
Jurnal Dinamika Hukum

Vol. 21 Issue 2, May 2021

E-ISSN [2407-6562](#) P-ISSN [1410-0797](#)

National Accredited Journal, Decree No. 21/E/KPT/2018

DOI: [10.20884/1.jdh.2021.21.2.2855](#)

This work is licensed under a Creative Commons Attribution 4.0 International License (cc-by)

Reformulation of Sanctioning Mining Acts of Individual Legal Subjects as Efforts to Improve Ecological Stability in Indonesia

Ismawati Septiningsih,[✉] Itok Dwi Kurniawan, and Muhammad Bintang Pratama
Faculty of Law, Sebelas Maret University, Surakarta - Indonesia

Abstract

This research analyzes the urgency of the need for reformulation of individual legal subjects who commit mining crimes to encourage increased ecological stability in Indonesia. This research is normative legal research using secondary data sources through a prescriptive literature study. The results showed that the frequency of mining criminal acts committed by individual legal subjects has a high rate of cases; it also has implications for the ecological balance around the mining area. The reformulation of sanctions on particular legal matters focuses on changing the substance of articles in Law Number 4 of 2009 concerning Mineral and Coal Mining (Mining Law). In the research, it will be presented with recommendations for changes in the substance of the Mining Law article which regulates the sanction of individual legal subjects who commit mining crimes to create a deterrent effect to the perpetrators, so that in the future it is expected to encourage increased ecological stability in Indonesia through reducing the frequency of criminal cases mining.

Keywords: reformulation; individual legal subjects; mining crimes; mining law; ecology.

Abstrak

Penelitian ini menganalisis urgensi perlunya reformulasi individu subjek hukum yang melakukan tindak pidana pertambangan untuk mendorong peningkatan stabilitas ekologi di Indonesia. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan sumber data sekunder melalui studi kepustakaan preskriptif. Hasil penelitian menunjukkan bahwa frekuensi tindak pidana pertambangan yang dilakukan oleh subjek hukum individu memiliki tingkat kasus yang tinggi; juga berimplikasi pada keseimbangan ekologi di sekitar area pertambangan. Perumusan kembali sanksi terhadap masalah hukum tertentu difokuskan pada perubahan substansi pasal dalam Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara (UU Pertambangan). Dalam penelitian ini akan dipaparkan rekomendasi perubahan substansi pasal UU Pertambangan yang mengatur tentang sanksi individu subjek hukum yang melakukan tindak pidana pertambangan agar menimbulkan efek jera bagi pelakunya, sehingga kedepannya diharapkan dapat memberikan efek jera bagi pelakunya. mendorong peningkatan stabilitas ekologi di Indonesia melalui pengurangan frekuensi kasus kriminal pertambangan.

Kata kunci: reformulasi; subyek hukum individu; kejahatan pertambangan; hukum pertambangan; ekologi.

Copyright©2021 Jurnal Dinamika Hukum. All rights reserved.

Introduction

The mining sector is one of the pillars of economic development for the State of Indonesia because of its role in providing the potential of abundant energy resources for those involved in it. The possibility of Indonesia's abundant natural resource wealth that encourages the management of mining sector production is a gift from God Almighty that must be preserved and developed to support the lives of Indonesian people (Salim, 2012).

[✉]Corresponding Author: ismawatisseptiningsih84@staff.uns.ac.id

Mining is also known to have a close relationship with the environment because the object of its activity is the environment. Article 1 number 6 of Law Number 32 the Year 2009 concerning Environmental Protection and Management, explains that each mining business is required to maintain the sustainability of the carrying capacity and carrying capacity of the environment to realize environmental preservation.

The mining sector's promising potential encourages many parties to take advantage of the benefits of using the mine. The utilization of management in the mining sector cannot be separated from the potential for the emergence of various disputes relating to the usage of the tunnel. Based on a report from Merah Johansyah as the Coordinator of the National Mining Advocacy Network (Jatam), it was stated that further action was needed in legal efforts to stop the problematic mining licenses. Non-tax state revenue bills of 4.3 trillion rupiahs to total losses suffered by the Indonesian state during 2016 (Amindoni, 2017).

Mining can also trigger an ecological crisis that will become a boomerang for the people of Indonesia. The environmental crisis is interpreted by Kunti May Wulan in his thesis quoting Arya Hadi Dharmawan, that the ecological crisis is a condition in which the environmental system experiences an imbalance in the exchange of material and information energy that results in irregularities in the distribution functions and energy-material accumulation between one organism and one organism. Other bodies and their natural environment, explain that with the ecological crisis that can directly disrupt the environmental balance, it can threaten human existence (Wulandari, 2014). Ecological losses caused by mining activities include, among others, Buyat Bay pollution that occurred in 2004 in South Minahasa Regency, North Sulawesi Province, which was produced by large-scale mining activities carried out by PT. Newmont Minahasa Raya (NMR) and the Timor Sea pollution due to mining activities carried out by Montana Australia in 2009 (Mahardika, 2016).

The mining crime case as one of the substantial things that often occur in carrying out mining activities by legal subjects which can be involved either individually or a legal entity under Article 1 of Law Number 4 of 2009 concerning Mineral and Coal Mining (For from now on referred to as the Minerba Act). Differences in criminal liability towards perpetrators of mining crimes have various arrangements depending on the legal subject that commits a criminal offense of mining.

Mining criminal acts are closely related to the subject, namely legal entities, both in the form of national legal entities or foreign legal entities. The mining world is often "stereotyped" with a wealth of assets and a promising cycle of financial cycles due to capital invested by legal entities that are generally corporate, however, if you want to be associated with all levels of society, of course, the mining of individuals who come in contact with the community directly.

Table 1. Statistics Table Number of Indonesian Mining Business Units in 2017 [5]

Num.	Types of Mining Business Units in Indonesia in 2017	Number of Indonesian Mining Business Units in 2017 (unit)
1.	Limited Liability Company (PT)	508

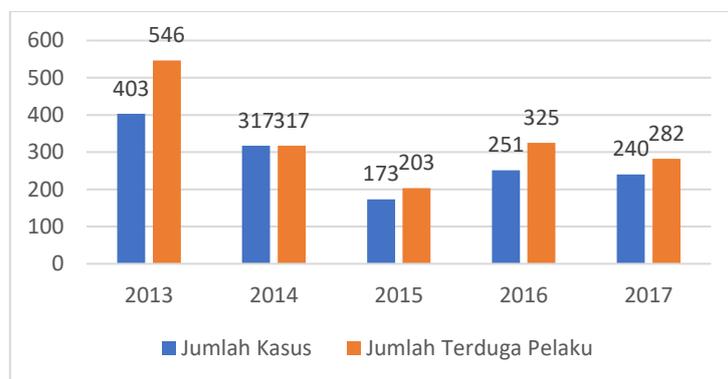
2.	Commanditaire Vennootschap (CV)	386
3.	Cooperative	14
4.	Other Business Units	113.120

Source: BPS. 2017. *Statistik Pertambangan Bahan Galian Indonesia 2015 & 2017*.

Data from the Central Statistics Agency on Mineral Mining Statistics show that there were a total of 114,028 mining business units in Indonesia in 2017. Business units run by legal subjects are limited liability companies or other legal entities, which only amounted to 908 units in 2017. While a total of 113,120 units are run by other legal subjects, in general, the new legal matters referred to are legal subjects of individuals who are carrying out the management of mining activities.

Individual legal subjects that carry out the mining sector's management and utilization activities are motivated by economic needs to carry out their lives. Particular legal issues that carry out mining activities should not neglect the rules of procedures or regulations relating to before, during, or after mining activities on the grounds of pruning for commercial purposes. The fact is that when carrying out mining activities, it generally comes from the doctrine/mindset of the individual community based on the orientation of earning money to meet their daily needs by ignoring the legal provisions that must be achieved so that they can have various direct impacts on ecology.

Table 2. Statistics on Mining Crime Cases and Suspected Actors of 2017 According to the Indonesian Police Headquarters (Avrianty, 2019)



The presentation by Kompol Eko Susanda, who acted as an Investigator in a Criminal Act Criminal Investigation Headquarters of the National Police Headquarters, revealed the details of criminal acts in mining individual legal subjects in Indonesia in recent years. According to him, the problem of mining criminal offenses as a single legal subject is not simple and complex. When the police, as the law enforcement apparatus, want to prosecute mining criminal acts, individual legal matters are often confronted with a dilemma. The dilemma in question relating to law enforcement is frequently clashed over meeting the needs of people's lives 'reasonable' to do.

Criminal sanctions that can be imposed on individual legal subjects are regulated in Article 158 through Article 160 of the Minerba Law. There are 7 (seven) types of criminal acts that can be imposed on individual legal subjects, including. In general, the types of criminal acts that can be imposed on different legal matters consist of three types of

sanctions: imprisonment, fines, and additional penalties. Among the seven types of criminal acts that can be imposed on individual legal subjects are accumulative, except for points 3 and point 6, which are alternative. The accumulative and alternative elements contained in the Minerba Act, according to the author, only emphasize the types of sanctions that are criminal, which are not necessarily sufficient to be applied in the culture of people's lives in Indonesia.

Research Problems

Therefore, the authors propose reformulation in the field of giving criminal sanctions to individual legal subjects to increase the law's effectiveness in regulating mining criminal acts against particular legal issues by increasing the types of criminal penalties that are given and efforts to increase ecological stability in Indonesia. The legal reformulation that the authors propose lies in giving sanctions which are not only focused on criminal penalties, but the orientation of sanctions must lead to something more effective in providing a deterrent effect to individual legal subjects of mining criminal law through administrative sanctions that are present complementing the existence of criminal penalties that are pre-arranged (administrative penal code) so that it is expected to be able to suppress and reduce the high level of cases based on the data that the author has previously described.

Research Method

In this study, the authors used a type of doctrinal legal research, namely by utilizing the technique of gathering legal materials through literature studies and secondary data in the form of licensed materials. The nature of the review that I use is prescriptive by using the rule of law, legal principles, and relevant legal doctrines to solve the problem that the author wants to study to find solutions to these answers. The author uses several research approaches, namely the law approach (statue approach), case approach (case approach), and conceptual approach (conceptual approach) (Marzuki, 2015).

Discussion

Examined from the world of existing literature, although there have been many writings that discuss mining criminal sanctions, there is still no specific mention regarding the analysis of mining criminal sanctions with individual legal subjects. The majority of the existing writings focus on the study of criminal penalties with the legitimate issue of legal entities carefully described by large companies, or regarding licensing. Whereas mining criminal offenses whether carried out by legal entities (companies) or by individuals remain a criminal offense, in this case, the slightest impact on the surrounding ecological conditions. Here are some studies related to the author's theme. *First*, research conducted by Oheo K. Haris (2014) who describes the analysis of mining criminal acts and

criminal sanctions in terms of licensing. *Second*, a study by Ade Adhari (2017) who focuses on discussing the issue of mining criminal sanctions from licensing aspects.

Arrangements for sanctions against mining crimes perpetrators of individual legal subjects in Indonesia can be found in the Minerba Law. Legal matters that can be convicted in the mining sector can be seen in Articles 158 through 165 of the Minerba Law. An individual is a person or person who has committed a criminal act in the mining sector. The management of a legal entity is the people who regulate or operate or operate the legal entity. A legal entity is a collection of people who have individual goals, assets, and rights and obligations.

Meanwhile, there are 7 (seven) types of criminal acts that can be handed down to legal subjects of people, which include (Salim, 2012):

1. Doing a mining business without IUP, IPR, or IUPK;
2. Submitting false reports or false statements;
3. Doing exploration without having IUP or IUPK;
4. Having an IUP of Exploration but conducting production operations;
5. Accommodating, utilizing, processing and refining, transportation, sales of minerals and coal that are not from holders of IUP, IUPK, or permits;
6. Obstruct or interfere with mining business activities;
7. Issue IUP, IPR, or IUPK that contradicts and abuses its authority.

Imposing sanctions against mining criminal offenders under the subject of a specific law in Indonesia, referring to the Minerba Act, still has an orientation that prioritizes criminal sanctions (through imprisonment and criminal fines). Penalties given to mining criminal offenders that are considered ineffective are individuals, as evidenced by the high frequency of mining cases committed by individual legal subjects in Indonesia. Encouraging the need to shift the focus of the orientation of punishment for mining criminal offenses in particular legal matters in Indonesia, the shift in direction, which was initially sanctioned in the form of criminal sanctions, then shifted to administrative. Criminal penalties are considered a relevant solution in suppressing the high frequency of cases that have been or are likely to occur.

In this research, the writer will give a brief description of the framework that we want to propose. We can see in the story of the urgency of the reformulation process to provide administrative, criminal sanctions to individual legal subjects in the Minerba Law. here fore, the author would like to convey the framework of this research.

Based on statistical data on the Number of Indonesian Mining Business Units in 2017, the majority of business units are not in the form of a corporation. The mastery of mining management tends to be managed by the community as an individual legal subject.



Mining criminal acts carried out by individual legal subjects is often carried out, evidenced by the statistics of mining criminal acts of particular legal issues in Indonesia.



The high level of mining criminal cases by individual legal subjects is one of which is driven by the lack of effectiveness in providing criminal sanctions for particular legal matters in the Minerba Act.

↓

The granting of types of criminal sanctions on individual legal subjects in the Minerba Act that still have two types of penalties, namely accumulative and alternative, makes the inequality of the law not yet optimal in minimizing criminal acts of individual legal subjects.

↓

The granting of types of criminal sanctions on individual legal subjects in the Minerba Act that still have two types of penalties, namely accumulative and alternative, makes the inequality of the law not yet optimal in minimizing criminal acts of individual legal subjects.

↓

Crime reformulation is intended with the ultimate goal of output to minimize mining criminal offenses through effective and deterrent sanctions. This, in particular, has an impact on efforts to increase ecological stability.

The potential of Indonesia's natural resources, especially in the mining sector, is a strong attraction for many parties to invest in and manage mining operations. Individual legal subjects generally dominate some parties involved in mining activities. In this study, the author would like to review the regulation of mining criminal sanctions for particular legal matters in Indonesia. Based on the total statistical data of Indonesian mining business units in 2017. The high involvement of individual legal subjects in mining management activities is also comparable to the high level of mining criminal acts committed by particular legal issues. When people who are generally classified as legal subjects of individuals want to carry out mining operational activities, it becomes a public secret. It directly touches with all the production activities of the Indonesian people.

When they want to carry out mining operational activities in meeting economic needs, the motives of individual communities are often the reasons that justify them to commit mining crimes. Regulations governing criminal acts of mining different legal subjects can be found in Article 158 to Article 165 of the Minerba Law. However, the orientation of giving the law, which is only in the form of criminal sanctions, is not the right thing to do, there should be a shift in direction in giving penalties to items that are effective and can provide a deterrent effect in the form of administrative sanctions.

Some of the research that will be used as a discussion of the need for reformulation of giving sanctions to administrative, criminal penalties. The absence of previous research that examines the reformulation of mining criminal sanctions on individual legal subjects encourages writers to be interested in reviewing discussions on the matter. With the restatement of the provision of criminal penalties against particular legal topics, it can be one of the solutive efforts to reduce the high frequency of mining criminal cases committed by individual legal issues in Indonesia.

Mining criminal acts committed by individual legal subjects based on Law Number 4 of 2009 concerning Mineral and Coal Mining (from now on referred to as the Law of the Republic of Indonesia concerning Mineral and Coal Mining) consist of 7 (types) of criminal acts. Based on a study of several recent decisions related to this matter, there is a tendency that the sanctions imposed by the panel of judges on mining crimes committed by

individual legal subjects are more predominantly related to mining activities that do not have official permits.

According to Susim (2015), punishment is when the panel of judges wants to pass a sentence based on the purpose and conception of the punishment. The judge's consideration of imposing criminal sanctions conceptually tries to his utmost to prevent the convicted person from being sentenced to crimes that lead to deprivation of liberty (imprisonment), with several factors being considered, namely the age of the convicted person, the first criminal act is committed.

The regulation of sanctions against perpetrators of mining crimes as individual legal subjects in Indonesia can be found in the Law of the Republic of Indonesia concerning Mineral and Coal Mining. Legal issues that can be convicted in the mining sector can be seen in Articles 158 to 165 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. A person is a person or person who commits a criminal act in the mining sector. Management of a legal entity is a person who regulates or runs or runs a legal entity.

Imposition of sanctions against perpetrators of mining crimes based on specific legal subjects in Indonesia, referring to the Law of the Republic of Indonesia concerning Mineral and Coal Mining, remains oriented towards criminal sanctions (through imprisonment and criminal fines). Individuals who are considered ineffective for mining criminal offenses are punished, as evidenced by the prevalence of mining cases committed by individual legal subjects in Indonesia.

Encouraging the need to shift the focus of punishment for perpetrators of mining crimes, especially in the field of law in Indonesia, a shift in direction that was initially in the form of criminal sanctions, then shifted towards administration. Criminal punishment is considered a relevant solution in suppressing the high frequency of cases that have occurred or are likely to occur. In this study, the authors will provide a brief overview of the framework we would like to propose. We can see in the story the urgency of the reformulation process to provide administrative and criminal sanctions to individual legal subjects in the Law of the Republic of Indonesia concerning Mineral and Coal Mining. Therefore, the writer wants to convey the framework of this research.

The potential of Indonesia's natural resources, especially in the mining sector, is a strong attraction for many parties to invest in and manage mining operations. Individual legal subjects generally dominate several parties involved in mining activities. In this study, the author wants to examine mining criminal sanctions for some legal issues in Indonesia. Based on the total statistical data of the Indonesian mining business unit in 2017.

The high involvement of individual legal subjects in mining management activities is also proportional to the high level of mining crimes committed by a particular legal issue. When people who are generally classified as individual legal subjects want to carry out mining operations, it becomes an open secret. This is in direct contact with all production activities of the Indonesian people.

When they want to carry out mining operations to meet economic needs, individual community motives are often the reasons for committing mining crimes. Provisions regulating mining crimes with different legal subjects can be found in Article 158 to Article 165 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. However, giving legal sanctions, which are only in criminal sanctions, is not the right thing to do. There must be a shift in the direction of imposing sanctions on valuable things and can deter society. Form of administrative sanctions.

Several studies will be used to discuss the need for reformulation of administrative sanctions and criminal sanctions. The absence of previous research that examines the reformulation of mining criminal sanctions on individual legal subjects encourages the author to study the discussion on this matter. Reaffirming the imposition of criminal sanctions on specific legal topics can be one solution to reduce the high frequency of mining criminal cases committed by individual legal issues in Indonesia.

In conducting a comprehensive review of the research that the author conducted, the author uses several judges' decisions that are relevant in examining the urgency of reformulation of sanctions against mining criminal acts of individual legal subjects as an effort to improve ecological stability in Indonesia in the *inkracht* decisions handed down by the panel of judges within years. 2016-2019. Several decisions taken as material for research studies were based on the sampling method of several cases scattered throughout Indonesia. Here are some *inkracht* decisions which were used as material for the author's study, including:

The potential of Indonesia's natural resources, especially in the mining sector, is a strong attraction for many parties to invest in and manage mining operations. Individual legal subjects generally dominate several parties involved in mining activities. In this study, the author wants to examine mining criminal sanctions for some legal issues in Indonesia. Based on the total statistical data of the Indonesian mining business unit in 2017.

The high involvement of individual legal subjects in mining management activities is also proportional to the high level of mining crimes committed by a particular legal issue. When people who are generally classified as individual legal subjects want to carry out mining operations, it becomes an open secret. This is in direct contact with all production activities of the Indonesian people. When they want to carry out mining operations to meet economic needs, individual community motives are often the reasons for committing mining crimes. Provisions regulating mining crimes with different legal subjects can be found in Article 158 to Article 165 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining.

However, giving legal sanctions, which are only in criminal sanctions, is not the right thing to do. There must be a shift in the direction of imposing sanctions on practical things and can deter society. Form of administrative sanctions. Several studies will be used to discuss the need for reformulation of administrative sanctions and criminal sanctions. The absence of previous research that examines the reformulation of mining criminal

sanctions on individual legal subjects encourages the author to study the discussion on this matter.

Reaffirming the imposition of criminal sanctions on specific legal topics can be one solution to reduce the high frequency of mining criminal cases committed by individual legal issues in Indonesia. In conducting a comprehensive review of the research that the author conducted, the author uses several judges' decisions that are relevant in examining the urgency of reformulation of sanctions against mining criminal acts of individual legal subjects as an effort to improve ecological stability in Indonesia in the *inkracht* decisions handed down by the panel of judges within years. 2016-2018. Several decisions taken as material for research studies were based on the sampling method of several cases scattered throughout Indonesia. Here are some *inkracht* decisions which were used as material for the author's study, including:

Imposing Sanctions on Individual Legal Subjects Who Commit Mining Crimes which were handed down by the Panel of Judges through the *Inkracht* Decision in 2016

In reviewing several recent judges' decisions relating to sanctions on individual legal subjects who commit mining crimes, the authors took several decisions that judges have sentenced through the *inkracht* decision in 2016.

No	District Court Decision	Punishment Verdict	Confinement in lieu of criminal fines
1.	Pelaihari District Court Decision Number 5/Pid.B/2016/PN.Pli	Imprisonment for 3 (three) months and a fine of Rp. 5,000,000.00 (five million rupiahs)	There is, (1 month, to replace fine)
2.	Wonosari District Court Decision Number 10/Pid.Sus/2016/PN.Wno	Imprisonment for 7 (seven) months and a fine of Rp. 10,000,000.00 (ten million rupiahs)	There is, (4 month, to replace fine)
3.	Negara District Court Decision Number 122/Pid.Sus/2016/PN.Nga	Imprisonment for 2 (two) months and a fine of Rp. 500,000.00 (five hundred thousand rupiahs)	There is, (4 month, to replace fine)

First, namely the Pelaihari District Court Number 5/Pid.B/2016/PN.Pli (PN.Pli5/2016). In the verdict, the panel of judges gave a verdict against Defendant in the form of a prison sentence of 3 (three) months and a fine of Rp. 5,000,000.00 (five million rupiahs) provided that if the fine is not paid, it is replaced by 1 (one) month imprisonment for illegal coal mining activities committed by the Defendant. The verdict handed down by the panel of judges in charge of the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining (mining activity crimes without official permits) and Article 55 paragraph (1) of the Criminal Code (Inclusion in criminal acts) which line up the elements that the Defendant had violated was in the form of; a. Everyone (the Defendant who committed a criminal act); b. Those conducting mining businesses without an IUP (illegal mining activities carried out by the Defendant because they did

not have an IUP); and c. As a person who committed ordered to commit or participated in committing the crime (the Defendant did not commit a criminal act. he also ordered another person to do it accompanied by payment of wages in carrying out illegal mining activities)

The panel of judges who handled the PN.Pli Decision 5/2016 had the basis for giving decisions under the Law of the Republic of Indonesia concerning Mineral and Coal Mining, The sanctions imposed by the panel of judges against the Defendant SOTARDODO ARTHA CHRISTY TAMBUNAN bin JORANG PORANG MANGARIANG (as individual subject law), the author focuses from the perspective of the Law of the Republic of Indonesia on Mineral and Coal Mining as a basis for reviewing the verdict handed down by the panel of judges, namely in the form of criminal sanctions in the form of imprisonment and fines under the clauses of articles that the Defendant has violated, namely Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which reads:

Every person conducting mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment at the maximum. 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).

Based on the level of sentencing, the sanctions imposed by the panel of judges on Defendant have met the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is an implementation of these rules. The alternative option to replace fines with imprisonment is an option if the Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed. The panel of judges handling the Decision of PN Pli 5/2016 did not provide maximum sanctions under the clauses of the article of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which Defendant had violated, on several grounds.

The verdict given by the panel of judges was based on several considerations, including those that were burdensome (causing losses to PT Setmin as the PKP2B Concession Owner) and mitigating grounds (giving sentences/sanctions in order to foster the Defendant because he was young so that he had the potential to become a successful person in Indonesia. Later on, Defendant pleaded guilty and promised not to repeat his actions. Defendant behaved politely in following the proceedings).

Second, namely the Wonosari District Court Decision Number 10/Pid.Sus/2016/PN.Wno (Decision PN.Wno10/2016). In the verdict, the panel of judges gave a verdict against Defendant in the form of a 7 (seven) month imprisonment and a fine of Rp. 10,000,000.00 (ten million rupiahs) provided that these provisions are not paid. It is replaced by imprisonment for 4 (four) months for illegal Limestone mining activities carried out by the Defendant. The verdict released by the panel of judges in the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal

Mining (mining crimes without official permits) and Article 55 paragraph (1) of the Criminal Code (Inclusion in criminal acts) which outline elements that the Defendant has violated in the form of:

- a. Everyone (the Defendant who committed a criminal act);
- b. Those conducting mining businesses without an IUP (the Defendant conducted mining businesses without a valid permit);
- c. Without an IUP, IPR, or IUPK (the Defendant carried out mining activities without obtaining a valid permit under the type of mining activity carried out); and
- d. The person who did, ordered the person to do it and said and did the deed (The Defendant was responsible for the illegal mining business activities carried out by other people with the balance of paying wages)

The panel of judges handling the PN.Wno10/2016 Decision has the basis for giving decisions under the Law of the Republic of Indonesia concerning Mineral and Coal Mining, the sanctions imposed by the panel of judges against the Defendant SUGIMIN bin KARTOYO SUTINO (as an individual legal subject), the author focused from the perspective of the Law of the Republic of Indonesia on Mineral and Coal Mining as a basis for reviewing the verdicts released by the panel of judges, namely in the form of criminal sanctions in the form of imprisonment and fines following the clauses of articles violated by the Defendant, namely Article 158 of the Law of the Republic of Indonesia on Mineral Mining and Coal which reads:

Every person conducting mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be sentenced to imprisonment. a maximum of 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).

Based on the reference to the verdict handed down by the panel of judges to Defendant, the rules have complied with the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is the implementation of these rules. There is an alternative option of substituting a fine for imprisonment, which is the provision of an option if Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed. The panel of judges handling the Decision PN.Wno 10/2016 did not provide maximum sanctions under the clause of the article of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which Defendant had violated, with several primary considerations.

The verdict given by the panel of judges was based on several considerations, including burdensome (the Defendant's actions could have an impact on environmental damage) and mitigating grounds (the act initially intended to help the witness flatten the yard which was converted into a mining location, the Defendant had not yet. He was once convicted, the Defendant was the backbone of his family, and Defendant confessed and promised not to repeat his actions).

Third, namely the Negara Court Decision Number 122/Pid.Sus/2016/PN.Nga (Decision PN.Nga122/2016). In the verdict, the panel of judges gave a verdict against the Defendant in the form of imprisonment for 2 (two) months and a fine of Rp. 500,000.00 (five hundred thousand rupiahs) provided that if the fine is not paid, then it will be replaced by imprisonment for 4 (four) months for illegal sea sand mining activities carried out by the Defendant.

The verdict handed down by the panel of judges in charge of the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining (mining activity crimes without official permits) and Article 55 paragraph (1) of the Criminal Code (Inclusion in criminal acts) which line up the elements that the Defendant has violated are: a. Everyone (the Defendant who committed a criminal act, namely an individual legal subject); b. Conducting mining business (description of mining activities carried out by the Defendant); c. Elements without IUP, IPR, or IUPK (conducting illegal mining activities without a permit); and D. Those who gave or promised something by abusing power or dignity, by threatening violence, misdirection, or by providing opportunities, means, or information, deliberately encouraged others to do dressings (the Defendant ordered someone else to pay wages to help him carry out illegal mining activities)

The panel of judges who handled the PN.Nga 122/2016 Decision had the basis for giving a decision under the Law of the Republic of Indonesia concerning Mineral and Coal Mining, the sanction given by the panel of judges against the Defendant SUGIMIN bin KARTOYO SUTINO (as an individual legal subject) focuses from the perspective of the Law of the Republic of Indonesia on Mineral and Coal Mining as a basis for reviewing the verdicts handed down by the panel of judges, namely in the form of criminal sanctions in the form of imprisonment and fines following the clauses of articles that have been violated by the Defendant, namely Article 158 of the Law of the Republic of Indonesia on Mineral Mining and Coal which reads:

Every person conducting mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment at the maximum. 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).

Based on the reference to the verdict handed down by the panel of judges to Defendant, the rules have complied with the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is the implementation of these rules. There is an alternative option of substituting a fine for imprisonment, which is providing an option if Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed.

The panel of judges handling the Decision PN.Wno 10/2016 did not provide maximum sanctions under the clause of the article of the Law of the Republic of Indonesia

concerning Mineral and Coal Mining which Defendant had violated, with several primary considerations. The verdict given by the panel of judges was based on several considerations, including burdensome (the Defendant's actions were contrary to the Government's program of encouraging environmental mining) and mitigating grounds (the Defendant had never been sentenced before, the Defendant was candid in court, the Defendant regretted his actions and promised not to repeat his actions).

Based on several examples of the *inkracht* verdict issued by the panel of judges in 2016 against the imposition of sanctions against individual legal subjects who commit mining crimes, generally related to mining operations that do not have a permit. The provision of sanctions put forward by the panel of judges shows that there are indications of prioritizing corporate criminal sanctions. The difference in the level of sanctions given by the panel of judges is based on the judge's interpretation of the level of crime committed by the Defendant based on the provisions in the Law of the Republic of Indonesia concerning Mineral and Coal Mining.

Imposing Sanctions on Individual Legal Subjects Who Commit Mining Crimes which were handed down by the Panel of Judges through the *Inkracht* Decision in 2017

In reviewing several recent judges' decisions relating to sanctions on individual legal subjects who commit mining crimes, the authors took several decisions that judges have sentenced through the *inkracht* decision in 2017.

No.	District Court Decision	Punishment Verdict	Confinement in lieu of criminal fines
1.	Garut District Court Decision Number 28/Pid.Sus/2017/PN. Grt PN.Grt 28/2017)	Imprisonment for 8 (eight) months and a fine of Rp. 10,000,000.00 (ten million rupiahs)	There is, (3 months, to replace a fine)
2.	Pelaihari District Court Decision Number 133/Pid.Sus/2017/PN.Pli (PN.Pli 133/2017)	Imprisonment for 5 (five) months and a fine of Rp. 1,000,000.00 (one million rupiahs)	There is, (3 months, to replace a fine)
3.	Sungailiat District Court Decision Number 204/Pid.Sus/2017/PN.Sgl (PN.Sgl 204/2017)	Imprisonment for 2 (two) months and a fine of Rp. 2,000,000.00 (two million rupiahs)	There is, (2 months, to replace a fine)

First, namely the decision of the Garut District Court Number 28/Pid.Sus/2017/PN. Grt (Decision PN.Grt 28/2017). In the verdict, the panel of judges gave a verdict against Defendant in the form of imprisonment for 8 (eight) months and a fine of Rp. 10,000,000.00 (ten million rupiahs) provided that if the fine is not paid, then it is replaced by imprisonment for 3 (three) months for sand and stone mining activities which have tried to get a mining permit for Galian C but were rejected because it could damage the ecosystem of Mount Guntur.

The verdict handed down by the panel of judges in charge of the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining

(mining activity crimes without official permits) which, in general, the elements that Defendant has violated are; a. Everyone (the Defendant who committed a criminal act); b. Those who carry out mining businesses without an IUP, IPR, or IUPK (illegal mining business activities carried out by the Defendant because he does not have an IUP that is justified under the provisions of the prevailing laws and regulations because it was only limited to applying for a permit but was rejected by the official authorized to issue the IUP); The panel of judges who handle the PN.Grt 28/2017 Decision has the basis for the issuance of decisions under those stipulated in the Law of the Republic of Indonesia concerning Mineral and Coal Mining.

Given the sanctions given by the panel of judges against the Defendant SIROJUDIN (as an individual legal subject), the author focuses from the perspective of the Law of the Republic of Indonesia on Mineral and Coal Mining as a basis for studying the verdicts handed down by the panel of judges, namely in the form of criminal sanctions in the form of imprisonment and fines following clauses of articles that the Defendant has violated, namely Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which reads:

Every person conducting mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment at the maximum. 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah).

Based on the reference to the verdict handed down by the panel of judges to Defendant, the rules have complied with the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is the implementation of these rules. There is an alternative option of substituting a fine for imprisonment, which is providing an option if Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed.

The panel of judges handling the Decision of PN.Wno 10/2016 did not provide maximum sanctions under the clause of the article of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which Defendant had violated, with several essential considerations. The verdict given by the panel of judges was based on several considerations, including burdensome (the actions committed by the Defendant damaged the ecosystem of Mount Guntur as a result of illegal mining activities carried out) and mitigating grounds (the Defendant admitted to being candid and acting politely and regretting his actions, and the Defendant has never been convicted before).

Second, namely the Decision of the Pelaihari District Court Number 133/Pid.Sus/2017/PN.Pli (PN.Pli 133/2017). In the verdict, the panel of judges gave a verdict against Defendant in the form of imprisonment for 5 (five) months and a fine of Rp. 1,000,000.00 (one million rupiahs) provided that if the fine is not paid, it is replaced by imprisonment for 3 (three) months for illegal coal mining activities carried out by the Defendant.

The verdict handed down by the panel of judges in charge of the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining (mining activity crimes without official permits) which, in general, the elements that Defendant has violated are; a. Everyone (the Defendant who committed a criminal act); b. Conducting mining business without an IUP, IPR, or IUPK (illegal mining business activities carried out by the Defendant because he did not have an IUP that was justified under the provisions of the prevailing laws and regulations because it was only limited to applying for a permit but was rejected by the official authorized to issue the IUP).

The panel of judges who handled the PN.Pli 133/2017 Decision had the basis for giving decisions under the Law of the Republic of Indonesia concerning Mineral and Coal Mining, The sanctions imposed by the panel of judges against the Defendant BUDI PURNOMO bin NGATEMAN (as an individual legal subject), the author focuses from the perspective of the Law of the Republic of Indonesia concerning Mineral and Coal Mining as a basis for reviewing the verdicts handed down by the panel of judges, namely in the form of criminal sanctions in the form of imprisonment and fines following the clauses of articles that have been violated by the Defendant, namely Article 158 of the Law of the Republic of Indonesia on Mining Mineral and Coal which reads:

Every person conducting mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment at the maximum. 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah).

Based on the reference to the verdict handed down by the panel of judges to Defendant, the rules have complied with the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is the implementation of these rules. There is an alternative option of substituting a fine for imprisonment, which is the provision of an option if Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed.

The panel of judges who handled the PN.Pli 133/2017 Decision did not provide maximum sanctions under the clause of the article of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which Defendant had violated, with several essential considerations. The verdict given by the panel of judges was based on several considerations, including burdensome (the Defendant's actions had the potential to damage the environment around the mining activity location) and mitigating grounds (the Defendant admitted his mistake and had expressed regret and promised not to repeat his actions, the Defendant was polite. At trial and has never been convicted, and Defendant is still young, so it is hoped that he can improve in the future).

Third, namely the Sungailiat District Court Decision Number 204/Pid.Sus/2017/PN. Sgl (PN.Sgl 204/2017). In the verdict, the panel of judges gave a verdict against the Defendant in the form of imprisonment for 2 (two) months and a fine of Rp. 2,000,000.00

(two million rupiahs) provided that if the fine is not paid, it is replaced by imprisonment of 2 (two) months for illegal Tanah Puru mining activities carried out by the Defendant.

The verdict handed down by the panel of judges in charge of the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining (mining activity crimes without official permits) which, in general, the elements that Defendant has violated are; a. Everyone (the Defendant who committed a criminal act); b. Conducting mining business without an IUP, IPR, or IUPK (The illegal mining business activities carried out by the Defendant was proven by his inability to show official mining activity permit documents from the authorized official). The panel of judges who handled the PN.Sgl 204/2017 Decision has the basis for giving the decision under what is stipulated in the Law of the Republic of Indonesia concerning Mineral and Coal Mining.

Given the sanctions given by the panel of judges against the Defendant SUHERMAN Als AFONG bin SUMARDI (as an individual legal subject), the author focuses from the perspective of the Law of the Republic of Indonesia on Mineral and Coal Mining as a basis for studying the verdicts imposed by the panel of judges in the form of criminal sanctions in the form of imprisonment and a fine under the clause of the article violated by the Defendant, namely Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which reads:

Based on the reference to the verdict handed down by the panel of judges to Defendant, the rules have complied with the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is the implementation of these rules. There is an alternative option of substituting a fine for imprisonment, which is the provision of an option if the Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed—the panel of judges handling the Decision of PN.Sgl 204/2017 did not provide maximum sanctions under the clause of the article of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which Defendant had violated, with several essential considerations.

The verdict given by the panel of judges was based on several considerations, including burdensome (the Defendant's actions had the potential to damage the environment around the mining activity location) and mitigating grounds (the Defendant admitted his mistake and had expressed regret and promised not to repeat his actions, the Defendant was polite. At trial and has never been convicted, Defendant is still young, so it is hoped that he can improve in the future).

Based on several examples of the *inkracht* verdict issued by the panel of judges in 2017 against the imposition of sanctions against individual legal subjects who commit mining crimes, generally related to mining operations cases that do not have a permit. The provision of sanctions put forward by the panel of judges shows that there are indications of prioritizing imprisonment and fines. The difference in the level of sanctions given based on the verdict handed down by the panel of judges is based on the judge's interpretation of the level of crime committed. The judge has a verdict to impose a sanction on Defendant

while still referring to the provisions in the Law of the Republic of Indonesia concerning Mineral and Coal Mining.

Imposing Sanctions on Individual Legal Subjects Who Commit Mining Crimes which were handed down by the Panel of Judges through the Inkracht Decision in 2017

In reviewing several recent judges' decisions relating to sanctions on individual legal subjects who commit mining crimes, the authors took several decisions that judges have sentenced through the inkracht decision in 2018.

No.	District Court Decision	Punishment Verdict	Confinement in lieu of criminal fines
1.	Sungailiat District Court Decision Number 24/Pid.Sus/2017/PN.Sgl (PN.Sgl 24/2018)	Imprisonment for 10 (ten) months and a fine of Rp. 1,000,000.00 (one million rupiahs)	There is, (2 months, to replace a fine)
2.	Rantau District Court Decision Number 20/Pid.Sus/2018/PN.Rta (PN.Rta 20/2018)	Imprisonment for 10 (ten) months and a fine of Rp. 3,000,000.00 (three million rupiahs)	There is, (3 months, to replace a fine)
3.	Pelaihari District Court Decision Number 179/Pid.Sus/2018/PN.Pli (PN.Pli 179/2018)	Imprisonment for 12 (twelve) months and a fine of Rp. 10,000,000.00 (ten million rupiahs)	There is, (1 months, to replace a fine)

First, namely the Sungailiat District Court Decision Number 24/Pid.Sus/2018/ PN.Sgl (PN.Sgl 24/2018 Decision). In the verdict, the panel of judges gave a verdict against Defendant in the form of imprisonment for 10 (ten) months and a fine of Rp. 1,000,000.00 (one million rupiahs) provided that if the fine is not paid, it is replaced by imprisonment of 2 (two) months for illegal Tin Sand mining activities carried out by the Defendant.

The verdict handed down by the panel of judges in charge of the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining (mining activity crimes without official permits) which, in general, the elements that Defendant has violated are; a. Everyone (the Defendant who committed a criminal act); and b. Those who carry out mining businesses without an IUP, IPR, or IUPK (The illegal mining business act of Pasir Timah carried out by the Defendant because he does not have an IUP that is validated under the provisions of the prevailing laws and regulations because it is only limited to applying for a permit but was rejected by the official authorized to issue IUP). The panel of judges who handle the PN.Sgl 24/2018 Decision has the basis for the issuance of decisions under those stipulated in the Law of the Republic of Indonesia concerning Mineral and Coal Mining.

Given the sanctions given by the panel of judges against Defendant TANZANIA Als ATENG bin MADDIN (late) (as an individual legal subject), the author focuses from the perspective of the Law of the Republic of Indonesia on Mineral and Coal Mining as a basis for reviewing the verdicts handed down by the panel of judges in the form of sanctions Penalty in the form of imprisonment and a fine following the clause of the article violated

by the Defendant, namely Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which reads:

Every person conducting mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment at the maximum. 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah).

Based on the reference to the verdict handed down by the panel of judges to Defendant, the rules have complied with the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is the implementation of these rules. There is an alternative option of substituting a fine for imprisonment, which is the provision of an option if the Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed—the panel of judges who handled the PN.Sg 24/2018 Decision did not provide maximum sanctions under the clause of the article of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which Defendant had violated, with several essential considerations. The verdict given by the panel of judges was based on several considerations, including burdensome (the Defendant did not support government programs in the development and utilization of natural resources in Indonesia) and mitigating grounds (the Defendant was polite in the trial, the Defendant acknowledged and regretted his actions, and the Defendant has never been convicted).

Second, namely the Rantau District Court Decision Number 20/Pid.Sus/2018/PN.Rta (PN.Rta 20/2018). In the verdict, the panel of judges gave a verdict against Defendant in the form of imprisonment for 10 (ten) months and a fine of Rp. 3,000,000.00 (three million rupiahs) provided that if the fine is not paid, then it will be replaced by imprisonment of 3 (three) months for illegal mining activities of *Tanah Uruk* conducted by the Defendant. The verdict handed down by the panel of judges in charge of the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining (Mining activities without official permits) which, in general, the elements that the Defendant had violated were; a. Everyone (the Defendant who committed a criminal act); and b. Those who carry out mining businesses without an IUP, IPR, or IUPK (Illegal mining operations for *Tanah Uruk* committed by the Defendant because they do not have an IUP that is justified under the provisions of the statutory regulations).

The panel of judges who handled the Decision of PN.Rta 20/2018 had the basis for giving decisions under the Law of the Republic of Indonesia concerning Mineral and Coal Mining, The sanctions imposed by the panel of judges against Defendant TANZANIA Als ATENG bin MADDIN (late) (as individual subject law), the author focuses from the perspective of the Law of the Republic of Indonesia on Mineral and Coal Mining as a basis for reviewing the verdict handed down by the panel of judges, namely in the form of criminal sanctions in the form of imprisonment and fines under the clauses of articles that

the Defendant has violated, namely Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which reads:

Every person conducting mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment at the maximum. 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah).

Based on the reference to the verdict handed down by the panel of judges to Defendant, the rules have complied with the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is the implementation of these rules. There is an alternative option of substituting a fine for imprisonment, which is providing an option if Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed. The panel of judges who handled the Decision of PN.Rta 20/2018 did not provide maximum sanctions under the clauses of the article of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which Defendant had violated, on several grounds.

The verdict given by the panel of judges was based on several considerations, including burdensome (The Defendant's actions were carried out only for personal gain without regard to the negative impact caused by mining activities he carried out, and the Defendant's actions caused losses to the state) and mitigating grounds The Defendant admits candidly about his actions, the Defendant profoundly regrets his actions, the Defendant promises not to repeat his actions, the Defendant is the backbone of the family, and the Defendant has never been convicted).

Third, namely the Decision of the Pelaihari District Court Number 179/Pid.Sus/2018/PN.Pli (PN.Pli 179/2018). In the verdict, the panel of judges gave a verdict against Defendant in the form of imprisonment for 12 (twelve) months and a fine of Rp. 10,000,000.00 (three million rupiahs) provided that if the fine is not paid, it will be replaced by imprisonment for 1 (one) month for illegal gold mining activities carried out by Defendant.

The verdict handed down by the panel of judges in charge of the case was guided by Article 158 of the Law of the Republic of Indonesia concerning Mineral and Coal Mining (mining activity crimes without official permits) which, in general, the elements that Defendant has violated are; a. Everyone (the Defendant who committed a criminal act); and b. Intentionally (the Defendant knew or wanted the illegal mining crime to be committed); and c. Conducting mining business without an IUP (the Defendant carried out mining activities without obtaining an official permit from the competent official).

The panel of judges who handled the PN.Rta 20/2018 Decision had the basis for giving decisions under the Law of the Republic of Indonesia concerning Mineral and Coal Mining, The sanctions imposed by the panel of judges against the Defendant ARDIANSYAH Als ANANG bin BASRANI (late) (as individual subject law), the author

focuses from the perspective of the Law of the Republic of Indonesia on Mineral and Coal Mining as a basis for reviewing the verdicts handed down by the panel of judges, namely in the form of criminal sanctions in the form of imprisonment and fines under the clauses of articles that have been violated by the Defendant, namely Article 158 of the Law. The Republic of Indonesia concerning Mineral and Coal Mining which reads:

Every person conducting mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment at the maximum. 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah).

Based on the reference to the verdict handed down by the panel of judges to Defendant, the rules have complied with the provisions of the Law of the Republic of Indonesia concerning Mineral and Coal Mining. The imposition of sanctions in the form of imprisonment and fines is the implementation of these rules. There is an alternative option of substituting a fine for imprisonment, which is the provision of an option if Defendant cannot pay the fine or wants to replace it with imprisonment for mining crimes committed.

The panel of judges handling the Decision of PN.Rta 20/2018 did not provide maximum sanctions under the clause of the article of the Law of the Republic of Indonesia concerning Mineral and Coal Mining which Defendant had violated, with several essential considerations. The verdict given by the panel of judges was based on several considerations, including burdensome (The Defendant's actions were carried out only to pursue personal gain alone regardless of the negative impacts arising from the mining activities he carried out, and the Defendant's actions caused losses to the state) and mitigating grounds (the Defendant frankly admitting his actions, the Defendant deeply regretted his actions, the Defendant promised not to repeat his actions, the Defendant was the backbone of the family, and the Defendant had never been convicted).

Based on several examples of the *inkracht* verdict issued by the panel of judges in 2018 against the imposition of sanctions on individual legal subjects who commit mining crimes, in general, it is related to mining operations that do not have a permit. The provision of sanctions put forward by the panel of judges shows that there are indications of prioritizing imprisonment and fines. The difference in the level of sanctions given based on the verdict handed down by the panel of judges is based on the judge's interpretation of the level of crime committed. The judge has a verdict to impose a sanction on Defendant while still referring to the provisions in the Law of the Republic of Indonesia concerning Mineral and Coal Mining.

Based on several simple studies of several *inkracht* decisions handed down by the panel of judges in the 2016-2018 timeframe relating to mining crimes committed by individual legal subjects as well as some argumentation points used by the panel of judges in giving sanctions that have a mild tendency when compared with the maximum clause as stipulated in the Law of the Republic of Indonesia concerning Mineral and Coal Mining.

The sanctions imposed by the panel of judges are fundamentally appropriate from the Law of the Republic of Indonesia on Mineral and Coal Mining as a guideline for imposing penalties for criminal offenders.

However, suppose it is to be studied based on the effectiveness of imposing criminal sanctions on individual legal subjects who commit mining crimes. In that case, it tends that there is an indication of the ineffectiveness of the sanctions given. This is evidenced by the high frequency of mining criminal cases committed by individual legal subjects in Indonesia. There is a tendency for the level of sanctions given by the judges according to the author's opinion to have a light level, thus encouraging the prevention function of criminal law to not run optimally in preventing other people who are individual legal subjects from committing mining crimes (general prevention) or prevent the convicted person from committing criminal acts of mining (general prevention). Re-commit mining crime again (special prevention).

The philosophical foundation that underlies the reformulation of mining criminal sanctions for individual legal subjects in the Minerba Law is a technical elucidation of the 1945 Constitution of the Republic of Indonesia NRI article 28 paragraph (4) which outlines that protection, promotion of enforcement, and fulfillment of human rights (HAM) is the responsibility of the state through the government. The obligation of the country in upholding and fulfilling the human rights referred to in the opinion of the writer himself lies in maximizing the severity of sanctions to be given to the perpetrators of mining criminal acts on individual legal subjects. Where it is also used as an effort to increase ecological stability in Indonesia, one of which is through reformulation of criminal penalties for mining individual legal subjects as stipulated in the Minerba Law.

The sociological foundation underlies the reformulation of mining criminal sanctions for individual legal subjects in the Minerba Act is based on the still high number of mining criminal cases for particular legal issues. According to the author's opinion, the phenomenon is triggered by the main underlying factor, namely the ineffectiveness of the level of granting sanctions that only focus on criminal penalties to overcome these problems. Indicators of the ineffectiveness of mining criminal sanctions for individual legal subjects can be assessed from the high frequency of criminal cases related to this matter, with the existence of legal reformulations that seek to shift the focus of effective sanctions and deter the perpetrators, it is deemed necessary to change the orientation of the penalties towards administrative sanctions.

The juridical basis that underlies the reformulation of mining criminal sanctions for individual legal subjects in the Minerba Act, according to the author, lies in the rules that have not sufficiently provided optimal law enforcement, either preventive or repressive. The non-optimal enforcement of preventive law is not optimal in the level of granting criminal sanctions that are not, however, accumulative in nature, which can have the effect of preventing a person from committing illegal mining actions that are less than optimal.

While the repressive law enforcement is not yet optimal lies in the editorial substance of the rules in the Minerba Act which regulates the types of sanctions that

should not only focus on providing criminal penalties but alternative options that can be used in the form of administrative sanctions to encourage someone to be more "afraid" in committing a criminal offense of mining because the loss from sanctions imposed is more significant than merely imposing sanctions on a "criminal basis" only. Therefore, reforming the Minerba Law in terms of providing types of criminal penalties against individual legal subjects can increase the effectiveness in reducing the number of mining criminal cases of particular legal issues themselves to provide certainty, fairness, and legal benefits for all parties involved in mining activities.

According to Francis Bowes Sayre in his research, the paradigm for the development of administrative, criminal sanctions states that as one type of existing law, there is a background of several arrangements regarding the kinds of punishments given to criminal offenders. The types of penalties provided are classified into 2 (two) models, namely actual sanctions and useful sanctions. Related to the nature of real sanctions is reflected in the permissions of punishment which has an orientation focus that emphasizes more on the perpetrators of criminal acts to provide a deterrent effect on the criminal acts he has committed, rather than having to offer preventive efforts to the community not to repeat their actions. Whereas useful sanctions have an orientation to the community related to the type of criminal penalties needed following the dynamism of community development needs (Borre, 1961).

Law as a formal recognition of the values that develop in social life should be adapted to the development of types of law that are adaptive and flexible following the level of dynamism in the development of the community's need for legal presence to regulate social life. The process of development of the law is adjusted to the needs of the community through a long process of stages in the process of development, starting from the process of revisiting (revisiting), re-forming (reshaping), and reintegrating (Meese, 2013).

The shift in the use of administrative law applied by most countries on the European continent is based on the level of effectiveness of the lawful presence in handling problems that occur in the life of modern society today. In connection with the regulation of environmental law in countries in the European Continent, the majority of states consider administrative law a substantial element in providing sanctions to perpetrators of environmental crime (Hertz, 2011). The shift in regulation on environmental law is one small example of a change in proper orientation that not only prioritizes sanctions that are miserable/suffering through criminal penalties, but there is a trend of shifting laws that lead to deaths that can have a direct effect on social life through criminal penalties administrative (Holmes Jr, 1897).

The new development of administrative, criminal law is a reaction to the need for regulation so that it does not always have an orientation towards criminal sanctions only. However, the development of types of penalties to anticipate penalties that only have an orientation focus on giving punishments to someone who commits a crime through physical sanctions in the form of prison or a fine in the form of payment of a sum of money

to replace or reduce the duration of the sentence for the perpetrators of the crime (Meese, 2013). Administrative, criminal law is an embodiment of the policy of using criminal law to enforce administrative law through the functionalization or operationalization that is maximized through technical rules under what is needed by the community (Arief, 2003).

The existence of licensing criminal offenses in the Minerba Law is a characteristic of the regulation of administrative, criminal acts contained in the editorial substance of the rule. Arrangement of individual legal subjects as address in the Minerba Law can be found in Article 158 - Article 165 of the Minerba Law, the scope of personal coverage in mining criminal law covers everyone who works as a government apparatus and civilians who have violated the provisions of the article in Minerba Act. Comparison of article sounds and article regulation recommendations relating to mining criminal sanctions for individual legal subjects as listed in the following table.

Based on the table setting description, criminal sanctions on individual legal subjects in Indonesia's mining activities can be found in Article 158 to Article 165 of the Mining Law. There are 7 (seven) types of acts that are regulated, which outline the types of sentences that are given are criminal sanctions. Criminal sanctions provided are alternative and cumulative in emphasis on imprisonment and fines, deemed ineffective in suppressing the high frequency of mining criminal cases committed by individual legal subjects.

Based on the description above, the authors propose to hold a reformulation of mining criminal sanctions for individual legal subjects in Indonesia. The proposed restatement lies in changing the orientation of the punishment, which emphasizes criminal penalties and requires permissions that have a more practical level of effectiveness to reduce the high frequency of mining criminal cases committed by individual legal subjects in Indonesia.

The intended reformulation lies in the administration of administrative, criminal law by prioritizing aspects of administrative punishment in the form of revocation of certain civil rights such as revocation of election/election in politics, revocation of letters of ethical conduct, giving a certificate of crime that has been committed.

If the sanctum is deemed ineffective, then criminal sanctions can be given with the record that the overall criminal penalties are cumulative to provide a deterrent effect either preventive (through preventing people from committing criminal acts) or repressive (through criminal sanctions for fines and prisons for deterrent effect) to perpetrators who must be held responsible in the event of a crime or error committed in mining activities which result in losses to the ecology and the community.

The deterrent effect that is given will affect the mining activities' actors so that the mining activities carried out will be endeavored not to violate the rules or conduct mining activities that harm the ecology and the community. Thus, mining activities carried out place more emphasis on events that are based on sustainable development.

Article 1 number 3 of the Law on Environmental Protection and Management (UUPPLH) states that what is meant by sustainable development is a conscious and

planned effort that integrates environmental, social, and economic aspects into development strategies to ensure ecological integrity and safety, ability, welfare, and quality of life of present and future generations.

Which is the principle of sustainable development in line with the fourth mining principle contained in Article 2 of Law Number 4 of 2009, namely the principle of sustainable and environmentally sound? What is meant by the policy of lasting and environmentally sound is a principle that has planned to integrate the economic, environmental, and socio-cultural dimensions in the overall mineral and coal mining business to realize present and future prosperity.

The expected output is an orientation of sanctions from initially criminal to directed towards administrative, criminal penalties, provided that regulatory sanctions are prioritized. Criminal sanctions are only one of the solutive efforts to reduce the high frequency of mining criminal cases committed by individual legal subjects in Indonesia.

Conclusion

Reformulation of the imposition of criminal sanctions against individual legal subjects in mining crimes is intended to increase the imposition of sanctions to provide a deterrent effect on perpetrators of criminal acts. Referring to several *inkracht* decisions against several previous judges' decisions shows that the tendency to impose criminal sanctions leads to fines and imprisonment only. This can be less effective if it is examined with the frequency of mining crimes committed by individual legal subjects. The reformulation of the provision of individual legal subjects is projected to replace administrative, criminal sanctions, which are projected to be able to provide a deterrent effect on perpetrators of mining crimes. Administrative action, the criminal sanction in question, has an orientation that prioritizes administrative sanctions as an effort to reduce the high frequency of cases if it is deemed not new enough to be given criminal sanctions with all articles that are cumulative to provide a more deterrent effect to the perpetrators (repressive) or as a means of preventing others from committing crimes for the same (preventive) action.

References

- Adhari, Ade. (2017). Kebijakan Integral dalam Mencegah dan Menanggulangi Tindak Pidana Penambangan Tanpa Izin di Indonesia. *Bina Hukum Lingkungan*. 2(1). 108-125.
- Amindoni, A., (2017). 'Merugikan negara', Ribuan Izin Tambang di Indonesia akan Diblokir. Retrieved from BBC: <https://www.bbc.com/indonesia/indonesia-42308353>
- Arief, Barda Nawawi. (2003). *Kapita Selekta Hukum Pidana*. Bandung: Citra Aditya Bakti.
- Avrianty, Anastasia. (2019). "Miris, 74 Tahun Merdeka Masih Marak Tambang Ilegal di RI". Retrieved January 8, 2020, from <https://www.cnbcindonesia.com/news/20190819164116-4-93066/miris-74-tahun-merdeka-masih-marak-tambang-ilegal-di-ri>

- Borre, G. V. (1961). Public Welfare Offenses: A New Approach. *Journal of Criminal Law and Criminology*. 52. 7.
- Garut District Court Verdict Number 28/Pid.Sus./2017/PN.Grt diakses dari Direktori Putusan Mahkamah Agung. Dari <https://putusan3.mahkamahagung.go.id/direktori/putusan/694cc7747372d3915ideaf6a59b053af.html> accessed at 19 April 2021.
- H. S., Salim (2012). *Hukum Pertambangan Mineral dan Batubara*. Second Edition. Jakarta: Sinar Grafika.
- Haris, Oheo K. (2014). Aspek Hukum Pidana dalam Kaitannya dengan Perizinan di Bidang Pertambangan. *Yuridika*. 29(3). 346-360.
- Hertz, Michael. (2011). Structures of Environmental Criminal Enforcement. *Fordham Environmental Law Review*. 7(3). 91.
- Indonesia, B. P. (2017). *Statistik Pertambangan Bahan Galian Indonesia 2015 & 2017 (The Indonesia Quarrying Statistics 2015 & 2017)*. Jakarta: Badan Pusat Statistik Republik Indonesia.
- Mahardika, Bisma Putra. (2016). Rekonstruksi Pengaturan Pertanggungjawaban Pidana Pengelola Perusahaan Pertambangan Yang Mengakibatkan Kerugian Pada Ekologi dan Masyarakat. Malang: Faculty of Law Brawijaya University.
- Marzuki, Peter Mahmud. (2015). *Penelitian Hukum*. Jakarta: Kencana Prenanda Media Group.
- Meese, Edwin. (2013). Reconsidering the Mistake of Law Defense. *Journal of Criminal Law and Criminology*. 102(3). 728.
- Negara District Court Verdict Number 122/Pid.B./2016/PN.Nga diakses dari Direktori Putusan Mahkamah Agung. Dari <https://putusan3.mahkamahagung.go.id/direktori/putusan/174b098b8ddc50df039e72b07d885837.html> accessed at 18 April 2021.
- Oliver W. Holme Jr. (1897). The Path of the Law. *Harvard Law Review*. 10. 457.
- Pelaihari District Court Verdict Number 133/Pid.Sus./2017/PN.Pli diakses dari Direktori Putusan Mahkamah Agung. Dari <https://putusan3.mahkamahagung.go.id/direktori/putusan/de06e711047ce585a087d29fiod69d3.html> accessed at 19 April 2021.
- Pelaihari District Court Verdict Number 5/Pid.B./2016/PN.Pli diakses dari surel website <https://putusan3.mahkamahagung.go.id/direktori/putusan/d785fcb7e0510eobcd685457a3230c2d.html> accessed at 18 April 2021.
- Pelaihari District Court Verdict Number 179/Pid.Sus./2018/PN.Pli diakses dari Direktori Putusan Mahkamah Agung. Dari <https://putusan3.mahkamahagung.go.id/direktori/putusan/2fe73b4906fb62b9369b320faieaf005.html> accessed at 20 April 2021.
- Rantau District Court Verdict Number 20/Pid.Sus./2018/PN.Rta diakses dari Direktori Putusan Mahkamah Agung. Dari <https://putusan3.mahkamahagung.go.id/direktori/putusan/d51915f3c19d54bba5e53954cee73c3b.html> accessed at 20 April 2021.
- Sungailiat District Court Verdict Number 204/Pid.Sus./2017/PN.Sgl diakses dari Direktori Putusan Mahkamah Agung. Dari <https://putusan3.mahkamahagung.go.id/direktori/putusan/43e42f8023b6e9dd4610f58648e756a9.html> accessed at 19 April 2021.
- Sungailiat District Court Verdict Number 24/Pid.Sus./2018/PN.Sgl diakses dari Direktori Putusan Mahkamah Agung. Dari <https://putusan3.mahkamahagung.go.id/direktori/putusan/1dc4c4805a2598doe8f7fd27ca347c5d.html> accessed at 19 April 2021.

- Susim, Selfina. (2015). Pidana Denda dalam Pemidanaan serta Prospek Perumusannya dalam Rancangan KUHP. *Lex Crimen*. IV(1). 225-234.
- Wonosari District Court Verdict Number 10/Pid.B./2016/PN.Wno diakses dari Direktori Putusan Mahkamah Agung. Dari <https://putusan3.mahkamahagung.go.id/direktori/putusan/3c35bb1e3d6fb0028d491bb20a4fc98.html> accessed at 18 April 2021.
- Wulandari, Kunti May. (2014). Dampak Krisis Ekologi terhadap Strategi Nafkah Rumah tangga Petani di Desa Ciganjeng, Kecamatan Padaherang, Kabupaten Pangandaran. *Thesis*. Bogor: Bogor Agricultural Institute.