

Criminal Accountability for Mining Entrepreneurs Who Fail to Implement Reclamation

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Abstract The obligations of mining business actors, both corporation and community mining, in carrying out business activities are required to carry out reclamation and post-mining. The reclamation is in the form of arranging, restoring, and improving the quality of the environment and ecosystem, as well as social functions so that it can function again according to its designation. The government provides obligations to mining businesses to carry out reclamation as stipulated in the Mineral and Coal Law and other related regulations. The purpose of this study is to analyze criminal liability for mining business actors who do not reclaim and regulate criminal sanctions for mining business actors who do not reclaim. The research method used is normative juridical with a statutory approach. The results of this study show that aspects of criminal liability reclamation are: the existence of a criminal act, there is an element of error, there is a maker who is able to be responsible and there is no basis for forgiving.

Keywords: Accountability, Reclamation, Tin Mining

1 Introduction

Indonesia, as an archipelagic nation, possesses abundant natural resources, encompassing both biological and non-biological resources. Among the non-biological resources, mineral resources hold a significant place. Indonesia's mineral resources are diverse, both in terms of quality and quantity. Deposits of mineral resources are generally distributed unevenly beneath the Earth's surface. These mineral resources include oil, gold, coal, silver, tin, and more.[1]

Indonesia's geographic location intersects major global mountain ranges, such as the circum-Mediterranean and circum-Pacific belts, and its astronomical positioning lies along the equator. This tropical nation boasts a rich diversity of flora and fauna that has evolved over millions of years. These geographical and astronomical factors have favored Indonesia as a producer of mineral resources found throughout its territory. Additionally, Indonesia's strategic location has endowed it with a geological structure and mining potential recognized worldwide. The country excels in the production of copper, gold, silver, nickel, and coal.[2]

These natural resources are extracted and harnessed to improve human welfare. Natural resources constitute one of the fundamental assets for national development, and thus, they must be utilized to the greatest extent possible for the benefit of the people, always with an orientation towards environmental sustainability.[3] These mineral resources, including gold, silver,

copper, oil and natural gas, coal, and others, are under state control.[4]

The philosophical foundation for natural resource management in Indonesia is enshrined in Article 33(3) of the 1945 Constitution of the Republic of Indonesia, which asserts that the land, water, and natural wealth contained therein are controlled by the state and used to the greatest extent for the welfare of the people.[5] Mining and environmental conservation are like two sides of the same coin. On one hand, mining activities bring prosperity to those engaged in mining and the government, while on the other hand, mining can pose risks to the surrounding environment. Therefore, there is a need for a balance between resource management and environmental preservation, ensuring that economically valuable mining activities do not harm protected areas. Although mining activities benefit many parties, both the state and the public, the reality is that every mining operation affects local communities.[6]

Initially, mining was conducted primarily for the development of the nation and the welfare of its people, as stated in Article 33(3) of the 1945 Constitution of the Republic of Indonesia. However, in practice, many mining companies prioritize their private gains without due regard for the well-being of the surrounding environment, which remains far from prosperity. Many children still drop out of school, and numerous individuals live below the poverty line. This constitutional norm has provided the direction for the development of national natural resources, emphasizing state ownership for the prosperity of the people.[7]

The negative impacts that arise from mining activities require serious attention from all parties involved to minimize uncontrolled environmental damage. These impacts may include water, air, and soil pollution, as well as the creation of large excavated pits due to mining activities.[8] Mining operations have the potential to cause significant environmental changes, either on a large or small scale, depending on their technical processes. To manage these impacts, the government imposes an obligation on artisanal mining entrepreneurs to carry out reclamation, as stipulated in the Mining Law and related regulations. However, the existing legal framework has not yet been effective in promoting environmental conservation and protection against the adverse effects of artisanal mining.[9]

Both corporate and artisanal mining companies are legally required to undertake reclamation and post-mining activities. Reclamation involves the restoration, recovery, and improvement of the quality of the environment and ecosystems, as well as social functions, so they can return to their intended purpose. Indonesia still faces challenges in this regard..

Mining activities encompass various stages, starting from exploration to extraction, processing, transportation, and sales. The mining industry is highly influenced by factors such as capital, expertise, available deposits, ore grades, market prices, and marketing strategies. The choice of mining method depends on the characteristics of the mineral resources to be extracted. Broadly, mining methods are categorized into underground and open-pit mining.

Examining the term "responsibility" in the legal context refers to the process by which an individual can be sued, prosecuted, or held accountable and be prepared to bear the consequences of one's own actions or the actions of others acting on their behalf. Responsibility implies the duty of an individual to carry out what is required of them in a proper manner. In the context of legal responsibility in the field of mining, it is understood as liability. Liability refers to the obligation to pay compensation for losses incurred. In this context, responsibility

is also interpreted as assuming all the losses that occur as a result of one's own actions or the actions of others acting on their behalf.[10]

Mining activities, in any case, have the potential to cause environmental changes, either on a large or small scale, depending on their technical processes. To control these impacts, the government mandates that artisanal mining entrepreneurs undertake reclamation, as stipulated in the Mining Law and related regulations. However, the existing legal framework has not yet been effective in promoting environmental conservation and protection against the adverse effects of artisanal mining. In the context of protecting and promoting public welfare, criminal law plays a central role in addressing and mitigating crimes. The role of criminal law is crucial, both in the present and in the future, as a form of social control to prevent disorder, especially in crime prevention.[11]

However, the legal provisions indicate differences in regulations between mining conducted by companies and artisanal mining. According to Article 96, point (c) of the Mining Law, as well as Article 2, paragraph (1) of Government Regulation No. 78 of 2010 concerning Reclamation and Post-mining, it is stipulated that land reclamation after mining is the obligation of Mining Business License (IUP) and Special Mining Business License (IUPK) holders. For holders of Artisanal Mining Business Licenses (IPR), the regulations are further defined by district or city regulations, guided by Government Regulation No. 78 of 2010 concerning Reclamation and Post-mining.[12]

Furthermore, there is an obligation for mining companies to compensate for any environmental damage caused by their business activities. Mushibah, et al., in their journal, explain that the obligation to compensate for environmental damage caused by mining company activities is based on Article 1365 of the Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata) regarding unlawful acts. The purpose of compensation is to restore the surrounding community's condition to its state before mining activities began. In contrast, the Environmental Protection and Management Law No. 32 of 2009 (UUPPLH) stipulates that, in addition to compensating for environmental damage, mining companies must also undertake environmental rehabilitation. These differing regulations have the potential to generate controversy, given that the environmental impact of mining, whether conducted by companies or artisanal miners, is similar, leading to potential environmental damage.

Salim H.S. highlights the potential environmental damage caused by mining activities carried out by corporate miners. Mining by corporate miners has resulted in negative consequences. These include deforestation in the mining vicinity, marine pollution, an increase in diseases among the local population, and conflicts between local communities and mining companies. According to Jeanne Darck Novianti Manik's research, the primary cause of forest degradation is the opening of land due to mining activities.[13] Environmental damage potential is also present in artisanal mining. Prayogo explains that artisanal mining triggers environmental problems closely related to land degradation, particularly in un-reclaimed mining holes, leading to erosion.[14]

However, when examined more closely, the obligation to comply with mining regulations is a legal consequence that every mining business operator must accept. One of the legal consequences of carrying out these activities by mining business operators is the implementation of post-mining land reclamation as an integral part of mining operations. The mandatory nature

of implementing post-mining land reclamation gives rise to legal responsibilities that must be fulfilled by mining business operators.[15]

In this case, the mining business operator is the holder of the Artisanal Mining Business License (IPR). The obligation to carry out post-mining land reclamation is regulated by district or city regulations, guided by Government Regulation No. 78 of 2010 concerning Reclamation and Post-mining. Based on the background as outlined, the researcher is interested in conducting research on "Criminal Liability for Mining Business Operators Who Do Not Reclaim Land." With the background and argumentation described above, the research problem is formulated as follows: What is the criminal liability for mining business operators who do not carry out land reclamation, and how are criminal sanctions regulated for mining business operators who do not perform reclamation? The objectives of this research are to analyze the criminal liability for mining business operators who do not perform reclamation and to determine the regulations regarding criminal sanctions for mining business operators who do not carry out reclamation.

2 Method

The research method used is a Literature Review (library research), which is a type of research commonly known as Juridical Normative. This research employs juridical-normative research, where the author examines legal provisions based on case facts related to criminal liability for intentional non-compliance with reclamation obligation.[16] This research falls under the category of library research, focusing on the primary sources of legal literature. The study also utilizes a legal approach to legislation.[17] In the realm of legal scholarship, the juridical-normative method is used to elaborate on solving problems using an analysis of positive legal provisions to understand the legal gap between the "should be" (das sollen) and the "is" (das sein), as well as to identify the most ideal and strategic solutions.[18]

3 Result and Discussion

3.1 Criminal Liability of Mining Business Operators

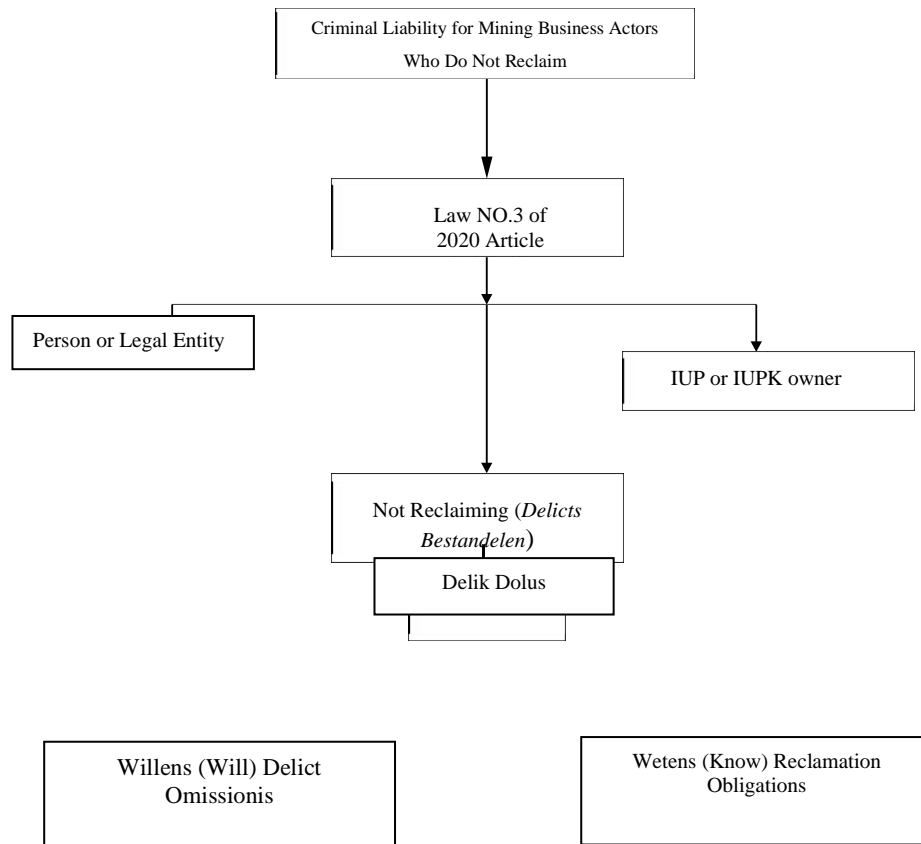
Natural resources are extracted and utilized to enhance human well-being.[8] Natural resources are one of the fundamental assets in national development; therefore, they must be exploited to the greatest extent for the benefit of the people while always maintaining a focus on environmental sustainability.[19] The main characteristic of mining activities is that they are non-renewable, and the way they are managed can impact the environment, both physically and socially. In Indonesia, mining activities have raised significant issues because they not only benefit the government and business owners but, on the other hand, they compromise the environment and the communities surrounding the mining areas.[20]

Mining activities have resulted in negative impacts on the extraction of mineral resources. The negative impacts include damage to forests in the vicinity of mining areas, contamination of the sea, the spread of diseases among local residents, and conflicts between the communities living near the mines and the mining companies.[21] Examining the concept of "responsibility" refers to the legal process where an individual can be held accountable, prosecuted, and blamed, and they must be prepared to bear the consequences of their own actions or the actions of others.

Responsibility, as an individual's obligation to act properly, is interpreted as liability in the legal context. Liability, in this sense, is the obligation to compensate for the losses suffered. In the context of liability, responsibility can also be defined as accepting all the losses that result from one's actions or the actions of others acting on their behalf.

Penalties that can be imposed on legal entities or associations include fines, license revocation, dissolution, compensation, the obligation to take certain actions, making public apologies to the public or other affected parties, or the revocation of specific rights. In practice, it is difficult to fully restore a damaged or contaminated environment to its previous state, as mining regulations begin with the issuance of permits that outline procedures before starting mining activities.

Chart. 3.1 Flow of Discussion on Criminal Liability for Mining Business Actors Who Do Not Reclaim



The diagram illustrates the flow of the discussion regarding the criminal liability of mining business operators who fail to perform reclamation. The criminal liability for mining business operators failing to carry out reclamation contravenes Law No. 3 of 2020, Article 161B

paragraph (1) (criminal acts related to the failure to perform post-mining reclamation and not providing reclamation guarantee funds), which stipulates that any person with an IUP (Mining Business License) or IUPK (Special Mining Business License) who fails to carry out reclamation and does not allocate post-mining reclamation guarantee funds under Article 161B paragraph (1) will face criminal sanctions of imprisonment for a maximum of 5 years and a fine of up to 100 billion Rupiah. Article 161B paragraph (2) prescribes additional penalties in the form of a financial obligation to fulfill the reclamation duties.

The corporate or individual actions of not performing reclamation (Delicts Bestanddelen) that have criminal liability aspects include the element of intention (delik dolus). The Criminal Code of 1809 states, "Intention is the willingness to perform or not perform actions that are prohibited or required by the law." Intent or intention is the second subjective element to determine whether an individual can be held accountable for a criminal offense. Another term for intention is "opzet" or "dolus." Therefore, the requirement for corporate or individual actions of not performing reclamation (Delicts Bestanddelen) to have criminal liability aspects is the presence of intention.

The corporate or individual actions of not performing reclamation (Delicts Bestanddelen) with criminal liability aspects also include the element of "Willens" (Wishing) or Delik Omissionis. In this context, the corporate or individual indeed wish not to perform reclamation. "Willens" (Wishing) means the defendant is aware, conscious, or understands their actions, both the conduct performed and the consequences and circumstances accompanying it. The corporate or individual actions of not performing reclamation (Delicts Bestanddelen) with criminal liability aspects also include "Wetens" (Knowing), indicating an awareness of the obligation of reclamation but a lack of willingness to carry it out. Investors who rely solely on a piece of paper, the Production Business License (IUP) held by corporations or companies, while neglecting legal responsibilities where entrepreneurs engage in deforestation and mountain excavation for the sake of substantial profit, are no longer guided by the Republic of Indonesia Law No. 32 of 2009 concerning Environmental Protection and Management.[22]

Addressing mining crimes is not as straightforward as dealing with common crimes such as assault, theft, fraud, and others. The police force is the law enforcement agency whose primary function is to uphold the law, serve the interests of the general public, prevent crimes, and provide protection to the community. Article 5 paragraph (1) of Law No. 2 of 2002 states that the Indonesian National Police, as a state apparatus, is primarily responsible for maintaining security and public order, offering protection, guidance, and service to the public, and enforcing the law.[23]

Addressing criminal governance of mining activities should be approached through a policy framework. Standardization of criminal policies is an integral part of social policies with the aim of viewing the community as the subject of social protection policies, ultimately resulting in the well-being of that community. Moreover, the criminal governance of mining, implemented through criminal policy, should be rational and well-considered.

Regarding mining operations carried out by mining service companies, the responsibility for any consequences resulting from mining activities still rests with the holders of IUP (Mining Business License), IUPK (Special Mining Business License), and IPR (Mining Business License for Individuals) as stipulated in the Mining Law. Several prerequisites for accountability

include responsibility as accountability, responsibility as a cause, and responsibility as an obligation. Based on these origins of accountability, Spiro further categorizes them into two types, explicit accountability and implicit accountability. Explicit accountability refers to external accountability through the provision of reports on actions and their consequences. Implicit accountability, on the other hand, is often understood as accountability based on specific criteria for assessing government actions.[24]

The legal framework for criminal law understands reclamation as an obligation for license holders to ensure compliance with the principles of good mining practices. The core of the offense is a passive act that involves not following legal mandates. This passive action is carried out by those who hold mining rights. The question arises as to why the obligation for reclamation is limited to IUP and IUPK holders and does not extend to IPR holders. According to the 2020 Mining Law, all mining license granting authority is centralized at the national level. The granting authority for all types of licenses comes from the central government. Then, the obligation for reclamation is only imposed on IUP and IUPK holders, while IPR holders are exempt from reclamation because it falls under the minister's responsibility. So, what happens if the government, in this case, the relevant ministry, intentionally or negligently fails to carry out reclamation? Normatively, in such cases, criminal sanctions cannot be applied; only administrative sanctions may be imposed.[14]

The Mining Law obliges the implementation of post-mining land reclamation activities as an effort to conserve the environment and maintain its sustainability. Several provisions regarding reclamation and environmental conservation activities in the Mining Law are as follows. First, the obligation of IPR holders to preserve the environmental sustainability when conducting mining activities is an environmental conservation effort. As stated in Article 70, IPR holders are obliged to commence mining activities within three months of receiving their IPR, comply with regulations on mining safety, environmental management, and relevant standards, collaborate with local governments on environmental management, pay fixed and production-based fees, and periodically report their mining activities to the issuing authority.

In general, the Mining Law (UU Minerba) recognizes several licensing schemes for mining businesses. At least nine forms of licenses are acknowledged by Article 35 of the Mining Law. These include IUP (Mining Business License), IUPK (Special Mining Business License), IUPK for Contract/Agreement Continuation, IPR (Mining Business License for Individuals), SIPB, Assignment License, Transportation and Sales License, IUJP, and IUP for Sales. Failure to meet the administrative requirements and adhere to the applicable regulations in these licenses may lead to criminal qualifications within the realm of administrative governance. Even though these are fundamentally administrative in nature, the criminal sanctions stipulated in the Mining Law are quite severe, including imprisonment of up to 5 years and fines of up to 100 billion Indonesian Rupiah for engaging in mining activities without the required licenses, as stated in Article 35 of the Mining Law.

The obligation to pay compensation for environmental damage caused by mining activities is based on Article 1365 of the Civil Code, which addresses unlawful acts. The purpose of compensation is to restore the surrounding environment to its original state before mining activities took place. Conversely, the Environmental Protection and Management Law (UUPPLH) No. 32 of 2009 mandates that mining companies pay compensation for environmental damage and also imposes sanctions requiring the rehabilitation of the damaged

environment.[25]

Law No. 4 of 2009 on Mineral and Coal Mining obligates mining companies to conduct reclamation and post-mining activities on their mining areas. To enforce this obligation, these companies are required to deposit a certain amount of money as a reclamation guarantee, which must be provided when they engage in production operations. In light of this issue, local governments should take various measures related to reclamation. They should not rely solely on the central government, and instead, local governments can impose sanctions on companies they believe are not earnestly fulfilling their post-mining reclamation obligations.

The implementation of small-scale mining activities also takes into consideration the sustainability of environmental functions by adhering to regulations on environmental protection and management, as detailed in paragraph b. Furthermore, paragraph c specifies that efforts to maintain the sustainability of environmental functions should be carried out jointly with local governments, including reclamation of post-mining lands, as described in the Mining Law's explanations. Additionally, paragraph e obliges IPR holders to periodically report their mining activities every four months. This requirement aims to facilitate government oversight of mining operations.

The emergence of reclamation responsibilities for IPR holders is based on the obligation to conduct post-mining land reclamation activities as stipulated in Article 44, Paragraph 1 of Government Regulation No. 78 of 2010 concerning Reclamation and Post-Mining. It mandates that, before issuing IPR in areas of small-scale mining, each district or city must develop reclamation and post-mining plans. Article 44, Paragraph 2, specifies that these plans must be based on approved environmental documents issued by the competent authorities in accordance with environmental regulations and management of environmental laws. Article 45, Paragraph 1, states that regents/mayors shall establish reclamation and post-mining plans as referred to in Article 44 for IPR holders. Article 45, Paragraph 2, explains that IPR holders, in conjunction with regents/mayors, must implement reclamation and post-mining activities in line with the reclamation and post-mining plans as stated in Paragraph 1. According to Article 46, further regulations regarding reclamation and post-mining activities in small-scale mining areas are determined through local regulations in districts or cities, guided by the aforementioned Government Regulation.[1]

The social and environmental responsibilities of companies towards the environment are mandated by Article 74 of Law No. 40 of 2007 on Limited Liability Companies (UUPT). Coal companies, as entities closely connected to the environment, carry social and environmental responsibilities in the areas where they operate. If companies fail to fulfill the requirements set by the UUPT, they will face sanctions in accordance with the prevailing legal regulations.

Criminal provisions within the Mining Law (UU Minerba) serve as a last resort instrument incorporated into the law to address the developments and challenges in the mining industry following the enactment of Law No. 11 of 2011 on Basic Mining Regulations. The inclusion of criminal sanctions in UU Minerba necessitates the enforcement of these legal provisions. The criminal sanctions for reclamation specified in UU Minerba are governed by Article 161 B(1), which comprises two types of criminal sanctions: imprisonment and fines. The legal responsibility for corporations in environmental offenses is also governed by Law No. 40 of 2007 on Limited Liability Companies. This law states that company directors cannot absolve

themselves of criminal liability when the companies they lead cause environmental pollution or damage. Corporate Social Responsibility (CSR) in relation to the environment is a commitment for a company to participate in sustainable economic development to enhance the quality of life and the environment for the benefit of the company itself, the local community, and society at large. The explanation of Article 1 of Law No. 40 of 2007 on Limited Liability Companies defines a corporation as a legal entity formed through a capital alliance, based on an agreement to engage in business activities with all of its capital divided into shares, and fulfilling the requirements set forth in the law.

Article 161 (offenses related to smuggling, transportation, and sale of minerals and unauthorized mineral processing): "Any person who receives, utilizes, processes and/or refines, develops and/or utilizes, transports, or sells minerals and/or coal not originating from the holder of IUP, IUPK, IPR, SIPB, or permits as referred to in Article 35 paragraph (3) letters c and g, Article 104, or Article 105 shall be subject to a maximum imprisonment of 5 years and a fine of up to 100 billion Rupiah."

Article 161 B(1) (offenses related to failure to perform post-mining reclamation and failure to provide reclamation guarantee funds): "Any person with IUP or IUPK that is revoked or expires without conducting Reclamation and not placing post-mining reclamation guarantee funds as stipulated in Article 161 B(1) will be subject to imprisonment for a maximum of 5 years and a fine of up to 100 billion Rupiah. Article 161 B(2): an additional penalty in the form of payment of funds to fulfill the reclamation obligations."

Furthermore, criminal sanctions for legal entities that commit violations are applicable in addition to the sanctions imposed on their management. As provided in Article 163, these criminal sanctions consist of two main elements. First, it involves a fine with an aggravation of up to one-third of the maximum fine prescribed. Second, additional penalties include the revocation of business permits and/or the revocation of corporate status.

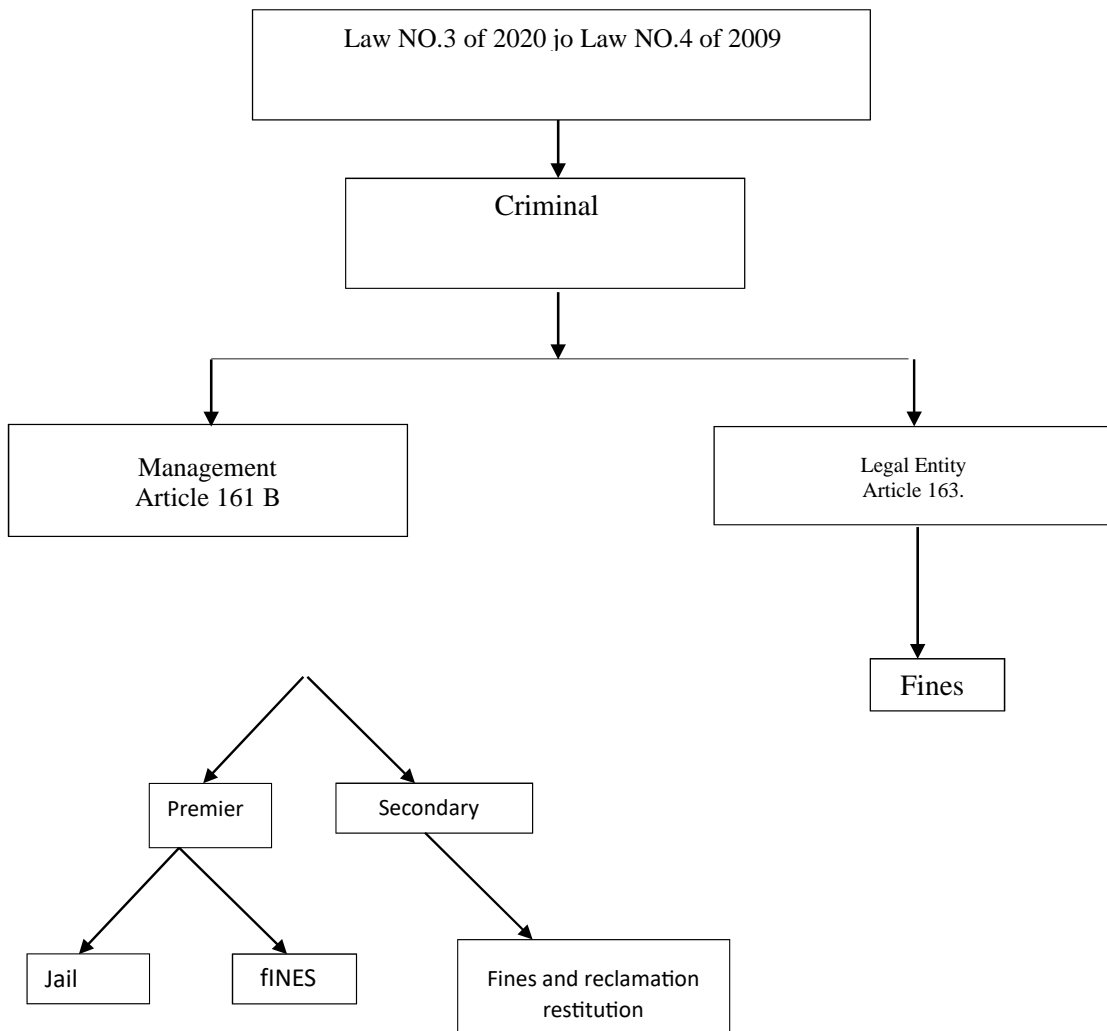
3.2 Pengaturan Sanksi Pidana Criminal Sanction Regulations

The provisions regarding reclamation are stipulated in the Minister of Energy and Mineral Resources Regulation No. 18 of 2008 on Reclamation and Mine Closure. Reclamation is an activity aimed at restoring or arranging the use of disturbed land resulting from mining activities to ensure that it functions and is useful according to its intended purpose. Several important considerations related to the implementation of reclamation are as follows. Reclamation must be carried out no later than one month after mining activities cease on the disturbed land, which includes former mining sites and areas outside the mining sites, such as soil cover piles, raw material/production piles, transportation routes, processing/refining facilities, offices and housing, as well as ports/wharves. The implementation of reclamation must be reported by mining companies every year to the Minister, Governor, or Regent/Mayor as appropriate.

Mining companies are obliged to perform reclamation and post-mining activities, which involve organizing, restoring, and improving the quality of the environment and ecosystems, as well as social functions, to ensure they function again according to their intended purposes. Indonesia still faces challenges in this regard. What has received scrutiny is the high number of mining

companies that do not comply with reclamation and post-mining regulations and the associated supervision.

Figure 3.2: Flowchart of the Discussion on Criminal Sanctions Regulations for Mining Companies that Fail to Reclaim Land.



The diagram above explains the sanctions imposed on mining industry participants who do not carry out reclamation. If an individual commits an environmental crime, criminal sanctions are imposed on the person who gave the order or was in a leadership position. When criminal charges are brought against the person who gave the order or was in a leadership role, the criminal penalties are increased by one-third.[26] In the context of criminal law, Eddy O.S Hiarij formulated criminal law as follows: Criminal law serves as a legal framework of a

sovereign state, containing actions that are prohibited or mandated, accompanied by criminal sanctions for those who violate or fail to comply with these actions, specifying when and in what circumstances these criminal sanctions are imposed, and how the enforcement of these sanctions is enforced by the state.

The threat of criminal liability for mining industry participants who do not carry out reclamation violates Law No. 3 of 2020, Article 161B paragraph (1), which pertains to criminal acts related to the failure to conduct post-mining reclamation and failure to provide post-mining reclamation guarantee funds. Article 161B paragraph (1) states that anyone with an IUP or IUPK that has been revoked or terminated and does not carry out reclamation or place post-mining reclamation guarantee funds shall be subject to criminal sanctions of a maximum imprisonment term of 5 years and a fine of up to 100 billion Rupiah. Article 161B paragraph (2) adds the supplementary criminal penalty of making payments for the purpose of fulfilling reclamation obligations.

If environmental crimes are committed by, for, or on behalf of business entities, criminal charges and penalties are imposed on: (a) the business entity; and/or (b) the individual who issued orders or acted as a leader. Criminal sanctions are applied to business entities represented by authorized executives both inside and outside of court proceedings. Business entities may also face additional criminal penalties. Criminal charges and penalties in the name of a business entity, as outlined in Article 163 of the Criminal Code, can result in criminal fines being increased by one-third of the maximum allowable fine..

The responsibility for implementing post-mining reclamation obligations begins with the creation, assessment, and approval of a reclamation plan as the framework for reclamation execution, as stipulated in Article 44 of Government Regulation No. 7 of 2010 concerning Reclamation and Post-Mining. However, there is a legal gap regarding the technical aspects and procedures for carrying out reclamation when there is no reclamation guarantee fund. This has led to artisanal mining operators avoiding their reclamation responsibilities. Sanctions that can be applied under government regulations involve imposing fines on those who fail to carry out reclamation as planned. The imposition of these fine sanctions does not absolve artisanal mining operators of their obligation to collaborate with regional governments in restoring post-mining environmental damage.[27]

Sanctions, in essence, represent a form of penalty for an offense committed by the wrongdoer. Black Law Dictionary, as cited in works by Samsul Ramli and Fahrurrizi, defines sanctions as penalties imposed for non-compliance with regulations. Sanctions are a legal consequence whereby the wrongdoer is compelled to perform specific actions due to a violation of the rules. In the legal system of Indonesia, various forms of sanctions are recognized:

- a. Criminal sanctions within the domain of criminal law, encompassing both primary and additional penalties, as detailed in Article 10 of the Criminal Code (Kitab Undang-Undang Hukum Pidana or KUHP).
- b. The obligation to meet requirements and the change of a legal status followed by the emergence of a new legal status in the realm of civil law.
- c. Fines, temporary suspension, permit revocation, and other administrative measures within administrative law.
- a. Concerning environmental corporate criminal offenses, the Republic of Indonesia Law No. 32 of 2009 concerning Environmental Protection and Management stipulates the

following aspects:

- b. If an environmental criminal offense is committed by, for, or on behalf of a business entity, criminal charges and penalties are applied to: (a) the business entity; and/or (b) the individual who issued orders for the commission of the criminal offense or who acted as a leader in the criminal act.
- c. If an environmental criminal offense is committed by an individual, based on an employment relationship or any other association within the scope of business entities, criminal penalties are applied to the person who gave orders or acted as a leader in the criminal act, regardless of whether the criminal offense was committed individually or jointly.
- d. When criminal charges are brought against the person who gave orders or acted as a leader in the criminal act, the criminal penalties, which include imprisonment and fines, are increased by one-third.

In the case of a corporate criminal offense, criminal sanctions are applied to the business entity, which is represented by authorized executives who act on behalf of the entity both within and outside of court proceedings, according to relevant legal regulations in their functional roles.

Business entities may be subject to additional penalties or disciplinary actions, including:

- a. Confiscation of profits gained from the criminal offense.
- b. Closure of the entire or part of the business premises and/or activities.
- c. Remediation of the consequences of the criminal offense.
- d. The obligation to rectify the unlawfully neglected actions.
- e. Placing the company under trusteeship for a maximum period of three years.

The sanctions for environmental crimes are clearly regulated by the Republic of Indonesia Law No. 32 of 2009 concerning Environmental Protection and Management. However, there are some distinctions between standard criminal sanctions and environmental crime sanctions, including the following:

- a. Confiscation of profits gained from the criminal offense lacks specific regulations regarding the utilization and allocation of these confiscated profits.
- b. The closure of all or part of business premises and/or activities can also be imposed through administrative sanctions, such as the revocation of business permits through the State Administrative Court.
- c. The concept of "remediation of the consequences of the criminal offense" is not clearly defined since the remediation of environmental damage can often be challenging to quantify, potentially overlapping with the civil law obligations for environmental restoration.
- d. The obligation to restore what was unlawfully neglected without the right to do so can be challenging to define, particularly in cases of severe pollution or environmental destruction, where restoring the environment to its original state may be impossible.
- e. Placing a company under trusteeship for a maximum of three years aims to maintain the continuity of corporate activities, but the specific form and regulations for this sanction are not yet explicitly defined in legal provisions.

The analysis indicates that there are differences in regulations between mining activities conducted by companies and those conducted by artisanal miners (small-scale mining). According to Article 96 (c) of the Mining Law (UU Minerba) and Article 2 (1) of Government Regulation No. 78 of 2010 on Reclamation and Post-Mining, the obligation for post-mining land reclamation applies to Mining Business License (IUP) and Special Mining Business License (IUPK) holders. As for holders of People's Mining Business License (IPR), the regulations are

determined by district/city local regulations, guided by Government Regulation No. 78 of 2010 on Reclamation and Post-Mining.

Moreover, mining companies are obligated to pay compensation for environmental damage caused by their activities. This obligation is based on Article 1365 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata or KUHPerdata) concerning unlawful acts. The purpose of this compensation is to restore the condition of the community around the mining area to its original state before mining activities were conducted.

However, under the Environmental Protection and Management Law (UUPPLH) No. 32 of 2009, mining companies are not only required to pay compensation for environmental damage but are also subject to the obligation to remediate environmental damage. The differentiation between these rules can lead to debates, considering that the potential environmental impacts of mining activities, whether conducted by companies or artisanal miners, are similar and may result in environmental damage.

However, under the Environmental Protection and Management Law (UUPPLH) No. 32 of 2009, mining companies are not only required to pay compensation for environmental damage but are also subject to the obligation to remediate environmental damage. The differentiation between these rules can lead to debates, considering that the potential environmental impacts of mining activities, whether conducted by companies or artisanal miners, are similar and may result in environmental damage.

4 Conclusion

Criminal Accountability for Mining Industry Actors Who Neglect Reclamation. The criminal liability for corporate or individual entities failing to carry out reclamation (Delicts Bestanddelen) comprises certain aspects: Intentional Element (Delik Dolus): In accordance with the Criminal Code of 1809, "intentional" implies the will or intent to perform or abstain from actions either mandated or prohibited by the law. In the context of non-compliance with reclamation obligations within the mining sector, it denotes a deliberate intent not to undertake reclamation efforts. Willens (Volition): The "Willens" component signifies that the defendant is cognizant, conscious, or comprehends their actions. This includes an understanding of the conduct performed, its consequences, and the associated circumstances. Wetens (Knowledge): In cases where there exists an obligation to conduct reclamation, yet there is no intention to do so, the "Wetens" element indicates awareness of the reclamation duty without the motivation to fulfill it. **Regulation of Criminal Sanctions for Mining Industry Actors Neglecting Reclamation.** The legal framework for imposing criminal sanctions on mining industry actors who neglect reclamation obligations can be found in Law No. 3 of 2020, Article 161B paragraph (1). This section pertains to criminal acts related to the failure to perform post-mining reclamation and the non-provision of post-mining reclamation security funds. It stipulates that any individual holding an IUP or IUPK will face criminal sanctions, including a maximum imprisonment term of five years and a fine not exceeding 100 billion Indonesian Rupiah. Article 161B paragraph (2) outlines an additional criminal penalty in the form of a financial contribution to meet reclamation obligations. Furthermore, as stated in Article 163 of the Criminal Code, criminal charges and penalties can also be applied to legal entities, entailing the imposition of fines with an increase by one-third of the maximum fine penalty.

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