



## Implementation of Legal Protection for Third Parties in good faith in the court ruling to confiscate evidence for the state in mining criminal cases (Study Court Ruling Number: 73/Pid.B/LH/2023/PN.Rbg)

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### Abstract

This research refers to the illegal mining case that will be reviewed by the author is the case in the Court ruling Number: 73 / Pid.B / LH / 2023 / PN.Rbg, the side of injustice in the content of this decision is the role of a Third Party named Abdul Rohman whose as the owner of evidence in the form of 1 (one) unit of truck, the goods he owns are confiscated and confiscated for the state. on the basis of consideration that the goods have participated in assisting the process of criminal acts that have been committed by the Defendant. The judge in deciding this case to realize that the defendant is deterred by Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal. Is it appropriate that Abdul Rohman as a Witness in this judgment should participate in obtaining sanctions like this, when in reality Abdul Rohman did not know anything if the goods he owned were rented to the Accused to commit the illicit act. This research uses two types of legal materials, namely primary legal materials and secondary legal materials, while the type of data used in this research is qualitative data and uses normative legal research types.

The results of this study show that: Law enforcement against Illegal Mining business actors in the perspective of environmental protection to achieve Supremacy of Law is carried out by the application of administrative sanctions, civil sanctions and criminal sanctions. Relevant law enforcement officials must be able to carry out law enforcement measures in the form of preventive and repressive measures, including supervising every mining activity such as legal protection for third parties who have good intentions in the decision to confiscate evidence for the state in cases of mining crimes

**Keywords:** Law enforcement, illegal mining, legal protection, good faith

### Introduction

Various issues regarding forestry, especially *illegal maning*, often cause injustice to a party, especially Third Parties where third parties in *illegal maning* cases are often involved in the case. Where a third party is a party who lends or rents equipment (heavy equipment to do mining work) to criminal actors, so that the perpetrators can commit mining crimes. Although the Third Party does not know if the equipment he has rented will be used for *illegal maning crimes*

The *illegal Maning case* that will be reviewed by the author is the case in court ruling Number: 73 / Pid.B / LH / 2023 / PN.Rbg, the unfair side of the content of this decision is the role of a Third Party named Abdul Rohman whose notabe as the owner of evidence in the form of 1 (one) unit of truck, the goods he owns are confiscated and confiscated for the state. on the basis of consideration that the goods have participated in assisting the process of criminal acts that have been committed by Defendant. The judge in deciding this case to realize that the defendant is deterred by Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal. Is it appropriate that Abdul Rohman as a Witness in this judgment should participate in obtaining sanctions like this, when in reality Abdul Rohman did not know anything if the goods he owned were rented to the Accused to commit the illicit act.

In the context of this evidence, Article 194 paragraph (1) of the Code of Criminal Procedure (KUHP) provides that in the event of a conviction or acquittal or release from all lawsuits, the court determines that the seized evidence be

handed over to the party most entitled to receive back the name listed in the judgment unless according to the provisions of the law the evidence must be seized for the benefit of the state or destroyed or damaged so that can no longer be used.

In a confiscation process, it is possible that the goods to be confiscated not only belong to the perpetrators of a criminal act but also have links with the property of other people who did not participate in a criminal act, as a third party in good faith, of course, the law must provide protection for third parties in good faith to get evidence back that has been seized by law enforcement.

In general, the Criminal Procedure Code explains third parties as parties related to criminal cases based on the interests of these parties. These interested third parties include parties who, directly or indirectly, suffer losses due to the termination of investigations or prosecutions, as well as in requests for compensation and rehabilitation. Based on the provisions of Article 80 of the Criminal Procedure Code, it can be seen that those who can be categorized as third parties are victims, or victims' families or the community in general. The MINERBA Law states that third parties with the term third party in good faith are related to the seizure of goods made against third parties or goods that are not the property of the defendant. In the MINERBA law, the position of this third party can also be interpreted as a subject who participates in *illegal maning*, in contrast to the definition of a third party regulated in Article 80 of the Code of Criminal Procedure.

The determination of third parties in good faith is a complex issue because there are often no clear boundaries between third parties as perpetrators and third parties as parties in good faith and potentially suffer losses from investigative actions, especially confiscation of evidence.

*Normatively, goods that are the result of criminal cases, these goods must be confiscated and destroyed such as liquor, drugs and other illicit goods. However, if the evidence is goods or assets whose notable the goods really belong to the victim or other parties, which are used for the act (criminal act). Can it be said to be "fair" if the goods are confiscated and destroyed? and the only judge who can decide whether they should be confiscated or returned is a judge. The way the judge can decide the item should be managed "confiscated or returned", the judge needs to know the origin of the item. In fact, there are still many judges who often miss giving a decision, because the process of examining the item "evidence" is not completed completely and optimally.*

The role of the judge in carrying out the process, especially the examination of evidence, is very important and needs to be prioritized, because it is the judge who is able to give a decision to confiscate and return the evidence, and the judge must be observant in giving decisions in managing the item. Because if the judge is wrong in the process "examining evidence" will cause injustice, especially on the part of the victim or other parties, even though the main purpose of victims reporting a crime starting from the police level to the judicial process is to provide information and get certainty of justice, where the hope is that the perpetrator will be sentenced in accordance with applicable legal provisions as well as losses and evidence that In fact, it is owned by the complainant can be returned in his right.

Based on the explanation above, whether it is appropriate to create law, namely the ideals of mankind throughout the world who yearn for peace, tranquility, happiness and prosperity, therefore the author is interested in discussing further about the Implementation of Legal Protection for Third Parties who have good intentions in the decision to seize evidence for the state in mining criminal cases (Study Court Ruling Number: 73/Pid.B/LH/2023/PN.Rbg)

### Research Methods

In this study, Method is a tool to find answers from a problem solving, therefore a method or tool must first be clear what will be sought. In legal research, the method used depends on what concept is meant about the law. Setiono based on the views of Soetandyo Wigyoebroto, stated that there are 5 (five) legal concepts, namely:

1. Law as a natural principle of truth and justice and
2. universally applicable.
3. Law is positive norms in the National Legislation system.
4. Law is what is decided by the Judge in concreto and systematized as Judge Made Law.
5. Laws are patterns of social behavior that are institutionalized to exist as
6. empirical social variables.
7. Law is the many investment of the symbolic meanings of social behaviour as apparent in their interactions

This research uses a type of non-doctrinal research or the third legal concept, namely law is what is decided by the Judge *in concreto* and systematized as Judge Made law. In

judicial processes as part of the judge's efforts to resolve cases or cases, and have the possibility of precedent for subsequent cases or cases. Thus the law is conceptualized as a norm that is the product of a judge (Judgments) when the judge decides a case by taking into account the realization of benefits and benefits for the litigants. This research is a type of normative law research using *normative legal case studies* in the form of legal behavior products, for example reviewing draft laws and the approach used in this study using the Case Approach

### Result and Discussion

Implementation of Legal Protection for Third Parties in good faith in the court ruling to confiscate evidence for the state in mining criminal cases (Study Court Ruling Number: 73/Pid.B/LH/2023/PN.Rbg)

Before we discuss, it's good to know about criminal acts in mining

Mining Crime is one of the special crimes regulated by the Law itself, namely Law Number 4 of 2009 concerning Mineral and Coal Mining. Therefore everything related to mining must be subject to the Act. The Mining and Coal Law contains (5) main elements, namely:

1. Unlicensed mining business;
2. False information;
3. Unauthorized exploration;
4. Unlicensed production operations;

Disrupting someone else's mining business.

In this research, the author wants to focus on articles related to mining business permits and articles regarding 20 violations in the mining world. The contents of these articles are:

**1. Article 158 reads:** "Any person who conducts mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah)." There are criminal elements, namely:

- a. Element of each person, namely every individual Indonesian citizen or business entity in the form of a legal entity or non-legal entity established and domiciled in the jurisdiction of the Unitary State of the Republic of Indonesia who carries out business activities in mining as a legal subject / perpetrator of criminal acts that can be held criminally responsible provided that if the criminal act / unlawful act committed;
- b. The element of mining without IUP, IPR, IUPK is unlawful in this case mining without a permit which is interpreted the same as doing illegal mining.

**2. Article 159 reads:** "Holders of IUP, IPR or IUPK who deliberately submit reports as referred to in Article 43 paragraph (1), Article 70 point e, Article 81 paragraph (1), Article 105 paragraph (4), Article 110, or Article 111 paragraph (1) incorrectly or submit false information shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp10,000,000,000, 00 (ten billion rupiah).

- a. The element of every holder of IUP, IPR or IUPK is "an individual or business entity as a legal subject / perpetrator of a criminal act who can be held criminally

responsible on condition that the criminal act / unlawful act committed.

- b. Elements deliberately submit false IUP, IPR or IUPK reports or false information that is interpreted as the same as illegal mining.

**3. Article 160 reads:** "(1) Any person who conducts exploration without having an IUP or IUPK as referred to in Article 37 or Article 74 paragraph (1) shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp200,000,000.00 (two hundred million rupiah). (2) Any person who has an Exploration IUP but carries out production operations shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah)." There are criminal elements, namely:

- a. The element of each person is "person" as a subject of law / perpetrator of a criminal act who can be held criminally responsible on condition that the criminal act / unlawful act he committed.
- b. Elements deliberately carry out exploration mining without IUP or IUPK and / or have an Exploration IUP but carry out production operation activities, namely unlawful actions in this case are interpreted the same as doing illegal mining.
- c. Article 161 reads: "Any person or holder of Production Operation IUP or Production Operation IUPK who accommodates, utilizes, processes and refines, transports, sells minerals and coal that is not from the holder of IUP, IUPK, or permit as referred to in Article 37, Article 40 paragraph (3), Article 43 paragraph (2), Article 48, Article 67 paragraph (1), Article 74 paragraph (1), Article 81 paragraph (2), Article 103 paragraph (2), Article 104 paragraph (3), or Article 105 paragraph (1) shall be punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp10,000,000,000.00 (ten billion rupiah)." There are criminal elements, namely:
  1. The element of each person is a person "as a subject of law / perpetrator of a criminal act who can be held criminally responsible on condition that the criminal act / unlawful act is committed.
  2. Elements as a person or holder of a production operation IUP or IUPK production operation that accommodates, utilizes, processes, and refines, transports, sells minerals, and coal that is not an IUP holder, IUPK is an unlawful act in this case mining without a permit which is interpreted the same as illegal mining.
  3. Article 162 reads: "Any person who obstructs or interferes with the mining business activities of IUP or IUPK holders who have fulfilled the conditions as referred to in Article 136 paragraph (2) shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp100,000,000.00 (one hundred million rupiah)." There are criminal elements, namely:
    - a. The element of each person is a person "as a subject of law / perpetrator of a criminal act who can be held criminally responsible on condition that the criminal act / unlawful act is committed.

- b. Elements deliberately act against the law and have malicious intent (*mens rea*) to interfere with other mining business activities that have met the requirements.

In mining crimes, there are various types. In addition to recognizing the existence of illegal mining crimes, there are also various other crimes, most of which are directed at mining business actors, and only one type of crime directed at permit issuing officials in the mining sector. These crimes are as follows:

#### **Criminal Acts of Mining Without a Permit**

As already known above that the State has the right to control the earth, water, and natural wealth contained therein including mines. Based on this, everyone who will carry out mining activities must first ask for permission from the State / government. If there is a mining activity the perpetrator does not have a permit, then his actions are a criminal offense regulated in article 158 of Law No. 4 of 2009 concerning Mineral and Coal Mining which reads: "Any person who conducts mining business without IUP, IPR, or IUPK as referred to in article 37, article 40 paragraph (3), article 48, article 67 paragraph (1), article 74 paragraph (1) or punishable with a maximum imprisonment of 10 years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).

#### **The Crime of Exploring Without Rights**

Basically, to carry out mining business activities, you must have a permit and every permit issued there are 2 (two) activities that must be carried out, namely for exploration and exploitation. Exploration activities include general investigation, exploration and feasibility studies. What is meant by exploration is the stages of mining business activities to obtain detailed and thorough information about the location, shape, dimensions, distribution of quality, and measurable resources from excavated materials as well as information about the social and environmental environment (article 1 number 15 of Law No. 4 of 2009 concerning Mineral and Coal Mining). Because carrying out mining exploration activities is based on a permit issued by the government, namely IUP or IUPK, exploration carried out without a permit is a criminal act that is punishable by punishment under article 160 paragraph 1 of Law No. 4 of 2009 concerning Mineral and Coal Mining with a maximum imprisonment of one year or a maximum fine of Rp. 200,000,000, 00 (Two hundred million rupiah).

#### **Mining Laundering Act**

In financial and banking activities, money laundering is known, where money derived from crime is "laundered" by financial services companies to become money that is considered "clean". In the mining sector there can also be laundering of mining products, illegal miners can deal with miners who have permission to conduct transactions of mining products so that they reach the community as legitimate mining goods. The crime of mining *laundering* in Law No.4 of 2009 concerning Mineral and Coal Mining is punishable with a maximum imprisonment of 10 years and a maximum fine of "Rp10,000,000,000.00 (ten billion rupiah). To be able to dismantle the crime is certainly not easy because in general mining is carried out in rural areas

which are usually far from crowds and empty of officers, so intensive supervision is needed with cooperation between mining ministry officials, local governments, and the police. Criminal Acts Obstructing Mining Business Activities

Mining entrepreneurs who have obtained permits from authorized officials can immediately carry out their activities according to the given location. In carrying out mining business activities sometimes cannot run smoothly due to interference from local residents. The disturbance occurred, among others, because the road became damaged due to heavy vehicles, rivers and rice fields covered with excavated land, crops were damaged, and others. Residents who feel aggrieved usually protest by blocking in various ways so that mining does not continue.

For actions that interfere with mining business activities is a criminal offense threatened with article 162 of Law No. 32 of 2009 concerning Environmental Protection and Management, punishable with a maximum imprisonment of one year and a maximum fine of "Rp. 100,000,000.00- (one hundred million rupiah)" Due to interference from the community, it will be troublesome for mining entrepreneurs because the project cannot run, it should have been illustrated in a psycho analysis so that entrepreneurs can avoid the risks that will occur. For example, if the road passed to the project before it was heavily damaged was immediately repaired, of course the community would be happy.

The seriousness of this mining crime requires a legal protection for the parties involved in it, but in this study, the author will only discuss third parties who carry out good faith in reporting a mining crime, as it is known that there are several forms of legal protection, namely as follows:

1. Protection in the form of Preventive Law This can be interpreted as the law in its protection of processing early an action that will one day be debated so that in this context, the legal protection prevents it before the conflict occurs and causes adverse effects such as gross violations or crossing boundaries outside human rights.
2. Protection in the form of Repressive Law According to Setiono in his case study on the rule of law (2004), law in its protection as a form of repression, namely something when a conflict that crosses the limits of human norms has been created by humans or the parties concerned (Setiono, 2004). This makes the law as a rule by strictly creating a reciprocal impact to process the conflict so that it is not repeated in every human activity both subject and object of law, for example in the form of fines, imprisonment, sanctions and other punishments.

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Abdul Rohman did not know anything if the goods he owned were rented to the Accused to commit the illicit act. In the context of this evidence, Article 194 paragraph (1) of the Code of Criminal Procedure (KUHAP) provides that in the event of a conviction or acquittal or release from all lawsuits, the court determines that the seized evidence be handed over to the party most entitled to receive back the name listed in the judgment unless according to the provisions of the law the evidence must be seized for the benefit of the state or destroyed or damaged so that can no longer be used.

Basically, the process of confiscating evidence of a criminal act, especially in *illegal maning*, has the potential for human rights violations, especially regarding property rights. *The Universal Declaration of Human Rights* (UDHR) states that no one should be arbitrarily deprived of their property. Therefore, in the process of confiscation, restrictions are needed. These restrictions on confiscation measures are necessary so that there is no arbitrariness committed by investigators.

In a confiscation process, it is possible that the goods to be confiscated not only belong to the perpetrators of a criminal act but also have links with the property of other people who did not participate in a criminal act, as a third party in good faith, of course, the law must provide protection for third parties in good faith to get evidence back that has been seized by law enforcement.

In general, the Criminal Procedure Code explains third parties as parties related to criminal cases based on the interests of these parties. These interested third parties include parties who, directly or indirectly, suffer losses due to the termination of investigations or prosecutions, as well as in requests for compensation and rehabilitation. Based on the provisions of Article 80 of the Criminal Procedure Code, it can be seen that those who can be categorized as third parties are victims, or victims' families or the community in general. The MINERBA Law states that third parties with the term third party in good faith are related to the seizure of goods made against third parties or goods that are not the property of the defendant. In the MINERBA law, the position of this third party can also be interpreted as a subject who participates in *illegal maning*, in contrast to the definition of a third party regulated in Article 80 of the Code of Criminal Procedure.

The determination of third parties in good faith is a complex issue because there are often no clear boundaries between third parties as perpetrators and third parties as parties in good faith and potentially suffer losses from investigative actions, especially confiscation of evidence.

In fact, the main purpose of victims reporting a crime starting from the police level to the judicial process is to provide information and get certainty of justice, where the hope is that the perpetrator will be sentenced in accordance with applicable legal provisions and losses and evidence that are in fact owned by the complainant can be returned according to their rights. But in reality there has been no action in the form of legal protection to third parties in good faith to report a mining crime. This is a serious concern for law enforcement agencies so that legal protection can be carried out to parties who try to report a problem that has the potential to cause mining crimes, both preventive and repressive legal protection

### Conclusion

Law enforcement against Illegal Mining business actors in the perspective of environmental protection to achieve Supremacy Of Law is carried out by applying administrative sanctions, civil sanctions and criminal sanctions. Relevant law enforcement officials must be able to carry out law enforcement measures in the form of preventive and repressive efforts including supervising every mining activity such as legal protection of third parties who have good intentions in the decision to confiscate evidence for the state in cases of mining crimes, this is very important because the mining sector is a sector that is large in providing state income, So it takes courage and consistency in enforcing existing laws in the mining sector, one of which is by providing legal protection for related parties who have good faith in reporting problems that can potentially cause losses such as mining crimes in the form of illegal mining

### Suggestion

The government and institutions related to mining should pay more attention to mining activities and the problems in them, so as to create a healthy business activity in the mining sector and certainly provide significant income or income to the state, not vice versa cause more losses because parties who hinder the law enforcement process as explained in this study, The role of parties who have good intentions to report a problem in this case in the mining sector must be appreciated as high as possible, the form of appreciation can be in the form of protection to related parties such as these third parties, both preventive and repressive legal protection.

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