



Enforcement Of Environmental Laws Against Illegal Sand Mining In Sirkandi Village, Purwareja-Klampok District Based On The Mineral And Coal Mining Law

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Abstract

There are several places for sand mining in Banjarnegara. One of them is in Sapi River, precisely in Sirkandi Village, Purwareja-Klampok District. Sand mining activities in the Sapi River using a suction machine harm the community, such as damaged roads due to overloaded dam trucks, rivers getting more profound due to river water deepening, and water sources shrinking. This study aims to determine the enforcement of the environmental law on illegal sand mining in Sirkandi Village, Purwareja-Klampok District, Banjarnegara Regency, and what factors hinder the regulation of illicit sand mining. This study uses a normative juridical method where the law is conceptualized as what is written in the legislation, or the law is conceptualized as a rule or norm, a regulation of human behavior considered appropriate. The enforcement of illegal sand mining environmental laws in Sirkandi Village, Purwareja-Klampok District, and Banjarnegara Regency has not been carried out optimally, and the application of sanctions no longer exists for sand mining actors. Two factors inhibit the environmental law of illegal sand mining, namely internal factors and external factors. Internal factors include a lack of legal awareness in the community, economic factors, and external factors such as difficulty obtaining business permits.

Keywords: Law Enforcement, Sand Mining, Illegal

Abstrak

Pertambangan pasir di Banjarnegara terdapat beberapa tempat. Salah satunya di Sapi River tepatnya di Desa Sirkandi Kecamatan Purwareja-Klampok. Kegiatan penambangan pasir yang dilakukan di Sapi River dengan menggunakan alat sedot mesin menimbulkan dampak negatif bagi masyarakat seperti jalanan menjadi rusak akibat muatan truk dam yang terlalu berat, sungai semakin dalam karena pendalaman air sungai serta sumber mata air semakin menyusut. Penelitian ini bertujuan untuk mengetahui penegakan hukum lingkungan terhadap pertambangan pasir secara ilegal di Desa Sirkandi Kecamatan Purwareja-Klampok Kabupaten Banjarnegara, serta apa faktor penghambat penegakan hukum lingkungan terhadap pertambangan pasir secara ilegal. Penelitian ini menggunakan metode yuridis normatif dimana hukum dikonsepsikan sebagai apa yang tertulis dalam peraturan perundang-undangan atau hukum dikonsepsikan sebagai kaidah atau norma yang merupakan patokan berperilaku manusia yang dianggap pantas. Penegakan hukum lingkungan terhadap pertambangan pasir secara ilegal di Desa Sirkandi Kecamatan Purwareja-Klampok Kabupaten Banjarnegara belum terlaksana secara maksimal dan penerapan sanksinya diterapkan supaya tidak adalagi para pelaku pertambangan pasir ilegal. Faktor penghambat penegakan hukum lingkungan terhadap pertambangan pasir secara ilegal terdapat 2 faktor yaitu faktor internal dan faktor eksternal. Faktor internal seperti kurangnya kesadaran hukum di masyarakat, faktor ekonomi dan faktor eksternal seperti susahnya dalam mengurus ijin usaha.

Kata kunci: Penegakan Hukum, Pertambangan Pasir, Ilegal

I. Introduction

The environment is all objects and conditions in an occupied space that can affect human life.¹ The environment is all things and conditions, including man and his deeds, which are present in the space in which man is located and affects and relate to the well-being of man and other living remains.² There are two primary components of the environment, namely biotics, and antibiotics.³ Biotics is an environmental component of a group of living things. Biotic components include humans, animals, and plants or so-called living things while antibiotics are inanimate objects on the earth's surface and provide benefits and

¹ Soemarwoto, *Lingkungan Hidup dan Pembangunan*, Penerbit Djambatan (Ekologi, 1977), 4.

² Munadjat Danusaputro, *Hukum Lingkungan*, Buku I Umum (Bandung, Penerbit Bina Cipta), 28.

³ Agoes Soegianto, *Ilmu Lingkungan, Sarana Menuju Masyarakat Berkelanjutan*, Surabaya Airlangga University Press, 2010).

influences on human life and other living things. This results in the high exploitation of natural resources.⁴

One of Indonesia's natural wealth is mining potential, spread from Sabang to Merauke.⁵ Article 33, paragraph (3) of the 1945 Constitution states, "The earth, water, and natural wealth contained therein are controlled by the state and used as much as possible for prosperity of the people." Based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, there are essential elements in the exploitation of Indonesia's earth, water, and natural wealth, including the ingredients: "controlled by the state" and "the greatest prosperity of the people." These two significant elements become the soul of every business of earth, water, and wealth. Any exploitation of natural resources must be linked to the fundamental question philosophically based on Article 33 paragraph (3) of the 1945 Constitution. Natural resources are not only the property of the current generation but also belong to future generations. Natural resources are not only owned and utilized intergenerationally but also between ages. But on the other hand, there is another view that considers natural resources as economic commodities that must be utilized as optimally as possible so that natural resources become *the engine of growth*. Natural resources are oriented as capital by pursuing productivity in achieving economic growth.⁶

Mining is a series of activities in the search, development (control), processing, utilization, and sale of excavated materials such as minerals, coal, oil and gas, stone, and sand.⁷ Sand is refined grains of rock; sand is provided by nature and found in several places, including volcanoes, seas, rivers, and on the ground.⁸ Mining carried out by man is an effort to meet the needs of his life. It's just that the mining process carried out so far tends to be an effort to overexploit natural resources, which ultimately hurts humans' survival. One of the most prevalent today is unlicensed mining, where these activities have resulted in various environmental changes, including changes in the landscape nature, changes in the habitat of flora and fauna, changes in soil structure, changes in the flow patterns of surface water and groundwater and so on.⁹

Banjarnegara Regency has an area of 1,064 square kilometers. And there are several sand mining sites. One is located in Sapi River, in Sirkandi Village, Purwareja- Klampok District. Sand mining activities in Sapi River using a suction machine tool hurt sand miners in Sapi River. This mining results in environmental damage, such as roads becoming damaged with holes passed by trucks with heavy loads when it rains, the streets being covered by puddles, endangering other motorists, and potentially causing accidents. The existence of sand mining makes the river deep and wide so that the right cliff and left of the river landslide, and farmers feel disadvantaged because the farmland is getting narrower. Residents' wells deepen due to the deepening of the river flow and the reduced availability of water in Sirkandi Village; the existence of sand mining sites that do not pay attention to soil and land conservation is evidenced by the high level of erosion hazards that occur causing the amount of water on the ground surface so that the ability of the land to hold water is reduced. It was complained about by residents who claimed that the water in the pond and spring water was shrinking, even though the water was needed by residents who used it for daily needs. Sand mining in Sapi River does not have a business license; mining activities are currently widely questioned by various groups because, in addition to the negative

⁴ Marini, Sumbangan Baja, Iqbal Sultan, "Penerimaan Informasi Dampak Penambangan Pasir Bagi Kerusakan Lingkungan Hidup di Kalangan Penambang Pasir Ilegal di Das Jeneberang Kabupaten Gowa," *Jurnal Komunikasi KAREBA* Vol. 3, No. 2 (April - Juni 2014).

⁵ Chyntia Damayanti dan Kartika Sari Dian Pratama, "Urgensi Pembangunan Smelter Oleh Perusahaan Tambang di Indonesia Sesuai Amanat Undang-undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral dan Batu Bara," *Privat Law*, vol. 2:6.

⁶ Ahmad Redi, "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam," *Jurnal Konstitusi* Volume 12 Nomor 2, (Juni 2015).

⁷ Salim HS, *Hukum Pertambangan Mineral dan Batubara*, Jakarta (Sinar Grafika, 2014), 12.

⁸ Pengembangan Bahasa, Kamus Besar Bahasa, 652.

⁹ Marini, Sumbangan Baja, Iqbal Sultan, "Penerimaan Informasi Dampak Penambangan Pasir Bagi Kerusakan Lingkungan Hidup Di Kalangan Penambang Pasir Ilegal Di Das Jeneberang Kabupaten Gowa," *Jurnal Komunikasi KAREBA* Vol. 3, No.2 (April - Juni 2014).

impacts caused are also without a mining business license.¹⁰

Based on the background that the author has described above, the author is interested in conducting research with the title "Enforcement Of Environmental Laws Against Illegal Sand Mining In Sirkandi Village, Purwareja-Klampok District Based On The Mineral And Coal Mining Law."

II. Research Problems

1. How is the enforcement of environmental laws against illegal sand mining in Sirkandi Village, Purwareja-Klampok District, under the mineral and coal mining law?
2. What are the factors inhibiting environmental law enforcement against illegal sand mining?

III. Research Methods

The method used by the author in this study is normative juridical, where the law is conceptualized as what is written in the laws and regulations or laws conceptualized as rules or norms that are the benchmark for human behavior that is considered appropriate.¹⁶ The data specification used in this study is a descriptive study. Descriptive research aims to describe a problem in a specific area or time. This study seeks to reveal the facts and what they are. An illustrative method examines the status of a group of human beings, an object, a condition, or a system of thought.¹¹ Secondary data are obtained by researchers from various literature studies in writing research that uses a normative approach. The legal materials used are obtained through tracing legal materials, among others.

The data collection procedure is carried out with literature studies to obtain secondary data through reading activities, notes, and documentation techniques by looking for newspapers, magazines, and so on. The data in the preparation of this study is presented in the form of a description, a method compiled systematically, logically, and rationally. In giving the data obtained from the research, is processed and analyzed based on the formulation of the problem that has been applied and then presented descriptively, namely explaining, describing, and describing the problems that are closely related to this research to provide a clear and directional understanding as obtained from the results of the study later. So it is hoped that a clear picture can be obtained.¹²

IV. Results and Discussion

1. Based on the mineral and coal mining law, the enforcement of environmental laws against illegal sand mining in Sirkandi Village, Purwareja-Klampok District.

Law enforcement is a process of bringing the wishes of the law into reality; the so-called legal wishes here are nothing but the thoughts of the Law-making body formulated in the rule of law. The formulation of lawmakers' opinions, as outlined in the direction of law, will also determine how law enforcement is carried out.¹³ Law enforcement as a process is, in essence, an application of discretion that concerns making decisions that are not strictly regulated by the rules of law. The benchmark of law enforcement effectiveness is 5 (five) factors closely related to people's lives. Various factors influence the conditions of law enforcement:

- a. Legal or statutory factors themselves that in this case, are related to
 - 1) Consistency of its principles or principles.
 - 2) The process of its formulation.
 - 3) The level of legal ability in its operationalization.

¹⁰ Pre-survey of research sites on May 30, 2021

¹¹ Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum*, (Raja Grafindo Persada Jakarta, 2012), 118.

¹² Suteki dan Galang Taufan, *Metode Penelitian Hukum (Filsafat, Teori, Dan Praktik)*, (Depok: Rajawali Pres, 2018), 133.

¹³ Satjipto Raharjo, *Penegakan Hukum Sebagai Tinjauan Sosiologis*, Genta Publishing, (Yogyakarta, 2009), 25.

- b. The resources of its law enforcement apparatus are a critical factor in law enforcement.
- c. Adequate facilities and infrastructure.
- d. Community factors are public perceptions of law, order, and the function of law enforcement.
- e. The political factors of state control are particularly discretionary about the interference of the government and interest groups in law enforcement efforts.¹⁴

The five factors above are different from the opinion of Soerjono Soekanto, where after the four factors mentioned above, the fifth factor is the cultural factor that regulates so that humans can understand how it is time to act, do and determine attitudes when dealing with others.¹⁵ Law enforcement always takes place in competitive relations and intersects with processes in other areas such as social, economic, political, and so on. The law always "compromises" with circumstances that are disorderly in society.¹⁶ According to Soerjono Soekanto, law enforcement is harmonizing the relationship of values described in the stable rules and attitudes of action as a series of elaborations of final stage values to create, maintain, and maintain the peace of life associations.¹⁷ The enforcement of environmental laws regulates the enforcement of illegal mining laws. This unlicensed mining business is contained in article 158 of Law No. 4 of 2009 concerning Mineral and Coal Mining which reads, "Everyone who carries out mining business without a mining business license (IUP), community mining permit (IPR) or special exploration mining business permit (IUPK) as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiahs)."

The mining business to be established, several conditions must be met, as stated in article 39 of Law No. 4 of 2009 concerning Mineral and Coal Mining. Paragraph (1) of the Exploration IUP, as referred to in Article 36, paragraph (1) point a must contain the provisions of at least: (a) The name of the company; (b) Location and area of the territory; (c) A general plan of spatial planning; (d) Guarantee of sincerity; (e) Investment capital; (f) Extension of time for the activity stage; (g) The rights and obligations of the holder of the mining business license (iup); (h) The period of entry into force of the activity stage; (i) The type of business provided; (j) Plans for the development and empowerment of communities around the mining area; (k) Taxation; (l) Dispute resolution; (m) Fixed dues and exploration dues; (n) Amdal. Paragraph (2) of the Production Operation IUP as referred to in Article 36 paragraph (1) point b must contain provisions of at least: (a) Company name; (b) Area; (c) Mining sites; (d) Processing and refining sites; (e) Carriage and sale; (f) Investment capital; (g) The period of validity of the iup; (h) The term of the activity stage; (i) Settlement of land issues; (j) The environment includes reclamation and post-mining; (k) Reclamation and post-mining guarantee funds; (l) Extension of mining business license (iup); (m) Rights and obligations of mining business license holders (iup); (n) Plans for the development and empowerment of communities around the mining area; (o) Taxation; (p) Non-tax state revenues consisting of fixed dues and production dues; (q) Dispute resolution; (r) Occupational safety and health; (s) Conservation of minerals or coal; (t) Utilization of domestic goods, services, and technologies; (u) Application of good mining economic and engineering rules; (v) Development of the country's workforce; (w) Management of mineral or coal data; and (x) Mastery, development, and application of mineral or coal mining technology.

The obligations that must be fulfilled when mining is contained in Article 95 of Law No. 4 of 2009 concerning Mineral and Coal Mining which reads, "Holders of mining business permits (IUP) and special exploration mining business permits (IUPK) are required to (a) apply good mining engineering rules; (b) managing finances by the Indonesian accounting system; (c) increase the added value of mineral and/or coal resources;(d) carry out the

¹⁴ Bambang Sutiyoso, *Reformasi Keadilan dan Penegakan Hukum di Indonesia*, Yogyakarta (UII Press, 2010), 21-23.

¹⁵ Nasution, M. Syukuri Albani, et all, *Hukum Dalam Pendekatan Filsafat*, Jakarta (Prenada Media Grup, 2016),301.

¹⁶ Satjipto Rahardjo, *Hukum dan Perilaku*, Jakarta (PT Kompas Media Nusantara, 2009), 167.

¹⁷ Soerjono Soekanto, *Faktor-faktor Yang Mempengaruhi Penegakan Hukum*, Jakarta (PT Rajagrafindo, 2005), 5.

development and empowerment of local communities, and (e) comply with environmental carrying capacity tolerance limits."Relate to mining law enforcement in the event of a violation. Authorities are cracking down on those in Article 149 of Law No. 4 of 2009 concerning Mineral and Coal Mining which reads (1) In addition to investigating police officials of the Republic of Indonesia, civil servant officials whose scope of duties and responsibilities in the mining sector are given special authority as investigators by the provisions of the laws and regulations. (2) The civil servant investigator as referred to in paragraph (1) is authorized to: conduct an examination of the veracity of reports or information related to criminal acts in mining business activities; (a) conduct an examination of persons or entities suspected of committing criminal acts in mining business activities; (b) summon and/or forcibly bring in persons to be heard and examined as witnesses or suspects in criminal cases of mining business activities; (c) search the premises and/or means allegedly used to commit criminal acts in mining business activities; (d) inspect the facilities and infrastructure of mining business activities and stop the use of equipment suspected of being used to commit criminal acts; (e) sealing and/or confiscating mining business activities used to commit criminal acts as evidence; (f) bring in and/or request the assistance of necessary experts in connection with the examination of criminal cases in mining business activities; and/or (g) stop the investigation of criminal cases in mining business activities.

The use of tools in sand mining activities is stated in articles 50 and 51 of the Banjarnegara Regency Regent Regulation Number 449 of 2010 concerning Mineral and Coal Mining in Banjarnegara Regency, which reads "Provisions for the use of tools in mining business permits (IUP) production operations: a. Holders of mining business permits (IUP) production operations can use heavy equipment, b. Use Fuel Oil for production operations as referred to in letter a, if the user is above 50 (fifty) liters/day using a certificate or recommendation issued by the authorized agency." Article 51 reads, "Terms of use of tools in community mining permits (IPR) production operations: a. community mining permits (IPR) production operations can use mechanical pumping devices a maximum of 25 hp / 30 pk; b. Community mining permits (IPR) for production operations are prohibited from using heavy equipment; c. the use of Fuel Oil for production operations as referred to in letter a, if its use is above 50 (fifty) liters/day using a certificate or recommendation issued by the authorized agency."

Mining is a strategic activity carried out to improve the economic sector. Especially in Banjarnegara Regency, there are various illegal sand mining in the river. Illicit mining of sand causes environmental damage, one of which is in Sirkandi Village or commonly referred to as Karangjengkol sand mining. This sand mine is located in Sapi River, precisely in Sirkandi Village, Purwareja Klampok District; this mine was established in 2019. Residents agreed to the existence of sand mining in the Sapi River because with it, residents have livelihoods such as looking for sand and depositing it into the sand owner. Sand mining activities carried out in Sapi River use the first two types of mining: heavy equipment and machine suction tools. It has caused many negative impacts on the environment around the sand balance.

The negative impacts caused by sand mining are quite a lot, resulting in environmental damage, such as roads becoming damaged with holes passed by trucks with heavy loads when it rains and the streets being covered by puddles, thus endangering other motorists. It has the potential to cause accidents. The existence of river sand mining becomes deep and wide so that the right cliff left of the river landslide. Farmers feel disadvantaged because the agricultural land is getting narrower, and the residents' wells will be more profound due to the deepening of the river flow and reduced water availability in Sirkandi Village. The existence of sand mining that does not pay attention to soil and land conservation is evidenced by the high level of erosion hazard that occurs, causing the amount of water on the soil surface so that the ability of the land to hold water is reduced. Residents complained of this negative impact that claimed that the water in the ponds and springs was shrinking, even though the water was needed by residents who used it for daily needs. As a result of this unlicensed mining activity, it causes environmental damage and disrupts the balance of natural ecosystems. These mining activities are carried out on agricultural lands or plantations that have high productivity. Sand mining in Sapi River does not have a business license because managing this mining business license must go

through several stages. Mining activities without a business license are illegal, and sanctions apply to anyone who violates them. Mining permits will benefit the community and local governments; in addition, the presence of mining permits will legalize mining activities for miners and increase local governments' income sources.

Sand mining in Sirkandi Village does not have a mining company license (IUP), so this mining can be said to be illegal. It happens because the mine owner feels that the process of obtaining a permit is difficult and too complicated, which makes the owners prefer the easier path, namely mining without a license—referring to article 39 of Law no. 4 of 2009 concerning Mineral and Coal Mining that this mining is still not qualified. The conditions that have not been met such as general spatial plan, spatial planning general plan, the extension of the time of the activity stage, rights and obligations of IUP holders, the period of validity of the activity stage, the type of business given, taxation, dispute resolution, fixed contributions, and exploration contributions, and amdal. In Law No. 4 of 2009 concerning Mineral and Coal Mining in article 95, obligations must be carried out. Still, sirkandi mining has not used good techniques and is by the law because the facilities and infrastructure are inadequate. Sirkandi mining in managing finances is not by the law because this illegal mining party does not think about the systematics of silverware and ignores the welfare of workers. The value of mineral resources for individuals because this mining is not yet by the rules. In developing and empowering the community, they do not feel disadvantaged because, with this mining, the community becomes a job.

The environment supports the existence of the mine because it improves the economy of the surrounding residents. Mining in Sirkandi violates article 158 of Law No. 4 of 2009 concerning Mineral and Coal Mining. Everyone who conducts mining business without a mining business license (IUP), community mining permit (IPR), or exploration special mining business permit (IUPK) shall be sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiahs). Be interpreted that whoever carries out sand mining business without contravening the laws and regulations, and for actors who carry out sand mining activities without a permit or for law enforcement who are supposed to work to create legal harmony but in this case even covering up, existing activities can be criminalized as stipulated in the article aforementioned.¹⁸ Using tools in sand mining activities in Sirkandi violates articles 50 and 51. Banjarnegara Regent Regulation Number 449 of 2010 concerning Mineral and Coal Mining in Banjarnegara Regency states that if you are going to carry out mining activities using a suction machine or heavy equipment, you must have a community mining business license (IPR) or a mining business license (IUP). The authorities have not implemented the legal sanctions of mining in Sirkandi because the rules are only taking precautions.

Thus, illegal sand mining in Sirkandi Village, Purwareja-Klampok District, Banjarnegara Regency, violates articles 39, article 95, and article 158 of Law No. 4 of 2009 concerning Mineral and Coal Mining. This Sirkandi sand mine breaks Banjar Negara regent regulation number 449 of 2010 articles 50 and 51.

2. Factors Inhibiting Environmental Law Enforcement Against Illegal Sand Mining

Two factors inhibit environmental law enforcement, namely internal and external factors.

a. Internal Factors

An internal inhibiting factor in enforcing the law against illegal sand mining in Sirkandi Village, Purwareja-Klampok District, Banjarnegara Regency, namely the lack of legal awareness in the community in Banjarnegara Regency, makes more and more violating the legal regulations stipulated in the law. The economic factors of the communities around the mine, most of which depend on the results of sand mining, mainly depend on the impacts of the sand mining. In addition, to the limited employment opportunities, the high unemployment rate, and the number of needs that must be met, the mining owner in Sapi River opened a sand mine. They hired residents so they could work and meet their needs;

¹⁸ Achmad Surya, "Penegakan Hukum Terhadap Pertambangan Galian C Tanpa Izin DiKabupaten Bener Meriah," *Resam Jurnal Hukum*, Vol 5, No 2, (2019):126-140.

in this way, it can reduce the number of unemployed and help daily needs.

b. External Factors

The external inhibiting factor in enforcing the law against illegal sand mining in Sirkandi Village, Purwareja-Klampok District, Banjarnegara Regency, namely not being familiar with licensing matters, is an obstacle when applying for mining business, in addition to the lack of legal awareness in managing permits, it must go through several stages and complicated and far become the cause of a large number of unlicensed sand mining.

V. Conclusion

1. Illegal sand mining violates articles 39, 95, and 158 of law No 4 of 2009 concerning Mineral and Coal Mining and violates articles 50 and 51 of Banjarnegara Regent Regulation Nomor 449 of 2010 concerning Mineral and Coal Mining in Banjarnegara Regency. Banjarnegara Regency has not fully enforced the law because sanctions have not been imposed related to illegal sand mining regulated in the mining law and the Banjar Negara regent regulation Nomor 449 of 2010.
2. The inhibiting factors of environmental law enforcement against illegal sand mining are two factors. The first factor is the internal factor of the lack of legal awareness in the community so that more and more people violate the legal regulations stipulated in the law and the economic factors of the communities around the mine who mainly depend on the results of the sand mining. The second factor of external factors, namely not being familiar with licensing matters, is an obstacle when applying for the mining business.

VI. Suggestion

1. Environmental law enforcement against illegal sand mining has not been carried out optimally, and sanctions must be applied so that there are no more perpetrators of illegal sand mining. In illegal sand mining, a maximum of 10 years imprisonment and a maximum fine of Rp. 10,000,000,000.00 are subject to 10 years imprisonment and a maximum fine of Rp. 10,000,000,00. Illegal sand mining sanctions have not been implemented optimally because the Banjarnegara regional authorities only take preventive measures.
2. The mineral resources energy service (ESDM) should shorten the registration flow in applying for sand mining business permits and provide socialization to the surrounding community so that the community better understands the rule of law.

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