

SHIFT OF CRIMINAL LIABILITY IN UNAUTHORIZED OIL MINING OFFENSES TOWARDS REALIZING THE WELFARE OF THE PEOPLE

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Abstract

This research has the purpose to: This research is motivated by the absence of a supervision system for oil mining permits and the occurrence of norm shifts in criminal sentencing for unauthorized oil mining offenses, resulting in a lack of clarity in procedures and processes regarding the imposition of criminal sanctions. The issues in this research are as follows: (1) How is the Concept of Criminal Liability in Unauthorized Oil Mining Offenses Framed to Achieve the Welfare of the People? (2) Can the Shift in Norms Regarding the Concept of Criminal Liability in Unauthorized Oil Mining Offenses Contribute to the Welfare of the People? Research Methodology: (1) Normative juridical research type. Analysis of Legal Materials: The obtained legal materials are inventoried and subsequently analyzed qualitatively, providing descriptions of results that prioritize the quality of legal materials. The method of legal material analysis employed is systematic interpretation. Drawing conclusions from the analysis results is conducted using the deductive method, which involves inferring research outcomes from general principles to specific instances. The intended results include discovering a formulation regarding a supervision system for oil mining

permits and elaborating on the concept of shifting criminal liability in imposing penalties for unauthorized oil mining offenses, resulting in the lack of clarity regarding procedures and processes for imposing criminal sanctions.

1. Introduction

Indonesia is often referred to as the lungs of the world, and this is not without reason, as Indonesia is a country endowed with abundant natural resources and holds a strategic geographical position. Hence, Indonesia tightly regulates the management of its natural resources. This regulation is enshrined in Article 33, paragraph (3) of the 1945 Constitution, which explains that the land and water as well as the natural resources contained therein are controlled by the State and used to the greatest extent for the prosperity of the people. This provision signifies that the state's control over natural resources is intended for the prosperity of the Indonesian people themselves. The management of mines is expected to enhance the well-being of the people, including mining activities conducted by the community in the form of artisanal mining, which has been indicated to have been carried out illegally for some time.

Mining is a sequence of activities aimed at the exploration, extraction (digging), processing, utilization, and sale of mineral resources. Mining possesses several characteristics, namely its non-renewable nature, relatively higher risks, and its operations having a greater environmental impact, both in terms of physical and social aspects, compared to other commodities in general (Salim, 2011).

As a country founded on the rule of law, there is no way to actualize this matter other than by initiating a regulatory process. This regulatory process should encompass legal norms that demonstrate a commitment to realizing the objective of sustainably managing oil and natural gas mining operations with an environmental perspective.

The management of mines is expected to enhance the well-being of the people, including mining activities conducted by the community in the form of artisanal mining, which has been indicated to have been carried out illegally for some time. Mining is a series of activities aimed at the exploration, extraction, processing, utilization, and sale of mineral resources. Mining exhibits several characteristics, namely its non-renewable nature, relatively higher inherent risks, and its operations having a greater environmental impact, both in terms of physical and social aspects, compared to other commodities in general (Satriawan, 2021). Mining enterprise encompasses several stages of mining activities, namely:

1. General Investigation
2. Exploration
3. Feasibility Research
4. Mining Preparation

5. Extraction
6. Mineral Processing
7. Transportation
8. Reclamation (Pratama, 2016).

The management of oil and natural gas energy resources is carried out by enacting laws that regulate oil and natural gas, a process that has undergone several revisions, namely (Hutapea, Siburian, 2020):

- a. Presidential Regulation Number 44 of the Year 1960 concerning Oil and Gas Mining.;
- b. Law Number 15 of 1962 regarding the Enactment of Government Regulation in Lieu of Law Number 2 of 1962 concerning the Obligation of Oil Companies to Fulfill Domestic Needs;
- c. Law Number 8 of 1971 concerning State-Owned Oil and Natural Gas Mining Companies is no longer in line with the developments in the oil and natural gas mining industry; and
- d. Law Number 22 of 2001 concerning Oil and Natural Gas, where the basis for its enactment is the incompatibility of Presidential Regulation Number 44 of 1960 with the advancements in the oil and gas industry, both at the national and international levels.
- e. The Republic of Indonesia Law Number 6 of 2023 Regarding the Determination of Government Regulation in lieu of Law Number 2 of 2022 Concerning Job Creation to Become Law.

The Republic of Indonesia Law Number 6 of the Year 2023 Regarding the Enactment of Government Regulation in Lieu of Law Number 2 of the Year 2022 Concerning Job Creation into Law (Job Creation Law) continues to spark controversy. Several articles within Government Regulation in Lieu of Law Number 2 of the Year 2002 concerning Oil and Natural Gas (Oil and Gas Law) are also causing debate. The highlighted regulation is the shift in regime from upstream oil and gas contracts to Business Licensing. Article 1 paragraph 1 of the Omnibus Law is an effort towards job creation through facilitating, protecting, and empowering cooperatives and micro, small, and medium enterprises, enhancing the investment ecosystem and ease of doing business, as well as central government investments and the acceleration of national strategic projects (Neununy, 2021).

There are eight articles that have been amended through the Omnibus Law, namely Articles 1, 4, 5, 23, 25, 52, 53, and 55. In addition, the Omnibus Law introduced Article 23A, inserted between Article 23 and Article 24. Several changes have been made, including the definition of central government, the definition of regional government, regulations concerning upstream oil and gas activities, regulations concerning

downstream activities, and procedures for imposing sanctions for violations in the implementation of oil and natural gas business activities (Indrati, 2007).

The changes that have occurred to those eight articles result in criminal liability in cases of unauthorized oil mining. In the Omnibus Law, this has led to a shift in norms, causing alterations in the sanctions and the process of accountability.

2. Research Method

Based on the problems above, this article will discuss the following 2 problem formulations: 1. What is the Concept of Criminal Liability in Unauthorized Oil Mining Offenses for the Purpose of Realizing the Welfare of the People? 2. Can the Shift in Norms Regarding the Concept of Criminal Liability in Unauthorized Oil Mining Offenses Contribute to the Welfare of the People?.

In the scientific tradition of legal science, the type of legal research is highly dependent on the legal concepts used (Nasution, 2008). This research on confiscation and shifting criminal liability in the crime of oil mining without a permit in the context of realizing people's welfare focuses on normative legal science. Therefore the type of research used is doctrinal research or normative legal research.

3. Results And Discussion

The Concept of Criminal Liability in Cases of Unauthorized Oil Mining Towards Achieving the Welfare of the People

Criminal responsibility is referred to as *toerekenbaarheid*, criminal responsibility, and criminal liability. The purpose of criminal responsibility is to ascertain whether an individual, who is a suspect or defendant, is held accountable for a criminal act (crime) that has taken place (Kanter, Sianturi, 2002). Criminal responsibility involves the objective attribution of wrongdoing to a criminal act based on the applicable legal provisions. Subjectively, it pertains to the offender who meets the qualifications stipulated in the criminal law and can be subjected to criminal punishment for their actions. Meanwhile, for the imposition of criminal responsibility or the application of a criminal penalty, the presence of a culpable element in the form of intent or negligence is necessary (Arief, 2005). Criminal liability is based on the principle of legality, while the basis for the prosecution of an offender relies on the principle of culpability. This implies that a perpetrator of a criminal act will only be subject to prosecution if they bear culpability for committing that criminal act (Abidin, 1983). In Law No. 22 of 2001 concerning Oil and Natural Gas, it is evident that unauthorized oil mining is prohibited, as oil and natural gas are non-renewable natural resources and are exceptionally strategic resources. Their management concerns the interests of many individuals, thus requiring maximization for the benefit of the greater population. Additionally, oil and gas resources serve as vital

commodities in providing and enhancing national economy for the purpose of national economic growth (Badri, Pitri, Eka, 2021). Hence, the concept of criminal liability must encompass the act of the Criminal Offense (Formal Offense) and the resultant consequences of that act (Material Offense). This holds true in the context of criminal acts related to unauthorized oil mining in Indonesia. However, changes have occurred in the formulation of the offense, leading to a shift in criminal responsibility. Initially, the Offender who could be subject to Criminal Responsibility was limited to the act of mining without permission, as stipulated in Article 23 of the Oil and Gas Law (UU Migas), where criminal sanctions are prescribed in Article 53 of the UU Migas, allowing for criminal liability. The formulation of the offense is as follows:

Pasal 53 (Undang-Undang 22 Tahun 2001)

Every individual who commits:

- a. Processing as referred to in Article 23 without a Processing Business Permit is punishable by imprisonment for a maximum of 5 (five) years and a fine of up to IDR 50,000,000,000.00 (fifty billion Indonesian rupiahs);
- b. Transportation as defined in Article 23 without a Transportation Business Permit is punishable by imprisonment for a maximum of 4 (four) years and a fine of up to IDR 40,000,000,000.00 (forty billion Indonesian rupiahs);
- c. Storage as stipulated in Article 23 without a Storage Business Permit is punishable by imprisonment for a maximum of 3 (three) years and a fine of up to IDR 30,000,000,000.00 (thirty billion Indonesian rupiahs);
- d. Trading as defined in Article 23 without a Trading Business Permit is punishable by imprisonment for a maximum of 3 (three) years and a fine of up to IDR 30,000,000,000.00 (thirty billion Indonesian rupiahs).

In Article 53 of the Oil and Gas Law, the *primum remedium* principle is clearly employed, which prioritizes the imposition of criminal sanctions first. This is aimed at preventing unauthorized oil mining, thereby leaving no room for offenders to engage in criminal actions. In the Oil and Gas Law, a preventive approach is emphasized, as unauthorized oil mining can lead to state losses. However, with the issuance of the Omnibus Law on Job Creation, the introduction of Article 23A and the modification of Article 53 have resulted in a shift in criminal liability, which can now be applied based on the requirement for the existence of material offense.

The material offense within the Omnibus Law on Job Creation is elaborated in Article 53, stating that if actions as defined in Article 23A result in harm/damage to health, safety, and/or the environment, the offender shall be subject to imprisonment for a maximum of 5 (five) years or a fine of up to IDR 50,000,000,000 (fifty billion Indonesian rupiahs) (Undang-Undang Nomor 6 Tahun 2003). Thus, providing an opportunity for perpetrators of unauthorized oil mining to engage in mining activities

as long as there are no victims. This is elucidated by the formulation of Article 23A (1), which states that anyone who conducts Downstream Business Activities without a Business Permit as stipulated in Article 23 is subject to administrative sanctions, including the cessation of operations and/or activities, fines, and/or compulsory measures by the Central Government. The Omnibus Law on Job Creation indeed prioritizes the *Ultimum Remedium* principle (Widayati, 2015). Namely, making criminal law the last resort. This is a positive breakthrough as the government provides an opportunity for individuals who intend to engage in oil mining to generate income beforehand to facilitate the process of obtaining mining permits. However, this must be balanced with effective supervision to prevent losses to the state, considering that natural resources in Indonesia are owned by the state according to Article 33 of the Constitution.

The system and supervision of criminal liability for the crime of oil mining without a permit is still not optimal because the concept of supervision carried out by the local government on oil mining without a permit has not been clearly regulated. In addition, the shift in criminal responsibility in the imposition of crimes against oil mining without a permit has resulted in unclear procedures and processes regarding the imposition of criminal sanctions. Therefore, in the future, this research will provide a solution to criminal responsibility for the crime of oil mining without a permit in order to realize people's welfare.

The Shift in Norms Regarding the Concept of Criminal Liability in Cases of Unauthorized Oil Mining Can Realize the Welfare of the People

Legal norms are regulations intended to maintain societal order, typically established by local government authorities within a country. A shift in legal norms has occurred in criminal liability concerning unauthorized oil mining. This normative shift transpired with the enactment of the Omnibus Law on Job Creation, involving legal norms that have shifted through various provisions of the Omnibus Law, such as Articles 1, 4, 5, 23, 25, 52, 53, and 55. Additionally, the Omnibus Law introduces Article 23A, inserted between Article 23 and Article 24.

The shift in legal norms results in a shift in criminal liability. The Omnibus Law on Job Creation provides an opportunity for illegal oil mining actors to engage in mining without proper permits, with only administrative sanctions imposed. This opportunity is reflected in Article 23A of the Omnibus Law, wherein the government grants space for ordinary citizens to engage in oil mining prior to obtaining permits due to the lengthy registration process. Consequently, the government imposes milder sanctions on those engaging in unauthorized mining, refraining from criminal liability and applying only administrative penalties.



The government's intention in providing such leeway is essentially to aid the community in acquiring job opportunities, as this is reflected in the deliberations of the Omnibus Law on Job Creation. This law emphasizes that by means of the Omnibus Law, it is expected to effectively absorb the extensive Indonesian workforce in the midst of increasingly competitive circumstances and the demands of global economic globalization, as well as the existence of challenges and global economic crises that could disrupt the national economy. Consequently, this leads to the imposition of milder sanctions on unauthorized oil mining (Pratiwi, Tamara, Kotijah, Apriyani, 2021).

Despite the government's aim to assist the community in achieving the well-being of the people, it must be accompanied by strengthening the oversight of illegal oil miners and ensuring that this does not result in consequences as outlined in Article 53 of the Omnibus Law on Job Creation (Rahmad, Wairocana, Satyawati, 2013).

Government supervision over unauthorized oil mining has not been adequately reflected in the Omnibus Law on Job Creation. The supervision stipulated in the Omnibus Law pertains only to mining operations that possess licenses. The lack of integrated supervision between the government and law enforcement agencies has led to the proliferation of illegal mining, resulting in losses to the state. The loss to the state occurs because illegal oil miners do not pay taxes as stipulated by the provisions of the laws and regulations. It is disheartening to consider Article 33, paragraph 3 of the Constitution, which states that the Earth, water, and natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people (Undang-Undang Dasar Republik Indonesia 1945). The prosperity of the people can be realized if illegal mining entrepreneurs pay taxes. Considering that taxes serve as a means to build Indonesia in order to achieve the well-being of society.

Therefore, it is necessary to establish an integrated Supervisory, Preventive, and Law Enforcement Team for illegal mining, encompassing both the central and regional levels. The formation of this team aims to facilitate illegal oil miners in promptly obtaining mining permits (Ramadhan, 2020). Since the government only imposes administrative sanctions, resulting in criminal penalties being applicable only when there are discernible consequences arising from illegal oil mining. Waiting for consequences to manifest from the actions of the offenders not only victimizes the state but also the community. Without the prompt establishment of the Supervisory, Preventive, and Law Enforcement Team for illegal mining, the Omnibus Law on Job Creation, which aims to achieve public welfare, remains a mere aspiration.

Thus, the Supervisory, Preventive, and Law Enforcement Team for illegal mining can be coordinated with the Ministry of Coordinating Political, Legal, and Security Affairs, in collaboration with the Ministry of Environment, Ministry of Energy and Mineral Resources, Ministry of Finance, Republic Prosecutor's Office,

Indonesian National Police, and Regional Government. This leads to the establishment of an integrated supervision framework that spans from the central government to regional administrations.

In addition to the establishment of the Supervisory Team, there is also a restructuring of mining to ensure the rights of local communities to engage in mining activities. This approach aims to prevent the monopolization of mining, which is otherwise limited to mining companies or mining entrepreneurs.

4. Conclusion

A shift in criminal liability and norms concerning the criminal act of unauthorized mining has occurred with the enactment of the Omnibus Law on Job Creation. This is due to the prioritization of the ultimum remedium principle, thereby affording opportunities for perpetrators of unauthorized oil mining to evade criminal sanctions when engaging in mining activities as long as no victims are identified, as stipulated in Article 53 of the Omnibus Law on Job Creation. The absence of Criminal sanctions against unauthorized mining can result in losses to the state. This is attributed to the lack of oversight over unpermitted mining activities, leading to a proliferation of unauthorized mining operations within society. Consequently, illegal miners who do not pay taxes contribute to disruptions in national revenue, potentially impeding the state's objective of realizing public welfare.

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