

Reformulation of Law Enforcement Against Corporations with Underground Mining Business License (Case Number 5499 K/PID.SUS/2024 Jo. 329/PID.SUS/2023/PN.KTP)

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ABSTRACT: Mining Administration crimes have now occurred so much that it has become a serious concern, especially the number of companies that have mining business licenses and Current Budget Activity Plans affected by the investigation process in the Indonesian Police. The pro-justice process actually cannot be applied to corporations that have mining business licenses and Current Budget Activity Plans because there must be prior legal action taken by the Ministry of Energy and Natural Resources Cq. Directorate General, namely administrative efforts in the form of Guidance and Supervision so that in this case there is an overlap of authority and rules which results in uncertainty and legal expediency. In this study using normative juridical research through research on court decisions from the first level to the final decision and from the literature. The result of this research approach is that there is a need for clear provisions to accommodate mining administration crimes specifically for companies that have mining business licenses and Current Budget Activity Plans while still paying attention to public interests, legal interests, and state interests. This is done to realize justice in mining criminal cases both in research cases and cases that may occur in the future.

KEYWORDS: mining, crime, IUP, RKAB, authority, principle of benefit.

I. INTRODUCTION

The Indonesian nation is a large nation that has a vast territory and many islands accompanied by a variety of people who have diverse backgrounds in terms of ethnicity, religion, language, customs, clothing, dances, food and many other things so that there are various kinds of mottos and local wisdom values such as for example: BHINEKA TUNGGAL IKA which means "Different but still one, namely the Unity of Indonesia and there is the value of TEPO SELIRO or TENGGANG RASA, there is also WAWASAN NUSANTARA which is the perspective and attitude of the diverse Indonesian nation with a strategic regional position by prioritizing national unity and unity in organizing the life of the nation, state with the objectives of the Indonesian State as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia.

That in addition to the diversity of human backgrounds - humans in Indonesia, it turns out that the Indonesian Nation has very abundant natural resources both natural resources that exist above and within the surface of the land, and also many natural resources that exist in the oceans. That there are many examples of natural resources in Indonesia, namely all types of wood - wood, all types of materials - metal and non-metal mineral materials, all types of rocks such as coal, all types of fish - fish in the sea, and many more sources - natural resources in the State of Indonesia.

"Natural resources for various communities in Indonesia not only have economic value but also social, cultural and political meaning. Natural resources play an important role in the formation of civilization in human life, so that every culture and ethnicity has its own conception and worldview about the control and management of natural resources. The cosmological conception and worldview of natural resources, especially land, in several ethnic groups in Indonesia have similarities, namely land as an integral entity or as an ecosystem. In general, the management of natural resources carried out by an indigenous community recognizes the existence of various statuses of control and utilization. The form and status of control of natural resources can be divided into four groups, namely: public property (open access), state property (state), private or individual property (private) and communal property (communal)."¹

Juridically, the definition of natural resources is contained in Article 1 paragraph (9) of Law No. 32 of 2009 concerning Environmental Protection and Management, which states that natural resources are elements of the environment consisting of

¹ Hidayat, 2014, *Pengelolaan Sumber Daya Alam Berbasis Kelembagaan Lokal*. Jurnal Sejarah Citra Lekha, Universitas Diponogoro Semarang, hlm 19-32

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biological and non-biological resources which as a whole form a unified ecosystem. There are several opinions regarding the division of natural resources. among others, in terms of the general nature of the ecosystem, it is divided into two major groups, namely terrestrial natural resources (land) and aquatic natural resources (water). "However, in the management of natural resources, three types of natural resources are generally recognized based on their nature, namely:

1. Renewable resources, where the flow of resources depends on management, with some possibility of declining, sustainable or increasing supplies. Examples are soil, forests and wildlife.
2. Non-renewable or deposit resources, which are fixed stocks and natural resources, consist of:
 - a) Physical supplies will be completely depleted. Examples: coal, oil, natural gas.
 - b) Inventory decreases, but can be reused (recycled). Example: metal and rubber group
3. Natural resources that will not run out (continuous or flow resources), which are available on an ongoing basis consist of:
 - a) Its supply is unlimited and is not affected by human actions. Examples: solar energy, tidal energy.
 - b) The supply is unlimited, but is affected by human actions. Examples: landscapes, natural beauty, space and air. Natural resources (SDA) are the grace of God's gift that must be managed properly and correctly in order to provide maximum and sustainable benefits to humans."²

That against the background of Indonesia's social and cultural diversity and the abundance of natural resources, the founding fathers of our nation formulated the Indonesian national philosophy of PANCASILA with five values, namely DIVINETY, HUMANITY, UNITY, COUNTRY, SOCIAL JUSTICE. The main purpose of PANCASILA is for every Indonesian citizen to instill the values in PANCASILA in terms of thinking, acting and or behaving towards others so that the ideals of the nation are achieved.

That after the existence of PANCASILA, then the CODE OF CONSTITUTION was made, namely the 1945 Constitution as part of the national pillars, one of which contains natural resources controlled and owned by the State must be used as widely as possible for the sake of HUMANITY and SOCIAL JUSTICE, namely the values that exist in the PANCASILA PHILOSOPHY. That the values in the 1945 Constitution in question are contained in Chapter XIV on the National Economy and Social Welfare Article 33 paragraph 3 which states: ("The land and water and the natural resources contained therein shall be under the control of the State and shall be used for the greatest prosperity of the people.")³

("Article 33 of the 1945 Constitution is the moral and cultural message in the Constitution of the Republic of Indonesia in the field of economic life. This article does not merely provide instructions on the structure of the economy and the authority of the state to regulate economic activities, but rather reflects an ideal, a belief that is firmly held and consistently fought for by government leaders.")⁴

"Article 33 of the 1945 Constitution as the constitutional basis for natural resource management is 'translated' into various laws and regulations. The 'translation' of Article 33 of the 1945 Constitution into various laws is influenced by various values and interests of the drafters, which may conflict with the true intent of Article 33 of the 1945 Constitution itself. Therefore, the Constitution needs to be used as a 'guiding star' in the creation of various laws in the field of agrarian and natural resource management."⁵

That on the basis of Article 33 paragraph 3 of the 1945 Constitution, the Government subsequently issued laws relating to Natural Resources, one of which is the Mineral and Coal Mining Law (Minerba), namely Law Number 11 of 1967 and then amended by Law Number 4 of 2009 and then there was a third amendment to Law Number 3 of 2020.

("Mohammad Hatta formulated the notion of being controlled by the state in Article 33 of the 1945 Constitution as being controlled by the state which does not mean that the state itself becomes a businessman, entrepreneur or ordernemer. It is more accurate to say that the power of the state lies in making regulations for the smooth running of the economy, regulations that also prohibit the exploitation of the weak by people with capital. In line with this, the Finance and Economic Committee formed by BPUPKI, chaired by Mohammad Hatta, formulated the notion of being controlled by the state as follows:

- 1) The government should be a watchdog and regulator with the safety of the people in mind;
- 2) The larger the company and the greater the number of people who depend on it for their livelihood, the greater the government's participation should be;
- 3) Land must be under the control of the state; and
- 4) Large mining companies are run as state enterprises."⁶

That subsequently from the mineral and coal laws, it turns out that there are still many legal problems starting from land tenure, licensing to the sale of production, all of which are inseparable from the ignorance of the community and / or entrepreneurs that the

² Sukanda Husin, 2014, *Penegakan Hukum Lingkungan Hidup*, Jakarta : Sinar Grafika, hlm. 174

³ Undang-Undang Dasar Tahun 1945

⁴ Bagir Manan, 1995, *Pertumbuhan dan Perkembangan Konstitusi Suatu Negara*, Bandung: Mandar Maju, hlm. 45.

⁵ Yance Arizona, 2011 *Perkembangan Konstitusionalitas Penguasaan Negara Atas Sumber daya Alam Dalam Putusan Mahkamah Konstitusi*, Jurnal Konstitusi, Volume 8, Nomor 3,hlm. 259.

⁶ *Ibid*, hlm. 260

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natural resources contained therein are controlled by the State, which means that all of them belong to the State not to the permit holder or mine, so that the rights of permit holders are only in the management of not mining minerals, this is in accordance with Chapter III concerning Mineral and Coal Control Article 4 paragraphs 1, 2, and 3 in Law No. 3 of 2020 Jo. Law number 4 of 2009, namely: Article 4 paragraph 1 ("Minerals and Coal as non-renewable natural resources are national wealth controlled by the state for the greatest welfare of the people.")

Article 4 paragraph 2 ("Control of Mineral and Coal by the state as referred to in paragraph (1) is organized by the Central Government in accordance with the provisions of this Law").

Article 4 paragraph 3 ("The control as referred to in paragraph (2) is implemented through the functions of policy, regulation, management, and supervision").

That in the practice of mining law, related to technical mining after having a Mining Business License is usually divided into 10 (ten) stages, namely;

1. General Investigation,
2. Exploration
3. Feasibility Study
4. Construction
5. Mining
6. Processing and/or Refining
7. Development and/or Utilization
8. Transportation
9. Sales and
10. Post-mining Activities.

This is in accordance with Article 1 point 1 of Law number 3 of 2020 concerning the definition of Mining, namely:

Mining is part or all stages of activities in the framework, management and exploitation of minerals or coal which include general investigation, exploration, feasibility study, construction, mining, processing and/or refining or development and/or utilization, transportation and sales, and post-mining activities.

That in the management of mining there are usually many disputes between IUP (Mining Business License) holders, especially disputes between Mining Areas (WP), therefore each IUP holder in conducting Mining refers to the Minister of Energy and Mineral Resources Regulation number 26 of 2018 concerning the implementation of good mining principles and supervision of mineral and coal mining and also in terms of mining supervision carried out by the Government of the Republic of Indonesia Cq Ministry of Energy and Mineral Resources will be carried out by the name of Mining Inspectors who have functions and authorities regulated in Chapter XIX concerning guidance, supervision, and community protection article 139 to 144 of the Minerba Mining Law Jo. Government Regulation number 10 of 2010 concerning guidance and supervision of the implementation of mineral and coal mining business management.

That the ongoing guidance and supervision of one of the companies suspected of committing a mining administrative crime by ESDM Officials will be ruled out when the Indonesian Police conducts Pro - Yustisia, whereas in fact the Mineral and Coal Law adheres to the Ultimum Remedium principle (Punishment is the last legal effort) even though the Mineral and Coal Mining Law does not explicitly apply this legal principle as is the case with the Taxation Law and the Environmental Protection and Management Law, But the composition of the article shows that if administrative efforts have been pursued (Temporary cessation of mining) but the IUP Owner still insists on his belief, then Pro-Justice can be followed up in addition to the amendment of the Mineral and Coal Mining Law, namely the previous Law - Law number 4 of 2009 was changed to Law number 3 of 2020 which criminal penalties in criminal provisions are lighter, which previously had a maximum of 10 years was changed to 5 years, and what was aggravated was the maximum fine of Rp. 10,000,000,000, - (ten billion) to a maximum of IDR 100,000,000,000..000.000.000,- (one hundred billion).

That this is the subject of research where in the case that occurred at PT SULTAN RAFLI MANDIRI was reported to the Criminal Investigation Unit of the Police with Article 158 of the Minerba Mining Law jo. article 159 of the Minerba Mining Law jo. Article 161 of the Minerba Mining Law until the case was brought to the Ketapang District Court which was decided at the first level, namely case number 329/Pid.sus/2023/Pn.Ktp dated January 25, 2024 with one of the decisions Acquitting the Defendant (PT. SULTAN RAFLI MANDIRI) therefore from all charges of the Public Prosecutor (vrijpraak) and then on September 06, 2024 was just found guilty of committing the Crime of "conducting Mining Without a Permit" by the Supreme Court of Judges at the Cassation level with case number 5499 K/Pid.sus/2024 whose verdict reads as follows: Granting the cassation request from the Cassation Petitioner / Public Prosecutor at the KETAPANG NEGERI JUSTICE Stating that the Defendant PT SULTAN RAFLI MANDIRI has been proven legally and convincingly guilty of committing the crime of "conducting mining without a permit as referred to in Article 35 which is carried out by a Legal Entity and imposing a fine of Rp.10.000.000.000, - - - -.000.000.000,- (ten billion Rupiah) which shall be implemented at the latest 1 (one) month after the Court Decision obtains permanent legal force

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and if the Defendant does not pay the fine within the time limit as stipulated in the Court Decision, then the assets, property, wealth, income or goods of the Defendant or assets related to the Defendant shall be confiscated by the Public Prosecutor and auctioned to pay the fine.

That the author sees that in the criminal case there is an overlap of authority, namely ongoing supervision and or guidance between the ESDM mining inspector and PT SULTAN RAFLI MANDIRI related to mining outside the Mining Area of PT. SULTAN RAFLI MANDIRI with the pro-justice process carried out by the Police Criminal Investigation Unit (Bareskrim Polri) so that the guidance and supervision actions from the Ministry of Energy and Mineral Resources and the Provincial Office of Energy and Mineral Resources should have taken precedence but were overruled by the Police Criminal Investigation Unit which caused in the Level I (first) Decision the existing evidence presented by the Public Prosecutor in the trial had no evidentiary value which resulted in the articles in the Public Prosecutor's indictment not being proven (*vrijpraak* decision) even though finally in the Cassation Decision the Defendant was found guilty with a fine of Rp.10.000.000,-..000.000.000,- (ten billion Rupiah) which is a very far fine from the demands of the Public Prosecutor at the Attorney General's Office Cq. West Kalimantan High Prosecutor's Office Cq. Ketapang District Attorney, namely: "To impose a fine of Rp.75.000.000.000,- (seventy five billion Rupiah).

That with the background of the legal case mentioned above, the author summarizes the problems, namely: 1) how is the application of the provisions of article 158 of Law number 3 of 2020 Jo Law number 4 of 2009 concerning Mineral and Coal Mining namely mining without a license against corporations that have a mining business license; and 2) How is the ideal formulation related to Law Enforcement on corporations that have licenses in Law number 3 of 2020 Jo Law number 4 of 2009 concerning Mineral and Coal mining . Therefore, the objectives of the problem are: 1) To analyze the norms of Article 158 of Law No. 3 of 2020 Jo Law No. 4 of 2009 concerning Mineral and Coal Mining which contains subjects who carry out mining without a permit; and 2) To analyze and understand how corporations that have a mining business license (IUP) specifically for underground mining but pass through the Mining Business License Area (WIUP) are subject to article 158 of Law number 3 of 2020 Jo Law number 4 of 2009 concerning Mineral and Coal Mining.

II. RESEARCH METHODS

The type of research that the author conducts is Normative - Empirical Research with a statutory approach (*statue* approach), conceptual approach (*analytical and conceptual* approach), and case approach, namely the author examines and analyzes Law - law number 3 of 2020 Jo. Law number 4 of 2009 concerning mineral and coal mining is approached with a case study of a mining criminal case with the example of criminal verdict PERKARA NUMBER 5499 K / PID.SUS / 2024 Jo. 329/ PID.SUS/ 2023/ PN.KTP which the author himself is included in as one of the Attorneys for the Defendant/ Respondent in Cassation/ Convicted.

Normative-Empirical Legal Research (applied law research), which is a research that uses normative-empirical legal case studies in the form of legal behavior products, for example examining the implementation of credit agreements. The subject of study is the implementation or implementation of positive legal provisions and contracts factually in each specific legal event that occurs in society in order to achieve predetermined goals.⁷

Normative Legal Research, which consists of:

1. Research into the principles of law.
2. Research into legal systematics.
3. Research into the degree of legal synchronization.
4. Legal history research.
5. Comparative law research.⁸

That from the above explanation, the author uses a research location in Jakarta. Because the author is directly the attorney for the defendant (corporation) which is the subject of research, the location of the research conducted by the author is only centered on court decisions both at the first level and the cassation level, namely:

1. Decision of the Ketapang District Court number 329/Pid.sus/2023/Pn.Ktp dated January 25, 2024.
2. CASE NUMBER 5499 K/ PID.SUS/ 2024 cassation decision

III.DISCUSSION AND RESULT

A. The application of the provisions of Article 158 of Law Number 3 of 2020 Jo Law Number 4 of 2009 concerning Mineral and Coal Mining to corporations that have mining business licenses.

Mineral and Coal Mining activities are certainly related to permits, both mining business licenses and other permits because in carrying out mining activities there are certainly negative impacts that arise so that the government in the form of making regulations and / or regulations to minimize these negative impacts.

⁷ Abdulkadir Muhammad, *Law and Research*, Bandung: Citra Aditya Bakti p, 52.

⁸ Soerjono Soekanto dan Sri Mamudja, 2001, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, Jakarta : Rajawali Pers

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Every mining business, whether it is related to general mining or oil and gas mining, is required to maintain the sustainability of the carrying capacity and capacity of the environment. This is commonly referred to as the preservation of environmental functions (Article 1 point 5 of Law Number 23 of 1997 concerning Environmental Management).

To ensure the preservation of environmental functions, every company engaged in various fields of activity, especially in the mining sector, is required to do the following.

- a) Companies are required to have an environmental impact assessment (Article 15 paragraph (1) of Law Number 23 Year 1997 on Environmental Management). An environmental impact assessment is a study of the major and important impacts of a planned business and/or activity on the environment that is necessary for the decision-making process regarding the implementation of the business and/or activity (Article 1 point 21 of Law Number 23 of 1997 concerning Environmental Management). Matters that are analyzed include:
 1. climate and air quality;
 2. physiology and geology;
 3. hydrology and water quality;
 4. space, land and soil,
 5. flora and fauna;
 6. social (demographic, economic, socio-cultural) and community health.
- b) Companies are obliged to conduct waste management of business results and/or activities. The person in charge of the business can hand over its waste management to other parties (Article 16 of Law No. 23/1997 on Environmental Management).
- c) Companies are obliged to manage hazardous and toxic materials. The management of hazardous and toxic materials includes: producing, transporting, distributing, storing, using and/or disposing (Article 17 of Law Number 23 Year 1997 on Environmental Management).⁹

That therefore every legal subject in mining activities must not be allowed not to protect the environment, but the principle of utilization of minerals and coal must also be carried out for the welfare of the community and the state so that the balance in managing and protecting the environment is maintained.

1. Arrangement of Article 158 in Law No. 3 of 2020 Jo Law No. 4 of 2009 concerning Mineral and Coal Mining.

That subsequently every legal subject that carries out mining must have a mining business license (IUP) so that it can carry out mining activities. In Article 1 point 7 of Law number 3 of 2020 Jo. Law number 4 of 2009 concerning mineral and coal mining is explained ("Mining Business License, hereinafter referred to as IUP, is a permit to carry out Mining Business.") Furthermore, in article 1 point 6 of the mineral and coal mining law it is explained ("Mining Business is an activity in the context of Mineral or Coal exploitation which includes stages of general investigation, exploration, feasibility study, construction, mining, processing and refining or development and / or utilization, transportation and sales, and post-mining.").

That from the explanation above, several technical regulations have emerged, namely government regulations related to mining business licenses, namely:

- a. Government Regulation of the Republic of Indonesia Number 25 of 2023 concerning Mining Areas.
- b. Government Regulation Number 25 of 2024 concerning the Implementation of Mineral and Coal Mining Business Activities.
- c. Government Regulation No. 55/2010 on the Guidance and Supervision of the Implementation of Mineral and Coal Mining Business Management.
- d. Government Regulation No. 78/2010 on Reclamation and Post-mining.

That with the many technical regulations above so that legal subjects who carry out mining activities that have mining licenses must have spent large resources, both time to take care of permits, technology in exploration and of course a lot of money to finance the management of mining businesses, so according to researchers it is hoped that in the event of a mining administration criminal law dispute, criminal law is used as the last tool in law enforcement (Ultimum Remedium).¹⁰

That further in the case of mining criminal administration law that researchers conduct research, namely, specifically on mining crimes Article 158 Jo. Article 163 of Law number 3 of 2020 Jo. Law number 4 of 2009 concerning Mineral and Coal Mining, where the article is proven guilty at the cassation level against corporations that carry out mining without a permit in accordance with the criminal decision of CASE NUMBER 5499 K / PID.SUS / 2024 dated September 06, 2024 Jo. 329/ PID.SUS/ 2023/ PN.KTP dated January 25, 2024.

That before we examine the decision along with the background of mining administrative law issues, we will first describe Article 158 Jo. Article 163 of Law number 3 of 2020 Jo. Law number 4 of 2009 concerning Mineral and Coal Mining.

⁹ H.Salim HS., 2012, *Hukum Pertambangan di Indonesia*, Jakarta : Raja Grafindo Persada, hlm. 29-30

¹⁰ Bambang Waluyo, 2022, *Penegakan hukum di Indonesia*, Jakarta: Sinar Grafika, hlm. 121.

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("Article 158 of Law number 3 of 2020 is Every person who conducts Mining without a license as referred to in Article 35 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp100,000,000,000.00 (one hundred billion rupiah).

Furthermore, in article 35 of Law number 3 of 2020:

- 1) Mining Business is carried out based on Business Licenses from the Central Government.
- 2) Business Licensing as referred to in paragraph (1) is carried out through granting:
 - a) business identification number;
 - b) standard certificate; and/or
 - c) Permission.
- 3) license as referred to in paragraph (2) letter c consists of:
 - a) IUP;
 - b) IUPK;
 - c) IUPK as a Continuation of Contract Operation Agreement;
 - d) IPR;
 - e) SIPB;
 - f) assignment license;
 - g) Transportation and Sales License;
 - h) IUIP; and
 - i) IUP for Sales.
- 4) The Central Government may delegate the authority to grant Business Licenses as referred to in paragraph (2) to the provincial Regional Government in accordance with the provisions of laws and regulations.

("Article 163 of Law No. 4 of 2009 is

- 1) In the event that the criminal offense as referred to in this chapter is committed by a legal entity, in addition to imprisonment and fine against its management, the punishment that can be imposed on the legal entity is in the form of a fine with aggravation plus 1/3 (one-third) times the maximum provision of the imposed fine.
- 2) In addition to the fine as referred to in paragraph (1), legal entities may be subject to additional punishment in the form of:
 - a) revocation of business license; and/or
 - b) revocation of legal entity status."

2. Implications for corporations that have a mining business license but conduct mining outside the corporation's mining business license area (WIUP)

The criminal case against PT Sultan Rafli Mandiri (SRM) relating to alleged unlicensed mining began with an indictment by the Public Prosecutor based on three alternative articles in Law Number 3 of 2020 in conjunction with Law Number 4 of 2009 concerning Mineral and Coal Mining. In the Ketapang District Court decision, PT SRM was found not guilty of all charges. The panel of judges acquitted the defendant and restored his rights, with the consideration that the evidence submitted was invalid and not convincing enough, especially regarding the report on the measurement of the coordinate points of the underground mine which was considered not to have been carried out by a competent expert.

However, the Supreme Court at the cassation level overturned the District Court's decision and found PT SRM guilty of mining without a license and imposed a fine of Rp10 billion. The cassation judge considered that the report on the results of measuring and taking coordinate points by the Mining Inspector from the Ministry of Energy and Mineral Resources must be considered procedurally valid and is part of the technical supervision function in accordance with statutory regulations.

The conflict between the decisions of the District Court and the Supreme Court reflects a fundamental difference in assessing the validity of the evidence and the competence of the parties conducting the measurements. The court of first instance considered that the report used by the Public Prosecutor was not scientifically valid because it was not supported by competent experts and a recognized methodology. In contrast, the Supreme Court judged that the report was legally valid because it was conducted by an authorized agency and followed mining supervision procedures.

The main issue in this case is the lack of clarity on whether PT SRM actually conducted mining outside its IUP area, and whether the evidentiary process in court was conducted legally and professionally. This divergence of views indicates a conflict between the pro-justice legal process by Police Criminal Investigators and the administrative process by the Ministry of Energy and Mineral Resources, which should complement each other. This raises questions about the extent of the limits of authority and coordination between law enforcement agencies and technical institutions in supervising and enforcing the law against corporations that have mining business licenses.¹¹

¹¹ Prasetyo, Handoyo, (2020), "PERAN DAN FUNGSI STRATEGIS KORPORASI DALAM UPAYA BELA NEGARA." (Dalam buku Bela negara: norma, internalisasi nilai bela negara dan penegakan hukum), Jakarta: Kencana, hlm. 89-96.

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Finally, this contradiction between decisions is highlighted in the context of the application of Article 158 of the Minerba Law to corporations that already have licenses. On the one hand, corporations as license holders should receive legal protection within the scope of administrative guidance and supervision by the Ministry of Energy and Mineral Resources. On the other hand, criminal law enforcement by law enforcement officials must still pay attention to aspects of justice and legal evidentiary procedures. This case is an important study in assessing how criminal law is applied to mining corporations, and how coordination between agencies must be strengthened so as not to cause legal uncertainty.¹²

Researchers summarized the time comparison between the projections conducted by the Police Criminal Investigation Unit and the Ministry of Energy and Mineral Resources Cq. Director General of Mineral and Coal, as follows:

No.	Police investigation event	ESDM RI's guidance and supervision efforts
1	Police report number: LP / B / 0537 / IX / 2021 / SPKT / Bareskrim Polri dated September 08, 2021 with the reported PT. Sultan Rafli Mandiri and the victim PT. Bukit Belawan Tujuh.	Letter of the Ministry of Energy and Mineral Resources Cq. Director General of Mineral and Coal number 214/MB.04.15/DJB/2021 regarding Approval of the Budget Work Plan of PT SULTAN RAFLI MANDIRI dated January 29, 2021.
2	Investigation warrant number: Sprin.sidik/ 438/ IX/ 2021/ Tipidter dated September 16, 2021 and Warrant for commencement of investigation (SPDP) no.SPDP/ 56/ IX/2021/ Tipidter dated September 16, 2021	Letter from the Ministry of Energy and Mineral Resources Cq. Directorate of Mineral and Coal dated February 21, 2022 signed by Indra Yuspier as the coordinator of mineral business guidance at the Directorate of Mineral Business Development and the Attorney General of PT Sultan Rafli Mandiri containing a discussion meeting on the application for share changes and discussion of overlapping areas of PT SULTAN RAFLI MANDIRI.
3	Further investigation warrant number: Sprin.sidik/ 214/ V/ 2022/ Tipidter dated May 18, 2022 and Warrant of commencement of investigation (SPDP) no.SPDP/ 56a/ V/2022/ Tipidter dated May 18, 2022.	Letter of the Ministry of Energy and Mineral Resources Cq. Director of Mineral and Coal Cq. Director of Engineering and Environment / Chief Mine Inspector number B - 2208 / MB.07 / DBT. PT/ 2022 dated April 27, 2022 signed by Sunindiyo Suryo Herdadi as Chief Mine Inspector which contains inviting PT SRM to submit a request to open the police line to the relevant agencies in accordance with applicable laws and regulations so that it can carry out temporary maintenance and maintenance, and then as our study material in evaluating and reopening mining activities.
4		Letter of the Ministry of Energy and Mineral Resources Cq. Director of Mineral and Coal Cq. Director of Engineering and Environment / Chief Mine Inspector number B - 2466 / MB.07 / DBT. PT / 2022 dated May 17, 2022 signed by Sunindiyo Suryo Herdadi as Chief Mine Inspector which contains PT SRM's mining activities can be restarted by taking into account the following matters: Implementation of mining activities must be in accordance with Good Mining Basic technical rules of activities Has received approval for the 2022 RKAB as the 2022 mine. In accordance with the Stipulation of the Ketapang District Court No.628/Pen.Pid/2021/PNKtD dated October 19, 2021 and No.667/Pen.Pid/2021/PN Kip dated November 23, 2021 that the underground mine opening pit (tunnel) and processing and refining plant/facilities are excluded

¹² Witasya Aurelia Sulaeman, Beniharmoni Harefa, dan Handar Subhandi Bakhtiar. (2025). Law Enforcement Against the Crime of Sexual Exploitation of Children in the Legal Systems of Indonesia and Malaysia. *International Journal of Social Welfare and Family Law*, 2 (3), 01–16. <https://doi.org/10.62951/ijsw.v2i3.362>

		from the stipulation, it is deemed necessary to carry out maintenance and care of the underground mine opening pit (tunnel) and processing and refining plant/facilities and other supporting facilities to ensure the operation of mining activities. Install boundary markings in accordance with applicable laws and regulations. Eligibility Do not change or disturb the object as determined by the Ketapang District Court. Based on numbers 1 to 5 above, you can immediately carry out mining activities in accordance with the provisions of the applicable laws and regulations.
5		Letter of the Ministry of Energy and Mineral Resources Cq. Director of Mineral and Coal Cq. Director of Engineering and Environment / Chief Mine Inspector number B - 1.I / MB.07 / DBT. PT / 2022 dated June 07, 2022 signed by Sunindiyo Suryo Herdadi as Chief Mine Inspector which contains the same points as letter number 4 above, namely letter number B - 2466 / MB.07 / DBT. PT / 2022 dated May 17, 2022

That from the attachment and explanation of the attachment that the author describes above, it can be seen related to the date of the start of the police report then the warrant of investigation then the warrant of further investigation twice compared to letters from the Ministry of Energy and Mineral Resources Cq. Director of Mineral and Coal Cq. The Chief Mining Inspector / Director of Engineering and Environment overlaps in authority so that PT SULTAN RAFLI MANDIRI, which is allowed by the Chief Mining Inspector in his letter to carry out mine maintenance activities around the mine, does not dare to carry out these activities because it can lead to allegations of other criminal acts.

3. Analysis in theoretical perspective related to the crime of mining without a special permit for underground mining carried out by corporations that have mining business licenses and the current year's Work Plan and Budget (RKAB) in terms of criminal law enforcement / pro justisia.

That towards law enforcement related to mining without a permit, according to the author, it must be distinguished between corporations that have a mining business license and have approved a Work Plan and Budget (RKAB) for the current year that are mining with corporations that really do not have a mining business license but carry out mining activities because when corporations that have a mining business license and Work Plan and Budget (RKAB) for the current year are carrying out mining activities, there must be a form of guidance and supervision from the Ministry of Energy and Mineral Resources in contrast to corporations that really do not have a permit at all.¹³

That the following will explain the theoretical approach that the author will use in relation to the crime of mining without a special permit for underground mining carried out by a corporation that has a mining business license and a Work Plan and Budget (RKAB) for the current year vide the criminal decision PERKARA NUMBER 5499 K / PID.SUS / 2024 dated September 06, 2024 Jo. 329/ PID.SUS/ 2023/ PN.KTP dated January 25, 2024, namely as follows:

a. Relative theory in the purpose of punishment (Doeltheorieën)

As with the absolute theory, there are also differences of opinion or understanding from scholars, as follows:

- 1) The purpose of punishment in terms of preventing crime (prevention) there are different understandings, namely:
 - a) Some want it to be aimed at the general public, called *algemene preventie* (general prevention);
 - b) Some want it to be directed at the person who commits the crime, known as *speciale preventie* (special prevention).
- 2) In terms of how to achieve the goal of prevention, there are several opinions, including:
 - a) By imposing severe punishment aimed at frightening someone from committing an offense (*algemene preventie*);
 - b) By providing education and guidance aimed at improving the person who commits a crime (*speciale preventie*);
 - c) By removing criminals from society.¹⁴

¹³ Prasetyo, Handoyo. "PENEGAKAN HUKUM TERHADAP PELAKU TINDAK PIDANA PENADAHAN BENDA YANG MENJADI OBJEK JAMINAN FIDUSIA (STUDI PUTUSAN MAHKAMAH KONSTITUSI REPUBLIK INDONESIA NOMOR 18/PUU-XVII/2019)." *National Conference on Law Studies (NCOLS)*. Vol. 2. No. 1. 2020.

¹⁴ Roni Wiyanto, 2012, *Asas – asas Hukum Pidana Indonesia*, Bandung : Mandar Maju, Hal. 114 - 115

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That from the understanding of the relative theory on the purpose of punishment above, it can be used in this thesis writing because the purpose of punishment in the Law on Mineral and Coal Mining, especially in criminal provisions, can be in line with the purpose of punishment, where the purpose of punishment is not only to punish people for mistakes, but whether or not there are benefits from punishing these people because according to this theory the essence of punishment is the benefit for the general public to act and behave and carry out activities must be based on the law.

The criminal case verdict against PT Sultan Rafli Mandiri, as stated in the Supreme Court Decision Number 5499 K/Pid.Sus/2024 jo. Decision of Ketapang District Court Number 329/Pid.Sus/2023, shows a significant difference in the application of punishment between the first level and the cassation level. The Public Prosecutor in his indictment requested that PT Sultan Rafli Mandiri be sentenced to a fine of Rp75 billion for violating Article 158 jo. Article 163 Paragraph (1) of Law No. 3 of 2020 concerning Mineral and Coal Mining. However, the Ketapang District Court acquitted the defendant because he was not proven legally and convincingly to have committed the crime.

In a subsequent development, the Cassation Level Panel of Judges granted the Public Prosecutor's appeal and overturned the District Court's decision. The Supreme Court found PT Sultan Rafli Mandiri guilty of mining without a license and imposed a fine of Rp10 billion. This amount is much lower than the original charges, which shows that the punishment of corporations does not only consider the aspect of retaliation or deterrent effect.

The significant difference between the charges and the final decision indicates that the purpose of punishment in this case is in line with the relative theory in the doctrine of the purpose of punishment (*doeltheorieën*). This theory emphasizes that punishment should be oriented towards social benefits, prevention, and rehabilitation, not just retaliation. In the corporate context, this decision also serves as a warning for companies to be more careful in carrying out mining activities and for law enforcement officials to be more thorough in the investigation and prosecution process.

Thus, the use of relative theory in this context is relevant and can be applied as a theoretical foundation in the writing of the thesis. The purpose of punishment, particularly in the mining sector, should not only be to punish offenses, but also to create legal compliance, environmental protection, and legal certainty in business practices. This reflects that punishment should provide benefits to the wider community and not merely satisfy a retributive sense of justice.

b. Theory of Authority

The focus of the study of the theory of authority is related to the source of authority of the government in carrying out legal acts, both in relation to public law and in relation to private law.

Indroharto, suggests three kinds of authority derived from laws and regulations. The authority includes:

1) Attribution;

Attribution is the granting of authority by the legislator himself to a government organ, either an existing one or a new one altogether, attribution is the authority to make a decision (*besluit*) which is directly derived from the law in a material sense Attribution is also said to be a normal way of obtaining government authority. So it is clear that the authority obtained through attribution by a government organ is an original authority, because it is obtained directly from laws and regulations (mainly the 1945 Constitution).

2) Delegates,

Delegation is the transfer of authority possessed by a government organ to another organ. In delegation contains a handover, namely what was originally the authority of A, henceforth becomes the authority of B. The authority that has been given by the delegator then becomes the responsibility of the recipient of the authority.

3) Mandate.

A mandate is defined as a delegation of authority to a subordinate to make a decision a/n the State Administrative official who gives the mandate The responsibility does not transfer to the mandatary, but the responsibility remains in the hands of the mandate giver, this can be seen from the word as (on behalf of). Thus, all legal consequences arising from the decision issued by the mandatee are the responsibility of the mandatee.¹⁵

The legal problems faced by PT Sultan Rafli Mandiri stem from the overlapping authority between the Ministry of Energy and Mineral Resources and the Indonesian National Police. On the one hand, the Ministry of Energy and Mineral Resources has the authority to conduct guidance and supervision of mining activities based on the Mineral and Coal Mining Law. On the other hand, the Police have the authority to conduct investigations and inquiries as stipulated in the Criminal Procedure Code (Law No. 8 of 1981). This overlap is the starting point for the emergence of conflicts of authority in the law enforcement process against corporations holding IUPs.

Based on the results of document research, PT Sultan Rafli Mandiri has carried out mining activities in accordance with the 2021 RKAB (Activity and Budget Plan) approved by the Ministry of Energy and Mineral Resources. These activities include exploration,

¹⁵ H.Salim HS dan Erkies Septiana Nurbani, 2022, *Penerapan Teori Hukum pada penelitian tesis dan disertasi*, Depok : RajaGrafindo Persada, hlm. 193- 196

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construction, mining operations, processing, and community development. However, on September 8, 2021, PT Sultan Rafli Mandiri was reported by PT Bukit Belawan Tujuh for alleged violations of various articles in the Minerba Law, Environmental Law, and Anti-Money Laundering Law. Shortly after the report, police investigators issued a warrant of investigation against PT. Sultan Rafli Mandiri.

In the midst of the investigation process, the Ministry of Energy and Mineral Resources also took guidance and supervision measures due to allegations that PT Sultan Rafli Mandiri's mining activities exceeded its IUP area. This is evidenced by an official letter from the Directorate of Engineering and Environment of the Ministry of Energy and Mineral Resources, stating that PT SRM was asked to submit a work plan for installing boundary markers, and was allowed to apply for the opening of a police line for mine maintenance purposes. The ministry also stated that it is conducting an internal evaluation of the suspension of mining activities.

From these facts, it is clear that there is a dualism of authority that has the potential to cause harm, both for corporations that are running IUP legally and for reporting parties who feel disadvantaged due to alleged area violations. Therefore, the theory of authority is crucial to be studied further, especially in determining priorities between criminal law enforcement by the police and administrative guidance by the Ministry of Energy and Mineral Resources. The author will discuss in more depth the solution to this overlapping issue in the next section of the paper.

c. Ultimum Remedium Principle

That according to the author, this principle is a principle that must be prioritized for law enforcers, because punishment is a punishment that cannot be revoked, for example, when a legal subject is immediately carried out a pro-justice process and then detention is carried out while at the same time the civil or state administrative legal process is still running and it is proven that the legal subject is innocent, then in the case of detention it cannot be revoked, because the person has been detained. body.

That this is also the object of research on the case of PT. SRM which in the explanation of the theory of authority above there is an overlap of law enforcement (pro iustitia) and administrative efforts of supervision and guidance so that when approached with the principle of ultimum remedium, because the criminal is the last resort, what takes precedence is administrative efforts of supervision and guidance on the basis that when the RKAB (Plan of Activities and Expenditures) of a mining corporation is approved by the Ministry of Energy and Mineral Resources Cq Director General of Mineral and Coal, at that time there is also automatically a form of supervision and guidance, namely CHAPTER XIX concerning MONITORING, SUPERVISION, AND COMMUNITY PROTECTION article 139 to article 144.

d. Lawrence M. Friedman's Legal System Theory

That from the explanation that the author has conveyed while pages 25 to 27 that there is a theory of Lawrence M. Friedman's legal system which is divided into three objectives, namely the existence of legal structure, legal substance and legal culture which become a unity in the legal order in society that complements each other with the aim that the State will run well because the legal system is running well.

That if the theory of Lawrence M. Friedman's legal system is brought closer to the object of the problem that the author examines, namely the overlapping of authority between the police and the Ministry of Energy and Mineral Resources (Director General of Mineral and Coal) related to mining without a permit carried out by PT Sultan Rafli Mandiri, it will be clear that Lawrence M. Friedman's legal system theory is not working properly.

That in the structure of law enforcement there are legal interests in terms of law enforcement carried out by law enforcers will be biased when these law enforcers in their respective authorities carry out their duties in this case one side conducts a form of supervision and guidance, one conducts an investigation in which the victim is a legal object (PT. Sultan Rafli Mandiri) which is being processed both administrative and or pro-iustitia efforts so that the legal goal of creating legal certainty will not be achieved.

That further the substance of the law that refers to the laws and regulations is also biased because of the existence of rules that overlap in authority, namely on the one hand the administrative efforts of supervision and guidance are protected by Law 3 of 2020 Jo. Law 4 of 2009 concerning Mineral and Coal Mining and on the other hand the investigation process is protected by Law No. 8 of 1981 concerning the Criminal Procedure Code so that it must be clarified which one should take precedence because on the one hand there are companies that have made mining investments that cannot carry out mining, on the other hand there are companies whose rights are taken away because their minerals are extracted without permission / against the law of other companies.

That related to legal culture is the action or actions of mining companies will become a habit of carrying out their work properly when the legal structure and legal substance are already running well, and if it is brought closer to PT Sultan Rafli Mandiri it will become a bad habit and become an example to other mining companies that the legal structure and legal substance that collide with each other are currently running and there is no way out related to the problem of the legal structure and legal substance that collide with each other.

e. Theory of Legal Effectiveness

The term legal effectiveness theory comes from the English translation, namely the effectiveness of the legal theory, the Dutch language is called the effectiviteit van de juridische theorie, the German language, namely wirksamkeit der rechtlichen theorie.

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There are three syllables contained in the theory of legal effectiveness, namely theory, effectiveness, and law. In the Big Indonesian Dictionary, there are two terms related to effectiveness, namely effective and effectiveness. Effective means (1) having an effect (as a result, influence, impression), (2) effective or effective, (3) able to bring results, effective (about efforts, actions), (4) coming into force (about laws, regulations). Effectiveness means (1) the state of having an effect, the state of being effective, (2) efficacy; efficacy, (3) success (of an effort, action), and (4) the state of coming into effect (of a law, regulation).¹⁶

Hans Kelsen presents a definition of legal effectiveness. Legal effectiveness is: "Whether or not people in fact act in a way to avoid the sanction threatened by the legal norm, and whether or not the sanction is actually implemented when the conditions are met."¹⁷

Other views on legal effectiveness were expressed by Clearence J. Dias, Howard and Mummers. Clearence J. Dias put forward five conditions for the effectiveness of a legal system. The five conditions include:

1. whether or not the meaning or content of the legal rules is easily captured;
2. The extent to which people in society are aware of the content of the rules in question;
3. efficient and effective mobilization of legal rules achieved with assistance:
 - a. administrative officers who are aware of their obligation to involve themselves in such mobilization efforts;
 - b. citizens who feel involved and feel compelled to participate in the legal mobilization process;
4. the existence of a dispute resolution mechanism that must not only be easily accessible and accessible to every citizen, but must also be effective in resolving disputes; and
5. There is an assumption and recognition among citizens that the rules and institutions of the law are actually effective.¹⁸

That from the above explanation of the theory of legal effectiveness when approached with the problem of PT Sultan Rafli Mandiri, namely the criminal verdict PERKARA NUMBER 5499 K / PID.SUS / 2024 dated September 06, 2024 Jo. 329/ PID.SUS/ 2023/ PN.KTP dated January 25, 2024, it can be concluded that in the author's view the effectiveness of the law is not maximized because in accordance with the theory of the legal system above, both the legal structure, legal substance, and legal culture do not run optimally in the Law on mineral and coal mining so that the biggest loss is in the community itself as an implementer of mineral and coal mining business actors which will later lose to non-tax state revenues (royalties) and other taxes related to mineral and coal mining, so that according to the author the norms in the Mineral and Coal Mining Law must be clear and detailed, especially the issue of prosecuting criminal sanctions for mineral and coal mining.

B. Ideal formulation related to Law Enforcement on corporations that have licenses in Law No. 3 of 2020 Jo Law No. 4 of 2009 concerning Mineral and Coal mining

That in law enforcement against corporations that commit criminal offenses, it is currently regulated in Supreme Court Regulation number 13 of 2016 (Perma 13 of 2016) concerning procedures for handling criminal offenses committed by corporations.

That in Perma 13/2016 there are two articles that explain in detail what is meant by corporate crime and how the form of criminal acts committed by corporations, namely in article 3 and article 4.

Article 3 "Criminal offenses by Corporations are criminal offenses committed by persons based on employment relationships, or based on other relationships, either individually or jointly acting for and on behalf of the Corporation within or outside the Corporate Environment".

Article 4 Paragraph 1

Corporations can be held criminally liable in accordance with the criminal provisions of Corporations in the laws governing Corporations.

Article 4 paragraph 2

In imposing punishment on the Corporation, the Judge may assess the guilt of the Corporation as referred to in paragraph (1), among others:

- a) The Corporation may benefit from the criminal offense or the criminal offense is committed for the benefit of the Corporation;
- b) The corporation allows a criminal offense to occur; or
- c) The corporation did not take the necessary steps to take precautions, prevent greater impact and ensure compliance with applicable legal provisions to avoid the occurrence of criminal acts.

That from the explanation above, the qualifications related to corporate crime are clear and clear because previously the subject of corporate law was rarely prosecuted because the most important thing was the absence of regulations and / or regulations related to corporate crime.

¹⁶ *Ibid.*, hlm. 301 - 302

¹⁷ Hans Kalsen, 2006, *Teori Umum tentang hukum dan negara*, Bandung : Nusa Media, hlm. 39

¹⁸ Marcus Giyo Gunarto, 2008, *Kriminalisasi dan Penalisisasi dalam rangka fungsionalisasi Perda pajak dan redistribusi*, program doktor ilmu hukum Universitas Diponegoro, hlm. 71 – 72.

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That before the existence of Perma 13 of 2016, there were several legal experts who disagreed that corporations could be subject to liability, could not be made the subject of criminal law for the following reasons:

1. When it comes to crimes or criminal offenses, fault (intentionality and negligence) is only found in natural persons.
2. That which is material behavior, which is a condition for the punishment of several kinds of criminal acts, can only be carried out by natural persons (stealing goods, persecuting people, rape and so on; in this regard, it is mentioned by Barda Nawawi Arief in his book entitled Comparative Criminal Law that there are cases which by their nature cannot be carried out by corporations, for example: bigamy, rape, perjury.
3. That crimes and actions in the form of depriving people of their freedom cannot be imposed on corporations, in this regard it is mentioned by Barda Nawawi Arief in his book entitled Comparative Criminal Law that in cases where the only punishment that can be imposed is not possible to be imposed on corporations, for example imprisonment or death penalty."
4. That the prosecution and punishment of the corporation by itself may affect innocent people or create new problems,
5. That in practice, it is not easy to determine the norms on what basis can be decided, whether the management alone or the corporation itself or both should be prosecuted and punished.¹⁹

That the corporation as a legal subject according to the author must still be responsible, especially since many corporations are used as tools in terms of committing criminal acts where the proceeds of crime from the corporation are deliberately disguised or eliminated with the aim that later if law enforcement is not carried out related to the flow of funds, it can be used.

1. Research approach to the form of special legal settlements against corporations that have mining business licenses.

In criminal case Number 5499 K/Pid.Sus/2024 jo. 329/Pid.Sus/2023/PN.KTP, there are fundamental differences in legal considerations between the decisions of the Ketapang District Court and the Supreme Court regarding the corporate criminal liability of PT Sultan Rafli Mandiri (PT SRM). The District Court acquitted PT SRM from the charge of mining without a license, on the basis that the criminal elements were not proven, as well as the absence of proof that the director representing the company, Muhammad Pamar Lubis, was the controller of activities or the direct beneficiary (beneficial owner) of the company.

The District Court's consideration was based on Supreme Court Regulation No. 13/2016, which states that corporations can be convicted if they benefit from criminal acts, allow crimes to occur, or fail to prevent and supervise crimes. However, the Panel of Judges considered that Muhammad Pamar Lubis did not have operational authority and was not included in the influential ownership structure, so he could not be held criminally responsible on behalf of the corporation.

In addition, the District Court considered the evidence in the form of a Measurement and Coordinate Point Collection Report prepared by Antonius Ardi Nugroho from PT Cakra Prisma Semesta as scientifically and legally invalid. This is due to the absence of the involvement of certified experts in the measurement, as well as the non-fulfillment of methodological rules commonly used in underground mining measurements, as stipulated in the Decree of the Minister of Energy and Mineral Resources Number 1827 K/30/MEM/2018.

In contrast, the Supreme Court in its decision stated that the District Court's reasoning was erroneous. *Judex juris* considered that the measurement report by Bareskrim and the Mining Inspector of the Ministry of Energy and Mineral Resources was valid and procedural because it was carried out as part of technical supervision in accordance with PP No. 55/2010. Therefore, the Supreme Court stated that PT SRM was proven to have conducted mining outside its IUP area, and therefore fulfilled the criminal elements in Article 158 jo. Article 163 of the Minerba Law.

The Supreme Court also overturned the District Court's consideration of the element of "every person" in criminal offenses by corporations. The Court emphasized that as a legal entity, PT SRM could be held criminally liable even though the direct management was not proven to be the beneficial owner. This view shows that the corporate liability system can be imposed even if the evidence against the controlling individual is not fully met, provided that the material criminal elements have been proven based on valid and procedural evidence.

The main difference in the decisions of the Ketapang District Court and the Supreme Court regarding the PT Sultan Rafli Mandiri (SRM) case lies in the assessment of the validity of evidence in the form of a coordinate point measurement report. The District Court judges considered that the report prepared by PT Cakra Prisma Semesta did not qualify as *scientific evidence* because it was not prepared by a certified expert and was not based on an officially recognized geospatial methodology. This was reinforced by the fact that expert witnesses were not presented at the trial, and there was no evidence of measurement certification from the author of the report.

In contrast, the Supreme Court stated that the measurement report conducted by PT Cakra Prisma Semesta and supported by Bareskrim and the Mining Inspector of the Ministry of Energy and Mineral Resources was procedurally valid. The measurements were considered part of the technical supervision function in accordance with PP No. 55/2010 and therefore could be recognized as

¹⁹ H. Setiyono, 2003, *Kejahatan Korporasi Analisis Viktimologi dan Pertanggung jawaban Korporasi dalam Hukum Pidana*, Edisi kedua cetakan pertama, banyumedia publishing, Malang, hlm. 10

valid evidence. The Court overlooked formal flaws in the technical measurement process by emphasizing the authority of the institutions involved and the procedures that had been carried out.

The author highlights that the measuring instrument used in the measurement is *Total Station (TS)* and GPS static method, but the process does not follow the technical provisions stipulated in the Decree of the Minister of Energy and Mineral Resources No. 1825 K/30/MEM/2018 and PP No. 45 of 2021. One of them is the obligation to link *Benchmark (BM)* points with the *National Horizontal Control Net (JKHN)* managed by the Geospatial Information Agency. The fact that this process was not carried out indicates procedural weaknesses and potential inaccuracies in the measurement data.

The author also questions why a new BM point must be made, when mining companies usually already have permanent boundary marks. This further demonstrates the potential inconsistency of the technical procedures that form the basis of the first-level legal considerations. Furthermore, the author considers that the overlapping authority between police investigators under KUHAP and administrative supervision by the Ministry of Energy and Mineral Resources has triggered legal confusion in this case.

As a solution, the author proposes that the authority to investigate mining crimes be fully transferred to Civil Servant Investigators (PPNS) under the Directorate General of Mineral and Coal. This is by considering that PPNS better understands the technical aspects of mining, has been given the task of supervision and guidance through law, and there is a state interest in maintaining non-tax state revenue (PNBP) from the mining sector. This proposal refers to the model that has been regulated in the Customs Law, where the authority to investigate is limited to the Customs PPNS.

By adopting the same pattern as in the Customs Law, law enforcement in the mining sector can be carried out in a more targeted manner, avoid inter-agency conflicts, and maintain the sustainability of state revenues from the natural resource sector. In this case, strengthening the administrative and technical position of the Ministry of Energy and Mineral Resources is very important to avoid dualism of counterproductive law enforcement.

2. Theoretical analysis of the formulation of legal settlements in terms of criminal sanctions in Article 158 of Law No. 3 of 2020 Jo Law No. 4 of 2009 concerning Mineral and Coal Mining in terms of the Principles of Benefit, Justice and Balance

That of the 5 (five) theories that the author uses in analyzing the legal problems that occur at PT SRM related to mining without a permit, it is necessary to know that PT SRM's mining is a type of gold mining obtained underground (underground mining) which is handled differently if mining is done above ground.

That the existing theories according to the author explain that it cannot necessarily be against mining that has a Mining Business License (IUP) and Budget Activity Plan (RKAB) in the current year at the same time criminal law enforcement is carried out.

That a corporation that has carried out mining in accordance with the current year's RKAB and also the provisions of Regulation of the Minister of Energy and Mineral Resources Number 26 of 2018 concerning the Implementation of Good Mining Practices and Supervision of Mineral and Coal Mining should be able to carry out the process of investigation and or investigation is the PPNS Ministry of Energy and Mineral Resources not the police because of technical knowledge and also both state losses, investor losses and community and environmental losses that cannot be calculated by the Indonesian Police.

That according to Prof. Abraham Saleng SH., MH. in his testimony as an expert in the decision of PT SRM explained the existence of malicious intent / *mens rea* in mining without a permit against a corporation that has a permit is when the corporation has been given a letter of interest in mining activities from the Ministry of Energy and Mineral Resources Cq. Director General of Mineral and Coal but the corporation is still carrying out mining activities, then the evil intent has been fulfilled. That all laws that will have a criminal impact are only material that must be tested if the formal crime does not need to be tested such as theft because the impact is already visible because the goods have been lost so if mining is material, first study the permit, first study the perpetrator and then find out what the impact is so we agree that crimes related to natural resources are material crimes because they start from company licenses; That Administrative sanctions in Article 151 Jo Article 188 of PP 96 of 2021 there are 49 Articles that can be subject to Administrative sanctions while Criminal sanctions are regulated in Articles 158 to 164 so it is clear that Administrative sanctions are regulated first and then criminal sanctions; That sanctions that can go directly to criminal sanctions without Administrative sanctions are acts of grabbing if a mining business has a permit then it will not be directly subject to criminal sanctions, it will definitely be subject to Administrative sanctions first but if there is no permit it means grabbing and can be directly punished;

That from the explanation of the expert witness in the decision of PT SRM above, it is clear that there are differences in case handling, namely corporations or individuals who do not have a license at all but carry out mining in the area of mining business licenses belonging to other people or other business entities in the sense of grabbing, then if it happens and it is seen that there is mining, law enforcement can be carried out immediately without waiting in advance for Administrative Efforts from the Ministry of Energy and Mineral Resources Cq. Director General of Mineral and Coal.

That in relation to underground mining that has a license and an ongoing RKAB, administrative efforts (supervision and guidance) should be prioritized over the pro-justice process because the vulnerability of crossing the boundaries of the Mining Business License Area is greater than above ground mining because there is certainly no boundary that can be seen physically, which is different from underground mining which must continue to check coordinate points at all times.

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That related to checking the coordinate points, not just anyone can do it, those who can do it are certified in accordance with ESDM Regulation number 33 of 2015 concerning procedures for installing boundary marks for mining business license areas and special mining business license areas for minerals and coal Jo. Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia number 1825 K / 30 / MEM / 2018 concerning Guidelines for Installing Boundary Marks for Mining Business License Areas or Production Operation Special Mining Business License Areas and Government Regulation of the Republic of Indonesia number 45 of 2021 concerning the Implementation of Geospatial Information.

In chapter II of the Mineral and Coal Mining Law regarding the principles and objectives of article 2, it is explained that mineral and/or coal mining is managed based on the principles of benefit, justice and balance. What is meant by the principle of benefits in mining is a principle that shows that mining must be able to provide maximum benefits and advantages for increasing the prosperity and welfare of the people. Then the principle of justice is that mining must be able to provide equal opportunities and opportunities proportionally for all citizens without being excluded. Meanwhile, the principle of balance is that mining activities must pay attention to other fields, especially those directly related to their impact.²⁰

That according to the author and what has been described by Prof. Abram Saleng in his testimony as an expert in the Ketapang District Court Decision that the existence of an administrative sanction article first and then criminal sanctions shows that the State in principle upholds the principle of expediency first in terms of justice, because it wants to show that the welfare of the community must take precedence over the enforcement of criminal law which in fact will only imprison and pay compensation that is not comparable if there are mining companies that manage mining that can benefit the state and also the surrounding community.

CONCLUSIONS

That the application of criminal law that occurs in mining administration crimes must be differentiated to legal subjects who have mining business licenses as well as budget activity plans with those who do not have mining licenses because when corporations and / or communities have mining business licenses as well as budget activity plans running, the norms related to guidance and supervision of corporations and / or communities that have licenses will automatically run and protect these legal subjects from the provisions of general criminal law.

That specifically for law enforcers who carry out law enforcement against mining administration crimes must really master mining techniques because in it there are state rights, namely non-tax state revenues in the form of royalties for mineral and / or coal goods so that overlapping authority between law enforcers does not occur and the principles of benefit, justice and balance in the mandate of the Mineral and Coal Mining Law can be achieved and prosper all parties.

That the application of Article 158 of the Mineral and Coal Mining Law, namely mining without a special permit for underground mining in the process of proof related to measurement and taking coordinate points must be carried out by experts who have measurement certification with scientific evidence and technical regulations related to taking measurements and coordinate points because it is certainly much more difficult to take measurements and coordinate points underground than above ground because taking measurements and coordinate points underground because there are techniques for taking coordinates by taking into account the slope of the land.

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