

## LAW ENFORCEMENT AGAINST ILLEGAL MINERS

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### Abstract

Illegal mining refers to extraction or excavation activities carried out by individuals or companies without proper permits and without adhering to Good Mining Practices. Illegal mining is often conducted by communities using simple equipment, without licenses, and without environmental and safety considerations. It also involves financiers and traders. In certain cases, illegal mining is also carried out by companies. In this paper, the author uses a normative juridical approach. Due to this approach, this type of legal research is called normative legal research. Legal provisions, specifically Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 on Mineral and Coal Mining, serve as primary legal sources. The author employs the library research method, which involves reviewing relevant books, magazines, journals, articles, and internet sources related to the discussed issue.

**Keywords:** Law Enforcement, Illegal mining, Mineral and Coal Mining

## INTRODUCTION

Data from the Ministry of Energy and Mineral Resources (ESDM) recorded over 2,700 illegal mines in Indonesia as of Q3 2022. Of this total, 2,600 locations were mineral mines and 96 were coal mines. The rampant illegal mining activities are a result of neglect and minimal oversight from authorities. However, the surge in illegal mining cannot be separated from the economic value gained by local communities. Many residents depend on these illegal activities for their livelihoods, especially given the continuous strengthening of mineral and coal commodity prices over the past year. Illegal mining practices are carried out in various ways, ranging from exploiting protected and production forest areas to operating on land within companies' mining business permits. Some even occur in coastal areas and small islands.

These conditions harm many parties. Besides the potential for environmental damage due to practices that disregard environmental principles and Health, Safety, Security, and Environment (HSSE) aspects, illegal mining also causes financial losses to the state as perpetrators do not pay royalties or taxes.

Natural resources beneath the earth's surface are state-controlled assets, and therefore, their exploitation requires permits from authorized parties. It is crucial to eradicate illegal mining activities. Article 158 of Law No. 3 of 2020 on Mineral and Coal Mining stipulates that illegal mining is a crime, making perpetrators subject to criminal liability.

Criminal law enforcement, both penal and non-penal, can be employed in the prevention and prosecution of illegal mining. The formation of a task force for combating illegal mining is one way to ensure organized, cross-sectoral, and comprehensive efforts in addressing the issue of illegal mining.

## RESEARCH METHOD

Approach. In this paper, the author uses a normative juridical approach, and because of this approach, this model of legal research is called normative legal research. Legal provisions constitute primary legal materials. These include Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The author uses the library research method or literature review. This literature review research involves conducting studies from library books, magazines, journals, articles, and internet sources relevant to the issue discussed.

## RESULTS AND DISCUSSION

Based on data from the Mining Advocacy Network (Jatam) East Kalimantan (Kaltim), there are a number of rampant illegal mines without firm action. According to Jatam Kaltim's records, from 2018 to 2022, there were 168 points of illegal mining activity spread across 4 regencies and cities in Kaltim. Data from Jatam Kaltim's Dynamicator indicates that over the past 4 years, there has been a drastic growth in "coal robbery" activities that have been allowed to occur in Kaltim.

Annually, there are around 40-50 points of illegal mining activity. This can happen because there have been groups that approve of illegal mining activities. Illegal mining began to surge after the cessation of new permits for coal mining in Kaltim. Still according to data collected by Jatam Kaltim, from 2018 until now, there have been 11 reports made by Jatam Kaltim together with citizens.

Based on these reports, only 2 actions were taken. This means that over these 4 years, the police's enforcement performance has been very low in responding to the presence of illegal mines in Kaltim. A number of recent data, including investigation results by Kaltim journalists, apparently have not been enough to prompt the authorities to take firm action against illegal mining activities. Of these 11 reports, the last one occurred in Sumber Sari Village, Kukar. The illegal mining activity there has been going on for almost 5 months. However, for the past 1 month, there has been no action at all. Jatam Kaltim is concerned that if no action is taken, similar activities will resume. In this case, the community will once again become victims. Moreover, the majority of local residents are farmers, who rely on their living space for daily life. A number of authorities, including the police, local government, central government, and relevant ministries, are also pushing for firm action to immediately address illegal mining activities.

Mining activities, both legal and illegal, equally cause environmental problems. Jatam Kaltim requests that environmental problems caused by mining activities also be thoroughly investigated to guarantee the lives of the people in Kaltim.

It is only right that all citizens have the basic constitutional right to a good and healthy living space. The rights of all people should not be reduced or limited. These rights are increasingly disappearing due to illegal mining, which has immense destructive power. Illegal mining not only has destructive power and destroys the environment, but it is also unmeasured and undirected. It is not as it should be.

There are several reasons why illegal mining is rampant again currently. These reasons are mentioned as follows: acquiescence from authorities, lack of supervision, and lack of licensing facilitation. People's mining permits are currently still difficult due to the sub-optimal commitment from local governments in establishing Regional Regulations for People's Mining Areas (WPR) and People's Mining Permits (IPR). Specifically, IPR is a permit to carry out mining business within a people's mining area with a limited area and investment. The rampant illegal mining activities cannot be separated from the economic value gained by the community. Many people depend on illegal activities for their livelihoods. What needs to be known is that there are several criminal offenses in mining, namely:

1. Criminal Act of Mining Without a Permit (Illegal Mining)

Mining activities where the perpetrator does not have a permit, then their actions constitute a criminal offense regulated in Article 158 of the Mining Law which reads: Every person conducting mining business without an IUP, IPR, or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or (5) shall be punished with imprisonment for a maximum of 10 years and a maximum fine of Rp 10,000,000,000 (ten billion rupiah).

2. Criminal Act of Submitting False Data Reports

In carrying out mining activities, accurate data or information is needed, prepared by the relevant business actor, such as feasibility study data, business activity reports, and mining product sales reports, so that these can be accounted for. The act of providing false data or reports is actually sanctioned in Article 263 of the Criminal Code concerning Document Forgery. Because the forgery of documents is in the mining sector and has been specifically regulated, the perpetrators can be punished with a fine with imprisonment for a maximum of 10 years and a maximum fine of Rp 10,000,000,000.

3. Criminal Act of Unlawful Exploration

Since mining exploration activities are based on permits issued by the government, namely IUP or IUPK, exploration carried out without such permits constitutes a criminal act punishable under Article 160 paragraph (1) of the Mining Law with imprisonment for a maximum of 1 year or a maximum fine of Rp 200,000,000.

4. Criminal Act as an IUP Exploration Holder Not Conducting Production

Operations An IUP exploration holder, after conducting exploration activities, may not conduct production operations before obtaining a Production IUP. This is because there are two stages in conducting mining business, namely, exploration and exploitation, so their implementation must be in accordance with procedures. Violations of this will be punished with imprisonment for a maximum of 5 years and a maximum fine of Rp 10,000,000,000.

5. Criminal Act of Laundering Mining Products

In financial and banking activities, money laundering is known, where money originating from crime is laundered through financial service companies to become "clean" money. The criminal act of laundering mining products (mining laundering) under the Mining Law is punishable by imprisonment for a maximum of 10 years and a maximum fine of Rp 10,000,000,000.

6. Criminal Act of Obstructing Mining Business Activities

Disruptions that occur to mining activities by mining entrepreneurs who have obtained permits from authorized officials, such as citizens who feel disadvantaged, will usually protest by obstructing mining activities in various ways to prevent mining from continuing. Once the permit is held by the mining company, mining activities can begin. In this regard, the Minerba Law also provides protection for the continuity of these legitimate mining activities. Article 162 of the Minerba Law states that anyone who obstructs or disrupts mining business activities can be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah).

The illegal mining case in East Kalimantan was exposed by Ismail Bolong, a former member of the Samarinda Police Resort. Ismail Bolong's confession in a video went viral. Ismail Bolong himself had been summoned twice by Bareskrim for questioning. However, Ismail Bolong failed to appear for both summons and sent his family to fulfill the police summons. The questioning of Ismail Bolong's family took place today. Bareskrim has received confirmation of the presence of Ismail Bolong's wife and child. The Director of Certain Criminal Acts (Dirtipidter) of the National Police Criminal Investigation Agency, Brigadier General Pipit Rismanto, admitted to having identified criminal elements in the illegal mining case in East Kalimantan (Kaltim). The National Police Criminal Investigation Agency has now named one person as a suspect, namely Ismail Bolong. The Attorney General's Office has appointed 6 prosecutors to examine the case files and follow the development of the case. Previously, Bareskrim

Polri investigators handed over Phase I of the Ismail Bolong et al. files to the prosecutor's office on December 16.

Ismail Bolong played a role in arranging a series of illegal mining activities. He also served as Commissioner of PT EMP. He arranged a series of illegal mining activities within the PKP2B area of another company and served as Commissioner at PT Energindo Mitra Pratama which did not have an IUP (Mining Business Permit) to conduct mining activities. It was stated in the official police release that 3 people have been named as suspects. They are Ismail Bolong, 46 years old, BP, 41 years old, and RP, 34 years old. BP was an unlicensed coal miner in the PKP2B area of PT Santan Batubara. Meanwhile, RP was the Authorized Director of PT EMP. RP is the majority shareholder of PT EMP. In addition, RP was also responsible for organizing the operational activities of coal mining, from mining, transportation, and loading for sale under the name of PT EMP.

These activities were carried out by the three suspects. They carried out the utilization, transportation, and sale of minerals and coal without a Mining Business Permit (IUP), People's Mining Permit (IPR), and Special Mining Business Permit (IUPK). Sub-directorate IV of Dittipidter Bareskrim Polri secured coal transportation activities originating from unlicensed mining by transporting coal products allegedly from unlicensed mining from the stockpile to Tersus PT MTE using dump trucks.

The articles to be charged are articles concerning mining activities in forest areas without a ministerial permit and participating in or assisting in the unauthorized use of forest areas, which are regulated in Article 89 Paragraph 1 Letter a and Letter b Jo. Article 17 Paragraph 1 Letter b and/or Article 98 Paragraph (1) Jo. Article 19 Letter b and/or Article 94 Paragraph (1) Letter c Jo. Article 19 Letter b of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction as amended by Article 37 of Law No. 11 of 2020 concerning Job Creation with a maximum prison sentence of 15 years and a maximum fine of Rp 100 billion. In addition, Ismail Bolong is charged under Article 55 paragraph 1 of the Criminal Code because he played a role in arranging a series of illegal mining activities and as Commissioner of PT Energindo Mitra Pratama (PT EMP), which did not have a mining permit.

Normatively, Article 158 of Law No. 3 of 2020 concerning Mineral and Coal Mining has regulated that illegal mining is a crime, thus its perpetrators are subject to criminal liability. Criminal law enforcement, both penal and non-penal, can be carried out in the prevention and prosecution of illegal miners. To eradicate illegal mining activities, there must be multi-sector legal efforts accompanied by coordination among relevant agencies. In addition, strong law enforcement and supervision between ministries and institutions are also needed for the successful eradication of this illegal practice. A Task Force for Combating Illegal Miners is also needed. This task force will not only be involved in law enforcement but also provide guidance, facilitation, and supervision. No less important is the high commitment required from relevant stakeholders to address the problem of illegal miners. The formation of a Task Force for Combating Illegal Miners is one way to ensure organized, cross-sectoral, and comprehensive work in addressing the problem of illegal miners. As a wise mining contractor, it is advisable to complete all permits before starting a business in the mining sector. This is to prevent the increase in illegal mining. One of the permits that mining contractors must have is a Mining Services Business Permit (IUJP).

## CONCLUSION

Several factors explain the current resurgence of illegal mining. These include: acquiescence from authorities, insufficient oversight, and a lack of licensing facilitation. Obtaining permits for community mining is currently difficult due to the local government's suboptimal commitment to establishing Regional Regulations for People's Mining Areas (WPR) and People's Mining Permits (IPR). Specifically, an IPR is a permit to conduct mining operations within a people's mining area with limited scope and investment. The proliferation of illegal mining activities cannot be separated from the economic value gained by the community. Many people depend on these illegal activities for their livelihoods.

As a prudent mining contractor, it's advisable to complete all necessary permits before starting any mining venture. This measure helps prevent the increase in illegal mining activities. One essential permit that mining contractors must possess is the Mining Services Business Permit (IUJP).

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