

## **LEGAL CONSIDERATIONS OF JUDGES IN APPLYING CRIMINAL SANCTIONS TO PERPETRATORS OF THE CRIMINAL ACTS OF MINING WITHOUT A PERMIT**

**Alfath Sandjaya<sup>1\*</sup>, Sujono<sup>2</sup>**

<sup>1,2</sup>Universitas Dirgantara Marsekal Suryadarma, Jakarta, Indonesia  
alfathsandjaya@gmail.com<sup>1\*</sup>, merpatisjn@gmail.com<sup>2</sup>

### **Abstract**

The judge's legal considerations regarding the criminal case of illegal mining in Decision Number 17/Pid.B/LH/2023/Pn.Tdn and Decision Number 119/Pid.Sus-LH/2024/PN.Tdn that the judge in sentencing the defendant is linked to the theory of the legal system, namely: the aspect of the legal structure has not been running optimally due to weak coordination between institutions, limited human resources and technology in supervising mining areas, and the presence of certain officers involved in corrupt practices that hinder the process of strict law enforcement. From the aspect of legal substance, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining does not clearly state the minimum sentence. Therefore, the judge is given the freedom to impose a sentence, unless the law specifically states the regulations that are at least, as short as possible, and as light as possible. From the aspect of legal culture, society is often still permissive towards illegal mining practices, especially in areas that depend on the mining sector as their main source of income. Therefore, legal reform in the mining sector must be carried out comprehensively so that criminalization can truly be an effective instrument in suppressing the number of illegal mining in Indonesia.

**Keywords:** Criminal Sanctions, Mining, Without Permit

**INTRODUCTION**

Mineral and coal mining business activities have an important role in providing real added value for national economic growth and sustainable regional development. Therefore, every mining business activity must have a permit as regulated in Article 35 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining:

- (1) Mining Business is carried out based on Business Permits from the Central Government
- (2) Business Licensing as referred to in paragraph (1) is implemented through granting:
  - a. business registration number;
  - b. standard certificate; and/or
  - c. permission.
- (3) The permit as referred to in paragraph (2) letter c consists of:
  - a. IUP;
  - b. IUPK;
  - c. IUPK as a Continuation of Contract/Agreement Operations;
  - d. IPR;
  - e. SIPB;
  - f. assignment permit;
  - g. Transportation and Sales Permit;
  - h. IUJP; and
  - i. IUP for Sales.
- (4) The Central Government may delegate the authority to grant Business Licensing as referred to in paragraph (2) to the Provincial Government in accordance with the provisions of statutory regulations.

Illegal Mining (PETI) is a criminal act. In law enforcement, it is very closely related to the social and economic problems of poor communities around mining areas, thus creating a dilemma for law enforcement officers in processing illegal mining cases ((Istan, 2022). PETI is a mining business carried out by individuals, groups of people or companies/foundations with legal status whose operations do not have permits from central or regional government agencies in accordance with applicable laws (Junaidi, 2022).

Initially, illegal mining (PETI) in almost all areas of the Republic of Indonesia was carried out by individuals or groups of people, as additional/side businesses in the regions. Increasing economic needs and mining results that were expected to provide hope for a better life, made mining actors shift this secondary business into a primary business (Ranggalawe, et al., 2023).

Mining business activities carried out without a permit are criminal acts. A criminal act is an act that is prohibited by a rule of law, the prohibition of which is accompanied by a threat (sanction) in the form of a criminal act. A criminal act is an act that is prohibited by a rule of law and is threatened with a criminal act, as long as it is remembered in the criminal act that the prohibition is directed at an act, namely a condition or incident caused by a person's negligence, while the criminal threat is directed at the person who caused the incident (Chazawi, 2015).

The criminal threat of mining business activities carried out without a permit is regulated in Article 185 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining: "Any person who carries out Mining without a permit as referred to in Article 35 shall be punished with imprisonment of a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah)."

Based on data from the Ministry of Energy and Mineral Resources (ESDM) until 2023, the total number of illegal mining reports (PETI) spread across Indonesia reached 128 reports. Data from the Indonesian Police report and Expert Statements on PETI Cases until 2023 with

sanctions including a maximum imprisonment of 5 years and a maximum fine of IDR 100 billion. This is stated in Law Number 3 of 2020 in Article 158, namely:

1. Aceh 11 reports
2. Banten 1 report
3. Bengkulu 6 reports
4. Jambi 1 report
5. West Java 3 reports
6. East Java 9 reports
7. West Kalimantan 1 report
8. South Kalimantan 2 reports
9. Central Kalimantan 1 report
10. East Kalimantan 7 reports
11. North Kalimantan 1 report
12. Bangka Belitung Islands 2 reports
13. Riau Islands 1 report
14. Lampung 4 reports
15. Maluku 1 report
16. West Nusa Tenggara 2 reports
17. Riau 24 reports
18. South Sulawesi 1 report
19. Central Sulawesi 1 report
20. Southeast Sulawesi 2 reports
21. North Sulawesi 2 reports
22. West Sumatra 7 reports
23. South Sumatra 26 reports
24. North Sumatra 12 reports

Based on the illegal mining data above, the researcher is interested in this topic. In this thesis, the researcher examines Decision Number 17/PID.B/LH/2023/PN.TDN with the Defendant Imam Mustaqim Bin Abdul Kholil. The Defendant Imam Mustaqim Bin Abdul Kholil was proven legally and convincingly guilty of committing the crime of "carrying out mining without a permit and carrying out mining and carrying heavy equipment and/or other tools that are commonly or reasonably suspected of being used to carry out mining activities and/or transporting mining products in the Forest Area without the Minister's permission" as regulated in the First Article 158 of the Republic of Indonesia Law Number 03 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining and Second Primair Article 89 Paragraph (1) letter b of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction. The verdict states that the criminal sanction is to sentence the Defendant to 3 (three) years imprisonment and a fine of Rp. 1,500,000,000.00 (one billion five hundred million rupiah) with the provision that if the fine is not paid, it will be replaced with imprisonment for 2 (two) months.

The next decision is the Tanjungpandan Court Decision Number 119/Pid.Sus-LH/2024/PN.Tdn with the Defendant Sudirman alias Sudir bin the late. Seri Saleh. The Defendant's actions as regulated and threatened with criminal penalties in Article 158 of the Republic of Indonesia Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral Mining. The decision of the Panel of Judges, namely stating that the Defendant Sudirman alias Sudir Bin the late. Seri Saleh, was proven legally and convincingly guilty of committing the crime of mining without a permit as in the single indictment and sentenced the Defendant therefore to imprisonment for 5 (five) months and a fine of Rp. 1,000,000.00 (one million rupiah) with the provision that if the fine is not paid it is replaced with imprisonment for 1 (one) month.

The problem is 1. How is the regulation of mining crimes? And what are the judge's legal considerations regarding cases of illegal mining crimes in Decision Number 17/Pid.B/LH/2023/Pn.Tdn and Decision Number 119/Pid.Sus-LH/2024/PN.Tdn?

## **RESEARCH METHODS**

The type of research used is normative legal research, namely research conducted by reviewing, summarizing and supplementing with legislation that specifically regulates mining in order to find legal rules, as well as doctrines to answer the legal problems studied. The approaches used are the legislative approach and the conceptual approach. The data used in this study come from secondary data. The data collection techniques and tools used are documentary techniques. The data analysis technique used is qualitative data analysis.

In answering the problem being studied, a researcher definitely needs research materials to then also provide the prescription that should be, there are two types of research material sources, namely primary and secondary. Here are some research source materials that the author uses:

a. Primary legal materials

Primary legal materials are materials that have authority, consisting of legislation, official records or minutes in the loading of legislation and judges' decisions. However, the primary material of this study is legislation, especially the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining and court decisions related to illegal mining.

b. Secondary Legal Materials

The most important secondary legal materials are books, because they contain the basic principles of legal science and the classical views of highly qualified scholars. In addition, secondary legal materials include law books, theses, law dissertations and law journals, as well as legal dictionaries and analysis of court decisions (Marzuki, 2005).

c. Tertiary Legal Materials

Tertiary legal materials support primary and secondary materials such as relevant dictionaries, encyclopedias, and so on.

## **RESULT AND DISCUSSION**

### **A. Regulation of Mining Crimes**

In Article 1 of Law Number 4 of 2009 concerning Mineral and Coal Mining, mining is defined as:

"Some or all stages of activities in the context of research, management, and exploitation of minerals or coal that include general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-mining activities."

Mining crimes are acts that are stated by law as prohibited acts in the context of research, management and business activities of minerals or coal which include general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation, and sales as well as post-mining activities (Sucantra, et al., 2019), as regulated in Law No. 4 of 2009 concerning Mineral and Coal Mining, which can be subject to sanctions for perpetrators of the act, for protection in mineral and coal mining activities and businesses.

Illegal mining or excavation activities carried out by the community or companies without having a permit and not using good and correct mining principles (mining). According to Law Number 4 of 2009 concerning Mineral and Coal Mining, the principle of justice is a principle in the management and utilization of minerals and coal where in the

utilization must provide equal rights and a sense of justice for the community at large. Anyone who carries out mining without having permits issued by the relevant agencies and authorized officials should be subject to sanctions for the crimes committed, namely a maximum imprisonment of 10 years and a maximum fine of 10 billion rupiah.

Mining Crime is one of the special crimes regulated by the Law itself, namely Law Number 4 of 2009 concerning Mineral and Coal Mining. Therefore, all matters related to mining must comply with the Law. The Mining and Coal Law contains (5) main elements, namely: Mining business without a permit, false information, exploration without a permit, production operations without a permit, disrupting mining business owned by others. However, in this case the author does not describe one by one the contents of each article in the mining law, but rather focuses on articles related to mining business permits and articles regarding violations in the mining world.

In the researcher's research, decision number 17/Pid.B/LH/2023/Pn.Tdn, refers to Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining and Article 89 paragraph (1) letter a of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, while in decision number 119/Pid.Sus-LH/2024/PN.Tdn, refers to Article 158 of Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral Mining. According to the researcher, the criminal sanctions in decision number 119/Pid.Sus-LH/2024/PN.Tdn have not provided legal certainty. A judge in finding his law is allowed to reflect on the jurisprudence and opinions of famous legal experts (doctrine). Law functions as a protection of human interests (Mappiasse, 2015). It is through law enforcement that law becomes a reality. In enforcing the law, there are three elements that must always be considered, namely:

1. Legal certainty
2. Benefits
3. Justice

Legal certainty is something new but the values of justice and utility have traditionally existed long before the era of modern law. Gustav Radbruch said that legal certainty is "Scherkeit des Rechts selbst" (legal certainty about the law itself). There are four things that are related to the meaning of legal certainty, including:

1. That the law is positive, which means that the law is legislation (*legality law*).
2. Law is based on facts (*Tatsachsen*), is not based on a formulation of the assessment that will be carried out by the judge, such as goodwill and politeness.
3. That the facts must be formulated clearly to avoid errors in interpretation, and also easy to implement.
4. Positive law cannot be changed frequently.

Another opinion about legal certainty was put forward by Roscoe Pound, as written by Peter Marzuki in his book *Introduction to Legal Science*, in which legal certainty has two meanings, namely:

1. Firstly, it is a general rule to make individuals understand what actions they may and may not take.
2. Second, in the form of legal security for every person from government arbitrariness, with the existence of general rules, individuals can understand what the State may impose or do to each individual.

Legal certainty means that there is consistency and certainty in the judge's decision between one decision and another in the same case that has been decided. So legal certainty is not only in the form of articles in the Law (Marzuki, 2008). The principle of legal certainty is a guarantee that a law must be implemented properly and appropriately because the main purpose of law is certainty. If there is no certainty in it, then the identity and meaning of the

law itself will not be known and if something like that happens, the law will no longer be used as a guideline for behavior by everyone. The existence of legal certainty in a country also causes efforts to regulate its law which are manifested in legislation made by the government. These laws and regulations are the applicable legal system, namely those that are not based on momentary decisions.

The principle of legal certainty is a concept to ensure that the law has been implemented properly so as not to cause any harm to anyone, the law must protect and protect society from various crimes or harassment of individuals or groups and must be used as a guideline for everyone's life. The law is prohibited from being contradictory and must also be formulated in a way that can be understood and comprehended by the general public. For that reason, the understanding of the principle of legal certainty and justice applies without retroactively so as not to damage the existing integrity system and those related to regulations and their implementation. Legal certainty is formed with the hope of providing understanding to the community to always act as well.

The judge's consideration or *Ratio Decidendi* is an argument or reason used by the judge as a legal consideration that becomes the basis before deciding a case.

Regarding law enforcement, the obstacles often faced are:

- a. Lack of inter-agency coordination: For example, between local governments, law enforcement officers, and relevant ministries.
- b. Resource limitations: Authorities often face logistical and personnel constraints in monitoring large mining areas.
- c. The presence of strong actors: Mining crimes often involve actors who have great influence, such as businessmen or officials.
- d. Low public legal awareness: Many local people are involved due to economic factors without realizing the legal impacts and consequences.

To increase the effectiveness of law enforcement, the following steps need to be taken:

- a. Strengthening Law Enforcement Officers: Improving the capabilities of police, prosecutors and judges in handling illegal mining cases.
- b. Increased Surveillance and Enforcement: Using technology such as drones or satellites to monitor illegal mining activities and conducting raids on heavy equipment entering forest areas.
- c. Restorative Approach: In addition to criminal sanctions, an environmental restoration approach through repairing damage also needs to be part of the punishment.
- d. Multi-Party Collaboration: Government, communities, NGOs, and the business world must work together in monitoring and enforcement.
- e. Increasing Legal Awareness: Providing education to the public about the importance of official permits and the impact of damage caused by illegal mining.

Therefore, a preventive approach is needed, such as:

1. Transparent and easily accessible licensing: To avoid illegal mining practices.
2. Empowerment of communities around the mine: Improving community welfare so that they do not get involved in illegal activities.

Law enforcement against mining crimes must be carried out firmly but also inclusively, involving all relevant parties. Clear regulations, strict supervision, and collaboration between the government, law enforcement, and the community are key to overcoming this crime. In addition to criminal sanctions, environmental restoration and prevention efforts must be an integral part of the law enforcement approach.

**B. Judge's Legal Considerations Regarding the Criminal Case of Mining Without a Permit in Decision Number 17/Pid.B/LH/2023/Pn.Tdn and Decision Number 119/Pid.Sus-LH/2024/PN.Tdn**

Mining Crime is one of the special crimes regulated by the Law itself, namely Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Therefore, all matters related to mining must comply with the Law. The Mining and Coal Law contains (5) main elements, namely: Mining business without a permit, false information, exploration without a permit, production operations without a permit, disrupting mining businesses owned by others. However, in this case the author does not describe one by one the contents of each article in the mining law, but rather focuses on articles related to mining business permits and articles regarding violations in the mining world.

The contents of these articles are:

1. Article 158 reads:

"Any person who carries out mining without a permit as referred to in Article 35 shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah)."

There are criminal elements, namely:

- a. The element of every person is every individual Indonesian citizen or business entity in the form of a legal entity or non-legal entity established and domiciled within the jurisdiction of the Unitary State of the Republic of Indonesia that carries out business activities in mining as a legal subject/perpetrator of a criminal act who can be held criminally responsible on the condition that the criminal act/unlawful act committed by him/her.
- b. The element of carrying out mining without IUP, IPR, IUPK is an act against the law in this case carrying out mining without a permit which is interpreted as the same as carrying out illegal mining.

2. Article 159 reads:

"IUP, IUPK, IPR, or SIPB holders who intentionally submit reports as referred to in Article 70 letter e, Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) incorrectly or submit false information shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah)."

There are criminal elements, namely:

- a. The elements of each IUP, IPR or IUPK holder are "individuals or business entities as legal subjects/criminal perpetrators who can be held criminally responsible on the condition that the criminal act/unlawful act committed by them.
- b. The element of intentionally submitting an incorrect IUP, IPR or IUPK report or false information which is interpreted as the same as carrying out illegal mining.

3. Article 160 reads:

"Any person who has an IUP or IUPK at the Exploration activity stage but carries out Production Operation activities shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one hundred billion rupiah)."

There are criminal elements, namely:

- a. The element of every person, namely "person" as a legal subject/perpetrator of a criminal act who can be held criminally responsible on the condition that the act committed is a criminal act/unlawful act.
- b. Elements who intentionally carry out exploration mining without an IUP or IUPK and/or have an Exploration IUP but carry out production operations, namely their

actions are against the law, in this case interpreted as the same as carrying out illegal mining.

4. Article 161 reads:

"Any person who accommodates, utilizes, carries out Processing and/or Purification, Development and/or Utilization, Transportation, Sales of Minerals and/or Coal that do not originate from the holder of an IUP, IUPK, IPR, SIPB or permit as referred to in Article 35 paragraph (3) letter c and letter g, Article 104, or Article 105 shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah)."

There are criminal elements, namely:

- a. The element of every person, namely a person as a legal subject/perpetrator of a criminal act who can be held criminally responsible on the condition that the criminal act/unlawful act is committed by him.
- b. The element as a person or holder of an IUP production operation or IUPK production operation who accommodates, utilizes, processes and refines, transports, sells minerals and coal who is not a holder of an IUP, IUPK, namely his/her actions are against the law in this case carrying out mining without a permit which is interpreted as the same as carrying out illegal mining.

5. Article 162 reads:

"Any person who obstructs or disrupts the Mining Business activities of IUP, IUPK, IPR or SIPB holders who have fulfilled the requirements as referred to in Article 136 paragraph (2) shall be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of IDR 100,000,000.00 (one hundred million rupiah)."

There are criminal elements, namely:

- a. The element of every person, namely a person as a legal subject/perpetrator of a criminal act who can be held criminally responsible on the condition that the criminal act/unlawful act was committed by him.
- b. The element of intentionally acting against the law and having evil intentions (*mens rea*) to disrupt other mining business activities that have fulfilled the requirements.

Regarding law enforcement, law enforcement is an executive task in the institutional structure of a modern state, and is carried out by the bureaucracy of the executive in question, or what is called the law enforcement bureaucracy. The executive with its bureaucracy is part of the chain to realize the plans contained in the regulations (laws) in accordance with the fields handled (welfare state). Law enforcement according to Soerjono Soekanto is an activity to harmonize the relationship of values outlined in the rules, firm views and embody them in attitudes, actions as a series of final stage value descriptions to create peace in social life.

In terms of law enforcement in Indonesia, especially in eradicating corruption, Satjipto Raharjo is of the view that in general we are still stuck in conventional law enforcement methods, including culture. The laws that are implemented are liberal in nature and have a liberal culture that only benefits a small number of people (privileged few) above the "suffering" of many people. To overcome this imbalance and injustice, we can take firm steps (affirmative action). This firm step is by creating a different law enforcement culture, namely a collective culture. Changing individual culture to collective in law enforcement is indeed not easy. Sudikno Mertokusumo said that law functions as a protection of human interests, so that the law must be implemented normally, peacefully, but violations of the law can also occur, so that the law must be enforced so that the law becomes a reality ((Mertokusumo, 2005).

In law enforcement contains three elements, first legal certainty (*rechtssicherheit*), which means how the law is what must apply and must not deviate, or in the proverb even



though this world collapses the law must be enforced (*fiat justitia et pereat mundus*). The law must be able to create legal certainty because the law aims for public order. Second, benefit (*zweckmassigkeit*), because the law is for humans, the implementation of the law or law enforcement must provide benefits or uses for the community, do not let it be because the law is implemented causing public unrest. Third, justice (*gerechtigheit*), that in the implementation of the law or law enforcement must be fair because the law is general and applies to everyone and is equalizing. But the law is not identical to justice because justice is subjective, individualistic and not equalizing.

Law enforcement according to A. Hamid S. Attamimi as quoted by Siswanto Sunarno is essentially the enforcement of legal norms, whether they function as commands (*gebot*, command) or other functions such as giving power (*ermachtigen*, to empower), allowing (*erlauben*, to permit), and deviating (*derogieren*, to derogate). Furthermore, Siswanto Sunarno said that in a country based on material or social law that is determined to advance public welfare and educate the nation's life, the enforcement of laws and regulations cannot be prevented ((Sunarno, 2008).

Andi Hamzah said that law enforcement is called in English Law Enforcement, in Dutch *rechtshandhaving*. He quoted *Handhaving Milieurecht*, 1981, *Handhaving* is the supervision and application (or with the threat) of using administrative, criminal or civil instruments to achieve the arrangement of legal provisions and regulations that apply generally and individually. *Handhaving* includes the law enforcement phase which means repressive law enforcement and the compliance phase which means preventive (Hamzah, 2005).

Koesnadi Hardjasoemantri stated: It should be noted that law enforcement is carried out through various channels with various sanctions, such as administrative sanctions, civil sanctions, and criminal sanctions" (Hardjasoemantri, 2000). Furthermore, Koesnadi Hardjasoemantri said that: Law enforcement is the obligation of the entire community and for this, understanding of rights and obligations is an absolute requirement, the community is not a spectator of how the law is enforced, but the community actively plays a role in law enforcement.

Keith Hawkins stated as quoted by Koesnadi Hardjasoemantri that: Law enforcement can be seen from two systems or strategies, called compliance with conciliatory style as its characteristic and sanctioning with penal style as its characteristic. Another opinion from *Milieurecht* which was also quoted by Koesnadi Hardjasoemantri said that: Investigation and implementation of administrative sanctions or criminal sanctions are the final part (*Sluit stuk*) of law enforcement. What needs to be there first is preventive enforcement, namely supervision of the implementation of regulations. This preventive supervision is aimed at providing information and advice and efforts to convince someone wisely to move from an atmosphere of violation to the stage of fulfilling the provisions of the regulations.

Based on the facts stated in the decision regarding illegal mining, the elements above have all been fulfilled, and after considering all of them, the panel of judges contained in the two decisions, that the defendants were proven to have legally carried out mining business without a permit as stated in Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009.

Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining states that:

"Any person who carries out mining without a permit as referred to in Article 35 shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah)"

Where in the criminal provisions in this article there are elements, namely:

1. Elements of every person

That is, anyone who carries out mining activities without a permit and is able to be held responsible for what they do.

2. Mining business without a permit

Namely, anyone who carries out mining business without a permit as stated in Article 35 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009.

In sentencing, the panel of judges also considered aggravating and mitigating circumstances. By looking at these considerations, the panel of judges also saw actions that were contrary to applicable laws and actions carried out by the defendant also disturbed the community because mining without a permit would result in natural disasters and environmental damage so that in sentencing the panel of judges intended to provide a deterrent effect and not repeat it again.

According to the researcher, the judge who sentenced the defendant was not wrong to impose any sentence of any length as long as it was under the maximum threat. According to the researcher, the purpose of punishment to provide a deterrent effect is included in the combined theory. This combined theory attempts to combine the concepts adopted by the absolute theory and the relative theory. So it can be concluded that the purpose of punishment, namely in addition to the imposition of punishment must create a deterrent effect, must also provide protection and education to the community and the convict.

From the description above, it can be concluded that the purpose of punishment is to achieve improvements in humans or those who commit crimes, especially minor crimes. Meanwhile, for certain crimes that are considered to be able to damage the social and community life order, and it is considered that these criminals can no longer be fixed, then the deterrent or retaliatory nature of a punishment cannot be avoided. This theory on the one hand recognizes the element of retaliation in the imposition of punishment. However, on the other hand, it also recognizes the element of prevention and the element of improving the criminal/perpetrator that is inherent in each punishment. With the emergence of this combined theory, there are differences of opinion among criminal law experts, some emphasize retaliation, some want the elements of retaliation and prevention to be balanced.

A combined theory that emphasizes absolute justice that is realized in retribution, but which is useful for society. The basis of each punishment is severe suffering according to the severity of the act committed by the convict. But to what extent the severity of the punishment and the severity of the act committed by the convict can be measured, is determined by what is useful for society.

Criminalization of perpetrators of illegal mining crimes is one of the law enforcement efforts that aims to provide a deterrent effect, both to the direct perpetrators and to the wider community so that they do not commit similar acts. In the perspective of Lawrence M. Friedman's legal system theory, the effectiveness of criminalization of perpetrators of illegal mining is not only determined by the normative aspects of laws and regulations, but also by three main elements in the legal system, namely legal structure, legal substance, and legal culture.

The legal structure refers to institutions tasked with enforcing the law, such as the police, prosecutors, courts, and mining sector supervisory institutions. In the context of criminalizing illegal mining perpetrators, the effectiveness of law enforcement is highly dependent on how law enforcement officers work professionally and with integrity in handling these cases. However, in practice, various obstacles still often occur in the legal structure, such as weak coordination between institutions, limited human resources and technology in supervising mining areas, and the presence of certain officers involved in corrupt practices that hinder the process of strict law enforcement. If the legal structure does not function properly, then criminalization will not be effective in providing a deterrent effect for perpetrators of illegal mining crimes.

In addition to the legal structure, the substance of the law is also an important factor in the effectiveness of criminal punishment. The substance of the law includes the rules governing the crime of illegal mining, including the criminal sanctions applied. In Indonesian positive law, the regulation regarding illegal mining can be found in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. This law stipulates that anyone who carries out mining business without a permit can be subject to criminal sanctions with the threat of imprisonment and quite heavy fines. However, in practice, many illegal mining perpetrators only receive light sentences or even go free due to legal loopholes or lack of strong evidence in court. If the substance of the law is not applied consistently and firmly, then criminal punishment will not provide a maximum deterrent effect.

In Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the article states: "Any person who carries out Mining without a permit as referred to in Article 35 shall be punished with imprisonment of up to 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah)". While the law does not clearly state the minimum sentence. Therefore, judges are given the freedom to impose sentences, unless the law specifically states the regulations that are at least, as short as possible, and as light as possible.

The third aspect of Friedman's legal system theory is legal culture, namely the attitude and perception of society towards the law. In the case of illegal mining, the legal culture of society is often still permissive towards mining practices without permits, especially in areas that depend on the mining sector as their main livelihood. Many people consider illegal mining to be an economic solution, without realizing the environmental impacts it causes. In addition, the support of certain officials and big businessmen who finance illegal mining operations further strengthens the legal culture that does not support a deterrent effect for the perpetrators. Therefore, in addition to implementing strict law enforcement, there needs to be an effort to change the legal culture through socialization, education, and community empowerment so that they understand the importance of law enforcement in the mining sector.

In relation to the deterrent effect, effective punishment does not only rely on criminal sanctions in the form of imprisonment and fines, but must also be accompanied by a more comprehensive prevention strategy. One way to increase the deterrent effect is to apply additional penalties such as confiscation of assets resulting from crime, revocation of business licenses for corporations involved, and strict supervision of areas prone to illegal mining. In addition, the application of the principle of restorative justice in cases of illegal mining can also be an alternative to ensure that punishment is not only oriented towards punishment alone, but also towards restoring environmental damage that has occurred.

Thus, in the perspective of Lawrence M. Friedman's legal system theory, the effectiveness of criminal punishment against perpetrators of illegal mining crimes is highly dependent on the synergy between a strong legal structure, firm and consistent legal substance, and a legal culture that supports law enforcement. Without improvements in these three aspects, criminal punishment will not provide an optimal deterrent effect, and illegal mining practices will continue to occur with increasingly complex modes. Therefore, legal reform in the mining sector must be carried out comprehensively so that criminal punishment truly becomes an effective instrument in suppressing the number of illegal mining in Indonesia.

## **CONCLUSION**

The regulation of mining crimes means that anyone who will carry out mining activities must first request permission from the State/government. If mining activities occur and

the perpetrator does not have a permit, then his actions are a crime regulated in Article 158 of Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law of the Republic of Indonesia Number 4 of 2009 concerning Mining and Coal.

The judge's legal considerations regarding the case of illegal mining in Decision Number 17/Pid.B/LH/2023/Pn.Tdn and Decision Number 119/Pid.Sus-LH/2024/PN.Tdn that the judge in sentencing the defendant was not wrong to impose a sentence of any length as long as it is under the maximum threat. According to researchers, the purpose of punishment to provide a deterrent effect is included in the combined theory. This combined theory attempts to combine the concepts adopted by the absolute theory and the relative theory. So it can be concluded that the purpose of punishment, namely in addition to the imposition of a sentence must create a deterrent effect, must also provide protection and education to the community and the convict. In the theory of the legal system, the aspect of the legal structure has not been running optimally due to weak coordination between institutions, limited human resources and technology in supervising mining areas, and the presence of officers involved in corrupt practices that hinder the process of strict law enforcement.

From the aspect of legal substance in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the minimum sentence is not clearly stated. Therefore, judges are given the freedom to impose sentences, unless the law specifically states the regulations that are at least, as short as possible, and as light as possible. From the aspect of legal culture, society is often still permissive towards illegal mining practices, especially in areas that depend on the mining sector as their main livelihood. Therefore, legal reform in the mining sector must be carried out comprehensively so that criminalization truly becomes an effective instrument in reducing the number of illegal mining in Indonesia.

## REFERENCES

- Achmad, A. (2010). *Menguak teori hukum (Legal Theory) & teori peradilan (Judicialprudence) termasuk undang-undang (Legisprudence) Volume I pemahaman awal*. Jakarta: Kencana Prenada Media Group.
- Achmadi, C. A. (2023). Tidak diterapkannya Pasal 362 KUHP dalam perkara penambangan tanpa izin (Studi Putusan Nomor 124/Pid. Sus/2021/Pn. Tdn). *Legal Standing: Jurnal Ilmu Hukum*, 7(2), 283-296.
- Akib, H., & Tarigan, A. (2008). Artikulasi konsep implementasi kebijakan: Perspektif, model dan kriteria pengukurannya. *Jurnal Baca, 1*, Universitas Pepabari Makassar.
- Ali, A. (2010). *Menguak teori hukum (Legal Theory) & teori peradilan (Judicialprudence) termasuk undang-undang (Legisprudence) Volume I pemahaman awal*. Jakarta: Kencana Prenada Media Group.
- Angelina, C., Ismail, A., Kristi, A., Febrina, D., & Beneficia, M. (2023). Analisis kondisi sumber daya mineral Brown Canyon Semarang. *Jurnal Pengendalian Pencemaran Lingkungan (JPPL)*, 5(2), 196-203.
- Chazawi, A. (2015). *Pelajaran hukum pidana bagian I*. Jakarta: Rajawali Press.
- Efendi, E. (2011). *Hukum pidana Indonesia*. Bandung: Refika Aditama.
- Hamzah, A. (2005). *Hukum acara pidana Indonesia*. Jakarta: Sinar Grafika.
- Hardjosoemantri, K. (2000). *Hukum tata lingkungan*. Yogyakarta: Gajah Mada University Press.
- Herdiansyah, H. (2010). *Metode penelitian kualitatif*. Jakarta: Salemba Humanika.
- Kartodihardjo, H. (2006). Masalah kelembagaan dan arah kebijakan rehabilitasi hutan dan lahan. *Jurnal Analisis Kebijakan Kehutanan*, 3(1), 29-41. <https://doi.org/10.20886/jakk.2006.Vol.3.No.1>
- Lamintang, P. A. F. (1984). *Hukum penitensier Indonesia*. Bandung: Armico.

- Lamintang, P. A. F. (1987). *Hukum pidana I: Hukum pidana material bagian umum*. Bandung: Binacipta.
- Mahmud Marzuki, P. (2005). *Penelitian hukum*. Jakarta: Kencana Prenada Media Group.
- Mahmud Marzuki, P. (2008). *Pengantar ilmu hukum*. Jakarta: Kencana Prenada Media Group.
- Mappiasse, S. (2015). *Logika hukum pertimbangan putusan hakim*. Jakarta: Dabara.
- Mertokusumo, S. (2005). *Penemuan hukum (sebuah pengantar)*. Yogyakarta: Cahaya Atma Pustaka.
- Muladi. (1985). *Lembaga pidana bersyarat*. Bandung: Alumni.
- Muladi, & Arief, B. N. (1998). *Teori-teori dan kebijakan pidana*. Bandung: Alumni.
- Narcky Ranggalawe, G., Susanti, I., & Fahmi, K. (2023). Dilema penegakan hukum penyelesaian pertambangan tanpa izin. *Marwah Hukum*, 1(1).
- Nawawi Arief, B. (2002). *Bunga rampai kebijakan hukum pidana*. Bandung: Citra Aditya Bakti.
- Poerwadarminta, W. J. S. (2006). *Kamus umum bahasa Indonesia* (Edisi Ketiga). Jakarta: Balai Pustaka.
- Putusan Nomor 17/Pid.B/LH/2023/Pn.Tdn.
- Putusan Nomor 119/Pid.Sus-LH/2024/PN.Tdn.
- Rahardjo, S. (2008). *Membedah hukum progresif*. Jakarta: Kompas.
- Saleh, R. (1983). *Mengadili sebagai pergulatan kemanusiaan*. Jakarta: Aksara Baru.
- Saleh, R. (1996). *Pembinaan cita hukum dan asas-asas hukum nasional*. Jakarta: Karya Dunia Fikir.
- Salim, H. S. (2004). *Hukum pertambangan Indonesia* (Cet. III). Jakarta: Raja Grafindo Persada.
- Sanawiah, I. (2022). Penegakan hukum pertambangan tanpa izin berbasis transendental. *Satya Dharma: Jurnal Ilmu Hukum*, 5(1).
- Samosir, D. (2002). *Fungsi pidana penjara dalam sistem pemidanaan di Indonesia*. Bandung: Putra Abardin CV.
- Soedarto. (1981). *Kapita selekta hukum pidana*. Bandung: Alumni.
- Sphon, C. (2009). *How do judges decide? The search for fairness and justice in punishment*. California: Sage Publication, Inc.
- Suparni, N. (2007). *Eksistensi pidana denda dalam sistem pidana dan pemidanaan*. Jakarta: Sinar Grafika.
- Supramono, G. (2012). *Hukum pertambangan mineral dan batu bara di Indonesia*. Jakarta: Rineka Cipta.
- Sunarno, S. (2008). *Hukum pemerintahan daerah di Indonesia*. Jakarta: PT. Sinar Grafika.
- Sucantra, I. M. B., Sujana, I. N., & Suryani, L. P. (2019). Sanksi pidana terhadap tindak pidana pertambangan (Menurut Undang-Undang No. 4 Tahun 2009 tentang Minerba). *Jurnal Analogi Hukum*, 1(3). Denpasar: Warmadewa.
- Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara.