Sentecing Model For Residivists Of Illegal Mineral And Coal Mining Crimes

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Article Info
Received:2023-12-27
Revised:2024-02-28
Accepted: 2024-06-29

Keywords:
Sentencing Model,
Recidivist,
Mining and Mineral Crimes

Abstract
The goal of the current normative research is to investigate how Law Number 4 of 2009 concerning Mineral and Coal Mining (also known as the Minerba Law) applies to the sentencing of recidivist offenders for offenses involving mining minerals and coal. When it comes to dealing with criminal punishments for recidivists who commit crimes related to mining and minerals, there appears to be a complete lack of legislation. This indicates a legal gap that applies to perpetrators who meet the requirements for recidivist status. Since it is governed by Book Two, Chapter XXXI covering Rules for Repetition of Crimes Relating to Various Chapters, Articles 486 to Article 488, the present Criminal Code's position on recidivists is, in theory, not a general norm in this regard. Articles 486 through 488, however, define recidivist as a criminal aggravation for the kinds of criminal crimes included in the established provisions. The criminal punishments found in the Criminal Code correspond to the penalties found in a number of specific criminal legislation that are applied to repeat or recidivist offenders.

I. Introduction

The Republic of Indonesia is rich in natural resources (NR), including mining and minerals. This natural resource wealth represents extraordinary potential that can be managed by both corporations and individuals to improve community welfare. In this regard, natural resource management has been expressly determined in Article 33 paragraph (3) of the Undang-Undang Dasar Negara Republik Indonesia of 1945 (hereinafter called UUD NRI 1945)as written constitution of Indonesia, cited as follows"earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."One of the natural resources that has great potential to provide beneficial value is natural resources in the field of mineral

and coal mining (hereinafter abbreviated as Minerba).

Indonesia is currently fertile ground for the mining industry. Most of the natural resources concerning the world of mining are non-renewable resources. Law Number 4 of 2019 concerning Mineral and Coal Mining, as amended by Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2019 concerning Mineral and Coal Mining, is one of the policies used by the state to carry out various forms of natural resource management in the mineral and coal mining sector. The ability of the federal government and local governments, particularly provincial governments, to manage coal and mineral mining is one of the significant items that has changed under the Mineral and Coal Law.

The management of natural resources, particularly coal and minerals, faces a number of challenges in its execution, one of which is that this activity has the potential to involve the criminal justice system. Court rulings concerning illicit mining offenses in Indonesia are rather numerous. based on information obtained from the Supreme Court of the Republic of Indonesia's Directory of Decisions. It is recorded that there are 2,693 (two thousand six hundred and ninety three) court decisions originating from all courts in Indonesia which contain judge's decisions regarding mining crimes.[1]Specifically for 2023, there are 222 (two hundred and twenty two) court decisions containing decisions regarding criminal acts of illegal mining.[2]

In several court decisions regarding mining crimes, it was recorded that quite a number of criminals were perpetrators who had the qualifications to be recidivists or repeat criminal acts. In criminal law, recidivism is one of the reasons for criminal aggravation, the penalty is increased by one third of the maximum penalty. Recidivist mining perpetrators are sentenced to the same punishment as perpetrators who commit mining crimes for the first time. This is because the Mining Law does not yet regulate the punishment of mining recidivists. Therefore, it can be argued that there is now considerable evidence to study regarding the sentencing model for perpetrators of mineral and coal crimes who are qualified as recidivists.

2. Research Method

Conducted through normative approach, The data were collected and analyzed from court decisions scattered in the Directory of Supreme Court Decisions. In addition, the current project is backed by legal provisions that pertain to Indonesia's management of coal and minerals and are restricted to penalizing those who commit mining offenses and meet recidivist requirements.

[1]Directory of Decisions of the Supreme Court of the Republic of Indonesia, Accessed on 14 October 2023.
[2]*Ibid*

3. Results and Discussion

Mineral reserves have a great deal of promise in Indonesia. The mining industry, with its vast potential, also adds to the state's non-tax revenue (PNBP).With the existence of these large mines, it also attracts interest from miners who mine illegally. It is recorded that there are 2,693 (two thousand six hundred and ninety three) court decisions from all courts in Indonesia which contain judge's decisions regarding mining crimes.[3]Specifically for 2023, there are 222 (two hundred and twenty two) court decisions containing decisions regarding criminal acts of illegal mining.[4]

In the Mining Law, apart from recognizing mining without a permit (Illegal Mining) which is considered as a criminal act, there are also various other criminal acts, most of which are aimed at mining business actors, and only one type of criminal act is directed at officials issuing permits in the mining sector. The following are examples of crimes related to mining: (1) mining without a permit; (2) false information report data submission; (3) mining without authorization; (4) being an exploration IUP holder and not carrying out production operation activities; (5) mining goods laundering; and (6) mining business obstruction.

Disturbances that occur in mining activities by mining entrepreneurs who have obtained permission from authorized officials, for example residents who feel disadvantaged will usually protest by blocking mining activities by using various methods so that mining cannot continue. In this regard, criminal acts in the mining sector do not differentiate between criminal offenses and trespass offenses and the penalties imposed on the perpetrators include cumulative and alternative penalties. If we investigate further, we find that the Mining and Coal Law's criminal sanctions—which apply to individuals, corporations, or legal entities—have not been identified or regulated in regard to the punishment of recidivists as criminal penalties.

Regarding the punishment of recidivist offenders as a criminal aggravation, whether in the form of individuals, legal entities, or businesses, nothing has been found or legislated.Recidivism is the term used to describe the repetition of a criminal act by the same individual who has previously committed a crime, been found guilty of it, and received a permanent criminal sentence before committing another crime.

Sentencing guidelines should be more stringent due to recidivism. The legal result of not controlling the recurrence of criminal crimes in the coal and mineral mining industry is that there is no legal foundation, particularly for judges and other law enforcement officials to enhance the severity of the penalties meted out. This is due to the fact that, when looking at the Criminal Code, repeat offenses or recidives, you will notice that, although they are covered in Book I of the Criminal Code under General Rules, they are covered

[3]*Ibid*
[4]*Ibid*

in Books II and III under the terms "recidive crimes" and "recidive violations." Therefore, the consequence of not regulating the repetition of criminal acts in Book I is that criminal provisions outside the Criminal Code must make their own regulations, so as not to cause juridical problems.[5]

As a result, Law Number 4 of 2009 Jo. Law Number 3 of 2020 regulating Mineral and Coal Mining regulates mining crimes. This indicates that crimes committed in the mining industry are a particular kind of criminal act. This makes sense given how different kinds of illegal conduct are grouped. Special criminal acts, to put it simply, are those kinds of criminal offenses whose laws fall outside the purview of the Criminal Code (KUHP). In terms of material criminal law as well as formal criminal law, extraordinary criminal acts have unique features and case management. The legal foundation and scope of special criminal law may deviate from the general provisions found in Book One of the Criminal Code (KUHP), and the provisions pertaining to special criminal procedural law may deviate from the general requirements found in the Criminal Procedure Code (KUHAP).

The penal hierarchy found in the Criminal Code diverges from that found in specific criminal laws. If citing an opinion of Chairul Huda[6]that the pattern of punishment (including the pattern of criminal aggravation) is basically a symptom implied by the criminal threat contained in the formulation of criminal acts in legislation, this can be used to determine the legislator's preferences for the kind and severity of punishment that should be meted out to an individual.perpetrators of criminal acts. Thus, the pattern of criminal aggravation is a guideline (which has been used) by legislators in determining criminal aggravation, between the formulation of criminal threats contained in special criminal law when compared with the formulation of general offenses that are “similar” in the Criminal Code (generic crime). To do this, it is necessary to first identify the Criminal Code's pattern of exacerbating criminal dangers.

The concept of punishment for repeating illegal crimes (recidive behavior) is recognized by the criminal justice system in Indonesia. According to several experts, such as Soesilo, recidivism can be used as an excuse to aggravate a criminal act, as is the opinion of Utrecht as quoted from Patuju and Afarmey,[7]which says “the law does not establish new rules (norms), but criminal law norms have existed previously in other parts of the law and also have sanctions. Only at a certain level, these sanctions are no longer balanced, so that stricter and heavier sanctions are needed which are referred to as criminal sanctions (punishment). Heavier confirmation of the law is also

[5] Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana (Perkembangan Penyusunan Konsep KUHP Baru)*, Kencana, Jakarta, 2014.
[6]Chairul Huda, *Pola Pemberatan Pidana dalam Hukum Pidana Khusus*,Jurnal Hukum No. 4 Volume 18 October 2011, pg. 513
[7]Patuju, L., & Afamery, S. S, *Residivis DalamPerspektif Sosiologi Hukum*, *Jurnal HukumVolkgeist*, 2019, hlm. 104–114.https://doi.org/10.35326/volkgeist.v1i1.78

carried out on those who have repeated criminal acts or those who have committed a combination of crimes" so that based on this opinion, recidivism is the same as a combination of crimes which can make a person's sentence heavier.

Articles 486, 487, and 488 of the Criminal Code in Indonesian criminal law regulations define recidivism in the context of general criminal activity. The recidivism regulations contained in each article regulate certain articles, so that for more specific laws (specialis), especially for the scope of special criminal acts, the regulations are in each law that regulates these criminal acts.[8]

The Mining and Coal Law does not contain provisions regarding recidivism, resulting in judges deciding cases without having a legal basis to increase the sentence for the defendant. Due to the lack of regulations pertaining to recidivism, the case was decided without taking into account the fact that the defendant had committed the same offense twice, even though the judge had previously considered this as a mitigating circumstance and the defendant had made a promise to not repeat the offense. The defendant's continued unlawful behavior demonstrates that there was no deterrent impact, which indicates that one of the fundamental requirements of criminal law is not met.

The recidivism aggravation article was included in Book II of the Criminal Code by its authors. Book I of the General Rules of the Criminal Code should have contained the recidivism requirements if the authors of the Criminal Code had meant for them to apply to all offenses.Both the Criminal Code and the Mineral and Coal Law contain ambiguities about the application of criminal penalties for repeating unlawful acts of mining without a permit. Therefore, the judge in his ruling had no foundation for allocating weight based on recidivism.

The Mining and Coal Law's criminal penalties are limited to situations in which a legal entity commits the crimes mentioned in this chapter. In these cases, the legal entity may be punished with imprisonment or a fine against its management, as well as with a fine that is 1/3 (one third) times the maximum amount allowed by the law; this provision is outlined in Article 163 of the Minerba Law.

If you examine the provisions pertaining to recidivism (repetition of criminal actions) in Law Number 1 of 2023 on the Indonesian Criminal Code (Law 1/2023), you will find that they are located in Book I addressing General Rules, Chapter II Paragraph 5 Article 23. This paragraph states the following:

1. Repetition of a Criminal Act occurs if Everyone:

[8]For example, in Law Number 30 of 2009 concerning Narcotics, regarding repetition of criminal acts (recidivism) is regulated in Article 144 with the consequence of an additional criminal threat of 1/3 (one third).

a. commit to repeat crime within 5 (five) years after serving all or part of

the principal sentence imposed or the principal sentence imposed has been expunged;

b. or when committing a criminal act, obligations
c. or at the time of committing a crime, the obligation to undergo the principal sentence imposed previously has not expired.

2. The criminal acts mentioned in paragraph (1) encompass offenses that carry a minimum exceptional penalty, a minimum four-year jail sentence, or a minimum category III fine.
3. The provisions as intended in paragraph (1) also apply to criminal acts regarding abuse.

Because the recidivism provisions have been regulated in Book I of the New Criminal Code, when the new Criminal Code is officially implemented, the consequences of punishment for perpetrators of mineral and coal crimes must comply with the recidivism provisions as specified in Article 23 of the New Criminal Code.

4. Conclusion

Based on the findings of this research, it is possible to conclude that there is a growing legal gap in the Criminal Code and the Mineral and Coal Law on the application of criminal penalties based on repeat offenders, particularly on mining without a permit. As a result, the judge in his decision had no basis for applying weighting on the basis of recidivism. On account of such obvious matters, it is therefore expected that the Minerba Law shall one day contain regulations regarding the severity of repetition on criminal acts, and thus it shall receive considerable attentionto several qualifying criteria. A law outside the Criminal Code that wishes to regulate the repetition of criminal acts is required to formulate special conditions for repetition, (1) conditions for criminal repeat offenses; and (2) the deadline for repetition.

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