

CRIMINAL RESPONSIBILITY OF BUSINESS OPERATORS FOR IRON SAND MINING CAUSED ENVIRONMENTAL DAMAGE

Didik Irawansah^{1,}, Nasrullah², Kasmar³*

*^{1,2,3}Departement In Law, Universitas Muhammadiyah Bima, Bima, Indonesia
didikirawansah@gmail.com^{1,*}, nasrullah@stihm-bima.ac.id², kasmar@stihm-bima.ac.id³*

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Abstract

The purpose of this research is **first** to describe the arrangement of criminal liability for business actors for iron sand mining activities which result in environmental damage; **second**, to describe the form of criminal responsibility of business actors for iron sand mining activities which result in environmental damage. Empirical legal research methods (non-doctrinal), case and policy approaches, using data collection, documentation, observation, and interviews and integrating with literature review of legal documents relevant to the object under study, and analyzed descriptively. The results of the study show, First, legal arrangements for criminal acts of environmental pollution committed by business actors, can be seen in Article 98, Article 99, Article 100, Article 101, Article 104, Article 105, and Article 112 of Law Number 32 of 2009 concerning Protection and Management of the Environment (UUPPLH) can be imposed on individuals, corporations, and authorized officials. Furthermore, accountability for criminal acts of environmental pollution as ultimum remedium is the last legal remedy where the goal is to punish the perpetrators in the form of imprisonment. In enforcing environmental criminal law through four stages namely investigation, prosecution, examination, and execution. In article 94 of the UUPPLH the investigators are Republic of Indonesia Police Officers and Civil Servant Officials, in article 96 evidence, the validity of evidence is witness testimony, expert testimony, letters, certain instructions, statements from the accused, as well as other evidence including evidence which is regulated in laws and regulations. Second, Forms of Corporate Criminal Liability Against Iron Sand Mining Activities Causing Environmental Damage. In the form of absolute liability (strict liability), however, based on Article 88 of the Law, absolute liability or (strict liability) is only limited to the obligation to pay compensation in the event of a civil lawsuit, on the other hand, criminal liability adhered to by the Law Number 32 of 2009 concerning Environmental Protection and Management still adheres to the principle of error.

Keywords: Criminal Liability; Businessmen; Mining Sand Iron; Environment

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INTRODUCTION

Indonesia is a country that highly upholds the law. All aspects of the implementation and administration of the state are regulated in a system of laws and regulations. The fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia contains the concept of state objectives both specifically and generally. In particular, the goal of the state is to protect the entire nation and all of Indonesia's bloodshed and to promote general welfare and educate the nation's life (Kaelan. 2004). While in general it is to participate in carrying out order based on independence, eternal peace and social justice (Kaelan. 2004). The state fully controls all the wealth contained in the earth and is used as well as possible for the prosperity of the people. However, in reality the people carry out mining activities without paying attention to the important aspects in it, such as not paying attention to the consequences caused or the influence of the mining (iron sand mining), but it does not rule out the possibility that mining is also carried out by mining companies that already have permits official.

Humans play a very important role in the environment and affect the surrounding environment. Within the framework of that human being fulfills his life needs both food and clothing and boards/housing.(Irawansah & Yuspin, 2022) The growth and development of human thought is related to technological developments that can have both positive and negative impacts on the environment. Therefore, we, the Indonesian people, are obliged to preserve and develop the environment so that it can become a source and support for life for the Indonesian people and nation, for the sake of the survival and welfare of the Indonesian nation. (Ridwan et al., 2023).

In general, the environment is defined as all objects, conditions, circumstances and influences of all things contained in the space we live in and affect all living things, including human life (Siswanto Sunarso. 2005). Our natural resources are generally divided into renewable natural resources (such as forests, fisheries, etc.) and non-renewable natural resources such as oil, gas, coal, natural gas, and others. Earth's wealth or natural wealth is everything that comes from nature that can be used to meet the needs of human life. Not only biotic components, such as animals, plants and microorganisms, but also abiotic components, such as petroleum, natural gas, various types of metals, water, minerals and soil (Wikipedia. <http://www.wikipedia.com>. accessed Monday, January 15 2017, at 19.00 WIB.). Viewed from the usage point of view, non-renewable natural resources must be used wisely. The results obtained from these natural sources need to be used to renew the basis for the development of the area concerned. Renewable natural resources must be managed according to a pattern that takes into account the sustainability of natural resources.

Mining law is never separated from the environment as a gift from God Almighty whose capacity must be preserved and developed so that it can still be a source of life support for humans and other living things for the sake of continuity and improvement of the quality of life itself. Today, environmental crimes often occur around our environment, but all of this without us being aware of it. For example, in mining, mining is an attempt to explore various potentials contained in the bowels of the earth. The term mining law is a translation and English, namely mining law. Mining law is the law that regulates the excavation or mining of ores and minerals in the ground (Salim, 2005). This definition is only focused on the activity of extracting or mining ore. Excavation or mining is an attempt to explore the various potentials contained in the bowels of the earth. This definition also does not show the relationship between the government and legal subjects. In fact, in order to dig up the mineral, a company or legal entity is required to manage it. Based on the type of mineral, mining in Indonesia is divided into three categories. First, strategic minerals (Salim. 2005) or class A mining, including strategic minerals such as: oil, natural gas, bitumen, asphalt, natural wax, anthracite, coal, uranium and other radioactive materials, nickel and cobalt. Second, group B vital minerals or mining, includes vital minerals, such as: gold, silver, diamonds, copper, bauxite, lead, zinc and iron. Third, excavations that do not include strategic and vital minerals (Salim. 2005) or group C mining, generally minerals that are considered to have a lower level of importance than the other two mining groups, including various types of stone, sand, limestone, and others - other.

Class C mining types such as sand are often found throughout Indonesia. This is because mining activities can bring enormous profits, namely bringing in foreign exchange and absorbing a large number of workers. Regencies/cities can increase own-source revenue (PAD) with the

obligation of employers to pay levies and other things. However, in reality the economic benefits obtained are not comparable to the environmental damage due to mining activities which require exploration and exploitation (Haryono, 2016). Exploitation of class A minerals is carried out by state companies. Meanwhile, foreign companies can only be involved as partners. Meanwhile, the exploitation of class B minerals can be carried out by both foreign and Indonesian companies. Exploitation of class C minerals can be carried out by Indonesian companies or individual companies. Meanwhile, mining actors in Indonesia are categorized into three, namely the State, Contractors and Mining Authority Holders (KP).

In mining activities both groups A, B and C need to maintain the preservation of environmental functions. To guarantee the preservation of environmental functions, all actions engaged in the mining sector are required to do several things. First, mining actors are required to have an analysis of environmental impacts or a study of the major and significant impacts of planned activities on the environment which are necessary for the decision-making process regarding the implementation of activities. Matters analyzed include climate and air quality, physiology and geology, water quality, land, flora and fauna, social and public health. Second, mining actors are required to manage waste resulting from operations and activities. Third, mining actors are required to manage hazardous and toxic materials. This is in accordance with Law Number 32 of 2009 concerning the Protection and Management of the Environment where the environment is a spatial unit with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and well-being of humans and other living things. This law states that a healthy and clean environment is the basic right of every person, so personal awareness and institutions, both government and non-government institutions, are needed to create a comfortable and proper environment for human livelihoods. In addition, a comprehensive environmental management policy needs to be implemented in terms of wise management and utilization of natural resources towards a sustainable environment.

Matters as explained by the law above have not yet been implemented by the community, corporations and local governments. Communities still carry out mining activities without paying attention to the important aspects in it, such as not paying attention to the consequences or effects of the mining (illegal mining). This is always done by mining companies that already have official permits or those that do not have official permits.

The act of sand mining which results in environmental damage has essentially fulfilled the elements that can be threatened with criminal law. This element is that the act absolutely fulfills the formal requirements, that is, in accordance with the formulation of the Law that has been stipulated by the Criminal Code and other regulations that have a criminal dimension and have a material element, that is contrary to the ideals of association, society or a nature against the law or a criminal act. Crime is one part of the crime prevention policy in law enforcement with the hope of being able to resolve or overcome crimes against humanity and social problems. Based on existing data on law enforcement officials in Indonesia, it was found that there was still a lack of awareness of corporate law in the mining sector. This can be seen from the many cases of illegal mining that have occurred in Indonesia.

The urgency of this research is based on several considerations as follows: 1) Mining actors are required to have an analysis of environmental impacts or studies of major and significant impacts regarding planned activities on the environment which are required for the decision-making process regarding the implementation of activities; 2) Mining actors are required to manage waste resulting from operations and activities. 3) Miners are required to manage hazardous and toxic materials. 4) The act of sand mining which results in environmental damage has essentially fulfilled an element that can be subject to criminal law. 5) Mining of iron sand by corporations which causes environmental damage in accordance with the formulation of the Law which has been stipulated by the Criminal Code and other regulations which have a criminal dimension and have a material element, which is contrary to the ideals of community relations or an unlawful nature or criminal act. 6) Laws and regulations relating to environmental protection have not yet been implemented by communities, corporations and local governments. 7) Business actors are still carrying out mining activities without

paying attention to the important aspects in it, such as not paying attention to the consequences or the impact of mining on the environment.

RESEARCH METHOD

Research method, empirical law (non-doctrinal), case and policy approach, using data collection, documentation, observation and interviews and combining it with literature review of legal documents relevant to the object under study, and analyzed by descriptive analysis.

RESULTS AND DISCUSSION

Arrangements for Criminal Liability of Actors Against Iron Sand Mining Activities Causing Environmental Damage.

Environmental crimes, such as actions that can result in the transfer of benefits from the environment and harm the surrounding community. As stipulated in the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) that the act was basically carried out by a business entity which is currently experiencing rapid development in industrialization, including in Indonesia.

Corporate crime is an act committed by a person based on a work relationship or other relationship carried out alone or jointly acting on behalf of the corporation inside or outside the corporate environment. Corporate arrangements specifically for criminal acts related to the environment in Article 116 of the Law of the Republic of Indonesia Number 32 of 2009 concerning the Protection and Management of the Environment (UUPPLH) are regulated with the first intention that if a business entity commits fraudulent acts in conducting its business then parties that can be held accountable are the business entity itself and someone who has thoughts in carrying out the fraudulent act. Then, for the second, if the environmental crime in the rules of this article is committed by individuals who have cooperation with the business entity, then that individual can be sued personally.

In addition, in accordance with the statement in Article 1 number 21 of Law Number 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, it states that any person or corporation that commits acts of forest destruction within Indonesian jurisdiction may be subject to the criminal provisions stipulated in Article 82 paragraph (3).) Law Number 18 of 2013 concerning prevention and eradication of forest destruction. Then, in criminal arrangements against corporations that violate it is regulated in the statement of Article 78 paragraph (14) of Law number 41 of 1999 concerning Forestry where the responsibility imposed is only directed to the management. Furthermore, it can be related to the provisions in Article 56 paragraph (1) and paragraph (2) of Law number 22 of 2001 concerning Oil and Gas which essentially states that the criminal provisions that can be imposed on corporations are fines.

Meanwhile, in the Criminal Code Bill in Chapter II regarding criminal acts and criminal responsibility, it is stated about corporations that are regulated in Article 48 of the Criminal Code Bill that criminal acts committed by corporations are acts carried out based on work relations or other things related to corporations. Then, Article 49 of the Criminal Code Bill states that the imposition of responsibility for a business entity that commits an unlawful act is its management and/or corporation. In Article 50 of the Criminal Code Bill states that corporations can be held criminally responsible if the actions are carried out on behalf of the corporation, but in Article 51 of the Criminal Code Bill the imposition of criminal responsibility can only be directed at business entity managers who still play a role in running the business.

Managers who hold control in a company based on the articles of association and bylaws who have the authority to take over corporate decisions and participate in providing corporate policies can also be subject to punishment. For this reason, supervision can be applied to the corporation. Sanctions are consequences that are given to anyone who commits an act that is prohibited by law. Sanctions are coercive tools to uphold the law and legal norms. Sanctions are given to a person or group of people as punishment in order to have a deterrent effect. One of the most severe sanctions is criminal sanctions. Criminal sanctions are imposed on legal subjects to ensure that these actions are not repeated (Andarisman, 2009).

Packer argues in Muladi's quote that criminal sanctions must be used appropriately covering the following matters: 1). Prohibited criminal acts; 2). Application of criminal sanctions against an act; 3). Eradication of other acts that hinder people's behavior; 4). Behavior can be dealt with in a way that

does not discriminate between one individual and another; 5). Applicability of the legal system; 6). There is no reasoned choice of the criminal sanction (Muladi, 2012). In formulating criminal sanctions in the Criminal Code, it is contained in Article 10 of the Criminal Code which states that: Criminal sanctions are categorized into two, namely the main punishment and additional punishment. The inclusion of the main crime in this article is because the Criminal Code still adheres to the criminal justice system which must provide a deterrent effect to the maker, while the additional sentence is more of a reprimand to the maker.

Forms of Criminal Liability of Business Actors for Iron Sand Mining Activities Causing Environmental Damage.

With the stipulation of corporations as legal subjects in UUPPLH, a corporation has criminal responsibility as a criminal subject of environmental crimes as stipulated in Article 116 paragraph (1) and paragraph (2) of the Law of the Republic of Indonesia Number 32 of 2009 concerning Protection and Management Apart from that, it is also regulated in Article 119 regarding criminal sanctions and additional criminal sanctions in the form of orderly actions. (Irawansah et al., 2022)

Criminal liability for environmental pollution when viewed in terms of material elements that must be met in environmental criminal liability is corporate/business entity and people based on work relationships or based on other relationships so that they can be accounted for as explained in the Law of the Republic of Indonesia Number 32 of 2009 concerning Protection And Environmental Management as codified into the OMNIBUSLAW Law, Article 116 (1) Explains that if an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions will be imposed on the business entity; and/or the person giving the order to commit the crime or the person acting as the activity leader in the crime. Furthermore, Paragraph (2) explains that if the environmental crime as referred to in paragraph (1) is committed by a person based on a work relationship or based on another relationship acting within the scope of the business entity's work, criminal sanctions will be imposed on the giver of the order or the leader in the the crime regardless of whether the crime was committed alone or together. (Hajairin et al., 2021)

In addition, criminal responsibility for environmental pollution is corporate or individual, we can find this in Law Number 32 of 2009 concerning the Protection and Management of the Environment Article 98 states that: 1) Everyone who intentionally commits an act which results in exceeding the standard ambient air quality, water quality standards, seawater quality standards, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah); 2) If the act as referred to in paragraph (1) causes injury to a person and/or endangers human health, the criminal shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 4,000,000,000. 00 (four billion rupiah) and a maximum of Rp. 12,000,000,000.00 (twelve billion rupiah); 3) If the act referred to in paragraph (1) causes a person to be seriously injured or dies, the criminal shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).

In Article 99 it is further explained that: 1) Everyone who because of his negligence causes the ambient air quality standard, water quality standard, sea water quality standard, or environmental damage standard criteria to be exceeded, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah); 2) If the act as referred to in paragraph (1) causes injury to a person and/or endangers human health, the criminal shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least Rp. 2,000,000,000. 00 (two billion rupiah) and a maximum of Rp. 6,000,000,000.00 (six billion rupiah); 3) If the act referred to in paragraph (1) causes a person to be seriously injured or dies, the criminal shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 9 (nine) years and a fine of at least Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 9,000,000,000.00 (nine billion rupiah).

In the event that a corporation is a legal subject and commits an environmental crime, it may be subject to additional punishment as an disciplinary sanction, namely by making the reputation of the corporation sound bad to the wider community in accordance with the court's decision when trying the

case, then it can also be in the form of dissolving the same corporation. In essence, by imposing capital punishment on corporations, besides that it can also impose penalties in the form of canceling the business license of the corporation and freezing its business activities and the state can take over the corporation so that the corporation concerned is under state supervision and confiscation of the corporation by issuing a determination to appoint other state-owned enterprises to temporarily manage the corporation until the confiscation period is completed and revoked (Noviyanti, N, N, A, T., Karma, N, M, S., Utama, I, N. 2019).

Whereas in the field of criminal law, which is heavily related to accountability, it is stated in the Criminal Code (KUHP) that only recognizes individuals as subjects of criminal law. Corporations have not been seen as subjects of criminal law. The formulation of criminal acts committed by individuals is also guided by Articles 55 and 56 of the Criminal Code. Article 55 Punished as a perpetrator of a crime:

- 1) those who did, who ordered to do, and who took part in doing the deed;
- 2) those who, by giving or promising something by abusing power or dignity, by violence, threats or misdirection, or by providing opportunities, means or information, deliberately encourage other people to take action.
- 3) For advocates, only actions that are intentionally recommended are taken into account, along with their consequences.

Article 56 Punishment as an accomplice of crime:

- 1) those who deliberately provide assistance when the crime is committed;
- 2) those who intentionally provide opportunities, means or information to commit crimes.

However, in subsequent developments it was mentioned in the special criminal law. Its relationship with vicarious liability or corporate responsibility in criminal law can be described as imposing criminal responsibility on someone in the capacity of the main actor, based on the act of violation or at least there is an element of violation committed by another person (Santoso, M. A, 2016).

CONCLUSION

Legal arrangements for criminal acts of environmental pollution committed by corporations can be seen in Article 98, Article 99, Article 100, Article 101, Article 104, Article 105, and Article 112 Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) can be imposed on individuals, corporations, and authorized officials, then the responsibility for criminal acts of environmental pollution as *ultimum remedium* is the final term of legal action where the aim is to provide punishment for the perpetrators in the form of imprisonment. In enforcing environmental criminal law through four stages namely investigation, prosecution, examination, and execution. In article 94 of the PPLH Law the investigators are Republic of Indonesia Police Officers and Civil Servant Officials, in article 96 evidence, the validity of evidence is witness testimony, expert testimony, letters, certain instructions, statements from the accused, as well as other evidence including as well as evidence which is regulated in statutory regulations. Thus, the enforcement of this criminal law can provide a very effective deterrent effect (deterrent factor).

As a form of criminal liability for business actors, it can be seen in Law Number 32 of 2009 concerning Environmental Protection and Management which regulates the form of absolute liability (strict liability), however based on Article 88 of the Law, absolute liability or (strict liability) is only limited to the obligation to pay compensation in the event of civil lawsuits, on the other hand, criminal liability adopted by Law Number 32 of 2009 concerning Environmental Protection and Management still adheres to the principle of guilt.

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