

Juridical Analysis Of Criminal Sanctions For Environmental Damage Due To Mining Activities (Study Decision Number 407/PID.SUS/2024/PN RGT)

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Abstract

This study uses a normative legal research type. Normative legal research examines legal rules or regulations as a system building related to a legal event. The purpose of this study is to discuss: Criminal liability for mining actors based on Decision Number 407 / Pid.Sus / 2024 / PN Rgt and Expert Opinion on the Defendant's actions in the trial of the illegal mining case resulting in Environmental Damage based on Decision Number 407 / Pid.Sus / 2024 / PN Rgt. Discussion: 1. Criminal liability based on Decision Number 407 / Pid.Sus / 2024 / PN Rgt that the Defendant RH alias R bin (late) Y has been proven legally and convincingly guilty of committing a crime, namely Purifying minerals and coal that do not come from the permit holder. The judge in his decision sentenced the Defendant to 8 (eight) months in prison and a fine of IDR 10,000,000.00 (ten million rupiah), with the provision that if the fine is not paid it will be replaced with 1 (one) month in prison. Aggravating and mitigating circumstances for the Defendant. Aggravating circumstances: - The Defendant's actions caused losses to the state; Mitigating circumstances: - The Defendant was cooperative at trial. - The Defendant admitted and regretted his actions. 2. Expert Opinion states that: The defendant RH alias R bin (late) Y in the management of Mineral and Coal Mining does not have a permit including: IUP (Mining Business Permit), or IUPK (Special Mining Business Permit), or IPR (People's Mining Permit). In accordance with the provisions of Article 2 paragraph (1) letter b of the Government Regulation of the Republic of Indonesia Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, it is explained that gold is a Metal Mineral commodity. So the potential losses that can be caused by mining activities without a permit include: environmental damage, prone to accidents because the perpetrators do not carry out good mining principles in accordance with the provisions of laws and regulations, loss of state and regional revenues, both tax and non-tax, causing social conflict in the community. Article 161 of Law of the Republic of Indonesia No. 3 of 2020 concerning Amendments to Law of the Republic of Indonesia No. 4 of 2009 concerning Mineral and Coal Mining states, "Any person who accommodates, utilizes, carries out Processing and/or Refining, Development and/or Utilization, Transportation, Sales of Minerals and/or Coal that do not originate from holders of IUP, IUPK, IPR, SIPB or permits as referred to in Article 35 paragraph (3) letters c and 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).

Keywords: Legal Analysis, Criminal Sanctions, Environmental Damage, Consequences of Mining Activities

INTRODUCTION

Mining is an activity that includes research, exploitation and management of natural resources in the form of minerals or coal. Mining is an important industry in driving the global economy and meeting the energy and raw material needs of local communities.

Mining consists of 2 types, namely open mining and underground mining. Open mining, namely a mining method carried out by digging or exploding layers of soil containing minerals. Meanwhile, underground mining is a mining method that is carried out by digging tunnels or holes to reach the desired mineral.

To start mining activities, (Eradany, 2020) there are at least stages that must be carried out, including: General investigation, Exploration, Feasibility study, Construction, Mining, Processing and refining, Transportation and sales, Post-mining activities.

Currently, many people are competing to start mining businesses, because mining is a very promising business. In mining activities, mining entrepreneurs rarely fully fulfill the

requirements of that stage. (Nugraha, 2024)The impacts that are visible due to the influence of mining that does not meet the requirements for mining activities and even do not have permits for these activities often have negative effects on the environment around the mining area. This is of course a serious matter that must be followed up by the regional government, central government and even law enforcement, to overcome illegal mining business activities which are directly detrimental to the community around the mining environment, regional government and even state losses because they are carried out without permission or illegally.

Article 33 Paragraph (3) of the 1945 Constitution states that the state controls the earth, water and natural resources contained therein and uses them for the greatest prosperity of the people. This means that the State controls the earth, water and natural resources, so that the State has the responsibility to regulate and manage natural resources with the aim of the prosperity of the people. Furthermore, natural resource management should provide maximum benefits for the interests of society in a fair and sustainable manner. Therefore, with the existence of illegal mining activities by certain groups in several regions in Indonesia illegally and controlled without a legally valid permit, this means that the objectives of the 1945 Constitution will never be realized. Prosperity and justice which are the ideals and objectives of the 1945 Law are only in the form of philosophy, not implementation. So, the state has the right to control natural resources in full, but on the other hand the state must not override the rights that the community as Indonesian citizens or legal entities have over these natural resources.

(Bidul & Widowaty, 2024)Mining businesses carried out by certain groups without considering the impact on the surrounding environment are certainly very detrimental, this includes violating the provisions of the Environmental Law. So illegal mining practices must be addressed early on because these activities not only have an impact at the moment but the impacts will be felt in the future.

Based on the description above, the author formulates the problem(Renaldiansyah & Septarina, 2022): what is the Expert Opinion regarding the Defendant's actions in the trial of illegal mining cases which resulted in Environmental Damage based on Decision Number 407/Pid.Sus/2024/PN Rgt? as well as criminal liability for mining actors based on Decision Number 407/Pid.Sus/2024/PN Regt.

RESEARCH METHODS

This research uses a type of normative legal research. Normative legal research examines legal rules or regulations as a building system related to a legal event. This research was conducted with the aim of providing legal arguments as a basis for determining whether an event was right or wrong and how the event should be according to the law. The approach method used is the statutory approach and case studies. The approach method is a legal scientific logical research procedure, meaning a problem solving procedure which is data obtained from literature observations which are then compiled, explained and analyzed by providing conclusions

RESULT AND DISCUSSION

Criminal Liability for Illegal Mining Perpetrators Based on Decision Number 407/Pid.Sus/2024/PN Rgt

(Pratama Andika, 2021)Mineral and coal mining business activities have an important role in providing real added value for national economic growth and sustainable regional development. This important role is to fulfill the livelihood needs of many people which are

controlled by the State to support sustainable national development in order to realize the welfare and prosperity of the people in a fair manner. The implementation of mineral and coal mining is still hampered by the existence of authority between the Central Government and Regional Government, licensing (Renaldiansyah & Septarina, 2022), protection of affected communities, mining data and information, supervision and sanctions, so that it is not running effectively and cannot provide optimal added value. Minerals and coal within the territory of the Unitary State of the Republic of Indonesia are non-renewable natural resources and wealth as a gift from God Almighty, so their use must be monitored.

Law enforcement in cases of Mineral and coal mining without permits and procedures contained in Law Number 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining as proof that this act is not legally justified, so that the perpetrator must receive a criminal penalty according to his actions.

The position of the case which is the object of this research is that on Thursday 03 October 2024 in Pundi Kayu Village, Serangge Kampung, Batang Peranap District, Indragiri Hulu Regency, precisely at the defendant's house, witness A came to sell 1 (one) raw gold bulb belonging to witness A which was the result of gold mining without a permit on 02 October 2024 and 03 October 2024. (Artikel et al., 2023) Then the defendant purified the gold by receiving the gold bulb first and then put the bulb in the shell then sprinkle the bulb with incandescent, then burn it using fire from a blower for approximately 15 (fifteen) minutes, then once it becomes gold, then take it using a pinch and place it on the scales to weigh it, then record the weight on the note so you know how much you will pay. (Magister et al., 2024) The aim of this refining activity is to obtain pure gold ore which is no longer mixed with mercury, because the gold mine obtained from the miner still has mercury involved in the mining process and the burning aims to separate the pure gold ore from the mercury contained in it.

That on Thursday, October 3 2024, at around 20.00 WIB, when the defendant was refining gold, witness BG, witness HJ (a member of the Indragiri Hulu resort police) came and arrested the defendant and witness A who were also in the same room as the defendant refining the gold while waiting for the defendant to finish refining it. Then after an inspection, 2 (two) sets of burning tools were found, 7 (seven) small shells, 1 (one) brick, 1 (one) sheet of zinc, 1 (one) red bowl containing a flare, 1 (one) sweet potato, 1 (one) clamp tool. Then the defendant, witness R and their evidence were taken to the Inhu police station for further examination. Supreme Court of the Republic of Indonesia That based on the Minutes of the Weighing of Gold Evidence by PT. Pegadaian (Persero) Rengat Unit Office: 108/IX/14297.00/2024 dated 07 October 2024 made by Isman Affandi, S.E as UPC Manager, evidence in the form of 1 (one) bowl containing burnt gold belonging to Defendant RH and witness AB, with a gross weight of 27.70 grams with details of the net weight being 1.32 grams and the weight of the bowl the pottery is 25.70 grams and the gold content is 23 Karat (+-) 958%. Supreme Court of the Republic of Indonesia That the defendant does not have any permission from the government to accommodate, utilize, process and/or refine, develop and/or utilize, transport, sell minerals and/or coal.

After going through the trial examination mechanism at the Rengat District Court, the Public Prosecutor at the Rengat District Prosecutor's Office carried out prosecution against the defendant so that the Panel of Judges at the Rengat District Court who examined and tried the case: 407/Pid.Sus/2024/PN Regt decided as follows:

Demand:

1. Declare that Defendant RH Als R Bin (Alm) Y has been legally and convincingly proven guilty of committing a criminal offense "any person who accommodates, utilizes, processes and/or refines, develops and/or utilizes, transports, sells minerals and/or coal which does not originate from the holder of an IUP, IUPK, IPR, SIPB, or IUPK permit

as a continuation of the operation of a contract/agreement, transport and sales permit, article 104, or article 105" which violates Article 161 Jo. Article 35 Jo. Article 104 in conjunction with Article 105 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 Mineral and Coal Mining in conjunction with Law of the Republic of Indonesia Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law as stated in the alternative indictment of the Public Prosecutor.

2. Sentenced the Defendant RH Als R Bin (Alm) Y to a prison sentence of 10 (ten) months reduced by the time the defendants were detained with an order that the Defendants remain detained. Imposing a fine on the defendant RH Als R Bin (Alm) Y in the amount of Rp. 10,000,000 (ten million rupiah), with the provision that if the defendant is unable to pay the fine, it will be replaced by imprisonment for 2 (two) months.
3. State evidence in the form of:
 - 2 (two) sets of burning tools;
 - 7 (seven) small shells;
 - 1 (one) brick;
 - 1 (one) zinc sheet;
 - 1 (one) plastic bowl containing incandescent powder;
 - 1 (one) sweet potato;
 - 1 (one) clamping tool;
 - 1 (one) gold pump head;

The evidence was confiscated for destruction.

One bowl containing burnt gold bulbs. The evidence was confiscated for the State. Determine that the defendant must pay court costs of IDR 2,000 (two thousand rupiah). Whereas in accordance with the provisions of Article 183 of the Criminal Procedure Code (KUHP), in order for the Defendant to be declared to have committed the criminal act for which he is charged, the Judge must have at least two valid pieces of evidence, so that the Judge can obtain confidence that the criminal act actually occurred and the Defendant is guilty of committing it. Considering, that the Defendant has been charged by the Public Prosecutor with alternative charges so that the Panel of Judges (Salsabila & Yulianingrum, 2023), taking into account the legal facts, first considers the First Alternative Charge as stated in Article 161 Jo. Article 35 Jo. Article 104 Jo. Article 105 Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law of the Republic of Indonesia Number 4 of 2009 concerning Jo Mineral and Coal Mining.

Expert opinion regarding the Defendant's actions in the illegal mining case which resulted in environmental damage based on Decision Number 407/Pid.Sus/2024/PN Rgt. That in accordance with the provisions of Law Number 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining Jo. Government Regulation no. 96 of 2021 concerning Implementation of Mineral and Coal Mining Business Activities:

- a. That an IUP (Mining Business License) is a permit to carry out a mining business, which is given to business entities, cooperatives and individuals. The legal basis is Article 1 paragraph (7), Article 38 of Republic of Indonesia Law no. 3 of 2020 concerning Amendments to Republic of Indonesia Law no. 4 of 2009 concerning Mineral and Coal Mining.
- b. To obtain an IUP (Mining Business License) for metal mineral and coal commodities, you must obtain a WIUP first, where to obtain a WIUP for metal minerals and coal is obtained through an auction mechanism. Meanwhile, to obtain an IUP for non-metallic

mineral and rock commodities, it is preceded by obtaining a WIUP for non-metallic minerals and rock. To obtain a WIUP for non-metallic minerals and rocks, the applicant must submit an application to the Minister of Energy and Mineral Resources, since the enactment of Presidential Regulation No. 55 of 2022 concerning Delegation of the Granting of Company Licensing in the Mineral and Coal Mining Sector, the issuance of WIUP for non-metallic minerals and rocks is delegated to the Governor.

- c. IUPK (Special Mining Business Permit), is a permit to carry out mining business in a Special Mining Permit area, which is given to business entities that fall under Indonesian law, whether in the form of state-owned companies, regional-owned companies or private business entities, the legal basis for which is Article 75 of Republic of Indonesia Law No. 3 of 2020 concerning Amendments to Republic of Indonesia Law no. 4 of 2009 concerning Mineral and Coal Mining. However, it is only given for metal mineral and coal commodities, to obtain an IUPK, the Minister makes offers to BUMN or BUMD on a priority basis, in the case of more than 1 (one) BUMN or BUMD interested, the WIUPK is given by auction, in the event that no BUMN or BUMD is interested, the WIUPK is offered to private business entities engaged in mineral or coal mining by auction.
- d. To obtain an IPR (People's Mining Permit), it is a business permit to carry out mining in a people's mining area in a people's mining area with limited area and investment which is given to individuals, community groups and cooperatives. The legal basis is Article 1 Paragraph (10), Article 68 of Republic of Indonesia Law No. 3 of 2020 concerning Amendments to Republic of Indonesia Law no. 4 of 2009 concerning Mineral and Coal Mining.
- e. The applicant must submit the application to the Minister; SIPB is granted by the Minister based on applications submitted by: BUMD/village-owned business entities, private business entities in the context of domestic investment, cooperatives or individual companies. SIPB applications can only be submitted in areas that have been designated as WUP. (Rivanie, 2019) Any person who carries out mining without a permit as intended in Article 35 shall be punished with imprisonment for a maximum of 5 (five) years and a fine of a maximum of Rp. 100,000,000,000.00 (one hundred billion rupiah)", thus, it is an offense for an individual or legal entity to carry out a mining or community mining business and carry out gold processing/refining without obtaining a permit from an authorized official. that according to Article 2 paragraph (1) of (Hukum & Vol, 2023) Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities.

Thus, it is concluded that the defendant's actions constituted a criminal act in violation of the provisions of Republic of Indonesia Law no. 3 of 2020 concerning Amendments to Republic of Indonesia Law no. 4 of 2009 concerning Mineral and Coal Mining (Kristanto et al., 2023).

CONCLUSION

Criminal liability based on Decision Number 407/Pid.Sus/2024/PN Rigt that the Defendant RH alias R bin (late) Y has been legally and convincingly proven guilty of committing a criminal act, namely refining minerals and coal that did not originate from the permit holder.

The judge in his decision sentenced the defendant to imprisonment for 8 (eight) months and a fine of IDR 10,000,000.00 (ten million rupiah), with the provision that if the fine was not paid, it would be replaced by imprisonment for 1 (one) month. aggravating and mitigating circumstances for the Defendant. Aggravating circumstances:- The Defendant's actions caused losses to the state; Mitigating circumstances: - The defendant was cooperative at trial. - The defendant admitted and regretted his actions.

The Expert Opinion states that: Defendant RH alias R bin (late) Y in managing Mineral and coal mining does not have a permit which includes: IUP (Mining Business Permit), or IUPK (Special Mining Business Permit), or IPR (People's Mining Permit). In accordance with the provisions of Article 2 paragraph (1) letter b of the Republic of Indonesia Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, it is explained that gold is a Metallic Mineral commodity. So the potential losses that can arise from mining activities without a permit include: environmental damage, prone to accidents because perpetrators do not follow good mining rules in accordance with statutory provisions, loss of state and regional revenues, both tax and non-tax, causing social conflict in the community. Article 161 Republic of Indonesia Law no. 3 of 2020 concerning Amendments to Republic of Indonesia Law no. 4 of 2009 concerning Mineral and Coal Mining reads, "Every person who accommodates, utilizes, carries out Processing and/or Refining, Development and/or Utilization, Transportation, Sale of Minerals and/or Coal which does not originate from the holder of an IUP, IUPK, IPR, SIPB or permit as intended in Article 35 paragraph (3) letter c and letter g, Article 104, or Article 105 shall be punished with a maximum prison sentence. 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah).

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