

# Types of Sanctions Against Unlicensed Coal Mining Crimes in Indonesia

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**Abstract.** Extraction of normal assets contained in the body of the earth has been directed in Regulation Number 4 of 2009 concerning Mineral and Coal Mining. There is potential in every region. The issue is that mining is carried out without a permit or even by "bribing" the appropriate authorities. It's hard to manage and direct these traditional (illegal) miners. For instance, they mine coal at a large scale and exceed the restrictions in Law No. 4 of 2009, which deals with mining coal and minerals. Mining without a permit is like growing mushrooms when it rains. Nearly all of Indonesia's regions are home to it. Article 1 passage 10 of Guideline No. 11 of 2018 of the Priest of Energy and Mineral Assets of the Republic of Indonesia relating to Methods for Conceding Regions, Authorizing, and Detailing in Mineral and Coal Mining Business Exercises expresses that the Stone Mining License to operate Region, alluded to as the Stone WIUP, is a part of WUP Batuan that is allowed to Business Substances, Cooperatives, and People through applications. Consequently, for anybody to gain a Mining License to operate Region (WIUP), an application should initially be submitted.

**Keywords:** Criminal Acts; Mining; Coal; Without permission.

## 1. Introduction

Minerals are pure minerals that can be mined for human consumption in their original state. "Earth, water, and the natural resources contained therein are controlled by State and used for the greatest prosperity of the people." [1] Extraction of customary resources contained in the body of the earth has been controlled in Guideline Number 4 of 2009 concerning Mineral and Coal Mining. Considering the five resolutions in Pancasila with everything taken into account, the presence of principles or rules in the game plans of Article 33 section (3) of the 1945 Constitution.

One of Indonesia's regular assets is mineral assets, which, if appropriately made due, will support the financial development of the country. Truth be told, Indonesia is known as a country plentiful in minerals that can be separated whenever in the mining industry.[2] Mining incorporates general examination, investigation, plausibility studies, development, mining, handling and refining, transportation and deals, and post-mining exercises with regards to research, the board, and double-dealing of coal or minerals.

The law that regulates the environment also includes mining law. Environmental crimes, such as mining, frequently affect the community environment during their development. Mining is an effort to discover various potentials in the earth's bowels.[3] There are three kinds of mining in Indonesia considering the sort of mineral. In any case, fundamental minerals like oil,

vaporous petroleum, bitumen, dark top, ordinary wax, anthracite, coal, uranium, and other radioactive materials, as well as nickel and cobalt, are associated with Mining Class A. Second, fundamental minerals like gold, silver, jewels, copper, bauxite, lead, zinc, and iron are remembered for Mining Classification B. Thirdly, there is Mining Class C, which typically includes stones, limestone, and other minerals that are thought to be less important than those in the other two mining groups.

The labor involved in the excavation of these minerals is referred to as a mining business because mining materials must be extracted from the earth's core. The mining industry requires a substantial area. The entire Indonesian archipelago, the land beneath Indonesian waters, and the continental portions of the Indonesian Archipelago constitute the Indonesian Legal Mining Territory.

There is potential in every region. For instance, in the Central Java region, which possesses ample, high-quality sand mining potential but cannot be utilized to its full potential. The issue is that mining is carried out without a permit or even by "bribing" the appropriate authorities. It's hard to manage and direct these traditional (illegal) miners. For instance, they do mining in all aspects of the stream with an enormous limit and surpass the cutoff points in Regulation no. 4 of 2009, which deals with mining coal and minerals. Mining without a permit is like growing mushrooms when it rains. It can be found almost everywhere in Indonesia.

Strategy vulnerability, unlawful mining, clashes with nearby networks, and clashes between the mining area and different areas, for example, mining without licenses, which brings about misfortunes for both the local area and the state, are only a couple of the significant issues that mining faces. Mining without a permit basically satisfies a requirement that carries a criminal penalty. The component is that the demonstration fulfills the conventional necessities, and that implies that it is as per the Crook Code and different guidelines that have a lawbreaker aspect and a material component and are contrary to local area relations' goals. or on the other hand something of a criminal sort or act.[4]

The fact that criminal law enforcement is not the only hope for resolving or overcoming social issues and crimes against humanity is one aspect of the crime prevention policy. Crime is an ever-expanding social phenomenon that is intertwined with other extremely intricate social structures and phenomena. Thusly, it is known as a socio-political issue. Because crime is a social process, criminal politics must be viewed within the context of social politics, which focuses on a society's efforts to improve the well-being of its citizens.[5]

Article 1 passage 10 of Guideline No. 11 of 2018 of the Pastor of Energy and Mineral Assets of the Republic of Indonesia relating to Methods for Giving Regions, Authorizing, and Detailing in Mineral and Coal Mining Business Exercises expresses that the Stone Mining License to operate Region, alluded to hereinafter as the Stone WIUP, is a part of WUP Batuan that is conceded to Business Elements, Cooperatives, and People through applications. Subsequently, for anybody to get a Mining License to operate Region (WIUP), they should initially present an application.

The event of avalanches, subsidence, floods, and barren soil — all of which will bring about misfortunes for individuals, country, and state — is proof of the effect of coal mining without a license. It was found that there was as yet an absence of public familiarity with legitimate issues relating to the mining business, in light of information on policing in Indonesia. It is apparent from the various occasions of coal mining in Indonesia without licenses.

The problem in this paper is How to Regulate Unlicensed Coal Mining Crimes in Indonesia?

## **2. Method and Approach**

### **2.1. Method**

The descriptive analytical method was used to write this applied paper. This means that data that clearly describes problems directly in the field were used, then the analysis was done, and then a conclusion was made to solve a problem was made. methods of observation and literature review for data collection in order to solve problems and prepare this paper.

In line with the research objectives to be achieved, the realm of this research is included in the realm of qualitative research, thus, a qualitative approach will be used. According to Petrus Soerjowinoto et al., a qualitative method is a method that emphasizes the process of understanding researchers on the formulation of problems to construct a complex and holistic legal phenomenon.[6]

### **2.2. Approach**

The normative juridical approach is carried out against certain laws and regulations or written regulations which are related to the Regulation of Unlicensed Coal Mining Crimes in Indonesia.[7] The study describes the situation of the object under study, namely focusing on how the regulation of illegal coal mining in Indonesia is in practice.

## **3. Discussion**

### **3.1. Criminal Sanctions Against Unlicensed Coal Mining Crimes in Indonesia.**

In the business area, mining without a license or unlawful mining is a wrongdoing. It is completed by people, gatherings, or organizations or establishments with lawful substances whose tasks don't have consent from government offices as per material guidelines. Anyone who violates the prohibition by mistake runs the risk of facing criminal penalties. As a result, proper law enforcement procedures can be carried out. Although the law can be manipulated and does not always result in injustice, it directs law enforcement. The objective of policing to carry harmony and equity to society all in all. It comes from the local area. The quest for legitimate thoughts and ideas that individuals trust will become the truth is what's really going on with policing. The course of policing various parts.[9]

Criminal courses of action for mining encroachment without an honor/unlawful mining are facilitated in Rule Number: 4 of 2009, which controls mineral and coal mining in Articles 158, 160, segments 1 and 2, Article 161, and Article 163 and Article 164, independently. Guideline No. 4 of 2009 on Mineral and Coal Mining describes the offense of mining without a permit. This is managed by criminal plans in Area XXIII, specifically:

#### **Article 158**

*"Anyone who carries out a mining business without an IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment a maximum of 10 (ten) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiahs)";*

#### **Article 160 paragraphs (1) and (2)**

*(1) A most extreme punishment of one year in jail or a fine of Rp 50,000 applies to any individual who conducts investigation without the IUP or IUPK expected by Article 37 or Article 74 passage 1. 200,000,000.00.*

- (2) *A maximum penalty of five years in prison and a fine of Rp 50,000 applies to anyone with an Exploration Mining Permit who engages in production activities. Ten billion rupiahs, or 10,000,000,000.00).*

#### Article 161

*“Any person or holder of Production Operation IUP or Production Operation IUPK who accommodates, utilizes, processes and refines, transports, sells minerals and coal that are not from the holder of IUP, IUPK, or permits as referred to in Article 37, Article 40 paragraph (3), Article 43 paragraph (2), Article 48, Article 67 paragraph (1), Article 74 paragraph (1), Article 81 paragraph (2), Article 103 paragraph (2), Article 104 paragraph (3), or Article 105 paragraph (1) shall be punished with imprisonment for a maximum of 10 (ten) years and a fine of a maximum of Rp. 10,000,000,000.00 (ten billion rupiahs)”.*

#### Article 163

- (1) *The discipline that can be forced on a legitimate substance for carrying out the wrongdoing portrayed in this section, notwithstanding detainment and a fine against its administration, is a weighted fine equivalent to 33% of the greatest fines.*
- (2) *Legal elements might be dependent upon extra punishments as the accompanying notwithstanding the fines referenced in passage (1):*
- a. *Revocation of permit to operate; and/or*
  - b. *The end of an entity's legal status.*

#### Article 164

*" In addition to the provisions referred to in Articles 158, 159, 160, 161, and 162, those who commit criminal acts may face additional punishment in the form of:*

- a. *Taking possession of items used in a crime;*
- b. *Loss of profits from illegal activities; and/or*
- c. *The obligation to cover expenses resulting from a crime.*

In article 158 and article 163 of Regulation Number 4 of 2009 concerning mineral and coal mining, it is made sense of that legitimate subjects who can be rebuffed in the mining area are:[10]

1. Natural person  
An individual is an individual or individual who has completed a culprit act in the mining region.
2. Management of legal entities.  
The administration of a lawful element is the individual who puts together or coordinates or deals with the legitimate substance.
3. Legal entity
4. Legitimate element is a gathering who have specific objectives, resources and freedoms, and commitments.

Articles 158 to 160 of Regulation No. 4 of 2009, which manages mineral and coal mining, frame the kinds of criminal punishments that can be forced on legitimate issues. Three kinds of criminal approvals can be forced on individual culprits, specifically: detainment, fines, and extra discipline. In the mean time, seven kinds of criminal demonstrations can be forced on lawful subjects, in particular:

- a. Doing mining business without IUP, IPR, or IUPK.

Everyone who wants to carry out mining business activities must obtain permission from the competent authority. Without this permit, the person conducting the mining business can be qualified as an illegal miner. Those who engage in mining activities without a permit may face repercussions. According to article 158 of Law No. 4 of 2009, people who operate a mining business without a permit have broken five articles. These five articles include:

- 1) Article 37 of Law Number 4 of 2009 regulates the authority of officials in granting IUP. Officials who are authorized to issue IUP, namely:
  - a) Regent or chairman in the event that the WIUP is situated in a solitary locale or city region.
  - b) After getting a proposal from the neighborhood official or chairman as per legal arrangements, the lead representative in the event that the WIUP is fanned out across different rules or urban communities inside a solitary territory.
  - c) The Pastor, subsequent to getting a suggestion from the neighborhood lead representative and official/city hall leader as per legal arrangements, on the off chance that the WIUP is situated across commonplace regions.
- 2) Article 40 paragraph (3) Law Number 4 of 2009.  
Article 40 paragraph (3) of Law Number 4 of 2009 regulates the obligations of IUP holders to exploit other minerals, other than those specified in their IUP. IUP holders who wish to exploit other minerals must apply for a new IUP to the minister, governor, regent/mayor under their authority.
- 3) Article 48 Law Number 4 of 2009.  
Article 48 Law Number 4 of 2009 concerning IUP Production Operations, IUP production operations are granted by:
  - a) Regent or mayor if the port, processing and refining facilities, and mining site are all in the same district or city.
  - b) Lead representative if the mining, handling, and refining, and port areas are inside the rule or have been suggested by the neighborhood official or city chairman as per guidelines.
  - c) The Priest if the mining area, handling and refining area, and the port are a situated in the area of the territory in the wake of getting a suggestion from the neighborhood lead representative and official/city chairman by the arrangements of regulations and guidelines.
- 4) Article 67 paragraph (1) Law Number 4 of 2009.  
Article 67 paragraph (1) of Law Number 4 of 2009 regulates the authority of regents/mayors in granting IPRs to residents.
- 5) Article 74 paragraph (1) or paragraph (5) of Law Number 4 of 2009.  
Article 74 paragraph (1) or paragraph (5) of Law Number 4 of 2009 regulates the minister's authority to grant IUPK or IUPK holders who express no interest in exploiting the other minerals found.

Two types of sanctions can be imposed on people who commit criminal acts without permission from regents/mayors, governors, and ministers, namely:

1. Prison sentence.  
Maximum imprisonment of 10 years
2. Criminal fines.  
Maximum fine of IDR 10,000,000,000.00 (ten billion rupiahs)
  - a. Submitting Incorrect Reports or False Statements.

In Article 159 of Law Number 4 of 2009, it has been determined that six articles have been violated by holders of IUP, IPR, or IUPK which result in imprisonment and fines being imposed on the perpetrators. The six articles include:

- 1) The obligation of Exploration IUP holders to report to the IUP grantor when they acquire excavated minerals or coal is governed by Article 43 paragraph 1 of Law Number 4 of 2009.
- 2) Article 70 letter e of Regulation Number 4 of 2009 directs the commitment of the IPR supplier to deal with the climate with the nearby government.
- 3) An exploration IUPK grantor who acquires excavated metal minerals or coal is required by Law Number 4 of 2009, Article 81, paragraph (1), to submit a report to the minister.
- 4) The commitment of a business substance that isn't participated in a mining business and means to offer unearthed new minerals or coal to convey the returns from the offer of uncovered minerals or coal to the clergyman, lead representative, official, or city chairman by his power is represented by Article 105 section (4) of Regulation Number 4 of 2009.
- 5) The commitment of IUP and IUPK holders to present all information acquired from the consequences of investigation and creation activities to pastors, lead representatives, officials, or city hall leaders as per their power is administered by Article 110 of Regulation Number 4 of 2009.
- 6) The commitment of holders of an IUP and an IUPK to submit occasional composed reports to pastors, lead representatives, officials, or city chairmen as per their power is administered by Article 111 passage (1) of Regulation Number 4 of 2009.

The six articles regulate holding business IUP, IPR, and IUPK to submit good reports or information relating to; finding excavated minerals or coal, managing the environment, submitting reports on mineral or coal sales, submitting all data and written reports on work plans, and implementing mining business activities.

- b. Carry out exploration activities without having an IUP or IUPK.

In Article 160 of Regulation Number 4 of 2009, sanctions not entirely set in stone for individuals who do investigation exercises without having an IUP or IUPK. In this arrangement two articles are disregarded, to be specific:

- 1) Article 37 of Law Number 4 of 2009 regulates the authority of officials in granting IUP
- 2) Article 74 section (1) of Regulation Number 4 of 2009 controls the authority approved to give IUPK, the authority approved to give IUPK, to be specific the pastor of energy and mineral assets.

Sanctions for individuals who do investigation exercises without having an IUP or IUPK not entirely settled in that frame of mind of Regulation Number 4 of 2009, have:

1. Maximum imprisonment of 1 year
2. A maximum fine of Rp. 200,000,000.00. The sanctions imposed on these perpetrators are alternative in nature, meaning that the perpetrators can only be subject to imprisonment or fines.

- c. Possessing an IUP for Exploration but carrying out production operations The holder of an IUP is only permitted to carry out one activity; however, once that activity has been completed, the holder is eligible to apply for a subsequent IUP. In Article 161

passage (2) of Regulation Number 4 of 2009, sanctions not entirely set in stone for individuals who have an investigation IUP yet do creation activities, the assents are as:

1. Maximum imprisonment of five years
2. A maximum fine of IDR 10,000,000,000.00.

Sanctions for perpetrators in this provision are not only imprisonment but also fines. So the witnesses, namely imprisonment and fines.

Accommodating, using, handling, refining, shipping, and selling minerals and coal that are not from IUP, IUPK, or IUPK holders.

The individuals who can store, use, process, refine, transport, and sell minerals and coal are individuals or holders of IUP, IUPK, or licenses. Nonetheless, shouldn't something be said about individuals who store minerals or coal that don't come from individuals or holders of IUP, IUPK, or the actual grant? The solution to this matter still up in the air in article 161 of Regulation Number 4 of 2009, 10 articles have been resolved that were disregarded, in particular:

- 1) Article 37 of Law Number 4 of 2009 relating to the authority of officials in granting IUP
- 2) Article 40 passage (3) of Regulation Number 4 of 2009, which connects with the commitment of IUP holders who mean to take advantage of different minerals to apply for another IUP to the priest, lead representative, official/city hall leader by their position.
- 3) Article 43 paragraph (2) Law Number 4 of 2009, relating to the obligations of exploration IUP holders who have discovered minerals and coal during exploration activities and feasibility study activities and the minerals and coal wish to be sold to other parties, then the holder IUP is required to apply for a temporary permit to carry out transportation and sales.
- 4) Article 48 of Law Number 4 of 2009, which relates to the authority of officials in granting IUPs for production operations.
- 5) Article 67 passage (1) of Regulation Number 4 of 2009 connecting with the power of the official/city hall leader to concede IPR, particularly to occupants, the two people and local gatherings and additionally cooperatives.
- 6) Article 74 paragraph (1) of Law Number 4 of 2009 relating to the authority of the minister in granting IUPK with due regard to regional interests.
- 7) Article 81 section (2) of Regulation Number 4 of 2009 connecting with investigation IUPK holders who wish to sell metal minerals or coal should apply for a brief grant to do the transportation and deal.
- 8) Article 103 paragraph (2) of Law Number 4 of 2009, which relates to the obligations of IUP and IUPK holders to process and refine mining products from other IUP and IUPK holders. The processing and refining facilities are carried out domestically.
- 9) Article 104 section (3) of Regulation Number 4 of 2009, which connects with the disallowance of handling and refining mining items that don't have IUP, IPR, and IUPK. This indicates that holders of IUP, IPR, and IUPK are those who are able to perform processing and refinement.
- 10) The commitment of a business element that isn't participated in the mining industry and plans to offer unearthed minerals or coal to initially have a creation activity IUP for deals is illustrated in Article 105 passage (1) of Regulation Number 4 of 2009.

The ten articles that were violated can be divided into two articles that were violated, namely:

1. Violating the IPR, IUP, and IUPK that have been granted by the authorized official.
2. Not fulfilling the obligations of IUP, IPR, and IUPK holders themselves to obtain new licenses, such as IUP production operations for sales.

Legal sanctions for violations of one of the ten articles above are:

1. Criminal sanction, a maximum of ten (10) years imprisonment
2. Fines, a maximum of IDR 10,000,000,000.00.

#### **4. Conclusion**

Unlawful mining or mining without a license is a sort of mining wrongdoing perpetrated by people, gatherings, or organizations or establishments with legitimate elements whose tasks don't have grants from government offices. The pertinent guidelines undermine criminal authorizations for anybody who disregards the denial accidentally. Criminal arrangements for mining violations without a grant/unlawful mining are managed in Regulation Number 4 of 2009 concerning Mineral and Coal Mining, which is controlled in Article 158, Article 160 Paragraph (1) and Paragraph (2), Article 161, Article 163 Paragraph (1) and Paragraph (2), and Article 164.

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