

LAW ASPECT IN TREATING ILLEGAL MINING CASE OF MINERAL C IN PATI REGENCY^Ω

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Abstract

The research entitled "Law Aspect in Handling Illegal Mining Case of Mineral C in Pati Regency" is motivated by the increasing illegal mining of mineral C. It causes environmental damage, air pollution, licensing violation and tax. The research focus is limited to: first, what are the influencing factors of illegal mining of mineral C in Southern Kendeng and Northern Kendeng mountains in Pati regency? Second, how to treat illegal mining case of mineral C in illegal areas of Southern Kendeng Mountain Area and Northern Kendeng Mountains in Pati Regency? It applies sociological juridical approach. The results of the research showed: First, Factors affecting illegal mining of mineral C in illegal areas of Southern Kendeng Mountain and Northern Kendeng Mountains include legal culture, legal structure and legal substance; Second, The treatment of illegal mining cases in the Southern Kendeng Mountains Area and the Northern Kendeng Mountains are conducted both penal and non penal.

Keywords: treatment, mineral C, illegal, Pati regency

Abstrak

Penelitian dengan judul "Aspek Hukum Penanganan Kasus Penambangan mineral C Tanpa Izin (Ilegal) Di Kabupaten Pati" dilatarbelakangi semakin maraknya penambangan galian C ilegal, yang menyebabkan kerusakan lingkungan, pencemaran udara, pelanggaran perizinan dan pajak. Penelitian dibatasi pada permasalahan: Pertama, Apakah faktor-faktor yang mempengaruhi terjadinya penambangan galian C tanpa izin (ilegal) di Kawasan Pegunungan Kendeng Selatan dan Pegunungan Kendeng Utara di Kabupaten Pati? Kedua, Bagaimana penanganan kasus penambangan galian C tanpa izin (ilegal) di Kawasan Pegunungan Kendeng Selatan dan Pegunungan Kendeng Utara di Kabupaten Pati? Metode pendekatan yang digunakan adalah metode pendekatan yuridis sosiologis. Hasil penelitian menunjukkan: *Pertama*, Faktor yang mempengaruhi terjadinya penambangan galian C tanpa izin (ilegal) di Kawasan Pegunungan Kendeng Selatan dan Pegunungan Kendeng Utara adalah faktor kultur hukum, struktur hukum, dan substansi hukum; *Kedua*, Penanganan kasus penambangan galian C tanpa izin (ilegal) di Kawasan Pegunungan Kendeng Selatan dan Pegunungan Kendeng Utara dilakukan baik secara penal maupun non penal.

Kata kunci: penanganan, galian C, ilegal, Kabupaten Pati

Introduction

Mining activity is a form of exploration from the beginning to the control and the management are going to the authority of the state. The provisions of Article 1 Number 1 In Indonesian Law 1945 Number 4 Year 2009 on Mineral and Coal Mining states, "Mining is part or all of the phases of activities within the framework of

research, management and exploitation of minerals or coal covering general investigation, exploration, feasibility study, mining, processing and refining, transportation and sales, and post-mining activities." Mining material is divided in-to three groups, namely class A, class B, and class C. Mining class C is a mining material that is not strategic and vital as mining material class A and class B; it is not considered as the thing that directly affect to the life of the society, such as salt, sand, marble, limestone, clay and asbestos.

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Mining of mineral C class currently occurs in various regions in Indonesia due to the needs of community for the mining industry both industry and fulfillment of basic needs in the construction of various buildings, houses, and so forth. Pati Regency which has potential of mining materials cannot be separated from the exploration efforts of mining materials. The problem is the increasingly widespread illegal mineral C mining regardless its impact such as environmental damage and other consequences.

Illegal mining activities that cause environmental damage are also regulated in Law Number 32 Year 2009 on the Protection and Management of the Environment. In addition, the laws and regulations related to illegal mining and environmental protection are Law Number 41 Year 1999 on Forestry amended by Law Number 19 Year 2004 on Stipulation of Government Regulation in Lieu of Law Number 1 Year 2004 on Amendment to Law Number 41 Year 1999 on Forestry.¹

Through the cause of the increasingly widespread mining activities of mineral C in the Southern Kendeng Mountains Area and the Northern Kendeng Mountains in Pati Regency, it is necessary to dig deeply whether it is caused by the community itself or whether there are other parties associated with the activity. It takes further studies since the increasing quantity or quantity of mineral C mining has a major impact on environmental damage, dusty and dirty air pollution caused by trucks carrying C pitched hikes, unlicensed licenses, non-taxes paid, in addition to the other losses. Considering negative consequences, it takes concrete action to deal with illegal mining of C in the South Kendeng Mountains Area and the North Kendeng Mountains in Pati Regency.

The issues discussed in this paper are: *firstly*, what are the influencing factors of illegal mineral C mining in Southern Kendeng and Northern Kendeng mountains in Pati regency; *second*, how to treat illegal mining case of mineral C in illegal areas in Southern Kendeng

Mountain Area and North Kendeng Mountains in Pati Regency?

Research Methods

A method of the research is juridical sociological or empirical approach. The population in this research are village and community administrative in mountain area of Kendeng north and south Kendeng mountains, Pati Resort Police, Pati District Attorney, Pati District Court, Satpol PP Pati, and Head of Integrated Licensing Service Office (KPPT) Pati Regency. The data consist of primary and secondary data. Data analysis technique applies qualitative approach.

Discussion

Influential Factors of the occurrence of illegal mining mineral C in Southern Kendeng Mountains and the Northern Kendeng Mountains in Pati District

Unlicensed (illegal) mining of mineral C in Southern Kendeng Mountains and Northern Kendeng Mountains in Pati District does not appear accidentally. Illegal mining occurs because of the backdrop of many factors. These factors are legal structure, legal substance, and legal culture.

Factor of legal structure (law enforcement officer, in this case Pati Precinct Police, Pati District Court, and Pati District Court) is one of the influential factors. According to Kanit Krimisus Polres Pati (Chief of Special Crime Unit in The Department Police of Pati),² the existing constraint is in the form of transportation means to transport or seizure of evidences such as heavy equipment. While in the prosecutor's office,³ the obstacles are: *first*, the demand or indictment is not heavy, due to mining of rocks whose economic value is lower than coal mining and other mining materials. According to the provisions of Article 158 of Law Number 4 Year 2009 on Mineral and Coal Mining, the meaning of unlicensed mining equals to the mine with a high economic output with low-economic value minerals. *Second*, mining land is used by an average of the property of the per-

¹ Aga Natalis, Et.Al., "Penegakan Sanksi Administratif Terhadap Pelaku *Illegal Mining* Di Kabupaten Sekadau Provinsi Kalimantan Barat", *Diponegoro Law Journal*, Vol. 6 No. 2, Year 2017, p. 3.

² Slamet Haryono, *Personal Interview*, on 13th May 2017, Kanit Krimisus Pati Precinct Police (Polres).

³ Heru Haryanta, *Personal Interview*, on 15th May 2017, Prosecutor District Court Pati.

petrator itself and includes mining area in Pati Regency which then it will be converted into productive land (agriculture). *Third*, the impact of environmental damage is not too bad for the environment. While within the scope of the Pati District Court, there are no obstacles to the mining act because the file delegated from the prosecutor's office is complete so it can be examined and decided on the basis of certainty, justice and benefit.

Factor of legal substance to law enforcement of illegal mining action of mineral C based on special law that is Law Number 4 Year 2009 on Mineral and Coal Mining as regulated in Article 158 with maximum 10 years imprisonment and fine Rp.10.000. 000.000, - (ten billion rupiah). This provision cannot be taken for granted, given the interests of the perpetrator, the land used, and the losses resulting from the mine until more comprehensive regional level arrangements are needed for the handling of the case.

Law enforcement efforts require compatibility between different degrees of legislation but the inconsistency of the rule may occur, for example, between higher-level laws and lower regulations, between specific and general laws, and between legislation in force with the foregoing. These circumstances can affect law enforcement since the purpose of establishing a regulation is to provide legal certainty, benefit and justice.⁴ The substantive aspects of the criminal justice system must be harmonious, and synchronous (vertical and horizontal) not overlapping.⁵

The second is factor of legal culture due to low public's participation. Law enforcement on illegal mining of mineral C in Pati Regency is influenced by the role of the community which is very important in assisting law enforcement officers. The community is still reluctant to cooperate with the Police by providing reports to assist law enforcement process against unauthorized mining actors. In addition, public legal

awareness is still low because it does not pay attention to the enactment of Law No. 4 Year 2009 on Mineral and Coal Mining especially Article 158 on unlicensed mining.⁶

The existing legal culture within the society leads to the pros and cons of illegal mining of mineral. Some communities oppose mining while others support mining, as illegal mining activities in Dukuh Serut, Kedung Bulus Village, Gembong District. According to Rindang who is also a villager⁷ accused the mining is unlicensed and does not comply with environmental regulations, potentially damaging the environment and pollution and miners only expect bigger profits.

Pro mining people consider that illegal mining practices of mineral C are beneficial to farmers, because they can open access to agricultural land. In addition, the dredging of land is considered to fertilize the soil and the economic value of the land becomes higher due to new road access.⁸

The awareness of the mine owner is a relevant factor to cultural law which is the obstacle to the management of the mine entrenchment of mineral C. Administratively, the miners are supposed to have a clear warrant of mining and fill in all things relating to the management of mine entrenchment before performing the mining. Technically, the owner of the mine should have filled in the rights of workers and the maintenance of the mining location so that it will have an impact to the surrounding coming from the mining of mineral C.⁹

The culture of law is the most fundamental problems of all. It is necessary to determine a choice of behavior to accept law or against it in order to be obeyed or accepted and used by the citizens determined by the culture of law built by the citizens. This matter is affected by economic, education, and knowledge problems. The culture of law is a whole scale of society's

⁴ Ratna Artha Windari, "Penegakan Hukum Terhadap Perlindungan Anak Di Indonesia (Kajian Normatif Atas Berjarnya Hukum Dalam Masyarakat)", *Jurnal Media Komunikasi FIS*, Vol. 10 No. 1, 2011, P. 6.

⁵ Sulistyanta, "Implikasi Tindak Pidana di Luar KUHP Dalam Hukum Acara Pidana (Studi Kasus Taraf Sinkronisasi)", *Jurnal Dinamika Hukum*, Vol. 13 No. 2, p. 179.

⁶ Slamet Haryono, *Personal Interview*, on 13th May 2017, Kanit Krimisus Pati Precinct Police (Polres).

⁷ Sayudi, *Personal Interview*, on 17th July 2017, Citizen of Kedung Bulus, Gembong District.

⁸ Naryo, *Personal Interview*, on 17th July 2017, Citizen Kedung Bulus, Gembong District.

⁹ Herman K, Et.AL., "Komunikasi Pemerintah Dalam Pengelolaan Tambang Di Kabupaten Gowa", *Otoritas Jurnal Ilmu Pemerintahan*, Vol. V No. 2, October 2015, p. 146.

behavior which is common and the society value that determines how things should be implemented in their environment.¹⁰

Given the requirement of the warrant for the mining of type C, it is actually not weighing the society. The warrant letter of ferrying activity type C (SIPD) is given if it meets the requirements: *first*, filling in the provided application form; *second*, a copy of founding official document verified by Ministry of Law and Human Rights for Limited Company (PT); *third*, a copy of company founding official document listed on District Court for the limited company and firms. *Fourth*, a copy of cooperation foundation verified by the local cooperation office; *fifth*, a referential letter from the government bank; *sixth*, a map or the topographic map of the mining area appealed by the a warrant letter of the local entrenchment (SIPD); *seventh*, a recommendation from the mining experts and attached with curriculum vitae; *Eight*, a copy of identity card (KTP); *ninth*, a copy of the last certificate; *tenth*, the field plan for the exploration or exploitation; *eleventh*, a copy of tax ID number; *twelfth*, a letter of capability to give guarantee of exploration with stamp on it.¹¹

Related to the legal culture of the illegal mineral C, it indeed does not comply with the procedure in the permit submission of the mineral C in Pati regency. This is caused by the aversion in managing the permission considered making things difficult to their activities. That is why it is necessary to do an effort to make society realize through espionage or other activities that aims to give understanding to the society that the permission procedure is made not to harden them but to consider some aspects such as analysis of environment impact to the mining activity.¹²

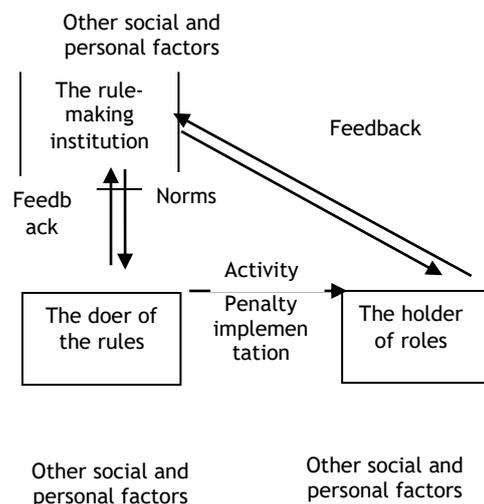
Law tells us how a person that has a role is expected to act as a response over the rules' function which is pointed out to him, penalty, activity of the mining conductor and also the

whole social, politic, economy, and culture. Law is seen as a whole system: *first*, it is oriented to one purpose; *second*, it is more than just numbers and parts; *third*, it interacts with other bigger system; *fourth*, it aims to create something valuable.¹³

Related to the law effectiveness, law has two functions as a medium of social control and social engineering. According to Michael Hager, the function of law is as a tool of social engineering consisting of: *first*, the tool for disciplinary; *second*, the balancing tool; *third*, catalyst. The concept of law as a tool of social engineering is introduced by Roscoe Pounds, law is not just about strengthening power, but also as a tool of social engineering. Law as a tool of social engineering means that law does not only take roles as a tool, but also plays for a tool to build society.¹⁴

The practice of the mining type C illegally points out that the law does not effectively work. This can be seen that the numbers of mining locale in the regency keeps growing. The Effectiveness of the law can be described as follows:

Figure 1.



Robert B . Seidman sees each rule which tells how a role holder acts as a response over the

¹⁰ Derita Prapti Rahayu, "Budaya Hukum Penambang Timah Inkonvensional (TI) Terhadap Mekanisme Perizinan Berdasar Perda Pengelolaan Pertambangan Umum Di Propinsi Kepulauan Bangka Belitung", *Jurnal Masalah-Masalah Hukum*, Vol. 41 No. 4, Year 2012, p. 495.

¹¹ Amal Diharto, *Personal Interview*, in November 24 2017, Chief of Pelayanan Perizinan Terpadu (KPPT) Pati Regency.

¹² *Ibid.*

¹³ Dwiyana Achmad Hartanto, "Local Wisdom Of Sedulur Sikep (Samin) Society's Marriage In Kudus: Perspective Of Law Number 1 Year 1974 On Marriage", *Jurnal Dinamika Hukum*, Vol. 17 No. 2, May 2017, p. 135.

¹⁴ Mochtar Kusuma Atmaja, 1986, *Pembinaan Hukum Dalam Rangka Pembaharuan Hukum Nasional*, Bandung: Binacipta, p. 13.

rules' function pointed out to him, penalty, activity of the mining conductor and also the whole social, politic, economy, and culture. Law is seen as a whole system: *first*, it is oriented to one purpose; *second*, It is more than just numbers and parts; *third*, it interacts with other bigger system; *fourth*, it aims to create something valuable.¹⁵ In this research, it is found that law does not work at its best due to the role holder (society) have not run their function and the institution that do the rules has not implemented norms and penalty due to the lack of consciousness coming from society.

The Treatment of illegal mining Type C in Southern Kendeng and Northern Kendeng in Pati Regency

Indonesian Law 1945 Article 33 paragraph (3) strongly states that land, water and other natural resources within is controlled by the nation and used for the well-being of the society. Minerals and coals as commodity of mining materials is non-renewable resources. Thus it takes a best, efficient, transparent, continuous, environmental, and fair effort for a great impact for the well-being of the society as a whole. It is expected that nation can play a great role in its management. The rules of mining in Indonesia is not only based on Constitution 1945 but also Law Number 11 Year 1967 on Main Mining Principal replaced by the Law No. 4 Year 2009 on Mineral and Coal Mining, and government rules as basis of its implementation.

The law of mining in Blacklaw Dictionary, Mining law is the act of appropriating a mining claim (parcel of land containing precious metal in its soil or rock) according to certain established rule which means that mining law is a specific certainty that rules the rights of mining (parts of the land containing precious metal in its soil or rock) according to certain established rules.¹⁶

The utilization of natural resources in its physical shapes such as rock, metal, gold, and others are included to the natural resources

which are used by digging, so that it can be said it uses industrial materials. As for that matter, in its utilization, it is done a grouping and classification of the Indonesian' industrial digging material based on the Government Rules Number 27 Year 1980 that classifies digging into 3 types: *first*, type A, called vital digging matter; *second*, type B, called strategical digging matter: and *third*, type C called as the not-vital and not strategical digging matter. The mining is a business in doing exploration, exploitation, production, purification, also selling. The mining materials for digging is not only for important access for the continual industrial sector of manufacture and construction, but also favors the mining to be one of the works every class of society can get, especially the one with low income.

Permission is the urgent problems in the mining implementation. This is because mining activity should be considering some factors related to the mining such as, environment, forestry, plantation, water resources, tax, cultural heritage, biological resources, and ecosystem, and also local rules of regency or province that has mining area and the mining itself. Therefore, in publishing a permission for a business, there should be a synchronization among related laws.

The treatment of illegal mining C in Pati Regency has passed law process by Pati departmental police (Polres). The judiciary of Pati and District Court are located in Gunungkawal and Cluwak. The mining activity was illegally conducted categorized as criminal act. The case, according to Pati Kanit Krimsus, has been done a law process. Those actions are taken because it is already against the Article 158 Law No. 4 Year 2009 on Minerals and Coals Mining. It also affects on the environmental damage and gives disadvantage to the government. The law cooperates with the society and related institutions such as, Integrated Licensing Service Office. Not only getting reports directly from the society, the police department also do some immediate operation on the field over the

¹⁵ Robert B. Seidman, 1978, *The State Law and Development*, Massachussets: Addison Wesley Publishing Company, p 75.

¹⁶ Salim H.S, 2005, *Hukum Pertambangan Di Indonesia*, Jakarta: Raja Grafindo Persada, p. 7.

illegal mining C located in the Gunungkawal District.¹⁷

The treatment of illegal mining C case is done through legal process which is penalized for the punishment tool for deterrent effect to the suspects. Moreover, the use of non penalized tool is also implemented by doing such programs like guidance and espionage to the society which aims as a preventive effort.¹⁸

The consideration as the basis of the judge to decide the case of illegal mining type C is by considering background aspects of why such act is done, equipment is used, the cost that nation will have to take, the mining location, and impact to the society.¹⁹ The consideration of all aspects is the progressive law action which offers the shape of thinking and non-submissive law process over the existed law system. Yet it is more affirmative which takes a great courage to do a liberation over the conventional practice and states with other ways or rule breaking.²⁰

The non penalized tools are implemented by some works and being responsible as society leader, driving the government, giving clues, collecting potentials, giving guidance, coordinating activities, giving opportunities and easiness, supervising and judging, watching, supporting, motivating, and protecting. Those activities can be done through permission. It enables government to control society's activity and company with permission.²¹

Permission of mining is a permission in environmental aspect (forestry, mining, plantation, and other sectors). It is a preventive juridical tool for the government as an administrative instrument to control any behavior on

the events of protection and management of environmental life.²²

One of the important factors for the society to increase their life quality is security for activities which becomes police responsibility. Police functions not only as the law force, but also as a servant, protector, defender of the society. It is their job to defend humanities, preserve social discipline and fight against criminal act whether it is in the shape of act to the hostiles or preventive one to achieve peaceful life. With that principle, society is expected to have their police matched with them which changes from evil police to good police.²³

The prevention and treatment of criminal offense should consider the aims to protect society for social welfare. Those aspects are very important especially the achievement of protection and welfare aspect which are immaterial particularly belief values, honesty and justice. Nevertheless, the prevention and treatment of criminal acts should be done with a comprehensive and integrated approach as well as balance with penalized and non-penalized approach.²⁴

Non-penalized tool can use given penalty that exists in society in which the penalty is implemented by some authorities in case of individual violence.²⁵ Moreover, the effort of making the society consciousness is required by giving understanding that the rights to pull out advantages from the land is just used to fill in life's need and family, which eventually causes environmental damage.²⁶ By doing so, it will create a situation where the society will obey

¹⁷ Slamet Haryono, Personal Interview, on 13th May 2017, Kanit Krimisus Pati Precinct Police (Polres).

¹⁸ *Ibid.*

¹⁹ Tri Asnuri Herkutanto, Personal Interview, on May 15th 2017, Judge of Pati District Court.

²⁰ M. Syamsudin, "Rekonstruksi Pola Pikir Hakim Dalam Memutuskan Perkara Korupsi Berbasis Hukum Progresif", *Jurnal Dinamika Hukum*, Vol. 11 No. 1, January 2011, p. 17.

²¹ Antonius Suhadi, dkk, "Model Corporate Social Responsibility (CSR) Perusahaan Tambang Batubara di Kabupaten Lahat Terhadap Pemberdayaan Masyarakat Berbasis Kearifan Lokal", *Jurnal Dinamika Hukum*, Vol. 14 No. 1, January 2014, P. 79.

²² Helmi, "Membangun Sistem Perizinan Terpadu Bidang Lingkungan Hidup Di Indonesia", *Jurnal Dinamika Hukum*, Vol. 11 No. 1, January 2011, p. 139.

²³ Saiful Alam, "Upaya Non Penal Terhadap Penyampaian Pendapat Di Muka Umum Yang Berpontesi Anarkis (Studi Kasus Pada Polresta Pontianak)", *Jurnal Nestor Magister Hukum*, Vol. 2 No. 2, 2012, p. 7.

²⁴ Arif Firmansyah, "Membangun Politik Kriminal Pada Pertambangan Batubara Yang Menyejahterakan Masyarakat Melalui Sarana Non-Penal", *Fiat Justisia Jurnal Ilmu Hukum*, Vol. 9 No. 3, July-September 2015, p. 300.

²⁵ Husen Alting, "Penguasaan Tanah Masyarakat Hukum Adat (Suatu Kajian Terhadap Masyarakat Hukum Adat Ternate)", *Jurnal Dinamika Hukum*, Vol. 11 No. 1, January 2011, p. 90.

²⁶ Lastuti Abubakar, "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia", *Jurnal Dinamika Hukum*, Vol. 13 No. 2, May 2013, p. 327.

the rules naturally. The law is obeyed and it is effective because law is considered as representative of justice that grows and develop in the society.²⁷

Conclusion

Factors that affect the occurrence of the mining entrenchment illegally in the southern Kendeng, mountain area and Northern Kendeng are; *first*, law structure (the officials do not work at its best caused by: the lack of transportation to seizure evidence, a light verdict due to the economic value of the mining materials and land of mining belongs to the suspect alone, as well as the environmental impacts is not really that bad; *second*, law substance (the requirement of Law Number 4 Year 2009 on Mining, the activity cannot just be done. Given the business of the person, the land that is used, as well as the disadvantage that was caused by the mining itself that it is needed a management in local area); and *third*, legal culture (it is very low to see the participation of the society, the aversion of obeying the permission of mining for it is considered hardening the mining, the mining can increase the road access, make land good, increasing the economic value of land, the consciousness of the miner fill in the rights of workers and the environmental preservation which is all affected by the economic problems, also education and knowledge.

The handling of illegal mining case type C in the mountain area, southern Kendeng and Northern Kendeng is done through penalized (through the jurisdiction like a prison sentence and fine which is done in order to create a deterrent effect to the suspects) and non-penalized (the effort to make society realize of things through the espionage related to the habitual norms of the society and the permission that put the damage of environment into account that emerges from the mining activity.

Suggestion

It is necessary to have preventive pattern for illegal mining C case which is comprehensive, through the penalized and non-penalized approach. Penalized approach is implemented by handling of the mining case through court. Moreover, it is necessary to have a synchronization to the local rules that is matched with society's culture in the mining location so that the optimizing of the officials' roles will be at its best. The non-penalized approach is done through the optimizing from the Integrated License Service Office, the institution of the environmental life and the justice officials as well as the local government to hold an espionage to the society, especially related to the permission of the mining business (IUP), permission of the civil mining (IPR), and the permission for a specific mining business (IUPK), in mining business.

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²⁷ Zulfadli Barus, "Analisis Filosofis Tentang Peta Konseptual Penelitian Hukum Normatif dan Penelitian Hukum Sosiologis", *Jurnal Dinamika Hukum*, Vol. 13 No. 2, May 2013, p. 312.

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