



Modus Operandi of Illegal Mining Crime in The Area of Gold Mining

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ABSTRACT

This study aims to determine the shape of the modus operandi of the crime of illegal mining in the District of Rarowatu North Bombana Southeast Sulawesi province and to know the constraints faced by the police in dealing with criminal acts of illegal mining (illegal mining) in District Rarowatu North as well as the efforts made by the parties Police against the illegal mining crime. This research uses a normative juridical approach method that is supported by empirical materials that are based on primary data and information obtained directly from the community as a source of analysis material.

The results of the study indicate that carrying out gold mining activities without an IPR (People's Mining Permit). The perpetrators carried out gold mining without a permit in the following way: The actors together built the machines at the mining location of North Rarowatu District, Bombana Regency. The internal constraints faced by the Bombana Resort Police in dealing with illegal gold mining activities are: Inadequate quantity and quality of investigator members in each unit, especially in the Bombana Resort Police Certain Crime Unit, and external obstacles, namely: the absence of witnesses who present, unclear witness statements, and expert witness statements that are not in accordance with the investigator's question.

Efforts made by the Bombana Resort Police to overcome internal obstacles are: Conducting trainings, training, and evaluations that are specifically carried out to measure the ability (performance) of investigator members, and develop strategies to improve coordination between related agencies, while to overcome external obstacles namely: Submission of Summons II, explaining to the witness the obligations of the witness and showing the legal basis for the obligation of the expert witness.

Keywords: *Illegal Mining, Modus Operandi, Gold Mining*

I. INTRODUCTION

The preamble to the 1945 Constitution (UUD 1945) legally guarantees to protect the entire Indonesian nation and the entire homeland of Indonesia, and to promote public welfare, educate the nation's life and participate in maintaining world order based on independence, eternal peace, and social justice. This means that the development that is being promoted today cannot be separated from the national goal itself, namely towards the creation of a just and prosperous Indonesian society based on Pancasila and the 1945 Constitution. For this reason, it is necessary to have the potential and energy available in managing and enjoying natural resources and natural resources. human resources owned by the Indonesian nation as the grace of God Almighty.

"Indonesia is blessed with abundant natural resources including mining minerals and Indonesia has a high dependence on the use of these mining minerals as development capital. Indonesia is one of the countries in the world that is rich in *natural resources*. There are natural resources that can be renewed (renewable), and some are non-renewable (unrenewable).

The total area of this huge course also directly proportional to the natural riches contained therein or on the surface of good that can be updated (*renewable*) and that cannot be updated (*unrenewable*).

"Mineral resources are one of the natural resources owned by the Indonesian people, if managed properly they will contribute to the country's economic development. In the world of mining, Indonesia is indeed known as a country rich in mineral content that is ready to be removed at any time".

The natural resources owned by Indonesia require the Indonesian people to make every effort to manage and utilize them for the welfare of human beings themselves and the State of Indonesia. These efforts can be carried out in the form of development that leads to improvement and guidance to create superior, competitive, and innovative

human beings and through sustainable development can improve people's living standards as stated by Otto Soemarwoto that:

"Development aims to improve the standard of living and welfare of the people, it can also be said that development aims to improve the quality of life of the people, because the quality of life of the people can be interpreted as the degree to which basic needs are fulfilled, then development can be interpreted as an effort to better meet the basic needs of the people".

Each region has its own potential. Bombana Regency and North Konawe Regency are one of the regencies that have large mining potential with good quality.

"The problem is when the mining is carried out without a permit or with a "bribery" permit to the relevant officials. These traditional (illegal) miners are not easy to manage and direct. For example, they do mine in any part of the river with a large capacity and exceeding the boundaries that exist in Law No. 4 of 2009 concerning Mineral and Coal Mining. Mining without a permit is like a mushroom that thrives in the rainy season. Its existence is almost spread throughout Bombana and North Konawe regencies".

The existence of mining activities that refer to *illegal mining* activities of course has implications for legal problems, especially with criminal matters and this has been regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining. In order to be punished, the perpetrator of a crime must fulfill all the elements of the Article that is alleged against him. That one of the main elements that must be met in Article 158 of Law no. 4 of 2009 concerning Mineral and Coal Mining is the element of "Conducting a mining business".

"Bombana Regency is one of the cities that has problems related to people's mining. Bombana Regency has gold mineral potential, especially North Rarowatu District which is a gold mining area with abundant yields whose turnover reaches Rp. 150 billion per month. So, this has attracted the attention of not only the local community but also people outside Bombana Regency to carry out mining".

"Many people who do mining do not have permits. Now the District of North Rarowatu has become an area of uncontrolled gold mining activities. North Rarowatu District, which was once an agricultural area with rice fields, fields and community gardens, is now filled with gold-processing drum machines and gaping holes ex-miners excavated. Ironically, some of them belonged to a number of security forces and government elites in Bombana Regency".

After more than eight years of processing Bombana gold, significant incidents are landscape changes, crime, land conflicts, land ownership changes, and the threat of pollution, the community has several times reported cases of livestock deaths due to waste disposal around the river. In addition, the reduced flow of river water due to the use of water by gold processing machines has sacrificed sources of income and people's livelihoods. This water crisis has killed the livelihoods of onion, rice and vegetable farmers who depend heavily on this river's water supply. Now the activities of destroying hills and land have spread to the surrounding areas, even gold-processing drum machines have been operating in the midst of residential areas. The government, which should have taken the leading position in solving this problem, was almost powerless and did nothing.

The dilemma is the most appropriate expression to describe the condition of people's mining, on the one hand, community mining has provided employment and livelihoods for thousands of people who work in mining areas, on the other hand, community mining activities that are difficult to control have resulted in damage and environmental pollution that causes serious environmental damage. very serious. Drums and barrels are equipment used to separate gold grains from sand, soil, and rocks. In operation, the drum uses mercury or mercury while the barrel uses cyanide. These two types of chemicals are the main causes of damage and contamination of the environment around the mining area.

People from various regions came in droves to carry out mining activities, most of them from South Sulawesi Province, others from Central Sulawesi region. Day by day their number is getting bigger. Mining is done wherever they please. Local people who used to be farming also moved to become gold miners. The slow anticipation of the local government in the early stages of mining activities has made the problems of people's mining even more unstoppable.

Seeing this, the authors are interested in conducting research and writing entitled "Treatment of Modus Operandi Forms of Illegal Mining Crimes (*Illegal Mining*) in Gold Mining Areas in Bombana Regency (Study in North Rarowatu District)".

II. LITERATURE REVIEW

Definition of Crime

"According to R. Soesilo (1997), a criminal act is an act that is prohibited or required by law which if committed or ignored, the person who commits or ignores it is threatened with a crime.

" According to Moeljatno (2002), that act (criminal act) is a condition created by someone or something that is done. In other words, the action shows both the result and the one that causes the effect. So, has/has an abstract meaning. Furthermore, Moeljatno emphasized that a criminal act must be clearly distinguished between being able to convict an act and being able to convict a person. Moeljatno's view shows that there is a separation/distinction between the notion of a *criminal act* and *criminal responsibility*. Therefore, the definition of a criminal act does not

include criminal liability, so this view is also called a dualistic view as a deviation from the view that Moeljatno calls a monistic view which he considers outdated.

General Concept of Mining Law

The definition of mining according to Law Number: 4 of 2009 concerning Mineral and Coal Mining. The meaning of mining, namely:

"Mining is part or all of the stages of activities in the context of research, management and exploitation of minerals or coal which include general investigation, exploration, feasibility studies, mining construction, management and refining, transportation and sales, as well as post-mining activities".

According to H. Salim HS (2005), mining law is: "The overall rule of law that regulates the authority of the state in the management of minerals (mines) and regulates the legal relationship of the state with individuals or legal entities in the management and utilization of mining minerals"

Law Number 4 of 2009 concerning Mineral and Coal Mining explains that: Holders of Mining Business Permits and Special Mining Business Permits may carry out part or all of the stages of the mining business, both exploration activities and production operations.

III. RESEARCH METHODS

Types of research

The type of research that will be carried out is included in the type of descriptive analytical research, which means "a study that describes certain conditions and determines the frequency of occurrence of certain events". "Or provide data as accurately as possible about humans, circumstances, and other symptoms".

The research method used is normative juridical which is supported by empirical materials which means "referring to the legal norms contained in legislation, court decisions, and by looking at the synchronization of a legal rule with other legal rules in a hierarchical manner". The approach to the problem used in this research is a statutory *approach*, which is an approach that is carried out by examining all laws and regulations related to the legal issues being handled"

Source of Legal Material

The types of materials and data used in this study are secondary data, namely data that is not collected by the researcher himself

Population and Sample

The population in this study are members of the community and the police as well as mining companies as one of the important elements in mining law enforcement, namely in the criminal act of *illegal mining*

Data analysis

Data and information obtained from the field, both primary data and secondary data were analyzed using qualitative normative analysis techniques, then presented descriptively. To interpret the existing data using the theoretical basis then explained. Described, and described in accordance with the problems that have been formulated in the research.

IV. DISCUSSION

The Modus Operandi of Illegal Mining Crimes in the District of North Rarowatu, Bombana Regency.

"As a result of field supervision by the Regional Government of Southeast Sulawesi Province, in 2014, there were incidents of mining without permits as follows: occurred in the area of 13 contract-of-work companies and occurred in the area of 6 companies holding IUPs ". Furthermore, according to Rusbandriyo, the impacts of mining without a permit are:

1. PNBP is not paid by Illegal Miners.
2. Environmental damage due to uncontrolled illegal mining can incur costs for rehabilitation

"The crime of mining without a permit in Bombana Regency in the last 3 (three) years has experienced a very significant increasing *trend* and is a serious problem that must receive special handling from the Police."

The following table shows the number of cases of illegal mining crimes in Bombana Regency:

Table 1. Data on the Number of Cases of Mining Crimes Without Permits in Bombana District

No	Year	Number of Reports	Number of Completed Reports	Number of Unfinished Reports	Percentage	Percentage of Unfinished Reports
1	2012	7	-	7	-	100%
2	2013	9	-	9	-	100%
3	2014	13	5	8	38.46%	61.54%

Source: Bombana Police

Based on the table above, that illegal mining crimes handled by the Bombana Police from the report from the Bombana Regency Mining and Energy Service both using pumps, lowders, and excavators in 2012 there were 7

cases reported and none of them were resolved by the Police so that the percentage of unfinished reports is 100%, while in 2013 there were 9 cases reported and none of the cases were resolved by the Bombana Police, and in 2014 cases of *illegal mining* crimes/ *illegal mining* in Bombana Regency increased to 13 cases and were resolved 5 cases by the Bombana Police so that the percentage of reports that were completed was 38.46% and the percentage of reports that were not completed was 61.54%. So, the number of cases regarding illegal mining crimes in Bombana Regency from 2012 to 2014 was 29 cases, and only 5 cases were resolved or transferred by the Bombana Police to the prosecutor's office.

The rise of *illegal mining* crimes/ *illegal mining* in Bombana Regency is certainly driven or caused by several factors. The factors that cause the rise of mining without permits/ *illegal mining* in Bombana Regency which were collected by the authors in the study, are as follows:

1. Economic factors
2. The perpetrator wants to avoid the obligations that have been determined.
3. Difficulty in getting an IUP (Mining Business Permit)
4. The lack of socialization regarding laws and regulations
5. Weak law enforcement

La Udi Alias Udin Bin Langkamuisa said: "I carried out mining activities without a gold type permit because it was difficult for me to find employment, and with this activity I was able to employ 10 (ten) unemployed youths in my village".

From the statement of the perpetrator, it is clear that the economic factor is the main factor for someone to carry out mining without a permit in Bombana Regency.

One of the factors rampant mining unlicensed / *illegal mining* also in Bombana is because the perpetrators wanted to avoid the obligations that have been determined by the Department of Mines and Energy and local authorities, among others: taxes on production haulage (retribution), LKMD, and other -other.

"The factor that causes the rise of *illegal mining* in Bombana Regency is because it is difficult for people to obtain Mining Business Permits (IUP) and usually people who apply for mining activities at our office are impatient, even though issuing permits takes quite a long time because we also have to synergize with the Department of the Environment regarding AMDAL"

Based on the author's research from several perpetrators of mining crimes that have been handled by the police, the modus operandi that is usually carried out by perpetrators of mining crimes without a permit in North Rarowatu District, Bombana Regency, is:

1. Carry out mining activities outside the given WIUP coordinates;
2. Carry out mining activities in locations whose IUP period has expired;
3. Carry out mining activities under the guise of printing new fields;
4. Carrying out mining activities under the guise of river normalization

"Many people who do mining do not have permits. Now the District of North Rarowatu has become an area of uncontrolled gold mining activities. North Rarowatu District, which was once an agricultural area with rice fields, fields and community gardens, is now filled with gold-processing drum machines and gaping holes ex-miners dug.

Constraints faced by the police and the efforts made in dealing with the occurrence of illegal mining crimes in North Rarowatu District, Bombana Regency

"Internal constraints, namely the constraints contained within the Bombana Resort Police agency which are inhibiting factors in dealing with illegal mining crimes in Bombana Regency, are: The quantity and quality of investigators in each unit are not adequate, especially in the criminal act unit. certain crimes, in this case a mining crime, at the Bombana Regency regional police office"

External constraints, namely the obstacles that researchers found in the Minutes of Investigation (BAP) of mining crimes without a permit, including:

1. Absence of legally summoned witnesses
2. Unclear witness testimony
3. The expert witness testimony does not match the investigator's question

The efforts made by the Bombana Resort Police in tackling the crime of gold mining without a permit include the following:

Efforts to overcome internal constraints

- a. Conducting trainings, training, and evaluations that are specifically carried out to measure the ability (performance) of investigator members.
- b. Develop strategies to improve coordination between law enforcement agencies.

According to the author, the efforts of the police and related agencies regarding the prevention of the rampant crime of *illegal mining* / *illegal mining* in Bombana Regency have taken various ways, namely preventively and repressively.

1. Preventive Effort

In preventive efforts, the emphasis is on eliminating opportunities for crime to be committed. These preventive efforts, namely:

- a. Conduct legal counseling on criminal provisions regarding the crime of mining without a permit/ *illegal mining*.
 - b. Conducting socialization regarding Law Number: 4 Year 2009 concerning Mineral and Coal Mining.
 - c. Installation of banners/pamphlets for each sub-district regarding the dangers of mining activities without a permit/ *illegal mining*.
 - d. Carry out routine supervision and operation of every mining business activity in Bombana Regency.
2. Repressive Effort

This effort is carried out when there has been a mining crime without a permit in Bombana Regency whose actions are in the form of *law enforcement*, namely:

- a. Take firm action against perpetrators of mining crimes without a permit and process them in accordance with applicable law.
- b. Confiscate tools used in carrying out mining activities without a permit.

V. CONCLUSION AND SUGGESTION

Conclusion

Based on the discussion contained in the previous chapter and the results of research that has been obtained by the author, conclusions can be drawn including:

The modus operandi of the crime of mining gold without a permit in the District of North Rarowatu, Bombana Regency is: carrying out mining activities without an IUP (Mining Business Permit), IPR (People's Mining Permit), or IUPK (Special Mining Business Permit), but the modus operandi of which is mostly handled by the Bombana resort police is to carry out gold mining activities without an IPR (People's Mining Permit).

The perpetrators carried out gold mining without a permit in the following way: The actors together built the machines at the mining location of North Rarowatu District, Bombana Regency. The method used by the perpetrators was previously, collecting materials obtained around the location or from rivers suspected of containing gold, either carried out by the defendants themselves or brought from the community, then the materials were put into a crushing machine. After all the material is smooth, then it is put into a sack which is then put back into the drum drum and after 2 (two) hours later the drum machine is put in a mixture of mercury. After 15 (fifteen) minutes later, the material mixture is removed and filtered with a soft cloth, then it is ready to be compacted and sold.

The internal constraints faced by the Bombana Resort Police in dealing with illegal gold mining activities are: Inadequate quantity and quality of investigator members in each unit, especially in the Bombana Resort Police Certain Crime Unit, and external obstacles, namely: the absence of witnesses who present, unclear witness statements, and expert witness statements that are not in accordance with the investigator's question.

Efforts made by the Bombana Resort Police to overcome internal obstacles are: Conducting trainings, training, and evaluations that are specifically carried out to measure the ability (performance) of investigator members, and develop strategies to improve coordination between related agencies, while to overcome external obstacles namely: Submission of Summons II, explaining to the witness the obligations of the witness and showing the legal basis for the obligation of the expert witness.

Suggestion

Based on the conclusions above, the authors provide several suggestions, including: The need to provide education and training, especially to investigators / assistant investigators in handling mining crimes without a permit and coordinating with related agencies. The police and related agencies should act decisively and consistently in carrying out their duties as law enforcement officers, and it is not advisable to accept funds from mining entrepreneurs to cover their mining business without a permit.

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