No. 1 of 2004 concerning amendments to Law No. 41 of 1999 concerning Forestry into Law.

Environmental damage caused by unlicensed mining (PETI) is still common in various regions in Indonesia. In developing the mining sector, especially community mining that is environmentally sound, the local government must actively supervise the implementation of mining activities, apply firmly and consequently to various regulations in the mining sector (especially regarding IPR) and environmental management and always provide guidance to communities who carry out community mining activities so that they can be carried out in accordance with legal principles Especially in environmental protection and management.

Based on the case that occurred in Decision No. 53/Pid.Sus/2021/PN Wgw relating to Law No. 32 of 2009 which mandates that every business activity that has the potential to damage the environment must have an environmental permit before starting its operations. In the case of unlicensed mining, the fact found by the panel of judges that the defendant did not have a license to conduct mining business is a violation of the provisions of this law. Environmental permits are legal requirements that must be complied with by all parties involved in natural resource extraction activities.

Furthermore, the main objective of Law No. 32 of 2009 is to protect the environment from the negative impacts of human activities. Unlicensed mining in forest areas can cause serious damage to natural ecosystems and the surrounding environment. Therefore, the court must consider how the actions of the defendant and his workers have violated the principles of environmental protection stipulated in the law. The statement also refers to the legal requirements that must be met to prove the criminal act of mining without a permit. One element of offense that needs to be proven is that criminal acts are committed by more than one person and acts are carried out mutual understanding between the perpetrators and their occurrence.

According to Law No. 8 of 1981 concerning the Code of Criminal Procedure, compensation and rehabilitation cases are the new norm. Article 96 sets out more concretely in paragraph (1) of the award of compensation in the form of determination. In paragraph (2) the determination referred to in paragraph (1) contains in full all matters considered as reasons for the decision. Articles 95 and 96 on indemnity are a special right of the suspect, defendant, or convict¹⁶. So it is with rehabilitation. In general, rehabilitation is a process of recovery. Rehabilitation restores something to its original state that was in good condition, but because of something then becomes dysfunctional or damaged.

Law Number 4 of 2009 concerning Mineral and Coal Mining as amended by Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah)."

Thus, the Defendant is sentenced to imprisonment for 1 (one) year and gets a fine of Rp200,000,000.00 (two hundred million rupiah) provided that if the fine is not paid it must be

replaced with imprisonment for 3 (three) months.

CONCLUSION

At the end of the previous chapter, it can be concluded that the validity of laws related to the criminal act of mining without permits in forest areas can reflect the government's efforts to maintain justice, preserve mineral resources, and overcome severe challenges faced by the state due to rampant illegal mining in forest areas. With criminal responsibility against defendants for mining without permits in forest areas according to Indonesian legislation listed in Article 158, Article 159, Article 160 a of the Mining Law and Article 3 of Law Number 8 concerning the Prevention and Eradication of Money Laundering by law enforcement officials at the application stage. Therefore, perpetrators who commit violations without permits will be given administrative sanctions in the form of compensation in accordance with the level of damage caused to the state in the form of rehabilitation costs, restoration of forest conditions, or other necessary actions. So that the criminal application by the judge against the defendant of mining without a permit in the forest area in the case in Decision No. 53/Pid.Sus/2021/PN Wgw is in accordance with Law No. 32 of 2009 concerning Environmental Protection and Management. The judge in his decision applied the appropriate legal basis of the law governing the criminal act of mining without a permit in forest areas and first applied the principle of *restorative justice* as part of the principle of *ultimum remedium*.

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