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Law Enforcement on Management of Limestone Mining Without Permits According to Law Number 3 of 2020 concerning Mineral and Coal Mining

Ratu Triani Ayune Wulan Suci  

Kantor Advokat Sriwijaya (Eko Haryanto, S.H)

Jl. Solo No.2, Randusari, Kota Semarang, 50244, Indonesia

 ratutriani803@gmail.com

ABSTRACT

One of the impacts of strengthening the Election Supervisory Body (Bawaslu)'s authority from the central level to Regency/City level in

handling election administrative violations is to guarantee the certainty of law for the justice seekers. This is based on the authority to examine and decide on allegations of handling election administrative violations. The authority to handle this violation is based on the Article 461 paragraph (1) of Law Number 7 of 2017 about Election. By the authority, Bawaslu is a *semi-judicial* or *quasi-judicial institution*. The output of the handling is in the form of verdict such as court verdict in general which have final and binding *power* and have *execution force* for the ranks of the Elections Commission (KPU). This executive power can be seen in verdict that can be directly executed without having to wait or require approval from the KPU through the issuance of verdict. As a final verdict, the verdict of Bawaslu, Provincial Bawaslu and Regency/City Bawaslu also have *constitutive* and *condemnatory* characteristic nature. With these characteristics, the purpose of issuing a Bawaslu verdict is to be finalizing administrative violation case of the election. However, at the practical level, the nature of the *final and binding* does not apply to Provincial Bawaslu and Regency/City Bawaslu. This can be seen in the existence of legal remedies against the verdict through a request for correction to the RI Bawaslu (central).

Keywords: *Verdict, Election Administrative Violations, Final and Binding, Quasi-Judicial.*

INTRODUCTION

Indonesia is a country rich in minerals (mining). The minerals include gold, silver, copper, oil and natural gas, coal, and others. The 1945 Constitution Article 33 Paragraph (3) stipulates that the wealth of natural resources found in Indonesia, including the earth, water and natural resources contained therein are assets controlled by the state and used for the greatest prosperity of the people. One of the natural resources owned by Indonesia is found in limestone mining minerals. The limestone mining sector is a non-renewable natural resource and has an important role in

meeting the needs of many people, so its management must be controlled by the state to provide real added value to the national economy in an effort to achieve prosperity and welfare of the people in a just manner.¹

Mineral resources are one of the natural resources owned by the Indonesian people, if managed properly it will contribute to the country's economic development, namely by utilizing natural resources by carrying out mining activities. Mining is one of the efforts to develop natural resources that have the potential to be used efficiently and optimally for the interests and prosperity of the people, through a series of exploration activities, entrepreneurs, and utilization of mining products. In Indonesia, regulations regarding mineral and coal mining are regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. In Article 1 Paragraph (1) it is explained that mining is one or part of all stages of activities in the context of research, management and exploitation of minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales. and post-mining activities. In other words, mining is a series of efforts to search for mining/excavation, processing, utilization and sale of minerals (minerals, coal, geothermal, oil and gas).²

Limestone mining or commonly referred to as limestone has many uses, namely as an industrial mineral that is widely used by the industrial or construction and agricultural sectors, including for building materials, building stones, road stabilizing materials, liming for agriculture and others. . Limestone mining activities are activities carried out in various stages, including including initial checks where the mine owner ensures whether the moor can be used as mining or not. After that the moor must be cleaned and then mining activities can begin. When the mining activity

¹ Imamulhadi. 2017. *Ikhtisar Ilmu Hukum*. Yogyakarta: K-Media, hlm. 4.

² Salim HS. 2014. *Hukum Pertambangan Mineral dan Batubara*. Jakarta: Sinar Grafika, hlm. 24.

is over, the owner will usually bury the former mining site using soil again so that it can be used as mooring again.³

The right of state supervision which contains the authority to regulate, manage and supervise the management or exploitation of minerals and contains the obligation to use them for the greatest prosperity of the people. Control by the State is held by the Government.⁴ Likewise with IUP (Mining Business Permit) for minerals such as limestone mining, the authority for these permits has been transferred to the Central Government. Business entities, cooperatives and individuals conducting mining businesses are required to meet administrative requirements, technical requirements, environmental requirements and financial requirements. The Minerba Law is a tool to regulate mineral and coal mining from upstream to downstream and its various permits. With the aim that the State obtains large profits from mining results and can be used for the welfare of the people. Law Number 4 of 2009 in conjunction with Law Number 3 of 2020 adheres to the *ultimum remedium* understanding. So, it's not surprising that the sanctions imposed tend to be in the form of administrative sanctions rather than criminal sanctions. The violations of the Minerba Law that have occurred were committed by PT. Stanindo Inti Perkasa (SIP) in Bangka Belitung. The company operates in tin mining using production suction vessels without a permit. The place of operation is right in the sand beach tourist area.

The existence of mining cases in Indonesian territory that does not have an IUP (Mining Business Permit) can have an impact on the environment such as landslides, subsidence, flooding, infertile soils, rivers dry up so that it will cause losses to the people, nation and state. Law enforcement against criminal acts without this permit must be carried out for the sake of social justice for all Indonesian people. And the latest

³ Risa Nur'aini, Suparman AW, dan Nurudin Hadi. 2019. *Dampak Penambangan Batu Kapur terhadap Kesejahteraan Masyarakat Pekerja Tambang di Desa Leranwetan Kecamatan Palang, Kabupaten Tuban*. Skripsi Pendidikan Pancasila dan Kewarganegaraan: Universitas Negeri Malang, hlm. 15-17.

⁴ Siti Maimunnah. 2012. *Negara Tambang dan Masyarakat Adat*. Malang: Intrans Publishing, hlm. 9.

Minerba Law is needed for the benefit of the Indonesian nation and state. The number of mining areas in Indonesia is quite large, so the existence of this Minerba Law is supposed to encourage the down streaming of mining products that are used as a steppingstone for re-industrialization.⁵

Therefore, this study aims to analyze on how the management of limestone mining permits in terms of Law Number 3 of is 2020 concerning Mining and Coal Mining and how is law enforcement against limestone mining without a permit in terms of Law Number 3 of 2020 concerning Minerba Mining.

METHOD

This study uses legal research with a normative juridical approach based on the literature on principles, systematics, and levels of synchronization. Furthermore, the research specification in this paper is in the form of analytical descriptive, which is a complete description of a situation in order to obtain data on the relationship between symptoms and analyze its relationship to statutory regulations, relevant legal theory, and legal application practices related to the problems in this paper.⁶

RESULT & DISCUSSION

I. MANAGEMENT OF LIMESTONE MINING PERMITS IN REVIEW OF LAW NUMBER 3 OF 2020 CONCERNING MINERBA MINING

Limestone is a rock consisting of calcium carbonate, formed directly from seawater precipitation as a result of biochemical processes. Limestone is

⁵ Ahmad Khoirul Umam. 2021. *Kuasa Oligarki atas Minerba Indonesia: Analisis Pasca Pengesahan UU No. 3 Tahun 2020 tentang Pertambangan Minerba*. Jakarta: Universitas Paramadina, hlm. 10-11.

⁶ Soerjono Soekanto. 1986. *Pengantar Penelitian Hukum*. Jakarta: UI Press, hlm. 96.

one of the industrial minerals that is widely used in the industrial or construction and agricultural sectors, among others, for building materials, building stones, road stabilizing materials. highway, liming for agriculture, and others. Limestone can occur in several ways, namely organically, mechanically or chemically. Most of the limestone found in nature occurs organically, this type comes from the deposition of shells/houses of shells and snails, foraminifera or algae or comes from the skeletons of corals/shellfish. Limestone can be milky white, light gray, light gray, brown and even black depending on the presence of mineral impurities.⁷

Mining is part or all of the stages of activities in the context of research, management and exploitation of minerals or coal which include general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales as well as post-mining activities.⁸ Mining is carried out based on a mining authorization, namely the authority given to an entity or individual to carry out a mining business. Mining authorization is granted by Decree of the Minister of Mines and Energy.

Mining businesses are grouped into mineral mining and coal mining. Mineral mining is the mining of a collection of minerals in the form of ore or rock, excluding geothermal, oil, natural gas, and groundwater. Meanwhile, coal mining is the mining of carbon deposits found in the earth, including solid bitumen, peat, and asphalt rock. The business purpose of mining is to process minerals that are in the earth so that they can be used to process minerals that are in the earth so that they can be used and utilized by all human beings to carry out their lives in order to achieve prosperity and prosperity.

Mining has a very close relationship with the environment, because every mining business, whether it is related to general mining or oil and

⁷ Anonim. 2000. *Spesifikasi Kalsium Karbonat Untuk Pelapis Kertas (Paper Coating)*. Probolinggo: PT. Kertas Leces, hlm. 12.

⁸ Pasal 1 Angka 1 Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara. Lembar Negara Tahun 2020 Nomor 3.

gas mining, is obliged to maintain the continuity of the carrying capacity and capacity of the environment. Utilization of excavated or mining materials has been regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The legal basis is one of the main guidelines for the government and society in utilizing natural resources, especially in the limestone mining sector. Not only as a legal basis, but also as a movement for the management, protection and allocation of results from the utilization of natural resources that are taken advantage of. It is undeniable that the potential for limestone mining has a positive impact on both the community and the country, especially on economic growth. But it can also have a negative impact on environmental damage. Limestone area is an area that is easily damaged and has very little resilience so that such conditions require the area to be planned very carefully so that environmental damage due to deep limestone mining is minimized.⁹

Utilization of natural resources and the environment for benefits, such as limestone mining, is an activity that utilizes the environment so that the government issued regulations regarding the mineral and coal mining law in Law Number 3 of 2020 and Law Number 32 of 2009 concerning Protection and Management Environment. The most important thing in Law Number 32 of 2009 is that every mining business is required to have a permit in the form of a mining business permit (IUP). In addition, the procedures for the utilization of mining resources have also been regulated in it. The procedure for issuing an IUP is carried out by the party or official who is authorized in his/her field. The first condition that must be met to obtain an IUP is to have an environmental permit. An environmental permit is granted to every business whose utilization is required to have an AMDAL or UKL-UPL, as regulated in Article 1 Number 35 of Law Number 32 of 2009, which explains that:

⁹ M. Abdul Gofur dan I Gede Astra Wesnawa. 2018. *Dampak Ekoogi Penambangan Batu Kapur sebagai Bahan Dasar pembuatan Semen di Gunung Sadeng Kecamatan Puger, Kabupaten Jember*. Jurnal Pendidikan Geografi Undiksha, Vol. 6, No. 3, pp. 163-174, hlm. 166.

Environmental permit is a permit that is given to every person who carries out a business and/or activity for which AMDAL and UKL-UPL are required in the context of environmental protection and management as a prerequisite for obtaining a business and/or activity permit.¹⁰

Law Number 3 of 2020 concerning Mineral and Coal Mining explains that what is meant by a mining business permit or what is called an IUP is a permit to carry out mining. Mining business permits are granted by the Regent/Mayor if the mining business permit area is in one Regency or City area. If it is cross-regional, then the mining business permit is given by the Governor after receiving a recommendation from the local Regent/Mayor. And if it is in a cross-provincial area, the permit is given by the Minister after receiving a recommendation from the Governor and the local Regent/Mayor.¹¹

However, after the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerba Mining, mining business permits (IUP) through the authority to manage mineral and coal mining which have been owned by the provincial government have become the authority of the central government. So, for mining business actors, whether in the form of limestone mining, IUPs are obtained with the permission of the central government. So that the transfer of authority erases or revokes the provisions in Law Number 23 of 2014 concerning Regional Government. Nevertheless, that Law Number 3 of 2020 in principle does not completely ignore the role of the regional/provincial regional government.

Mining activities, whether mineral or coal, which are not carried out in accordance with the designated area, cannot obtain an IUP. The reluctance of the community or limestone mining entrepreneurs to apply for an IUP is due to the difficulty of obtaining or issuing permits since the transfer of authority to issue IUPs from the Regency/City Government to

¹⁰ Gatot Supramono. 2012. *Hukum Pertambangan Mineral dan Batubara di Indonesia*. Jakarta: Rineka Cipta, hlm. 102.

¹¹ Abrar Saleng. 2004. *Hukum Pertambangan*. Yogyakarta: UII Press, hlm. 20.

the Central Government in this case the Ministry of Energy and Mineral Resources as stipulated in Article 35 Paragraph (4) of Law Number 3 Year 2020. The exercise of the delegation of authority has resulted in incompatibility of limestone mining practices or businesses, resulting in a lot of illegal mining. Illegal mining in addition to having a negative impact on the environment can also have a long-term impact on regional development. In addition, not having a permit by mining entrepreneurs can also have a negative impact on the safety of mining workers due to a lack of guarantees and supervision.¹²

The delegation in terminology refers to Law Number 30 of 2014 concerning Government Administration which states that delegation is the delegation of authority from a higher government agency and/or official to a lower government agency and/or official with full responsibility and accountability. to the delegated recipient. When related to the current practice of government administration, this understanding tends to interpret delegation as decentralization, which means that the responsibility for violations rests entirely with the party who was delegated. From this understanding, delegation cannot be given to regions. Thus, the meaning as stated in Law Number 30 of 2014 means that the delegation can only be given to the provincial government through the co-administration mechanism or to the Governor as the representative of the Central Government through the decentralization mechanism.¹³

In this regard, in the implementation of the norm of delegation to the Provincial Government in accordance with Law Number 3 of 2020, it is necessary to discuss further, whether the intended delegation is defined as the transfer of authority to the province as an autonomous region through a decentralization mechanism, assignment to the provincial government through mechanism for co-administration or delegation to the Governor as a representative of the Central Government domiciled in the Province through a deconcentration mechanism. The meaning is of course taking

¹² *Ibid.*, hlm. 105.

¹³ Paulus Efendi Lotulung. 1994. *Himpunan Makalah Asas-Asas Umum Pemerintahan Yang Baik*. Bandung: Citra Aditya Bakti, hlm. 65.

into account the provisions of Article 18 Paragraph (2) of the 1945 Constitution which mandates that autonomous regions in carrying out their government regulate and manage their own government affairs according to the principle of autonomy and assistance tasks whose structure and procedures for administering regional government are regulated in law.¹⁴

Mining has often been seen as a technical side and its impact, so the law has only been transformed into a series of licensing requirements for mining. The law is seen as a tool for mining legalization, it is rarely touched on how the law regulates mining based on natural resource social justice.

Article 2 of Law Number 3 of 2020 stipulates that Minerba mining is managed based on the following principles:

1. Benefit, fairness and balance.
2. Alignment to the interests of the nation.
3. Participatory, transparency and accountability.
4. Sustainable and environmentally friendly.

The first, second and third principles in the explanation do not provide elaboration. However, according to the author, the first principle is multidimensional, meaning that the benefits, fair and balanced include many aspects such as economic, social, cultural, environmental and others. The second principle shows an attitude of nationalism and sovereignty over the utilization and results of mining management and is anti-foreign intervention. The third principle demands that mining management involves the community, is open and responsible. In the explanation of the fourth principle, it is explained that what is meant by the principle of being sustainable and environmentally sound is the principle that in a planned manner integrates the economic, environmental and socio-cultural dimensions in the overall mineral and coal mining business to realize

¹⁴ Pushep. 2020. *Pentingnya Pengaturan Pelibatan Daerah Provinsi dalam Pengelolaan Minerba*. <http://pushep.com>, diakses Rabu, 30 Maret 2022, Pukul 09.00 WIB.

present and future prosperity.¹⁵ Mining Business Permit (IUP) consists of two stages, namely:

1. Exploration IUP which includes general investigation, exploration and feasibility study activities.
2. Production Operation IUP, which includes construction, mining, processing and refining activities as well as transportation and sales.

In the case of exploration activities and feasibility study activities, exploration IUP holders who obtain excavated minerals or coal are required to report to the IUP giver. According to Article 23 of PP Number 23 of 2010 concerning the Implementation of Minerba Mining Business Activities, it stipulates that the requirements for an exploration IUP include:

1. Administrative
2. Technical
3. Environment
4. Financial

The principle of granting permits as regulated in Law Number 3 of 2020 concerning Minerba Mining is that one IUP is only allowed for one type of mine. One IUP is granted for one type of mineral and coal. The granting of IUP may not be more than one type of mine. Article 6 of PP Number 23 of 2010, stipulates that IUPs are granted by the Minister, Governor, or Regent/Mayor in accordance with the authority of IUP granted to:

1. A business entity which can be a private company, a state-owned company or a regionally-owned company.
2. Cooperative.
3. Individuals who can be Indonesian citizens, Firman companies or limited partnerships.¹⁶

¹⁵ Otong Rosadi. 2012. *Quo Vadis Hukum, Ekologi dan Keadilan Sosial*. Jakarta: Thafa Media, hlm. 192.

¹⁶ Natasha Elza Jauhara dan Elsi Kartika Sari. 2019. *Pertambangan Batu Kapur Oleh I Made Sukaraja di Kabupaten Badung, Bali (Studi Kasus Nomor: 1105/PID.SUS/2016 PN.Dps)*. Jurnal Metrik Serial Humaniora dan Sains. Vol. 1, No.1, hlm. 29.

Mining activities can be temporarily suspended, for those who have an IUP (Mining Business Permit) and IUPK (Special Mining Business Permit), if:

1. Force majeure, such as war, civil unrest, rebellion, epidemic, earthquake, flood, fire, and natural disaster beyond human capability.
2. Circumstances that hinder part or all of mining business activities, such as blockades, strikes and disputes over actions beyond the fault of the IUP or IUPK holders and laws and regulations issued by the Government that hinder ongoing mining business activities.
3. The condition of the environmental carrying capacity of the area cannot bear the burden of mineral and/or coal production operations carried out in its territory.

The temporary suspension does not reduce the validity period of the IUP and IUPK. The application for temporary suspension is submitted to the Minister, Governor or Regent/Mayor in accordance with their respective authorities. However, for the temporary suspension at point 3, it can be carried out by a mining inspector and/or based on a request from the community to a public official in accordance with their authority. The answer to whether the application is accepted or rejected by the relevant official is given in writing no later than 30 days after the application is received.¹⁷

The expiry of a mining business license may expire due to several factors, including:

1. Refunded. This means that IUP or IUPK holders can submit their IUP or IUPK with a written statement to the Minister, Governor or Regent/Mayor in accordance with their authority and accompanied by clear reasons, and after fulfilling their obligations.
2. Removed. This means that the holder of an IUP or IUPK is revoked if:
 - a) Does not fulfill the stipulated obligations.
 - b) Committing a criminal act as regulated in this law.

¹⁷ Salim HS. 2012. *Hukum Penyelesaian Sengketa Pertambangan di Indonesia*. Bandung: Pustaka Reka Cipta, hlm. 94-95.

3. Expired. If the time period specified in the IUP and IUPK has expired and no application for an increase or extension of the activity stage or application is submitted but does not meet the requirements, then the IUP and IUPK shall expire.

With the expiration of the IUP and IUPK, the holder must still fulfill the obligations stipulated in the laws and regulations, including submitting all data obtained from the results of exploration and production operations to the Minister, Governor, or Regent/Mayor in accordance with their respective authorities.¹⁸

II. LAW ENFORCEMENT AGAINST UNLICENSED LIMESTONE MINING IN REVIEW OF LAW NUMBER 3 OF 2020 CONCERNING MINING

Before the author describes the problem that the author examines, the author will first explain the meaning of law enforcement. Law enforcement is the process of making efforts to enforce or actually function legal norms as guidelines for behavior in traffic or legal relations in social and state life. Law enforcement is a process to make legal wishes come true.¹⁹ In enforcing the law there are 3 (three) elements that must be considered, namely:

1. There is legal certainty.
2. Legal benefits.
3. Justice.²⁰

At a certain level, the current law enforcement practice, in terms of mining without a license from a micro scale, still prioritizes human values. The practice of law enforcement in Indonesia does not create enlightenment, a sense of security and protection, but instead is very

¹⁸ Suyatono, dkk. 2003. *Good Mining Practice*. Jakarta: Mutiara Bumi, hlm. 11.

¹⁹ Satjipto Rahardjo. 2009. *Penegakan Hukum sebagai Tinjauan Sosiologis*. Yogyakarta: Genta Publishing, hlm. 28.

²⁰ Ibid., hlm. 34.

pressing, makes people cramped, and at the same time does not give hope to the small people which in turn fosters pragmatic compliance which leads to the phenomenon of disorder in law enforcement.²¹

Mining crime is an act that is prohibited by regulations that is subject to sanctions for perpetrators of acts in order to protect mineral and coal mining activities and businesses. The crime of managing mining without a permit is an illegal mining crime that does not have an IUP (Mining Business Permit) or which in English is called illegal mining. Illegal mining in this context is mining activities carried out without state permits, in particular without land rights, mining permits and exploration permits or mineral transportation.²² Based on the applicable positive law, mining limestone without a permit is one of the criminal acts in the mining sector which is prohibited in Law Number 3 of 2020 concerning Minerba Mining.

There are 2 (two) types of sanctions for violators of the prohibition provisions in the Minerba Law, namely administrative sanctions and criminal sanctions. In addition, perpetrators may also be subject to additional sanctions. Administrative sanctions for limestone mining actors without a permit are in the form of written warnings, fines, temporary suspension or all exploration activities or production operations and/or revocation of IUP, IUPK, IPR, SIPB (Aid Mining Permit) or IUP for sale. Criminal sanctions can be imposed on violators as regulated in Articles 158 to 164 of the Minerba Law. Article 158 (amendment to the Minerba Law) for example stipulates in essence that anyone who conducts mining without a permit as referred to in Article 35 can be sentenced to a maximum imprisonment of 5 years and a maximum fine of Rp. 100 billion. In addition to administrative sanctions and/or criminal sanctions in the mining sector, additional penalties may also be imposed in the form of confiscation of goods used in committing a crime, confiscation of profits

²¹ Bambang Sutiyoso. 2010. *Reformasi Keadilan dan Penegakan Hukum di Indonesia*. Yogyakarta: UII Press, hlm. 10.

²² Marisan Dian Pertiwi dan Edi Setiadi. 2019. *Penegakan Hukum Praktek Illegal Mining*. Jurnal Prosiding Ilmu Hukum, Volume 5, No. 1, hlm. 134.

derived from a criminal act and/or the obligation to pay costs incurred as a result of a criminal act.²³

The administration of administrative sanctions is part of the administrative law enforcement which is preventive in nature in order to supervise and control the actions of individuals, legal entities and the government. Licensing is one of the administrative legal instruments and violations against it can be subject to sanctions.

Penalties or criminal sanctions are the suffering of someone who makes a mistake because it violates the public interest that has been regulated in the criminal law which is a sanction imposed by a judge on the perpetrator, including in the public interest, namely:

1. The interests of government agencies and state regulatory laws and regulations, such as the state, state institutions, state officials, civil servants, laws, government regulations and so on.
2. The interests of each person such as soul, body, independence, honor and property rights or property.²⁴

The laws and regulations relating to a permit include typical administrative sanctions, including:

1. Bestuurdwang (in the form of government coercion).
2. Withdrawal of a decision (decree) in favor of the subsidy payment permit.
3. Imposition of administrative fines.
4. Imposition of forced money by the government.²⁵

A perpetrator of the mining crime above can be given or subject to imprisonment and monetary sanctions which are mandatory punishments. The Minerba Law is a clear example of a law outside the Criminal Code which does not determine the qualification of the offense whether it is a criminal offense or a violation offense. The qualification of the offense is

²³ Prienter Jaya Hairi. 2021. *Penegakan Hukum Tindak Pidana Illegal Mining*. Jurnal Bidang hukum, Vol. XII, No. 15/I/Puslit/Agustus 2021, hlm. 3.

²⁴ Roeslan Saleh. 2003. *Perbuatan Pidana dan Pertanggung Jawaban Pidana*. Jakarta: Aksara Baru, hlm. 23.

²⁵ Philipus M. Hadjon, dkk. 2002. *Pengantar Hukum Administrasi Indonesia*. Yogyakarta: Gajah Mada, hlm. 250.

important to be regulated because it relates to the Criminal Procedure Code in the future, whether it meets the criteria of error with an act that is intentional or the negligence of the maker, both in criminal acts and in the form of violations. The existence of legal arrangements related to various prohibitions against the criminal act of limestone mining without a permit and the variations in the threat of sanctions, it turns out that in the implementation of law enforcement it is still felt to be ineffective, this is due to problems such as inadequate supervision and slow action in the field as well as indications of alleged games by mining mafia elements. Law enforcement in the Mineral and Coal Law, which should be an effort to overcome these crimes, fulfills a sense of justice and is efficient, as if it is powerless when it is applied. However, as the state's reaction to crime, law enforcement must continue to be pursued. Law enforcement ideally requires rational efforts that need to be integrated with each other in order to eradicate these crimes. These efforts can be carried out with penal criminal efforts or non-penal criminal efforts.²⁶

In the context of the criminal act of mining limestone without a permit, it seems that these two efforts must be carried out by the government in parallel. This means that both need to be carried out simultaneously, considering the massive violations that have occurred. Non-penal efforts mean that crime prevention efforts are carried out before a crime occurs, so this effort is better known as an effort that is preventive in nature. At the same time, this effort is prioritized over repressive efforts. Efforts that can be made are to improve supervision and monitoring of mining by strengthening the quantity and quality of mining supervision personnel (mining inspectors). This issue must be a concern of the government because since the enactment of the amendment to the Minerba Law, all licensing authorities have tried to shift to the central government, except for those which have been delegated to the provincial government. The problem is that the supervision from the Ministry of Energy and Mineral Resources is still very minimal. The target of the Ministry of Energy and Mineral Resources since 2014 to add as many as 1,000 mining

²⁶ Syaiful Bakhri. 2010. *Kebijakan Kriminal*. Jakarta: Total Media, hlm. 50.

inspectors to oversee 6,500 to 1000 mining companies in the country must be realized immediately. Penal measures mean efforts that are repressive in nature / action (done after the occurrence of a criminal act) against illegal mining based on the findings of law enforcement officials (APH) or based on public reports related to the crime. Law enforcement officers according to their respective authorities are obliged to strictly implement the law enforcement process against perpetrators of criminal acts. In addition, law enforcement officials must also take action against individuals from their agencies who are proven to be involved in the criminal act of mining without a permit.²⁷

It can be observed that what is happening in the field (weak enforcement of the mining law without a permit), could also be due to the lack of comprehensive efforts to fix the key factors that can affect the effectiveness of illegal mining law enforcement. As stated by Soerjono Soekanto, that there are 5 factors that influence law enforcement, namely legal factors, law enforcement factors, facilities and infrastructure factors, community factors and cultural factors.²⁸

In terms of legal factors, the mineral and coal law in general can indeed be said to have made progress in terms of legal certainty for law enforcement of illegal mining. Even the amendment to the mineral and coal law has exacerbated the threat of fines for violators in several articles of the criminal code. One of them is Article 158 of the Minerba Law which previously threatened a maximum fine of Rp. 10 billion rupiah, changed to a maximum fine of Rp. 100 billion rupiah. However, the problem is that several articles have been deleted, one of which is Article 165 of the Minerba Law, even though this article is very important because it regulates criminal acts for perpetrators of abuse of authority in issuing IUP, IPR or IUPK.

²⁷ Muhammad Helzha Indra. 2019. *Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Penambangan Tanpa Izin di Kawasan Hutan Lindung (Studi Putusan No. 12/PID.SUS/2017/PN.TDN)*. Jurnal Hukum: Fakultas Hukum Universitas Sumatera Utara, Vol. 1, No. 3, hlm.. 120.

²⁸ Soerjono Soekanto. 2004. *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Raja Grafindo Persada, hlm. 8.

In terms of law enforcement factors, it is still a real problem, meaning that there is still a need for strengthening, especially regarding the professionalism and integrity of law enforcement personnel. Then from the factor of facilities and infrastructure also need to get great attention. Law enforcement officials in carrying out their duties will not succeed without adequate equipment and funds. Meanwhile, from the community factor, it takes community sensitivity to participate in helping law enforcement officials by reporting if they know of illegal mining activities in their area, especially when the quantity of law enforcement officers is still very minimal. Finally, there is a cultural factor, namely the values of community legal awareness and law enforcement officials must be built so that they are not involved in these illegal activities.²⁹

The politics of criminal law talks about efforts to overcome crime through criminal provisions as part of criminal politics. This means that the politics of criminal law has a role as a crime prevention policy with criminal law. This crime prevention effort is part of the criminal law enforcement effort in law enforcement policy. Combating crime through the application of criminal law (criminal law application) is a crime prevention policy through the means of punishment. Penal facilities are focused on repressive law enforcement efforts after a crime has occurred. This facility focuses on regulating what actions should be made into criminal acts and what sanctions should be imposed on violators.³⁰

Mining without a permit is an act that is prohibited in Article 158 of the Minerba Law so that it is classified as a criminal act. The regulation of this crime is based on the fact that the act is a crime that meets the following criteria:

1. This act is an act against the law on a provision of criminal legislation.
2. This act can bring harm to society and the state.

²⁹ Andhika, dkk. 2018. *Kewenangan Kepolisian dalam Menangani Tindak Pidana Pertambangan (Illegal Mining) Menurut Undang-Undang Nomor 4 Tahun 2009 (Studi di Kepolisian Negara Indonesia)*. Jurnal Daulat Hukum, Vol. 1, No. 1, hlm. 20.

³⁰ Barda Nawawi Arief. 2005. *Bunga Rampai Kebijakan Hukum Pidana*. Bandung: Citra Aditya Bakti, hlm. 12-13.

3. This act hinders the ideals of the state so that it is dangerous.³¹

Based on the description above, it can be concluded that law enforcement against limestone mining permits is carried out in accordance with criminal law policies by prioritizing a criminal system for perpetrators of mining crimes without a permit is a crime because it violates the provisions in Article 158 of the Minerba Law, which can result in losses both physically and mentally. material and immaterial to society and the state, as well as hindering the ideals of the state in environmental protection and management. The regulation of this act is part of an effort to overcome crime using criminal means. The use of this criminal means is the embodiment of criminal policy through the means of a repressive penalty (eradication) that is imposed after the crime has occurred.

Article 158 of the Minerba Law is a criminal provision that is used as the basis for dealing with mining crimes without a permit. The application of Article 158 of the Minerba Law is a legal embodiment (law in action) in an effort to enforce criminal law (criminal law enforcement) at the application stage. At this application stage, law enforcement officials have a role to realize the laws that have been made at the formulation stage in question consist of the Police, the Prosecutor's Office, and the Courts who coordinate with each other in the enforcement of criminal law.³²

Law enforcement always takes place in a competitive relationship and intersects with processes that occur in other fields such as social, economic, political and so on. The law always compromises with the disorderly conditions in the society. Limestone mining business activities carried out without a business activity permit, it is necessary to reformulate people's mining business policies so that the state with its equipment is present to provide legal protection and protection as well as empower marginalized communities due to the development process which has been more

³¹ Salman Luthan. 2009. *Asas dan Kriteria Kriminalisasi*. Jurnal Hukum 16, No. 1, hlm. 14.

³² Kristian. 2018. *Kebijakan Aplikasi Sistem Pertanggungjawaban Pidana Korporasi dalam Sistem Pertanggungjawaban Pidana Korporasi dalam Sistem Peradilan Pidana Terpadu di Indonesia*. Bandung: Alumni, hlm. 33.

concerned with the growth aspect so that in time they can have competitiveness and live decently as a dignified human being.

Looking at the provisions in Law Number 3 of 2020 concerning Minerba Mining, there are still shortcomings, one of which does not regulate corporations that can be perpetrators of criminal acts of mining without a permit, as is the case in other laws, namely the Fisheries Law, Law No. -Aviation Act, Narcotics Act. If a criminal act in the mining sector is committed by a legal entity, then the legal entity can be prosecuted to the Court, but the punishment imposed by the judge is in addition to imprisonment, as well as fines for the management. In addition, the legal entity was sentenced to a fine with a weight plus 1/3 times the maximum penalty imposed. Then the judge can also impose additional penalties on legal entities in the form of revocation of business licenses and/or revocation of legal entity status.³³

CONCLUSION

The management of limestone mining permits in Law Number 3 of 2020 concerning Mineral and Coal Mining is carried out in accordance with the provisions in Article 35 Paragraph (4), in which the permits are carried out based on the delegated authority of the Central Government. This regulation has implications for regional authorities in issuing mining sector permits so that regional governments can no longer issue permits for mining business activities. The central government may delegate the authority to grant business permits to the provincial government in accordance with the provisions of laws and regulations. Law enforcement against limestone mining without a permit can be said to be ineffective and not in accordance with the purpose of punishment. Given that mining without a permit is a mining crime in the environmental sector, the imposition of criminal sanctions should be oriented towards the environment. This can be pursued through the theory of relative or

³³ Muhammad Helzha Indra. *Op.Cit.*, hlm. 37-38.

prevention in the purpose of punishment which is oriented towards environmental conservation. This can be pursued through criminal sanctions in the form of payment of compensation through criminal fines and sanctions for coercive action through additional criminal sanctions in Article 164 of the Minerba Law which is aimed at environmental restoration.

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About Author(s)

Ratu Triani Ayune Wulan Suci is one of the staff at Kantor Advokat Sriwijaya (Eko Heriyanto, S.H.) Semarang, Indonesia. She is also a Postgraduate Student at the Faculty of Law, Universitas Negeri Semarang, Indonesia.

Law enforcement officers are never 'off duty.' They are dedicated public servants who are sworn to protect public safety at any time and place that the peace is threatened. They need all the help that they can get.

Barbara Boxer