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The reconstruction of the criminal sanction in the issuance of mineral and coal mining license in Indonesia based on justice value

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Abstract
One of Indonesia's government's efforts to protect natural resources in Indonesia is by enacting Law Number 4 of 2009 concerning Minerals and Coal. However, in practice, however this protection is far from being fair. Seeing this, the author is interested in examining it into a study with the main problem of what are the weaknesses in the implementation of criminal sanctions in the issuance of problematic mineral and coal mining permits in Indonesia and how the reconstruction is able to realize the value of justice This research type is descriptive-analytical, meaning that the results of this study attempt to provide a comprehensive, in-depth picture of a condition or symptoms being studied. The approach method used in this research is the empirical juridical approach method where the data analysis used in this research is qualitative data analysis.
The results of the study indicate that the weaknesses of mineral and coal management regulations in Indonesia are not only in terms of the substance of the law, which are many legal loopholes that make foreign investors free from charge in exploiting natural resources, as well as human resources in Indonesia, but also in terms of structure, which shows the weak law enforcement of the central and regional governments and the culture of the Indonesian nation itself which is vulnerable to corruption. To overcome this, it is necessary to have a pro-people reconstruction that prioritizes technology transfer and also reconstruction in terms of structure and culture itself from a culture of corruption.

Keywords: reconstruction, criminal sanction, minerals and coal, justice value

Introduction
The increasing number of factories in various regions in Indonesia has created a profession transformation of the Indonesian population from being farmers in villages to factory workers. This has resulted in a food crisis in the future, a shift in the profession culture model of the village community, one of which is due to the less prosperous welfare of farmers in Indonesia as a result of international trade negotiations in the GATT and WTO which have reduced tariffs on agricultural products.
The problem of the decrease of agricultural land has resulted in an increasing unemployment rate. Basically, the reduction in agricultural land and the increase in the transformation of the public profession due to advances in information technology and the phenomenon of the borderless state have resulted in the Indonesian people wanting to try various new experiences with the consideration of changes in professions balanced with economic changes. This is also supported by a population that is greater than agricultural land, as well as the presence of urban people who start looking for work which is then placed in rural areas and bring the influence of modernization in the village so that rural people are also transformed into becoming workers in a factory. This then resulted in the dependence of the Indonesian people on employment land which was then controlled by the West through the foreign debt policy channeled by the World Bank and International Monetary Fund (IMF) and then control and control through economic policy control by Western nations which further marginalized the national environment and ecology to then mastery in the realm of the field through the hands of Multi-National Companies (MNC). The transformation of a peasant society into a worker in its development has been unable to improve the welfare of society, wages and labor rights in fact still characterize this country which must collide with the problem of high living needs due to the influence of control over developed countries through intervention and hegemony in the market sector.
Problems in the field of law in Indonesia caused by globalization are due to the influence of economic problems that become gaps for intervention and political hegemony in developing countries with weak economies. It has been previously explained that there is a pattern in the form of hegemony and intervention by developed countries against developing countries in international relations through the offering of foreign debt fund policies in order to build infrastructure development and finance the government budget deficits in developing countries through the hands of the World Bank and IMF, which then the implementation of budget allocations is in the hands of MNCs and Trans-National Companies (TNC) in partnership with local companies, which in its development escalated into domination of the formation of national laws on the environment, ecology, and labor which resulted in increased helplessness of developing countries. In the environmental and ecological sector, it has been explained that there has been a reduction in forest land which is also a residential area for customary law communities of 4.6 million hectares of the area of West Sumatra Province that is approximately seven times the area of DKI Jakarta Province from 2010 to 2019. As well as a reduction Agricultural land to 7.74

million hectares there and also in Java to only 3.4 million hectares [1].

Various kinds of environmental damage due to the conversion of green land to uncontrolled mining areas are basically influenced by the issue of area designation permits. Most of the Regional Medium-Term Development Plan (RPJMD) and the issuance of area designation permits do not rely on existing Regional Spatial Plans (RTRW), apart from that the RTRWs that are made often do not have clear certainty in determining the location for zoning. The result of this in the end resulted in various kinds of problematic mining business permits issuance and resulted in problems of environmental damage, agrarian disputes, and partialization of ecological justice. This is also seen in the case of Mineral and Coal mining (*Minerba*) in Indonesia currently.

In its development, the objective of *Minerba* mining is based on Pancasila, which mandates an appreciation for the balance of the fulfillment of human rights in order to be able to realize social justice for all groups of society in Indonesia, in this case, are related to the right to fulfill the needs of energy sources and at the same time ecological rights that are just. However, the threat of punishment in the provisions of Article 165 is very light when compared to the impact of the problematic mining permit issuance. This has resulted in rampant criminal acts in the issuance of mining permits for *Minerba* in Indonesia. Based on data from the Ministry of Energy and Mineral Resources, as of January 1, 2019, as many as 539 Trade Permits (IUP) or 15.92 percent of the 3,384 *Minerba* IUPs were non-CnC (Clean and Clear, a term to a company that fulfilled the Indonesian standardmandeted by the law). Meanwhile, the rest have CnC status and are permitted to do their business by the law. However, the non-CnC companies can in fact, still operate and sell their products through other companies. This condition that disregard the law is detrimental to the state because companies are at risk of not reporting their production or paying their obligations to the state. So, it is clear that the problem of issuing *Minerba* mining permits which are problematic in its development causes many losses both to environmental damage and to state financial losses. This clearly contradicts the mandate of Pancasila, the 1945 Constitution of the Republic of Indonesia, and Law Number 4 of 2009 concerning *Minerba.*

This problem is what urges the author to study it further in a research with the following issues

1. What Are the Weaknesses in the Implementation of Criminal Sanctions in the Issuance of Mineral and Coal Mining Permits in Indonesia currently?
2. How is the Reconstruction of Criminal Sanctions in the Issuance of Mineral and Coal Mining Permits in Indonesia based on justice value?

Method of Research

The paradigm that is used in the research this is the paradigm of constructivism which is the antithesis of the understanding that lay observation and objectivity in finding a reality or science knowledge [2]. Paradigm also looked at the science of social as an analysis of systematic against *Socially Meaningful Action* through observation directly and in detail to the problem analyzed.

The research type used in writing this paper is a qualitative research. Writing aims to provide a description of a society or a certain group of people or a description of a symptom or between two or more symptoms.

Approach method used in this research is *Empirical-Juridical* [3], which is based on the norms of law and the theory of the existing legal enforceability of a law viewpoint as interpretation.

As for the source of research used in this study are

1. Primary Data, is data obtained from information and information from respondents directly obtained through interviews and literature studies.
2. Secondary Data, is an indirect source that is able to provide additional and reinforcement of research data. Sources of secondary data in the form of: Primary Legal Material and Secondary Legal Materials and Tertiary Legal Material.

In this study, the author use data collection techniques, namely literature study, interviews and documentation where the researcher is a key instrument that is the researcher himself who plans, collects, and interprets the data [4]. Qualitative data analysis is the process of searching for, and systematically compiling data obtained from interviews, field notes and documentation by organizing data into categories, describing it into units, synthesizing, compiling into patterns, selecting important names and what will be studied and make conclusions.

Research Result and Discussion

1. Weaknesses in the Implementation of Criminal Sanctions in the Issuance of Mineral and Coal Mining Permits in Indonesia Currently

The author bases arguments regarding the weaknesses of the *Minerba* Law on decision Number 237/Pid. Sus /2018/PN. Jpa regarding criminal acts of participating in carrying out mining businesses without a Mining Business Permit (IUP), People's Mining Permit (IPR) or a Special Mining Business Permit (IUPK) in Jepara as a case study which explains that the current illegal mining business problems and future improvements in law enforcement, an analytical approach is carried out based on the legal system developed by M. Lawrence Friedman [5], which is as follows:

a. From a functional point of view, the criminal law system can be defined as All systems (laws and regulations) for the functionalization of criminal law; The entire system (laws and regulations) that regulates how criminal law is enforced or operationalized in a concrete manner so that a person is subject to criminal law sanctions. With this definition, the criminal law system is identical to the criminal law enforcement system which consists of the criminal law sub-system, both the material, formal and criminal law

[1] Velentina, Rouli. (2020). Legal Certainty for Foreign Investors In Coal Mining In Indonesia. Jurnal Hukum & Pembangunan. 49. 923. 10.21143/jhp.vol49.no4.2349.

[2] Faisal, (2010), *Menerobos Positivisme Hukum*, Rangkang Education, Yogyakarta.

[3] Johnny Ibrahim, (2005), *Teori dan Metodologi Penelitian Hukum Normatif*, Bayumedia, Surabaya.

[4] L. Moleong, (2002), *Metode Penelitian Kualitatif*, PT Remaja Rosdakarya, Bandung.

[5] Lawrence M.Friedman, in Edelman, Lauren. (2011). Lawrence Friedman and the canons of law and society. Law, Society, and History: Themes in the Legal Sociology and Legal History of Lawrence M. Friedman. 19-25. 10.1017/CBO9780511921629.002.

enforcement sub-systems. The three sub-systems are a criminal law enforcement system or an integrated criminal system because it is impossible for criminal law to be operationalized or enforced concretely with only one of these subsystems. The definition of a criminal or criminal law system can be called a criminal law system or a functional criminal.

b. From the point of view of substantive norms, the criminal or criminal law system can be interpreted as the entire system of rules/norms of material criminal law for punishment; or the entire system of rules/norms of material criminal law for the award or coercion and execution of crimes. In this case, basically every legal system always contains three components, namely the legal structure component, legal substance, and legal culture. A legal system in real operation is a complex organism in which structure, substance, and culture interact. This means that the legal system is in fact, are difficult to implement in various organizations which will have an impact on structure, substance, and culture. The explanation of the above components is as follows:

1. The structural component (legal structure) of a legal system includes various institutions created by the legal system with various functions to support the operation of the system. One such institution is the court. Regarding this, Friedman wrote “First many features of a working legal system can be called structural - the moving part, so to speak of the machine. Courts are simple and obvious example ...”. This means that one form of legal system operation can be called a structure that is part of the court mechanism. The court is a real and simple example.
2. Legal substance component (legal substance), Friedman stated as "...the actual product of the legal system". According to him, the definition of legal substance includes legal rules, including unwritten legal principles.
3. Legal culture component (legal culture). Before explaining further about legal culture, structure and substance are often referred to as legal systems. Legal culture by Friedman is defined as…” attitudes and values that are related to law and legal system, together with those attitudes and values effecting behavior related to law and its institutions, either positively or negatively. That is, attitudes and values that have to do with law or the legal system, along with attitudes and values that influence behavior related to law and legal institutions, both positive and negative.

In connection with the landfill mining business case in Jepara Regency which is the author's study, the discussion regarding the constraints and efforts to improve law enforcement in the future is based on the analysis knife of the three legal subsystems, namely legal substance, legal structure and legal culture.

The author's study of legal substance refers to the *Minerba* Law as a legal norm that underlies illegal mining business. The author has discussed the criminal law policy scheme in the *Minerba* Law in the previous sub-chapter. Meanwhile, in the discussion of the legal substance perspective in this sub-chapter, the researcher focuses on the implementation of the law (legal substance) in case studies of law enforcement in illegal mining businesses.

As for the legal structure perspective, the authors explain and analyze the due process system in law enforcement of illegal mining businesses, starting from the upstream of the case, namely investigations by the police, prosecution by prosecutors and court decisions by the panel of judges.

Meanwhile, in the perspective of legal culture, the author digs deeper into the legal culture both in the community and law enforcement officials related to mining without permits or illegally.

The first study of the illegal landfill mining business is seen from the perspective of legal substance. In this analysis, the authors depart from the legal scheme decision Number 237/Pid.Sus/2018/PN. Jpa. The panel of judges decided that the defendant was proven to have committed "a criminal act of participating in carrying out mining businesses without a Mining Business Permit (IUP), a People's Mining Permit (IPR) or a Special Mining Business Permit (IUPK)" [6].

This shows that the obstacle to law enforcement of illegal mining at this time, from the perspective of the Legal Substance (Legal Substance) is sufficient in ensnaring mining crimes without a permit. The administrative criminal qualification carried by the *Minerba* Law is proven to be in accordance with the legality principle (Article 158 of the *Minerba* Law). This can be seen from the consistency of the articles that are suspected and charged against both the suspect and the accused which leads to the verdict of the panel of judges using the same article, namely Article 158 of the *Minerba* Law. The defendant's culpability (error) principle is easily proven through trial facts.

The legal structure states that the law enforcement of illegal mining, through the due process system adopted by our rule of law. Namely investigations by the police, prosecution by the Attorney General's Office and case examinations through the court (Panel of Judges. This perspective is constrained by the lack of responsiveness of the role of PPNS ESDM (Civil Servant Investigator of Energy and Mineral Resources) in prosecuting crimes against the environment, especially mining without permits. Among investigators it is a classic problem in law enforcement of mining without permits. The role of PPNS ESDM should be more dominant considering the main duties and functions of the mineral resource’s institution.

Legal Culture Perspective (Legal Culture), is divided into two studies, namely internal and external. Internal law enforcement studies (related to the culture of law enforcement officials), show that there is still a need for routine operations from the Central Java Police Criminal Investigation Unit in activities caught in the hands of illegal mining (without a permit). So, without the intensity of routine operations against environmental crimes, the existence of mining crimes without a license purely relies on public reports or the emergence of impacts on environmental damage in the form of floods or landslides. Thus, the problem of this internal Legal Culture is continuous supervision through operation of compliance with the *Minerba* Law.

As for the perspective of External Legal Culture (values and attitudes of society) it shows that economic values are more dominant than environmental values which are more sustainable. The impact is a deterioration and silting of the people's perspective on the primacy of environmental

[6] Birawa, Andre & Tedjosaputro, Liliana. (2020). Criminal Law Enforcement Policy on Mineral and Coal Mining Businesses. Magistra Law Review. 1. 10.35973/malrev. v1i2.1619.

values. In detail, for the sake of a mouthful of rice, the people (especially the defendants) have the heart to destroy environmental values. Law enforcement which contains the return to the main values (norms regulated in the *Minerba* Law), faces challenges and threats in the form of illegal mining community behavior which for economic reasons destroys other dimensions, namely social and cultural environmental preservation [7].

2. Reconstruction of Criminal Sanctions in the Issuance of Mineral and Coal Mining Permits in Indonesia Based on Justice Value

Indonesia has long been a country known for its natural wealth, and this is what has invited many parties to come to Indonesia to seek profit. One of the things that have attracted so much attention is Indonesia's natural wealth in the mining sector. Many foreign and domestic companies have invested in this field in Indonesia. With the large number of players and the large amount of profits that can be obtained, the role of the government in establishing regulations is needed to defend rights and increase state profits. One of the regulations issued by the government to carry out its role is the *Minerba* (Mineral and Coal) Law Number 4 of 2009.

Minerba Law Number 4 of 2009 has been formulated and ratified since 2009 but only came into effect in Indonesia on January 12, 2014. This law has the potential for all mineral raw materials such as gold, nickel, bauxite, iron ore, copper, and coal to experience value-increasing process before export. This regulation also requires business owners to build a smelter, a mining processing facility that functions to increase the content of metals such as tin, nickel, copper, gold, and silver to a level that meets standards. It is hoped that the smelter construction will increase domestic investment because the existing smelter facilities are still limited. This regulation is stipulated through the consideration that real value added is created for the national economy in an effort to achieve equitable prosperity and welfare of the people.

Mineral and coal mining business activities play an important role in providing real added value to national economic growth and sustainable regional development. However, as explained by the author above, the *Minerba* Law is still full of weaknesses that need to be improved especially, in 2020 the government intends to replace the law so that according to the author this is the right moment to examine the weaknesses of existing articles so that can be an input for the DPR in formulating the new *Minerba* Law. The reconstruction proposal as intended by the author is as follows:

1. Regarding Community Mining Areas (WPR), if previously given a maximum area of 25 hectares and a maximum depth of 25 meters, through the amendment of the Law it is necessary to give it a maximum area of 100 hectares and have metal mineral reserves with a maximum depth of 100 meters.
2. Mining business needs to be carried out based on a business license from the central government which consists of: -IUP, IUPK, IUPK as a continuation of Operations; -Contract / Agreement, IPR, SIPB, Assignment Permit, Transport, and Sales Permit, Mining Service Business License and Mining Business License for Sales. Regarding the granting of licenses, the central government can delegate the authority to grant Business Licenses to governors. The delegation of authority is based on the principles of effectiveness, efficiency, accountability, and externality in the administration of government affairs, including in granting IPR and SIPB.
3. The provincial government, which previously received only 1 percent share of mineral and coal mine income, needs to be increased to 1.5 percent [8] to help the region grows.
4. There is an obligation for the minister to provide mining data and information to: a. Supporting WP preparation; b. Developing science and technology; and c. Transferring mining technology. The data and information management is carried out by the mining data and information center. Mining data and information centers must provide mining information that is accurate, up-to-date, and can be accessed easily and quickly by mining permit holders and the community.
5. There is an obligation for IUP and IUPK holders to use mining roads in the implementation of mining business activities. The mining road can be built independently or in collaboration.
6. There is an obligation for IUP and IUPK holders to allocate funds for the implementation of community development and empowerment programs, the minimum amount is determined by the minister.
7. Obligations for business entities holding Production Operation IUP or Production Operation IUPK whose shares are owned by foreigners to divest 51 percent of shares in stages to the central government, regional governments, BUMN, BUMD, and/or national private enterprises.
8. Obligations for the Holders of Production Operation IUP and Production Operation IUPK to provide mineral and coal reserve resilience funds which are used for the discovery of new reserves.
9. Regarding reclamation and post-mining activities, the holder of a Production Operation IUP or Production Operation IUPK before shrinking or returning the WIUP or WlUPK is obliged to carry out reclamation and post-mining until it reaches a 100 percent success rate, as well as ex-IUP or IUPK holders who have expired are obliged carry out reclamation and post-mining to achieve a success rate of 100 percent and place a post-mining guarantee fund.
10. Regarding the existence of the Mining Inspector, the responsibility for managing the budget, facilities, and infrastructure, as well as the operation of the mining inspector in conducting supervision is borne by the minister.
11. Regarding the criminal provisions, for mining activities without a permit previously subject to a maximum imprisonment of 10 years and a maximum fine of IDR 10 billion, is changed to a maximum imprisonment of 5 years and a maximum fine of IDR 100 billion as

[7] Aji, Iskak. (2020). Upaya Konservasi Mineral Dan Proyeksi Masa Depan Pertambangan Timah Di Indonesia. Prosiding Temu Profesi Tahunan PERHAPI. 1. 863-874. 10.36986/ptptp. v1i1.127.

[8] LNU, Ledyawati. (2017). Kewenangan Pemerintah Daerah Dalam Pengelolaan Sumber Daya Alam Pertambangan *Minerba* Di Era Otonomi Daerah. Jurnal Agregasi: Aksi Reformasi Government dalam Demokrasi. 5. 10.34010/agregasi. v5i1.218.

according to the study done by Derita in Bangka District, lowering the imprisonment sanction and increasing the fine will benefit the country more [9]. Likewise, with IUP, IUPK, IPR, or SIPB holders who deliberately submit false reports or submit false information, everyone who has an Exploration IUP or an Exploration IUPK, but carries out production operations activities. And every person who accommodates, utilizes, performs 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 other permits, is also subject to imprisonment. a maximum of 5 years and a maximum fine of Rp. 100 billion. The existence of criminal provisions that were not previously regulated in the previous law, namely every holder of IUP, IUPK, IPR, or SIPB who transfers an IUP, IUPK, IPR, or SIPB without the approval of the minister will be punished with a maximum of 2 years imprisonment and a maximum fine of IDR 5 billion. And every person whose IUP or IUPK is revoked or expired and does not carry out reclamation and/or post-mining and/or placement of reclamation guarantee funds and/or post-mining guarantees will be sentenced to a maximum of 5 years and a maximum fine of Rp10 billion. In addition, ex-IUP or IUPK holders can be subject to additional penalties in the form of payment of funds in the context of carrying out reclamation and / or post-mining which are their obligations.

Conclusion

1. Weaknesses that exist in the implementation of criminal sanctions in the issuance f mineral and coal mining permits in Indonesia can be seen not only in terms of their legal substance, which have many legal loopholes that make foreign investors free from legal charge in exploiting natural resources, as well as human resources in Indonesia, but also in terms of structure which shows the weak law enforcement of the central and regional governments and the culture of the Indonesian nation itself which is vulnerable to corruption.
2. Reconstruction of Criminal Sanctions Related to the Issuance of Just Mineral and Coal Mining Permits in Indonesia is a reconstruction that is pro-people in nature where the criminal provisions need to be changed to Related to criminal provisions, for mining activities without a permit previously subject to imprisonment of up to 10 years a maximum fine of Rp. 10 billion, must be amended to a maximum imprisonment of 5 years and a maximum fine of Rp. 100 billion. Likewise, with IUP, IUPK, IPR, or SIPB holders who deliberately submit false reports or submit false information, everyone who has an Exploration IUP or an Exploration IUPK, but carries out production operations activities. And every person who accommodates, utilizes, performs 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 other permits, is also subject to imprisonment. a maximum of 5 years and a maximum fine of Rp. 100 billion. The existence of criminal provisions that were not previously regulated in the previous law, namely every holder of IUP, IUPK, IPR, or SIPB who transfers an IUP, IUPK, IPR, or SIPB without the approval of the minister will be punished with a maximum of 2 years imprisonment and a maximum fine of IDR 5 billion. And every person whose IUP or IUPK is revoked or expired and does not carry out reclamation and/or post-mining and/or placement of reclamation guarantee funds and/or post-mining guarantees will be sentenced to a maximum of 5 years and a maximum fine of Rp10 billion. In addition, ex-IUP or IUPK holders can be subject to additional penalties in the form of payment of funds in the context of carrying out reclamation and/or post-mining which are their obligations.

[9] Rahayu, Derita & Yokotani, Yokotani & Toni, Toni. (2018). Formulation of *Minerba* Law Enforcement Policy Against Unconventional Mine Floating Category (Study Of Socio Legal In Bangka District). Journal of Private and Commercial Law. 2. 94-100. 10.15294/jpcl. v2i2.16262.

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