Corporate Criminal Liability Policy in Mining Crimes in Indonesia

Freddy Roesthody Hendrawan[1]*

[1]Universitas Jenderal Soedirman, Purwokerto, Indonesia.

Abstract. The impacts of mining activities that do not pay attention to the environment are numerous, and those who feel the consequences are not the miners, but rather local communities. The purpose of this study is to analyze corporate criminal liability for mining crimes in Indonesia. The research method used is a normative juridical approach. Data collection used library research. Qualitative analysis was employed. The results indicate that criminal law policy in addressing crimes in the mining sector emphasizes corporate responsibility, including the types of criminal sanctions imposed and the actions taken, so that the criminal provisions in the Mineral and Coal Mining Law can function as a whole. The concept of policy reform regarding mining crimes provides a strong basis for law enforcement officials in making appropriate decisions. The liability of companies involved in various forms of mining crimes is regulated in the Mineral and Coal Mining Law, particularly in Articles 151, 158, 159, 160, 161B, and 164.
Keywords: Criminal Liability; Policy; Corporations; Mining Crimes.

1 Introduction

Handling crime through criminal law is essentially part of the effort to enforce the law, especially in the context of criminal law enforcement. Therefore, it is often stated that criminal law policy or politics is also an element of law enforcement policy. In a broader sense, criminal law policy encompasses various aspects, including material criminal law, formal criminal law, and criminal enforcement law. Therefore, steps to overcome crime can be taken through a policy approach, which means first, there is an integration between criminal policy and social policy; second, there is an integration between crime prevention efforts, both correctional and non-penal. According to Marc Ansel, criminal law policy is a science that aims to compile or formulate positive law in a better way than before [1]. Addressing emerging environmental problems requires strong, consistent, and firm environmental law enforcement, which is expected to prevent and address various environmental issues. Therefore, the government establishes regulations to prevent environmental damage, so the government also participates in mining activities through the granting of permits. The regulation of the authority of district/city regional governments in

* Corresponding author: freddy.hendrawan@mhs.unsoed.ac.id

managing people's mining refers to Law Number 4 of 2009 concerning Mineral and Coal Mining in conjunction with Law Number 3 of 2020 concerning Mineral and Coal Mining, which stipulates the existence of regional regulations as further provisions, as well as a legal basis and requirement for district/city regional governments in managing people's mining [2].

The impacts of mining activities that do not pay attention to the environment are numerous, and those who feel the consequences are not the miners, but rather local communities. This occurs because mining activities are often carried out without considering the impact on the ecosystem. In general, mining businesses exploit both on land and in rivers using heavy machinery. The use of this heavy equipment causes the formation of large holes from the excavations that reach a depth of 3 to 4 meters. If these former excavations are not reclaimed by the business owner, they can cause damage to the surrounding environment [3]. Violations committed by corporations are representative of actions carried out by employers or corporations. This means that if workers or managers commit a crime in mining, then criminal liability can be imposed on the employer or corporation. Criminal liability can also be imposed on the employer or corporation based on the consideration of the existence of an employment relationship and the actions taken are within the scope of their work through that employment relationship.

Corporate mining crimes in Indonesia, involving multiple actors, are often linked to illegal mining and mining permit corruption, involving various parties from the government, businesses, and the community. These cases frequently involve bribery, misappropriation of funds, embezzlement, and fictitious activities. Officials authorized to issue permits, supervise, and enforce the law can also be involved in corruption, such as granting permits without meeting requirements, accepting bribes, or allowing illegal activities. Meanwhile, companies or individuals conducting mining activities without permits (illegally) or misusing existing permits can also engage in bribery for profit.

2 Methods

This exploration approach is structured using a normative juridical exploration system [4], videlicet exploration concentrated on examining the operation of rules or morals in positive law. Data collection styles used to gain data in this study include library exploration, a study conducted to gather primary and secondary legal accoutrements to help in developing conversations on commercial felonious liability programs in mining crimes. The data attained are anatomized using qualitative styles, videlicet the methodical discussion and elaboration of exploration data attained grounded on legal morals or legal principles, propositions, and legal doctrines. Through this data analysis, it's hoped that at the end of the study, clarity will be achieved regarding the issues bandied and conclusions can be drawn [5].

3 Results and discussions

3.1 Corporate Crime in the New Criminal Code (Law No. 1 of 2023)

The Criminal Code (KUHP), as the parent of criminal law regulations that are still in force today, qualifies criminal acts into 2 (two), namely crimes and violations. Most special laws do not mention/determine the qualifications of criminal acts as crimes or violations, so that legally it can cause problems in enforcing general rules of the Criminal Code that are not specifically regulated in special laws outside the Criminal Code. Law Number 4 of 2009 concerning Mineral and Coal Mining in conjunction with Law Number 3 of 2020 concerning Mineral and Coal Mining is a clear example of a law outside the Criminal Code that does not determine the qualifications of offenses including criminal offenses or violation offenses. The qualification of offenses is important to regulate because it is related to Criminal

Procedure Law in the future, whether it meets the criteria of error with an act in the form of intent or negligence of the perpetrator, both in criminal acts and in the form of violations. The criminal justice system, as part of the judicial power in Indonesia, functions to enforce substantive legal regulations. Therefore, in carrying out its functions, the guidelines in substantive criminal law provisions must be applied. Mining criminal provisions, in addition to specifying individuals as legal subjects, also mention corporations as legal subjects. Corporate crime represents a new dimension of crime, is highly dangerous and produces a far greater and more widespread number of victims, similar to crimes that threaten environmental sustainability and energy sources.

A corporation is a body or organization that is a legal subject consisting of a group of people who join together who have legal rights and obligations for a certain purpose [6] which means that as a legal creation like humans, a corporation has rights and obligations, or a corporation will become a legal subject if it has rights and obligations. Corporations according to the text of Law Number 1 of 2023 concerning the Criminal Code (KUHP) are criminal subjects which are legal entities such as limited liability companies, foundations, cooperatives, state-owned enterprises, regionally-owned enterprises or other forms that are equated according to statutory regulations (such as firms and commodity associations). Some of the characteristics of a corporation are having its own assets, having goals, having rights and obligations, having continuity that is separate from the people who run the corporation and changing corporate management. The definition of people in this case is the administrators or employees who are appointed based on the articles of association and their amendments and based on rank and work agreements in the corporation [7]. Thus, a corporation is an association of people carrying out an activity which is either a legal entity or not a legal entity and has objectives, rights and obligations as well as continuity related to its existence.

Corporate crime is stated by Simpson, citing the opinion of Jhon Barithwaite as a prohibited and punishable act committed by a corporation or employee acting on behalf of the corporation. Corporate crime is a criminal responsibility resulting from actions committed by directors and/or employees who are considered to represent the corporation either individually or jointly. Corporate crime is related to prohibited acts that are separated between criminal acts (felonious act) and criminal responsibility (felonious responsibility or felonious liability) [8]. Thus, the determination of a crime as a corporation so that it becomes corporate responsibility is based on the existence of large profits obtained by the corporation or large losses to society in economic and fiscal crimes so that criminal acts can be carried out on corporate administrators and require the corporation to comply with regulations and not repeat criminal acts. In Law Number 1 of 2023 concerning the Criminal Code (KUHP), it is stated that the definition of corporate crime is a criminal act committed by administrators who have a functional position in the corporate structure or people who, based on work relationships or other relationships, act for and on behalf of interests within the scope of the corporation's business or activities, either individually or jointly. The establishment of this Criminal Code is to fulfill the needs of society in accordance with the development of social, national and state life and in order to realize the national criminal law of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution. This new Criminal Code comes into effect after 3 (three) years from the date of its enactment, with reference to 4 (four) visions, namely the recodification of criminal law, the democratization of criminal law, the consolidation of criminal law and the adaptation and harmonization of various legal developments that occur.

In Law Number 1 of 2023 concerning the Criminal Code (KUHP), it is stated that the definition of corporate crime is a crime committed by managers who have a functional position in the corporate structure or people who, based on work relationships or other relationships [9], act for and on behalf of interests within the scope of corporate business or activities, either individually or together. The establishment of this Criminal Code is to meet the needs of society in accordance with the development of social, national and state life and in order to realize the national criminal law of the Unitary State of the Republic of Indonesia based on Pancasila and the 1945 Constitution. This new Criminal Code comes into effect after 3 (three) years from the date of promulgation, with reference to 4 (four) visions, namely; recodification of criminal law, democratization of criminal law, consolidation of criminal law and adaptation and harmonization to various legal developments that occur.

3.2 Illegal Mining and Its Legal Consequences

Law Number 1 of 2023 concerning the Criminal Code contains articles related to corporate liability written in Articles 12, 20, 36 and 37 as well as in Articles 45 to 50. One form of corporation in question is in the form of a firm or partnership, actions carried out by managers who have functional positions in the organizational structure, control holders and owners and within the scope of business activities according to the articles of association. Meanwhile, in Articles 12, 20, 36 and 38 of Law Number 1 of 2023 concerning the Criminal Code, a person is declared to have committed a crime if he violates the law and there are sanctions, is done alone, with an intermediary, participates in or by moving another person, and will be held accountable if it is done intentionally or due to negligence and has fulfilled the elements.

In addition, the Criminal Code also adopts a principal penalty of a fine to threaten corporations. If the fine is not paid in stages, the corporation's assets can be confiscated to replace the amount of the fine. Provisions regarding substitute penalties for corporations include: if the corporation's assets or income are insufficient to pay the fine, the corporation can be subject to substitute penalties in the form of freezing some or all of the corporation's business activities. In addition to substitute penalties, the Criminal Code also lists additional penalties that can be imposed on corporations, located in Article 120 of the Criminal Code. Regulations regarding corporate liability in mining crimes must be formulated more thoroughly so that in the future they can serve as guidelines for law enforcement, in this case judges, in rendering ideal decisions in mining crimes committed by corporations. Regarding law enforcement against corporate crimes, there is a dilemma between the interests of criminal punishment and maintaining the corporation's survival. Criminalization of corporations is not solely a legal issue, but also a social issue [10].

Criminalization that prioritizes a retributive approach will have more negative impacts, especially on innocent people who depend on corporations for their livelihoods. Criminal sanctions in mineral and coal mining crimes include principal criminal sanctions and additional criminal sanctions, both types of sanctions can be imposed on legal subjects who violate the mining criminal provisions in the Minerba Law. The principal penalties in the Minerba Law include imprisonment, detention, and fines. In the principal penalties only a specific maximum penalty is determined and is not accompanied by rules or guidelines for its implementation, to become a regulation of mining crimes which in the future should be regulated regarding guidelines for its implementation. Meanwhile, additional penalties in the Minerba Law include confiscation of goods used in committing the crime; confiscation of profits obtained from the crime; and/or the obligation to pay costs arising from the crime. The crime of mining without a permit/illegal mining is a crime 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 threatens criminal sanctions for anyone who, through their mistakes, violates the prohibitions [11]. Criminal law policy in dealing with criminal acts in the mining sector regarding traditional gold panning which results in pollution and loss of life [12]. Forms of mining business permit arrangements are regulated in the Minerba Law and if you want to have a permit in mining activities you must meet the requirements in the form of administrative requirements, technical requirements, environmental requirements and financial requirements. Corporations are legal entities that have different legal entities in the form of their responsibilities, but there are many theories that support that corporate responsibility can be imposed on corporations, there are even regulations that regulate corporations as legal subjects, but in practice corporations are rarely named as suspects or defendants [8].

Regulations regarding criminal acts in the mining sector state that if a corporation commits a mining crime, in addition to imprisonment and fines for its managers, the legal entity will be subject to a fine increased by one-third of the applicable maximum limit. Mining carried out without regard for the reclamation process can be avoided if law enforcement, the government, and the community unite to enforce regulations against miners who damage the environment. On the other hand, judges need to have the commitment and courage to take innovative legal steps in handling various mining-related cases [13]. For corporations, although the threat of criminal sanctions is quite significant, there are no regulations explaining the alternative sanctions. To ensure that the regulation of crimes in the mining sector becomes more ideal in the future, regulations should also be added regarding alternative sanctions if the corporation or legal entity is unable to pay the imposed fine. It is important to increase public legal awareness in the context of law enforcement carried out through a non-penal approach to support crime prevention efforts. Furthermore, the application of criminal law related to coal mining without a permit does not align with the intended purpose of the punishment. The punishment that should be used is based on relative theory which is applied through the imposition of certain fines and sanctions, as an effort to maintain environmental sustainability in accordance with the regulations in the Minerba Law [14].

Indonesia has recognized companies as legally accountable entities in criminal cases through Supreme Court Regulation No. 13 of 2016, which regulates the handling of criminal cases involving companies. This regulation ensures that companies are recognized as subjects under criminal law. Recognizing companies as subjects of criminal law results in the imposition of criminal liability on them. In the context of corporate crimes in the mining sector, criminal enforcement against companies in this sector is becoming increasingly clear..

Regulations regarding corporate liability in the mining sector are regulated in Law Number 3 of 2020 concerning Mineral and Coal Mining. In Indonesia, crimes committed by companies in the mining sector are still widespread, with many activities carried out illegally without proper permits [11]. This illegal mining has the potential to cause various problems such as criminal acts, land conflicts, and environmental pollution that can damage the future of the ecosystem. Criminal acts in the mining sector do not differentiate between serious crimes and minor violations and the types of punishments imposed on perpetrators, resulting in cumulative and alternative sanctions. Article 158 of Law Number 3 of 2020 concerning Mineral and Coal Mining contains cumulative sanctions. Meanwhile, alternative penalties can be found in Article 160 of the same law. The model of criminal liability for companies in these cases is of public concern, as these crimes can have a significant impact on residents. Regulated in Article 145 of Law Number 3 of 2020, corporate responsibility towards communities affected by illegal mining activities is regulated.

The provisions regarding the liability of business entities committing crimes in the mining sector are stipulated in Articles 151, 158, 160, 161B, and 164 of Law Number 3 of 2020 concerning Mineral and Coal Mining. One of the legal consequences for companies that violate these provisions is the revocation of their mining business permits. A concrete example of this is the case in Raja Ampat, Southwest Papua, involving alleged violations and environmental damage caused by the activities of four nickel mining companies [7]. The government has taken action by revoking the business permits of the four companies operating in Raja Ampat, but this decision does not apply to PT Gag Nikel, a state-owned company. The implementation of responsibility in the mining industry for environmental pollution is regulated in the Environmental Management Law (PPLH) and the Mineral and Coal Mining Law. These regulations require all Indonesian citizens to maintain, protect, and properly manage the environment. Violations of environmental protection and management provisions in mining activities can result in administrative, criminal, or civil sanctions[15]. In every mining activity, the government plays an important role which can be implemented through the formation of regulations, granting mining business permits, supervision, and law enforcement against violations in the management of mining activities.

4 Conclusion

According to statutory regulations, sanctions against corporations take several forms, including fines, additional penalties, and administrative sanctions. These sanctions are intended to enforce the law when corporate crimes are deemed to have resulted in significant losses to both the public and the state. The liability of business entities committing any form of crime in the mining sector is regulated in Law Number 3 of 2020 concerning Mineral and Coal Mining (UU Minerba), as stipulated in Articles 151, 158, 159, 160, 161B, and 164. The key findings indicate that corporate responsibility in the mining industry is firmly established under Law Number 3 of 2020 concerning Mineral and Coal Mining (UU Minerba), specifically in Articles 151, 158, 159, 160, 161B, and 164, which serve as the legal foundation for sanction enforcement. These findings confirm that law enforcement against corporations is crucial to addressing both public and state losses resulting from mining-related violationsFuture mining law enforcement policies must emphasize three key elements: strengthened regulations, increased oversight, and the application of strict sanctions. This aims to create sustainable, equitable, and environmentally conscious mining management.

References

1. A. E. Ananta, Penegakan Hukum terhadap Pelaku Tindak Pidana Penambangan Pasir Secara Illegal, Savana Indones. J. Nat. Resour. Environ. Law **1**, 53 (2024) https://doi.org/10.25134/savana.v1i01.35.
2. H. Herman, O. Kaimuddin Haris, S. Hidayat, H. Handrawan, H. Heryanti, and M. Fadli Masulili, Penegakan Hukum Terhadap Tindak Pidana Penambangan Mineral di Kawasan Hutan Tanpa Izin, Halu Oleo Leg. Res. **4**, 261 (2022) https://doi.org/https://doi.org/10.33772/holresch.v4i2.47.
3. F. Syawal, A. B. Azed, and Suzanalisa, Kebijakan Hukum Pidana Dalam Penanggulangan Dampak Lingkungan Hidup Akibat Pengusahaan Pertambangan Batubara Di Kabupaten Sarolangun, Leg. J. Huk. **IX**, 17 (2017) https://doi.org/http://dx.doi.org/10.33087/legalitas.v9i1.141.
4. Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel (Edisi Revisi)* (Mirra Buana Media, Yogyakarta, 2022).
5. Amiruddin, *Pengantar Metode Penelitian Hukum* (Raja Grafindo Persada, Jakarta, 2012).
6. Agus Irawan and Eviar Wista, Penegakan Hukum Terhadap Tindak Pidana Pertambangan Tanpa Izin Di Kabupaten Sarolangun, J. Yuridis Unaja **3**, 1 (2020) https://doi.org/10.35141/jyu.v3i2.133.
7. A. P. Sarasvati, I. M. Sepud, and I. N. Sutama, Sanksi Pidana Terhadap Pelaku Tindak

Pidana Penambangan Batu Padas Atau Paras Secara Ilegal Criminal Sanctions Against Perpetrators Of Illegal Padas (Paras Stone), J. Analog. Huk. **2**, 7 (2020) https://doi.org/10.22225/ah.2.1.1605.7-11.
8. Muhammad Agus Fajar Syaefudin and Fajar Ari Sudewo, Penegakan Hukum Terhadap Tindak Pidana Pertambangan Mineral dan Batubara Ilegal di Kota Cirebon, Diktum J. Ilmu Huk. **8**, 108 (2020) https://doi.org/10.24905/diktum.v8i1.81.
9. A. F. D. Putri and M. H. Prasetyo, Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Di Bidang Pertambangan, J. Pembang. Huk. Indones. **3**, 312 (2021) https://doi.org/10.14710/jphi.v3i3.312-324.
10. P. Ulpa, J. Abdilla, A. F. Gunawan, and C. Marhayani, Tinjauan Yuridis Penegakan Hukum Pidana Terhadap Kegiatan Penambang Ilegal di Dalam Kawasan Taman Hutan Raya Bukit Mangkol Berdasarkan Undang-Undang Nomor 3 Tahun 2020 Tentang Pertambangan Mineral dan BatuBara, **1**, 129 (2023) https://doi.org/https://doi.org/10.58819/jle.v1i2.108.
11. G. I. Amrullah, Pertanggungjawaban Pidana Korporasi dalam Tindak Pidana Pertambangan, Jurist-Diction **2**, 1275 (2019) https://doi.org/10.20473/jd.v2i4.14491.
12. H. Hannani, I. F. Sukri, and H. Hasim, Analisis Fiqhul Bi`ah terhadap Kewenangan Otonomi Daerah dalam Kebijakan Reklamasi Pasca Tambang : Tinjauan Hukum Islam, DIKTUM J. Syariah Dan Huk. **20**, 260 (2022) https://doi.org/10.35905/diktum.v20i2.2921
13. D. E. Purnomo and E. Wahyuningsih, Kebijakan Hukum Pidana Dalam Menanggulangi Tindak Pidana Mineral Dan Batubara (Studi Kasus Polda Jateng), J. Huk. Khaira Ummah **12**, 127 (2017) https://doi.org/http://dx.doi.org/10.30659/jhku.v12i2.1845.
14. N. Y. S. Tutuarima, D. J. A. Hehanussa, and M. G. Sopacua, Penegakan Hukum Pidana Terhadap Kegiataan Pertambangan Tanpa Izin, TATOHI J. Ilmu Huk. **1**, 1263 (2022) https://doi.org/10.47268/tatohi.v1i12.882.
15. Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru), (Jakarta, Kencana, 2014)