

Analysis of Acquittal Decision Number 57/PID.SUS/PN/KBA in Illegal Mining Case

Wayan Indra Lesmana

{ wayanindralesmana@gmail.com }

Magister of Law, Bangka Belitung University, Indonesia

Abstract. The rise of unconventional mining has resulted in massive environmental damage, whoever downloads it, while most of the IT mining actors are people who are not legal entities who have mining permits, while the tin mining management policy is the authority of the central government. The research in this article is normative juridical with a case approach. The focus of the problem wants to know how the Public Prosecutor's construction is in qualifying criminal acts as in Article 161. Then what is the judge's consideration in resolving mining cases without permits. The results of the research show that general clients construct the defendant's actions into the provisions of Article 161. However, in the transfer process general clients are weak in proving the elements of the offense formulation in that article. The judge considered that the fraudster had no obligation to take responsibility and be responsible in the case. The Panel of Judges considered that what was done by the Defendant as a third party was to become a partner and carry out collection and storage activities on the basis of the IUP mining location designation letter belonging to PT. Sinar Sejahtera Perkasa is still within the required grace period, so that there are no actions by the Defendant that violate the provisions of the statutory regulations.

Keywords: Illegal Mining, Criminal Acts, Judge's Decision, Public Prosecutor

1 Introduction

Indonesia is one of the countries with the highest mineralization levels in the world, heavily reliant on these mineral resources for its extractive mining industry, including nickel, copper, natural gas, gold, and tin. Its geographical location, within the Southeast Asia Tin Belt, alongside Myanmar, Thailand, and Malaysia, positions it as the world's second-largest tin producer after China, contributing up to 26% of the global tin production.[1] Tin deposits are widely distributed across the western Indonesian islands, including Bangka, Belitung, Singkep, and Karimun Kundur, collectively known as the 'Indonesian Tin Islands.' Mining policies, regulations, and management play a crucial role in ensuring the optimal utilization of tin resources in Indonesia.[2]

Historically, the Bangka Belitung Islands have been recognized as one of the world's largest tin

producers. Mining was conducted extensively due to the transition of tin from a strategic commodity to a non-strategic one. Several policies were enacted that granted mining permits to various parties. Over time, driven by economic factors, mining activities shifted from predominantly onshore to offshore operations.[3]

In many countries, mining-related issues invariably revolve around two major aspects: economic welfare and environmental conservation.[4] The exploitation of natural resources brings economic value to the state and local regions. National development across various sectors, including politics, economics, social and cultural aspects, defense, and security, is essential to achieve the well-being of the people based on Pancasila and the 1945 Constitution. Additionally, mining operations consistently pose environmental damage and post-mining impacts as well as the need for sustainable land development.[5]

Mining operations are not solely about excavation, extraction, and abandonment; they should also prioritize environmental well-being, natural preservation, and the health and welfare of local populations. Mining activities in the Bangka Belitung Province are not a recent development, as they have been ongoing since the 18th century, spanning three centuries to the present. Both legal entities and local communities engage in tin mining in various locations in Bangka Belitung.[6] Many Bangka Belitung residents rely on tin mining for their livelihoods, and there is an influx of migrants from outside the region who purposefully come to engage in tin mining activities.[7]

The tin mining activities in Bangka Belitung represent a significant sector that influences economic growth. This is evident from the substantial number of individuals directly involved in what is known as Unconventional Mining or Tambang Inkonvensional (TI).[8] TI has become a preferred means of livelihood, gradually displacing traditional farming activities. Historically, Bangka Belitung has been recognized for producing high-quality pepper; however, over time, due to the expediency of TI compared to agriculture, locals have gravitated toward direct tin mining for more immediate economic gains.[9]

While tin mining has had a positive impact on the economic development of the region, the extensive nature of tin mining also poses serious environmental challenges. Anyone arriving in Bangka Belitung via air travel can clearly observe the numerous holes and craters resulting from tin mining activities. This landscape is a stark reflection of the environmental damage caused by tin mining operations.

In the context of environmental degradation due to tin mining, it is crucial to understand that mining operators are legally obliged to conduct post-mining activities such as reclamation to restore former mining areas to their original condition. This serves to maximize land utility while minimizing the risks and threats posed by abandoned areas, such as environmental pollution, flooding, landslides, and their impacts on the surrounding flora and fauna. A case in point is the efforts made by PT. Timah Tbk. during the first half of 2023 to reclaim 203.6 hectares of land previously used for tin ore mining in the Bangka Belitung Islands. The purpose of this reclamation project is to restore the former mining sites to their pre-mining conditions.[10] However, in reality, tin mining in Bangka Belitung is not solely conducted by legal entities that are obligated to perform post-mining activities based on their permits. It is also carried out by local communities.

To protect and ensure the welfare of the community, criminal law plays a central role in addressing and mitigating the crimes that occur.[11] The role of criminal law is vital for both the present and the future, serving as a form of social control to prevent the emergence of disorder, particularly in the context of controlling illegal mining activities, which have become alarmingly prevalent in Bangka Belitung.[12]

Tin mining activities conducted by the local population in Bangka Belitung are commonly referred to as Unconventional Mining (TI). This form of TI represents mining activities conducted outside the purview of legal regulations. TI initially emerged under the management of PT. Timah Tbk. when the company was still conducting onshore mining operations in the Bangka Belitung Islands. This was due to PT. Timah Tbk.'s observation that certain areas were economically unviable for its own mining operations. PT. Timah Tbk.'s policy contributed to the proliferation of community-based tin mining, with PT. Timah Tbk.'s partners increasingly processing the output of TI more than their own production. TI became even more prominent following the issuance of Trade Ministerial Decision Number 146/MPP/Kep/4/1999 dated April 22, 1999, which categorized tin as a free commodity, thus removing its supervision. This decision came after the passing of Law Number 11 of 1967 on General Mining, which vested the authority for tin mining management with the central government. Initially, TI mining operators conducted their activities in areas designated by PT. Timah Tbk. However, since the Reform Era, TI activities have grown beyond control and have evolved into unauthorized sand tin extraction, affecting various locations such as forests, plantations, residential areas, rivers, mining pits, and any area deemed to have economically viable tin ore deposits to exploit.[13]

The rampant practice of Unconventional Mining or Tambang Inkonvensional (TI) has led to extensive environmental damage, raising questions about responsibility, particularly since TI miners include members of the community, who are not legal entities with mining permits. What is the basis for holding TI miners accountable for restoring the damaged land resulting from tin mining? Within the provisions of the legal regulations, any individual is prohibited from engaging in mining activities both outside and inside forest areas, and it is also illegal for any person to purchase or mine mining products without the necessary permits. Considering this, one must question the existence of buyers for the tin extracted through TI. It is implausible for TI to persist and flourish if there were no buyers. Does this situation involve a deviation from the rules?

However, research presented by Ahmad Redi indicates that, based on data from the Ministry of Environment and Forestry (KLHK), Unauthorized Mining (PETI) is a massive issue. Behind the occurrence of PETI activities, there are significant social and economic impacts for PETI miners. Criminal law enforcement against PETI poses a dilemma for law enforcement because there is a conflict between normative-legal aspects and sociological and philosophical aspects. Therefore, specific measures are required in the enforcement of PETI for small-scale miners.[14]

The mining sector has long been fraught with controversies and confronts various issues. These include the chaotic issuance of mining permits at the local level, overlaps in the rights to operating areas, differences in interpretations, management of regional and central mining, and royalty issues.[15]

Penalization for criminal acts as regulated in the Mining Law (also laws included in

administrative criminal law) is based on Indonesia's national interests as the owner of mineral rights to natural resources. This subsequently generates the state's entitlement, thus mandating the government to establish policies (beleid) and administrative actions (bestuursdaad), regulations (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad) for the utmost goal of the people's prosperity.[16]

Criminal prosecution for offenses, as stipulated in the Mining Law (also a law encompassed within administrative criminal law), is based on Indonesia's interest as the owner of mineral rights to natural resources. This interest then translates to the right to control by the state, mandating the government to establish policies (beleid) and measures of administration (bestuursdaad), regulation (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad) for the greatest prosperity of the people.

Given the context outlined above, in 2023, the Koba District Court acquitted the defendant, Mr. Suratno, who was charged with violating Article 161 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 regarding Mineral and Coal Mining. This verdict, issued on August 11, 2023, bore the case number 57/Pid.Sus/PN Kba. In this case, the defendant was charged under Article 161 for receiving tin from individuals without mining permits. However, the Panel of Judges concluded that the defendant was not proven to have committed the criminal act as alleged by the Public Prosecutor. Their reasoning was based on the assertion that the tin present at the defendant's storage location originated from individuals with mining permits.

Based on the background detailed above, this analysis aims to explore how the Public Prosecutor constructed the criminal offense in the verdict, related to the criminal act stipulated in Article 161 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 regarding Mineral and Coal Mining. Furthermore, it aims to examine the judge's considerations in qualifying the elements of the criminal offense in Article 161 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 regarding Mineral and Coal Mining.

2 Method

A scientific study fundamentally stems from a specific issue within the realm of law. The legal issue serves as the research problem to be explored using a specific research methodology. It is a convention and a widely accepted understanding that a defining characteristic of legal research is its normative character.[17] The research method employed is the normative juridical legal research. Within the juridical-normative research, a literature review is conducted with elaboration on secondary data sources obtained from various legal regulations.[18] The normative juridical research method is a form of library-based legal research where the analysis is carried out solely by examining literary materials or secondary data.[19] The approach utilized in data processing is the legislative approach. According to Peter Mahmud Marzuki, the legislative approach involves a comprehensive examination of all relevant legal regulations associated with the issue at hand. This approach relies on legislation and regulations. It is employed to explore various viewpoints and legal doctrines within the field of law with the goal of identifying ideas that give rise to legal concepts, the understanding of law, and legal principles relevant to the legal issue.

The technique for searching legal materials is conducted through the method of document study or library research, which involves the collection of legal materials by conducting research in a

library, including a wide array of literature, documents, expert opinions, and articles that can explain legal concepts. The analytical technique employed for legal materials is a descriptive analysis that pertains to a specific problem, subsequently allowing for a detailed examination.[20]

3 Result and Discussion

The ruling with Case Number 57/Pid.Sus/PN Kba dated August 11, 2023, is not yet in effect as it is currently under cassation proceedings.

- a. The defendant in this case is Suratno Als Akon, born to Sung Sak Men on December 20, 1992, in Pangkapinang. He is a male Indonesian citizen residing at Dusun Sampur RT. 005, Desa Kebintik, Kecamatan Pangkalan Baru, Kabupaten Bangka Tengah. Suratno Als Akon's religion is Buddhism, and his occupation is a Private Employee.
- b. Criminal Charges. The Public Prosecutor charges the defendant with the offense of collecting, utilizing, processing, refining, developing, transporting, and selling minerals and/or coal not originating from the holders of IUP (Izin Usaha Pertambangan), IUPK (Izin Usaha Pertambangan Khusus), IPR (Izin Pertambangan Rakyat), or SIPB (Surat Izin Penambangan Batubara). Those who commit, instruct, or participate in such acts are subject to imprisonment for a term of 3 (three) years and a fine of Rp. 1,000,000,000 (one billion Indonesian Rupiah), with a subsidiary sentence of 3 (three) months of imprisonment.
- c. Case Chronology. On Tuesday, February 14, 2023, the Governor of the Bangka Belitung Islands, Ridwan Djamaludin, along with his team, conducted an inspection of a tin sand processing site suspected of lacking proper permits. The location of the inspection was Dusun Sampur RT. 005, Desa Kebintik, Kecamatan Pangkalan Baru, Kabupaten Bangka Tengah, in the Province of Kepulauan Bangka Belitung. During this inspection, activities related to the collection and processing of tin sand were discovered, along with remnants of tin sand roasting using a hot iron pan and still-burning embers. Subsequently, Governor Ridwan Djamaludin contacted the local police, and officers from the Directorate of Special Crimes at the Bangka Belitung Regional Police promptly arrived. Governor Ridwan Djamaludin and the police then conducted an inspection inside a house on the premises, revealing 688 bags of tin sand with a total weight of approximately 13,558 kilograms, all in a dry state. No workers involved in tin sand processing were found at the time.

Following this, on Monday, February 20, 2023, at around 09:35 AM WIB, officers from Subdit IV Tipidter of Dit Reskrimsus at the Bangka Belitung Regional Police secured 688 bags of tin sand with a total weight of approximately 13,558 kilograms, all in a dry state, located at Dusun Sampur RT. 005, Desa Kebintik, Kecamatan Pangkalan Baru, Kabupaten Bangka Tengah, in the Province of Kepulauan Bangka Belitung. Subsequent investigations revealed that the warehouse owner was a witness named SUJONO Als ATHAU, while the owner of the tin sand was the defendant, SURATNO Als AKON. SURATNO Als AKON acquired the tin sand by purchasing it from illegal miners operating in Desa Air Bara, Kecamatan Air Gegas, Kabupaten Bangka Selatan. Additionally, SURATNO Als AKON obtained tin sand by purchasing it from a witness named KARMIN als GOGON, who, in turn, acquired the tin sand from illegal miners

in Lampur, Kecamatan Sungai Selan, Kabupaten Bangka Tengah, and from Desa Air Bara, Kecamatan Air Gegas, Kabupaten Bangka Selatan. SURATNO Als AKON also acquired tin sand through a purchase from Mr. SANDI, who is currently a wanted person (DPO).

3.1 Legal Construction of Criminal Act According to Article 161 of the Mineral and Coal Mining Law

The primary purpose of a trial in a courtroom is to obtain a judge's decision on whether the defendant's actions are in violation of the statutory provisions. The judge, when examining a case, does so within the scope defined by the indictment presented by the public prosecutor.

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In the realm of legal evidence, a panel of judges makes a verdict based on a minimum of 2 (two) types of evidence, both qualitative and quantitative. With at least 2 (two) pieces of evidence, the judge must be convinced that an individual has committed a criminal act.[21] Additionally, when the public prosecutor formulates criminal charges against the defendant, they also consider these criteria. If, based on the facts revealed during the trial, it is found that the defendant is not proven to have committed the alleged crime, the public prosecutor may seek acquittal. Conversely, if based on the trial's findings, an individual is proven to have committed a criminal act, the public prosecutor may seek a proportional penalty in accordance with the relevant legal regulations and one's conscience.

In Case Number 57/Pid.Sus/PN Kba, the public prosecutor constructs the defendant's actions within the criminal provisions of Article 161 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 regarding Mineral and Coal Mining, and in conjunction with Article 55, Paragraph (1), Point 1 of the Indonesian Criminal Code (KUHP). The elements of this offense are as follows:

- a. Any person
- b. Collecting, utilizing, processing, refining, developing, or selling coal that does not come from the holders of mining business licenses (IUP), special mining business licenses (IUPK), people's mining licenses (IPR), or rock mining permits (SIPB), or other relevant permits.
- c. Those who commit or instruct others to commit the offense.

During the trial, the public prosecutor presented evidence in the form of testimonies from 21 (twenty-one) witnesses, expert opinions, and physical exhibits. However, during the process, the statements of nine witnesses and the expert opinions were only read aloud in

the courtroom. The defendant disputed these statements, claiming that the tin found in his storage did not originate from illegal miners but came from legitimate IUP holders, specifically PT. Sariwiguna Bina Sentosa (SBS) and PT. Sinar Sejahtera Perkasa (SSP).

Subsequently, in their legal analysis, the public prosecutor concluded that the defendant had collected tin sand in his warehouse, located at Dusun Sampur RT. 005, Desa Kebintik, Kecamatan Pangkalan Baru, Kabupaten Bangka Tengah, in the Province of Bangka Belitung. The tin sand was purchased from tin miners in Desa Air Bara, Kecamatan Air Gegas, Kabupaten Bangka Tengah, and thus did not come from IUP holders. This conclusion was based on the testimonies of witnesses, expert opinions, and physical exhibits presented during the trial.

It is evident that the prosecution's case is weakened by their inability to prove the elements of collecting, utilizing, processing, refining, developing, or selling coal that does not come from the holders of mining business licenses (IUP), special mining business licenses (IUPK), people's mining licenses (IPR), rock mining permits (SIPB), or other relevant permits, as charged against the defendant, Suratno Als Akon, the child of Sung Sak Men. The weak evidence can be attributed to two main factors.

Firstly, the fact that the testimony of expert witnesses and nine other witnesses was only read aloud in court. Article 186 of the Indonesian Criminal Procedure Code (KUHAP) specifies that an expert witness's testimony is what an expert states in a courtroom. Such testimony should encompass opinions based on their expertise on a particular matter or situation. In this case, one critical aspect of the expert testimony that was necessary during the trial is the expert's response to the defendant's assertion that the tin he collected came from IUP holders.

Secondly, the problem arises from the testimony of witnesses that was read aloud in court. Witnesses such as Christian Salim, the Commissioner of PT. SSP, Robertus Setiawan, the Managing Director of PT. SBS, Arman Adhi Kusuma Rachmat, the director of PT. SSP, Dede Sanjaya, an employee of PT. SSP holding the position of head of mining technology, Hendrawan, Safari, Jerry Pratama, Bong Kuan Kho, Heri Gustiawan, and Topik, who worked at the defendant's tin sand storage warehouse. From the writer's perspective, this is a significant issue affecting the strength of the evidence, as the testimonies of these witnesses, as presented in court, could potentially influence the judge's decision. Notably, the crucial point from the testimonies given during the trial is that the defendant obtained the tin sand not from IUP holders, namely PT. SBS and PT. SSP, as had been established during the investigative phase.

KUHAP permits the reading of witness testimonies with the condition that witnesses have passed away or due to valid reasons. In this case, the question arises whether these witnesses were residing far away or whether there were more pressing national interests that prevented their presence. When a witness is unwilling to attend, the public prosecutor, based on the judge's decision, can compel them to appear and provide testimony in court. Furthermore, it's important to consider the context of the read testimonies, as this pertains to the establishment of a persuasive evidentiary construct that can convince the judge of the

defendant's guilt. If the testimonies read in court contradict other pieces of evidence, they can be set aside.

In addition, the prosecution's case is weakened by the removal of certain witness testimonies from the investigation report during the investigation stage. This means that the panel of judges will rely on the testimonies provided in the court trial, in accordance with Article 185, Paragraph (1) of the Indonesian Criminal Procedure Code, which states, "Witness testimony as evidence is what a witness states in a courtroom."

3.2 Judge's Consideration in Qualifying the Formulation of Criminal Acts and Imposing Penalties

The provision of Article 187 of the Criminal Procedure Code (KUHAP) essentially regulates that what is meant by a document is a) a report and other official letters in the form made by an authorized public official or made in the presence of someone containing information about an event or condition that was heard, seen, or experienced by oneself, accompanied by clear and definite reasons about its existence. Article 187 of the Indonesian Criminal Procedure Code (KUHAP) essentially defines a document as:

- a. An official record and other official documents created by authorized public officials, which contain information about events or circumstances they heard, saw, or experienced personally, accompanied by clear and precise reasons for their existence.
- b. Documents created in accordance with legal regulations or documents created by officials regarding matters falling within their responsibilities, intended for the purpose of proving a particular matter or circumstance.
- c. Statements by an expert that are based on their expertise regarding a specific matter or circumstance, requested officially from them.
- d. Other documents that are only applicable when related to the content of other pieces of evidence. As per Article 184, Paragraph (1), Subparagraph (c) of KUHAP, documentary evidence must be made under oath or confirmed with an oath.

Furthermore, the documents presented as evidence in a court proceeding must be affixed with sufficient stamps, in accordance with Article 3, Paragraph (1), Subparagraph (b) of the Republic of Indonesia Law Number 10 of 2020 concerning Stamp Duty.^[22] In rendering a verdict, the judge must have a constructive and comprehensible basis and rationale that is just, certain, and beneficial. The judge thoroughly considers the evidence presented by the Public Prosecutor and the defendant's Legal Counsel. In this context, the judge closely examines the defense statement (plea) and the counter-response submitted by the defendant's Legal Counsel, which may include attachments of related and interconnected documents used for evidential purposes in the case. The defendant's Legal Counsel, in presenting their defense statement (plea), included 16 (sixteen) photocopies of documents intended to be used as documentary evidence in the case.

The core issue in Case Number 57/Pid.Sus/PN Kba concerns the elements of 'collecting, utilizing, processing, refining, developing, or utilizing, transporting, selling minerals and/or coal

that do not originate from holders of IUP, IUPK, IPR, SIPB, or permits as referred to in Article 35, Paragraph (3), Subparagraphs (c) and (g), Article 104, or Article 105.' In this context, the permits referred to in Article 35, Paragraph (3), Subparagraphs (c) and (g) relate to Special Mining Business Licenses as a continuation of contract/agreement operations, as well as permits for transportation and sale. The permits mentioned in Article 104 primarily regulate that holders of IUP or IUPK, in the production operation phase, can conduct processing and/or refining themselves, either in an integrated manner or in cooperation with IUP or IUPK holders who have integrated processing and refining facilities or collaborate with other parties engaged in processing and/or refining activities not integrated with mining activities, whose permits are issued in accordance with legal regulations in the industrial sector. As for the permits mentioned in Article 105, they pertain to businesses that are not involved in mining but intend to sell mined minerals and/or coal; they are required to hold an IUP for sales.

The prosecution's indictment, in essence, accuses the Defendant of committing the criminal act of collecting, transporting, and processing tin sand that he obtained from illegal mining activities in the vicinity of Air Bara Village, Air Gegas Subdistrict, South Bangka Regency. Consequently, the Defendant, Suratno alias Akon, is alleged to have violated the provisions of Article 161 of Law Number 03 of 2020 concerning Amendments to Law Number 04 of 2009 regarding Minerals and Coal Mining. This article pertains to an offense attributed to anyone who collects, utilizes, processes and/or refines, develops and/or utilizes, transports, or sells minerals and/or coal that do not originate from the holders of IUP, IUPK, IPR, SIPB, or permits as stipulated in Article 35, Paragraph (3), Subparagraphs (c) and (g), Article 104, or Article 105. Therefore, the article implies that anyone who engages in these activities must possess the required permits.

In this case, the judge considered whether the pieces of evidence, specifically the 688 sacks of tin sand, belonged to the Defendant and were sourced from parties with the proper permits, as specified in Law Number 03 of 2020 concerning Amendments to Law Number 04 of 2009 regarding Minerals and Coal Mining. This determination was crucial to ascertain the origin of the tin sand owned by the Defendant. During the trial, the judge examined the testimonies of Karmin alias Gogon and Safari alias Saf, who stated that the Defendant obtained the tin sand from a mine located in the area covered by PT. Sinar Sejahtera Perkasa's Mining Business Permit, issued on January 6, 2023, with reference to the Location Designation Letter. Furthermore, the judge also considered PT. Sinar Sejahtera Perkasa's Production Operation Mining Business Permit Number 188.4/313/ESDM/DPMPSTSP/2018, which designated the Defendant as the field supervisor for small-scale mining activities at the location covered by PT. Sinar Sejahtera Perkasa's IUP.

Regarding the storage of the tin sand obtained by the Defendant from the area covered by PT. Sinar Sejahtera Perkasa's IUP, the judge believed that the storage location of the tin ore and tin sand was in accordance with the documentary evidence submitted by the Defendant's Legal Counsel. This documentary evidence included a letter numbered 002-T/STPTSP-SSP/I/2023 dated January 6, 2023, indicating that the storage site was in Sampur Hamlet, RT 005, Kebintik Village, Pangkalan Baru Subdistrict, Central Bangka Regency. According to this document, the Defendant was authorized by PT. Sinar Sejahtera Perkasa to store the mined tin sand at the specified location. As a result, the judge did not further consider the testimonies of Robertus Setiawan, the Director of PT. Sariwiguna Bina Sentosa, Arman Adhi Kusuma Rachmat, the Director of PT. Sinar Sejahtera Perkasa, and Dede Sanjaya alias Dede, the Head of Mining

Technology at PT. Sinar Sejahtera Perkasa. These testimonies contradicted and were inconsistent with the documentary evidence presented during the trial by the Defendant's Legal Counsel. Therefore, the judge excluded and did not further consider the testimonies of these witnesses.

The judges determined that the elements of the offense attributed to the Defendant, which include processing tin sand obtained from mining, did not align with the accusations made by the prosecution. The judges asserted that the Defendant's actions, involving cleaning and separating mixed sand and then roasting it to produce dry tin sand, did not qualify as the processing of tin according to the provisions of Republic of Indonesia Law Number 03 of 2020 concerning Amendments to Republic of Indonesia Law Number 04 of 2009 concerning Minerals and Coal Mining. The law defines processing as the effort to improve the quality of mineral mining commodities to produce products with physical and chemical properties that do not change from the original mining commodity's properties until purification or as a raw material for quality products is processed.

The judges also considered that the Defendant was not obligated to be responsible or act as a guarantor in this case. They based this decision on Attachment III, Section B, Number 3, regarding the obligations of the holder of IUP, as specified in the Decision of the Head of the Investment and Integrated One-Stop Services Office of Bangka Belitung Province. This document stated that the relationship between the holder of IUP for Production Operations and third parties is the responsibility of the IUP holder in accordance with the prevailing regulations. Therefore, the judges concluded that the actions of the Defendant, who served as a third party partner and conducted collection and storage activities based on the Location Designation Letter for the IUP mine owned by PT. Sinar Sejahtera Perkasa within the stipulated time frame, did not violate the provisions of mineral and coal mining regulations.

4 Conclusion

The Prosecutor, in constructing the elements of the criminal act committed by the Defendant, has made certain mistakes and demonstrated a lack of understanding of the actual circumstances of the case. The Prosecutor's inability to present witnesses has posed a hindrance to the evidentiary process during the trial. Additionally, the revocation of witness statements during the investigation has become a turning point in the failure to establish the elements alleged against the Defendant during the trial. In this case, the Prosecutor attempted to fit the Defendant's actions into the provisions of Article 161. However, the prosecution's case suffered from weak substantiation of the elements of the offense defined in the said article. The weak substantiation was primarily due to the fact that both the expert testimony and the statements of the nine witnesses were only read aloud in court. A significant aspect of the expert testimony, which could have provided valuable insights when presented in court, is the expert's response to the Defendant's objection, asserting that the tin he received did not originate from a holder of a Mining Business License (IUP). Furthermore, the weaknesses in the case were exacerbated by the reading of the witness statements. The main issue with the weak substantiation lies in the fact that these witnesses have the potential to contradict the judgment of the court, as their statements suggest that the Defendant did not receive the tin from an IUP holder, such as PT. SBS and PT. SSP, as previously explained during the investigative phase.

Moreover, the Judge has considered that the Defendant is not obligated to assume responsibility

and be held liable in this case. The Judge's perspective is based on the premise that the Defendant, acting as a third party and a partner, was engaged in the collection and storage of tin based on the Mining Business License (IUP) area designated by PT. Sinar Sejahtera Perkasa. It should be noted that this area was still within the time frame required by the regulation. Consequently, the Judge determined that the Defendant's actions did not violate the regulations governing Mineral and Coal Mining. The basis for this stance by the Judge can be found in a letter issued by the Head of the Investment and Integrated Licensing Service One-Stop Integrated Service of the Bangka Belitung Islands Province, which clarifies that the relationship between the holder of the IUP for Operational Production and third parties is the responsibility of the IUP holder in accordance with the prevailing legal regulations.

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