The Influence of the Form of the Indictment on Law Enforcement in Criminal Offenses Related to Mining in Forest Areas (Case Study: Verdict Number 15/PID.SUS/2017/PN.PGP)

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Abstract Indonesia is a country known for having a wealth of natural and mineral resources, such as crude oil, coal, copper, iron ore, tin and gold. With the wealth it has, the Indonesian State carries out exploration activities for natural resources as one type of exploration activity by carrying out mining activities. However, mining activities often carried out do not comply with applicable regulations, which can cause environmental damage. Mining activities without permits are widespread in the Bangka Belitung archipelago, therefore the author will examine the law enforcement process contained therein, especially in the prosecution section carried out by law enforcement officials, namely the public prosecutor through court decision Number: 15/PID.SUS /2017/PN.PGP, The method used by the author in collecting data was normative research methods, the author found that the Public Prosecutor was inappropriate in imposing charges by applying regulations that were not by the facts of the material actions of the defendants and legal facts what was revealed at the trial, evidence, and legal evidence presented at the trial.

Keywords: Application of Sanctions, Illegal Mining, Indictment

1 Introduction

Indonesia is renowned for its abundant natural resources and minerals, including crude oil, coal, copper, iron ore, tin, and gold. In line with the provisions of Article 33 paragraph (3) of the 1945 Constitution, all natural wealth within the country's borders is under the authority of the state for the welfare of the people.[1] To fulfill the mandate of Article 33, the government is empowered to contribute to the nation's prosperity by managing these natural resources, including through mining activities.[2] As defined in Article 1, point 1 of Law Number 3 of 2020 concerning Mineral and Coal Mining, mining encompasses various stages, such as general investigation, exploration, feasibility studies, construction, mining, management and refining, transportation, sales, as well as post-mining activities.[3] These activities encompass the entire process of mineral or coal research, management, and control.

Mining, in this context, constitutes a series of activities aimed at the exploration, extraction,

ICTA II-MIL 2023, October 21, Pangkalpinang, Indonesia

DOI 10.4108/eai.21-10-2023.2343520

processing, utilization, and sale of mineral resources (such as minerals, coal, geothermal resources, and oil and gas). These mining activities significantly contribute to Indonesia's economic development. This enables the Indonesian state to manage its natural resources for the welfare of its people, as stipulated in Article 33, paragraph 3 of the 1945 Constitution.[4]

Hutan (forest) refers to an ecosystem unit consisting of land containing living natural resources dominated by trees, which are an integral part of their respective environmental systems, interconnected with one another. Hutan, or forests, serve critical functions, including regulating water systems, preventing floods and erosion, preserving soil fertility, and protecting the environment.[5]

On the other hand, kawasan hutan (forest areas) refers to specific regions designated and defined by the government to be preserved as permanent forests. The optimal utilization of forests and lands for the welfare of society necessitates their effective management, taking into account their nature, characteristics, and priorities, while also aligning with their conservation, protection, and production functions.[6] To achieve maximum benefits from forests and lands for the well-being of society and to ensure their long-term sustainability, effective forest and land management is essential, including the implementation of forest rehabilitation and reclamation efforts.

Constitutionally, the use and utilization of forest areas as part of natural resource management are primarily aimed at the utmost prosperity of the people, as stipulated in Article 33, paragraph (3) of the 1945 Constitution. This article states that land, water, and the natural wealth contained within are under the authority of the state and must be utilized for the maximum benefit of the people.[7] This constitutional principle is reinforced by the provisions of Article 23 of Law Number 41 of 1999 concerning Forestry (Forestry Law), which emphasizes that forest utilization aims to achieve optimal benefits for the welfare of all people fairly while preserving its sustainability.[8] The utilization and utilization of forest areas are, in principle, primarily intended for forestry activities, which can be conducted throughout the forest areas, excluding nature reserves and core and buffer zones in national parks. However, the Forestry Law allows the possibility of using forest areas for development purposes outside of forestry activities. Such usage can occur in production forests and protected forests without altering the primary function of these forest areas.[9]

Considering the critical role that forests play in society, it is necessary to conduct a more in-depth examination of the functions and roles of forests. The utilization of forest natural resources, when carried out in alignment with their inherent functions, such as protective functions, sanctuary functions, production functions, and tourism functions, along with support from human resource development, scientific knowledge, and technology, will yield the desired results. Based on their core functions, the government designates forests as conservation forests, protected forests, and production forests. The formulation of ideal criminal provisions should not only be based on the core legal issues but also on the qualification of the offense. This is because the Indonesian Criminal Code (KUHP), as the primary criminal law regulation in effect, classifies criminal acts into two categories: crimes and violations. Most special regulations do not specify or determine the qualification of criminal acts as either crimes or violations. This legal vacuum can potentially cause challenges in the enforcement of general KUHP provisions not explicitly covered by specific regulations outside the KUHP.[7]

The Mineral and Coal Mining Law (UU Minerba) is a concrete example of a law outside the KUHP that does not establish the qualification of offenses as either criminal acts or violations. Qualifying the offense is crucial to regulation because it relates to the Criminal Procedure Law in the future. It determines whether an act constitutes an intentional or negligent wrongdoing, both in terms of criminal acts categorized as crimes and violations. This deficiency in UU Minerba can have repercussions on its enforcement.[10]

Since the objective of penalization in KUHP is oriented towards actions, imposing criminal sanctions for wrongful actions becomes an unavoidable choice in every criminal case. Applying formal legality is a rational choice within the current penalization concept of KUHP.[11] This means that cases such as the one involving Mak Minah leave no room for legal leniency. This is due to the fact that KUHP lacks a clear purpose and penalization guidelines, resulting in a lack of direction in criminal law enforcement and disparities in criminal judgments occurring in various places.[12]

In practice, there are significant differences in the application of criminal law regarding unauthorized mining by law enforcement, particularly between the Prosecutor's Office, which has the authority to prosecute cases of Unauthorized Mining, and the Courts, which have the authority to adjudicate such cases. These differences often result in non-compliance with the applicable rules, leading to ineffective handling of unauthorized mining cases. This study will analyze a specific case involving the defendants I SUHENDRY alias BONGKENG, son of ASAK (late), and defendant II SUJONO alias ATHAU, son of SUNG SAK MEN, who committed unauthorized mining within a forest area in the jurisdiction of the Pangkalpinang District Attorney's Office.

The implementation of criminal law enforcement relies on the legal instruments granted authority by the law to exercise their respective powers. It should be systematically carried out to achieve its objectives. This systematic effort involves various elements that must work together cohesively and interact with each other. Such efforts should be realized within a legal system responsible for enforcing criminal law, essentially, the criminal justice system. The basis for the imposition of criminal sanctions by the Public Prosecutor and the Panel of Judges in this court decision uses Article 158 of the Mining Law. However, it may be considered inappropriate, given that unauthorized mining within forest areas is governed by Article 89 of the Law on the Prevention and Eradication of Forest Destruction.[13]

The ultimate goal of the law is to create a well-ordered society. By establishing order and balance within society, it is expected that human interests are met and protected. Based on the facts mentioned above, there is a need for a legal review of cases involving criminal acts of mining within forest areas, with a focus on the case study of Decision Number 15/PID.SUS/2017/PN.PGP. In light of the background discussed, the specific research questions addressed by the author are:

a. How is the application of the indictment by the Public Prosecutor in Decision Number 15/PID.SUS/2017/PN. PGP?
b. How is the verification of the elements under Article 158 of Law Number 4 of 2009 on Mineral and Coal Mining as charged by the Public Prosecutor in Decision Number 15/PID.SUS/2017/PN.PGP

2 Method

This research adopts a normative research method and relies on secondary data sources.[14] The secondary data used in this research encompass various legal materials, including primary legal materials such as the 1945 Constitution of the Republic of Indonesia, Law Number 4 of 2009 Concerning Mineral and Coal Mining, Government Regulation Number 18 of 2013 Concerning the Prevention and Eradication of Forest Destruction, the Indonesian Criminal Code (Kitab Undang-Undang Hukum Pidana or KUHP), as well as Law Number 32 of 2009 Concerning Environmental Protection and Management. Additionally, secondary legal materials that explain and interpret primary legal materials, such as books, papers, newspapers, and journals, are utilized. Lastly, tertiary legal materials obtained from the internet and official websites that discuss mining activities are also incorporated into the research.

3 Result and Discussion

3.1 Form of the Charges in the Case *A Quo*

The defendants, Suhendry and Sujono, were both employed at Sujono's mining location from October 2016. Suhendry worked as a mining supervisor responsible for transporting diesel fuel and bringing back tin sand. He also reported any issues that arose at the mining site. The mining activities primarily involved using an excavator, specifically a Hitachi ZX 200, to excavate the topsoil and create a pit or excavation with an approximate depth of 6 meters, width of around 30 meters, and length of approximately 25 meters for mining purposes. Once the pit or excavation was ready, other workers installed a Wujin machine with a capacity of 22 horsepower, connecting hoses and pipes to operate the machinery. Subsequently, workers took turns spraying the soil, after which the sprayed soil was sucked up and elevated through pipes. At this point, the separation of sand, soil, and tin ore occurred.

The workers received individual wages ranging from Rp 700,000.00 (seven hundred thousand Indonesian rupiahs) to Rp 800,000.00 (eight hundred thousand Indonesian rupiahs) per week. Suhendry, on the other hand, received a weekly wage of Rp 1,000,000.00 (one million Indonesian rupiahs) from Sujono. Throughout the mining activities that had been ongoing since October, Suhendry and Sujono had accumulated approximately 1,000 kg of tin sand. In October, they obtained roughly 300 kg to 453 kg of wet tin sand. Suhendry handed over the wet tin sand to Sujono, who collected it at his home in the village of Jeruk, Pangkalan Baru sub-district, Central Bangka Regency. The intention was to sell it to buyers at an appropriate price.

The police officers from the Kepulauan Bangka Belitung Regional Police received information from the local community regarding mining activities at the Melempam mining location in the Air Mesu Village, Pangkalan Baru sub-district, Central Bangka Regency. This area fell within a forest zone that had been designated as the Bukit Mangkol Grand Forest Park based on the Decree of the Minister of Forestry and Plantations of the Republic of Indonesia No. 792/Kpts-II/1999, dated September 29, 1999, which declared the Gunung Mangkol Forest Zone spanning an area of 6,068.58 ha. On July 27, 2016, it was further designated as the Bukit Mangkol Grand Forest Park based on the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK.675/MenLHK/Setjen/PLA.2/7/2016, specifying its function as a core protected area and a nature conservation area as part of the Bukit Mangkol Grand Forest Park. The mining activities conducted in this area were deemed illegal as they were not accompanied

by a Mining Business License (Izin Usaha Pertambangan or IUP).

As such, the defendants, Suhendry alias Bongkeng, son of the late Asak, and Sujono alias Athau, son of Sung Sak Men, were charged with the criminal offense of conducting mining activities without a permit at the Melempam mining location in the Air Mesu Village, Pangkalan Baru sub-district, Central Bangka Regency. This location fell within a forest zone that had been designated as the Bukit Mangkol Grand Forest Park as outlined in the Minister of Forestry and Plantations of the Republic of Indonesia's Decree No. 792/Kpts-II/1999, dated September 29, 1999, and further declared as the Bukit Mangkol Grand Forest Park based on the Minister of Environment and Forestry of the Republic of Indonesia's Decree No. SK.675/MenLHK/Setjen/PLA.2/7/2016, specifying its function as a core protected area and a nature conservation area within the Bukit Mangkol Grand Forest Park.

The prosecution, in response to the defendants' actions, filed alternative charges. The first alternative charge accused the defendants of violating the provisions of Article 158 of Law No. 4 of 2009 regarding Mineral and Coal Mining, in conjunction with Article 55 paragraph (1) point 1 of the Indonesian Criminal Code (KUHP). The second alternative charge accused the defendants of violating the provisions of Article 89 paragraph (1) letter a of Law No. 18 of 2013 regarding Prevention and Eradication of Forest Destruction, in conjunction with Article 55 paragraph (1) point 1 of the KUHP. The third alternative charge accused the defendants of violating the provisions of Article 89 paragraph (1) letter b of Law No. 18 of 2013 regarding Prevention and Eradication of Forest Destruction, in conjunction with Article 55 paragraph (1) point 1 of the KUHP.

In their request for charges, the prosecution sought the conviction of the defendants under the first alternative charge, utilizing Article 158 of Law No. 4 of 2009 regarding Mineral and Coal Mining, combined with Article 55 paragraph (1) point 1 of the KUHP. They requested a prison sentence of 5 (five) months for defendant I, SUHENDRY alias BONGKENG, son of ASAK (deceased), and 4 (four) months for defendant II, SUJONO alias ATHAU, son of SUNG SAK MEN. This was to be reduced by the duration of their temporary detention, along with a fine of Rp. 5,000,000 (five million Indonesian rupiahs), with a subsidiary punishment of 3 (three) months of imprisonment if the fine was not paid. Both defendants were to remain in custody.

The panel of judges in the verdict of Court Decision No. 15/PID.SUS/2017/PN.PGP found the defendants guilty of the first alternative charge and imposed prison sentences. Defendant I, SUHENDRY alias BONGKENG, son of ASAK (deceased), received a sentence of 4 (four) months, while defendant II, SUJONO alias ATHAU, son of SUNG SAK MEN, received a sentence of 2 (two) months and 22 (twenty-two) days, along with fines of Rp. 3,000,000.00 (three million Indonesian rupiahs) each. It was stipulated that failure to pay the fine would result in a subsidiary imprisonment of 2 (two) months. Based on the above explanation, it is evident that both the prosecutor and the panel of judges applied Article 158 of Law No. 4 of 2009 regarding Mineral and Coal Mining, in conjunction with Article 55 paragraph (1) point 1 of the KUHP.

3.2 Juridical Analysis of the Application of the Indictment

In the criminal case with the case number 15/PID.SUS/2017/PN.PGP, the Prosecutor's Office filed an alternative indictment against the defendants. The first alternative charge accused the

defendants of violating the provisions of Article 158 of Law No. 4 of 2009 regarding Mineral and Coal Mining, in conjunction with Article 55 paragraph (1) point 1 of the Indonesian Criminal Code (KUHP). The second alternative charge accused the defendants of violating the provisions of Article 89 paragraph (1) letter a of Law No. 18 of 2013 regarding Prevention and Eradication of Forest Destruction, in conjunction with Article 55 paragraph (1) point 1 of the KUHP.

Based on the analysis of this case, in the criminal acts committed by the defendants, there are two material criminal actions. The first action is conducting mining activities at the Melempam mining site, located in the Air Mesu Village, Pangkalan Baru District, Bangka Tengah Regency, which is within the forest area designated as Taman Hutan Raya Bukit Mangkol. This designation was based on the Minister of Forestry and Estate Crops' Decree No. 792/Kpts-II/1999 dated September 29, 1999, which declared the Gunung Mangkol Forest Area spanning 6,068.58 hectares. Furthermore, on July 27, 2016, it was declared as Taman Hutan Raya Bukit Mangkol by the Minister of Environment and Forestry with Decree No. SK.675/MenLHK/Setjen/PLA.2/7/2016, specifying its function as the core function of a natural reserve and a conservation area as Taman Hutan Raya Bukit Mangkol. Mining activities within this area were against the law because they were not accompanied by the required Mining Business License (Izin Usaha Pertambangan or IUP).

The second criminal action was the use of heavy equipment for mining, specifically the use of one unit of the orange Hitachi ZX 200 Exavator PC, bearing serial number HCM1G500K00119769, which defendant II rented from Letkol R.E. Ambarita for a daily rental fee of Rp. 500,000. The purpose of employing heavy machinery in the extraction of tin sand in which the defendants were engaged was to excavate and dig the ground to create excavations (kolongs) for the purpose of obtaining tin sand. Once the excavations were created, water mixed with tin sand was sprayed and sucked using WUJIN TI machines, each with a capacity of 22PK. Subsequently, a washing and separation process between soil and tin sand was carried out to obtain the desired result in the form of tin sand.

Both of these material criminal actions by the defendants are governed by Article 89 paragraph (1) letter a of Law No. 18 of 2013 regarding Prevention and Eradication of Forest Destruction, which states, "Individuals who intentionally conduct mining activities within forest areas without the Minister's permission as referred to in Article 17 paragraph (1) letter b," and Article 89 paragraph (1) letter b of Law No. 18 of 2013 regarding Prevention and Eradication of Forest Destruction, which states, "Carrying heavy equipment and/or other equipment that is common or reasonably suspected to be used for mining activities and/or transporting mining products within forest areas without the Minister's permission as referred to in Article 17 paragraph (1) letter a. In the context of two criminal actions committed by the defendants, namely unauthorized mining within a forest area and the use of heavy machinery for mining and transportation of mining products within the forest area without the requisite ministerial permits, the legal principle known as "Concursus Realis" becomes relevant. This principle implies that when an individual commits two or more criminal offenses, they are considered to have violated two or more independent criminal statutes. In other words, each criminal act is self-standing and not interrelated with the others.

Regarding the imposition of penalties, if two criminal offenses are subject to similar primary penalties, only one penalty is imposed, with the maximum penalty being equal to the highest

penalty prescribed for either offense. However, if the primary penalties for the two criminal offenses are dissimilar, a separate penalty is imposed for each offense. In such cases, the combined penalty for all offenses must not exceed the maximum penalty imposed for the most severe offense, plus one-third of that maximum penalty.

Consequently, based on this legal principle, the prosecution should ideally employ a cumulative indictment, combining Article 89(1)(a) of Law Number 18 of 2013 concerning Forest Damage Prevention and Eradication and Article 89(1)(b) of the same law. With a cumulative indictment, the prosecutor is required to prove all elements of both articles, ensuring that each criminal act committed by the defendants is subject to legal consequences. Adhering to the Concursus Realis principle, a single penalty may be imposed when both Article 89(1)(a) and Article 89(1)(b) contain similar penalties, ranging from a minimum of three years to a maximum of fifteen years of imprisonment and a minimum fine of Rp1,500,000,000 to a maximum of Rp10,000,000,000. This approach serves the legal objectives of justice, legal certainty, and the practical utility of law.

By opting for an alternative indictment, the prosecution can choose to prove one of the three articles included in the alternative indictment. In the case of unauthorized mining in Decision Number 15/PID.SUS/2017/PN.PGP, the prosecution chose to charge and prove that the defendants violated Article 158 of Law Number 4 of 2009 concerning Mineral and Coal Mining. To substantiate their case, the prosecution presented witnesses in court, as follows:

a. Witness Burwanto, a Forest Police Officer who acted as the arresting officer.
b. Witness Agus Saputra, another Forest Police Officer who was involved in the arrest.
c. Witness Amar Zoni Bin Hasan, a mine worker.
d. Witness Erwan Als Wan Bin Abdullah, another mine worker.
e. Witness Luis Tatang Sungiri Bin La'if, a mine worker.
f. Witness Hamdani Als Bujang Bin Abdullah (deceased), a former mine worker.
g. Witness Hasanudin, S.H. Bin Burhanudin B, who serves as an expert witness.
h. The pieces of evidence presented in the case include:
i. Two units of WUJIN sand pump machines with a capacity of 22 horsepower each.
j. One pipe.
k. One roll of hose.
l. One hose monitor.
m. A bag of wet tin sand with an approximate weight of 66 kilograms.
n. One unit of heavy equipment, an orange Hitachi excavator/PC with the Product Identification Number (PIN) MCMG600K00119769.

Furthermore, the prosecution has also brought the defendants, namely Defendant I Suhendry and Defendant II Sujono, to the court proceedings.

To strengthen and support the evidence in this case, various pieces of evidence, including the machinery, equipment, and materials, were examined and admitted in accordance with Article 38(2) of the Criminal Procedure Code (KUHAP). These pieces of evidence were presented and verified by the witnesses and defendants, making them legally admissible in this verdict.

a. Witnesses Burwanto and Agus, who were involved in the arrest of the defendants,

testified that they received information from the public about mining activities. They visited the mining site to check whether the activities had the necessary permits. Upon inspection, they found evidence of tin sand mining, as mine workers were using machinery and monitor hoses to spray water into mining holes. However, the defendants were unable to produce the required licenses, such as IUP, IPR, or IUPK, authorizing them to conduct tin sand mining in the Mangkol Protected Forest Conservation Area without authorization. This unauthorized mining had been ongoing since September 2016.

b. Testimonies from mine workers Amar, Erwan, Luis, and Hamdani revealed that mining activities took place from approximately 7:00 PM to 3:00 AM. These activities involved excavation using heavy equipment. Around 8:00 AM, water was pumped into the mining holes, followed by spraying and suction to wash and separate soil from tin sand. This process resulted in the production of tin sand. Defendant I, Suhendry, supervised the mine workers during their shifts. In addition to supervision, Defendant I was responsible for delivering fuel and supplies to the mine workers and transporting the mined tin sand. He also reported the mining activities to Defendant II, Sujono.

c. Expert witness Hasanudin, S.H., who served as the Head of the Forest Protection Section in the field of Forest and Land Rehabilitation and Natural Resource Protection at the Kepulauan Bangka Belitung Forestry Office, was trained and certified in Forest and Land Rehabilitation and Natural Resource Protection. His role involved protecting forests and mapping conservation forest areas in the Kepulauan Bangka Belitung Province. According to the expert, the mining location of the defendants in Melempam, Desa Air Mesu, Kecamatan Pangkalan Baru, Kabupaten Bangka Tengah, was within a conservation forest. While mining activities are permitted in production forests, they are not allowed in conservation forests. The Mangkol Hill Conservation Forest was designated as a Great Forest Park (Taman Hutan Raya) by the Minister of Forestry in 2006, with plans for it to be used for tourism in the future. Therefore, the defendants were not authorized to conduct tin sand mining within the Bukit Mangkol Forest. Under Article 15 of Law No. 4 of 1999, the steps to designate an area as a conservation forest include the regional government designating the area as a protected forest zone, establishing boundaries for the protected forest zone, and conducting mapping of the protected forest area. No permits for mining activities can be granted for protected and conservation forests.

d. From Defendant Suhendry's statement, it was revealed that mining activities commenced in October 2016, financed by Defendant Sujono. The mining operation, led by Defendant II, produced an average of 50-60 kg of tin sand per day from two camoy holes. Defendant I was responsible for supervision at the mining site, handling the transportation of diesel fuel, bringing back tin sand, and reporting any issues at the mining site to Defendant II. Defendant II employed eight individuals for tin sand mining at the location, utilizing equipment that included an orange Hitachi ZX 200 excavator/PC with serial number HCM1G500K00119769, two unconventional mining machines of the Wujin brand, each with a capacity of 22 horsepower, one pipe, one roll of hose, and one hose monitor.

e. From Defendant II, Sujono, alias ATHAU, the son of SUNG SAK MEN, it was revealed that he provided the capital and supplied mining equipment for tin sand mining at the location. The mining activities began in October 2016. The heavy equipment used by the Defendant for mining was rented from Colonel R.E. Ambarita, while the two unconventional mining machines of the Wujin brand, each with a capacity of 22 horsepower, one pipe, one roll of hose, and one hose monitor, belonged to the Defendant. Defendant II did not possess the necessary mining business permits from the competent authorities to conduct mining at the location.

From the factual description of the material acts mentioned above, the requirements set out in Article 184 of the Indonesian Code of Criminal Procedure (KUHAP) regarding evidence, such as witness testimonies, expert opinions, documents, supporting evidence as guidance, and the statements of the defendants, have been met. The Public Prosecutor establishes the case under Article 158 of Law No. 4 of 2009 on Mineral and Coal Mining with the fulfillment of the following elements:

a. Concerning the first element, which is "Every Person," the Defendants in court have fundamentally confirmed that all the identities stated in the Public Prosecutor's indictment are indeed their true identities. Likewise, all the witnesses have, for the most part, confirmed that SUHENDRY, alias BONGKENG, the son of ASAK (deceased), and SUJONO, alias ATHAU, the son of SUNG SAK MEN, are the actual identities of the Defendants currently being presented and examined in the public session of the Pangkalpinang District Court. Therefore, it is clear that the term "every person" in this case refers to the Defendants.

b. Regarding the second element, "Engaging in Mining Activities without IUP, IPR, and IUPK," the factual consistency of the testimonies provided by Burwanto, Agus Saputra, Amar Zoni, Luis Tatang, Erwan, and Hamdani, as corroborated by the Defendants, reveals that since October 2016, with the capital provided by Defendant II through Defendant I, who acted as the manager, they have been engaging in tin sand mining at the Melempam mining location in Air Mesu Village, Pangkalan Baru Sub-district, Central Bangka Regency. They have used a heavy excavator machine of Hitachi brand, orange in color, two Wujin-brand mining machines, each with a capacity of 22 horsepower, one pipe, one roll of hose, and one hose monitor. This mining operation has produced approximately 800 kilograms of tin sand. However, as Defendant II stated, he did not possess any permits for the mining activities. Both Burwanto and Agus Saputra also confirmed that one of the reasons for seizing the mining activities conducted by the Defendants was the absence of mining permits. Thus, the second element is satisfied.

c. The third element is about the act of committing, ordering, and participating in the act. In this context, the act must be defined as it was considered and proven in the second element above, which is engaging in mining without the necessary permits. There are three qualifications within this third element: "committing" refers to a person who single-handedly realizes all the elements of the criminal act (criminal offense); "ordering" means that there are at least two persons, one giving orders and one receiving orders, so it is not the person themselves who committed the criminal act; and "participating" means acting together, which involves at least two persons,

the one who commits and the one who participates in the criminal act (offense). As R. Soesilo states in his book, the Criminal Code, the perpetrators of an act that may be punishable are those who commit the act, meaning those who perform the act, cause consequences, violate prohibitions, or fulfill the obligations that are prohibited by the law.

In instructing to commit a crime, there must be another person who is directed to perform an act, where the person being directed cannot be held accountable for the act. These individuals are those referred to in Article 44 of the Indonesian Criminal Code (KUHP), those who commit an act because of overmacht or who fall under Article 51 paragraph (2) of the KUHP. In instructing to commit a crime, it implies a passive role of the person being directed. Therefore, those who can be punished for instructing to commit a crime are those who instruct others to perform the directed act. On the other hand, individuals who can be punished for participating in the crime are those who meet all the elements defined in the law regarding a particular offense. Participation in the crime can occur when two or more individuals commit a punishable act together, while each individual's act on its own would not achieve the intended outcome.

From the analysis of the elements of the article above in connection with the material acts, it appears that there is a factual aspect in the material acts carried out by the defendants that has been overlooked by the prosecution in applying the relevant article that encompasses all the criminal acts of the defendants. The location where the illegal mining activities took place, in the Melempam area of Air Mesu Village, Pangkalan Baru Sub-District, Bangka Tengah District, is situated within a forest area that was designated as the Taman Hutan Raya (Forest Park) Bukit Mangkol based on the Decree of the Minister of Forestry and Plantation of the Republic of Indonesia No. 792/Kpts-II/1999 dated September 29, 1999, covering an area of 6,068.58 hectares. On July 27, 2016, it was further designated as Taman Hutan Raya (Forest Park) Bukit Mangkol based on the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK.675/MenLHK/Setjen/PLA.2/7/2016, designating it as a Forest Park Bukit Mangkol. Consequently, it is the opinion of the author that the relevant article that the Public Prosecutor should have applied to convict the defendants is Article 89 paragraph (1) letter a of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction. When the elements of the law are linked to the material acts of the defendants, they are as follows:

a. Individuals - In fact, the defendants are individual legal entities. In Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, the term "every person" refers to individual persons and/or corporations who carry out organized actions of forest destruction within the jurisdiction of Indonesia and/or actions that have legal consequences within the jurisdiction of Indonesia.
b. Intentionally - "Intentionally" means desiring, performing actions, or engaging in activities that are closely related to that desire. In this case, Suhendry and Sujono intentionally desired or engaged in activities related to mining.
c. Conducting mining activities within forest areas without the Minister's permission - In fact, the defendants conducted tin sand mining activities in the Melempam mining location in Air Mesu Village, Pangkalan Baru Sub-District, Bangka Tengah District, which falls within the conservation forest area of Gunung Mangkol in Bangka Tengah District. This area was designated as a Forest Park Bukit Mangkol according to the Decree of the Minister of Environment and Forestry of the Republic of

Indonesia No. SK.675/MenLHK/Setjen/PLA.2/7/2016 dated July 27, 2016. These mining activities took place without the permission of the Minister responsible for forestry affairs. In light of these facts, it is the opinion of the author that the relevant article that should have been applied by the Public Prosecutor in convicting the defendants is Article 89 paragraph (1) letter a of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction, as the actions of the defendants align with the elements outlined in this article.

Article 89 paragraph (1) letter b of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction relates to the fulfillment of elements based on the factual actions of the defendants. These actions involve the transportation of heavy machinery and/or other equipment that is commonly or reasonably assumed to be used for mining activities and/or transporting mining products within forest areas without the Minister's permission.

In fact, the defendants engaged in tin sand mining activities by transporting heavy machinery and/or other equipment commonly or reasonably assumed to be used for mining activities and/or transporting mining products in the Melempam mining location in Air Mesu Village, Pangkalan Baru Sub-District, Bangka Tengah District, which is situated within the conservation forest area of Gunung Mangkol in Bangka Tengah District. This area was designated as a Forest Park Bukit Mangkol according to the Decree of the Minister of Environment and Forestry of the Republic of Indonesia No. SK.675/MenLHK/Setjen/PLA.2/7/2016 dated July 27, 2016. Importantly, these activities were carried out without the permission of the Minister responsible for forestry affairs.

Based on the analysis of the fulfillment of the elements outlined in the article and the facts obtained, it is more appropriate to charge the defendants using Article 89 of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction because this article encompasses all the material actions of the defendants.

In accordance with the legal system in Indonesia, specifically the Negatief wettelijk bewijstheorie (Negative Statutory Proof Theory), which means that besides using evidence stipulated in the law, the judge also uses their conviction. Therefore, the evidence available in this illegal mining case within a forest area, as examined by the author, can be utilized by the Public Prosecutor to strengthen the judge's conviction in deciding this case. This way, the legal goals of Justice, Certainty, and Utility can be achieved.

4 Conclusion

Pursuant to your provided information, it appears that the form of the indictment used by the Public Prosecutor as an alternative is less suitable, as it only covers one criminal act. However, in the case No: 15/PID.SUS/2017/PN.PGP, there are two criminal acts: conducting mining activities within forest areas without the Minister's permission and transporting heavy machinery used for mining activities within forest areas without the Minister's permission. Therefore, the appropriate form of the indictment in the unauthorized mining case within a forest area in case No: 15/PID.SUS/2017/PN.PGP is a cumulative indictment.

Proving the guilt of the defendants in the verdict of the Pangkalpinang District Court No: 15/PID.SUS/2017/PN.PGP, which was charged using Article 158 of Law No. 4 of 2009

concerning Mineral and Coal Mining, does not align with the facts revealed during the trial. This is because the defendants have fulfilled the elements found in Article 89 paragraph (1) letter a and Article 89 paragraph (1) letter b of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction. The facts disclosed during the trial, obtained through the testimonies of witnesses such as Burwanto, Agus Saputra, Amar Zoni Bin Hasan, Erwan Als Wan Bin Abdullah, Luis Tatang Sungiri Bin La'if, Hamdani Als Bujang Bin Abdullah (deceased), and the expert witness testimony of Hasanudin, S.H. Bin Burhanudin B, as well as the evidence in the form of a single heavy excavator machine with an orange Hitachi ZX 200 mark and serial number HCM1G500K00119769, confirm that the elements of Article 89 letters a and b of Law No. 18 of 2013 concerning the Prevention and Eradication of Forest Destruction have been fulfilled.

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