Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

Criminal Law Policy Regarding Criminal Sanctions In Law Number 4 Of 2009 As Amended By Law Number 3 Of 2020 Concerning Mineral And Coal Mining And Law Number 32 Of 2009 Concerning Environmental Protection And Management

Dian Anggraini
Program Studi Hukum Program Magister, Program Pascasarjana Universitas Kristen Indonesia

Article Info
Keywords:
criminal sanctions,
Law Number 4 of 2009,
Mineral and Coal Mining,
environmental protection

ABSTRACT
This study examines the legal implications related to criminal sanctions in Law Number 4 of 2009 concerning Mineral and Coal Mining and other provisions governing environmental protection in Indonesia. The main focus of the study is on the ambiguity of the "obstruction" element in Article 162 which has the potential to criminalize communities trying to protect their natural resources from mining exploitation. Through a normative legal approach, this study highlights the need to reform legal provisions to be clearer and fairer, and proposes a dialogue between communities and the government to ensure that community rights are protected. The results of the study indicate the importance of reviewing and definitively explaining ambiguous provisions in order to create legal certainty and justice for all parties involved.

Corresponding Author:
Dian Anggraini
Program Studi Hukum Program Magister, Program Pascasarjana Universitas Kristen Indonesia

INTRODUCTION

As stated, Indonesia is a country rich in arts, culture, human resources, and natural resources and Indonesia's development towards a developed country is highly dependent on the wealth it has. Indonesia's natural resource wealth is not only limited to its biological wealth, but also its non-biological wealth, for example there are various mines contained in the bowels of the earth of Indonesia. In Indonesia itself there are eight types of mining commodities that are included in non-renewable natural resources. These commodities are petroleum, coal, tin, iron ore, gold, copper, nickel and diamonds.

These natural resources are intended for and for the prosperity of the Indonesian people as mandated by the Constitution of the Republic of Indonesia Law Number 4 of 2009 as amended by Law Number 3 of 2020 concerning Mineral and Coal Mining explains that mining is part or all stages of activities in the context of managing and exploiting minerals or coal which include general investigations, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation and sales, as well as post-mining activities.

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

Mining business activities in Indonesia have been clearly regulated in Law Number 4 of 2009 as amended by Law Number 3 of 2020 concerning Mineral and Coal Mining. To be able to carry out these mining activities, a business license is required. Business Licensing is the legality granted to business actors to start and run their businesses and/or activities as regulated in Article 1 number 9 of Government Regulation 96 of 2021 ("PP 96 of 2021"). Since the enactment of PP 96 of 2021, the authority for the latest mining business licenses has been taken over from the Regional Government to the Central Government.

Obstructing mining activities that already have legality can be subject to criminal penalties. Businessmen who have obtained permits from authorized officials can immediately carry out activities in accordance with the permits granted. Disturbances to mining activities are also criminal acts and are subject to criminal penalties. Communities who feel disadvantaged by mining activities, whether in the exploration, exploitation, operation or production stages, usually protest by obstructing in various ways so that mining activities are not continued.

In a mining activity, whether mineral or coal, it is possible for a legal problem to occur. One of them is the action of a person or group of people who try to obstruct mining activities, but if referring to the elements of Article 162 of Law Number 4 of 2009 as amended by Law Number 3 of 2020 concerning Mineral and Coal Mining which represents an element of error. Without clear boundaries regarding the "error" element of the article, the law enforcement process can be carried out haphazardly and targeted because according to the author there is no good explanation of the various terms used in determining the elements of the crime. The legislators only wrote "quite clearly" in the explanation of the article which ultimately resulted in the elements of "obstructing" and "disturbing" being interpreted so broadly by law enforcers.

One example of a case that occurred in the community related to the discussion above is a resident of Tinombo Selatan District, Parigi Moutong, Jaka (not his real name), said that the rejection of PT Trio Kencana, which has had a mining business permit (IUP) since 2010, has been carried out since 2011, 2012, and 2019. The rejection was made because they were worried that their clean water source that entered the mining concession area would be lost.

In 2020, residents again demonstrated because they received news that PT Trio Kencana's IUP would be extended. Based on data from Minerba One DataIndonesia (MODI) Ministry of Energy and Mineral Resources (ESDM), PT Trio Kencana's permit has been extended until August 27, 2040. During that period, Jaka said the public was never asked for their opinion about the presence of the gold mining company.

Such conditions are certainly not in line with the principles of lex certa and lex stricta in the principle of legality which requires that the preparation of criminal provisions must be clear and definite and must be interpreted in a limited manner to achieve justice and public welfare.

1. How is the guarantee of legal protection for communities who are suspected of obstructing and disrupting mining business actors according to Law Number 4 of 2009 as amended by Law Number 3 of 2020 concerning Mineral and Coal Mining and Law

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

Number 32 of 2009 concerning Environmental Protection and Management?

2. What is the criminal law policy regarding the regulation of criminal sanctions in Law Number 4 of 2009 as amended by Law Number 3 of 2020 concerning Mineral and Coal Mining?

The theoretical benefits of this study are to develop knowledge about the legal consequences that apply in Indonesia, where the Law is a relevant reference to be used in this scientific research. Practical research benefits To show the implementation of the effectiveness of criminal sanctions in Article 162 of Law Number 4 of 2009 as amended by Law Number 3 of 2020 concerning Mineral and Coal Mining

RESEARCH METHODS

The method used in this study is Normative legal research, normative research essentially studies the law that is conceptualized as a norm or rule that applies in society, and becomes a reference for everyone's behavior. The objects of focus of normative legal research according to Soerjono Soekanto and Sri Mamuji are:

1. Research into legal principles;
2. Research on legal systematics;
3. Research on the level of legal synchronization;
4. Legal history research;
5. Comparative legal research;7

The nature of this research is descriptive analysis, namely research that attempts to describe a legal problem.

The data used in this research are the following data:

a. Primary Legal Materials: namely legal materials that are authoritative in nature, meaning they have authority where primary legal materials consist of drafting laws, official records or literature in the making of legislation and judges' decisions, consisting of: the 1945 Constitution; Civil Code; Law Number 4 of 2009 as amended by Law Number 3 of 2020 concerning Mineral and Coal Mining; Law Number 32 of 2009 concerning Environmental Protection and Management as amended by Government Regulation in Lieu of Law Number 2 of 2022.
b. Secondary Legal Materials: Secondary legal materials are legal materials that are closely related to primary legal materials and can help analyze and understand primary book materials which are a form of official documents including: Written works or opinions of legal experts; Legal dictionaries; Legal journals; Studies of court decisions.

Data collection technique

Descriptive analysis is described or presented systematically and logically, in the sense that all the data obtained will be connected to each other according to the main problem being studied, so that it is a complete unity based on legal norms or legal rules that are relevant to the main problem. For secondary legal materials, they will be presented according to the needs of the analysis without eliminating the intent contained in the legal materials. The

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

presentation of this material can be placed in all chapters or sub-chapters of this paper according to the relevance of the matter being discussed.

Data Analysis Methods

All data obtained were analyzed using qualitative normative methods. Normative in the sense that research is conducted by examining existing library materials, while qualitative means describing correctly in the form of regular, coherent, logical, non-overlapping, and effective sentences, then discussing until conclusions are drawn. Processing legal materials in a qualitative normative manner is by discussing and describing the legal materials used based on norms, theories and doctrines related to the material being studied using deductive logic, namely drawing conclusions from a general problem to the concrete problems faced.

RESULTS AND DISCUSSION

Guarantee of Legal Protection for the Community is Suspected of Obstructing and Disturbing Mining Business Actors

Environmental issues are important to be studied or researched to what extent their legal protection is. Environmental damage is the responsibility of the State to restore it. Problems related to the environment that often occur in our area are in the form of environmental damage or pollution, one of which is the influence of uncontrolled utilization of natural resources (hereinafter referred to as SDA).

In order to realize a developed country, various business activities are carried out, one of which is mining business activities. According to Abrar Saleng, "the purpose of carrying out mining business activities is to carry out the management of natural resources to become raw materials used by humans, in order to meet their needs. Related to mining business activities, these are activities to utilize mining natural resources, especially mining materials in Indonesia. So that the implementation of mining industry business activities must bring good benefits, especially related to regional development and is expected to improve the standard of living of the community. According to Salim HS, he explained that "Mining areas consist of surface land and sub-surface land as well as those in sea or coastal areas".

In Article 28E paragraph (3) of the 1945 Constitution, it is emphasized that everyone has the right to freedom of association, assembly, and expression of opinion. This freedom of expression must be carried out by complying with the conditions. The existence of Article 162 of Law Number 3 of 2020 and Article 66 of Law Number 32 of 2009 raises questions about the regulation. This shows the urgency of discussing this problem. Therefore, in the context of writing this thesis, this topic has been chosen for the author to discuss to analyze the guarantee of legal protection for the community that is suspected of hindering and disrupting mining business actors.

Criminal Law Politics can also be called criminal law policy/Penal Policy or criminal law reform. Implementing criminal law politics means an effort to realize criminal legislation that is in accordance with the circumstances and situations at a certain time and for the future. Thus, when viewed from the aspect of Legal Politics, it means that criminal law politics means how the state strives or creates and formulates good criminal legislation for the present and

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

the future. In foreign literature, the term criminal law politics is often known by various terms, including penal policy, "criminal law policy," or "strafrechtspolitiek."

Meanwhile, when viewed from the aspect of criminal politics, it means a policy to combat crime with criminal law. The above definition is in accordance with Marc Ancel's opinion that Penal Policy is a science and art that ultimately has a practical goal to enable positive legal regulations to be formulated better and to provide guidance not only to lawmakers, but also to courts that apply laws and also to the implementers of court decisions. So Criminal Law Politics is a policy of combating crime with criminal law or criminal law politics is an effort to combat crime through the creation of criminal laws. Abdul Hakim G Nusantara defines legal policy as a legal policy that is to be implemented or implemented nationally by a particular country's government, which can include:

a. Consistent implementation of existing legal provisions
b. Legal development which is based on updating existing laws and creating new laws.
c. Affirmation of the function of law enforcement institutions and the development of their members
d. Increasing public legal awareness according to elite policy makers.

In carrying out its function as a guarantor, the state applies it in the form of laws and regulations. In ensuring that mining efforts can run smoothly, the government issued Law Number 3 of 2020 concerning Mineral and Coal Mining, the regulation contains the granting of mining business permits (IUP) to private parties, to obtain the mining business permit, the government determines the requirements that must be met by mining companies. If the requirements have been met, the government will issue a mining business permit. After the company obtains a mining business permit, the state is obliged to guarantee the continuity of the company to carry out coal mining activities.

The form of guarantee or protection is stated in Article 162 of Law Number 3 of 2020 concerning Mineral and Coal Mining, which states that anyone who obstructs or disrupts the mining business activities of mining business permit holders and special mining business permits shall be subject to fines or imprisonment.

In this case, anyone who obstructs mining will be subject to criminal sanctions. The form of implementation of these sanctions is an effort to overcome crimes in the coal mining sector. Article 162 of Law Number 3 of 2020 concerning Mineral and Coal Mining aims to protect permit holders to be safe in carrying out mining activities. With these criminal sanctions, the state is trying to create legal regulations that aim to overcome crimes in the mining sector.

The inclusion of these provisions according to the author is a state criminal policy that if the obstructive act is not a criminal act but is considered a criminal act. Criminal policy is a rational effort by society to combat crime. Crime prevention policies or efforts are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare (social welfare). The purpose of criminal policy is to protect society to achieve social welfare.

In reality, Article 162 of Law Number 3 of 2020 concerning Mineral and Coal Mining has become a means of violence carried out by the state which is contradictory to the purpose

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

of implementing the criminal law. The Environmental Forum (WALHI) noted that throughout 2021, at least 28 people were languishing in prison. As many as 37 other people had dealings with the Police because they fought for the preservation of living space from mining penetration. The implementation of handling legal problems in the mining sector with the means of punishment has given rise to new conflicts. For this reason, the policy in Article 162 of Law Number 3 of 2020 concerning Mineral and Coal Mining must accommodate more community participation, so that the objectives of the policy can improve the welfare of the community and protect the community can be realized.

In this case, referring to Article 162 of Law Number 3 of 2020 concerning Mineral and Coal Mining, there are problems for environmental activists who are good and healthy and have the potential to be used as a means of criminalization against anyone who fights for the right to a healthy environment that is not polluted by mining activities, namely that local communities will have their natural resources destroyed by mining business actors who in essence already have permits.

Those who try to reject their area for exploitation on the grounds that there will be environmental damage are likely to be subject to criminal sanctions. For example, in the case in 2020 experienced by H.Ach Busi'in, H Sugiyanto, Abdullah, they were criminalized for a good and healthy environment where they were considered to be obstructing or disrupting mining business activities. The Banyuwangi District Court sentenced them to 3 months in prison with decision number 802/Pid.sus/2020/PNByw.

The author believes that Article 162 of Law Number 3 of 2020 concerning Mineral and Coal Mining has unclear phrases so that it can be misused by law enforcement officers, even though Article 66 of Law Number 32 of 2009 concerning Environmental Protection and Management states that anyone who fights for the right to a good and healthy environment based on good faith cannot be prosecuted criminally or sued civilly.

In the author's opinion, none of the elements of Article 162 of Law Number 3 of 2020 concerning Mineral and Coal Mining represent an element of error. Without any clear limitations regarding the elements of error desired by the article, the result is that the law enforcement process can be carried out haphazardly and is limited to fulfilling the formulation of acts prohibited by law. Another error that occurred in the formulation of Article 162 of Law Number 3 of 2020 concerning Mineral and Coal Mining is the absence of a good explanation of the various terms used in determining the elements of the crime. The legislators only wrote it clearly enough in the explanation of the article, which ultimately resulted in the elements of 'obstructing' and 'disturbing' being interpreted so broadly by law enforcers.

The understanding of the welfare state cannot be separated from the four definitions of welfare above. The welfare state is closely related to social policy which in many countries includes government strategies and efforts to improve the welfare of its citizens, especially through social protection which includes social security (both in the form of social assistance and social insurance) and social safety nets.

The theory of welfare law is often referred to as a modern legal state in the material sense. Bagir Manan said that the concept of a welfare legal state is:

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

"The state or government is not merely a guardian of public security or order, but is the main bearer of responsibility for realizing social justice, general welfare, and the greatest possible prosperity of the people." In this theory, it can be explained from the things that have been stated above, that the role of the state has been placed in a strong and greater position in creating public welfare and social justice.

Criminal punishment is only justified if there is a need that is useful for society, a punishment that is not needed cannot be justified and is dangerous for society. Research conducted by the author, especially Article 162, that this provision will allow every citizen to be subject to criminal punishment without any clarity on the alleged action of obstructing or disrupting mining activities carried out whether it is contrary to the law or only the result of an action that causes someone to feel disadvantaged by the company's actions. This article is very subjective so it is too easy to criminalize someone.

In this case, Law No. 3 of 2020 concerning Mineral and Coal Mining should be able to provide solutions to the weaknesses that occurred during its implementation. Not the other way around, weakening the position of the government or the people, making the people more vulnerable to their safety, the damaged environment getting worse, and the contribution to state finances not improving. If viewed based on the history of 9 judicial reviews of Law No. 3 of 2020 concerning Mineral and Coal Mining which were granted regarding participation and clarity in mining area boundaries. According to the author, there has been no issue of justice in certain articles. The concept of legal certainty which is the goal of Law No. 3 of 2020 concerning Mineral and Coal Mining is tested when the material content of criminal provisions as a means to an end, is consistent with prioritizing legal objectives.

From the description above, the application of criminal law means must aim to achieve public welfare and public protection. Criminalization policy is a policy in determining an act that was originally not a criminal act to be a criminal act. In essence, criminalization policy is part of criminal policy using criminal law means and therefore is part of criminal law policy.

The criminal law policy in the Coal Mineral Mining Law, namely Article 162, states that anyone who obstructs or disrupts the mining business activities of IUP or IUPK holders who have fulfilled the requirements as referred to in Article 136 paragraph (2) shall be punished with imprisonment for a maximum of 1 year or a maximum fine of IDR 100,000,000 (one hundred million rupiah).

Although the article was once requested for a material review, the request was rejected by the Constitutional Court. The Constitutional Court considered that the request was not proven according to law, with the Constitutional Court's decision rejecting the request, Article 162 of the Mineral and Coal Mining Law is still valid, so that anyone who obstructs mining business activities can be punished. Such conditions are certainly not in line with the principles of lex certa and lex stricta in the principle of legality which requires that the preparation of criminal provisions must be clear and certain and must be interpreted in a limited manner.

It can be said that the mining industry is given the right to be able to criminalize people who are considered to interfere with their mining activities through Article 162 of the Mineral

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

and Coal Mining Law. However, the community is also given legal protection through Article 66 of the Environmental Protection and Management Law. This legal protection is given so that the community can fight for their rights to the environment in accordance with the mandate in Article 28H of the 1945 Republic of Indonesia Law. In addition, the right to the environment is part of human rights.

The resolution of the normative conflict that occurs between Article 162 of the Mineral and Coal Mining Law and Article 66 of the Environmental Protection and Management Law can be resolved by making changes to the Mineral and Coal Mining Law, especially to the articles that are considered detrimental to the community, one of which is Article 162 of the Mineral and Coal Mining Law.

In carrying out previous change activities, it is advisable to always involve the role of the community in the formation of changes to the Law. This aims to ensure that the changes to the Law that will be carried out later are not detrimental to the community, especially the community affected by the negative impacts of mining business activities. In addition, the Law should also be made to pay more attention to the conditions and circumstances of the community.

In addition, if a conflict occurs between the community and mining industry entrepreneurs, in resolving it, the principle of legal certainty must be applied, where this principle of legal certainty must be used if there is a conflicting legal rule, so that there is one legal rule that can be used, without any hesitation to set aside the legal rule that is considered to be in conflict.

Criminal Law Policy on the Regulation of Criminal Sanctions

Criminal Law Policy in the Mining Sector.

Minerals and coal are one of Indonesia's potential natural resources. In order for these natural resources to bring prosperity to the Indonesian people, a mining policy is needed that supports national economic interests. Mining policies favor foreign capital interests through work contract mechanisms that place the state as an inferior party. The state's right to control minerals and coal is not visible in mining policies. Current economic developments are accompanied by "increasingly advanced technological developments in Indonesia as a result of development, giving rise to various legal consequences, one of which is in the mining sector.

In the theory of the legal system put forward by Lawrence M. Friedman is one of the important theories in the study of law. According to Friedman, the success and effectiveness of law enforcement depends on three main elements in the legal system:

1. Legal Structure: This includes the institutions involved in making and enforcing laws, such as courts, police, and legislatures. The legal structure also includes the organizations, procedures, and human resources that run the legal system.
    a. Organizational structure is influenced by the shape and size of an organization. The shape and size of the organization will affect the administrative process or decision-making because every administrative process or decision-making will go through the parts in the organizational structure.

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

b. Governance is a work system applied in an institution in running the system. Governance can be said to be a standard operating procedure (SOP) that is a reference in running the administration process or decision making.
c. Human resources of the apparatus are people involved in running the system both within the structure and outside the structure. Human resources of the apparatus are influenced by the legal values for the apparatus and the attitude of the apparatus towards the law affects performance in processing administration or decision making.

Based on the description above, the legal structure concerns institutions including organizational aspects, administrative aspects, and human resource aspects of the apparatus in the system.

2. Legal Substance: This refers to the content of the law itself, including statutes, regulations, and court decisions. Legal substance includes the rules made by legislators and how those rules are applied in practice.
3. Legal Culture: This is the attitudes, values, and perceptions of society towards the law. Legal culture includes how society views the law and how they interact with the legal system. Legal culture greatly influences how the law is applied and respected in society3.

These three elements interact and influence each other. For example, a good legal structure will not be effective without clear legal substance and a supportive legal culture.

The application of Lawrence M. Friedman's legal system theory can be seen in various country contexts, including Indonesia. Here are examples of the application of this theory in the Indonesian legal system:

1. Legal Structure
   In Indonesia, the legal structure includes various institutions such as the Supreme Court, the Constitutional Court, the Police, the Prosecutor's Office, and legislative institutions such as the DPR. These structures function as machines that run the legal system. Challenges faced include corruption at various levels of legal institutions, which can hinder the effectiveness of law enforcement.
2. Legal Substance
   Legal substance in Indonesia includes laws, government regulations, and court decisions. For example, Law Number 32 of 2009 concerning Environmental Protection and Management is part of the legal substance that regulates environmental protection. Community involvement in the legislative process is also important to ensure that the laws made are relevant and effective.
3. Legal Culture
   Legal culture in Indonesia includes people's attitudes and perceptions towards the law. For example, people's legal awareness and how they view justice and law enforcement greatly influence the effectiveness of the legal system. Legal education programs and legal awareness campaigns can help foster a positive legal culture.

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

The application of this theory shows that to achieve an effective legal system, there needs to be a good balance and interaction between legal structure, legal substance, and legal culture. Looking at the explanation above, it can be emphasized that criminal law reform is part of criminal law policy. The background to criminal law reform can be viewed from socio-political, socio-philosophical, socio-cultural aspects, or from various policy aspects (especially social policy, criminal policy, and law enforcement policy). This means that criminal law reform must essentially be a manifestation of changes and renewals to various aspects and policies that underlie the reform. Criminal law reform in general has the meaning as an effort to reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlie social policy, criminal policy, and law enforcement policy in Indonesia.

With the regulation of criminal provisions on mining, its position as a criminal act outside the Criminal Code which is regulated deviates in accordance with the provisions of Article 162 of the Criminal Code. Because criminal acts of mining can cause danger in various fields which result in harm to the wider community and the environment. The regulation of criminal acts in the Mineral and Coal Mining Law cannot be separated from the basic theory of the punishment of criminal penalties.

According to Marpaung, there are the following theories: absolute theory (vergeldings theorie) and relative theory (doeltheorie). According to the absolute theory, the punishment is imposed as retaliation against the perpetrator for committing a crime that causes misery to others or members of society. While the relative theory is based on several objectives as follows:

1. Frightening;
2. Improving the convict's personality; and
3. Destroy.

Based on the Mineral and Coal Mining Law, there are various criminal acts, most of which are directed at mining business actors and only 1 (one) is directed at officials issuing permits in the mining sector. The criminal acts in the mining sector are:

1. It is a criminal offence to carry out mining without a permit.
2. The crime of submitting false report data.
3. It is a criminal offence to conduct exploration without permission.
4. Criminal acts as a holder of an Exploration Mining Business Permit are not carrying out production operations.
5. The crime of laundering mining goods.
6. Criminal acts of obstructing mining business activities.
7. Criminal acts related to the abuse of authority by officials issuing mining business permits.

Forms of Criminal Sanctions in Mineral and Coal Mining Law

The form of criminal sanctions regulated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining are contained in several articles: Article 158 of Law Number 3 of 2020 concerning Amendments to Law

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

Number 4 of 2009 concerning Mineral and Coal Mining stipulates that anyone who carries out mining without a permit as referred to in Article 35 shall be punished with imprisonment of a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion Rupiah). In addition, Article 159 stipulates that IUP, IUPK, IPR, or SIPB Holders who intentionally submit reports as referred to in Article 70 letter e, Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) incorrectly or submit false information shall be subject to a maximum imprisonment of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion Rupiah). There are also several rules listed in the paragraph that have been deleted for various reasons, but do not reduce the essence of the provisions of the regulation itself. As stated in Article 160 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, it is stipulated that the provisions of paragraph (1) of Article 160 have been deleted so that Article 160 reads as follows: (1) Deleted; (2) Any person who has an IUP or IUPK at the Exploration activity stage but carries out Production Operation activities shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion Rupiah).

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining in Article 161 regulates that any person who accommodates, utilizes, carries out Processing and/or Purification, Development and/or Utilization, Transportation, Sale of Minerals and/or Coal that do not originate from holders of IUP, IUPK, IPR, SIPB or permits as referred to in Article 35 paragraph (3) letters c and g, Article 104, or Article 105 shall be subject to a maximum imprisonment of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion Rupiah). Article 161A also regulates that every holder of an IUP, IUPK, IPR or SIPB who transfers an IUP, IUPK, IPR or SIPB as referred to in Article 7OA, Article 86G letter a, and Article 93 paragraph (1) shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of IDR 5,000,000.00 (five billion Rupiah).

Article 161B paragraph (1) and (2) regulates: (1) Any person whose IUP or IUPK is revoked or expires and does not carry out: a. Reclamation and/or Post-mining; and/or b. placement of Reclamation guarantee funds and/or Post-mining guarantee funds, shall be punished with imprisonment for a maximum of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah); (2) In addition to the criminal sanctions as referred to in paragraph (1), former IUP or IUPK holders may be subject to additional punishment in the form of payment of funds in the context of carrying out Reclamation and/or Post-mining obligations that are their obligations. Activities that disrupt mining business activities are regulated in Article 162 concerning Any person who obstructs or disrupts the Mining Business activities of IUP, IUPK, IPR, or SIPB holders who have met the requirements as referred to in Article 136 paragraph (2) shall be subject to a maximum imprisonment of 1 (one) year or a maximum fine of IDR 100,000,000.00 (one hundred million Rupiah). In addition to criminal sanctions in the form of fines, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 also regulates fines in the form of revocation of permits for mining

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

businesses. This is regulated in Article 164 which regulates: In addition to the provisions referred to in Article 158, Article 159, Article 160, Article 161, Article 161A, Article 1618, and Article 162, perpetrators of criminal acts may be subject to additional penalties in the form of:

1. confiscation of goods used in committing a crime;
2. confiscation of profits obtained from criminal acts; and/or
3. obligation to pay costs arising from criminal acts.

The form of criminal sanctions for mineral and coal mining in border areas based on Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining that criminal sanctions in the form of imprisonment of at least one year and a maximum of ten years in prison with a maximum fine of ten billion Rupiah plus additional aggravation and punishment as an implication for violations of mineral and coal mining law. The suggestion that the author can suggest is that the implications of criminal sanctions against perpetrators of mineral and coal mining crimes should be more intense as a preventive effort in mining of minerals and coal without a permit for individuals or legal entities.

Analysis of Criminal Law Policy in the Mining Sector.

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining found several articles that have the potential to harm the community and the environment based on the principles of Sustainable Development Goals so that it becomes a polemic. That Law Number 3 of 2020 is considered a regression of legal products because several articles in Law Number 4 of 2009 which were believed to be in favor of the community and environmental sustainability were not found again

Article 8 of Law Number 3 of 2020 concerning Mineral and Coal Mining is one of the concrete evidences of the decline in the legal products presented because it has the potential to neglect regional governments in managing mining in their regions. As well as other articles that favor private companies and shackle the voices of the people in mining areas. In fact, collaboration between the Central Government, Regional Governments and the community with all the roles and authorities possessed by each of these elements is something that is very important.

In a country of law, it is possible that there will be legal problems in regulating a legal regulation because legislation is the main source of regulations. Therefore, there is a possibility that legal problems will occur in legislation, including those related to the consistency of criminal law policies on criminal sanctions in mineral and coal mining laws, with environmental law, where mineral and coal mining laws protect business actors, while environmental law in this case the environmental protection and management law protects environmental fighters who are good and healthy.

Looking at the explanation above, it can be emphasized that criminal law reform is part of criminal law policy. The background to criminal law reform can be viewed from socio-political, socio-philosophical, socio-cultural aspects, or from various policy aspects (especially social policy, criminal policy, and law enforcement policy). This means that criminal law reform must essentially be a manifestation of changes and renewals to various aspects and policies that underlie the reform. Criminal law reform in general has the meaning as an effort to

Jurnal Multidisiplin Sahombu
Volume 4, Number 02, 2024, DOI 10.58471/jms.v4i02
ESSN 2809-8587 (Online)
https://ejournal.seaninstitute.or.id/index.php/JMS/index

reorient and reform criminal law in accordance with the central socio-political, socio-philosophical, and socio-cultural values of Indonesian society that underlie social policy, criminal policy, and law enforcement policy in Indonesia. In this case, concerning the theory of criminal law policy or politics, it can be seen from legal politics or from criminal politics. According to Sudarto, "Legal Politics" is:

a. Efforts to create good regulations according to the circumstances and the situation at a certain time
b. The policy of the state through authorized bodies to establish the desired regulations which are estimated to be able to be used to appreciate what is contained in society and to achieve what is aspired to.

Based on this understanding, Sudarto further stated that implementing criminal law policy means holding elections to achieve the best criminal legislation results in the sense of fulfilling the requirements of justice and utility. On another occasion, he stated that implementing criminal law policy means an effort to realize criminal legislation that is in accordance with the circumstances and situations at a certain time and for the future. Efforts and policies to create good criminal law regulations in essence cannot be separated from the purpose of law as a means of overcoming crime.

Therefore, the ambiguity of the phrase "hindering or disrupting" mining business activities has caused the provisions of Article 162 of the Law on Mineral and Coal Resources to also be used as a means of criminalizing individuals, against anyone who fights for the right to a healthy environment that is not polluted by existing mining activities.

Referring to Article 66 of the Law on Management and the Environment, it states that anyone who fights for environmental rights cannot be prosecuted criminally or in civil lawsuits. This raises the potential for abuse of power by law enforcement officers, because it has a double interpretation if the two articles are linked.

CONCLUSION

The resolution of the conflict of norms between Article 162 of the Law on Mineral and Coal Resources and Article 66 of the Law on Environmental Protection and Management can be done by making changes to the Law on Mineral Resources. Where if the changes are to be made, more attention must be paid to the explanation/interpretation of the phrase in Article 162, and also accept opinions, proposals, or suggestions from the community around the mining area. In addition, if a conflict occurs between the community and mining industry entrepreneurs in resolving it, the theory of the welfare state, the purpose of law, and criminal law policies must be applied in order to achieve the principle of legal certainty, where this principle of legal certainty must be used if there is a conflicting legal rule. This normative legal research highlights the implications of criminal provisions for parties who hinder mining and evaluates the legal perspective regarding the criminalization of these parties. The ambiguity in criminal provisions can potentially criminalize local communities who carry out activities that are considered to hinder mining operations. The author found a contradiction between this criminal sanction and the principle of affirmative action in law. In addition, legal ambiguity

related to the lack of parameters to define actions that hinder or obstruct mining operations contributes to the risk of criminalization of communities around the mine. Therefore, this study recommends legal and political efforts, such as judicial review at the Constitutional Court and hearings and aspirations at the DPR, to revise the criminal law regulations for mining. This study also shows the importance of these interventions to ensure lex certa, a component of the principle of legality, which can provide legal certainty to affected communities, thereby reducing unnecessary criminalization of communities. Further research is needed to explore the social and economic implications of this criminalization of communities and gain a better understanding of how legal and regulatory policies can be reformed to ensure justice for all parties involved. Given the problems that arise in Article 162 of the Law on Mineral and Coal Resources with Article 66 of the Law on Environmental Protection and Management, the government is expected to be able to eradicate the root of this criminalization problem, namely in Article 162 of the Law on Mineral and Coal Resources. It is better for the authorized government to reformulate the norming of this article. In particular, providing a definitive explanation in detail regarding the phrase "obstruction" which is considered a rubber clause, and providing clear parameters to create legal certainty. On the other hand,it is also necessary to define and determine the forms that can be protected through existing laws and regulations as an urgency, to strengthen the existence of legal protection. In addition, the government should also be expected to prioritize restorative justice in responding to conflicts between the community and the mining industry, this is considering the guarantee of legal protection in Article 66 of the law on environmental management and protection. Against articles that contain elements of criminalization against the community, such as Article 162 of the Law on Mineral and Coal Resources with Article 66 of the Law on Environmental Protection and Management and perhaps other articles in the laws and regulations in force in Indonesia, evaluation and revision must be carried out involving the community in the process of making laws so as to help ensure that the laws made reflect the needs and aspirations of the community and ensure that every article in the criminal law does not violate human rights.

REFERENCES

Adami Chazawi, *Pelajaran Hukum Pidana I,* Jakarta, Raja Grafindo Persada, 2011

Antonius Cahyadi dan E. Fernando M. Manullang, *Pengantar ke Filsafat Hukum*, Kencana, Jakarta, 2007

Andrian Sutendi, *Hukum Pertambangan*, Cet 1,Jakarta, Sinar Garfika, 2021

Asikin Zainal, *Pengantar Tata Hukum Indonesia*, Rajawali Press, Jakarta, 2012

Barda Nawawi Arief, 2011, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru),* Kencana, Jakarta

Barda Nawawi Arief, TT, *Kebijakan Hukum Pidana (Penal Policy),* Bahan Kuliah Program Magister Ilmu Hukum Universitas Diponegoro

Bambang Prabowo, Potret Hukum Pertambangan di Indonesia, Jakarta, LPHI, 2009

Dr.H.Ishaq, *Metode Penelitian Hukum,* Alfabeta Bandung, 2020

DR. Maroni,S.H.,M.Hum, *Pengantar Politik Hukum Pidana*, Aura, 2016, Lampung

Dr.Muhammad Akib,S.H.,M.Hum, *Politik Hukum Lingkungan*, Raja Grafindo Persada, 2016, Jakarta

Gatot Supramono, *Hukum Pertambangan Mineral dan Batu bara di Indonesia, cetakan ke-1,* Rienaka Cipta, 2012, Jakarta

Isrok dan Dhia Al-Uyun, *Ilmu Negara (berjalan dalam dunia abstrak)*, UB Press, Malang, 2010

I Nyoman Nurjana, *Menuju Pengelolaan Sumber Daya Alam yang Adil, Demokratis dan Berkelanjutan: Perspektif Hukum dan Kebijakan*, Jakarta

John Rawls, *A Theory of Justice*, Massachusetts: The Belknap Press of Harvard University Press, Cambridge, 1971

KEHATI, *Materi Kursus Inventarisasi flora dan fauna Taman Nasional Meru Betiri.* Malan,2009

Lamintang. *Dasar-Dasar Hukum Pidana Indonesia*, Bandung, Sinar Baru, 2000.

Lilik Mulyadi, *Bunga Rapai Hukum Pidana Perspektif Teoritis dan Praktik,* PT. Alumni Bandung, 2008

Marilang, "*Nilai Keadilan Sosial Dalam Pertambangan*", Disertasi, di dalam Marilang, Ideologi Welfare State Konstitusi: Hak Menguasai Negara Atas Barang Tambang, Jurnal Konstitusi, Volume 9, Nomor 2, Juni 2012

Marilang, *Ideologi Welfare State Konstitusi: Hak Menguasai Negara Atas Barang Tambang,* Jurnal Konstitusi, Volume 9, Nomor 2, Juni 2012

M Ali Zaidan. *Menuju Pembaharuan Hukum Pidana* , Jakarta, Sinar Grafika, 2015

Muladi, *Lembaga Pidana Bersyarat*, Bandung, Alumni, 2008

M. Taufik, *Penegakan Hukum Pidana Terhadap Pelanggaran Izin Lingkungan Dalam Perlindungan dan Pengelolaan Lingkungan Hidup*, Jurnal Nestor Ilmu Hukum, Vol. 3, No. 5 Tahun 2013

Moeljatno, *Perbuatan Pidana dan Pertanggungjawaban dalam Hukum Pidana,* Cetakan Pertama, Bina Aksara, Yogyakarta, 1983

Ridwan HR, *Hukum Adminstrasi Negara*, Radja Grafindo Persada, Jakarta, 2006

Salim HS, *Hukum Penyelesaian Sengketa Pertambangan di Indonesia*, Pustaka Reka Cipta, Jakarta,2013

Salim HS, *Hukum Pertambangan di Indonesia*, RajaGrafindo Persada, Jakarta, 2004

Soeroso, *Pengantar Ilmu Hukum*, Pt. Sinar Grafika, Jakarta

Tri Andrisman, *Asas-Asas dan Dasar Aturan Hukum Pidana Indonesia*, BandarLampung, Unila, 2009

Soehino, *Asas-Asas Hukum Tata Negara*, Liberty, Yogyakarta

Sudarto, *Hukum Pidana dan Perkembangan Masyarakat*, Sinar Baru, Bandung

Prof.Peter Machmud, *Pengantar Ilmu Hukum,* 2011

Wirjono Prodjodikoro, *Asas-Asas Hukum Pidana di Indonesia*, Bandung, PT Refika Aditama, 2003

Yudi Krismen, *Delik-delik Ekonomi di Luar KUHP*, Depok, Raja Grafindo Persada, 2020

Undang-Undang Dasar Republik Indonesia 1945

Undang-Undang Nomor 4 Tahun 2009 sebagaimana diubah oleh Undang-Undang Nomor 3 Tahun 2020 tentang Pertambangan Mineral dan Batubara

Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup sebagaimana diubah oleh Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022

Undang-Undang Nomor 23 Tahun 2014 tentang Pemerintahan Daerah

https://e-journal.uajy.ac.id/30637/3/181123975_Bab%202.pdf 20 Februari 2024 pukul 12.00 WIB

https://www.gurupendidikan.co.id/pemerintah-adalah/ 20 Februari 2024 pukul 12.00 WIB

https://smartlegal.id/perizinan/2021/10/22/ini-dia-ketentuan-perizinanberusaha-pertambangan-terbaru/ 20 Februari 2024 pukul 16.00 WIB

https://kbbi.web.id/investor#google_vignette 23 maret 2024 pukul 13.00 WIB

https://repository.uksw.edu/bitstream/123456789/19418/2/T2_322017007_BAB 23 maret 2024 pukul 13.00 WIB

https://www.esdm.go.id/id/media-center/arsip-berita/tata-cara-pemberian-izin-usaha-pertambangan-batuan 30 April 2024 pukul 12.04 WIB