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Criminal Policy Mining Criminal Countermeasures Efforts

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Abstract

Mining business governance in the mining criminal dimension will always face challenges in overcoming mining crimes that occur. The complexity of mining business governance has an impact on rational action in overcoming mining crimes through criminal policies. One of the questions posed as an important issue is how rational efforts are made within the framework of criminal policies in tackling mining crimes. Such questions are then studied and analyzed conceptually by building an integral thinking construction, and methodologically, analysis will be carried out through normative legal research methods, where the data source is only secondary data, consisting of primary legal materials, secondary legal materials and tertiary legal materials. The results showed that mining crime tackling rationally carried out integrally in the perspective of criminal policy through penal means determined by (formulation stage, application stage, and execution stage) and non-penal means become a mining crime prevention strategy with primary prevention and secondary prevention models.

Key word; Criminal, Rational, Mining Crime Policy, Countermeasures, Prevention.

Abstrak

Tata kelola usaha pertambangan dalam dimensi pidana pertambangan akan selalu menghadapi tantangan penanggulangan terhadap kejahatan tambang yang terjadi. Kompleksitas tata kelola usaha pertambangan, berdampak pada tindakan rasional dalam penanggulangan pidana pertambangan melalui kebijakan kriminal. Salah satu pertanyaan yang diajukan sebagai masalah penting ialah bagaimana upaya rasional itu dilakukan dalam kerangka kebijakan kriminal dalam menanggulangi pidana pertambangan. Pertanyaan demikian selanjutnya dikaji dan dianalisis secara konseptual dengan membangun konstruksi berfikir yang integral, dan secara metodologi akan dilakukan analisis melalui metode penelitian hukum normatif, di mana sumber data hanya data sekunder, yang terdiri dari bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Hasil penelitian menunjukkan, penanggulangan pidana pertambangan secara rasional dilakukan secara integral dalam perspektif kebijakan kriminal melalui sarana penal ditentukan oleh (tahap formulasi, tahap aplikasi, dan tahap eksekusi) dan juga

sarana non-penal menjadi strategi pencegahan pidana pertambangan dengan model pencegahan primer dan pencegahan sekunder.

Kata kunci: Kebijakan Kriminal, Rasional, Pidana Pertambangan, Penanggulangan, Pencegahan.

Preliminary

As an introduction, how important it is to put forward Michel Foucault's opinion as quoted by Tania Murray Li "to organize not to achieve a single dogmatic goal, but to achieve a specific set of outcomes." Efforts are continuing to be made to balance all types of relationships between "humans and all their sources of living". Various "outcomes" can be incompatible with one another, result in interventions that are also conflicting with one another, or even completely contradictory.¹

Legal arrangements in the field of mining governance, such as licensing law, corporate law, environmental law, administrative law, and including criminal law, are expected guidelines for mining governance management to take into account various aspects, among others; carrying capacity of natural resources, environmental sustainability, local wisdom, and social and economic welfare of the community.

The law, which previously had the will to regulate and provide direction for mining governance behavior, in the social field the series of laws were calculated in such a way with various variants of these aspects. Even the operation of criminal law in society, does not only deal with the technique of formulating elements of a crime against a certain act, which then determines the qualifications of the criminal penalty. It may be that what should be (criminal law) is not directly proportional to the real reality (mining governance complexities).

This fact is something that is difficult to avoid, for criminal law academics, law enforcers, and central and local government officials. The complexity of

²¹ Tania Murray Li, 2012, *The Will To Improve "Perencanaan, Kekuasaan, dan Pembangunan di Indonesia"*, 2012, Jakarta, Marjin Kiri, hlm 18

mining governance, in fact, in the context of overcoming mining crimes experiences contradictions and dilemmas.

Several researchers have written this, including Ahmad Redi in his conclusion, he stated that the dilemma of law enforcement on PETI (Mining Without Permits) is crucial for the operation of mining business activities considering that PETI activities are categorized as criminal acts as regulated in Article 158 and Article 160 The act of Coal and Mineral. However, PETI activities are related to the lives of destitute people who carry out mining businesses to meet their daily needs.²

Danny Z. Herman in his writing entitled "Mining Without Permits (PETI) and the Possibility of Transferring Status to Small Scale Mining" once reported the reasons for the development of PETI. He stated that there are several factors that are likely to affect the growth of PETI, one of which is that the business ¹has been going on for a long time from generation to generation, thus giving rise to the view that mining land is a legacy that does not require a business license; and the business capital is relatively small, so mining is carried out in a simple / traditional manner without using high-tech equipment.³

In Derita Prapti Rahayu's research, she said the phenomenon of unconventional tin miners (TI) in Bangka Belitung Islands Province shows the fact that legal norms governing general mining management, especially in terms of community mining permits or better known as unconventional mining (TI) cannot work as should be. Unconventional tin miners (TI) do not carry out licensing requirements if they want to carry out mining, causing environmental damage, on the other hand it turns out that the permit issuer, in this case the Mining Department, only accepts the mining permit application if it is already in the form of a Business Entity or CV, if only individuals do not accept. This is of course very difficult for small people who want to mine because of their ignorance

² Ahmad Redi, "Dilema Penegakan Hukum Penambangan Mineral dan Batu Bara Tanpa Izin Pada Pertambangan Skala Kecil (Dilemma Of Law Inforcement in Small Scale Illegal Mining)", *Jurnal Rechtsvinding*, Volume 5, Nomor 3, Desember 2016, hlm 418

³ Ade Adhari, "Kebijakan Kriminal dalam Mencegah dan Menanggulangi Tindak Pidana Penambangan Tanpa Izin Di Indonesia", *Jurnal Bina Hukum Lingkungan*, Volume 2, Nomor 1, Oktober 2017, hlm 114

of the business entity, and from an economic point of view they do not have the money to create a business entity even though they have to meet their basic needs resulting from mining..⁴

With these considerations, most miners are unable to make permits so they mine without having a permit. This then triggered mining activities to be carried out without obtaining a permit. In the end, unconventional miners (TI) can be said to have committed a mining crime, or at least violated the provisions of regional regulations. The complexity and dilemma of mining governance in the field of mining criminal law enforcement implies that criminal law researchers and law enforcers need to recall lessons on the basics of criminal law. In this case, it must be remembered and understood carefully what has been said by a criminal law scientist, namely Sudarto, that law is a normative social science (normative *maatschappij wetenschap*), normative science about human relations. In this regard, studying law (law science) cannot be separated from studying human behavior in society (behavioral sciences) and social sciences. A law degree must be able to integrate a juridical and social science approach.⁵

The understanding that has been conveyed by Sudarto, has provided an initial description of the important elements of the formulation of the definition of criminal law defined by his student Barda Nawawi Arief, in essence, criminal law is a normative social science. There is a balance between the normative and social aspects of the understanding of criminal law.

When connected with the complexity and dilemma of mining criminal law enforcement, it is not wrong if the normative application of criminal provisions in the The act of Coal and Mineral will closely intersect with the dynamics of the community. Meanwhile, the social behavior of the community cannot be seen with only normative standards, because the behavior of mining governance will be greatly influenced by economic, social, cultural and local wisdom factors. That

⁴ Derita Prapti Rahayu, "Budaya Hukum Penambang Timah Inkonsvensional (TI) Terhadap Mekanisme Perizinan Berdasar Peraturan Daerah Pengelolaan Pertambangan Umum Di Propinsi Kepulauan Bangka Belitung", *Jurnal Masalah-Masalah Hukum*, Jilid 41, No. 4, Oktober, 2012, hlm. 501

⁵ Sudarto, 2009, *Hukum Pidana 1 Edisi Revisi*, Semarang, Yayasan Sudarto Fakultas Hukum Universitas Diponegoro, Cet. Ketiga, hlm 2

way, it will become a problem if mining criminal law enforcement is solely carried out partially and not integrally based on criminal policies.

Overcoming mining crimes, will not be as easy as overcoming crimes such as persecution, theft, fraud, and other common crimes. Overcoming mining governance with a criminal dimension must be carried out with a policy approach. Criminal policy standardization directs itself to be an inseparable part of social policy with the spirit that society is the subject of social protection policy, whose end result is expected to create welfare for the community. Moreover, overcoming mining crimes carried out in a criminal policy approach is an approach that must be carried out rationally.

The characteristic of a rational criminal policy is none other than the application of rational methods. According to Hoefnagels, a rational criminal policy, otherwise it is not in accordance with its definition as the rational root of the total response to crime. In addition, this is important because conceptions of crime and power or the process of criminalizing are often emotionally defined.⁶

The criminal policy that is charged with tackling mining crimes rationally does not rule out the possibility of overcoming it involving non-criminal instruments or means. Thus, criminal policy is a policy to determine the choice of penal and non-penal means with the provision of normative and social science.

Penal means allow law enforcers to involve repressive actions and are accompanied by the foundation of normative science of criminal law. On the other hand, the non-penal suggestion calls for a criminal law enforcement situation that is fostered and developed in a preventive atmosphere in order to better understand the root causes of the crime that occurred and accompanied by remedial actions. Non-penal means will be a good coping method, if you understand social science.

That is why it is so important to tackle mining crimes through criminal policies. The tendency of normative criminal law science does not provide space for the discourse of social science, more importantly, the philosophical issue of mining governance, namely ecological justice. Therefore, the criminal policy of tackling crimes in an integral way, it will be very clear that mining crimes will be

⁶ Faisal, 2020, *Politik Hukum Pidana*, Yogyakarta, Thafa Media, hlm 69

reviewed with the approach of penal means (criminal instruments / normative criminal law) and non-penal means (instruments other than criminal / social science).

Formulation of the problems

The formulation of the problems presented in this study will be the focus of the discussion of overcoming mining crimes through criminal policies. The formulation of the problem presented is what is the rational effort to tackle mining crimes through criminal policies?

Research Purpose

The purpose of this research is oriented towards theoretical benefit in terms of providing conceptual answers regarding the approach to tackling mining crimes carried out through a criminal policy framework. Thus, these theoretical benefits can be useful for purposes from a functional point of view (practical benefits) to be operationalized / enforced in a concrete manner in upholding mining crimes.

Research Methods

This research¹⁷ is a normative legal research. Therefore, in normative legal research⁸, the data source is only secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. The data used are¹⁵ secondary data obtained through literature studies and documents derived from primary legal materials and secondary legal materials. The data source comes from primary legal materials, namely Law Number 3 of 2020 concerning Amendments⁶ to Law Number 4 of 2009 concerning Mineral and Coal Mining. Secondary legal materials are²⁰ obtained from literature studies and documents covering all legal research related to the legal issues under study in the form of doctrine and research results in the form of books and electronic scientific journals.

Discussion

Mining Crime Handling Through Rational Efforts to Criminal Policy Mining activities, regardless of their form, cannot be separated from environmental problems, because in essence mining means changing the natural order. When and wherever mining activities are carried out, they will be in direct contact with environmental destruction.

However, it must still be considered in mining exploitation regarding environmental aspects of sustainability, so as to create a sustainable society which Capra calls ecoliteracy, as a condition in which people understand ecological principles and live according to the principles. environment in organizing life with mankind on earth. Basically, ecoliteracy invites us to take advantage of the natural environment in accordance with environmental policies, namely local wisdom related to environmental management.

Mining is one of the sectors that still supports the country's economy. The country's abundant natural resources have made mining the prima donna of almost all regions, especially those with natural wealth in the form of mining products.

This is supported by the Regional Original Opinion (PAD) of several regions from the mining sector which is still quite high. Besides that, it is undeniable that mining business activities cause environmental changes. This means that economically mining provides benefits, on the other hand mining also presents problems in the living environment..⁷

Mining crimes are rife, it is an open secret. These crimes include mining without permits, manipulation during the exploration and exploitation stages, and so on. Problems that arise because mining without a permit characteristically does not comply with good mining practices, causing excesses such as environmental pollution.⁸

⁷ Dwi Haryadi, dkk, "Implementasi tanggung Jawab Reklamasi Pertambangan Timah di Pulau Belitung", *Jurnal Hukum Progresif*, Volume XII, Nomor 2, Desember 2018, hlm 2083-2084

⁸Ade Adhari, dkk, "Kebijakan Hukum Pidana Terhadap Tindak Pidana di Bidang Pertambangan Mineral dan Batu Bara dalam Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral dan Batu Bara", *Jurnal Diponegoro Law Review*, Volume 1, Nomor 2, 2013, hlm 3

In general, the The act of Coal and Mineral recognizes several mining business licensing schemes. There are at least nine forms of permits recognized by Article 35 of the The act of Coal and Mineral, namely IUP, IUPK, IUPK as a Continuation of Contract / Agreement Operations, IPR, SIPB, assignment permits, Transport and Sales Permits, IUJP, and mining license (IUP) for Sales.

If this licensing administration is not fulfilled and carried out according to the applicable provisions, then it will be included in the criminal qualification related to licensing in the scope of administration. Even though it is administrative in nature, the criminal provisions formulated are quite severe in the act of Minerba, namely the threat of 5 years in prison and a fine of 100 billion rupiahs, if carrying out mining activities without obtaining a permit as referred to in Article 35 of the act of Minerba.

Referring to the understanding which basically believes that the The act of Coal and Mineral is part of administrative criminal law. So it is also natural to put forward the view according to Barda Nawawi Arief that administrative criminal law is essentially a manifestation of criminal law policy as a means of enforcing / implementing administrative law. So, it is a form of "functionalization of the operationalization / instrumentalization of criminal law in the field of administrative law". In essence, it is an embodiment of criminal law politics as a tool to enforce administrative law norms.⁹

Likewise with law enforcement in the mining sector, law enforcement officials often find it difficult to separate the concepts of administrative law, civil law and criminal law in mining cases. The issuance of the The act of Coal and Mineral with the act of Environmental Protection and Management (PPLH) is undeniable, and should be observed by all mining business actors.¹⁰

Since the issuance of the act of 2009 PPLH which replaced the 1997 PPLH Law, the function as the main law of umbrella provisions is attached to the PPLH

⁹ Untung Setiyahadi dan Sukarmi, "Kebijakan Hukum Pidana Terhadap Tindak Pidana Pertambangan Mineral Dan Batubara (Study Kasus Normalisasi Kali Bebung Kabupaten Magelang)", *Jurnal Hukum Khaira Ummah*, Vol. 12. No. 2 Juni 2017, hlm 322

¹⁰ Maizardi dan Ebit Bimas Saputra, "Penegakan Hukum Terhadap Tindak Pidana Pertambangan Batuan Non Logam Pada Tanah Hak Milik Masyarakat (Studi Pada Satreskrim Polres Kerinci)" *Jurnal Unes Law Review* Volume 1, Nomor 1, September 2018, hlm 71

2009 Law. The 2009 PPLH Law brings about fundamental changes in environmental management arrangements in Indonesia.

First, to formulate a criminal act as an action that results in exceeding ambient air quality standards, water quality standards, sea water quality standards, or environmental damage standard criteria. Second, formulating the minimum and maximum penalties. Third, regulate convictions for violations of quality standards, expand evidence, integrate criminal law enforcement, and regulate corporate crime..¹¹

The spread of crime in the mining sector has become a separate challenge for criminal law enforcement which refers to the substantive criminal law norms in the Coal Mineral Law and the PPLH Law

. Can be interpreted here is part of the overall norms of material and formal criminal law. In other words, a norm that regulates acts that qualify for mining crimes, and norms that regulate the implementation of crimes against such material criminal law norms. Criminalization efforts (mining penalties; from the author) do not stop with the stipulation of an act as prohibited. This is because it will bring consequences in which the use of criminal law must also pay attention to the capacity of the capacity and work power of law enforcement agencies, namely that there should be no overstatement or overbelasting..¹²

There is an opinion that states that criminal law has limited ability to tackle crime, as was conveyed by Sudarto, that the use of criminal law is a remedy for a symptom of curricularly and not a solution by eliminating the causes.

So, the limitations of the capacity of criminal law so far are also caused by the nature / nature and function of criminal law itself. So far, criminal (legal) sanctions are not a remedy (remedium) to overcome the causes (sources) of disease, but simply to overcome the symptoms / consequences of the disease so that other efforts must be made to tackle crimes.

¹¹ So Woong Kim, "Kebijakan Hukum Pidana Dalam Upaya Penegakan Hukum Lingkungan Hidup", *Jurnal Dinamika Hukum*, Vol. 13 No. 3 September 2013, hlm 417

¹² Muhammad Ali Zaidan, "Kebijakan Kriminal Kejahatan Terhadap Ideologi Negara di Tengah Pusaran Globalisasi", *Jurnal Pandecta*, Volume 11. Nomor 2. December 2016, hlm 241

If it is related to criminal policy, it is necessary to know that what is meant is related to criminal policy. Marc Ancel has formulated that criminal policy is "the rational organization of the control of crime by society". Starting from the above opinions, it is quite clear that criminal policy is a rational arrangement or arrangement of efforts to control crime by society where the ultimate goal of criminal policy is "protection of society".¹⁴

Criminal policy is a rational attempt by society to prevent crime and react to crime. This rational effort is a logical consequence, as a matter which is a matter of policy, the use of criminal law is actually not a necessity. There is no absoluteness in the field of policy because in essence people are faced with the issue of policy assessment and selection of various alternatives.

Criminal policies or crime prevention are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare. Therefore, it can be said that the ultimate goal or main goal of criminal policy is the protection of society to achieve social welfare. Thus it can be said that criminal policy is also an integral part of public policy.¹⁵

In an effort to protect the community (social defense), criminal policy must integrate the penal policy and non-penal policy facilities. The existence of integration in a policy scheme is directed towards achieving social welfare for the community, of course within the framework of national development.¹⁶

¹³ Ateng Sudibyo, "Kebijakan Kriminal Terhadap, Gay, Biseksual dan Transgender (LGBT) Dikaitkan Dengan Delik Kesusilaan Di Dalam Kitab Undang-Undang Hukum Pidana" *De Lega Lata Jurnal Ilmu Hukum UMSU*, Volume 4, Nomor 1, Januari-Juni 2019, hlm 32

¹⁴ Ratri Novita Erdianti, "Alternatif Pemidanaan Terhadap Pelaku Penyalahgunaan Narkotika dalam Kebijakan Kriminal di Indonesia", Volume 25, Nomor.2, September 2017-Februari 2018, hlm 270

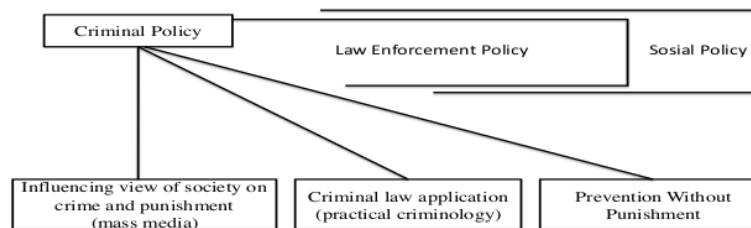
¹⁵ Iza Fadri, "Kebijakan Kriminal Penanggulangan Tindak Pidana Ekonomi di Indonesia", *Jurnal Hukum*, Nomor. 3, Volume 17, JULI 2010, hlm 445

¹⁶ Rizka Fakhry Alfiananda, "Masyarakat Hukum Adat Dalam Skema Kebijakan Kriminal (Criminal Policy) Di Bidang Perusakan Hutan", *Jurnal Wacana Hukum*, Volume XXIV, Nomor 2, Desember 2018, hlm 89

In connection with the Hoefnagels scheme regarding criminal policy, the scheme is translated by Muladi in his book "Kapita Selektta on the Criminal Justice System", is as follows:¹⁷



Thus, the crime prevention policy or what is commonly called criminal politics (criminal policy: author) covers a fairly wide scope. By examining what Hoefnagels put forward, we will get an understanding and description of the scope of criminal politics, as shown in the following demonstration.:¹⁸



¹⁷ Faisal, *Op.Cit*, *Politik Hukum Pidana*, hlm 74

¹⁸ *Ibid*

Looking at the scheme put forward by Hoefnagels, it can be seen that efforts to combat crime can be carried out in three ways, namely:¹⁹

- a) Criminal law application or often referred to as penal means, namely the application of criminal law
 - b) Prevention without punishment or often referred to as non-penal means, namely by handling criminogenic factors.
 - c) Influencing the view of society on crime and punishment or influencing the public's view of crime and punishment using mass media facilities. Even this method can actually be included in the prevention of crime by means of non-penal.
- b) In order to tackle mining crimes through criminal policies, criminal policy efforts are part of social policy. This policy is also included in the social protection policy scheme in the penal and non-penal means. It can be seen that penal means are usually pursued through the formulation stage (matters relating to the substantive norms of criminal law), the application stage (matters relating to the functionalization / operationalization of the application of criminal law norms), and the execution stage (matters which pertains to running the two previous stages).

Overcoming mining crimes in the criminal policy scheme, through penal means, of course, focuses on the formulation stage which deals with the substantive norms of mining criminal law. These substantive norms are formulated in the act of Coal and Mineral.

According to the act of Coal and Mineral, The juridical definition of mining can be found in Article 1 paragraph (1), mining is part or all of the activity stages in the context of mineral or coal management and exploitation which include general investigation, exploration, feasibility study, construction, mining, processing and / or refining, or development and / or utilization, transportation and sale, as well as post-mining activities

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¹⁹ *Ibid*

It can be said that mining criminal acts are related to acts as stated ¹⁸ in Article 1 paragraph (1) of the The act of Coal and Mineral, in which the acts have criminal dimensions. This means that the act is committed with disgrace and can be criminally reproached. Mining criminal acts in Law No. 3 of 2020 as amended ⁶ from Law No. 4 of 2009 concerning the Coal and Mineral Mining, in the act of Coal and Mineral, it can be seen that the qualifications for mining offenses are regulated in ² Article 158, Article 159, Article 160, Article 161, Article 161 A, ² Article 161 B paragraph (1), Article 162, Article 163, and Article 164.

As can be presented, the qualifying formulations for mining criminal acts in the The act of Coal and Mineral are; Criminal Actions Related to Licensing (Article 158), Criminal Actions Related to Submitting Wrong Reports and False Information (Article 159), Crimes Related to Utilization of Permits that Are Not In Accordance with Its Purpose (Article 160), Crimes Related to Smuggling, Transportation and Sales Minerba, as well as the Crime of Mineral and Coal Processing without Rights (Article 161), Crime Related to Transfer of Mining Business Permits or can be called in the Narrow Meaning of Embezzlement of Mining Business Permits (Article 161A),

Criminal Acts Related to Not Carrying Out Post-Mining Reclamation and Not Providing Post-Mining Reclamation Guarantee Funds (Article 161 B paragraph 1), Criminal Acts Related to Obstructing Mining Business Activities (Article 162), Mining Corporation Crimes ² (Article 163), and Additional Crimes Against Criminal Offenses Related to ² Article 158, Article 159, Article 160, Article 161, Article 161a, Article 161b, and Article 162 (Article 164). If further elaborated on mining criminal acts according to Law No.3 of 2020 Amendments ¹³ to Law No.4 of 2009 concerning Mineral and Coal Mining, it can be found formulations related to elements of criminal acts and the threat of criminal sanctions, are as follows

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²⁰ Lihat Pasal 1 ayat (1) Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-Undang Nomor 4 tahun 2009 Tentang Pertambangan Mineral dan Batu Bara.

o	Article	Elements of Crime	Criminal sanctions
	Article 158	<p>criminal offenses related to licensing): 1. Everyone 2. Doing mining without a permit (PETI) 3. As referred to in Article 35 Information: Mining business licensing scheme as referred to in Article 35 paragraph (3) is: a. IUP b. special mining business license (IUPK) c. IUPK as a Continuation of Contract / Agreement Operations d. people's mining permit (IPR) e. SIPB f. assignment permit g. Transport and Sales Permit h. IUP for Sales.</p> <p>a.</p>	<p>The maximum imprisonment is 5 years and a maximum fine of 100 billion Rupiah</p>
	Article 159	<p>(criminal acts relating to submitting false reports and false information): 1. on purpose 2. Holders of IUP, IUPK, IPR, or SIPB 3. Submit reports as referred to in Article 70 letter e, Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) 4. Report incorrectly 5. Deliver false information Information: The form of the report referred to in Article 159 is as follows a. Article 70 letter e: periodic reports on the implementation of people's Mining Business activities to the Minister. b. Article 105 paragraph (4): reports that are mandatory for business entities to submit to the Minister for the sale of minerals and / or coal extracted. c. Article 110 Holders of IUP and IUPK are required to submit all data obtained from the results of exploration and production</p>	<p>The maximum imprisonment is 5 years and a maximum fine of 100 billion Rupiah</p>

		<p>7operations to the Minister, governors or regents / mayors in accordance with their respective authorities.</p> <p>Article 111 (1) Holders of IUP and IUPK are obliged to provide regular w16en reports on the work plan and implementation of mineral and coal mining 7business activities to the Minister, governors or regents / mayors in accordance with their respective authorities.</p> <p>a.</p>	
Ar ticle 160		<p>(criminal acts relating to the use of a license that is not in accordance with its designation):</p> <p>1. Everyone 2. Have an IUP or IUPK at Exploration activity stage</p> <p>3. But doing activities Production operation Information: a. Article 1 paragraph (15): Exploration is the stage of Mining Business activities to obtain detailed and accurate information regarding the location, shape, dimensions, distribution, quality and measured resources of extracted materials, as well as information on the social and environmental environment. Article 1 paragraph (17): Production Operation is a mining business activity stage which includes construction, mining, processing and refining or development and / or utilization, including transportation12nd sales, as well as means of controlling environmental impacts in accordance with the results of a feasibility study.</p> <p>a.</p>	The maximum imprisonment is 5 years and a maximum fine of 100 billion Rupiah
Pa sal 161		<p><i>(tindak pidana berkaitan dengan penyelundupan pengangkutan dan penjualan</i></p>	The maximum imprisonment is 5

		<p><i>minerba, serta tindak pidana pengolahan minerba tanpa hak):</i></p> <ol style="list-style-type: none">1. Setiap orang2. Menampung, memanfaatkan, melakukan Pengolahan dan/ atau Pemurnian, Pengembangan dan/ atau Pemanfaatan, Pengangkutan, Penjualan Mineral dan/atau Batubara3. Tidak berasal dari pemegang IUP, IUPK, IPR, SIPB atau izin sebagaimana dimaksud dalam Pasal 35 ayat (3) huruf c dan huruf g, Pasal 104, atau Pasal 105	years and a maximum fine of 100 billion Rupiah
Pasal 161 A	<p><i>(tindak pidana berkaitan memindahtangankan izin usaha pertambangan atau dapat disebut dalam arti sempit menggelapkan izin usaha pertambangan):</i></p> <ol style="list-style-type: none">1. Setiap pemegang IUP, IUPK, IPR, atau SIPB2. Memindahtangankan IUP, IUPK, IPR, atau SIPB3. Sebagaimana dimaksud Pasal 70A, Pasal 86G huruf a, dan Pasal 93 ayat (1) <p>Keterangan:</p> <ol style="list-style-type: none">a. Pasal 70A: Pemegang IPR dilarang memindahtangankan IPR kepada pihak lain.b. Pasal 86G huruf a: Pemegang SIPB dilarang memindahtangankan SIPB kepada pihak lainc. Pasal 93 (1): Pemegang IUP dan IUPK dilarang memindahtangankan IUP dan IUPK kepada pihak lain tanpa persetujuan Menteri.	The maximum imprisonment is 2 years and a maximum fine of 5 billion Rupiah	
Pasal 161 B ayat (1)	(criminal acts related to not carrying out post-mining	Article 161 B paragraph (1): The	

		<p>reclamation and not providing post-mining reclamation guarantee funds): 1. Everyone 2. IUP or IUPK is revoked or expired 3. Not carrying out reclamation and not placing a post-mining reclamation guarantee fund (criminal acts related to obstructing mining business activities): 1. Everyone 2. Obstruct or distract 3. Mining Business Activities of IUP, IUPK, IPR, or SIPB holders 4. Those who have met the requirements as referred to in Article 136 paragraph (2)</p>	<p>maximum imprisonment is 5 years and a maximum fine of 100 billion Rupiah</p> <p>Article 161 B paragraph (2): additional punishment in the form of payment of funds in the framework of implementing the Reclamation obligation</p>
	Pasal 162	<p>(criminal acts related to not carrying out post-mining reclamation and not providing post-mining reclamation guarantee funds): 1. Everyone 2. IUP or IUPK is revoked or expired 3. Not carrying out reclamation and not placing a post-mining reclamation guarantee fund (criminal acts related to obstructing mining business activities): 1. Everyone 2. Obstruct or distract 3. Mining Business Activities of IUP, IUPK, IPR, or SIPB holders 4. Those who have met the requirements as referred to in Article 136 paragraph (2)</p>	<p>The maximum imprisonment is 1 year and a maximum fine of 100 million Rupiah</p>
	Pasal 163	<p>(mining corporation criminal acts): 1. In the event that the criminal act is committed by a legal entity 2. Apart from imprisonment and fines to the management Criminal charges can be imposed against legal entities</p> <p>1.</p>	<p>The penalty of a weighted fine is added by 1/3 (one third) of the maximum penalty imposed.</p>

	Pa sal 164	(Addition ² penalties for crimes related to Article 158, Article 159, Article 160, Article 161, Article 161A, Article 161B, and Article 162):	Additional penalties include: 1. Confiscation of goods used in committing a criminal act; 2. Deprivation of profits from a criminal act 3. Obligation to pay costs arising from criminal acts. 1.
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Furthermore, the criminal policy of tackling mining crimes through penal means will depend on the application stage. This stage rests on the application of the substantive legal norms of mining crimes. The application of mining penalties must pay attention to the legal construction built from the mining criminal formulation in the The act of Coal and Mineral. Criminal acts regulated in the The act of Coal and Mineral can be categorized within the scope of material offenses and formal offenses⁴

Offenses in criminal law can be divided into formal offenses and material offenses. According to Rahmadi, a generic crime is an offense or an act that is prohibited by law which is deemed perfect or fulfilled if the act has a consequence, while a specific crime is an offense that has been deemed perfect or fulfilled as soon as the act is committed without requiring it. there are consequences of actions.²¹

When viewed in the application stage, the mining crime is operationalized by considering whether the formulation of the article is a material offense or a formal offense. The construction of a material offense depicts a mining criminal act that is committed if it leads to an act that pollutes the environment as a result of a criminal act. This means that the material offense does not have to be borne by the evidentiary aspect of the licensing administration. Unlike the case with formal offense, as long as the action has been covered by the element of offense,

²¹ Derita Prapti Rahayu, "Delik Izin Lingkungan yang Terabaikan Kajian Putusan Mahkamah Agung Nomor 258 K/Pid.Sus/2012", *Jurnal Yudisial*, Volume 8, Nomor. 2, Agustus 2015, hlm 228

then the action has become a perfect offense, without having to wait for the consequences of the action. Acts related to criminal aspects of licensing are closely related to formal offenses.

Next is the execution stage which applies concretely to the previous stages, namely the formulation stage and the application stage. The execution stage will be determined by the legal apparatus and regional government officials in carrying out the mining criminal law politics. Apart from that, the aspect of facilities and infrastructure also determines the imperative execution of the execution stage.

The rational efforts of criminal policy cannot simply be left with penal means. Given the criminal policy needs to be done in an integral way. Thus, looking at crimes in the mining world must also look deeply at the complexities that influence these crimes to emerge. So, non-penal means become urgent to do, as a response to rational action within the framework of criminal policy.

At the beginning of this paper it was mentioned, if there is a dilemma in mining governance. The dilemma of funding complexity is usually driven by several dominant factors, one of which is the economic and welfare factors, the awareness and knowledge of the community regarding information regarding the application for mining business permits, local wisdom factors, and licensing management factors that are very procedural and very bureaucratized.

Some of these factors have triggered the prevention of mining crimes by means of rational actions that do not merely give up law enforcement by using penal means alone. In the end, non-penal means are needed as a preventive measure and moreover to find the root problems and solutions to mining crimes which are so very complex.

Non-penal means have a typology of prevention against crime itself. Prevention can be carried out in two general models, namely primary prevention and secondary prevention. The focus of primary prevention is to look carefully at the potential perpetrators who will create potential victims. Usually, the potential actors in mining crimes are committed by elite actors and small community actors. Elite perpetrators working on criminal offenses tend to fall within the area of the

licensing regime. The modes may vary, starting from providing ease of licensing, as well as weakening and omitting the aspect of supervision.

The tendency of elite actors to have the potential to commit crimes is due to weak public control due to lack of transparency in the management and information on permits. This makes it so easy for elite actors to continuously carry out their actions. Thus, to minimize the potential for elite actors to commit crimes, it is necessary to manage public information and control internal supervision as well as public control of mining business licensing services. Mapping of the licensing flow and its management is very important to do in order to unravel the tangled threads of manipulation and potential licensing rents.

In addition, small community actors can be overcome at least by providing continuous guidance and supervision so that they can understand mining business governance that adheres to principles and maintains environmental sustainability. Even though it is realized, the central and regional governments must also be more active in developing the economic sector which does not only rely on mining businesses. The hope is that small people who are crushed by economic conditions can switch to looking for their daily needs, not only depending on the mining sector.

Secondary prevention in non-penal means will be largely determined by mapping mining areas. In the social field of society, the mining sector will attract other potential sectors, such as fishing occupied by fishermen, plantations run by farmers, and the development of the tourism sector. Secondary prevention by mapping the mining area will be a long-term solution and can even minimize the clashes between the development sectors mentioned earlier.

Conclusion

The complexity of mining business governance that leads to a mining criminal dimension should be addressed by rational efforts of criminal policies. Rational efforts are the keywords for the crime response that must be overcome by paying attention to various aspects. Rational handling of mining crimes involves aspects of criminal policy with the hope that it is carried out through an integral

means or method. Penal means will determine how to work at the formulation stage, the application stage, and the execution stage of mining criminal action. In addition, non-penal facilities are an integral part of the mining crime prevention strategy by implementing two prevention models, namely primary prevention and secondary prevention. In the end, in the scope of mining crime, the construction of countermeasures used takes into account criminal law as an important part of criminal policy with the rationality of understanding crime as a normative science (penal) and social science (non-penal).

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