

Legal Analysis of Criminal Acts of Illegal Mining in Pidie Regency, Aceh (Analysis of Decision Number: 58/Pid.B/Lh/2022/Pn.Sgi)

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Abstract

This article examines the legal criminal act of illegal mining that occurred in Pidie Regency, Aceh, with a focus on the analysis of Decision Number: 58/Pid.B/Lh/2022/Pn.Sgi. Illegal mining is a serious violation of environmental law and criminal law in Indonesia, due to its negative impacts on the ecosystem and the risks it poses to the local community. In this article, an analysis of the legal procedures applied in handling the case is carried out, starting from the investigation stage, prosecution, to the court decision. This study uses a qualitative approach with document analysis and case study methods, with data sources coming from court decisions, related laws and regulations, and academic literature. The results of the analysis show that in Decision Number: 58/Pid.B/Lh/2022/Pn.Sgi, there is an affirmation of the importance of permits in mining activities as well as strict sanctions for perpetrators who violate them. In addition, this article also reviews various factors that influence court decisions, including the evidence presented, the legal framework used, and the environmental impacts caused by illegal mining activities. In conclusion, this article emphasizes the importance of consistent law enforcement and strict supervision of mining activities, in order to prevent similar violations in the future and to maintain environmental sustainability in Aceh.

Keywords: Illegal Mining, Legal Analysis, Pidie Regency, Law Enforcement.

INTRODUCTION

Indonesia is one of the countries in the world with very abundant natural resources compared to other countries in the world. As an archipelagic country with 17,508 islands and a land area of around 2 million km² and an area that stretches along the equator from 95 BT to 141 BT (around 5000 km) and 6 LU to 11 LS, it certainly illustrates how vast the territory of the Republic of Indonesia is. With this very large area, it is certainly also directly proportional to the natural wealth contained in it and on its surface, both renewable and non-renewable.¹

Indonesia as a constitutional state has mandated in the 1945 Constitution in Article 33 paragraph 3 that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, therefore the management of the natural resources contained therein can be empowered as it should be to realize the prosperity of the people and advance general welfare and the creation of a sustainable order of happiness based on integrated national policies that take into account the needs of the current and future generations.

Potential natural resources in the form of mining goods, oil and natural gas and other minerals found on land and on the seabed of the archipelago, are increasingly being explored, excavated and utilized to support development while maintaining environmental balance and

¹Nandang Sudrajat, Theory and Practice of Indonesian Mining According to Law. Yogyakarta, Pustaka Yustisia. Year 2010. page 187

the sustainability of environmental functions and by utilizing advanced technology. Mining development must provide added value and maximum benefits for the welfare of the people and encourage industrial growth in order to strengthen a balanced economic structure and increase national income.²

Natural resource management must be controlled by the state to provide real added value to the national economy, including management in the mining sector. Indonesia is a country that has the potential for wealth from mining materials. The mining materials include gold, silver, copper, oil, natural gas, coal and others. The state's control rights contain the authority to regulate, manage and supervise the management or business of mining materials, and contain rules and obligations to use them as much as possible for the prosperity of the people.³

This mining activity, in addition to generating large profits for its investors, of course also has a positive impact on the country and the surrounding community. Tax revenue from mining business activities can also be a source of income for the country in carrying out physical development and the life of the country. On the other hand, mining activities can open up a large number of jobs, considering the large number of business activities that have very long stages and scope of implementation.

The existence of mining activities in addition to bringing positive impacts also has negative impacts. Where mining activities are always identical to environmental damage and other problems. Work that does not comply with mining operational standards, indifference to environmental problems, or deliberate failure to act as agreed in the contract (product sharing or work contract/reclamation, etc.) or mining activity permits and the emergence of problems with the surrounding community are the root of the problem in the presence of mining activities in an area.

Mining problems do not only arise from official mining activities, but also touch on unofficial mining activities (unlicensed/illegal) or commonly called Illegal Mining. Even mining activities without permits are a factor in the emergence of uncontrolled environmental damage and other problems.⁴

The existence of several companies that conduct mining business without a permit, of course, will harm many parties. The state will certainly experience losses not only in terms of business permits, but income for the tax sector, as well as the consequences that may arise from mining businesses, for example, it can damage the natural ecosystem, and waste that will emerge from mining activities that can damage the environment. Therefore, the state, especially law enforcement in this case, must be present and enforce the law against mining companies that do not have permits or are illegal.

Every mining business of strategic mining materials and vital mining materials according to the Mining and Minerals Law, can only be carried out if it has first obtained a

²Koesnadi Hardjasoemantri, *Environmental Law*, Yogyakarta, Gadjah Mada University Press, 2017, p. 53

³Riswandi. "Resolving Illegal Sand Mining Cases (Case Study of Sand Mining in Gowa Regency)". Faculty of Sharia and Law UIN Alauddin Makassar 2016, page 1

⁴Nandang Sudrajat, *Op. Cit.*, page 78

mining permit. Those who violate the provisions of the Law can be subject to criminal penalties as stipulated in Article 158 of Law Number 4 of 2009, which states: Anyone who carries out mining business without a Mining Business Permit, People's Mining Permit or Special Mining Business Permit 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 imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).

Aceh is one of the areas rich in mining materials, including metal mining/minerals, non-metallic minerals, coal and other minerals. The location of the availability of potential mining materials is spread across almost all regencies/cities in Aceh, one of which is Pidie Regency. Pidie Regency is one of the areas in Aceh Province that is rich in mining materials such as gold, copper, iron sand and other metal minerals. However, illegal mining also occurs in Pidie Regency. The local government has tried to carry out control, supervision and has regional regulations and other devices in the form of technical agencies that have the authority to control the spatial planning of mining areas and supervise mining activities. However, this has not been able to overcome illegal mining activities in Pidie Regency.⁵

One of the cases of Illegal Mining Crime is case number: 58/Pid.B/LH/2022/PN.Sgi, where Satria bin Wagiran (30 years old) lives in gp. Meurandeh Teungoh, Langsa Lama District, Langsa City (defendant I) and Rizki Wahyudi bin Wagiran (21 years old) lives in gp. Selamat, Tenggulun District, Aceh Tamiang Regency (defendant II) carried out illegal gold mining activities and were charged with violating Article 158 in conjunction with Article 35 of Law no. 03 of 2020 concerning amendments to Law of the Republic of Indonesia Number 04 of 2009 concerning mineral and coal mining as amended by Law of the Republic of Indonesia Number 11 of 2020 concerning job creation in conjunction with Article 55 paragraph (1) ke- 1 of the Criminal Code and sentenced to imprisonment for 7 (seven) months each and reduced by the time the defendants were in temporary detention with the order that the defendants remain detained and a fine of Rp. 5 (five) million rupiah for each defendant with the provision that if the fine cannot be paid it will be replaced with imprisonment for 1 (one) month each.

In its decision, the panel of judges sentenced the two defendants to be proven legally and convincingly guilty of committing a criminal act of Mining Business without a Mining Business License (IUP) together. And sentenced each to 6 (six) months in prison and a fine of Rp. 5,000,000 (five million rupiah) with the provision that if the fine is not paid, it will be replaced with 1 (one) month in prison.

Illegal mining is carried out without permits, operational procedures, and regulations from the government. This causes losses to the state because it exploits natural resources illegally, distributes, and sells its mining products illegally, thus avoiding state taxes. This is

⁵Muhammad Hardi, Mussadun. "Spatial Control of Mining Areas Against Illegal Gold Mining Activities in Pidie Regency". *Journal of Regional and Urban Development*. Volume 12 (1): 61–72. March 2016, page 62

what causes cases that fall into the category of illegal mining crimes to often arise. Based on the background above, the author raises the title of this research, namely: "Jurisdictional Analysis of Criminal Acts of Mining Business Without a Permit (Illegal Mining) in Pidie Regency, Aceh (Analysis of Decision Number: 58 / Pid.B / LH / 2022 / PN. Sgi)".

Formulation of the problem

The main problems in this research are:

1. How Mining Law is Regulated in Positive Law?
2. How to Enforce Illegal Mining Law in Cases Number: 58/Pid.B/LH/2022/PN. Sgi ?

Research purposes

The objectives of this research are:

1. To know and study the Mining Legal Regulations in Positive Law
2. To Know and Study the Enforcement of Illegal Mining Law in Cases Number: 58/Pid.B/LH/2022/PN. Sgi

LITERATURE REVIEW

Definition of Mining

The definition of mining according to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) is part or all stages of activities in the context of research, management, and exploitation of minerals or coal which include general investigations, exploration, feasibility studies, mining construction, management and refining, transportation and sales, and post-mining activities.

Mining Area (WP) is an area that has mineral or coal potential that is not bound by government administrative boundaries that are part of the national spatial plan. And the Mining Business Area (WUP) is part of the WP that already has available data, potential, and geological information. And the Mining Business Permit Area (WIUP) is an area given to mining permit holders.

Mineral mining is the mining of mineral collections in the form of ore or rocks, excluding geothermal, oil and natural gas, and groundwater. Minerals are organic compounds that form in nature, which have certain physical and chemical properties and regular crystal structures or their combinations that form rocks, either in loose or solid form. Coal mining is the mining of carbon deposits found in the earth, including solid bitumen, peat, and asphalt rock.

Mining in general is one type of activity that extracts minerals and other mining materials from within the earth, the activity of removing natural resources from within the earth. Mining is the process of taking materials that can be extracted from within the earth and the definition of a mine is a place where mining activities occur.⁶

According to Sukandarrumidi, mining business is all efforts made by a person or legal entity or business entity to take mining materials with the aim of being further utilized for

⁶Salim HS, Mineral and Coal Mining Law. Jakarta, Sinar Grafika, 2012. p. 22

human interests. While mining activities are a series of activities from searching and studying the feasibility to the utilization of minerals, both for the benefit of the company, the surrounding community, and the government (regional and central)⁷

Mining is one type of activity of extracting minerals and other mining materials from the earth. Mineral resources are non-renewable natural resources, meaning that once the mining material is extracted, it cannot be restored or returned to its original state. Mining is the process of taking material that can be extracted from the earth. Mining business is an activity to optimize the use of natural mining resources (mining materials) found in the earth of Indonesia.

The construction of the understanding of minerals as inorganic compounds has the following characteristics:⁸

- a. Physical in nature
- b. Chemical in nature
- c. Non-renewable
- d. Has a certain arrangement of keristas.
- e. If these chemical elements combine or crystallize, they will form rocks.
- f. Formed naturally in nature (natural).

According to Latupono, there are four stages of modern mining activities today, namely as follows:⁹

1. *Prospecting*, aims to look for mining materials that have sales value (metallic or non-metallic minerals).
2. *Exploration*, aims to determine the accuracy of mining reserves. At this stage a feasibility study is carried out.
3. *Development*, is the stage of opening up mining deposits for the next stage, namely production, at this stage the following is carried out:
 - a) cessation of activities if at stage 2 (exploration stage) it is not considered suitable for mining
 - b) environmental impact studies, appropriate technology, and licensing;
 - c) construction of access roads and transportation systems;
 - d) determination of factory location and construction facilities;
 - e) opening of mining land.
4. *Exploitation*, is the mining material production stage.

Types of Mining

In Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law), the types of mining are stated as follows:

1. Mineral Mining

⁷Sukandarrumidi, *Industrial Mineral Materials*, Yogyakarta, Gadjah Mada University Press, 2016, p. 38

⁸Salim, *Op.Cit*, page 25

⁹Latupono, S. "Study of Environmental Damage Due to Sand and Stone Mining in Waeheru Village, District. Ambon Baguala Bay - Ambon City". Gadjah Mada University. Yogyakarta 2015, p. 64

According to Article 1 paragraph (2) of Law Number 4 of 2009 concerning Mineral and Coal Mining, minerals are organic compounds that are formed in nature, which have certain physical and chemical properties and regular crystal structures or their combinations that form rocks, either in loose or solid form. Mineral mining is the mining of mineral collections in the form of ore or rocks, outside geothermal, oil and natural gas, and groundwater. There are 4 (four) groups of mineral mining, namely:

- a. Radioactive mineral mines are minerals that contain the element uranium.
- b. Metallic minerals are minerals that are not transparent and can conduct heat and electricity.
- c. Non-metallic minerals, for example: diamonds, quartz sand, iodine, sulfur, phosphate, magnesite, kaolin, gypsum, quartz stone, and limestone for cement.
- d. Rocks are hard and dense objects that come from the earth, which are not metal

2. Coal Mining

Article 1 number 3 of Law Number 4 of 2009 concerning Mineral and Coal Mining states that coal is a deposit of organic carbon compounds that are formed naturally from plant remains. Coal mining is the mining of carbon deposits found on earth, including solid bitumen, peat, and asphalt rock. Unlike mineral mining, coal mining does not recognize the existence of various classifications.

Based on the mining system used, mining is divided into two types, namely:¹⁰

- a. Surface mining. The selection of the open pit mining system is usually applied to mining materials that are relatively close to the earth. Before carrying out excavation or taking of mining materials, preliminary work must first be carried out such as; cleaning of the mining plan (land clearing), stripping of overburden and excavation or dismantling of mining materials (digging).
- b. Underground mining. The selection of mining methods with underground mining systems is largely determined by several technical factors, the geological conditions of the excavated materials to be mined and other supporting factors.

Based on the mining business permit management carried out, mining is divided into three types, namely:¹¹

1. Class A strategic mining materials consist of: petroleum, asphalt, anthracite, coal, young coal, old coal, bitumen, liquid bitumen, solid bitumen, natural gas, petroleum wax, radium, thorium, uranium, and other radioactive mining materials (including cobalt, nickel and tin).
2. Group B vital mining materials consist of: mercury, antimony, chlorine, arsine, bauxite, iron, bismuth, cerium, gold, diamonds, chromium, manganese, silver, plastic, rhutenium, zinc, copper, lead, titan/titanium, vanadium, tungsten, and other rare metal materials (including barite, sulfur, beryllium, fluorspar, bromine, coundum, cryolite, creolin, crystal, quartz, iodine, and zircon).
3. Class C mining materials consist of sand, fill soil, and gravel.

¹⁰Nandang Sudrajat, Op.Cit, page 189

¹¹Edy Kastro. "Law Enforcement Against Illegal Mining Crimes in the Jurisdiction of the Muara Enim Police Resort", Jurnal Varia Hukum. Edition No. XL Year XXXI March 2019, p.1747

Mining materials and minerals can be distinguished based on how they are formed, namely:¹²

- a. Pegmatite mining materials are mining materials that are formed in the form of intrusions and in diatremes.
- b. Magmatic minerals are mining materials formed from magma found in the earth and located near magma chambers.
- c. Contact metamorphosis mining materials are mining materials that are formed from rocks that are around magma and come into contact with magma so that they change into minerals that have economic value.
- d. Hydrothermal mining materials are mining materials that are formed due to the infiltration of liquid magma that freezes in the cracks of the earth's layer structure. Examples of this material are gold and silver ore that are near the earth's surface. This material is carried by liquid magma through cracks.
- e. Sedimentary mining materials are mining materials that are formed due to the concentration of sediment at the bottom of the river due to the weathering process.
- f. Secondary enrichment mining materials are mining materials that are formed due to concentration due to the dissolution process of weathered rocks.

Based on the original material from which they are formed, mining materials and minerals can be divided into two, namely:

1. Organic minerals are minerals formed from the remains of living things, for example petroleum, coal and natural gas.
2. Inorganic minerals are minerals that are formed from the remains of non-living materials, for example iodine, kaolin, quartz sand, and rocks.

Mining license

The term mining business permit comes from the English translation, namely mining permit. Mining Business Permit (IUP) is "a permit to carry out mining business. Mining business permits (IUP) are regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining, as well as several laws that are described in the form of Government Regulations, including:¹³

1. Government Regulation Number 22 of 2010 concerning Mining Areas
2. Government Regulation Number 23 of 2010 concerning the implementation of mineral and coal mining business activities,
3. Government Regulation Number 55 of 2010 concerning the development and supervision of the implementation of mineral and coal mining business management.
4. Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining.

¹²Rachman, Types of Mining Materials and Minerals. <https://www.kompas.com>. Accessed October 19, 2023

¹³Dedi Kurniawan, Susilo Handoyo, Johan's Kadir Putra. "Law Enforcement Against C Mining Business Actors Who Do Not Have a License in Penajam Paser Utara Regency". *Lex Suprema Journal* Volume 2 Number I March 2020, page 192

Permit Is the granting of legality to a person or a business actor/certain activity, either in the form of a permit or a business registration certificate. Permit is one of the most widely used instruments in administrative law, to direct the behavior of citizens. In addition, permits can also be interpreted as dispensation or release/exemption from a prohibition.¹⁴

There are other terms that are parallel to permission, namely:¹⁵

- a. Dispensation is a State administrative decision that frees an act from the power of regulations that reject the act. So that a legal regulation does not apply to something special (relaxation legis).
- b. License, is a permit that grants the right to run a company. License is used to state a permit that allows someone to run a company with special or special permission.
- c. Concession is a permit related to a large work in which the public interest is closely involved so that in fact the work becomes the government's task, but the government is given the right to organize it to a concessionaire (permit holder) who is not a government official. The form can be contractual or a combination of a license with the granting of a certain status with certain rights and obligations and conditions.

Mining authority is the authority given to an agency/individual to carry out mining activities. Mining authority can be divided into five types, namely:¹⁶

1. General investigation mining authority;
2. Exploration mining authority;
3. Mining exploitation authority;
4. Mining processing and refining authority; and
5. Mining, transportation and sales authority

METHOD

Types of research

This type of research is normative legal research, namely by using a statutory regulatory approach. The focus of normative legal research, in accordance with the unique character of legal science, lies in the legal review or legal study of positive law, which includes three layers of legal science, consisting of legal dogmatics review, namely the review carried out on identification in positive law, especially statutes. While at the level of legal theory, a review is carried out on theories that can be used. The type of research in this study is normative legal research that critically and comprehensively examines the legal enforcement of traffic violations.

Problem Approach

The approach used is the case approach. The author uses a case approach by examining cases related to the issues faced that have permanent legal force.

¹⁴Y. Sri Pudyatmoko, *Licensing: Problems and Improvement Efforts*. Jakarta, Grasindo. 2009. p. 17

¹⁵Ridwan HR., *State Administrative Law*. Jakarta, Raja Grafindo Persada, 2016. p. 196

¹⁶Salim HS, *Law of Mineral and Coal Mining*. , Jakarta Sinar Grafika, 2016. p. 22

Source of Legal Material

Primary legal materials consist of laws and government regulations, court decisions that have permanent legal force, other related regulations such as the Criminal Code, Number 4 of 2009 concerning Mineral and Coal Mining. Secondary legal materials are materials that provide explanations regarding primary legal materials such as research, proceedings related to research. Tertiary legal materials, namely materials that provide instructions or explanations for primary legal materials and secondary materials such as dictionaries, encyclopedias (wikipedia) and tables related to the object of research.

RESULTS AND DISCUSSION

Illegal mining crimes are crimes in mining businesses committed by individuals, groups of people, or companies/legal foundations whose operations do not have permits from government agencies in accordance with applicable regulations, which are subject to criminal sanctions for anyone who, due to their mistakes, violates the prohibition. Illegal mining crimes must also receive serious attention from the police, considering that the task of the Mining and Energy Service is limited to conducting supervision. Meanwhile, the police are the ones who take action.

Although conventional gold mining activities have provided jobs for the community, the impacts are much greater considering the relatively high risks faced by miners. The negative impacts of illegal gold mining activities can be seen, one of which is the physical impact. The first physical impact is damage to the environmental ecosystem. Illegal gold miners practically do not understand at all about the importance of environmental management, so that fertile land turns into a stretch of desert that cannot be planted due to being buried by mining and processing waste. Mining activities carried out by the community conventionally are still very far from aspects of security, safety and occupational health. Then, illegal gold mining activities carried out conventionally have had a very large impact on the level of public health, this is inseparable from the spread of disease, both directly and indirectly from illegal gold mining activities.¹⁷

The rampant crime of illegal mining is certainly driven or caused by several factors. The factors causing the rampant illegal mining are as follows:¹⁸

1. Economic factors.

Economic factors are often used as a strong reason for carrying out illegal mining practices by the community. The tempting results cannot be stopped by the reason for the existence of illegal mining. The difficulty of getting jobs and business opportunities that match the level of expertise or skills of the lower class community. Crime arises due to the existence of unbalanced economic pressures in society.

2. The perpetrator wants to avoid the obligations that have been determined.

¹⁷Novia Rahmawati A Paruki, Ahmad. "The Effectiveness of Illegal Mining Law Enforcement". *Jurnal Batulis Civil Law Review*. Vol 3.Number , 2022, page) 184

¹⁸Adjat Sudrajat. "Criminological Review of Illegal Mining Crimes in Gowa Regency". Faculty of Law, Hasanuddin University, Makassar 2014, p.1

One of the factors that has led to the rampant illegal mining is because the perpetrators want to avoid the obligations that have been determined by the Mining and Energy Service and the local government. that the obligation and awareness of every citizen or legal entity in paying taxes, especially from mining business results, is one of the sources of Regional Original Income (PAD) which is then distributed and allocated through the APBN or APBD to finance development

3. Difficulty in obtaining an IUP (Mining Business Permit).

The complicated and time-consuming licensing process is thought to be a contributing factor to the rise in illegal mining.

4. Lack of socialization regarding laws and regulations.

One of the factors behind the rampant crime of illegal mining is the minimal socialization carried out by the Mining and Energy Service regarding the laws and regulations, which are regulated in Law Number: 4 of 2009 concerning Mineral and Coal Mining.

5. Weak law enforcement

Weak supervision and law enforcement seem to give freedom and do not deter illegal mining perpetrators. This is due to the low number of cases of illegal mining being resolved.

Efforts to combat the rampant crime of illegal mining are:¹⁹

a. Preventive Efforts

In preventive efforts, the emphasis is on eliminating the opportunity for crime to be committed. These preventive efforts are:

- 1) Conducting legal counseling on criminal provisions regarding crimes of mining without a permit/illegal mining.
- 2) Conducting socialization regarding Law Number: 4 of 2009 concerning Mineral and Coal Mining.
- 3) Conducting routine supervision and operations on all mining business activities

b. Repressive Efforts

This effort is carried out when a crime of illegal mining has occurred, the action of which is in the form of law enforcement, namely:

- 1) Take firm action against perpetrators of illegal mining crimes and process them in accordance with applicable laws.
- 2) Confiscate the tools used in carrying out mining activities without a permit, both pumps and heavy equipment such as excavators and lowders.

Considering that mining materials are non-renewable natural resources, all forms of management and utilization must comply with the precautionary principle to guarantee the interests of future generations, maintain the quality of the environment (environmentally aware), in addition to being able to improve the welfare of society in a fair and equitable manner.

¹⁹Ibid, p.5

Mining Legal Regulations in Positive Law

One of Indonesia's natural resources is the abundance of mineral deposits as a gift from God and is a very valuable asset for Indonesia and is a source of foreign exchange for Indonesia. Therefore, its control must be in the hands of the Government as the holder of the mandate from the people and then used as much as possible for the prosperity of the people, which is clearly and firmly stated in the 1945 Constitution Article 33 paragraph (3), that: "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Through this decision, the phrase "controlled by the state" carries the consequence of five obligations by the state, namely:²⁰

- a. Conducting policies (policies)
- b. Management actions (bestuursdaad)
- c. Settings (regulations),
- d. Management (management),
- e. Supervision (toezichthoudensdaad).

Along with the development of development and various government policies, Law Number 11 of 1967 was replaced by the establishment of Law Number 4 of 2009 concerning Mineral and Coal Mining, which was then followed up by Government Regulation Number 22 of 2010 concerning Mining Areas, Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, and Government Regulation Number 55 of 2010 concerning the Development and Supervision of Mineral and Coal Mining Business Activities.

Further developments in accordance with MPR Decree Number IX/MPR/2001 concerning "Agrarian Reform and Natural Resource Management". It is emphasized in Article 4 of MPR Decree Number: IX/MPR/2001 containing the principles of agrarian reform and natural resource management. Agrarian reform and natural resource management are implemented in accordance with the following principles, namely:²¹

- a. Maintain and defend the integrity of the unitary state of the Republic of Indonesia;
- b. Respect and uphold human rights;
- c. Respecting the supremacy of law by accommodating diversity In legal unification;
- d. Prosper the people, especially by improving the quality of Indonesian human resources;
- e. Developing democracy, legal compliance, transparency and optimizing people's participation;
- f. Realizing justice including gender equality in control,
- g. Ownership, use, utilization and maintenance of natural resources;
- h. Maintaining sustainability that can provide optimal benefits, both for the current generation and for future generations, while still paying attention to the environmental carrying capacity and carrying capacity;

²⁰Jerico Lavian Chandra. "Illegal Mining Crimes for Companies That Conduct Mining Without a Permit". Postgraduate Program of the University of Muhammadiyah North Sumatra Medan 2020, p. 34

²¹Ibid, page 36

- i. Carrying out social, sustainability and ecological functions in accordance with local socio-cultural conditions;
- j. Improving integration and coordination between development sectors and regions in implementing agrarian reform and natural resource management;
- k. Recognizing, respecting and protecting the rights of indigenous legal communities and the diversity of national culture and agrarian/natural resources;
- l. Striving for a balance between the rights and obligations of the state, government (central, provincial, district/city, and villages or equivalent), society and individuals;
- m. Implementing decentralization in the form of dividing authority at the national, provincial, district/city and village levels or equivalent.

In essence, the aim of state control over natural resources is to provide real added value to the national economy in an effort to achieve prosperity and welfare of the people in a just manner. Article 3 of Law Number 4 of 2009 concerning Mineral and Coal Mining states the aims of mineral and coal management, namely:

1. Ensure the Effectiveness of the Implementation and Control of Mining Business Activities in an Efficient, Effective and Competitive Manner;
2. Ensuring the Benefits of Mineral and Coal Mining in a Sustainable and Environmentally Conscious Manner;
3. Ensuring the availability of minerals and coal as raw materials and/or as energy sources for domestic needs;
4. Supporting and developing national capabilities to be more competitive at the national, regional and international levels;
5. Increasing the income of local, regional and national communities, as well as creating employment opportunities for the greatest possible welfare of the people;
6. Ensuring Legal Certainty in Organizing Mineral and Coal Mining Business Activities

There are 4 (four) types of principles that apply in mineral and coal mining, namely:

a. Benefit, Justice, and Balance

The principle of benefit in mining is a principle that shows that in carrying out mining, it must be able to provide the greatest possible benefits and advantages for increasing the prosperity and welfare of the people.

The principle of justice is that when carrying out mining, it must be able to provide equal opportunities and opportunities proportionally for all citizens without any exceptions.

The principle of balance is that in carrying out activities, it is mandatory to pay attention to other areas, especially those that are directly related to the impact.

b. Adherence to State Interests

This principle states that in carrying out mining activities, it is oriented towards the interests of the State. Although in carrying out mining efforts using foreign capital, foreign workers, or foreign planning, the activities and results are only for national interests.

c. Participatory, Transparency and Accountability

The participatory principle is a principle that requires that in carrying out mining activities, community participation is needed to formulate policies, management, monitoring and supervision of their implementation.

The principle of transparency is openness in the implementation of mining activities in the hope that the wider community can obtain correct, clear, and honest information. Conversely, the community can provide input to the government.

The principle of accountability is that mining activities are carried out in the correct manner so that they can be accounted for to the state and society.

d. Sustainable and Environmentally Conscious

The principle of sustainability and environmental insight is a principle that in a planned manner integrates economic, environmental and socio-cultural dimensions in the overall mineral and coal mining business to realize present and future prosperity.

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Conceptually, the core and meaning of law enforcement lies in the activity of harmonizing the relationship of values outlined in solid and embodied rules and attitudes as a series of final stage value explanations, to create, maintain, and defend peace in social life. Law enforcement must pay attention to 3 elements, namely legal certainty, legal benefits, and legal justice.

In the context of mining law enforcement when viewed from the substance of the Mining Law which includes its subjects and objects, it is included in the broad definition of law. Therefore, mining law enforcement also includes the influence of administrative law, civil law enforcement, and criminal law enforcement.²²

The benchmark for the effectiveness of law enforcement consists of 5 (five) factors that are closely related to the lives of the community. The condition of law enforcement is influenced by various factors:²³

- a. The legal or legislative factors themselves, in this case related to the consistency of the principles or principles, the process of formulating them, and the level of legal capability in their operationalization.
- b. The resources of law enforcement officers are a key factor in law enforcement;
- c. Adequate facilities and infrastructure;
- d. Community factors, especially community perceptions about law, order, and the function of law enforcement;
- e. Political factors of state control, especially discretion regarding government and interest group intervention in law enforcement efforts.

In case number: 58/Pid.B/LH/2022/PN.Sgi, where the defendant Satria Bin Wagiran (30 years old) a resident of Gp. Meurandeh Teungoh, Langsa Lama District, Langsa City and Rizki Wahyudi Bin Wagiran (21 years old) a resident of Gp. Selamat, Tenggulun District,

²²Edy Kastoro. "Law Enforcement Against Illegal Mining Crimes in the Jurisdiction of the Muara Enim Police Resort", *Jurnal Varia Hukum*. Edition No. XL Year XXXI March 2019, p.174

²³Bambang Sutiyoso, *Justice Reform and Law Enforcement in Indonesia*. Yogyakarta: UII Press. 2010, p. 23

Aceh Tamiang Regency, both are siblings who were arrested on February 2, 2022 to February 4, 2022 on charges of violating Article 89 in conjunction with Article 17 Paragraph (1) letters a, b of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction as amended by Law of the Republic of Indonesia No. 11 of 2020 concerning Job Creation in conjunction with Article 55 Paragraph (1) to 1 in conjunction with Article 56 Paragraph (2) of the Criminal Code or Article 158 in conjunction with Article 35 of the Republic of Indonesia Law Number 03 of 2020 concerning Amendments to the Republic of Indonesia Law Number 04 of 2009 concerning Mineral and Coal Mining as amended by the Republic of Indonesia Law No. 11 of 2020 concerning Job Creation in conjunction with Article 55 paragraph (1) to 1 of the Criminal Code.

The prosecutor demanded that the defendants be sentenced to 7 (seven) months in prison each, minus the time the defendants have been in temporary detention, with the order that the defendants remain in detention, and a fine of Rp. 5 (five) million rupiah for each defendant, with the provision that if the fine cannot be paid, it will be replaced with a prison sentence of 1 (one) month each.

In the trial, legal facts were revealed based on the defendant's statement, witness statements, expert statements and evidence presented at the trial that the defendant was arrested on Wednesday, February 2, 2022 at around 06.00 WIB at the edge of the Alue Riek River KM 26 Gp. Bangkeh District. Geumpang Regency. Pidie Regency together with 3 fellow defendants by the police who received a report from the community that the two defendants and 3 of their colleagues were carrying out illegal gold mining activities using heavy excavator equipment, where the illegal mining activities had been going on for a week.

In its considerations, the panel of judges chose the second alternative charge, namely violating Article 158 in conjunction with Article 35 of the Republic of Indonesia Law Number 03 of 2020 concerning Amendments to the Republic of Indonesia Law Number 04 of 2009 concerning Mineral and Coal Mining as amended by the Republic of Indonesia Law Number 11 of 2020 concerning Job Creation in conjunction with Article 55 paragraph (1) 1 of the Criminal Code, the elements of which are:

1. Each person;

That what is meant by every person is a person, every human being as a legal subject who is suspected of committing a crime. that the term whoever / every person as a criminal element, then what must be considered is whether the person who is brought before this trial is real and in accordance with what is mentioned in the indictment. The Public Prosecutor has brought the Defendants whose identities as stated in the indictment, have been confirmed by the Defendants and based on the statements of other witnesses there is no denial. during the trial the Panel of Judges did not see any error in persona as the subject or perpetrator of the crime. the legal considerations above, the Panel of Judges are of the opinion that the element of every person has been fulfilled

2. Carrying out, ordering to carry out, and participating in carrying out mining activities without an IUP, IPR or IUPK

The elements of doing, ordering to do, and participating in doing are alternative, meaning that if one element is proven, the other elements do not need to be proven again.

- a. that the person who committed the crime is the person who committed the entire contents of the crime
- b. that the person who orders to do / doenpleger is the person who does the act through another person, while the intermediary is only used as a tool. Thus there are two parties, namely the direct maker (manus manistra / auctor physicus), and the indirect maker (manus domina / auctor intellectualis);
- c. that a person who participates (medepleger) according to MvT is a person who intentionally participates in doing or helping something happen. Therefore, the quality of each participant in a crime is the same. Participating in something is:
 - 1) They fulfill all the requirements of a crime;
 - 2) One fulfills the formulation of a crime;
 - 3) Each of them only fulfills part of the offense formula. Requirements for medepleger include:
 - a) There is conscious cooperation, cooperation is carried out intentionally for cooperation and is aimed at things that are prohibited by law.
 - b) There is joint physical implementation, which results in the completion of the crime in question;
- d. that the prohibited act is conducting mining business without IUP, IPR or IUPK. Article 1 number 6 of Law Number 4 of 2009 concerning Mineral and Coal Mining defines mining business as an activity in the context of mineral or coal business which includes stages of general investigation, exploration, feasibility study, construction, mining, processing and refining, transportation and sales, and post-mining;
- e. Mining Business Permit, hereinafter referred to as IUP, is a permit to carry out mining business (Vide Article 1 number 7 of Law Number 4 of 2009 concerning Mineral and Coal Mining). People's Mining Permit, hereinafter referred to as IPR, is a permit to carry out mining business in a people's mining area with limited area and investment (Vide Article 1 number 10 of Law Number 4 of 2009 concerning Mineral and Coal Mining). Special Mining Business Permit, hereinafter referred to as IUPK, is a permit to carry out mining business in a special mining business permit area (Vide Article 1 number 11 of Law Number 4 of 2009 concerning Mineral and Coal Mining);
- f. Based on the facts revealed in the trial which are in accordance with the witness statements, the defendant's statement, and the expert's statement, the Defendant's actions in jointly carrying out gold mining efforts with his colleagues without permission from the authorized party fulfill the elements of participating in carrying out mining efforts without an IUP.

In its decision, the panel of judges stated that Defendant I Satria bin Wagiran and Defendant II Rizki Wahyudi bin Wagiran were proven legally and convincingly guilty of committing a criminal act of mining without a Mining Business License (IUP) together as in the second alternative charge and sentenced the Defendants therefore to imprisonment for 6 (six) months each and a fine of Rp. 5,000,000 (five million rupiah) with the provision that if the fine is not paid it will be replaced with imprisonment for 1 (one) month;

Government policies in the field of natural resource management have not been fully aimed at improving people's welfare. One of them is seen from the government's policies, both at the provincial, district and city levels, not being on the side of granting permits for natural resource management in the region, especially in terms of granting mining business permits. Where in general, the policies made have not been able to accommodate all the aspirations of the community, especially local communities around the mining area to exploit the natural resources in their area, so that it often triggers the emergence of mining practices without a permit (illegal).

According to Alva Viere Niwele,²⁴Efforts to combat the rampant illegal mining practices can be carried out in 2 ways, namely:

1. Penal Efforts

- a. There is a need to improve the capabilities and insight of Polri and TNI resources, especially insight into Indonesian Law that regulates Mining, in order to be able to supervise and overcome illegal gold mining crimes. As the spearhead in law enforcement efforts against illegal gold mining activities, Polri and TNI have a very strategic position considering their main tasks, functions and authorities in conducting investigations and inquiries into criminal acts in the mining sector. Therefore, to optimize efforts to overcome illegal gold mining activities by the community that have occurred for generations, it is necessary to balance it with the readiness of Polri and TNI resources, both in terms of human resources, budget, infrastructure and methods.
- b. improve intensive coordination with related agencies in law enforcement efforts against illegal gold mining perpetrators. In order to realize law enforcement efforts that are in accordance with the law and are able to provide a sense of justice for the community, in the implementation of law enforcement, there needs to be involvement from all elements of law enforcement.
- c. Trying to ensnare the perpetrators of illegal gold mining with other related crimes to provide a deterrent effect to the perpetrators. where in addition to being charged with Article 158 of Law Number 4 of 2009 concerning Mineral and Coal Mining in conjunction with Article 55 of the Criminal Code, the perpetrators can also be charged with Article 98 of Law Number 32 of 2009 concerning Environmental Protection and Management

2. Non Penal Efforts

- a. Increasing intensive coaching efforts for the community and tightening supervision efforts for mining businesses. The regional government as the leading sector in efforts to combat illegal mining activities, is required to be able to carry out its functions and roles in coaching and supervising mining business activities within its scope of authority.

²⁴Alva Viere Niwele, Fioren Mataheru, Iqbal Taufik. "Overcoming Illegal Gold Mining". SANISA: Creative Journal of Law Students, Vol 1 No.1, October 2021, p.65

- b. Conducting routine patrols to carry out sweeps carried out by members of the TNI and Polri around the area, to minimize the emergence of new illegal mining locations.
- c. Encourage local governments to provide convenience for the community in obtaining permits in the mining sector. As mandated in Article 8 of Law Number 4 of 2009 concerning Mineral and Coal Mining, in paragraph (1) letter g it is stated that the authority of the Regency/City government in managing mineral and coal mining, among others, is: development and empowerment of local communities in mining businesses with minerals and coal, among others, is: development and empowerment of local communities in mining business activities by paying attention to environmental sustainability.
- d. Providing outreach to local communities regarding the dangerous impacts of using traditional mining methods, where mercury is used in mining activities, which can have fatal impacts on the health of local communities and the surrounding environment.
- e. Changing the mindset of the community to implement good mining practices that are environmentally aware. Given the problem of illegal mining by the community which is very closely related to the socio-economic conditions of the community, then in efforts to overcome it, a social community approach must be used so that the interests of the community can be accommodated proportionally without ignoring the principles of good and correct mining practices (good mining practice).

CONCLUSION

Illegal gold mining activities carried out by the community in Pidie Aceh Regency have been going on for years. Where the rampant illegal gold mining activities carried out using traditional methods have had a very large impact, not only on the sustainability of the environmental ecosystem, but also on the lives of people living around the mining area, including the threat of mining accidents and the spread of diseases caused by pollution of hazardous chemicals in the soil and water. Even illegal gold mining activities have caused regional income from the mining sector to decrease, disrupted a conducive investment climate and the emergence of various social conflicts,

Based on Article 33 of the 1945 Constitution which mandates that the earth, water, air and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people, the government should really organize and regulate the mining of natural resources, and provide facilities for the lower classes to be actively involved in the management of natural resources so that the goal of prosperity for all the people can be achieved.

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