



# Material Delic For Mining Without Business License in Mamuju Regency

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**Abstract.** Article 158 jo Article 35 paragraph one Law Number Three of 2020 concerning amendments to the Law Number Four of 2009 concerning Mineral and Coal Mining establishes the criminal liability of mining business actors who engage in mining without a Mining Business Permit (IUP). Using a statutory approach, this research is an example of normative legal research in legal writing. Articles 158, 159, 160, 161, 161A, 161B, 162, and 164 of Law Number Three of 2020, an Act to Amend Law Number Four of 2009 Regarding Mineral and Coal Mining, govern serious violations in the mining industry. The case 229/Pid.Sus/2021/PN.Mam, on the other hand, the offender was charged with serious violations for mining without a license under Article 158 and Article 35 paragraph one. For instance, in decision 229/Pid.Sus/2021/PN.Mam, the judge considered the legal facts of the trial derived from evidence, statements of witnesses, and statements of Defendant and Matters mitigating the defendant before reaching a verdict on mining activity without a permit.

**Keywords:** Criminal Acts; Mining; Permission

## 1 Introduction

The natural resources of the Unitary State of the Republic of Indonesia are extensive. Article 33, subsection three of the Constitution of the Republic of Indonesia, which went into effect in 1945, states that "The State shall control Earth and water and natural wealth contained therein and shall be used to the greatest extent possible prosperity of the people." In accordance with this idea, the government allocates the natural assets of the country for the betterment of current and future generations.

Natural resources of Indonesia are plentiful. Coal and other mineral deposits are considered a valuable resource. Mining is one of Indonesia's natural resources, and the government has access to a wide variety of metals and minerals. The mining industry benefits from an increase in the number of businesses operating within it. Investment in the mining sector plants the seeds for economic growth, social harmony, and the preservation of the State's unique regional identity. Given that minerals and coal are part of the earth's natural wealth and are a source of non-renewable natural resources, it is imperative that they be managed in the most effective, efficient, trans-

parent, sustainable, environmentally-sound, and just way possible so that the greatest possible benefit can be obtained for the prosperity of the people.

All or some of the following steps general research, exploration, feasibility studies, construction, mining, processing, refining, development, utilization, transportation, sale, and post-mining activities make up what is known as the mining process. Mining operations are governed by Law Number Three of 2020, which includes 209 Articles and Chapter 28 as an addition to Law Number Four of 2009 regarding Mineral Mining and Coal. However, taking into account how things have changed. The law's justification was laid out: the minerals and coal found within Indonesia's legal mining jurisdiction are nonrenewable natural treasure bestowed by God Almighty. Because of this, before any business procedure can move forward, it must be approved by the proper authority.

Every company is required under Article 158 of Law Number Three of 2020, which amends Law Number Four of 2009 on Mineral and Coal Mining, to engage in mining-related activities. A valid Mining Business License (SIUP) is required in Indonesia. Legalization of Business Activity the Indonesian Mining Permit, or "Mining" for short, is required in order to conduct mining operations anywhere within the Unitary State of the Republic of Indonesia. This includes everything from initial exploration and planning to final product distribution. According to Article Six of Government Regulation Number 23 of 2010 on the Implementation of Business Activities in Mineral and Coal Mining (PP 23/2010), the government has the right to issue (IUP) permits. According to the law, ministers, governors, or regents/mayors have the power to issue individual permits (IUPs).

As a result of mining being carried out without a business permit, the main target is the environment. At this time, pollution and/or Environmental destruction are taking place everywhere at a swift rate fast. At this time, there are many problems highlighted by various parties because the environment is a source of human needs in carrying out their lives.

Therefore the government has regulated provisions regarding criminal liability for mining business actors who commit mining despite a Mining Business Permit (IUP), as stipulated in Article 158 to Article 35 paragraph one Law Number Three of 2020 concerning amendments to Law Number Four of 2009 concerning Mineral and Coal Mining which reads:

Article 158: "Anyone who carries out mining without a permit as referred to in Article 35 shall be punished with imprisonment for a maximum of five years and a maximum fine of Rp. 100,000,000,000.00 (one hundred billion rupiah)."

Article 35: "(1) Mining Business is carried out based on Business Licensing from the Central Government".

The article explains and emphasizes that every person who carries out mining activities without any IUP, IUPK, IPR, SIPB, permits assignment, transport and sale permit, IUJP, and IUP for sales will receive a cumulative penalty that carries multiple penalties.

According to the case of Usman Abdullah Alias Usman Bin Abdullah, who was charged with mining without a license and whose case was resolved by court decision number 229/Pid.Sus/2021/PN.Mam, illegal mining in the Tasiu River, South Tasiu

Environment, Kalukku Village, Kalukku District, Mamuju Regency, West Sulawesi Province, will take place from 2019 to 2021. The panel of judges hearing the quo case has found the defendant guilty beyond a reasonable doubt of committing a crime, "Performing mining without a business license mining" as indicated by the Public Prosecutor, and imposed an illegal sentence on the Defendant imprisonment for 9 (nine) months and a fine of Rp. 5,000,000,000,00 (five billion rupiah) provided that if the fine is not paid, imprisonment for a month is replaced.

## 2 Methods

Research in the area of law known as normative legal research. In order to investigate the legal foundation in greater depth, this research takes a statute-based method, which involves perusing relevant statutes and regulations. The case approach gives a conceptual approach that departs from ideas and doctrines developed in law, as well as a full analysis of the context, characteristics, and distinguishing features of the cases investigated. Legal principles, conceptions, and thoughts pertinent to the issues at hand can be found by researchers.

## 3 Results and Discussion

The state has the authority to control natural resources for the purpose of achieving economic and social justice. The mining industry in Indonesia has the potential to bring in the largest amount of export revenue for the country. Still, the existence of mining business activities in Indonesia has always been a problem that various groups debate due to the dilemma between the utilization of resources as a whole and the impacts arising from mining business activities. The. Currently, the state is more focused on resource utilization and pays less attention to the impacts that can be caused by the mining business, such as in terms of the environment and social/community, so this is necessary because this can cause an imbalance in the ecosystem and the world of mining.

In regions in Indonesia, there are still frequent mining businesses managed by local communities. Even though there are laws on the books at the federal level, it is not uncommon for local communities to conduct mining operations without appropriate permits, such as an IPR or an IUP from the appropriate municipal or county authorities. A mining business permit authorizes the holder to engage in mining activities by:

- a. If the mining business permit is to be used in the same Regency or City as the mining business permit, then the Regent or Mayor of that jurisdiction.
- b. Governor, with the suggestion of the local Regent or Mayor, if the region where the mining business permit will be issued is in a cross-Regency or City area within the same Province.
- c. If the mining permit is for an enterprise that spans multiple provinces, the Minister is required by law to obtain a recommendation from the appropriate Governor and Regent or Mayor.

Crimes of a serious nature in the mining industry are punishable by imprisonment, confinement, fines, and other sanctions under Articles 158, 159, 160, 161, 161A, 161B, and 164 of Law Number Three of 2020, which amends Law Number Four of 2009, which regulates mineral and coal mining. The content of the article, which in essence, the author describes as follows:

Article 158 reads: "Any person who conducts mining business without a permit as referred to in Article 35 shall be subject to imprisonment for a maximum of five years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah)".

Article 159 contains: "Holders of IUP, IPR or IUPK, or SIPB who deliberately provide a report as referred to in Article 70 letter e, Article 105 paragraph four, Article 110, or Article 111 paragraph one incorrectly or submit false information shall be subject to criminal penalties. Maximum imprisonment of five years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah)".

Article 160 states: "Anyone who has an IUP or IUPK at the stage of Exploration operations activities but carries out production Operations activities shall be subject to imprisonment for a maximum of five years and a fine of up to Rp. 10,000,000,000.00 (ten billion rupiah)".

Article 161 reads: "Anyone who accommodates, utilizes, processes and/or refines, develops and utilizes, transports, sells minerals and or coal that does not originate from holders of IUP, IUPK, IPR, SIPB or permits as referred to in Article 35 paragraph three letters c and g, Article 104, or Article 105 shall be punished with imprisonment for a maximum of five years and a fine of up to Rp. 10,000,000,000.00 (ten billion rupiah)".

Article 161A reads: "Any IUP, IUPK, IPR, or SIPB holder who transfers IUP, IUPK, IPR, or SIPB as referred to in Article 70A, Article 86G letter a and Article 93 paragraph one shall be subject to imprisonment for a maximum of Rp. 5,000,000,000.00 (five billion rupiah)".

Article 161B contains:

"1. Every person whose IUP or IUPK is revoked or expired and does not carry out:

- a. Reclamation and/or post-mining; and/or
- b. Placement of reclamation guarantee funds and/or post-mining guarantee funds, shall be punished with imprisonment for a maximum of five years and a fine of up to Rp. 100,000,000,000.00 (one hundred billion rupiah).

2. In addition to the criminal witness referred to in paragraph one, examining IUP or IUPK can be subject to additional punishment in the form of payment of funds in the context of carrying out reclamation and/or post-mining obligations which are their obligations".

Article 162 reads: "Anyone who obstructs or interferes with Mining Business activities of IUP, IUPK, IPR or SIPB holders who have fulfilled the requirements referred to in Article 136 paragraph (2) shall be subject to imprisonment for a maximum of 1 (one) year or a fine of up to Rp. 100,000,000.00 (one hundred million rupiah)".

Article 163 contains: "In addition to the provisions referred to in Article 158, Article 159, Article 160, Article 161, Article 161A, Article 161B, and Article 162, perpetrators of criminal acts may be subject to additional punishment in the form of:

- a. Confiscation of goods used in committing a crime;
- b. Deprivation of profits derived from criminal acts; and/or;
- c. The obligation to pay costs incurred as a result of a crime.”

One of the cases related to unlicensed mining in the Taisu River, South Tasiu Environment, Kalukku Subdistrict, Kalukku Subdistrict, Mamuju Regency, West Province, which was carried out by the defendant who was carried out without a mining permit so that he was charged with material offenses Article 158 in conjunction with Article 35 paragraph one of Law Number Three 2020 concerning amendments to Law Number Four of 2009 concerning Mineral and Coal Mining as indicted by the Public Prosecutor (PU).

Article 158 of Law Number Three of 2020, which modifies Law Number Four of 2009 on Mineral and Coal Mining, describes that "everyone who carries out mining without a permit as referred to in Article 35 shall be punished with imprisonment for a maximum of five years and a maximum fine of Rp. 100,000,000,000.00." As well as in Article 35 of Law Number Three of 2020 as stated in Article 158, which, in essence, are:

- “1. Mining business is carried out after obtaining a business license from the central government;
- 2. The business license includes:
  - a. business registration number;
  - b. Standard certificate;
  - c. Permission;
- 3. The permit, as referred to in paragraph two letter c, consists of the following:
  - a. IUP;
  - b. IUPK;
  - c. IUPK as Continuation of Contract/Agreement Operations;
  - d. IPR;
  - e. SIPB;
  - f. assignment permit;
  - g. Transport and sales license;
  - h. IUJP; And
  - i. IUP for sale.
- 4. The central government can delegate the authority to grant business licenses to the provincial government in accordance with the provisions of the applicable regulations.”

According to the analysis of Article 158, the rules apply to everyone. Each person or entity, whether legally incorporated or not, is treated as an individual or corporation in criminal contexts like mining. Stipulated criminal or criminal punishments are made up of jail time and fines (added up over time).

In addition, the regulation of criminal acts, as stipulated above, cannot be separated from the theory of criminal responsibility and the basic theory of criminal imposition, namely as a means to achieve the goal of protecting the interests of society through criminal sanctions or actions committed. From the aspect of criminal responsibility in the field of mining, it is not enough to just do it, but the perpetrator must fulfill the elements of criminal responsibility, namely:

- a. the fact that a criminal offense was committed by the offender;
- b. an act committed by mistake;
- c. the culprit is capable of being held responsible; And
- d. no excuses.

As for the criminal elements of Article 158 of the Mineral and Coal Mining Law which were violated by the Defendant USMAN ABDULLAH, namely:

1. Elements of each person; And

2. Elements of mining without appropriate permission from government officials to do mining (a Mining Business Permit, People's Mining Permit, or Special Mining Business Permit, respectively). Whereas it is clear that not possessing an IUP, IPR, or IUPK to operate a mining enterprise is at the heart of the unlawful behavior outlined in the aforementioned article. That's why we refer to it as "illegal mining." Therefore, the offender is subject to criminal penalties as described in the aforementioned article.

The Panel of Judges can only impose two distinct forms of criminal sanctions on the defendant: cumulative and alternative. In a cumulative sentence, the criminal would serve both their prison time and their financial penalty at the same time. While there may be a range of possible punishments, the Panel of Judges must ultimately settle on one: imprisonment or detention. As it happens, the aforementioned types of illegal behavior in the mining industry share no distinction between offenses and infractions.

Articles 158, 159, 160, 161, 161A, and 161B of the Mineral and Coal Mining Law provide the total penalties for criminal violations. Meanwhile, Article 162 of the Mineral and Coal Mining Law governs alternative penalties for infractions.

## **4 Conclusion**

Meanwhile, material offenses in the mining business are regulated in Law Number Three of 2020 concerning Amendments to Law Number Four of 2009 concerning Mineral and Coal Mining contained in Articles 158, 159, 160, 161, 161A, 161B, 162, 164. Meanwhile, in case Number 229/Pid.Sus/2021/PN.Mam Defendant USMAN BIN ABDULLAH who carried out mining without a permit was charged with material offenses Article 158 in conjunction with Article 35 paragraph one of Law Number Three of 2020 concerning amendments to Law Number Four of 2009 concerning Mineral and Coal Mining which reads that "everyone who carries out mining without a permit as referred to in Article 35 shall be punished with imprisonment for a maximum of five years and a fine of up to Rp. 100,000,000,000.00)."

## **Recommendations**

In order to avoid criminal sanctions, actors in the mining industry are required by Law Number Three of 2020 Concerning changes to Law Number Four of 2009 concerning Mineral and Coal Mining and other legal regulations to obtain mining permits in advance and arrange for the necessary permits to conduct mining operations.

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