

Criminal Law Enforcement Against Illegal Sand Mining in the Disaster-Prone Area of the Merapi Mountain Special Region of Yogyakarta

Tuson Dwi Haryanto¹ 

^{1, 2} Universitas Islam Indonesia, Yogyakarta, Indonesia

*Corresponding author: tusondwiharyanto@gmail.com

Abstract

This study aims to identify and analyze the efforts of police investigators and civil servant investigators in enforcing criminal law against illegal sand mining in the Mount Merapi Disaster-Prone Area, Yogyakarta Special Region. This study also aims to analyze and direct the possibility of criminal law regulation against illegal sand mining in the future. This study employed normative empirical research method, research that uses primary data and secondary data. Primary data were obtained by interview and documentation, while secondary data were obtained from primary, secondary, and tertiary legal materials. The obtained data were analyzed using a legal approach and a conceptual approach. The following are the findings of this research. First, the Criminal Procedure Code formally guides the enforcement of criminal law by police investigators and civil servant investigators against illegal sand mining, while Law No.4 of 2009 concerning Mineral and Coal Mining formally guides the enforcement of criminal law by police investigators and civil servant investigators against illegal sand mining. Second, in Chapter XXIII Articles 158-165 of Law No.4 of 2009 regulating Mineral and Coal Mining, criminal laws connected to mining without a permit or illegally are specified. However, the existing provisions require a review related to criminalization, the criminal responsibility system, the pattern of types of criminal sanctions, the pattern of the duration of the crime, and the pattern of criminal formulation, which must synergize with the purpose of punishment. Thus, criminal law enforcement in the mining sector in the future can run effectively.

Keywords: Criminal Law Enforcement, Illegal Mining, and Disaster-Prone Areas

History:

Received: January 30th 2024

Accepted: February 1st 2024

Published: March 4th 2024

Publisher: Universitas PGRI Madiun

Licensed: This work is licensed under
a [Creative Commons Attribution 3.0 License](https://creativecommons.org/licenses/by-sa/4.0/)



Introduction

Indonesia's natural resources are able to attract people's interest in mining in order to gain profits from the production of mineral mining goods. Especially the areas affected by the eruption phenomenon of Mount Merapi in 2010, which largely changed the structure and spatial patterns. Thus, spatial planning needs to be changed and adapted to new geographical conditions (Susena and Widowaty, 2018). The Sleman Regency Government responded to this by issuing Regent Regulation no. 20 of 2011 concerning Mount Merapi Disaster Prone Areas. This regulation divides the Mount Merapi Disaster Prone Area into 3 zones based on the level of vulnerability of an area, namely Merapi Disaster Prone Area Zones I, II, and III (Susena and Widowaty, 2018).

Head of Sleman Regional Disaster Mitigation Section Joko Lelono (Agus, 2017) stated that the fact is that illegal sand mining often occurs, especially in the slopes of Merapi, this uncontrolled sand mining has a negative impact on the environment because the Merapi slopes area is actually designated as a disaster-prone area as well as a protected area. its function is to preserve nature. In accordance with Regent Regulation no. 20 of 2011 concerning Mount Merapi Disaster Prone Areas, Article 2 states that protected areas function

as nature conservation. Therefore, the involvement of disaster mitigation in mining is very important, especially in disaster-prone areas where activities are limited, including illegal mining (Agus, 2017).

The rise of mining without permits is confirmed by reports of case handling at the Ditreskrim POLDA DIY within a period of 3 years, namely: 8 cases in 2018, 14 cases in 2019 and 19 cases in 2020 (Andoyo, 2023). Mining without permits increases every year, in which there are 9 cases of illegal sand mining found in disaster-prone areas of Mount Merapi (Andoyo, 2023). This is of course a concern for law enforcers, especially police investigators and civil servant investigators as the main guard in enforcing criminal laws regarding illegal sand mining. That legally the act of illegal sand mining in the disaster-prone area of Mount Merapi violates Regent Regulation no. 20 of 2011 concerning Mount Merapi Disaster Prone Areas, but also violates Law no. 4 of 2009 concerning Mineral and Coal Mining.

The background that has been described gives rise to a problem that has been examined in this research, namely:

1. What are the efforts of police investigators and civil servant investigators in enforcing criminal law against illegal sand mining in the disaster-prone area of Mount Merapi, Special Region of Yogyakarta?
2. How will the criminal law regulate illegal sand mining in the future?

Other research with a mining theme is research written by Syuaib Abdullah (Abdullah, 2016) with the title "Criminal Law Enforcement for Perpetrators in Overcoming Mining Crimes Without Permits (Peti) in the Legal Area of the Semarang Police", and research by Zulham Effendy Harahap (Harahap, 2016) with the title "Legal Analysis Regarding the Imposition of Criminal Sanctions on Land Mining Business Actors Without Mining Business Permits in Deli Serdang Regency" as well as research by Anton (Anton, 2018) with the title "The Influence of Judges' Decisions on the Investigation of Illegal Mining Crimes at the Kulonprogo Police". These three studies have different discussions from those researched by the author, Syuaib focuses on the obstacles faced by law enforcers in tackling PETI, Zulham focuses on the factors that cause mining to occur without permits, while Anton focuses more on the influence of the judge's decision on mining criminal investigation process.

Materials and Methods

According to Saifuddin, research is a series of scientific activities in order to solve a problem (Saifuddin, 2005). According to F. Sugeng Istanto, research is defined as a series of regular activities that help develop knowledge in revealing the truth (Istanto, 2007). A scientific research that produces scientific answers requires research methods. With research methods, a legal researcher or writer will know the quality of their research results (Jurdi, 2017).

The type of legal research used in this research is empirical normative legal research. This research is included in empirical normative legal research because it consists of a study of related laws and regulations and their implementation in real life in legal incidents in order to find out how criminal law is enforced against illegal sand mining in the disaster-prone area of Mount Merapi, Special Region of Yogyakarta.

In empirical normative research, primary data and secondary data are used. Primary data was obtained by interviews and documentation, while secondary data was obtained from primary, secondary and tertiary legal materials. The data analysis process uses a statutory approach and a conceptual approach.

Results and Discussion

1. Efforts of POLRI Investigators and Civil Servant Investigators in Enforcement of Criminal Law Against Illegal Sand Mining in Disaster Prone Areas of Mount Merapi Special Region of Yogyakarta

The process of enforcing criminal law, especially regarding unlicensed or illegal mining, begins with an investigation. Investigation is a series of investigative actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the methods regulated in the law (Harun, 1991). In starting an investigation here, investigators are based on the Police Report. A report is a notification submitted by someone about a criminal act being or suspected of occurring.

According to the Republic of Indonesia State Police Regulation No.6 of 2019 concerning Criminal Investigation, it is stated that there are 2 (two) types of Police Reports, namely Model A Police Reports and Model B Police Reports. Model A Police Reports are Police Reports made by members of the National Police who have experienced, knowing or directly determining the criminal event that occurred. Meanwhile, the Model B Police Report is a report made by members of the National Police based on reports or complaints received from the public.

The police have a role in taking action against perpetrators of unlicensed or illegal mining based on Law Number 2 of 2002 concerning the State Police of the Republic of Indonesia. In the Special Region of Yogyakarta, police resorts carry out inquiries and investigations into the practice of sand mining without permits or illegally as mandated by Article 158 of Law No. 4 of 2009 concerning Mineral and Coal Mining and the Criminal Procedure Code (Bimantoro, 2023). The police also coordinate with DPUP-ESDM DIY at the inquiry and investigation stage. This is an embodiment of Article 149 paragraph (1) of Law No. 4 of 2009 concerning Mineral and Coal Mining that apart from investigators from the Police, civil servants whose scope of duties and responsibilities in the mining sector are given special authority can act as investigators. (Bimantoro, 2023).

The form of coordination carried out by DIY DPUP-ESDM investigators is in the form of checking the veracity of reports regarding criminal acts of mining without a permit or illegally (Bimantoro, 2023). This first requires an analysis of whether or not there are permit documents as well as an analysis of the coordinates of mining areas without permits (Bimantoro, 2023). Determining these coordinates is intended to find out whether the area is an IUP area owned by the relevant IUP holder. This is because perpetrators of sand mining without permits or illegally often carry out mining in a concession or IUP area of an IUP holder which clearly has sand resources (Bimantoro, 2023).

Furthermore, POLRI investigators together with DIY DPUP-ESDM investigators conducted investigations into perpetrators of criminal acts, carried out searches and inspections of mining areas, as well as facilities and infrastructure used in mining without permits or illegally (Bimantoro, 2023). This form of coordination supports the police at the inquiry and investigation stage, especially in the analysis of mining area coordinates and licensing documents. This is because police investigators do not have competence in terms of licensing documents and abilities in coordinate analysis and so on (Bimantoro, 2023).

Apart from that, the articles applied in investigating criminal acts of mining without a permit or illegally, both by investigators from the Sleman Resort Police (POLRES Sleman) and investigators from the Yogyakarta Special Region Police (POLDA DIY), namely Article 158 of Law No. 4 of 2009 concerning Mineral Mining. and Batubara, which reads:

"Any person who carries out mining business without an IUP, IPR or IUPR permit as intended in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with a maximum prison sentence of 10 (ten) years and a maximum fine of IDR 10,000,000,000 (ten billion rupiah)."

In their investigation, investigators should not only apply a single article, namely Article 158 of Law No. 4 of 2009 concerning Mineral and Coal Mining, but supplement it with other articles in related laws such as Law No. 32 of 2009 concerning Environmental Protection and Management Life, if carrying out the mining business results in damage to the environment and its ecosystem, Law No. 22 of 2001 concerning Oil and Gas, if the heavy equipment used in carrying out the mining business uses fuel subsidized by the government and Law No. 26 of 2007 concerning Spatial Planning, if in carrying out exploitation (mining) activities you do not comply with the spatial planning plan that has been determined and/or the activity results in loss of property or damage to goods so that the investigation can be maximized based on the criminal article applied to the suspect.

Although in terms of enforcing criminal law against unlicensed or illegal mining, National Police investigators and PPNS investigators have the same authority, in practice PPNS investigators are more concerned with carrying out mining supervision and licensing functions (Yusuf, 2023). The form of implementing the mining supervision and licensing function includes: recommendations for issuing permits, analysis of licensing documents relating to the coordinates of mining areas, as well as supervision of the mining permits themselves that have been issued so that they remain in accordance with good environmental guidelines (Yusuf, 2023).

2. Criminal Law Regulations Against Illegal Sand Mining in the Future

The author tries to explain the provisions regarding criminal punishment patterns in Law No. 4 of 2009 concerning Mineral and Coal Mining:

First, the types of criminal sanctions (strafsoort) threatened in the Minerba Law are basic penalties in the form of imprisonment, fines and imprisonment. Apart from that, additional penalties are also regulated, namely confiscation of goods, confiscation of profits and the obligation to pay court costs that arise.

All criminal acts in the Minerba Law have prison/imprisonment sanctions, showing that lawmakers still view the importance of prison as a means of preventing and controlling crime. Regarding this problem, Sudarto (Arief, 2000) stated that the means chosen must be the means that are considered the most effective and useful for achieving the goal. Thus, the benchmark for the justification of imprisonment, seen from a rational approach, must be seen from the objectives that have been set. Meanwhile, according to Barda Nawawi Arief (Arief, 2000), the use of imprisonment can still be maintained, but selective and limitative policies need to be adopted in its use by considering the balance between the interests of protecting society on the one hand and the protection and improvement of individuals (criminal perpetrators) on the other. These two opinions provide direction, that the use of imprisonment must take a rational approach and look at the purpose of the punishment, and be pursued selectively and limitatively.

Meanwhile, the types of sanctions for legal entities, apart from imprisonment or fines for their administrators, are fines for legal entities, plus 1/3 times the maximum fine imposed. Then there are also additional penalties in the form of: revocation of business permits; and/or revocation of legal entity status.

Second, the formulation of the pattern of criminal length (strafmaat) in the Minerba Law in principle adheres to a special maximum system as regulated in the Criminal Code. This formulation can be seen from the formula "...the longest prison sentence/imprisonment...and/or the maximum fine...". The pattern of length of sentence under this special maximum system ranges from a maximum prison sentence of 2 years to 10

years. Meanwhile, the maximum length of imprisonment is 1 year. Then the criminal fines range from a maximum fine of 100 million to 10 billion. The specific maximum height or low varies according to the offense being regulated.

The formulation of the criminal length pattern with the special maximum system above should be reviewed to also include the regulation of a special minimum system for certain criminal acts based on the impact of the offense on the wider community, such as environmental damage, smuggling of mining products abroad, the magnitude of the victim's losses/ society or the possibility of repetition of criminal acts.

There are 2 (two) special minimum criminal models, namely the first fixed sentence model: MMS (Mandatory Minimum Sentence) which is absolute/imperative, and the second is the Unfixed sentence model which is relative/elastic. There has been criticism of the MMS model because it is seen as not providing justice, and even being dangerous; eliminating the judge's discretion and sense of justice and turning the judge into a computer (automatic machine) (Arief, 2000).

According to the author, the special minimum criminal pattern applied is the second model which is elastic. So even though there is a special minimum, for certain reasons that have been regulated it is possible to be below the minimum. Other formulations, for example, can at least be dropped if they are repetitive. So in principle, special minimum criminal regulations are not rigid, but remain elastic. Apart from being elastic, the formulation of a special minimum penalty must also be accompanied by guidelines for its implementation.

Third, the criminal formulation pattern of the Mining and Coal Law adheres to a cumulative and alternative formulation system. This can be seen by the use of the phrases "and" & "or". The cumulative formulation is seen in all criminal acts which are punishable by imprisonment, while the alternative formulation is used for two articles which are punishable by imprisonment. The consequence of using this system is that the judge is bound to impose criminal sanctions in accordance with the provisions regulated by the offense. This does not provide flexibility for judges to impose appropriate and effective sanctions based on their considerations. It is important to review it to reformulate it using an alternative-cumulative system, but while still paying attention to the subject of criminal acts and the impacts they cause. So a single and alternative system could be formulated, but with guidelines for its implementation.

Based on the discussion above, the criminal provisions in Law Number 4 of 2009 concerning Mining and Coal require a review, both regarding criminalization, the criminal responsibility system, the pattern of types of criminal sanctions, the pattern of the length of the sentence and the pattern of the formulation of the crime, which must be in synergy with the objectives of the punishment so that enforcement criminal law in the Minerba Law in the future can operate effectively.

Conclusion

Based on the results of research and discussion regarding illegal sand mining, the author reached the following conclusions:

- a. In the process of investigating cases related to mining, police investigators formally guide criminal procedures regulated in law, namely the Criminal Procedure Law (KUHAP) and internal police regulations, namely National Police Chief Regulation No. 6 of 2019 concerning Investigation of Criminal Offenses. Meanwhile, materially investigators are guided by the relevant law, namely Law No. 4 of 2009 concerning Mineral and Coal Mining, especially the criminal provisions contained in Article 158 and so on. Apart from that, National Police investigators also coordinate with PPNS investigators from DPUP-ESDM DIY, because PPNS investigators have a supervisory function in terms of mining permits, which

includes: recommendations for permit issuance, analysis of permit documents relating to the coordinates of mining areas, as well as supervision of mining permits. which have been issued to remain in accordance with environmental guidelines.

- b. Criminal law regulations for criminal acts in the mineral and coal mining sector are currently contained in Law No. 4 of 2009 concerning Mineral and Coal Mining. With the formulation of Chapter XXIII concerning Criminal Provisions Articles 158-165 in this law, it is a form of implementation of the criminal formulation/determination stage by the legislators. This formulation stage is seen as a very important stage in the process of overcoming crime using penal means. In other words, this stage really determines the success of the stage of administering the sentence and carrying out the sentence. However, there are still many weaknesses in the criminal provisions regulated in Law Number 4 of 2009 concerning Minerals and Coal, so that it requires a review, both regarding criminalization, the criminal responsibility system, the pattern of types of criminal sanctions, the pattern of the length of the sentence and the pattern of criminal formulation, which must be synergize with criminal objectives so that criminal law enforcement in the mining sector in the future can run effectively. Apart from that, criminal law regulations in the mining sector in the future should be based on the provisions of Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislative Regulations as the juridical basis for their formation, based on evidence provided research-based (research based evidence) and with the right approach.

Based on the conclusions above, the researcher recommends that when conducting an investigation investigators should not only determine the articles regulated in Law No. 4 of 2009 concerning Mineral and Coal Mining, namely regarding carrying out mining activities without a Mining Business Permit (IUP), People's Mining Permit (IPR) and Special Mining Business Permit (IUPK). Investigators should add elements regulated in other laws such as the Environmental Law, Oil and Gas Law, Spatial Planning Law and other related laws so that their decisions can be maximized. Then, all law enforcers are expected to always work together in carrying out legal processes, especially those related to illegal sand mining. All processes carried out must be based on regulations that serve as a reference so that the results are expected to satisfy all parties and provide a sense of justice in society. Apart from that, in terms of formulating criminal provisions in the mining sector, the author suggests that the House of Representatives should be more careful and clear regarding: criminalization, the criminal responsibility system, patterns of types of criminal sanctions, patterns of criminal duration and patterns of criminal formulation in mining regulations in the future. .

References

Regulation

The 1945 Constitution of the Republic of Indonesia.

Law Number 1 of 1946 of the Republic of Indonesia concerning Criminal Law Regulations.

Law Number 8 of 1981 concerning the Criminal Procedure Code.

Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining,

National Police Chief Regulation No.6 of 2019 concerning Criminal Investigation

Sleman Regent Regulation Number 20 of 2011 concerning Mount Merapi Disaster Prone Areas.

Book:

Arief, Barda Nawawi 2000, *Legislative Policy in Combating Crime with Imprisonment*, Diponegoro University Publishing Agency, Semarang.

Harun, M. Husein, 1991, *Investigators and Prosecutors in the Criminal Process*, PT. Rineka Cipta. Jakarta

Istanto, F Sugeng 2007, *Legal Research*, CV. Ganda, Yogyakarta.

Jurdi, Fajlurrahman, 2017, *Legal Logic*, Kencana, Jakarta.

Saifuddin, Azwar 2005, *Research Methods*, Student Library, Yogyakarta.

Articles

Bayu Susena and Yeni Widowaty, 2018, "The Concept of Spatial Planning Control in Accordance with the Principles of Sustainable Development in Sleman Regency," Master of Law, Yogyakarta Muhammadiyah University.

Syuaib Abdullah, 2016, "Enforcement of Criminal Law for Perpetrators in Overcoming the Criminal Act of Mining Without a Permit (Peti) in the Legal Area of Semarang Police", Thesis, Faculty of Law, Sultan Agung Islamic University Semarang, Central Java.

Zulham Effendy Harahap, 2016, "Legal Analysis Regarding the Imposition of Criminal Sanctions on Land Mining Business Actors Without Mining Business Permits in Deli Serdang Regency", Thesis, Postgraduate Study Program in Law, University of North Sumatra, Medan.

Anton, 2018, "The Influence of the Judge's Decision on the Investigation of Illegal Mining Crimes at the Kulonprogo Police Station", Thesis, Master of Law Litigation Study Program, Gadjah Mada University, Yogyakarta.

Andhika, Dany, Karya Gita, Amin Purnawan, and Djauhari, 2010, *Police Authority in Handling Mining Crimes (Illegal Mining) According to Law Number 4 of 2009 (Studies in the Indonesian National Police)*, Journal of Sovereign Law 1, Semarang.

Interviews

Interview with AKP. Neko Budi Andoyo, S.H., M.M, Head of Unit 1 Subdit 2 Ditreskrimsus POLDA DIY, 06 May 2023

Interview with IPDA Sulistyو Bimantoro, S.Tr.K., M.H, Head of Unit 3 Satreskrim POLRES Sleman, April 30 2023

Interview with Gusman Yusuf, S.T., Head of the General Mining Section of DPUP-ESDM DIY, April 29 2023.

Internet:

Dwi Agus, 2017, Eruption Material Has Run Out,
<https://radarjogja.jawapos.com/2017/01/14/material-eruption-merapi-has-run-out>,
accessed on 04 November 2019.