

# JURIDICAL ANALYSIS OF THE ROLE OF THE POLICE IN THE INVESTIGATION PROCESS OF UNLICENSED MINING OFFENCES

(Research Study in the Legal Area of Bintan Police Station)

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## ABSTRACT

*The purpose of the study is to determine the legal regulation of the role of the alleged police in the process of investigating unlicensed mining crimes, to determine the implementation of the role of the alleged police in the process of investigating unlicensed mining crimes, to find out obstacles and solutions to the role of the alleged police in the process of investigating unlicensed mining crimes. This thesis research method is normative juridical (legal research) through literature study with empirical juridical approach (sociological juridical) through field studies aimed at obtaining legal knowledge empirically. The results showed that the legal regulation of the role of the alleged police in the process of investigating the criminal act of mining without a permit in the Bintan Police Area is based on the criminal provisions of Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which regulates criminal sanctions for mining business actors who mine without a permit. The implementation of the role of the alleged police in the process of investigating unlicensed mining crimes still requires optimization, because the number of unlicensed mining crimes is still increasing significantly even though the police are still trying to optimize through investigating unlicensed mining crimes and various other law enforcement actions to bring order to unlicensed mining. The implementation of the role of the police in the process of investigating unlicensed mining crimes (TIPI) in the jurisdiction of the Bintan Regional Police faces various obstacles, including limited resources, complexity of regional geography, community legal culture that has not been fully supported, involvement of individuals, and limited information. However, various solutions have been identified to overcome these obstacles, including capacity building and personnel training, strengthening facilities and infrastructure, community education and socialization, strict action against individuals, and developing more sophisticated and integrated information systems. With the comprehensive implementation of these solutions, it is hoped that the police can increase their effectiveness in handling TIPI and restore public trust in law enforcement institutions. It is recommended that local and central governments should improve coordination and synergy in law enforcement related to TIPI. The Police must continue to improve the capacity and professionalism of its personnel in handling TIPI cases. The community has an important role as a partner of the police in the prevention and control of TIPI*

*Keywords: Role, Police, Criminal Acts of Unlicensed Minings*

## 1. BACKGROUND

Indonesia is a country rich in mines. The minerals include gold, silver, copper, oil and gas, coal and many other natural potentials that support the development of the country. Mining materials are minerals in their original form. All mining materials are controlled by the state and utilised for the entire Indonesian nation. This reflects the importance of any management or exploitation can only be done with a licence from the state. The affirmation in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia authorises the state to regulate and supervise in the form of laws and regulations. The constitutional provision is the highest source of law in the management and exploitation of natural resources in Indonesia, which aims to realise justice and prosperity for the people. Mining materials are natural resources that are non-renewable and have a very limited amount of course have a very high

economic value. The existence of this very high economic value is a factor in the business of mining materials into an industry both by the government and the private sector, the existence of mining activities also has a negative impact. Mining activities are always identified with environmental damage and other things, workmanship that is not in accordance with mining operational standards, indifference to environmental problems around it..

Problems with communities around the area, and mining licences are problems that are present in mining activities. The negative impact of the decline in environmental quality either due to pollution or depletion of natural resources is the emergence of threats or negative impacts on health, decreased aesthetic value, economic loss (economic cost), and disruption of natural systems.<sup>4</sup> This also applies when mineral and coal mining activities. The management of mining natural resources cannot be careless. Conducting mining activities without a permit is one of the special criminal offences listed in the environmental criminal offences. Special environmental crimes in the scope of mining are also closely related to permits, which must pay attention to environmental impact assessments and other studies that have the potential to damage the mining environment..

The criminal provisions contained in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining regulate a lot about Mining Business License (IUP) People's Mining License (IPR), and Special Mining Business License (IUPK). In Article 1 paragraph (7) of the Minerba Law. Mining Business Permit (IUP) is a permit granted to carry out mining business. In terms of providing IUP, it is the authority of the government.

Empirical facts about problems related to mining carried out illegally (without a permit) still occur in Indonesia.<sup>5</sup> As happened on Bintan Island, which is the jurisdiction of the Bintan Police Criminal Investigation Unit, arrested 2 men with the initials AM (51) and ST Als M (48) for illegal sand mining. The Bintan Police Criminal Investigation Unit has arrested 2 people who were conducting illegal sand mining. The two suspects carried out unauthorised sand mining activities in Teluk Bakau village, Gunung Kijang sub-district using a sand suction machine and then the sand was shovelled into a lorry and then sold.

The role of the Police based on Law Number 2 of 2002 concerning the Police as law enforcers based on the principle of equality before the law (Equality before the law) Police officers as law enforcers should be able to become role models for the community, be able to become controllers and friends of the community have good communication quality. The law has clearly regulated the duties of police officers in enforcing the law against the community, including their position as public servants without discriminating against ethnicity, race, religion, economy and culture.

Based on the above provisions, the Team from the Bintan Police Satreskrim received information from the community that there were illegal sand mining activities (without a permit) in the Teluk Bakau area, so the Team conducted an investigation, at the location our members found 1 unit of sand suction machine connected to pipes, when arrested the 2 perpetrators were siphoning sand or caught red-handed by Satreskrim members. The sand is sold to buyers, namely lorry trucks that come to the location at a price of IDR 450,000 per lorry truck. The suspect has been mining since February 2023 and also admitted to mining without a permit from the local government, so the suspect and evidence were secured at the Bintan Police Station for further handling.

## 2. LITERATURE REVIEW

### a. The Grand Theory of Positive

Law is the basis for the birth of other theories at various levels. It is called macro because these theories are at the macro level. The Grand Theory used in this research is the theory of Positive Law initiated by Jhon Austin. Jhon Austin, known as the founding father of legal positivism, starts from the fact that there is a power that gives orders, and there are generally people obeying government orders. It is not important why people obey these government orders. Some because they feel obliged to look after the public interest, some because they fear chaos, some because they feel compelled to, all the same. Failure to obey will result in sanctions. According to Austin, to be called law, there are elements; a ruler (Sovereignty), there is an order (command), there is an

obligation to obey (duty), there are sanctions for those who disobey (sanction).<sup>12</sup> Legal positivism is also known as a legal theory that considers that the separation between law and morals is very important. Positivism distinguishes between what makes a norm exist as a valid legal standard and what makes a norm exist as a valid moral standard..

b. Legal System Theory (Middle Theory)

Middle range theory is a theory used to make the discussion more focused and detailed on a grand theory.<sup>19</sup> Middle range theory in this study uses legal system theory. Lawrence M. Friedman argues that the effectiveness and success or failure of law enforcement depends on three elements of the legal system, namely the structure of the law, the substance of the law and the legal culture.<sup>20</sup> The legal structure concerns law enforcement officials, the substance of the law includes legislation and legal culture is the living law adopted in a society. About the legal structure Friedman explains: "To begin with, the legal system has the structure of a legal system consisting of elements of this kind: the number and size of courts; their jurisdiction...Structure also means how the legislature is organised...what procedures the police department follows, and so on. Structure, in a way, is a kind of cross-section of the legal system...a kind of still photograph, which freezes the action..

c. Theory of Legal Certainty (Applied Theory)

Applied theory is the theory applied in making this thesis is the theory of justice. The word "certainty" refers to a thing (statement) that has no limits or boundaries. Basically, the law must be clear and fair. Clear as a standard of behaviour and fairness, because a code of conduct is needed to justify an order that is considered reasonable. The law can only fulfil its purpose if it is fair and implemented with certainty. Questions of legal certainty can only have normative, not sociological, answers.<sup>27</sup> Law, in Kelsen's view, is a set of norms. By offering some guidelines on what should be done, norms are statements that emphasise the "should" or *das sollen* component. Norms are creations and conscious human behaviour. The general standard of law serves as a guide to how people should act in society, both in interactions with others and with society as a whole. These laws serve as limits to society's ability to burden or reward individuals. There is legal certainty as a result of the existence and application of these regulations.

### 3. METHODOLOGY

The method of approach in this research is a combination of methods between normative approach "legal research" with empirical approach method "Juridical Sociology". The research mechanism with this combined approach method is carried out by describing the research explanation in an inductive way leading to a deductive way and vice versa. This type of research is included in the group of combined research between normative legal research (library research) with observational research, while in terms of its nature it is analytical, where the author makes efforts to explore data that is verbal in nature.

The population is all police officers, especially those who are members of the Bintan Police Satreskrim. The sample used by the author is a random technique, namely with details of 3 (three) police officers consisting of 1 (one) Head of Criminal Investigation Unit and 2 (two) Investigators in the Bintan Police Satreskrim. Data analysis is carried out qualitatively by describing the research, then comparing the data with legal theories, legal experts and laws and regulations.

### 4. DISCUSSION

#### a. Legal Regulation Of The Role Of The Police In The Process Of Investigation Of Unlicensed Mining Offences

The role of the Police in the investigation process of unlicensed mining offences in Indonesia is very important. The police are tasked with investigating and enforcing the law against illegal mining perpetrators in accordance with applicable laws and regulations. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia has required that the use of natural resources and ecosystems be used for the greatest prosperity of the people. Therefore, unlicensed mining actions that can damage

the environment and ecosystems must be dealt with firmly. In the law enforcement process, the Police conduct stages of investigation, prosecution and court hearings in accordance with applicable procedures and provisions. For example, in the case in Bintan Regency, Riau Islands Province, law enforcement was carried out based on the criminal provisions of Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which regulates criminal sanctions for mining business actors who conduct unlicensed mining. Perpetrators can be punished with a maximum imprisonment of 10 years and a maximum fine of IDR 5,000,000,000.00. The role of the Police in the investigation process of unlicensed mining offences in Indonesia is very important. The police are tasked with investigating and enforcing the law against illegal mining perpetrators in accordance with applicable laws and regulations. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia has required that the use of natural resources and ecosystems be used for the greatest prosperity of the people. Therefore, unlicensed mining actions that can damage the environment and ecosystems must be dealt with firmly. In the law enforcement process, the Police conduct stages of investigation, prosecution and court hearings in accordance with applicable procedures and provisions. For example, in the case in Bintan Regency, Riau Islands Province, law enforcement was carried out based on the criminal provisions of Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which regulates criminal sanctions for mining business actors who conduct unlicensed mining. Perpetrators can be punished with a maximum imprisonment of 10 years and a maximum fine of IDR 5,000,000,000.00.

In addition, criminal sanctions for perpetrators of mining crimes are also expressly regulated in Article 162 which regulates criminal sanctions for mining business actors who do not fulfil reclamation and post-mining obligations. The perpetrators can be punished with imprisonment for a maximum of 3 years and a maximum fine of IDR 1,500,000,000.00. Article 163 which regulates criminal sanctions for mining business actors who do not fulfil royalty payment obligations. The perpetrators can be punished with imprisonment for a maximum of 1 year and a maximum fine of Rp500,000,000.00. Article 164 which regulates criminal sanctions for mining business actors who do not fulfil the obligation to pay fixed contributions. The perpetrator can be punished with imprisonment for a maximum of 1 year and a maximum fine of Rp500,000,000.00. And Article 165 which regulates criminal sanctions for mining business actors who do not fulfil the obligation to pay regional contributions. The sanctions aim to enforce the law and maintain justice, as well as ensure that mining activities are carried out in a responsible and sustainable manner.

The Indonesian National Police plays a crucial role in dealing with unlicensed mining offences (TIPI). As a law enforcement institution, the police have the authority to investigate alleged offences related to illegal mining activities. This investigation process includes a series of activities ranging from the collection of initial information, arresting suspects, to collecting evidence that can be used to bring perpetrators to court.

In this analysis, the legal regulation of TIPI in Indonesia is consistent with Austin's positive law theory. Law functions as an instrument of social control by a sovereign ruler, with the police as one of the institutions that ensure the application and adherence to the law.

#### **b. Implementation Of The Role Of The Police In The Investigation Process Of Unlicensed Mining Offences**

The police is a law enforcement tool that can provide protection, protection, and prevent crime in people's lives. This is in accordance with Rahardi's opinion that "Police as one of the functions of state government in the field of maintaining security and public order". To get a clear picture of the definition of the police, there are several opinions of experts, among others: According to Van Vollenhoven quoted by Momo Kelana, the term police is defined as "organ and function, namely as an organ of government with the task of supervising, if necessary using coercion so that the commanded carry out and do not carry out the prohibitions of the order".

In the context of unlicensed mining (TIPI), the police play an important role in the identification and monitoring stages. Identification is the initial process where the police gather information related to the presence of suspected illegal mining activities. Using various intelligence sources, including community reports, information from government agencies, and remote sensing technology, the police can detect and map potential TIPI locations. This allows law enforcement to understand the extent of TIPI and determine the next steps of action. Furthermore, in the surveillance phase, the police conduct routine monitoring of areas that have been identified as TIPI locations. This surveillance is carried out both directly through routine patrols and by using technology, such as drones or monitoring cameras. The aim is to ensure that no illegal mining activities continue, while also collecting additional evidence that may be needed for the investigation process. This surveillance also serves as a preventative measure, where the presence of the police can prevent TIPI perpetrators from continuing or restarting their illegal activities. However, the police's role in identification and surveillance is not without its challenges. Indonesia's vast geographical area and diverse regional conditions, especially in mining areas, often make identification and surveillance difficult.

In addition, limited resources, both in terms of personnel and technology, are an obstacle. Nevertheless, with cross-agency cooperation and the support of the latest technology, the police continue to improve their effectiveness in identifying and monitoring TIPI. Upon receiving information or reports of TIPI, the police will immediately move to make arrests. At this stage, it is important for the police to collect strong evidence, such as documents, witnesses, and other evidence, so that the investigation process can run smoothly. After the identification and surveillance stage, if preliminary evidence or strong indications of unlicensed mining (TIPI) are found, the police move to the arrest stage. These arrests are made to prevent the perpetrators of TIPI from continuing their illegal activities and ensure that the perpetrators can be prosecuted in accordance with applicable law. Arrests are made based on preliminary evidence and supported by a valid arrest warrant. The police must ensure that all arrest procedures are conducted in accordance with the law, to avoid human rights violations and ensure the integrity of the legal process. In the context of evidence collection, the role of the police is crucial. Evidence gathering is done to ensure that perpetrators of TIPI can be tried with strong and valid evidence in court. This evidence includes, but is not limited to, documents related to mining activities, eyewitnesses, samples of mining products, and video footage or photos from the scene.

In addition, heavy machinery, vehicles and mining equipment used in illegal activities are also important evidence in TIPI cases. Any evidence found and collected must be properly preserved and documented to ensure its validity in the judicial process. Despite arrests and evidence collection being two critical stages in the TIPI law enforcement process, police often face challenges. Some of these include resistance from perpetrators or local communities, access difficulties to illegal mining sites, and attempts to destroy evidence by perpetrators. Therefore, good coordination between the police and related agencies and local communities, as well as the implementation of appropriate strategies, are key to success in the capture and collection of TIPI evidence. The police often collaborate with other agencies such as the Directorate General of Mineral and Coal in the Ministry of Energy and Mineral Resources, as well as with local governments to handle TIPI cases. The police often need support from other agencies, both in terms of intelligence, technical expertise, and resources. Therefore, cross-agency co-operation is essential to ensure the investigation process is effective. In addition, coordination with public prosecutors is also needed to ensure that TIPI cases investigated meet the elements of a criminal offence and can proceed to court.

The impact of the rise of TIPI in Bintan is significant. Apart from damaging the environment, this activity also has the potential to harm the regional economy. Potential regional revenue from the mining sector that could have been utilised for development and community welfare is lost due to this illegal activity. In addition, the existence of TIPI also threatens the sustainability of natural resources and can cause social conflict in the community. Therefore, serious efforts from all parties, including the local government, police and community, are needed to address this phenomenon. From the description above, it can be concluded that the implementation of the alleged role of the police in the

investigation process of unlicensed mining crimes is still not running optimally because the number of unlicensed mining crimes is still increasing significantly even though the police are still trying to optimise through the investigation of unlicensed mining crimes and various other law enforcement actions to curb unlicensed mining.

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The implementation of the police role in TIPI investigations in the jurisdiction of Bintan Police, when analysed with Friedman's legal system theory, shows the importance of harmonisation between the structure, substance, and culture of law. The police must understand and respond to the dynamics between these three components to improve their effectiveness. Meanwhile, from the perspective of Sudikno Mertokusumo's legal certainty theory, the clarity, consistency, and firmness of the law are key factors that support the success of the police in overcoming the TIPI phenomenon in Bintan..

#### **c. Obstacles And Solutions To The Implementation Of The Role Of Role Of The Police In The Investigation Process Of Criminal Offence Of Mining Without A Licence**

Obstacles to the implementation of the role of the police in the process of investigating criminal acts of mining without a permit in the jurisdiction of Bintan Police, namely:

1. **Limited Resources** One of the main obstacles is the limited resources, both in terms of personnel, facilities, and investigation support tools. This can result in the police having difficulty in monitoring the vast and remote mining areas in Bintan. Limited resources are one of the main obstacles in law enforcement efforts against unlicensed mining offences (TIPI) in the jurisdiction of Bintan Police.
2. **Geography** The Bintan region has a unique geographical area with many remote and hard to reach areas. This complicates the process of surveillance and routine patrols by the police. The geography of Bintan Region, which is one of the regencies in Riau Islands Province, Indonesia, affects various aspects, including law enforcement against unlicensed mining offences (TIPI).
3. **Community Legal Culture** There may be a perception among the community that TIPI is a legitimate source of income, or there may be a lack of awareness about the negative impacts of TIPI. This can result in the community being less supportive of police efforts in law enforcement. Community legal culture is often an obstacle in law enforcement efforts, including in the context of unlicensed mining offences (TIPI) in the Bintan region.
4. **The existence of individuals involved** The existence of individuals from various parties, both from internal police and other government agencies that may support or even be involved in TIPI activities, is one of the serious obstacles in the eradication of TIPI. The existence of individuals involved in the criminal offence of unlicensed mining (TIPI) is a significant obstacle in law enforcement efforts in the Bintan region. These individuals can come from various backgrounds, including internal police, government agencies, or even local officials who have power and influence in the community.
5. **Information Limitations** Police may not always have accurate or upto-date information on the location and activities of TIPI, making identification and prosecution difficult. Limited information is often an obstacle in law enforcement against unlicensed mining offences (TIPI) in areas such as Bintan. Investigating and preventing TIPI requires accurate data and

information on the location, actors involved, techniques used, and impacts caused by illegal mining activities. Without adequate information, police officers will find it difficult to identify hotspots, formulate appropriate strategies, or even allocate resources efficiently.

Information system development must also pay attention to data security aspects. Given the sensitivity of data relating to criminal offences and personal information, protecting data from the risk of leakage, manipulation, or cyber-attacks is a top priority. Investment in cybersecurity technology, regularity of system updates, and training for personnel managing information systems are equally important in ensuring the integrity, reliability, and security of the information system. By implementing the above solutions, it is hoped that the obstacles faced in TIPI law enforcement can be minimised and legal certainty can be enforced more effectively.

#### 4. CONCLUSIONS

The legal regulation of the role of the police in the investigation process of unlicensed mining crimes in the Bintan Police area is based on the criminal provisions of Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining which regulates criminal sanctions for mining business actors who conduct mining without a permit. The perpetrator can be punished with a maximum imprisonment of 10 years and a maximum fine of IDR 5,000,000,000.00.

The implementation of the role of the police in the process of investigating unlicensed mining crimes still requires optimisation, because the number of unlicensed mining crimes is still increasing significantly even though the police are still trying to optimise through investigations of unlicensed mining crimes and various other law enforcement actions to curb unlicensed mining.

The implementation of the role of the police in the investigation process of unlicensed mining offences (TIPI) in the jurisdiction of Bintan District Police faces various obstacles, including limited resources, the complexity of the geography of the area, the legal culture of the community that is not fully supportive, the involvement of unscrupulous people, and limited information. However, various solutions have been identified to overcome these obstacles, including increasing personnel capacity and training, strengthening facilities and infrastructure, community education and socialisation, strict action against unscrupulous people, and developing a more sophisticated and integrated information system. By comprehensively implementing these solutions, it is hoped that the police can increase their effectiveness in handling TIPI and restore public trust in law enforcement institutions.

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