

Enforcing Environmental Criminal Law Based on Environmental Legislation: A Case Study of Damage to River Channels and Rice Fields Due to Class C Mineral Processing

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ABSTRACT

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In the case of environmental damage due to sand and stone mining, in the last period development activities in all sectors in Kaur Regency have continued to increase from year to year. Until 2024, sand and rock mining will still be a problem in Bengkulu province. One of the sand and stone mines is in Kaur district, precisely in Pulau Panggung village, Luas district. Sand and stone mining is carried out on the Air Luas river. This causes a decrease in the quality of discharge and changes in river mining, resulting in river water evaporating and causing flash floods in the rice field areas around the Luas River in Pulau Panggung Village. The research method used is an empirical research method with data collection tools through observation and interviews. Law enforcement regarding mining activities without a permit on Panggung Island takes 2 ways, namely persuasive compromise towards mining without a micro scale permit which generally has a weak economic background and low education, middle age to fulfill daily living needs and repressive law enforcement against the perpetrators. Other mining on a medium scale and long term. The most dominant factor influencing the enforcement of mining laws without permits is political factors, where the central government sees the authority of regents and mayors as an obstacle in running the government. Furthermore, there are apparatus resource factors, community perception factors, and community culture. It is necessary to periodically reorient the government apparatus in the mining sector and related parties so that there is a balance between the exercise of authority and the fulfillment of duties and a complete understanding of the moral message contained in the constitution is formed in seeking the greatest prosperity of the people and preventing wrong assumptions. about the power he has. The Central & Regional Governments need to immediately provide life skills training to small communities and direct them as micro and small business actors in the natural tourism and culinary sectors so that the tendency to carry out micro-scale PETI can be minimized.

INTRODUCTION

Indonesia is one of the archipelagic countries in the world with abundant natural resources. As an archipelagic country, Indonesia has 17,508 islands and a land area of around 2 million KM². With such a large area, of course this is directly proportional to the natural wealth it has. The Republic of Indonesia is a country of law, that is what is stated in article 1 paragraph (3) of the 1945 Constitution. Therefore, in Indonesia, all aspects of life are carried out based on law, and law is the reference point for national, state and social activities.

Mining law is never separated from the environmental aspect, it is a gift from God Almighty which must be preserved and developed so that it can continue to be a source of life support for humans and other living creatures for the sake of continuity and improvement of the quality of life itself. Nowadays, environmental crimes often occur around our environment, but all without us realizing it.

Definition of Mining according to Law No.3 of 2020 concerning amendments to Law No. 4 of 2009 concerning Mineral and coal mining, Article 1 Paragraph (1) Mining is part or all of the activity stages in the framework, management and exploitation of minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and for refining or development and for utilization, transportation and sales, as well as post-mining sales and post-mining activities. [Law no. 3 of 2020 concerning amendments to law number 4 of 2009 concerning mineral and coal mining]

At the beginning of the 20th century, gold mining began to be carried out in other locations on the island of Sumatra. Basically, the regulation of the management of minerals or the mining sector in Indonesia, is the same as the legal basis for other fields in general, namely starting from the Dutch East Indies government. So, up to the Old Order government, concretely the regulation of the management of minerals or the mining sector still used Dutch East Indies law. which was immediately adopted into Indonesian mining law.

The management of the mining sector during the Dutch East Indies government was regulated based on regulations called Indische Mijnwet 1899 (IM 1899), one of the provisions contained in Indische Mijnwet 1899 (IM 1899), regulating the terms of contracts between the Dutch East Indies government and private parties. These contract provisions are known as the 5A Contract. This article is the forerunner there will be provisions for work contracts or production sharing contracts that will be implemented after independence. In 1928, the Dutch started mining bauxite on Bintandan Island and in 1935 they started mining nickel in Pomala, Sulawesi. After World War II (1950-1966), Indonesia's mining production experienced a decline. Only towards 1967, the Indonesian government formulated a work contract (KK). The first KK was given to PT. Freeport Sulphure (now PT. Freeport Indonesia). Based on the type of mineral, mining in Indonesia is divided into three categories, namely: first, Class A Mining, including strategic minerals such as: oil, natural gas, bitumen, asphalt, natural wax, anthracite, coal, uranium and other radioactive materials, nickel and

cobalt. Second, Group B Mining, includes vital minerals, such as: gold, silver, diamonds, copper, bauxite, lead, zinc and iron. Third, Group C mining, generally minerals which are considered to have a lower level of importance than the other two mining groups. These include various types of stone, limestone, and others.

Exploitation of Class A minerals is carried out by State Companies, while foreign companies can only be involved as partners. Meanwhile, exploitation of Class B minerals can be carried out by both foreign and Indonesian companies. Exploitation of Class C minerals can be carried out by Indonesian companies or individual companies. As for mining actors in Indonesia can be categorized into three, namely the State, Contractors and KP (Mining Authorization) Holders.

METHOD

Research is a process, namely a series of steps carried out in a planned and systematic manner to obtain solutions to problems or answers to certain questions. Research is basically a search effort and not just observing carefully an object that is easily held in the hand. This is because research aims to reveal the truth systematically, methodologically and consistently. Through the research process, analysis and construction of the data that has been collected and processed is carried out.

RESULT AND DISCUSSION

1. Enforcement of Environmental Criminal Law Based on Laws Related to the Environment Case Study of Damage to River Channels and Rice Fields Caused by Class C Mineral Processing

The topic of mining in developing countries has been a hot issue from the past until now. In the book entitled *Escaping the Resource Curse*, edited by one of the world's economists, Joseph Stiglitz, it actually shows the huge losses for a country which gives developed countries the freedom to invest massively in this field. It cannot be denied that the income obtained from the process and output is truly promising. But who are these benefits for, big companies or just a few people in government who don't care about the effects that occur after the exploitation doesn't continue.

The study of Article 33 of the 1945 Constitution is always popular and is used as a basis for mining management in Indonesia. In fact, this has become an outdated issue and is more motivated by economic justice than ecological justice. Indeed, we can see that in several aspects of economic management that are related to or based on the use of land or natural resources, they always ignore environmental aspects. Some anthropocentrists consider the environment to be an object that can be managed optimally because humans are considered to be the highest level creatures compared to other creatures, both abiotic in nature.

and it is also abiotic (living things such as animals and plants) so it doesn't matter what happens in the future or to the next generation.

Likewise, environmental issues always arise if there has been damage and/or pollution or there are victims due to a business activity. Preemptive and preventive aspects are always neglected to produce good, economical products that can quickly make money rather than mitigation and recovery aspects, so it is certain that the damage will become more widespread and uncontrollable. No matter how good an effort is to restore an environment that has been damaged or polluted, it will not return to its previous environmental quality position.

The position of environmental law as a multi-disciplinary science among other sciences such as environmental engineering, environmental health, environmental biology, environmental chemistry and other related sciences is felt to be too late to keep up with the acceleration of these sciences and only as a sweetener and complementary object that is manifested through weakness. environmental law enforcement in Indonesia. Even within the legal field itself, environmental law is functional law because environmental law is part of the genus of legal science where environmental law does not have an explanatory 'mother of legal science'. Environmental law which is inter-disciplinary in nature is a breakthrough from previously existing legal sciences. In it there is environmental law civil, criminal and administrative matters. Furthermore, environmental law plays an increasingly important role in several other fields of law, including money management law, taxation and international environmental law. This awareness emerged when awareness about the environment began to be heard internationally at the 1972 Stockholm Conference and began to be implemented into Indonesian law ten years later with the birth of UU No. 4 of 1982 and later became UU No. 23 of 1997 which is the Umbrella Act. And the last one is Law no. 32 of 2009 concerning Environmental Protection and Management.

The history of Indonesian mining begins with the first management concession rights by Freepot with unlimited exploitation and can be extended at any time, making Indonesia suffer economic and ecological losses. This was encouraged by the President's policies during the New Order era under the pretext of development, making us lulled. The New York Agreement which was agreed upon after the resignation of President Soekarno and then replaced by President Soeharto opened a wide door for the freedom to exploit Indonesia's natural resources. UU No. 1 of 1967 concerning Foreign Investment, UU No. 5 of 1967 concerning Forestry and then Law No. 11 of 1967 seemed to be organized crime laws. How could it not be UU No. 1 of 1967 seems to be the opening door for mining exploitation, which is mostly in forests where the upstream to downstream process requires high investment costs so that it becomes a sweet marriage. The three laws mutate into an octopus that is ready to eat victims (humans and the environment) around it and finally just waiting to die.

The effects of mining activities are not only economic losses but also cause

disturbing social unrest. For example, the increasing escalation of friction between mining companies and the community, the change in the agricultural pattern of the community to become a mining community and the last thing that is always a topic of discussion is the damage and pollution of the area around the mine. . Even though there are efforts to repair the damage or pollution, they are still deemed inadequate and do not touch on anything substantive.

As happened in Pulau Panggung Village, the residents of Pulau Panggung Village through their attorney Ahmad Kabul, S.H. and Partners attached CV. Lista Lestari and CV. Jaya Lestari because the C (Quari) excavation mine which has been active since 2013 has resulted in many people's rice fields being damaged so they cannot use the rice fields, even though in their daily lives the people only rely on rice cultivation.

UU no. 11 of 1967 concerning Basic Mining Provisions, in my opinion, does not explicitly include regulations regarding prevention and recovery for areas around mines. Only then in PP no. 75 of 2001 concerning the Second Amendment to PP No. 32 of 1969 concerning Implementation UU no. Law No. 11 of 1967 regulates this matter a little. Among other things, it regulates reclamation guarantee costs and environmental management and monitoring activities (Article 41 paragraph 1e), supervision of mining environmental protection including post-mining land reclamation and conservation and increasing added value (Article 164 paragraph 3d and e) and also in relation to local government through environmental monitoring and implementation of reclamation (article 67), while more detailed matters are not regulated in the PP.

As one of Indonesia's sources of foreign exchange in the last few decades, the mining industry in all its forms and types has become an interesting issue and has a large dimension in the lives of Indonesian people. It is an interesting issue because when we talk about mining the focus is on economic issues where countries and large companies (national and foreign) benefit from the process and results of mining. In this case, the state receives revenue in the form of both taxes and non-taxes. Meanwhile, mining companies get proceeds from the sale of exploited minerals. On the one hand, there are many aspects that are neglected in terms of pursuing economic profits in the mining sector. For example, with the establishment of mining companies, asking the state to provide excessive security forces instead of being a source of state income and guarding strategic locations. But what then happened were several acts of violence that led to human rights violations committed by security forces against local communities who were deemed to have caused chaos or disturbance so that the lives of people in mining areas were increasingly pushed to the limit. In this case, the state has not only committed a violation, but has failed in protecting its people. In the social and cultural context, we can see that cultural values and local wisdom are beginning to be eroded, replaced by the presence of heavy equipment that moves without limits with its noise and pollution. People who previously preferred gardening and farming with their friendly culture have been replaced by farm workers who work

in mining areas which are more economically promising in the short term than working in the fields or rice fields. This is also supported by policies in the agricultural and food sectors that are more market and results oriented. Apart from that, what is no less important is the environmental aspect. This aspect then becomes the final criterion in determining economic policies and production processes on a macro and micro scale in the mining sector. If the damage and pollution is covered by the media and there are victims injured or even killed, then only then will the Government and Regional Government think about taking steps to deal with it.

Article 33 paragraph 3 of the 1945 Constitution clearly states that "Earth, water and the natural riches contained therein are controlled by State and used for the greatest prosperity of the people." In simple terms, everything produced from Indonesia's natural wealth is only for the Indonesian people. This is the final decision where we adopt a welfare state. So it is not for the benefit of individuals, large companies, or even the state (The Indonesian government itself. In this case, Bagir Manan stated that the state's control over mining with the greatest prosperity of the people gives rise to the state's obligation, namely that all forms of utilization of natural mining resources and the results obtained therein (natural wealth), must be intended to increase prosperity and the welfare of society. In this case, the State should also be able to guarantee all the rights of the people within and on the earth which can be produced directly or enjoyed directly by the people. He further stated that the State prevents all actions from any party which will cause harm to the people. do not have the opportunity or lose the rights that exist in and on the earth. These three things should be a guideline for the government and regional governments in determining the direction of policy in the mining sector. Apart from Article 133, in environmental management, Article 28 H of the 1945 Constitution states that "Everyone has the right to live in physical and spiritual prosperity, to live in a place of residence, and to have a good and healthy living environment and the right to receive health services". According to thrift I believe that the right to a good and healthy environment is part of human rights in addition to other human rights. Of course, this is not only aimed at humans as users of the environment but also at the human rights of nature itself not to be damaged or polluted by irresponsible parties. Furthermore, in article 5 paragraph 1 of Law no. 23 of 1997 concerning Environmental Management states that "Everyone has the same rights to a good and healthy living environment". From the existing norms mentioned above, it is clear that any type of business that is related to environmental activities and has the potential to change, in this case damage or pollution, must pay attention to the principles and norms stated in the above and related laws and regulations, including mining industry activities in inside.

Environmental Management in Indonesia Siti Sundari Rangkuti stated that the substance of laws regarding environmental management must contain the principles of environmental policy ("principles of environmental policy") to be stated in regulations containing the following legal norms:

a. Abatement at the source (measures at the source)

- b. The best available Technology (BAT)= the "alara principle" ("as low as reasonably achievable")
- c. The polluter pays principle (the polluter pays principle)
- d. Stand still principle (principle of intercept/block)
- e. Principle of regional differentiation (principle of regional differences)
- f. Shifting the burden of proof="het beginsnel van de omkering der bewijslast" (reverse burden of proof).

The principles as mentioned above underlie the establishment of environmental management legal instruments as a means of preventing environmental pollution and are one of the keys to successful environmental management.

Mining law has a very close relationship with environmental law because every mining business, whether related to general mining or oil and gas mining, is required to maintain the continuity of the environmental carrying capacity and resilience. This is commonly referred to as preserving environmental functions. Mining law as a field of legal science has various dimensions, one of which is in the environmental field because the object of mining activities is the environment. In this case, the environment in question is both biotic and abiotic. Mining law places the environmental aspect as an important aspect because there are dynamics and changes in the nature and physical changes of the environment so that special treatment of the environment is required so that it is hoped that the environment managed as a result of mining activities will always have environmental functions and resources that are maintained or even possibly increased.

Environmental management is an integrated effort to preserve environmental functions which includes policies for structuring, utilizing, developing, maintaining, restoring, monitoring and controlling the environment. The meaning of environmental management can be concreted by accommodating R. Seerden's opinion. M. Heldeweg, in *Public Environmental Law in the Netherlands*, in: *Comparative Environmental Law in Europe: An Introduction to Public Environmental Law in EU Member States*. Environmental management is a chain (Regulatory chain) which includes: legislation, regulation, issuing permits, implementation, and enforcement which is depicted in the scheme below.

In environmental management, law not only functions as protection and certainty for the community (social control), but also as a means of development (a tool of social engineering) with a role as an agent of development or agent of change. In its function as a means of development, the law legitimizes policy instruments in environmental management, namely environmental Quality Standards, Environmental Impact Analysis, and environmental permits.

Permit is an agreement from the government based on law or government regulations to, in certain circumstances, deviate from the provisions of statutory prohibitions. [Philipus in accordance with the definition of the permit, the permit functions as a means of legal certainty for the permit holder to carry out activities that are prohibited in a statutory regulation. Apart from being a means of legal

certainty, permits are used as a means for the government to control certain activities that can disturb the rights of other people or the environment. So permits are also instruments commonly used in the field of Administrative Law which are intended to influence citizens to follow the recommended methods to achieve concrete goals.

Environmental law enforcement can be defined as the application of legal governmental powers to ensure compliance with environmental regulations by means of:

- a. Administrative supervision of the compliance with environmental regulations (inspection) (= mainly preventive activity);
- b. Administrative measures or sanctions in case of non-compliance (= corrective activity)
- c. Criminal investigation in case of presumed offenses (= repressive activity);
- d. Criminal means or sanctions in case of offense (= repressive activity);
- e. Civil action (law suit) in case of (threatening) noncompliance (=preventive or corrective activity)

From this, how do we draw synergy between the system of environmental legal aspects and mining activities so that comprehensive integration between these aspects produces an ideal combination so as to create a normative order that leads to an accelerated development process in the field of law that is effective and efficient. Environmental regulations in the mining sector are one of a series of legal norms that contain legal mechanisms that must be adhered to by business and/or activity initiators and their legal enforcement. The role of state apparatus as holders of active authority has an important role in the law enforcement process. State officials who are competent and have high integrity in law enforcement are expected to become active means of mobilization armed with applicable statutory norms so that in the future the environmental management system in the mining sector can be implemented consistently based on applicable statutory regulations.

2. Administrative Environmental Law Enforcement

Enforcement of unlawful behavior that does not meet the requirements, stops and returns to its original state (before the violation). Administrative law places more emphasis on actions, in contrast to criminal law which places more emphasis on the legal subject of polluting or destroying the environment. Apart from providing rewards or compensation (retribution), it is also a sorrow for the creator and to satisfy individual and collective victims.

Administrative facilities can be enforced with environmental management facilities, especially in the financial sector, such as relief regarding pollution prevention tools and bank credit for management costs, etc. Administrative sanctions primarily have an instrumental function, namely controlling prohibited acts. Apart from that, administrative sanctions are aimed at protecting the interests protected by the violated provisions. Law no. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) states that: Ministers,

governors, or regents/mayors apply administrative sanctions to those responsible for businesses and/or activities if during supervision a violation of environmental permits is found. Administrative sanctions according to Article 76 paragraph 2 of the PPLH Law include:

- a. written warning;
- b. government coercion;
- c. suspension of environmental permits; or
- d. revocation of environmental permits.

So these sanctions are a sequence of sanctions from written warning to license revocation. However, Article 80 paragraph 2 states that the imposition of government coercion can be imposed without warning if the violation has resulted in:

- a. a very serious threat to humans and the environment
- b. bigger and wider impacts if the pollution and/or destruction is not immediately stopped and/or
- c. greater losses to the environment if pollution and/or destruction is not immediately stopped.

Administrative sanctions according to Article 151 paragraph 2 of Law no. 4 of 2009 concerning Mineral and Coal Mining (*UU Minerba*) states administrative sanctions in the form of:

- a. written warning
- b. temporary suspension of part or all of exploration activities or production operations and
- c. revocation of IUP, IPR and IUPK

So basically the imposition of administrative sanctions in the PPLH Law and the Minerba Law are the same, only the PPLH Law adds aspects of government coercion in the form of:

- a. temporary cessation of production activities
- b. transfer of production facilities
- c. closure of waste water or emission channels
- d. dismantling
- e. confiscation of goods or tools that have the potential to cause violations
- f. temporary suspension of all activities or
- g. other actions aimed at stopping violations and actions to restore environmental functions.

3. Enforcement of Criminal Environmental Laws According to Law no. 32 of 2009 concerning Environmental Protection and Management

The purpose of imposing criminal sanctions on business and/or activity initiators is misery. So either a person or a legal entity Those who pollute and/or damage the environment are expected to have a deterrent effect and not repeat their actions. The PPLH Law also recognizes sanctions in the form of imprisonment and fines. There are several things regarding the application of criminal sanctions in

the PPLH Law relating to mining activities, namely:

- a. Relating to Environmental Quality Standards. In paragraph 1 of Article 100 of the PPLH Law states that anyone who violates water quality standards, emission quality standards, or nuisance quality standards will be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah). However, paragraph 2 of Article 100 states that this criminal offense can be imposed if the administrative sanctions that have been imposed are not complied with or if the violation is committed more than once.
- b. B3 waste. Article 103 states that every person who produces B3 waste and does not carry out management as intended in Article 59, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah).
- c. Related to environmental permits. Article 109 states that every person who carries out business and/or activities without having an environmental permit as intended in Article 36 paragraph (1), shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least IDR 1. 000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah). Article 36 paragraph 1 relates to licensing requirements for a business and/or activity.
- d. Corporate Crime. This is confirmed in Articles 115-118 of the PPLH Law.
- e. Additional criminal or disciplinary action in Article 119 of the PPLH Law in the form of:
 1. Confiscation of profits obtained from criminal acts
 2. Closure of all or part of business premises and/or activities
 3. repairs resulting from criminal acts
 4. the obligation to do what is neglected without rights and/or
 5. Placement of the company under supervision for a maximum of 3 (three) years.

4. Enforcement of Criminal Environmental Laws According to Law No. 4 of 2009 concerning Mineral and Coal Mining.

Specific regulations regarding criminal sanctions for mining activities related to the environment include:

- a. Mining activities without a permit. Article 158 states that every person who carries out mining business without an IUP, IPR or IUPK as intended in Article 37, Article 140 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).
- b. Incorrect information or false information. Article 159 states that IUP, IPR, or IUPK holders who deliberately submit reports as intended in Article 43 paragraph (1), Article 70 letter e, Article 81 paragraph (1), Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) by falsely or

conveying false information is punishable by a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

- c. Additional penalties. Article 164 states additional penalties in the form of:
1. Confiscation of goods used in committing a criminal act
 2. confiscation of profits obtained from criminal acts and/or
 3. the obligation to pay costs arising from criminal acts

5. Factors that influence the enforcement of environmental criminal law based on environmental laws. Case study of damage to river channels and rice fields caused by excavation C

The essence of the effectiveness of law in society is the working power of law in regulating or forcing society to obey the law. For this reason, what must be studied is the legal, sociological and philosophical implementation of the law. However, the application of law is also related to non-legal norms so that the law cannot be enforced in all cases.

Therefore, law should be used at the last level if legal norms are no longer able to overcome problems. The function of law is greatly helped by the effectiveness of implementing the law, the reaction of society, and the time period for implementing the law. Citizens obey the law for various reasons as follows:

1. Fear of negative sanctions if the law is violated
2. Maintain good relations with the authorities
3. Maintain good relations with fellow colleagues
4. Because the law is in accordance with the values adhered to
5. His interests are guaranteed.

At a certain level, the practice of law enforcement that occurs in Kaur Regency, which for micro-scale mining without permits still prioritizes human values, has dismissed the opinion of Suparman Marzuki who stated that, the practice of law enforcement in Indonesia does not create enlightenment, a sense of security and protection, but In fact, it is very stressful, makes things stuffy, and at the same time does not give hope to the little people, which in turn fosters pragmatic obedience which leads to the phenomenon of disorder in law enforcement.¹

In Rizal's view, law enforcement is influenced by economic, political power and the legal and judicial mafia and is hampered by legal procedures and is increasingly moving away from conscience.² In the case of Kaur Regency, the law has obtained its normative authority, because it has the ability to achieve social good so that it is respected by society because society has the right to make moral judgments.³

¹ Bambang Sutiyoso, 2010, Justice Reform and Law Enforcement in Indonesia. Yogyakarta: UII Press

² Rizal, Awi. 2015, "Critical Study of the Ideal of Justice: A Legal Philosophy Approach to Law Enforcement in the Context of Juridical Positivism", Padjajaran Journal of Legal Studies Vol. 2 No.

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³ Petrus Bello, Law and Morality Review of Legal Philosophy, Jakarta: Erlangga, p. 95.

Law enforcement as a process is essentially the exercise of discretion which involves making decisions that are not strictly regulated by legal rules. The benchmarks for the effectiveness of law enforcement are 5 (five) factors which are closely related to people's lives. The condition of law enforcement is influenced by various factors:

1. The legal or statutory factors themselves, which in this case are related to (a) the consistency of the principles or principles, (b) the formulation process, (c) the level of legal capability in its operationalization;
2. The resources of the law enforcement apparatus are a key factor in law enforcement;
3. Adequate facilities and infrastructure;
4. Community factors, especially community perceptions about law, order and the function of law enforcement;
5. Political factors of state control, especially discretion regarding government intervention and interest groups in law enforcement efforts.⁴

The five factors above are different from Soerjono Soekanto's opinion where after the four factors mentioned above, the fifth factor is the cultural factor which regulates so that humans can understand how to act, act and determine attitudes when dealing with other people.⁵ There must be careful planning and strategy so that good policy products can be produced with high selling value and can realize community welfare.⁶ 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 disorderly conditions in society.⁷

It is necessary to reformulate people's mining business policies so that the State, with its tools and equipment, is presessnt to provide legal protection and guidance as well as empower communities who have been marginalized as a result of the development process which has so far been more concerned with the growth aspect so that in time they can have competitiveness and live a decent life as dignified human beings.

Guidance and supervision of people's mining businesses in Kaur Regency is not effective because the Kaur Regency ESDM Service was abolished in 2016, the authority for this was withdrawn to the provincial level and the Kaur Regency only became the frontline/intermediary for processing IUPs which were then passed on to the province. Supervision of environmental functions was transferred to the Environmental Service. This needs to continue to be fostered by state civil servants at the village to district level as well as law enforcement officers at the police

⁴ Bambang Sutiyoso, Op. Cit, p. 21 -23.

⁵ Nasution, M. Syukuri Albani, et. All Laws in a Philosophical Approach. Jakarta: Prenada Media Group, p. 301.

⁶ Zakiyah, Umami & Iqbal Aidah Idrus, "Natural Resource Management Strategy in Ponggok Village." Journal of Government Science. Vol 2. No 2. October, p. 3.

⁷ Satjipto Rahardjo, Op. Cit, p. 167.

station to district police and Bengkulu regional police levels.

However, this should not stop at prohibition measures, but at the same time it needs to be balanced with efforts to improve the appearance of local residents to balance the ability to manage the potential of existing natural resources as a means of natural tourism and accompanying business derivatives such as arts and culture performing activities, typical culinary delights, local, as well as forest/mountain and river adventures such as tubing, rafting, camping, or kite flying festivals as well as photography, all of which require skilled personnel as tour guides and so on.

The active pastir mining in Pulau Panggung Village which is carried out openly has changed the landscape and pushed out agricultural activities. There was no information from community members that the location was provided with guidance and supervision by the relevant authorities. In this regard, the lack of guidance and supervision of community mining businesses at the 6 research locations in Kaur Regency in the short term has not had a significant effect on environmental functions. Although this has the consequence of reducing water catchment areas which are vital for agricultural activities.

Apart from that, population pressure on the environment is also not very significant because the residents of Kaur Regency are known as people who like to migrate outside the area. From the results of field observations, it was discovered that almost no residential houses were found that were in poor condition, all of them were permanent buildings that were well maintained, neat and clean. This shows that the level of welfare of the residents of Kaur Regency is relatively well above the average of other districts in general. The insignificance of population pressure on the environment means that residents of Kaur Regency can fulfill their living needs from the blessings provided by nature and very few residents live in poor conditions.

The factors that influence the effectiveness of guidance and supervision of people's mining businesses on environmental functions in Kaur Regency are caused by the legal factors themselves which are based on the consistency of legal rules, disharmony, vertical conflict of norms between Law Number 23 of 2014 concerning Regional Government and the rules outlined by Article 33 Paragraph (3), Articles 18 and 18 A of the 1945 Constitution and horizontally by Law No. 4 of 2009 concerning Mineral and Coal Mining.

The provisions of Article 14 Paragraph (1) of Law Number 23 of 2014 trigger erroneous interpretations of assumptions regarding the authority of the central government, thus harming the spirit of regional autonomy, showing that Law Number 23 of 2014 is centralized and this has reduced the basic principles outlined in the constitution.

This has extended the span of control and hampered services to community members and ignored protection for small people who, with all the existing limitations, are forced to carry out mining without permits just to survive.

As implementing regulations for Law Number 4 of 2009 concerning Mineral and Coal Mining, PP 55 of 2010 concerning Guidance and Supervision of the Implementation of Mineral and Coal Mining Business Management only accommodates the interests of capital owners and provide fair legal protection to the small people.

In fact, Article 145 of Law Number 4 of 2009 only provides protection for communities affected by direct negative impacts from the consequences of errors in mining business activities in the form of appropriate compensation and filing court lawsuits, while the provisions of Article 158 indiscriminately punish them with imprisonment and very high fines. . It is urgent to immediately reformulate policies in the field of mineral and coal mining, especially people's mining businesses, by not criminalizing small people who carry out mining businesses without permits but accommodating their interests in directly or indirectly benefiting from mining materials in the form of cooperatives through a coaching process. sustainability, legal protection and community empowerment through training that provides life skills, capital assistance so that they have competitiveness in facing the free market.

Misunderstanding of the central position of the 1945 Constitution as the State Constitution, especially the relationship between the basic principles contained in Article 33 Paragraphs (1) to (3) as well as Articles 18 and 18 A of the 1945 Constitution and their implementation in various provisions of related laws and regulations Mineral and coal mining can trigger the emergence of horizontal conflicts between members of society as well as vertical conflicts with the government starting from the Regency/City, Provincial and Central levels.

If this condition is allowed to drag on, conscious efforts to provide rights and access to utilize natural resources such as minerals and coal can trigger the growth of embryonic resistance in the regions which can undermine the integrity of the nation and the Unitary State of the Republic of Indonesia.

It is necessary to build a strong commitment among government officials at the central, provincial and district/city levels in providing services and legal protection, especially to economically weak groups as an embodiment of the moral message contained in the preamble and Article 33 paragraph (3), Article 18, Article 18 A of the Constitution 1945, fostering the development of complete integrity in carrying out the duties assigned so that the authority granted by the Law and its implementing regulations is carried out humanely and still respects the honor and dignity of members of the community, even if the economic group is weak.

Law Number 23 of 2014 concerning Regional Government needs to be interpreted in such a way that its implementation is not carried out literally textually, but still refers to the relevant legal theory and is based on legal principles agreed upon by officials holding authority, experts and other figures. community leaders by synergizing all the potential of human resources, mining resources and other natural resources as well as the application of technology in managing people's

mining businesses.

Bearing in mind that mining materials are non-renewable natural resources, all forms of management and utilization must comply with the precautionary principle to ensure the interests of future generations, the quality of the environment is maintained (environmentally sound).

CONCLUSION

Law enforcement regarding C excavation mining activities without a permit in Kaur Regency takes 2 ways, namely persuasive compromise against mining without a micro scale permit which generally has a weak economic background and low education, middle age to fulfill daily living needs and law enforcement repressively towards other mining actors on a medium scale and long term.

The most dominant factor influencing law enforcement regarding C mining without a permit is political factors, where the central government sees the authority of regents and mayors as an obstacle in running the government. Furthermore, there are apparatus resource factors, community perception factors, and community culture.

REFERENCES

- A. Ali, 2009, *Revealing Legal Theory and Judicial Theory*. Jakarta: Kencana
- Abrar Saleng, *Mining Law*, UII Press, Yogyakarta, 2004
- Andi Hamzah, 1986. *Criminal and Sentencing System in Indonesia*. Pradnya Paramit, Jakarta.
- Andi Hamzah, *Environmental Law Enforcement*, Sinar Graphics, Jakarta, 2005 p. 82.
- Andi Hamza. 2005. *Important Principles in Criminal Procedure Law*, Surabaya: FH University.
- Arif, Muhammad. "The duties and functions of the police in their role as law enforcers according to Law Number 2 of 2002 concerning the police." *Al-Adl: Law Journal* 13.1.
- Asril. 2014. *The Impact of Quarry C Mining on the Lives of the People of Koto Kampar Hulu District, Kampar Regency*. *Journal of Entrepreneurship*. Vol 13 No.1 Riau Tower
- Asshiddiqie, J. 2016. *Law Enforcement*. In http://www.jimly.com/makalah/namafile/56/Penegakan_Hukum.pdf. Accessed 05 June 2021.
- Bambang Sutyoso, 2010, *Justice Reform and Law Enforcement in Indonesia*. Yogyakarta: UII Press. ss
- Governance and Good Environmental Governance" held by the Faculty of Law, Airlangga University on February 28 2008 in Surabaya
- Rizal, Awi. 2015, "Critical Study of the Ideal of Justice: A Legal Philosophy Approach to Law Enforcement in the Context of Juridical Positivism", *Padjajaran Journal of Legal Studies* Vol. 2 No. 1

- Salim. 2006. Mining Law in Indonesia, Jakarta: PT. Raja Grafindo Persad.
- Sheyla Nichlatus Sovia et al, Various Legal Research Methods, Institute for Criminal Law Studies, Center for Legal and Human Rights Studies, Faculty of Sharia, IAIN Kediri, 2022
- Siti Sundari Rangkuti, Environmental Law and National Environmental Policy, Airlangga University Press, Print III, 2003
- Sudrajat, Nandang. 2018. Indonesian mining theory and practice. Media Pressindo.
- Tatik Sri Djatmiati, Principles of Industrial Business Licenses in Indonesia, Dissertation, 'Airlangga University Postgraduate Program, 2004,
- Law no. 3 of 2020 concerning amendments to law number 4 of 2009 concerning mineral and coal mining
- Zainal Arifin, 2012, Educational Research New Methods and Paradigms, Bandung, PT Teen Rosdakarya
- Zakiyah, Ummi & Iqbal Aidah Idrus, 2019, "Ponggok Village Natural Resources Management Strategy." Journal of Government Science. Vol 2. No 2. October