

Criminal Law Formulation Policy to Prevent Corporate Crimes Conducting Mining in Forest Areas without Permission

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Abstract : Corporations carrying out mining activities in forest areas are still widespread, the existing laws and regulations currently in force are still not enough to prevent corporate crimes in the criminal sector without a business permit from the central government, which causes the risk of environmental damage and social disadvantage for the community, which means In the absence of harmonious law enforcement in the field, there is a need for a concept to provide legal certainty regarding the burden of criminal liability for violations by corporations carrying out mining activities without a permit through policy formulation to provide certainty. The purpose of this writing is to know, understand, analyze, describe and discover the concept of criminal law formulation policies in preventing corporate crimes that carry out mining activities in forest areas without ministerial permission. The results of this writing, through the Connectivity Legal Theory, will be believed to provide a breath of fresh air in law enforcement within the police in order to ensnare corporations that carry out covert and organized business activities. This will provide certainty in the basic guidelines. It differs in that the interpretation method is still ambiguous from various points of view and is still difficult to apply without basic references in countries that adhere to the continental European legal system. The idea of law enforcement in realizing an Article which still contains ambiguities but is based on other rules can be used as a reference to strengthen the position of the Article with the following provisions: a. Still relevant in law in the same environment; b. Still in the same hierarchy of laws and regulations; c. Connected regulations provide clarity on legal issues in legislative formulation; d. Bag-connected rules provide clarity in criminal liability.

Keywords : policy formulation; Criminal Law; Preventing; corporations; mining activities without permits.

INTRODUCTION

Etymologically, the word corporation (Dutch: *corporation*, English: *corporation*, German: *corporation*) comes from the word corporation in Latin. *Corporate* itself comes from the word “*corpus*” (Indonesian: *badan*), which means to give a body or body. Thus, *corporation* that means the result of the work of embodying, in other words the body made into a person, the body obtained by human actions as opposed to the human body, which occurs according to nature.¹

The issue of corporate responsibility as perpetrators of criminal acts is not a simple matter considering that corporations are legal entities. This problem stems from the principle of no crime without error. *mens rea* or error is an attitude of the heart, which naturally only exists in natural people and therefore, it is considered that only natural people can be held criminally responsible.

Scientific interpretation regarding the responsibility of corporations as legal entities in committing criminal acts is not only a national issue, but has become a global issue. so that the regulation and placement of corporations as subjects of criminal law cannot be denied.

Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations (Perma 13 of 2016) which regulates that a corporation is an organized collection of people and/or assets, whether they are legal entities or non-legal entities. Article 3 of Perma 13 of 2016 regulates that criminal acts by corporations are criminal acts committed by people based on work relationships, or based on other relationships, either individually or collectively acting for and on behalf of the corporation inside or outside

the environment. corporation, so that it can be legally responsible for the actions it carries out as stated in the public prosecutor’s indictment and does not exist error *in person* or the subject’s fault in a criminal case.

One of the issues in the mining industry is when these activities are carried out in forest areas, which encourages mining actors to enter forest areas to develop their businesses. This shows that forests are vulnerable to mining exploitation, with business actors often using permits as the legal basis for managing forests, provided administrative licensing procedures are followed. However, if these procedures are not followed correctly, mining permits can become a legal violation that results in forest destruction.

Using forests without permission is a form of destruction that is increasingly rampant and complex. Mining without permits is one of the main causes of forest destruction, which is not only limited to production forests, but also extends to protected and conservation forests. This destruction has developed into transnational organized crime with a sophisticated *modus operandi*, threatening people’s lives and causing alarming damage to the survival of the nation and state. Therefore, handling forest damage must be carried out in an extraordinary manner.

Based on a report from the BPK in November 2022 One of the significant problems that has not been followed up by the Ministry of Environment and Forestry is related to 516 business actors carrying out activities without permits in forest areas covering an area of 1,090 million hectares. A total of 516 business actors do not have a Forest Area Borrow-to-Use Permit (IPPKH), are carrying out activities outside the IPPKH area owned by the company, and there are also those carrying out activities in the IPPKH area whose permits have been revoked. Then, significant-

¹ Muladi and DwidjaPriyanto, *Corporate Criminal Responsibility*, Jakarta: Kencana, 2010, p.23.

ly, examples of corporate practices that carry out mining activities in forest areas without ministerial permission in the form of IPPKH or PPKH can be given:

1. PT. SLG at Ds. Sopura, district. Pomalaa, Kab. Kolaka Province Central Sulawesi
2. PT. EMM in Beutong Aceh, North Sumatra
3. PT. IMM on Bacan Island Ds. Yaba District. North West Bacan District. South Halmahera Province. North Maluku
4. PT. BBPK in Ds. Banta District. Lake Bauntung District. Banjar Province South Kalimantan

From the empirical data, it can be concluded that corporations carrying out mining activities in forest areas are still widespread, the existing laws and regulations currently in force are still not enough to prevent corporate crimes in the criminal sector of business licensing in the central government, meaning that there is no harmonious law operating in For enforcement in the field, there is a need for a concept to provide legal certainty regarding the burden of criminal liability for violations by corporations carrying out mining activities without ministerial permission through formulated policies to provide certainty.

Several impacts arise from mining activities without a permit. First, it hampers business activities for official permit holders and endangers safety. Several cases that occurred in mines without permits have claimed lives. Apart from that, mining activities without permits have the potential to damage the environment. In some places, many rivers cause shallowing which then reduces soil fertility which ultimately creates the danger of flooding. Not only that, these activities have the potential to cause social problems and security disturbances.

If mining without a permit is carried out in

a forest area, it can cause forest damage. Furthermore, this activity could potentially harm the state from a tax and non-tax perspective. This further causes the emergence of mining without permits, including motivational factors. Common causes include limited employment opportunities, economic pressures, no education required, easy work because it only relies on energy. There is also the factor of land ownership. "What this means is that because the land is one's own and if it is planted it is not productive, then if there are more attractive results, of course it is an option that can be done. So what is known as mining without a permit has emerged,"²

To prevent criminal mining activities in forest areas without ministerial permission carried out by corporations, the author believes that by using a preventive concept through policy formulation it can provide legal protection, and prioritize the principle of continuous precaution, responsibility and provide sustainable benefits in preserving the environment without endanger the welfare of people living in forest areas or prevent losses being borne by the state.

The author gives an example of the weak provisions contained in the Law which specifically regulates mining activities in areas without ministerial permission referring to Article 89 Paragraph (2) letter (a) of Law 18 of 2013 concerning Prevention and Eradication of Destruction of Forest Areas (UU P3H) formulate:

- a. *carry out mining activities in forest areas without the Minister's permission as intended in Article 17 paragraph (1) letter b; and/or*
- b. *carrying heavy equipment and/or other*

² <https://bisnis.tempo.co/read/1625575/esdm-tambang-illegal-tersebar-di-2-741-lokasi-libatkan-37-juta-pekerja> internet access date 01/11/2023

tools which are commonly or reasonably suspected to be used to carry out mining activities and/or transport mining products in forest areas without the Minister's permission as intended in Article 17 paragraph (1) letter a shall be punished with a criminal offense. imprisonment for a minimum of 8 (eight) years and a maximum of 20 (twenty) years and a fine of at least Rp. 20,000,000,000.00 (twenty billion rupiah) and a maximum of Rp. 50,000,000,000.00 (fifty billion rupiah).

This article is the main and specific provision for ensnaring corporations that carry out mining activities in forest areas without ministerial permission, however, this provision does not contain the diction of criminally responsible management, so that in implementing this article in practice in the field, law enforcement in the police experience obstacles. . How is it possible that when a corporation carries out mining activities in a forest area without the minister's permission, the burden of responsibility contained in this provision is only on the corporation without a management, of course this will cause the corporation to act in violation of business permits because there is no formulated policy in the criminal law to prevent corporate crime. In contrast to Article 92 Paragraph (2) of the P3H Law in the criminal provisions for plantations in forest areas without the minister's permission, this provision makes it clear that there is a burden of responsibility for administrators after being amended in the Perpu on work creation which later became law even though the diction in these two provisions has different proportions. The same.

In this provision, there is still confusion because it does not provide a clear burden of responsibility and there is also no management formulation which makes corporate responsibility lack diversity in terms of lin-

guistic certainty, which will make it difficult to provide legal certainty. So because of the policy principles of criminal law formulation, it will be used as a basis for preventing corporate crimes without business permits from the central government in forest areas. It is important to provide legal certainty through preventive action to suppress the growth rate of corporations that commit mining crimes in forest areas without ministerial permission. To overcome the confusion of the provisions in Article 89 paragraph (2) letter (a) of the P3H Law which is a dead norm because for whom the burden of criminal responsibility is still ambiguous, there are multiple interpretations and there is lack of clarity and to prevent the growth rate of corporations that commit mining crimes in forest areas without permission minister.

Because law enforcement carried out by law enforcers, especially the Police, is a preventive and also repressive measure in order to maintain public security and peace and preserve the environment. Which is preventatively related to the problem of mining without a permit or commonly abbreviated to the term PETI, such as guidance, direction and invitation, providing understanding, legal counseling, guidance and solutions.³ It is still not enough to suppress the growth rate of corporations that carry out mining activities without ministerial permission, so a concept must be formed in policy formulation to provide preventive action.

So the problem that arises from the description above is how to formulate criminal law policies to prevent corporate crimes that carry out mining activities in forest areas without ministerial permission.

³ Prof. Dr. Samsul Wahidin. Legal aspects of contemporary mining and unlicensed mining. Yogyakarta. Student Library. 2019. Page 123.

Regarding these problems, this writing aims to find out, understand, analyze, describe and discover the concept of criminal law formulation policies in preventing corporate crimes that carry out mining activities in forest areas without ministerial permission.

METHODS

This research uses a type of normative legal research, namely research conducted or aimed at written regulations or other legal materials that examine the legal principles of legal rules or regulations that refer to preventive actions through policy formulation.

legislative approach (*statute approach*), conceptual approach (*conceptual approach*) and Comparative Approach (*Comparative Approach*). Legislative approach (*statute approach*) is carried out by analyzing the ambiguity of Article 89 Paragraph (2) letter (a) of the P3H Law and at the same time preventing the growth of corporations that carry out mining activities without ministerial permission.

The nature of the research used in this journal is prescriptive research where the object of knowledge is the coherence between legal norms and legal principles, between legal rules and legal norms and between individual behavior and legal norms and will be explained later in the analysis and then supported by research reports. and interviewing sources in the field where this research will provide information on legal rules and provide legal knowledge of concepts that are novel in the research.

ANALYSIS AND DISCUSSION

The Concept of Connectivity Legal Theory as a Criminal Law Formulation Policy to Prevent Corporate Crimes from Carrying Out Mining in Forest Areas Without Permits.

In Law 18 of 2013 concerning Prevention

and Eradication of Destruction of Forest Areas (UU P3H), perpetrators of criminal acts in the form of corporations do not regulate the different elements *mens rea* in this criminal case so that it can be concluded that the criminal act committed by the Corporation is considered to have been carried out with full awareness with heavier criminal sanctions as regulated in Article 89 Paragraph 2 letter (a) of the P3H Law. However, for corporate actors some provisions are different from sanctions for individuals, one of which is that the main punishment that can be imposed is only a fine and not imprisonment, as regulated in Article 109 paragraphs 1 to paragraph 6, absent *mens rea* For corporate forestry crime, the issue of corporate responsibility for criminal acts is a simple matter, considering that corporations are legal entities. This problem stems from the existence of principles *mens rea* there is no crime without error, error is *mens rea* or a heart attitude that is only natural in humans. *mens rea* This is an element that is difficult to prove for a corporation that is considered to have committed a corporate crime considering that corporations can only commit criminal acts through the organs of the board of directors.⁴

Business licensing as stated in Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 concerning Job Creation is that Business Licensing is the legality given to Business Actors to start and run their businesses and/or activities. And central government. The Central Government is the President of the Republic of Indonesia who holds the power of the government of the Republic of Indonesia assisted by

⁴ M Yasir Said, S.H and Dr. Ifrani, S.H., M.H, Indonesian forestry crime shifts forestry offenses as a premium remedy. Bandung. Nusa media.2019 Pg. 107

the Vice President and ministers as intended in the 1945 Constitution of the Republic of Indonesia.

So a ministerial permit issued by the central government is a business permit to carry out business activities in the licensing sector which was previously under the control of the regional government and transferred to the central government. This is confirmed in several statutory provisions which are not yet 10 years old.

Law enforcement carried out by law enforcers, especially the police, is a preventive and also repressive measure in order to maintain public security and peace and preserve the environment. Which is preventatively related to PETI issues such as guidance, direction and invitation, providing understanding, legal counseling, guidance and solutions.⁵

To prevent misuse and violations of business permits issued by the central government, the author provides an idea *Concept of Legal Theory connectivity* as an indirect preventive legal protection effort through formulation efforts. At least the impact that can arise from the activities of corporations carrying out mining business activities in forest areas without ministerial permission can result in:

1. Disrupting social welfare, because there is no stipulation in the area of the corporation, corporations will act blindly without certain boundaries which can disrupt the livelihood of proletarian communities who depend on forest areas.
2. It can cause deforestation of the environment so that the consequences of corporate actions that carry out operational activities without permission from a systemized minister and analysis of cor-

porate activities can disrupt the ecology of the environment so that there is a decrease in quality, pollution, carbon emissions without structured efforts that can disrupt natural harmonization. which is dangerous in maintaining biodiversity.

Through preventive legal protection efforts through corporate policies, the author refers to regulatory updates in ideal law enforcement for corporate accountability through the Legal Theory of Connection as indirect preventive protection through policy formulation, the author initiates the Principle of Connectivity, namely with the following conditions:

- a) Still relevant in Law in the same environment;
- b) Still in the same hierarchy of laws and regulations;
- c) Connected regulations provide clarity on legal issues in the formulation of legislation;
- d) Bag-connected rules provide clarity in criminal liability.

In this way, there is a solution if there is a legal issue regarding the existence of a legal ambiguity or void in a law, so that crimes committed by corporations, especially in the forestry sector, can be prevented or minimized. Corporations will comply with the administration of business permits, especially PPKH permits from the Ministry of Environment and Forestry and will be more careful in carrying out mining business operational activities that prioritize good mining governance.

Connectivity Legal Theory is a manifestation of the theory of legal certainty, the ideas and ideas of Connectivity Legal Theory are built on the principle of legality, the provisions in statutory regulations are applied clearly and firm perhaps the existence of ambiguity in a provision will cause its application and

⁵ Prof. Dr. Samsul Wahidin. Aspects of mining law and contemporary mining without a permit. Yogyakarta. Student Library. 2019. Page 123.

execution to be hampered so that the form of the provision cannot produce certainty, in a statutory regulation if there is unclear meaning of the essence of the regulation it will not produce justice. The Theory of Connection Law is also contained in the representation of theory of preventive legal protection through policyformal To provide the goals of prosperity and justice to society, for this reason it is necessary to have a fundamental basis for law enforcement to carry out content material in vague terms so that it is not based on interpretation or even analogies to fill in this ambiguity in law enforcement in concreto.

The Connectivity Law Theory in this dissertation research is used to determine the burden of responsibility which is still not harmonized in unclear regulations, this theory will also be the basis for achieving control of criminal acts, especially in administrative criminal crimes in corporations, this theory also provides ideas between the provisions of one with other provisions that are interconnected to cover any shortcomings or injustices, but the use of this theory also requires comprehensive factors to think about the causes and consequences that will have a big impact on sustainable development and the future welfare of the country.

For this reason, this theory cannot be applied comprehensively in all kinds of legal sectors and various kinds of legal events, a complex study is needed so that this theory is given limitations in the environmental sector which is oriented towards the burden of criminal responsibility.

This theory is to avoid conflicting confusion between the principle of *lex specialis derogat legi generali* and the principle of *a posteriori derogat legi priori*, for example, sometimes a special law does not provide fair criminal provisions in providing the burden of criminal responsibility while the provisions in

other similar laws provide For more complex matters in criminal accountability efforts, there needs to be a basis for switching to more general legislation to override the principle of *lex specialis* in provisions that are still ambiguous. To provide certainty in the burden of criminal liability, in this case it needs to be underlined that it is regulated based on hierarchical provisions. which is equal and contains the essence of the content of the Article which is still coherent.

Because the Connectivity Legal Theory is a manifestation of the theory of legal certainty, the ideas and concepts of the Connectivity Legal Theory are built based on *principle of legality*, provisions in statutory regulations are implemented as clearly as possible and as firm perhaps the existence of ambiguity in a provision will cause its application and execution to be hampered so that the form of the provision cannot produce certainty, in a statutory regulation if there is unclear meaning of the essence of the regulation it will not produce justice. The Theory of Connection Law is also contained in the representation of theory of preventive legal protection through policyformal To provide the goal of prosperity and justice to society, for this reason there needs to be a fundamental basis for law enforcement to carry out content material in vague provisions so that it is not based on interpretation or even analogies to fill in the ambiguity in law enforcement. *in concrete*.

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This theory is to avoid conflicting confusion between *asas a special law derogates from a general law* and *asas derogates the latter from the former law*, for example, sometimes a specific law does not provide fair criminal provisions in providing the burden of criminal responsibility, while provisions in other laws of the same nature regulate more complex matters in criminal responsibility efforts, so there needs to be a basis for switching to a more general law to setting aside the principle of *lex specialis* in the provisions which are still ambiguous, in order to provide certainty in the burden of criminal responsibility, in this case it is necessary to underline that it is regulated based on equal hierarchical provisions and contains the nature of the content of the article which is still coherent.

Because the justice adopted in this theory is utilitarian justice, to look at it from the point of view of benefit, if the burden of responsibility given to certain parties can provide long-term benefits, the Connectivity Law Theory will be determined to be an alternative theory, not the main theory that must be applied in all circumstances without relativity. .

CONCLUSION

Ideas and concepts through criminal law policy in preventive legal protection perfect existing legal doctrine or theory by forming a new legal theory concept called Legal

Theory. Connectivity in the application of law enforcement, this theory will be a problem solving if problems with legal norms occur such as blurred norms, conflicts norms or the absence of norms in a piece of legislation, such as in this case Article 89 Paragraph (2) letter (a) of the P3H Law, to resolve legal issues that arise related to the legal subject of Corporations, legal interpretation can be carried out using Systematic Legal Theory by referring to the definition of Corporations as Corporations (legal entities) and Management (corporate organs) with other statutory provisions, the concept of theoretical ideas can be applied with the following conditions:

- a. Still relevant in Law in the same environment;
- b. Still in the same hierarchy of laws and regulations;
- c. Connected regulations provide clarity on legal issues in legislative formulation;
- d. Bag-connected rules provide clarity in criminal liability.

In this way, there is a solution if a legal issue arises regarding the existence of a legal ambiguity or void in a law, so that crimes committed by corporations, especially in the forestry sector, can be prevented or minimized. Corporations will comply with the administration of business permits, especially PPKH permits from the Ministry of Environment and Forestry and will be more careful in carrying out mining business operational activities that prioritize good mining governance.

SUGGESTION

It is necessary to provide recommendations to conduct a holistic legal research study regarding the concept of Connectivity Legal Theory and formulate it in legislation in accordance with the requirements of the concept of theoretical ideas. Then it is appropriate for Indonesian law to adopt the criminal liability of

United States corporations, with legal subjects:

- a. Individuals who have a direct relationship with the Corporation, such as directors, officers and employees;
- b. Subsidiaries, or;
- c. Independent contractor.

As Indonesian law and Indonesian legislation still recognize in formulating corporate responsibility, the object is only limited to the corporation and its management to suppress the growth rate of corporations that carry out mining activities in forest areas without ministerial permission.

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