

# Law Enforcement of the Crime of Money Laundering Against Perpetrators of Mining Without a License in Indonesian Territory

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## KEYWORDS

law enforcement;  
perpetrator; mining  
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## ABSTRACT

The purpose of this research is to describe law enforcement arrangements for unlicensed mining actors involved in money laundering crimes. The author uses a normative juridical approach, using primary and secondary data. Data analysis uses qualitative analysis. Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 11 of 2018 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities, in Article 1 paragraph 10 it is stated that the Rock Mining Business Permit Area, referred to as the Rock WIUP, is part from the Batuan WUP which is given to Business Entities, cooperatives and individuals through applications. So, everyone has to go through an application first to get a Mining Business Permit Area (WIUP). In Indonesia, legal regulations regarding the prevention and eradication of money laundering crimes were initially regulated in Law Number 15 of 2002 concerning the Crime of Money Laundering (UUTPPU) which was later revised into Law Number 25 of 2003 and subsequently revoked and replaced by Law- Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering. The results show that perpetrators of money laundering crimes are subject to sanctions based on Articles 6, 7, 8, 9, and 10 of Law Number 8 of 2010 concerning Money Laundering Crimes.

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## 1. Introduction

Minerals are native minerals in their original form, which can be mined for human needs. All mining materials are controlled by the State and utilized for the entire Indonesian nation, based on the five principles in Pancasila as a unified whole, there are norms or rules in the provisions of Article 33 paragraph (3) of the 1945 Constitution "Earth, water and the natural resources contained therein are controlled by State and used for the greatest prosperity of the people (Rosadi, 2012).

Mineral resources are one of the natural riches owned by the Indonesian nation, if managed well they will contribute to the country's economic development. In the world of mining, Indonesia is known as a country rich in mineral deposits that are ready to be removed at any time (Supramono, 2012). Mining is some or all stages of activities in the context of research, management, and exploitation of minerals or coal which includes general investigations, exploration, feasibility studies, construction, mining, processing, refining, transportation, and sales, as well as post-mining activities (Hs, 2005).

Mining law is part of the law that regulates the environment. In its development, environmental crimes often occur in community environments, for example, mining. Mining is an effort to explore various potentials contained in the bowels of the earth. Based on the type of mineral, mining in Indonesia is divided into three categories. First, Class A Mining includes strategic minerals such as oil, natural gas, bitumen, asphalt, natural wax, anthracite, coal, uranium and other radioactive materials, nickel, and cobalt. Second, Group B Mining, includes vital minerals, such as gold, silver, diamonds, copper, bauxite, lead, zinc, and iron. Third, Group C Mining, generally minerals that are considered to have a lower level of importance than the other two mining groups, include various types of stone, limestone, etc (Fahrojih, 2016).

There are several important issues related to mining, namely policy uncertainty, illegal mining, conflicts with local communities, and conflicts between the mining sector and other sectors, such as mining without permits which results in losses for both the community and the state. The act of mining without a permit essentially fulfills the elements that can be punished by criminal law. This element is that the act meets the formal requirements, that is, it is by the formulation of the law that has been stipulated by the Criminal Code and other regulations that have a criminal dimension and have a material element, that is, it is contrary to the ideals of social relations or an unlawful nature or criminal act (Waworundeng, 2018).

One part of the crime prevention policy is that criminal law enforcement is not the only hope for resolving or overcoming crime, humanitarian problems, and social problems. Crime is a dynamic societal phenomenon that is always growing and is linked to other very complex societal phenomena and structures. Therefore, it is called a socio-political problem. Crime is a social process so criminal politics must be seen within the framework of social politics, namely the efforts of a society to improve the welfare of its citizens (Muladi, 2010).

Recently, the Indonesian people have felt angry with the findings from BNN regarding the crime of money laundering worth 15 billion Rupiah, originating from narcotics crimes and carried out by former narcotics convicts (Bakir & Asmoro, 2023). There are many cases of criminal acts of money laundering that occur, but escape our attention, namely criminal acts of money laundering originating from unlicensed mining in Indonesian territory.

There are various formulations related to the meaning of money laundering or the crime of money laundering the formulation involves a process of laundering money obtained from crime and laundered through a financial institution (bank) or financial service provider so that in the end the illicit money gets an appearance as legitimate or halal money (Eleanora, 2011). The crime of money laundering is an organized crime, which requires special efforts to overcome it, both at the national and international levels (Suranta, 2010). The consequences of the criminal practice of money laundering will damage the country's economic system and even have a negative impact on it. So, efforts to prevent and eradicate money laundering require a strong legal basis to guarantee legal certainty, especially during the pandemic and even after the COVID-19 pandemic. Efforts to restore the national economy by the government through serious planning may be hampered by perpetrators of money laundering crimes (Andrikasmi, 2022), This implementation can be implemented by mutual strengthening and cooperation between the anti-money laundering regimes that have been established (Tambunan., 2016).

In Indonesia, legal regulations regarding the prevention and eradication of money laundering crimes were initially regulated in Law Number 15 of 2002 concerning the Crime of Money Laundering (UUTPPU) which was later revised into Law Number 25 of 2003 and subsequently revoked and replaced by Law- Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering, which is anti-money laundering in Indonesia. In this law, there is an institution that acts as financial intelligence, namely the Financial Transaction Reports and Analysis Center (PPATK). The duties, functions, and authority of PPATK are contained in Article 39, namely that PPATK has the task of preventing and eradicating criminal acts of money laundering. Then in Article 40, it is explained that to carry out the tasks referred to in Article 39, PPATK has the following functions: a. prevention and eradication of money laundering crimes; b. management of data and information obtained by PPATK; c. supervision of the reporting party's compliance; and D. analysis or examination of financial transaction reports and information that indicate criminal acts of money laundering and/or other criminal acts as intended in Article 2 paragraph (Yanuar, 2019).

Nowadays, corporations play an increasingly important role in people's lives, especially in the economic sector. The doubts in the past about placing corporations as subjects of criminal law that could commit criminal acts and at the same time be held accountable in criminal cases have shifted. The doctrine that characterizes the 1886 Dutch WetVan Strafrecht (KUHP), namely "Universitas delinquere non potest" or "Societas delinquere non potest" (legal entities cannot commit criminal acts), has changed in connection with the acceptance of the concept of functional perpetrators (functioneel Daderschap) (Nasichin & Nofita, 2021). According to Rolling, "offenders include corporations in the Daderschap functioneel (functional actors) because corporations in the modern world have an important role in economic life which has many functions, namely as employers, producers, price setters, users of foreign exchange, etc. "

The subject of the crime of money laundering can be seen from the provisions contained in Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering. The subjects of the crime of money laundering are individuals and corporations. Individuals as legal subjects of money laundering crimes can be understood by looking at Article 1 Paragraph 9, Article 3, Article 4, Article 5, Article 10, and so on. From Article 1 paragraph 9 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, it is emphasized that every person consists of an individual or a corporation. Corporations as the subject of the crime of money laundering are also explained in Article 1 paragraph 9 of Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering and so on, where in Article 1 paragraph 9 it is said that each person is an individual or a corporation. Corporations in Article 1 paragraph 1 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering are organized groups of people and/or assets, whether they are legal entities or non-legal entities.

The problem in this paper is "How the Law Enforcement of the Crime of Money Laundering Against Perpetrators of Mining Without a License in Indonesian Territory?"

## **2. Materials and Methods**

The method used in writing this applied paper is a descriptive-analytical method, namely by using data that clearly describes problems directly in the field, then analysis is carried out and then conclusions are drawn to solve a problem. The data collection method is through observation and literature study to obtain solutions to problems in preparing this paper.

### 3. Result and Discussion

#### **Imposition of criminal sanctions against perpetrators of money laundering crimes**

Preliminary crime investigators can carry out investigations into money laundering crimes if they find sufficient initial evidence that a money laundering crime has occurred. When carrying out investigations into predicate criminal acts by their authority as regulated in the criminal procedure law and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crimes.

Law enforcement aims to provide an atmosphere of calm in society, as well as a deterrent effect on other people so that they do not commit criminal acts. However, that does not mean there are no problems in law enforcement. Soekanto views that law enforcement cannot be separated from the factors that influence it. These factors can influence the power of law to work effectively in society.

The criminal sanctions against perpetrators of the crime of money laundering are subject to sanctions under Articles 3, 4, 5 paragraph (1) of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, with a maximum threat of imprisonment of 20 years and a fine of Rp. 10 Billion.

#### Article 3

Every person who places, transfers, diverts, spends, pays, gives away, entrusts, takes abroad, changes form, exchanges for currency or securities, or other actions on assets which he knows or reasonably suspects are the proceeds of a criminal act as referred to in Article 2 paragraph (1), to conceal or disguise the origin of assets, is punishable by the crime of money laundering with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

#### Article 4

Every person who conceals or disguises the origin, source, location, allocation, transfer of rights, or actual ownership of assets which he knows or reasonably suspects are the result of a criminal act as intended in Article 2 paragraph (1) shall be punished for the crime of laundering. Money with a maximum imprisonment of 20 (twenty) years and a maximum fine of IDR 5,000,000,000.00 (five billion rupiah).

#### Article 5

- (1) Every person who receives or controls the placement, transfer, payment, grant, donation, safekeeping, exchange, or use of assets which he knows or reasonably suspects are the proceeds of a criminal act as intended in Article 2 paragraph (1) shall be punished by a maximum imprisonment of 5 (five) years and a maximum fine of IDR 1,000,000,000.00 (one billion rupiah).
- (2) The provisions as intended in paragraph (1) do not apply to Reporting Parties who carry out reporting obligations as regulated in this Law.

Fair and humane law enforcement can be interpreted as meaning that the law does not move in a vacuum, or only looks at one side, on the contrary, it always moves dynamically following the changes and developments of the times in the concept of criminal law reform, so that legal reform requires policies that according to conditions or needs at that time. Several efforts or innovations in law enforcement can be expressed in the form of policies that deal with law enforcement for money laundering crimes.

#### **Imposition of Criminal Sanctions on Corporations and/or Corporate Control Personnel Who Commit Money Laundering Crimes**

Corporations have contributed a lot to the development of a country, especially in the economic sector. However, corporations also often have negative impacts from activities such as environmental pollution, tax manipulation, exploitation of workers, fraud, and money laundering crimes. Therefore, this impact has made the law a regulator and protector of society, which must pay attention and regulate the activities of these corporations.

Initially, lawmakers were of the view that only humans could be the subject of criminal acts. So, initially, a corporation cannot be the subject of a criminal act. We can see this in the history of the formulation of Article 59 of the Criminal Code, especially in the way the offense is formulated, which is always preceded by the phrase whoever. However, the facts show that we will not find an opportunity to sue corporations before a criminal court. However, legislators in formulating offenses are often forced to consider the fact that humans carry out actions within or through organizations that exist within civil law or outside it, appear as a single unit, and are therefore recognized and treated as legal entities/corporations. In the Criminal Code, legislators will refer to corporate managers or commissioners if they are faced with such a situation.

According to civil law, a corporation is a legal entity (legal person). However, in criminal law, the definition of corporation does not only include legal entities, such as limited liability companies, foundations, cooperatives, or associations that have been legalized as legal entities that are classified as corporations. According to criminal law, firms, limited liability companies CVs, and partnerships or matchups are also included in corporations. Apart from that, what is also referred to as a corporation according to criminal law is a group of people who are organized and have leadership and carry out legal acts, such as entering into agreements in the context of business activities or social activities carried out by their management for and on behalf of that group of people.

Talking about criminal acts and criminal responsibility, in its principle, is an inseparable part of discussing the criminal law system. Reksodiputro said that in the development of criminal law in Indonesia there are three systems of corporate responsibility as the subject of criminal acts, namely: Corporate managers as makers, responsible managers, corporations as makers, responsible managers, and corporations as responsible makers (Mahrus Ali, 2015).

The first accountability system explains that accountability is characterized by efforts to limit the nature of criminal acts committed by corporations to individuals (natuurlijk person). So if a criminal act occurs within a corporate environment, the criminal act is deemed to have been committed by the management of that corporation. In this first system, the drafters of the Criminal Code still accept the principle of "Universitas delinquere non potest" [legal entities (corporations) cannot be punished]. This principle applied in the last century to all Continental European countries. This is in line with individual criminal law opinions from the classical school that prevailed at that time and later also the modern school in criminal law. In the Explanatory Memory of the Criminal Code which came into force on 1 September 1886, it can be read: a criminal act can only be committed by an individual (natuurlijk person). Fictional thinking about the nature of legal entities (recht person) does not apply to the field of criminal law. In this first system, managers who do not fulfill obligations that are corporate obligations can be declared responsible.

The second system of responsibility is characterized by the recognition that arises in the formulation of the law that a criminal act can be committed by a union or business entity (corporation), but responsibility for the falls on the management of the legal entity (business). Gradually, criminal responsibility shifts from the management members to those who order them or are prohibited from doing so if they neglect to truly lead the corporation. In this accountability system, corporations can be the perpetrators of criminal acts, but those who are responsible are the management members, if it is stated explicitly in the regulations.

The third accountability system is the beginning of direct responsibility from the corporation. In this system, the possibility of suing corporations and holding them accountable under criminal law is opened. Things that can be used as a basis of the justification and reason that corporations are both creators and at the same time responsible is that in various economic and fiscal offenses, the profits obtained by corporations or the losses suffered by the public can be so great, that it would not be possible to balance them if the punishment were only imposed on corporate managers. The reason was also put forward that by simply punishing the management there was no or no guarantee that the corporation would not repeat the offense. By punishing corporations with a type and severity that



is appropriate to the nature of the corporation, it is hoped that corporations can be forced to comply with the relevant regulations.

The criminal sanctions against corporations and/or corporate control personnel who are perpetrators of money laundering crimes are subject to sanctions under Articles 6, 7, 8, 9, and 10 of Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, with a maximum threat of a prison sentence of 20 years and a fine of IDR 10 billion.

#### Article 6

- (1) If the criminal act of Money Laundering as intended in Article 3, Article 4, and Article 5 is committed by a Corporation, the penalty shall be imposed on the Corporation and/or the Corporation's Control Personnel.
- (2) A penalty is imposed on a corporation if the crime of Money Laundering: a. carried out or ordered by Corporate Control Personnel; b. carried out to fulfill the aims and objectives of the Corporation; c. carried out by the duties and functions of the perpetrator or giver of the order; and D. carried out to provide benefits to the Corporation.

#### Article 7

- (1) The principal penalty imposed on a Corporation is a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah).
- (2) In addition to the fine as intended in paragraph (1), additional penalties may also be imposed on Corporations in the form of a) announcement of the judge's decision; b) freezing of part or all of the Corporation's business activities; c) revocation of business license; d) dissolution and/or prohibition of the Corporation; e) confiscation of Corporation assets for the state; and/or f) takeover of corporations by the state.

#### Article 8

If the convict's assets are insufficient to pay the fine as intended in Article 3, Article 4, and Article 5, the fine is replaced by a maximum imprisonment of 1 (one) year and 4 (four) months.

#### Article 9

- (1) If the Corporation is unable to pay the criminal fine as intended in Article 7 paragraph (1), the criminal fine is replaced by confiscation of assets belonging to the Corporation or Corporate Control Personnel whose value is the same as the criminal fine imposed.
- (2) If the sale of confiscated assets belonging to the Corporation as intended in paragraph (1) is insufficient, imprisonment in place of a fine is imposed on the Corporation Control Personnel by taking into account the fine that has been paid.

#### Article 10

Every person within or outside the territory of the Unitary State of the Republic of Indonesia who participates in carrying out attempts, assistance, or criminal conspiracy to commit the crime of money laundering shall be punished with the same crime as intended in Article 3, Article 4, and Article 5.

Law Number 25 of 2003 concerning the Crime of Laundering, namely: Only a few articles have been changed, but those regulating corporations still apply Law Number 15 of 2002. Law Number 8 of 2010 concerning the Prevention and Eradication of the Crime of Laundering Article 6, 7, 8 and 9. Article 7 regulates a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah), and additional penalties in the form of: a. Announcement of the judge's decision; b. Suspension of part or all of the Corporation's business activities; c. Revocation of business license; d. Dissolution and/or prohibition of the Corporation; e. Confiscation of corporate assets for the state; and/or f. Corporate Takeover by the state.

The primary sanction against a money laundering corporation is a fine of 100,000,000,000.00 (one hundred billion rupiah). Additional criminal sanctions include the announcement of a judge's decision, freezing of part or all of a corporation's business activities, revocation of a business license,

dissolution and/or prohibition of a corporation, confiscation of corporate assets for the state and/or takeover of a corporation by the state.

In Article 9 of Law no. 8 of 2010 concerning the Prevention and Eradication of the Crime of Money Laundering, it is explained that a substitute crime is that a corporation that is unable to pay a fine is replaced by confiscation of corporate assets or Corporate Control Personnel whose value is the same as the fine imposed. In addition, if the sale of confiscated corporate assets is insufficient, imprisonment instead of a fine is imposed on the Corporate Control Personnel considering the fines that have been paid.

Legal politics must be oriented towards values related to the state's objectives in regulating certain matters. Likewise, corporate behavior in exploiting natural resources is not only aimed at the personal or corporate needs and interests of capital owners, but should also pay attention to environmental sustainability, but in reality there are many perpetrators of criminal acts destroying forests and the environment who carry out business activities, one of which is mining that exploit natural resources on a large scale by companies. Thus, it would be very appropriate for perpetrators of mining without a permit in Indonesian territory, whether individual or corporate actors, to be subject to criminal sanctions, based on the crime of money laundering, and/or the crime of mining without a permit.

#### **4. Conclusion**

Money laundering is a method or process of changing money originating from illegal (haram) sources into money that appears to be halal. In Indonesia, the crime of money laundering is regulated in Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Meanwhile, corporations themselves are the subject of money laundering crimes regulated in Article 6 paragraph (1) of Law No. 8 of 2010 concerning the Prevention and Eradication of Money Laundering. Meanwhile, a corporation that commits a money laundering crime can be held criminally responsible if it has fulfilled the elements of punishment, namely the corporation's ability to take responsibility, the existence of an error, and no reason to remove the crime from the corporation.

Legal politics must be oriented towards values related to the state's objectives in regulating certain matters. Likewise, corporate behavior in exploiting natural resources is not only aimed at the personal or corporate needs and interests of capital owners but should also pay attention to environmental sustainability. Yet there are many perpetrators of criminal acts destroying forests and the environment who carry out business activities, one of which is mining by exploiting natural resources on a large scale by corporations. Thus, it would be very appropriate for perpetrators of mining without a permit in Indonesian territory, whether individual or corporate actors, to be subject to criminal sanctions, based on the crime of money laundering, and/or the crime of mining without a permit.

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