



PROLIFERATION OF UNLICENSED MINING IN INDONESIA WHEN THE MINERBA LAW WAS ENACTED

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ABSTRACT

Keywords:
Illegal mining,
Coal, Law,
Government.

Background: Article 33, Section 3 of the 1945 Constitution of the Republic of Indonesia states, "Land and water and the natural resources therein shall be under state control and shall be used for the maximum prosperity of the people." Therefore, according to Article 33, Section 3 of the 1945 Constitution of the Republic of Indonesia, Indonesia's natural resources are managed by the state to benefit the people, as mentioned earlier. Coal production in Indonesia is increasing every year.

Purpose: Therefore, the Indonesian government has decided to change the country's primary energy source from petroleum to coal by 2025.

Method: The research style employed in this study is normative legal; however, it is supported by data/information from the Directorate General of Mineral and Coal about numerous issues associated with unlicensed mining in Indonesia.

Results: Illegal mining must be eradicated through a concerted effort. Improving mining supervision and monitoring aspects, particularly by increasing the quantity and calibre of mining supervision employees, should be a top priority for the government's current preventative measures (mine inspectors). Furthermore, repressive attempts by law enforcement must be addressed seriously, particularly against law enforcement officers who participate in such operations. In addition, illegal mining must be prosecuted by addressing multiple elements, including legal, law enforcement, infrastructure, community, and cultural factors.

Conclusion : In this instance, the House of Representatives of the Republic of Indonesia must urge the government to adopt a fiscal policy that better supports the facilities and equipment of law enforcement officers in the mining industry. This is important to tackle various challenges associated with the monitoring and monitoring requirements of mining activities.

INTRODUCTION

Article 33, Section 3 of the 1945 Constitution of the Republic of Indonesia states (Ruslina, 2016), "Land and water and the natural resources therein shall be under state control and shall be used for the maximum prosperity of the people." According to Article 33, Section 3 of the 1945 Constitution of the Republic of Indonesia, Indonesia's natural resources are managed by the state to benefit the people, as mentioned earlier. These are the natural resources that are controlled and used for the benefit of the Indonesian people. (Harinda, Purnawan, & Witasari, 2021).

Indonesia's natural resources also include mineral resources, which, if managed effectively, contribute to economic development. Indonesia is a mineral-rich country in the mining industry whose resources can be extracted anytime (Lavianchandra, Sahari, & Fauzi, 2020).

Coal production in Indonesia is increasing every year. Therefore, the Indonesian government has decided to change the country's primary energy source from petroleum to coal by 2025 (Achsan & Barcah, 2015). However, unlike in developed countries where illegal coal mining has ceased, it is still widespread in developing countries (Thomson & Finenko, 2014). Illegal (unlicensed) mining provides employment, revenue, and increased market activity. Nevertheless, the negative impacts, such as the degradation of agricultural land and water pollution, high cost of living, and increased social crime, outweigh the positive effects (Volgin, Safargalieva, & Sergeev, 2020).

Illegal mining, which involves small-scale mining without adequate safety equipment and facilities, often leads to the death of miners in some places (Drapezo & Shelestukov, 2019). The rugged terrain, inadequate personal safety system, lack of medical equipment and medicines on-site, distance of health facilities from the mining area, and lack of parties responsible for the safety of these workers' lives are concrete reasons why the problem of illegal mining in Indonesia requires significant attention (Shelestukov, Drapezo, & Islamov, 2020).

Illegal mining is a euphemism for unauthorized mining. According to Law No. 4 of 2009, three types of permits are recognized. IUP (Mining Business Permit), IPR (People's Mining Permit), and IUPK are the three permits (Special Mining Business Permit). This is implicitly referred to in Chapter XIII of the Criminal Code, which specifies administrative penalties and criminal sanctions for illegal mining (illegal mining) (Birawa & Tedjosaputro, 2020).

Illegal mining in Indonesia is also not a new development; illegal mining has been common in almost all areas with the potential for rich mineral resources. As with money, the activities of unlicensed miners are generally not environmentally friendly because they are only engaged in their hobby for a limited period. This behaviour results from a lack of awareness of environmental conservation (Nomani et al., 2021). In addition to ecological problems, mining areas in several regions indicate the risk of poverty and potential conflict. The industry's struggle with surrounding communities over strategic sources such as mining materials is potentially the most significant conflict (Bruno et al., 2020). This has led to the widespread problem of unlicensed miners (PETI), whose sites are spread across most of Indonesia. The PETI problem remains homework for the Ministry of Energy and Mineral Resources and needs to be addressed immediately (Mulyanto, 2018). Mining activities without a permit / illicit mining are inextricably linked to four underlying reasons. The rise of mining activities without authorization has reached a particularly worrisome stage (Suroto & Gunarto, 2018). It has also led to an increase in the sale of mining products on black markets that illegally exploit natural resources, distribute, and sell mining products, thereby evading state taxes. This is the primary reason for the prevalence of unlawful mining-related crimes (Ukut, 2020).

RESEARCH METHODS

The research style employed in this study is normative legal; however, it is supported by data/information from the Directorate General of Mineral and Coal about numerous issues associated with unlicensed mining in Indonesia. In addition, the Ministry of Resources and Energy collects data secondarily, notably through the utilization of data that the Ministry itself has supplied.

RESULTS AND DISCUSSION

After the Minerba Law was implemented in Indonesia, the power holders for mining licenses changed. The federal government has returned the implementation of mining licenses for non-metallic minerals and rocks to their separate areas as of February 11, 2022. However, this continues to be a hurdle for the coal-producing region of Muara Enim in South Sumatra. The bureaucracy's difficulties in issuing mining permits have led to increased unauthorized coal mining in some areas of Indonesia (Spiegel, 2012). Receipts should be simplified to expedite investments that will eventually be used for the country's development. For instance, the royalties paid directly to the Indonesian government can progressively rise to match the country's development demands.

In addition, the unauthorized mining is a result of the lack of welfare of local communities in the vicinity of the mine. With the presence of mines in the area, the local economy should be able to absorb local workers and turn the wheels. Therefore, local and central governments must be vigilant to resolve this issue. Taking into mind the welfare of the surrounding community and developing effective coordination between the government and the local police to take extreme action, namely the closure of the mine in the absence of government approval, can reduce the prevalence of PETI. However, this will lead to the expansion of unlicensed mines in Indonesia due to the difficulty in obtaining mining permits.

According to data from the Ministry of Energy Resources and Minerals, Unlicensed Mining, often known as PETI, remains a government issue. Therefore, efforts and assistance from all parties are required to promote handling the PETI issue and its consequences. More than 2,700 PETI sites are located throughout Indonesia. According to data from 2021, there are approximately 96 locations for coal PETI and 2,645 places for mineral PETI (quarter-3). South Sumatra Province contains one of the most PETI sites.

Enforcement of Unlawful Mining Offenses, Illegal mining is one of the mining-related crimes outlawed by the Mineral and Coal Law and the Amendment to the Mineral and Coal Law, according to the applicable positive law. Administrative fines and criminal sanctions are available for those who violate the ban restrictions of Article 2 of the Mineral and Coal Law. Additionally, the offender may be liable for additional punishments.

Administrative consequences for illegal mining include: (a) written warnings; (b) fines; (c) the temporary suspension of some or all exploration or production activities; and (d) the cancellation of an IUP, IUPK, IPR, SIPB (Rock Mining License), or IUP for Sale. In addition, holders of Mining Business Permits (IUP), People's Mining Permits (IPR), or Special Mining Business Permits (IUPK) are subject to administrative punishment for violations of many conditions outlined in Article 151. (Amendment to the Mineral and Coal Law). One of them is using a Mining Business Permit (IUP) in a manner not permitted by the IUP's issuance (Article 41 of the Mineral and Coal Law).

Meanwhile, the Mineral and Coal Law offenders of Articles 158 to 164 may face criminal penalties. Article 158 (Amendment to the Mineral and Coal Law), for instance, provides that anyone who engages in mining without a license as required

by Article 35 is subject to a potential sentence of 5 years in prison and a maximum fine of Rp100 billion (one hundred billion rupiahs). In this instance, Article 35 (Minerba Law as amended) governs the business licenses issued by the central government. Moreover, in addition to administrative and criminal sanctions, perpetrators of mining crimes may face additional crimes in the form of (a) deprivation of goods used in committing criminal acts; (b) deprivation of profits derived from criminal acts; or (c) the obligation to pay costs resulting from a criminal act.

Implementing the Mineral and Coal Law, which should be an effort to combat these crimes, satisfies a sense of justice and effectiveness as if it were weak. However, law enforcement must be undertaken as a governmental response to crime. To Eliminate Criminal Indictment, law enforcement preferably demands rational actions that must be coordinated with one another. This context includes criminal/penal efforts and non-criminal/non-penal activities. Regarding legal factors, the Mineral and Coal Law has improved legal clarity regarding enforcing illegal mining regulations.

CONCLUSION

Illegal mining must be eradicated through a concerted effort. Improving mining supervision and monitoring aspects, particularly by increasing the quantity and calibre of mining supervision employees, should be a top priority for the government's current preventative measures (mine inspectors). Furthermore, repressive attempts by law enforcement must be addressed seriously, particularly against law enforcement officers who participate in such operations. In addition, illegal mining must be prosecuted by addressing multiple elements, including legal, law enforcement, infrastructure, community, and cultural factors. In this instance, the House of Representatives of the Republic of Indonesia must urge the government to adopt a fiscal policy that better supports the facilities and equipment of law enforcement officers in the mining industry. This is important to tackle various challenges associated with the monitoring and monitoring requirements of mining activities.

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