The Effectiveness of Implementing Criminal Sanctions in Mine Business Without Mining Permits in Belitung District

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ABSTRACT

Bangka Belitung Province was one of the biggest tin producers in Indonesia. According to Bangka Belitung Energy and Mineral Resource Agency, in 2018, Bangka Belitung Province produces 70,418 tons of tin. In Bangka Belitung Province, particularly in Belitung Regency, most of the tin was produced by the community. It is because tin mining in Belitung Regency has been held since Hindia-Belanda colonial period. By the rule of Law of The Republic Of Indonesia Number 4 Of 2009 Concerning Mineral and Coal Mining, Article 66 was stated that small-scale mining that held by the community has to have its own permits. But, there is still a lot of community that mining tin illegally. One of the reasons was they are doesn’t know about the obligation to have permits on mining tin. According to Tanjungpandan District Court, during 2013-2019, there are 114 cases concerning illegal mining in Belitung Regency. In this article, will discuss the Effectiveness of Implementing Criminal Sanctions in Mining Business Permits In Belitung Regency.

Keywords: Effectiveness, Criminal Sanctions, Mine Business, Mining Permits

1. INTRODUCTION

The Republic of Indonesia is one of the countries with abundant natural resources, both in the form of renewable natural resources and non-renewable natural resources. According to the mandate of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945), that the earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people¹. The meaning of the phrase controlled by the state itself based on the Constitutional Court Decision 001-021-022 / PUU-I / 2003 has the meaning of control by the state in a broad sense which originates from the conception of the sovereignty of the Indonesian people overall sources of wealth "earth and water and natural resources contained therein ”, including the notion of public ownership by the collectivity of the people over said resources².

Besides, the meaning of the phrase controlled by the state according to Bagir Manan is³:

1. Control of a kind of ownership by the state, meaning that the state through the Government is the sole authority to determine the authority over it, including here the earth, water, and natural resources contained therein.
2. Regulate and supervise their use and utilization. Equity participation and in the form of state enterprises for certain businesses.

One of the many mineral mining commodities is tin. The biggest tin producing region in Indonesia is the Bangka Belitung Province, based on data from the Bangka Belitung Energy and Mineral Resource Agency, in 2018 tin production in the Bangka Belitung Province reached 70,418 tons⁴. According to the mandate of Article 33 paragraph (3) of the 1945 Constitution mentioned above, the government through Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law)

¹Indonesia, the 1945 Constitution of the Republic of Indonesia, Article 33 paragraph (3).
³National Legal Development Agency, Report of the Legal Analysis and Evaluation Team (State’s Control of Natural Resources (Law No. 22/2001 on Oil and Gas), (Ministry of Law and Human Rights R.I: Jakarta, 2007), page 2.
has set such a way regarding mining in Indonesia. According to Article 3 of the Minerba Law, to support sustainable national development, the objectives of the management of minerals and coal are:

a. ensure the effectiveness of the implementation and control of mining business activities in an efficient, effective, and competitive manner,
b. guarantee the benefits of mineral and coal mining in a sustainable and environmentally friendly manner,
c. guarantee the availability of minerals and coal as raw material and / or as a source of energy for domestic needs,
d. support and develop national capabilities to be more able to compete at national, regional and international levels,
e. increase the income of local, regional and state communities, and create jobs for the greatest welfare of the people, and
f. guarantee legal certainty in conducting mineral and coal mining business activities.

Based on this article, the purpose of the regulation by the state in mining is to ensure the effectiveness of the mining business itself, guarantee the sustainability of the mining with an environmental perspective, improve the welfare of the community in general and open employment, and guarantee legal certainty for mining business operations. Of course it is the state's authority to regulate such matters, especially in mining matters, because given the results of mining are non-renewable natural resources, it is necessary to regulate the management of mining products in order to realize mining businesses that are environmentally sound and truly prosper for the community.

In the Mining Law, there are three types of mining businesses. In Article 35 of the Minerba Law, the mining business as referred to in Article 34 is implemented in the form of a) Mining Business Permit, b) Small-Scale Mining Permits and c) (Special Mining Business Permit). Whereas Article 34 Paragraph (1) of the Minerba Law contains the types of mining businesses, namely mining businesses classified into a) mineral mining businesses and b) coal mining businesses. Based on Article 35 of the Mining Law, it can be known about the different types of mining both in terms of concessions and permits needed in conducting mining operations.

But in reality, even though mining business licenses have been regulated, there are still many mining activities without permits. In Belitung Regency, in particular the practice of mining without a permit is carried out by many people, namely in conducting tin mining activities. This was partly due to the community's ignorance of the obligation to obtain a permit first before carrying out mining activities and also those who were indeed reluctant to take care of mining licenses because they had long ago and for generations carried out mining operations without permits, besides that the community was reluctant to take care of mining licenses because access to the provincial capital is very far away and costs a lot of money. Therefore, there are still many people who carry out mining activities without permission in Belitung Regency, especially for conducting tin mining activities.

Based on the search results, it is known that from 2013 to 2019 in the jurisdiction of the Tanjungpandan District Court there were 114 cases of mining without a permit that already had a decision of permanent legal force. Of these 114 cases, all of them are mining without permission carried out by the community. Regarding mining activities without a permit, in fact, it has been regulated in Article 158 of the Minerba Law, which states that every person who conducts mining business without Mining Permit, Small-Scale Mining Permits or Special Mining Permit as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiah). This unlicensed mining business leaves a variety of complicated problems, one of which is the physical damage to the environment in the form of an increase in critical land due to reduced forest, damage to agricultural land and gardens. According to the recapitulation of Bangka Belitung Energy and Mineral Resource Agency in the Province of Bangka Belitung in 2005, the forest area in the Bangka Belitung Province ± 690,092 Ha, covering ± 97,159 Ha (14%) had been damaged by forests. In addition, the decline in water quality is due to tin mining activities. An example is the Jelitik River flow in Bangka Regency, Bangka Belitung Province. From the results of the research conducted, it can be analyzed that the mining activities of tin ore along the Jelitik River flow, this is marked by an increase in pollutant load especially turbidity parameters in water samples taken upstream of 5.4 NTU to 999 NTU downstream Jelitik River. For wastewater quality, if the wastewater is discharged into the receiving water body, namely the Jelitik River, the parameters of iron metal (Fe) and zinc (Zn) exceed the quality standards

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1 Indonesia, Law Number 4 of 2009 concerning Mineral and Coal Mining (State Gazette of the Republic of Indonesia of 2009 Number 4, Supplement to the State Gazette of the Republic of Indonesia Number 4959), Article 3.
2 Ibid, Article 35
3 Ibid, Article 34 Paragraph (1)
5 Op.Cit, Article 158
in accordance with Government Regulation No. 82 of 2001 concerning Control and Management of Class II Water Pollution, with each measurement result value for ferrous metal (Fe) 0.380 mg / l exceeds the required quality standard (-) mg / l, and zinc metal (Zn) 0.082 mg / l exceeds the required standard of 0.5 mg / l. This mining activity without permission is actually also one of the obstacles both the state and the regions in achieving prosperity and obstacles in fulfilling the constitutional mandate. Based on these reasons, the title of this study was raised the effectiveness of the application of criminal sanctions against mining without permission in Belitung Regency in 2014-2019. Based on the description above, the formulation of the problem in this study is how is the effectiveness of the application of criminal sanctions in the mining business without permission in Belitung Regency in 2014-2019.

2. RESEARCH METHODS

There are several types of research method properties. According to Soerjono Soekanto, from the perspective of the purpose of legal research itself there are two types, namely normative legal research and sociological or empirical legal research, one of which is research on legal effectiveness. In this study, the research used was sociological or empirical research. This was done in order to know firsthand how the effectiveness of the application of criminal sanctions in the mining business without permission in Belitung Regency in 2014-2019.

In this study, the nature of the research method used is prescriptive research, namely research that aims to provide an overview or formulate a problem in accordance with the circumstances or facts. This is in line with this research which aims to find out how effective the application of sanctions in the mining business without permission and try to describe or explain it in full and clearly based on facts that occur in the field.

The types of data used in this study are grouped into two, namely:

a. Primary Data, is data obtained directly from the informant using the interview method.

b. Secondary data, i.e. data obtained through literary sources in the form of library data in accordance with research such as books, journals, papers, legislation and internet pages.

In research, there are generally three types of data collection tools, namely the study of documents or library materials, observations, and interviews. These three tools can be used individually, or together. Observations can be divided into direct and indirect observations, and interviews are divided into direct and indirect communication.

In this study, data collection techniques or tools used were observation and in-depth interviews with informants, in this case the Regent of Belitung Regency, the Office of Energy and Mineral Resources of the Province of Bangka Belitung, and ex-convicts of mining without permission in Belitung Regency. Observations were made to look directly at the location used for community mining activities along with the impact of environmental damage caused by these activities. While the interviews were conducted to obtain data directly from data sources, both from policy makers, law enforcement officials and with the people of the mining business without the permit itself.

The approach used in this study is a qualitative approach, which aims to focus attention on the general principles underlying the manifestation of symptom units in human life, or patterns analyzed by socio-cultural phenomena using the culture of a society concerned to get a picture of these patterns. This approach is used to obtain a detailed explanation of what happened in this study, in this case the effectiveness of the imposition of criminal sanctions against unlicensed mining businesses in Belitung Regency in 2014-2019.

The data obtained in this research process cannot be used just like that without the data analysis process. According to Miles and Huberman, data analysis consists of three stages:

a. Data reduction

Data reduction is defined as the process of selecting, focusing on simplification, abstracting and transformation of rough data arising from written records in the field. Data reduction continues throughout the qualitative research-oriented project.

b. Presentation of data

Miles & Huberman limits a presentation as a collection of organized information that

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12 Soerjono Soekanto, Introduction to Legal Research, (Jakarta: University of Indonesia, 2014). Page 50
14 Soerjono Sekanto, Op.Cit, Page 21
16 Burhan Ashofa, Legal Research Methods, (Jakarta: Rineka Cipta, 2010), 20.
17 Miles and Huberman, Qualitative Data Analysis, (Jakarta: Universitas Indonesia Press, 1992), p. 16
gives the possibility of drawing conclusions and taking action. Better presentations are a primary way for valid qualitative analysis, which includes: various types of matrices, graphs, networks and charts. Everything is designed to combine information that is arranged in a coherent and easily accessible form.

c. Conclusion / verification

Drawing conclusions according to Miles & Huberman is only part of one activity of a complete configuration. The conclusions were also verified during the study. The verification may be as short as the rethinking thought that goes through the analyzer (researcher) as he writes, a review of the field notes, or it may become so thorough and exhausting with review and exchange of ideas among peers to develop intersubjective agreements or also extensive efforts to place a copy of a finding in another set of data.

3. DISCUSSIONS

Tin mining is one of the livelihoods cultivated by many people in the Bangka Belitung Province, especially in Belitung Regency. This is due to the large number of tin reserves in Belitung Regency, besides that, the reason for tin mining being a livelihood that many people work on is because they can get abundant income in a relatively short time. As the resource person in the previous chapter said, tin miners can get between 70 and 80 kilograms of tin a day\textsuperscript{18}, even if they are lucky, can get up to 100 to 200 kilograms. This amount when calculated with the selling price of tin which ranges from Rp 95,000 to Rp 114,000\textsuperscript{19} is a very large amount as income in one day. In addition, tin mining activities that have been carried out since the days of the Dutch East Indies colonial government that continue to this day, which form the character of the Belitung Regency society closely with tin mining activities. Basically the government accommodates mining activities carried out by the community as stipulated in Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba). The form of government accommodates mining activities by the community, for example, is contained in the Minerba Law Chapter V on Mining Areas Part Three on People's Mining Areas (WPR), Article 20 to Article 26\textsuperscript{20}. In addition, it is also stated in the Minerba Law Chapter IX regarding People's Mining Permits (Small-Scale Mining Permits), starting from Article 66 to Article 73\textsuperscript{21}. Which in that chapter regulates the permits that must be fulfilled by the people who want to carry out mining activities. From the Small-Scale Mining Permits, rights and obligations arise for the holders of the Small-Scale Mining Permits. The authority to grant Small-Scale Mining Permits previously rests with the Regional Government in this case the Regent or Mayor, as stated in Article 67, namely\textsuperscript{22}:

\begin{itemize}
  \item a. Regents / mayors grant Small-Scale Mining Permits, especially to local residents, both individuals and community groups and / or cooperatives.
  \item b. The regent / mayor may delegate the authority to carry out the granting of the Small-Scale Mining Permits as referred to in paragraph (1) to the camat in accordance with the provisions of the legislation.
  \item c. To obtain an Small-Scale Mining Permits as referred to in paragraph (1), the applicant must submit a request letter to the regent / mayor.
\end{itemize}

However, the authority since the issuance of Law Number 23 of 2014 concerning Regional Government (UU Pemda) has been transferred to the Provincial Government, as stated in the Appendix of the Regional Government Law, namely the Division of Concurrent Government Affairs between Central and Provincial Governments and Regency / City Regions, in the Table CC on the Division of Government Affairs in the Field of Energy and Mineral Resources, the second part is the Mineral and Coal Sub Affairs\textsuperscript{23} As can be seen from the table above, through the Regional Government Law, Regency / City Governments do not have any authority related to mineral and coal mining affairs. All authority is transferred to the Provincial Government. This causes people who want to carry out mining activities must go to the provincial capital to take care of licensing. When associated with tin mining activities carried out by the Belitung Regency community, the mining community must head to the provincial capital in the City of Pangkalpinang.

With the Local Government Law, authority has shifted over community mining which was previously in the Regency / City Government to the Provincial Government. Likewise also in the Bangka Belitung Province. Based on the results of interviews with the Department of Energy and Mineral Resources, up to the time the interview was conducted, permits regarding mining businesses that had been issued by

\textsuperscript{18} Researcher, Interview, Indonesian Guest Speaker of People Mining, (Belitung, Paki Aik Village, 20 January 2020).
\textsuperscript{19} Researcher, Interview, Resource Person Mr. SN Ex-Convict Mining Without Permit, (Belitung, Badau Village, June 2019).
\textsuperscript{20} Op. Cit., Article 20 to Article 26
\textsuperscript{21} Ibid, Article 66 to Article 73
\textsuperscript{22} Ibid, Article 67
\textsuperscript{23} Indonesia, Law Number 23 of 2014 concerning Regional Government (State Gazette of the Republic of Indonesia of 2014 Number 244, Supplement to the State Gazette of the Republic of Indonesia Number 5587).
the Bangka Belitung Provincial Government came from the company, none from the community who wanted to carry out the mining business. The Department of Energy and Mineral Resources furthermore said that the supervisory and coaching function was only carried out for those who had held a mining permit, while those who did not have a permit did not conduct coaching and supervision. This means that the people who do mining are not permitted to do business, in the sense that there is no guidance or advocacy against them. With the ignorance of the government to the miners of the people, can cause the miners of the people are also ignorant of the obligation to have a permit. As stated by Dr. Derita Prapti Rahayu, basically the people miners are actually obedient to the rules and want to fulfill these obligations, but access for them to take care of licensing is difficult to obtain.

The form of legal action taken by the Bangka Belitung Provincial Government against people without mining permits in Belitung Regency can be seen from the large number of cases that have been handled by the Tanjungpandan District Court (PN). As the case data presented in the previous section, it can be seen that from 2013 to 2019 there have been 114 mining cases without permits handled by PN Tanjungpandan. Of these 114 cases, it can be seen that the average imprisonment ranged from seven months in prison to two years in prison, while the fines imposed on average ranged from Rp 500,000 (five hundred thousand rupiah) to Rp 50,000,000 (five tens of millions of rupiah) in which all the fines imposed on these cases can be replaced with one to two months' confinement. This certainly is far from being threatened by Article 158 of the Minerba Law which reads that everyone who conducts mining business without Mining Permit, Small-Scale Mining Permits and Special Mining Permit as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp 10,000,000,000 (ten billion rupiah).

If it is related to the objective of punishment as the relative theory put forward by Marpaung is to entrap the perpetrators and not to repeat their actions and to make the new people want to take similar actions to undo their intentions. However, if it is related to the situation that occurs in the field, it can be concluded that the goal of deterrence has not been achieved. As the results of an interview with Mr. SN, who openly admitted that he was still carrying out mining activities without permission after serving his previous sentence. In addition, if related to the above theory, which is to deter and make the community discouraged to carry out similar actions, it can also be seen that the still rampant mining without permission in Belitung Regency indicates that the community is not affected or discouraged to conduct mining without permission despite many who was convicted of mining without permission.

The use of criminal sanctions as a means of taking action against perpetrators of crime in Indonesia is common. As stated by Muladi in the previous section, this is evident from the practice of legislation so far showing that the use of criminal law is part of legal policy or politics adopted in Indonesia. The use of criminal law is considered as normal and normal, as if its existence is no longer in question. From this opinion, it can be interpreted that indeed the use of criminal law to crack down on mining perpetrators without permission is indeed part of the political law of the government, especially in this case the Bangka Belitung Provincial Government as the authority related to mining matters.

Tourism which is predicted by the Belitung Regency Government as the main locomotive of the economy in Belitung Regency might be an alternative for the people to switch from the tin mining sector. In addition, there are also many other alternatives, such as using the local wisdom approach by the local government to educate unlicensed community mining. Using local wisdom towards community miners might be more effective in educating them, because it cannot be denied that in fact the people of Belitung Regency still uphold local local wisdoms. In this case, for example, using the approach through traditional institutions or commonly known by the community in Belitung Regency as "village shamans", where the position of "village shamans" is still highly valued by the community, including in this case by community miners.

The community miners usually before opening the mine land will do some customs led directly by the "village shaman". Customs include "remorse" in the form of prayers and water sprinkling that has been prayed by "village shamans" in locations around the mine. In addition, there are also restrictions given by "village shamans” who must be obeyed by the miners
to avoid danger. By seeing the conditions of the people in Belitung Regency still being so obedient with traditional institutions, it is not impossible for the local government to involve these traditional institutions in fostering and supervising miners so that they do not carry out mining activities in any place and also pay attention to environmental aspects.

4. CONCLUSIONS

Based on the results of research that has been done, as well as the analysis that has been outlined in the previous section, then in this section the author wants to present a conclusion regarding the effectiveness of the application of criminal sanctions in illegal mining efforts in Belitung Regency in 2014-2019. The application of criminal sanctions against mining operators without permits in Belitung Regency is not yet effective. Because when viewed from the goal of punishment that is to provide a deterrent effect, the goal has not been achieved, this is because there are still illegal mining operators who after serving their sentences, but after the sentence has been completed, the people still repeat their actions.

There are still quite a lot of illegal mining operators in Belitung Regency, because tin mining is still the main choice for the community to get large income in a short time. The ineffectiveness of the application of criminal sanctions is also due to the fact that there are still law enforcement officers who protect miners without permission, as stated in the previous section, these persons protect miners with the aim of making a profit. In addition, the sanctions imposed on mining cases without a permit can also be said to be quite mild, so they have not given a deterrent effect to those who receive these sanctions.

The regional government which is also still impressed ignoring the interests of the community miners is also one of the causes of the still rampant unlicensed mining activities in Belitung Regency. Until now, the local government has only focused on taking action against mining operators without permission, but has not made efforts to supervise and supervise them. Even if the government makes appeals to them, and even then only in the form of appeals without a solution or a way out for those who are forced to do so. The local government has been appealing only to leave mining activities, but does not provide alternatives in the form of other jobs. While the insistence on economic needs cannot be ignored by the miners of the people, their lives must continue, cannot be dependent and face entirely to the local government.

Based on the conclusions outlined above, the writer can provide the following suggestions:

1. In order for the government, in this case especially the Bangka Belitung Provincial Government to present solutions for community miners in Belitung Regency who want to take care of licensing, for example by facilitating access for community miners to administer licenses without having to go to the Bangka Belitung Energy and Mineral Resource Agency in Pangkal Pinang City located in Pangkalpinang City in Bangka Island, which makes it difficult for community miners in Belitung Regency. The form of easy access for the community miners can be in the form of opening licensing services that come directly to the community miners, so that they do not need to leave their work for a long time to take care of licensing.

2. Encouraging the Belitung Regency Government to realize plans to make the tourism sector the locomotive of the local economy in the near future and be serious in realizing this, because it is not impossible that the tourism sector in Belitung Regency can make people gradually leave the mining sector and switch to tourism sector.

3. The use of a local wisdom approach in the form of involving traditional institutions to assist local governments in fostering community miners.

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