

## CRIMINAL LAW ENFORCEMENT POLICY ON MINERAL AND COAL MINING BUSINESSES

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### ABSTRACT

The implementation of the criminal law enforcement policy on mineral and coal mining businesses (minerba) still occurs several violations of Article 158 of the Law of the Republic of Indonesia No 4 of 2009 (minerba Law). This journal aims to find out and analyze: 1) criminal law policy in law enforcement on illegal mining businesses according to the Minerba Law, and 2) current law enforcement constraints and future improvements. The normative juridical research approach places secondary data, in the form of primary legal material (Minerba Law) as the main material. Meanwhile, primary data acts as supporting analysis, which is obtained using interview techniques. Secondary data was obtained through the study of legal literature, especially Case No. 237 / Pid. Sus / 2018 / PN Jpa. The entire dawasa was analyzed using descriptive qualitative methods. Results: (1) Minerba Act, qualified as administrative criminal law. The criminal provisions are regulated in 8 articles with the threat of imprisonment, confinement and fines. (2) Law enforcement constraints from the Legal Substance dimension is the equalization of all mining activity permits in the form of Mining Business Permits. The legal structure perspective, demands large funding requirements. Internal Legal Culture experiences obstacles in coordination between Police investigators and PPNS. Externally, it explains that people prioritize economic value. In the future, a Rock Mining Permit is required, consistency in the application of article 158 and solid coordination between police and ESDM investigators, as well as education on environmental values.

**Keywords: Criminal Law Policy; Mining.**

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### A. INTRODUCTION

Mineral and coal mining business activities play an important role in providing added value significantly to national economic growth and sustainable regional development. For this reason, a legal policy is needed that can manage and exploit the potential of minerals and coal independently, reliably, transparently, competitively, efficiently and with environmental insight, to guarantee sustainable national development.

Regulation in the Law of the Republic of Indonesia No. 4 of 2009 concerning Mineral and Coal Mining (hereinafter abbreviated to the Minerba Law), the government regulates mining governance with the main ideas listed in the general explanation of the Minerba Law as follows: (1) Mineral and coal as a non-renewable resource controlled by the state and its development and utilization carried out by the Government and regional governments together with business actors. (2) The government then provides opportunities for business entities with Indonesian legal status, cooperatives, individuals, and local communities to carry out mineral and coal exploitation based on permits, which are in line with regional autonomy, granted by the Government and/or regional governments in their respective authorities. respectively. (3) In the framework of implementing decentralization and regional autonomy, mineral and coal mining management is carried out based on the principles of externality, accountability and efficiency involving the Government and regional governments. (4) Mining efforts must provide maximum economic and social benefits for the welfare of the Indonesian people. (5) Mining

businesses must accelerate regional development, encourage community / small and medium-sized business/entrepreneur economic activities, and encourage the growth of mining supporting industries. (6) In the framework of creating sustainable development, mining business activities must be carried out by taking into account the principles of the environment, transparency and community participation<sup>1</sup>. Mineral and coal mining management is carried out based on the principles of externality, accountability and efficiency involving the Government and local governments. (4) Mining efforts must provide maximum economic and social benefits for the welfare of the Indonesian people. (5) Mining businesses must be able to accelerate regional development, encourage community / small and medium-sized business/entrepreneur economic activities, and encourage the growth of mining supporting industries. (6) In the framework of creating sustainable development, mining business activities must be carried out by taking into account the principles of the environment, transparency and community participation. mineral and coal mining management is carried out based on the principles of externality, accountability, and efficiency involving the Government and local governments. (4) Mining efforts must provide maximum economic and social benefits for the welfare of the Indonesian people. (5) Mining businesses must accelerate regional development, encourage community / small and medium-sized business/ entrepreneur economic activities, and encourage the growth of mining supporting industries. (6) In the framework of creating sustainable development, mining business activities must be carried out by taking into account the principles of the environment, transparency and community participation. (4) Mining businesses must provide maximum economic and social benefits for the welfare of the Indonesian people. (5) Mining businesses must accelerate regional development, encourage community / small and medium-sized business/ entrepreneur economic activities, and encourage the growth of mining supporting industries. (6) In the framework of creating sustainable development, mining business activities must be carried out by taking into account the principles of the environment, transparency and community participation. (4) Mining efforts must provide maximum economic and social accelerate regional development, encourage community / small and medium-sized business/ entrepreneur economic activities, and/or small and medium-sized business/ entrepreneur economic activities as well as encourage the growth of mining supporting industries. (6) In the framework of creating sustainable development, mining business activities must be carried out by taking into account the principles of the environment, transparency and community participation.<sup>2</sup>

The Minerba Law philosophically emphasizes that the results of mining must be able to leverage and be effective in providing the greatest economic and social benefits for the welfare of the Indonesian people. The juridical basis for the mining business as stated in the Minerba Law confirms that mining is regulated through a legal substance which qualifies as an administrative crime. Administrative criminal law is criminal law in the field of administrative law violations. Administrative law is regulatory law or regulatory law, namely, the law made in exercising regulatory powers, so "administrative criminal law" is often referred to as "criminal

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<sup>1</sup> "UU 4 tahun 2009 Pertambangan Mineral Batubara." <https://www.jogloabang.com/pustaka/uu-4-2009-pertambangan-mineral-batubara> (accessed Mar. 18, 2019).

<sup>2</sup> "UU RI NO 4 TAHUN 2009 TENTANG PERTAMBANGAN MINERAL DAN BATUBARA." <https://www.slideshare.net/csr-semenindonesia/uu-ri-no-4-tahun-2009-tentang-pertambangan-mineral-dan-batubara> (accessed Mar. 18, 2019).

law (regarding) regulation" or "criminal law. of the rules "(Ordnungstrafrecht / Ordnungstrafrecht).<sup>3</sup>

The legal policy contained in the Minerba Law regulates all mining businesses, both community mining and capital-intensive enterprises. The criminal provisions in the Minerba Law are regulated in Chapter XXIII covering 8 (eight) articles starting from article 158 to article 165. Article 158 of the Minerba Law with its juridical formula: "Anyone who carries out 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 for a maximum of 10 (ten) years and a maximum fine of Rp.10,000,000,000. 00 (ten billion rupiah) ". It is a criminal law norm, which links administrative law with criminal law. Administrative law is formulated in the Mining Business License (IUP) diction, People's Mining Business Permit (IUPR) and Special Mining Business Permit (IUPK). Meanwhile, the realm of criminal law is described through a formula with the diction "Everyone ... is sentenced to imprisonment ...".

The legal facts compiled by the author, explain that there are still criminal acts in the mining sector that have not been resolved with several cases including illegal mining of gold and rocks. In the Sumatra region, sand and other mineral metals such as tin, nickel and others are mined that aren't clear and clean against the provisions of criminal law norms in the Minerba Law. With globalization and the improvement of international relations and trade, quite a lot of foreign or international laws will also be poured into national legislation.<sup>4</sup>

In mining problems, several cases occurred in Indonesia. In the Central Java region, there is mining without permits (PETI) which threatens the environment. One of the areas that the author studies are Jepara Regearthe y. Mining business problems in the provisions stipulated in the Minerba Law, there have been impacts and certainty of legal norms. Law enforcement, even though the criminal approach is a final step, in line with the principle of *ultimum remedium* is an effort to uphold justice that has permanent legal force. So the mining sector is an interesting source of academic studies to research, both from the perspective of legal substance, legal culture and legal structure.

Based on that, the authors formulate the following problems: What is the law enforcement policy for illegal mining as stipulated in Law of the Republic of Indonesia No. 4 of 2009 concerning Mineral and Coal Mining? and What are the obstacles to criminal law enforcement in the current illegal mining business and efforts to improve law enforcement in mining business in the future?

## B. RESEARCH METHODS

This study uses a normative juridical approach. According to Soerjono Soekanto, the normative juridical approach is legal research which is carried out by examining library materials or secondary data as the basic material for research by searching for regulations and literature related to the problem under study.<sup>5</sup> The data sources in this study are grouped into two types,

<sup>3</sup> Barda Nawawi Arief Dalam Maroni, *Pengantar Hukum Pidana Administrasi*. Bandar Lampung: Anugerah Utama Raharja (AURA), 2015

<sup>4</sup> E. Pranoto, "PEMBANGUNAN SISTEM HUKUM EKONOMI INDONESIA BERLANDASKAN PADA NILAI PANCASILA DI ERA GLOBALISASI," *SPEKTRUM Hukum.*, 2018, doi: 10.35973/sh.v15i1.1111.

<sup>5</sup> S. Soekanto and S. Mamudji, *Penelitian Hukum Normatif, Suatu Tinjauan Singkat*. 2011

namely primary data and secondary data. In analyzing the data, researchers used qualitative descriptive techniques. Secondary data that has been obtained from literature studies and primary data obtained from interviews are then arranged sequentially and systematically and then analyzed using qualitative methods, namely, to obtain an overview of the subject matter using deductive and inductive thinking methods, the thinking that begins from general things to the next to specific things and vice versa from specific to general in answering the problems that exist in a study<sup>6</sup>.

## C. DISCUSSION

### 1. Criminal Law Enforcement Policies in Law of the Republic of Indonesia No. 4 of 2009 concerning Mineral and Coal Mining

The mining business is regulated in Law No. 4 of 2009 concerning Minerba stipulates that anyone who operates a mining business without a license can be subject to criminal sanctions. The license referred to in Law No. 4 of 2009 concerning Minerba is a Mining Business Permit, hereinafter referred to as IUP, which is a license to carry out a mining business.

The criminal law policy regulated in the Minerba Law qualifies as administrative criminal law. The explanation of administrative crime is criminal law in the field of administrative law violations. Therefore, administrative crime is stated as an offence consisting of a violation of an administrative rule or regulation and carrying with it a criminal sanction.

The characteristics or characteristics of administrative criminal law in the Minerba Law can be seen from the following aspects:

#### a) Offense

A criminal act is an act of doing or not doing something which is stated by statutory regulations as a prohibited act and punishable by punishment. In general, the Minerba Law regulates criminal provisions in chapter XXIII which contains eight articles.

#### b) Criminal sanctions

Criminal sanctions that are a consequence of the criminal act (offence) regulated in the Minerba Law are in the form of imprisonment, imprisonment and fines. Apart from that, additional penalties are also regulated including revocation of business licenses; and/or revocation of legal entity status, confiscation of goods used in committing criminal acts, confiscation of profits obtained from criminal acts and obligation to pay costs arising from criminal acts.

The juridical scheme in Law No. 4 of 2009 concerning Minerba related to illegal mining businesses, according to the author's opinion, contains the following main ideas:

- a) Minerals and coal as non-renewable resources are controlled by the state and their development and utilization are carried out by the Government and regional governments together with business actors;
- b) The government further provides opportunities for business entities with

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<sup>6</sup> M. . Dr. Sandu Siyoto SKM., M.kes & M. Ali Sodik, Dasar Metodologi. 2015.

- Indonesian legal status, cooperatives, individuals, and local communities to carry out mineral and coal exploitation based on permits, which are in line with regional autonomy, granted by the Government and/or regional governments in their respective authorities;
- c) In the context of implementing decentralization and regional autonomy, the management of mineral and coal mining is carried out based on the principles of externality, accountability and efficiency involving the Government and local governments;
  - d) Mining efforts must provide maximum economic and social benefits for the welfare of the Indonesian people;
  - e) The mining business must be able to accelerate regional development and encourage community / small and medium-sized entrepreneurial economic activities as well as encourage the growth of mining supporting industries;
  - f) In the framework of creating sustainable development, mining business activities must be carried out with due regard to the principles of the environment, transparency and community participation.

As a legal substance in the form of statutory regulations related to mineral and coal mining, the path to be built in law enforcement efforts is to prioritize the norms of natural resource management as a gift from God, which in the long run needs to be passed on to future generations, including economic, social and environmental potential. Life.

In principle, the licensing law contains the principle of prohibiting environmental destruction because it is a crime that itself is punishable by criminal offences. Apart from that, the State will regulate the management of acts that are disgraceful because they damage the environment through a licensing system. This system states that as long as environmental exploitation is based on safety, public health and environmental sustainability, it is permissible to comply with the administrative licensing law.

In efforts to control environmental management that are effective for future generations, both central and local governments have legal mining licensing instruments with the aim of controlling the impact of mining businesses that are still within the environmental ecosystem threshold.

Based on the above points of thought, in principle, the legal policy contained in the Minerba Law contains three important aspects about Mining Business Permits (IUP), namely: (1) Legal Rule Aspects. (2) Aspects of Government Authority. (3) Legal Relations Aspect. Legal aspects in the Minerba Law cannot be separated from administrative law and criminal law. The systematics of writing in the Minerba Law which places administrative provisions preceding criminal provisions indicates that punishment is an *ultimum remedium*. In addition, the legal policy qualifications stipulated in the Minerba Law qualify for administrative criminal law. As Barda Nawawi Arif's view defines that "Administrative criminal law is a criminal law in the field of administrative law violations. Therefore, "administrative crime" is stated as "An Offence consisting of a violation of an administrative rule or regulation and carrying with it a criminal sanction" (Black's). Besides, because administrative law is regulatory

law, namely the law made in exercising regulatory powers, "administrative criminal law" is often referred to as "criminal law (regarding) regulation" or "criminal law of the rules" (Ordnungstrafrecht / Ordnungstrafrecht).

The legal norms thought scheme that the Minerba Law intends to address regarding the criminal law policy of mining without permits (illegal) about government authority can the authors explain as follows:

- a) Real enough authority for the Regency / City Government in the field of Mineral and Coal Mining is manifested in the following forms: (1) authority to issue mining business permits (IUP) and community mining business permits (IUPR); (2) establishing a regional work unit structure (mining service); (3) formulating regional regulations (Perda) related to mining.
- b) Regulations for the division of authority from the government, provincial governments and district/city governments whose juridical formulations are formulated in Article 6, Article 7 and Article 8 of Law No. 4 of 2009 concerning Minerba.

It is based on the authority of both central and regional governments that the source of law in enforcing the law on illegal mining (without permits) begins. Although other legal arguments state that the enforcement of criminal law in environmental crimes adheres to the principle of *ultimum remedium*, namely in environmental law enforcement, the criminal law instrument is the last means if the initial instrument is not fulfilled. What the author means about the initial instrument is action including mediation, kinship, negotiation, civil, or administrative law.

Criminal law rules regulated in the Minerba Law, specifically regulate criminal provisions in chapter XXIII. In more detail, the authors analyze article by article criminal acts and their juridical formulations. Criminal provisions in the Minerba Law are regulated in 8 (eight) articles, namely articles 158 to article 165.

The eight articles in Law No. 4 of 2009 concerning Minerba are criminal articles that establish the legality principle in law enforcement of illegal mining business crimes. These articles outline:

#### 1) Elements of Action

The element of action in the criminal law norms written in Law No. 4 of 2009 concerning Minerba contains actions prohibited in the mineral and coal mining business including:

- a) Doing mining business without permits either IUP (Mining Business Permit), IPR (People's Mining Permit) or IUPK (Special Mining Business Permit).
- b) Submitting reports incorrectly or submitting false information related to reporting and information in Article 43 paragraph (1), Article 70 letter e, Article 81 paragraph (1), Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) ) Law No. 4 of 2009 concerning Minerba.
- c) Misusing the permission that has been given. For example, having an exploration mining business license (IUP) but running production operations.
- d) Obstruct or interfere with the mining business activities of the permit holder.
- e) Officials who issue or issue permits that are contrary to this Law and abuse

their authority.

## 2) Criminal Qualifications

Criminal qualifications in the chapter governing Criminal Acts in Law No. 4 of 2009 concerning Minerba incl:

### a) Prison Criminal

The criminal provisions of Law No. 4 of 2009 concerning Minerba stipulate that the maximum length of imprisonment is 10 years and the minimum is 1 year

### b) Criminal Fines

Law No. 4 of 2009 concerning Minerba in terms of fines stipulates a maximum fine of ten billion rupiah and a minimum fine of one hundred million rupiah. In the case of additional fines, this Law provides for a fine with an additional weight of 1/3 (one third) of the maximum penalty imposed.

### c) Criminal Cage

In the case of imprisonment, Law No. 4 of 2009 concerning Minerba regulates a maximum of 1 (one) year.

### d) Additional Criminal

Additional criminal provisions in Law No. 4 of 2009 concerning Minerba include (a) confiscation of goods used in committing criminal acts; (b) confiscation of profits derived from a criminal act; and/or; (c) the obligation to pay expenses arising from the crime.

## 3) Legal Subjects

Legal subjects regulated in Law no. 4 of 2009 concerning Minerba includes every person, license holder, business entity and/or management, as well as officials who issue permits.

Based on the above discussion, several main points of criminal law policy regulated in the Minerba Law are related to illegal mining businesses, namely:

- 1) The principles of the Minerba Law in the form of benefits, justice and balance; side with the interests of the nation; participatory, transparency, and accountability; sustainable and environmentally friendly.
- 2) The purpose of the Minerba Law is
  - a) ensure the effectiveness of the implementation and control of mining business activities in an efficient, effective and competitive manner;
  - b) guarantee the benefits of mineral and coal mining in a sustainable and environmentally friendly manner;
  - c) guarantee the availability of minerals and coal as raw materials and/or as energy sources for domestic needs;
  - d) support and develop national capabilities so that they are more able to compete at the national, regional and international levels;
  - e) increase local, regional and state income, and create jobs for the greatest welfare of the people; and
  - f) guarantee legal certainty in the implementation of mineral and coal mining business activities.
- 3) The criminal law provisions stipulated in chapter XXIII contain eight articles of criminal acts with criminal sanctions in the form of imprisonment, imprisonment,

finer, and additional penalties.

- 4) The Minerba Law is classified as an administrative crime with the character of a criminal law policy as reinforcement or coercion for actions that violate administrative articles, such as legal requirements for permits in every mineral and coal mining business.

In the discussion of law enforcement on illegal mining, the author attempts to explain and analyze more concretely through normative studies of the already inaccurate judge's decision, namely Decision Number 237 / Pid.Sus / 2018 / PN Jpa. Broadly speaking, the discussion will be divided into several sub-studies including:

- 1) Position Case

- a) Case Chronology

The defendant Agus Irawan Bin Muhamad Nazir and the defendant Sodikan Bin Sarkan on Tuesday, May 15 2018 at around 10.30 WIB or at least one time in May 2018 at the landfill mining site which is located at Dusun Bego Kel. Damarjati Kec. Kalinyamatan Kab. Jepara or at least in other places that are still included in the jurisdiction of the Jepara District Court, which carry out, order to do, participate in mining businesses without being equipped with a mining business permit (IUP), community mining permit (IPR), or mining business permit specifically (IUPK), these acts were committed by the defendants in the following manner:

- That around December 2017 the defendant Agus Irawan Bin Muhamad Nazir met with the defendant Sodikan Bin Sarkan at the house of the defendant Sodikan, then at the meeting discussed the construction of rice fields to the east of the land belonging to the defendant Sodikan, which is making the rice fields required a way out and in ;
- That for the preparation of the road, Defendant Agus Irawan together with Defendant Sodikan agreed to cooperate to carry out mining activities at the Dusun Bego Kel. Damarjati Kec. Kalinyamatan Kab. Jepara;
- Whereas in the case of mining, the defendant Sodikan was the owner of the land/land provider while the defendant Agus Irawan provided the excavator, then since May 14 2018 the landfill mining activity was at the location of Dusun Bego Kel / Desa Damarjati Kec. Kalinyamatan Kab. Jepara is operational;
- Tuesday, May 15 2018 at around 10.30 am witness Alfian F. Numairi, SH Bin Sholikin KM who was a member of the Central Java Regional Police along with the team learned about the landfill mining activities using 1 (one) excavator unit and during interrogation, the defendant Agus Irawan and the defendant Sodikan acknowledges if the mining proceeds are transported outside the mining location for general sale and mining activities without being equipped with an IUP (Mining Business License)

- b) Indictment of the Prosecutor (Public Prosecutor)

The Defendants' actions were regulated and punishable under article 158 in



conjunction with Article 37 of Indonesian Law No. 4 of 2009 concerning Mineral and Coal Mining Jo. Article 55 paragraph (1) 1 of the Criminal Code. The juridical formulation of article 158 of the RI Law No. 4 of 2009 concerning Mineral and Coal Mining is as follows:

"Every person conducting mining business without an 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 punishment. maximum imprisonment of 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah). "

Meanwhile, Article 55 paragraph (1) 1st of the Criminal Code, the formulation of the juridical criminal offence is as follows: (1) Convicted as a criminal: 1. those who do, who command to do, and who participate in doing the deeds "

## 2) Proof of the Case

The panel of judges in proving this illegal mining business case goes through the following stages:

### a) Legal Facts

- That on Monday, May 14 2018, the defendants jointly carried out mining in Dusun Bego Kel. Damarjati Kec. Kalinyamatan Kab. Jepara;
- Whereas those who had the idea to carry out the mining, namely the Defendants were discussing that to carry out the mining, they agreed to be carried out cooperatively;
- Whereas the role of Defendant II was as the owner of the land/location used for the mining of landfill, while the role of Defendant I was as a person who had an excavator that would be used to extract/dredge the landfill;
- Whereas the aim of the Defendants to carry out the mining was that the defendant would make the land an access road in and out of the rice fields located next to the landfill mining location as well as the profits in mining the overfilled land to meet family needs;
- That to mine the landfill Defendant I ordered witness Ahmad Edi Suprayitno Bin Shodiqin to operate the excavator belonging to Defendant, I ordered witness Siswandono Dwi Prakoso Bin Nor Badri who was in charge of ritase registrar;
- Whereas the Defendants gave Ahmad Edi Suprayitno a daily wage of Rp. 100,000, - (one hundred thousand rupiah) and a meal allowance of Rp. 100,000, - (one hundred thousand rupiah), while for witness Siswandono Dwi Prakoso his daily wage was Rp. 60,000, - (sixty thousand rupiah) and a meal allowance of Rp. 50,000, - (fifty thousand rupiah);
- That the defendants sold the landfill per trip for the jumbo truck for Rp. 110,000, - (one hundred and ten thousand rupiah) and normal/standard trucks for e amount of Rp. 70,000, - (seventy thousand rupiah);

- That the backfill mining activity began on Monday, May 14 2018 and working hours started from 07.00 WIB to 16.00 WIB;
  - Whereas the landfill mining activity only lasted 2 (two) days because the mining activity was discovered by a Police Officer from the Central Java Regional Police;
  - That in carrying out the mining activities for the landfill the Defendants received a profit per trip of Rp. 36,000, - (thirty-six thousand rupiah) with details of Defendant II Sodikan Bin Sarkan getting Rp. 6,000, - (six thousand rupiah) per trip, while Defendant I Agus Irawan Bin Muhamad Nazir received Rp. 30,000, - (thirty thousand rupiah) per trip;
  - Whereas the landfill mining activity took place for 2 (two) days. The defendants received a total profit of Rp. 6,720,000, - (six million seven hundred and twenty thousand rupiah);
  - That in mining the landfill, the Defendants did not have an IUP (Mining Business License).
  - That Defendant was sorry and promised not to repeat his actions.
- b) Judge Evidence of Legal Facts

Article of the indictment in the form of a single as regulated in Article 158 of Law No. 4 of 2009 concerning Mineral and Coal Mining Jo. Article 55 paragraph (1) 1st of the Criminal Code, the elements of which are as follows:

- (1) Each person;
- (2) Doing mining business without a mining business permit (IUP), community mining permit (IPR) or special mining business permit (IUPK);
- (3) As Those Who Do, Who Ask To Do, Participate And Do;

Concerning these elements, the Panel of Judges considers the following: Ad. (1) Each person;

The element of each person is a person who is presented by the Public Prosecutor before the trial because he is accused of having committed a criminal act with the identity as described in the indictment to avoid the occurrence of the wrong subject. Whereas in front of the trial two persons, respectively Agus Irawan Bin Muhamad Nasir and Sodikan Bin Sarkan, were questioned by the Panel of Judges against the Defendants and Witnesses with the identities mentioned above as the Defendants. It was not denied in court, the Panel of Judges thought that the elements of each person of the Public Prosecutor's indictment had been fulfilled. Ad.

(2) Doing mining business without a mining business permit (IUP), community mining permit (IPR) or special mining business permit (IUPK); Based on the facts revealed at the trial, it was found that on Monday 14 May 2018 the defendants jointly carried out mining in Dusun Bego Kel. Damarjati Kec. Kalinyamatan Kab. Jepara.

Meanwhile, those who had the idea to carry out the mining were the Defendants who agreed to carry out the mining cooperatively. The role of Defendant II was as the owner of the land/location used for the mining of

the landfill, while the role of Defendant I was as a person who had an excavator that would be used to take/dredge the landfill.

The purpose of the defendants to carry out the mining activities was that the defendant would make the land an access road in and out of the rice fields next to the landfill mining location as well as profits in mining the landfill to meet family needs.

To carry out the mining of the landfill Defendant I ordered witness Ahmad Edi Suprayitno Bin Shodiqin to operate the excavator belonging to Defendant I and ordered witness Siswandono Dwi Prakoso Bin Nor Badri who was in charge of ritase registrar.

The defendants gave witness Ahmad Edi Suprayitno a daily wage of Rp. 100,000,- (one hundred thousand rupiah) and a meal allowance of Rp. 100,000,- (one hundred thousand rupiah), while for witness Siswandono Dwi Prakoso his daily wage was Rp. 60,000,- (sixty thousand rupiah) and a meal allowance of Rp. 50,000,- (fifty thousand rupiah).

The defendants sold the landfill per trip for the jumbo truck for Rp. 110,000,- (one hundred and ten thousand rupiah) and normal/standard trucks for e amount of Rp. 70,000,- (seventy thousand rupiah). The landfill mining activity began on Monday, May 14 2018 and working hours began at 07.00 WIB to 16.00 WIB. The landfill mining activity only lasted 2 (two) days because the mining activity was discovered by the Police Officer from the Central Java Regional Police.

In carrying out the mining activities for the landfill the Defendants received a profit per trip of Rp. 36,000,- (thirty-six thousand rupiah) with details of Defendant II Sodikan Bin Sarkan getting Rp. 6,000,- (six thousand rupiah) per trip, while Defendant I Agus Irawan Bin Muhamad Nazir received Rp. 30,000,- (thirty thousand rupiah) per trip. The landfill mining activity for 2 (two) days The defendants received a total profit of Rp. 6,720,000,- (six million seven hundred and twenty thousand rupiah).

In the mining business, the Defendants as the owner and person in charge of the business were unable to show the Mining Business Permit (IUP), Community Mining Permit (IPR), or Special Mining Business Permit (IUPK) so the officers immediately stopped the mining activities. That business entities or individuals to carry out mining activities must have an IUP (Mining Business Permit) or IPR (People's Mining Permit) and IUPK (Special Mining Business Permit) issued by the competent authority.

Based on the reasons outlined in the above considerations, the Panel of Judges believes that the element of "conducting mining business without a Mining Business Permit (IUP), People's Mining Permit (IPR) or Special Mining Business Permit (IUPK)" was fulfilled in the actions of the Defendants.

Ad. (3) who did, who ordered to do and who participated in the action;

Considering, that in the indictment, the public prosecutor relates it to the provisions of Article 55 paragraph (1) of the Criminal Code which regulates deelneming, wherein the criminal act of inclusion, the perpetrator of the

crime must be more than one person, which is by the content of Article 55. paragraph (1) of the Criminal Code, there are 3 (three) forms of participation, namely:

a. The party who did (plegen);

Where all parties involved in a criminal act fulfil all elements of the articles of the regulation that are violated;

b. The party who ordered to do it (does plegen);

Namely, if someone orders to do it means that someone is ordered to do it, where the person who commits the crime is the one who is ordered to do it. And the party who was told to do it ended up committing a criminal act because he was in a mental illness vide Article 44 of the Criminal Code or in a state of force/overmatch (vide Article 48 of the Criminal Code) or order of office (vide Article 51 of the Criminal Code) so that the criminal act committed by the person who was ordered to commit covered by the basis for the eradication of crime and the consequence is that the party ordered cannot be convicted while the person ordered is convicted.

c. Participate and do (medeplegen);

With the understanding that each party involved in a criminal act does not have to fulfil all the elements of the criminal act committed, but there is a common intention / will among the perpetrators to commit a criminal act and the same intention/will is manifested in the form of active cooperation which because of the role/contribution that determines the / size of the parties involved in the crime, the criminal act occurs;

d. Persuade or recommend doing actions (uitlokker);

Where the party who persuades or recommends the perpetrator uses certain instruments to motivate the perpetrator to commit a criminal act that the perpetrator can still avoid so that both the proponent and the perpetrator can be punished;

From the facts revealed at the trial, it was known that on Monday, May 14 2018 the defendants jointly carried out mining in Dusun Bego Kel. Damarjati Kec. Kalinyamatan Kab. Jepara, which has committed an act as considered in the elements of the previous article, there is a similarity of intention/will between the three of them to commit a criminal act and the same intention/will is manifested in the form of active cooperation due to the role/role that determines the size of the party participate in doing so the criminal act occurs;

Based on the aforementioned considerations, the Defendants were proven to have participated in committing criminal acts as charged by the Public Prosecutor, thus the Panel of Judges thought that the elements that participated in the acts had been fulfilled by the actions of the Defendants.

c) Judge's verdict

- (1) Convicting Defendant I Agus Irawan Bin Muhamad Nasir and Defendant II Sodikan Bin Sarkan are legally and convincingly proven guilty of committing a criminal act of participating in mining business without a Mining Business Permit (IUP), People's Mining Permit (IPR) or Special Mining Business Permit (IUPK);
- (2) Therefore, the punishment imposed on Defendant I and Defendant II is subject to imprisonment for 1 (one) month and 15 (fifteen) days respectively and a fine of Rp1,000,000.00 (one million rupiah) respectively. the provision that if the fine is not paid, the Defendants must serve a 1 (one) month imprisonment each;
- (3) To determine the period of arrest and detention that the Defendants have served, fully deducted from the sentence imposed;
- (4) Determine that the Defendants remain detained;
- (5) Determine evidence in the form of:
  - 1 (one) unit of Orange Hitachi Brand Excavator. Returned to the defendant Agus Irawan Bin Muhamad Nazir;
  - 1 (one) plastic bag containing landfill and 1 (one) ritase notebook. Seized to be destroyed;
  - Money from sales amounting to Rp1,620,000.00 (one million six hundred and twenty thousand rupiah). Deprived for the State;
- (6) Charge the Defendants to pay each case fee of IDR 5,000.00 (five thousand rupiah)

Analysis of Judges' Considerations in Decision Number 237 / Pid.Sus / 2018 / PN Jpa. The panel of judges in proving the decision Number 237 / Pid. Sus / 2018 / PN Jpa., Went through several stages before deciding on cases of illegal mining business. The process and consideration of the panel of judges according to the author's analysis, through several levels of consideration as follows:

- a) Evidence in the legality principle of the illegal mining business crime  
The principle of legality in criminal law is known to originate from the doctrine of *nullum dictum nulla poena sine praevia lege penal*, there is no crime and no crime without being previously stipulated in the law. In their consideration, the panel of judges is based on legal facts and examination of evidence, the testimony of witnesses and defendants. Then prove each element accused by the prosecutor in a series of examinations of evidence, witness testimony and experts. The juridical formulation of article 158 of the Minerba Law and Article 55 paragraph (1) 1 of the Criminal Code are formulations of offences that are proven during the trial. The two articles consist of 3 (three) elements which include: Elements of every person, elements of conducting mining business without a Mining Business Permit (IUP), People's Mining Permit (IPR) or Special Mining Business Permit (IUPK) and elements that carry out,  
Based on the evidence during the trial, the panel of judges believed that all of these elements were fulfilled. So that the criminal act accused is proven and meets the legality principle.
- b) Evidence in the principle of culpability of illegal mining business crimes

The author analyzes the principle of culpability (Schuld / guilt/men's rea) or a term in criminal law called the principle of error, which explains that "... problems of error or criminal responsibility (including the principle of no crime without error; the principle of culpability, no liability without blameworthiness; afwezigheids van all Schuld-AVAS; liability due to / erfolgshaftung; error/error; corporate responsibility). "

Thus, based on the facts in the trial of the illegal mining business case above, it can be seen that "... the idea to undertake the mining, namely that the Defendants discussed the mining activities were agreed to be carried out cooperatively. The role of Defendant II was as the owner of the land/location used for the mining of the landfill, while the role of Defendant I was as a person who had an excavator that would be used to extract/dredge the landfill. " This data shows that the defendant's initial intention was to cooperate in the illegal mining of landfills. The role that was functioned by each defendant was stated in legal facts, namely Defendant I was the party who had an excavator to dredge land while Defendant II was the owner of illegally mined land.

The purpose of their actions as described in the facts of the trial as follows: "The purpose of the defendants to carry out the mining activities, namely that the defendant would make the land an access road in and out of the rice fields next to the location where the landfill was mined and the profit in mining the landfill to meet the needs of the family."

In the author's opinion, this legal fact shows that the intention of the illegal landfill mining business was perfect when the mental condition of the defendant intended to mine the landfill and the purpose or result of the mining was explained through the defendants' objectives, namely the landfill that was mined would be used as an access road in and out of the rice fields and the benefits of mining the land to meet family needs. Thus, the element of the defendant's guilt was clear that the intention to mine the landfill was accompanied by an economic objective resulting from the mining, namely economic gain.

c) Analysis of the results of the decision of the Panel of Judges

The panel of judges was successful in believing that the legal construction of the illegal landfill mining business was through proving the elements of offences in the legality principle in article 158 of the Minerba Law and Article 55 paragraph (1) 1st of the Criminal Code. A series of pieces of evidence in the examination of illegal mining business cases also succeeded in convincing the panel of judges of the principle of culpability, so the results of the judge's decision were as follows:

- Elements of Actions of the Defendant

Doing mining business without permits either IUP (Mining Business Permit), IPR (People's Mining Permit) or IUPK (Special Mining Business Permit).

The basis for the decision is based on the legality principle of article 158 of the Minerba Law. Whereas the addition of another principle against formal law, namely that there is a similarity of intent / will among the perpetrators to commit a criminal act and the same intention/will is manifested in the form of active cooperation which because of the role/role that determines

/ the size of the parties who participate in doing so occurs. the criminal act (formulated in the principle of legality of Article 55 paragraph (1) 1 of the Criminal Code). So that the defendant's criminal act imposed by the panel of judges was "the criminal act of participating in carrying out mining businesses without a Mining Business Permit (IUP), People's Mining Permit (IPR) or Special Mining Business Permit (IUPK)"

- Criminal Qualifications

In its decision, the panel of judges sentenced the defendant as follows:

"Imprisonment for 1 (one) month and 15 (fifteen) days respectively and a fine of Rp1,000,000.00 (one million rupiah) each on the condition that if the fine is not paid, the Defendants must undergo criminal penalties. confinement each for 1 (one) month "

If the writer analyzes this imprisonment sentence, it is much lighter than the maximum sentence formulated in article 158 of the Minerba Law, namely "... shall be sentenced to imprisonment of a maximum of 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiah) ".

Based on the verdict of the panel of judges, the court verdict examining the illegal mining business case of the landfill in Jepara Regency was imprisoned (1.5 months) and a fine (one million rupiah) for each defendant. Provided that the determination of the period of arrest and detention that has been served by the Defendants is reduced in full from the sentence imposed. Money from the sale of landfills (proceeds from illegal mining operations) was confiscated by the state.

## 2. Obstacles to Law Enforcement of Criminal Law in Current Illegal Mining Businesses and Efforts to Improve Criminal Law Enforcement of Mining Businesses in the Future

The author is based on the case study decision Number 237 / Pid.Sus / 2018 / PN Jpa. explained that the current problem of the illegal mining business and improvement of law enforcement in the future, conducted an analytical approach based on the legal system developed by M. Lawrence Friedman, namely that the legal system consists of:

a. Subsystem Legal Substance (Legal Substance); b. Subsystem Legal Structure; c. Subsystem Legal Culture (Legal Culture).

### a) Constraints to Criminal Law Enforcement in Current Illegal Mining Businesses

The information that the researchers collected from the three perspectives developed by M. Lawrence Friedman can be explained as follows:

The criminal law system can also be seen from the point of view of the criminal law enforcement system or the criminal system, which can be explained as follows:

- i. From a functional point of view the criminal law system can be interpreted as:
  - The whole system (laws and regulations) for the functionalization/concretization of criminal law;
  - The entire system (laws and regulations) regulates how criminal law is enforced or operationalized concretely so that a person is subject to

criminal law sanctions.

With this definition, the criminal law system is identical to the criminal law enforcement system which consists of a criminal law sub-system, both material, formal, and criminal law enforcement sub-systems. The three sub-systems constitute an integrated criminal law enforcement system or criminal system because criminal law can't be operationalized or enforced concretely with only one of these subsystems. The definition of such a criminal law system or punishment can be called a criminal law system or functional punishment.

- ii. From the point of view of the substantive norms of the criminal law system of punishment can be interpreted as:
  - The entire system of rules/norms of material criminal law for punishment; or
  - The entire system of rules/norms of material criminal law for the giving or imposition and execution of crimes.

In addition, the view of Lawrence M. Friedman explains that:

every legal system always contains three components, namely the legal structure component, legal substance, and legal culture. A legal system in actual operation is a complex organism in which structure, substance, and culture interact. " This means that the legal system in reality is difficult to implement in various organizations which will affect the structure, substance and culture.

The explanation of the above components is as follows:

- a. Structural components (legal structure) of a legal system include various institutions created by the legal system with various functions in supporting the operation of the system. One of these institutions is the court. Regarding this, Friedman wrote, "First many features of a working legal system can be called structural - the moving part, so to speak of the machine. Courts are simple and obvious example ... ". This means that one form of the legal system operation can be called a structure that is part of the court mechanism. The court is a real and simple example.
- b. Legal substance component (legal substance), Friedman stated as "... the actual product of the legal system". According to him, the definition of legal substance includes legal rules, including unwritten legal principles.
- c. Legal culture component (legal culture). Before explaining further about legal culture, structure and substance are often referred to as legal systems. Legal culture by Friedman is defined as... "attitudes and values that are related to law and legal system, together with those attitudes and values affecting behaviour related to law and its institutions, either positively or negatively. That is attitudes and values that have to do with law or the legal system, along with attitudes and values that influence behaviour related to law and legal institutions, both positive and negative.



In connection with the landfill mining business case in Jepara Regency which is the author's study, the discussion in the sub-chapter of constraints and efforts to improve law enforcement in the future is based on the analysis knife of the three legal subsystems, namely legal substance, legal structure and legal culture.

The author's study of a legal substance refers to the Minerva Law as a legal norm that underlies the illegal mining business. The author has discussed the criminal law policy scheme in the Minerba Law in the previous sub-chapter. Meanwhile, in the discussion of the legal substance perspective in this subchapter, the researcher focuses on the implementation of the law (legal substance) in case studies of law enforcement in illegal mining businesses.

As for the legal structure perspective, the authors explain and analyze the due process system in law enforcement of illegal mining businesses, starting from the upstream of the case, namely investigations by the police, prosecution by prosecutors and court decisions by the panel of judges.

Meanwhile, from the perspective of legal culture, the author digs deeper into the legal culture both in the community and law enforcement officials related to mining without permits or illegally.

The first study of the illegal landfill mining business is seen from the perspective of legal substance. In this analysis, the authors depart from the legal scheme decision Number 237 / Pid.Sus / 2018 / PN Jpa. The panel of judges decided that the defendant was proven to have committed "a criminal act of participating in carrying out mining businesses without a Mining Business Permit (IUP), a People's Mining Permit (IPR) or a Special Mining Business Permit (IUPK)".

This decision, according to the author's analysis, proves that the legal norms or juridical formulations in article 158 of the Minerba Law, can become the legality principle for illegal mining business offences. The legal substance in this article 158 legal norms simultaneously corresponds to the case of the landfill mining business in Jepara Regency which is organized in such a way that the perpetrator of the crime is not only committed alone but in an organized manner. It is proven that the criminal article charged against the perpetrator is not only article 158 of the Minerba Law but Article 55 paragraph (1) 1st of the Criminal Code as well.

The facts of the trial show that the legal substance in the criminal case of an illegal mining business contains the context of a case which does not necessarily become rigid in its legalistic aspects. Article 158 of the Minerba Law which is qualified as an administrative crime directs law enforcers to find the right legal construction, following the *ultimum remedium* principle of the Minerba Law. Considering that the defendant's evidence and actions were quite clear in violating the administrative law provisions of the Minerba Law in every mining business, the defendant even recognized that the mining business activity was without a mining business permit (IUP), the panel of judges easily believed that the defendant's actions were legality principle by article 158 of the Minerba Law. The principle of culpability (element of error) examined by the panel of judges,

The legal substance aspect which is the basis for the criminal offence of carrying out a mining business without a permit or illegally is sufficient as a juridical guideline

because it contains two subsystems in the crime, namely proven criminal action (legality principle) and an element of error (culpability principle).

Meanwhile, from the perspective of the legal structure, it can be seen that from the facts of the investigation of illegal mining in Jepara Regency, it started with the Central Java Regional Police Criminal Investigation Unit operations related to special crimes against the environment.

A series of stages in the legal structure of the illegal landfill mining case in Jepara Regency, according to the author's study, found several legal perspectives as follows:

- a) Constraints in law enforcement in the case of landfill mining in perspective legal structure lies in the coordination mechanism between law enforcement agencies related to crimes against the environment including illegal mining of landfills. In the division of law enforcement work functions, the ESDM (Energy and Mineral Resources) Agency has PPNS (Civil Servant Investigators) but in the case that the author examines, the fact is that the case started with the routine operations of the Central Java Regional Police. This reality is sufficient to prove that the roles and coordination between institutions are still insufficient in harmonizing illegal mining law enforcement.
- b) Crimes against the environment, it seems that the way law enforcement officials work is not optimal. This is evident in the existence of a consolidated mining crime without a permit, in the form of an organization of landfill mining carried out by residents. The structure of the workings of landfill miners, through the division of tasks and roles, shows that evil intentions (men's *rea*) the miner has not considered the damage that will be caused by mining activities. Once again, this evidence shows that the span of control of law enforcement officials related to environmental crimes is still far from perfect. Because the cases studied by the researchers indicated that "only" was caused by routine operations, this mining case without a permit was accidentally caught in the act.

Turning to the legal culture perspective, in mining landfills without permits (illegal), the author divides it into two studies, namely the view from an internal and external legal culture perspective. What I mean by internal legal culture is the domain of law enforcement carried out by law enforcement officials such as the Police, the Attorney General's Office and the Panel of Judges (Courts). Meanwhile, the external legal culture study includes the values and attitudes of the community regarding illegal mining.

The first point of view (Legal Culture internally), shows the formality of prosecuting crimes against the environment. This means that criminal activities that have a broad impact on the existence of society, both in the social economy and culture, are still emphasized in a repressive nature rather than preventive (prevention). This internal legal culture prolongs education for the community on the importance of preserving nature. Thus, it has an impact on the public's perspective, in this case, namely, as long as there is no enforcement operation, mining without a permit is legal.

Meanwhile, in the perspective of the External Legal Culture, it was based on the facts of the trial which showed that the mining activities without the defendant's

permission stemmed from economic problems. As in the data as follows:

"The aim of the defendants to carry out the mining activities was that the defendant would make the land an access road in and out of the rice fields next to the landfill mining location and the profits from mining the landfill to meet family needs."

This description of the objectives of the mining of illegal landfills shows clearly that it was economic factors that were dominant in the values held by the defendant. So that the value of environmental sustainability, which if damaged brings disaster to the community, is neglected due to economic elements alone. Because economic considerations are more important in the eyes of the defendant, social and cultural factors related to environmental management are the last. The social costs and values of the community affected by environmental damage are at greater stake than the income the defendant earned in the criminal act of mining without a permit.

In simpler terms, the current law enforcement subsections and future improvements in law enforcement related to illegal mining can be summarized as follows:

- a) The obstacle to law enforcement of illegal mining at this time, from the perspective of the Legal Substance (Legal Substance) is sufficient in ensnaring mining crimes without a permit. The administrative criminal qualification carried by the Minerba Law is proven to be by the legality principle (Article 158 of the Minerba Law). This can be seen from the consistency of the articles that are suspected and charged against both the suspect and the accused which leads to the verdict of the panel of judges using the same article, namely Article 158 of the Minerba Law. The defendant's culpability (error) principle is easily proven through trial facts.

The legal structure states that the law enforcement of illegal mining, through the due process system adopted by our rule of law. Namely investigations by the police, prosecution by the Attorney General's Office and case examinations through the court (Panel of Judges). This perspective is constrained by the lack of responsiveness of the role of PPNS ESDM (Civil Servant Investigator of Energy and Mineral Resources) in prosecuting crimes against the environment, especially mining without permits. Among investigators, it is a classic problem in law enforcement of mining without permits. The role of PPNS ESDM should be more dominant considering the main duties and functions of the mineral resources institution.

Legal Culture Perspective (Legal Culture), is divided into two studies, namely internal and external. Internal law enforcement studies (related to the culture of law enforcement officials) show that there is still a need for routine operations from the Central Java Police Criminal Investigation Unit in activities caught in the hands of illegal mining (without a permit). So without the intensity of routine operations against environmental crimes, the existence of mining crimes without a license purely relies on public reports or the emergence of impacts on environmental damage in the form of floods or landslides. Thus, the problem of this internal Legal Culture is continuous supervision through the operation of compliance with the Minerba Law.

As for the perspective of External Legal Culture (values and attitudes of

society), it shows that economic values are more dominant than environmental values which are more sustainable. The impact is deterioration and silting of the people's perspective on the primacy of environmental values. In detail, for the sake of a mouthful of rice, the people (especially the defendants) have the heart to destroy environmental values. Law enforcement which contains the return to the main values (norms regulated in the Minerba Law), faces challenges and threats in the form of illegal mining community behaviour which for economic reasons destroys other dimensions, namely social and cultural environmental preservation.

- b) The author can formulate the future law enforcement related to illegal mining as follows:
- i. Dimensions Legal Substance(Legal Substance), to effectively enforce the law of illegal mining, the trawl article, namely article 158 of the Minerba Law, needs to be improved through the addition of a permitted facility in the form of SIPB (Rock Mining Permit). The argument behind the addition of this new permit facility is the permission granted to carry out rock mining business activities for certain purposes and certain types. Thus the different types of permits in Article 158 are Mining Business Permits (IUP), Special Mining Business Permits (IUPK), Community Mining Permits (IPR) and SIPB. Thus, the scope of the licensing law by the government becomes complete to protect environmental sustainability for the livelihood of many people.
  - ii. The dimension of the legal structure related to law enforcement officials in the future, the criminal act of illegal mining is the coordination between investigators from both PPNS (Civil Servant Investigators) and the Police. Provision of a more dominant portion of prevention as in principleultimum remedium can be played actively by PPNS in the Ministry of Energy and Mineral Resources (Energy and Mineral Resources). However, as is related to the legal culture (legal awareness) of our society, as social therapy, law enforcement also requires the role of the police, because the mindset of police investigators is better known to the public. So criminality, in the legal awareness of the community, plays a role in the police (Reskrimsus Polda).
  - iii. Dimensions Legal Culture(Legal culture), consists of two divisions, namely internal and external. In the future, law enforcement of illegal mining internally. Legal Culture (values and attitudes of law enforcers) is consistent in seeing the juridical formulation (Minerba Law) in the alleged and accused articles. So that our due process legal system can respond more effectively and efficiently in handling illegal mining cases. For this reason, coordination is needed from the very beginning of legal action against illegal mining, namely coordination between police investigators and PPNS (Civil Servant Investigators). Whereas in the external part of Legal Culture (community values and legal awareness), a system of socialization management is needed, which mainly concerns environmental values rather than just a momentary economic value system and not necessarily economic. Because it is much more expensive for environmental sustainability to be passed on to our children and grandchildren. Instead of deviations or disgraceful actions destroying

environmental values for a bite of rice. This means that more jobs can bring in money without destroying the environment.

#### D. CONCLUSIONS

The criminal law policy stipulated in Law of the Republic of Indonesia No. 4 of 2009 concerning Mineral and Coal Mining, is based on benefit, justice and balance. Apart from that, the principles of taking sides with the interests of the nation, participation, transparency and accountability. The next principle is sustainable and environmentally sound. The goal is to ensure legal certainty in the implementation of mineral and coal mining business activities. Criminal law norms in the Minerba Law are regulated in eight articles and qualify for administrative crimes. Penal threats include imprisonment and fines. Law enforcement of illegal mining business according to Law of the Republic of Indonesia No. 4 of 2009 concerning Mineral and Coal Mining, refers to the due process system, namely investigations by the Police, prosecution by the Prosecutor's Office and examination in court by the Panel of Judges. The framework of this system depends on the upstream process, namely investigations that can be more optimal through coordination between Police investigators and Civil Servant Investigators (PPNS) of the Ministry of Energy and Mineral Resources (Energy and Mineral

Resources). The legality aspect is guided by the legal norms stipulated in article 158 of the Minerba Law, and the culpability aspect (error) refers to the evidence in court examination by a panel of judges. Constraints to law enforcement of illegal mining businesses at this time in the legal system with a Legal Substance dimension in the form of equalizing all mining activities (both small and large scale) in the form of Mining Business Permits (IUP), Special Mining Business Permits and Community Mining Permits. This makes it difficult to take the legal norm if it is carried out by special mining such as a landfill. The legal structure dimension is constrained by the early initiation of routine operations which require a large number of funds to hold hand catching operations during operations. Meanwhile, the legal culture dimension has obstacles both internally (law enforcers) and externally (society). The internal section of Legal Culture leaves behind coordination problems between investigators, both the Police and PPNS. Efforts to improve law enforcement of illegal mining businesses that will come in the legal substance dimension require a new juridical formulation, namely a Rock Mining Permit (SIPB), to provide effective legal certainty for mining communities (landfill). The legal structure dimension is necessary to improve the consistency of the legality aspects in the Minerba Law, namely the application of Article 158, both at the stage of the investigation, prosecution, and examination in court. The legal culture dimension requires solid coordination between police investigators and ESDM, to promote prevention by the principle of *ultimum remedium*. Education on environmental sustainability values is much more important than just economic values regarding mining communities. The authors suggest, that considering that the legal policies regulated in the Minerba Law see the overall mining activity, special rules are needed to facilitate law enforcement. For example, differentiating licensing policies (administrative law) for small-scale and large-scale miners. So that person who has an interest in managing licensing is facilitated by a bureaucratic system clean and clear. Another impact is educating the public to order permits to carry out mining activities. Thus, it does not create a mindset in the community that it is better not to have a permit than to have difficulty managing mining permits. Coordination between agencies and investigators is an important keyword in efforts to enforce

the law on illegal mining because the upstream due process system lies in the input system, namely the routine operation of prosecuting crimes against the environment. Breaking the value chain, people's attitudes and behaviour (Legal Culture) in illegal mining, there needs to be continuous synergy between parties in the governance domain (government, ESDM sector) and the community as custodians of community values. This means that the legal awareness of the community regarding illegal mining needs to be strengthened both in quality and quantity. Qualitatively, by strengthening the public mindset about the impact of environmental damage. Quantitatively, it explains to the community how much the environmental cost loss is compared to the economic cost of the family alone.

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