

12 Prosiding Formulating A Criminal Policy Of Unlicensed Tin

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Formulating A Criminal Policy Of Unlicensed Tin Minings Which Improves The Community Welfare In Bangka Belitung Islands

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Abstract—Unlicensed mining is a complicated issue in the Province of Bangka Belitung Islands. Tin which used to be a strategic commodity, in the reformation era, has been stated as a non-strategic commodity; the export activities of tin are no longer supervised. As a result, unlicensed tin minings emerge, causing environmental damages to date. Therefore, it is important to investigate the following research problems: (1) what are the efforts to stop the unlicensed tin minings and their constraints? (2) how a criminal policy which improves the community welfare could be formulated? This qualitative study employs a post-positivism paradigm with socio legal approach. Data of the research consist of primary and secondary data obtained using participative observations, focus group discussions, documentations, and in-depth interviews with selected respondents. Based on the findings of the study, efforts to prevent unlicensed minings have been done through early detections, which are pre-emptive, preventive and repressive; however, the results are not optimal because they are affected by some factors, such as juridical factors in regional regulations and legislations, the limited capability of law enforcers, inadequate supporting facilities/infrastructures, low law and environmental awareness, and negative social behaviors, as well as the pressure of the operations/workings of law in the society. The efforts to formulate criminal policy which improve the community welfare consist of penal and non-penal policies, which are integrated and located in the scope of substantial, structural, and cultural reformation.

Keywords— *unlicensed mining, law enforcement, criminal policy*

I. INTRODUCTION

Indonesia is rich of natural resources, including tin. Tin can only be found in the Islands of Bangka, Belitung, Singkep, and Karimun-Kundur, as well as in Bangkinang, the mainland of Sumatra. The islands are located on a line called *the South East Asia Tin Belt*. In the literature, these tin-producing islands are mentioned as *the Indonesian tin islands*. [1]

Initially, tin was a national strategic commodity which could only be mined by state-owned companies or private companies which had obtained licenses from the government. This has changed since the Indonesian Ministry of Industry and Trade released the Decree No. 146/MPP/Kep/4/1999 concerning *the revocation of the status of tin as a strategic commodity*, and the Decree No.

294/MPP/Kep/10/2001 which does not contain the trade system of tin as a commodity that is regulated, supervised, and banned for exports. Then, these decrees were interpreted by local governments; since then, unlicensed/illegal mining become uncontrolled.

Unlicensed tin mining (illegal), tin smuggling, environmental damages, the neglect of reclamation, the payment of tax and royalties, accidents, health threats/problems, and negative social impacts indicate the discrepancy between *law in the books* and *law in action, das sollen* and *das sein*. The existing law and local regulations are often neglected and violated by those involved in illegal minings. The complexity of the issue/problem has made the Indonesian Minister of State-Owned Enterprises (BUMN) state that he could not do much to solve the cases of illegal minings in Bangka Belitung. [2]

The prevention of unlicensed/illegal tin mining has been implemented through law enforcement. However, the results are not optimal. The involvement of the local community in unlicensed/illegal minings and their low environmental awareness have made law enforcement ineffective, only limited to the provision of warnings and guidance. Such actions were not successful, because illegal miners kept doing mining activities; they moved from one place to another place. Illegal minings become difficult to prevent. When there were illegal-mining operations, they hid. On the other hand, when the operations were over, they did illegal mining activities.

The limited police officers, municipal police, civil servant investigators, mining inspectors, and infrastructures make the prevention effort become difficult, due to the vast region of Bangka Belitung. The illegal mining activities are also done in hidden areas, moving from one place to another, and in areas difficult to reach, such as forests, rivers, and seas far from human habitation.

At the level of local governments, guidance and supervision which become obligations for the governments also do not run optimally. Mining licenses are still released, but not followed with optimal supervision. Furthermore, the results of the supervision could not be used for revoking the licenses due to the intervention from superior/high-ranked government officials. The inability of districts/city in mining supervision, based on Law No. 23 of 2014 on Regional

Government, has caused their authority taken by the provincial government.

The condition indicates that the existing criminal policy has not been able to overcome the problems of illegal tin mining, especially for the welfare of the community. In the context of this research, the welfare is seen from some indicators: public services, education, health, environment, economy, socioculture, and law enforcement.

The complexity of illegal minings does not only require repressive approaches, but also preventive approaches. Illegal minings are not only about law violation, but also related to the aspects of economy, politics, education, environment, and socioculture.

It is then important to see the issue of illegal minings through the lens of the criminal policy comprehensively through various approaches. Criminal policy as part of the social policy requires a crime prevention policy, not only related to criminal law enforcement policy, but also other legal approaches, such as administrative law and the social policy across sectors to address the causative factors. The main research problems investigated in this study are: (1) what are the efforts to stop the unlicensed tin minings and their constraints? (2) how a criminal policy which improves the community welfare could be formulated?

II. METHODS

This research employs post-positivism paradigm with qualitative method in socio-legal research. It was conducted in the Province of Bangka Belitung Island, which consists of 7 districts/cities, with the consideration that the province is the biggest producer of tin in Indonesia. This research uses primary and secondary data. The selection of the participants employs purposive sampling strategy. The primary data were collected through participative observations, focus group discussions, documentation, and in-depth interviews with the respondents. The data were analysed using an interactive model and validated using triangulation of the data sources.

III. RESULTS AND DISCUSSION

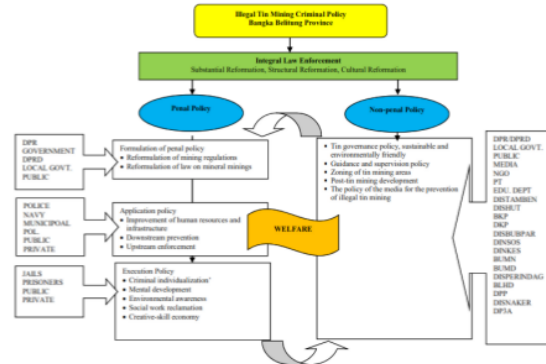
A. The efforts to stop unlicensed tin minings and their constraints

Efforts to mitigate/stop illegal tin mining in Bangka Belitung have been done by municipal police, especially to enforce mining regulations with preemptive, preventive non-judicial and repressive non-judicial approaches. Meanwhile, the police enforces the law on mineral and coal mining by implementing early detection, preemptive, preventive, and repressive. The results of these efforts are not optimal, and are oriented towards legal actions. This could be due to many factors, such as the weakness of the juridical in laws and local regulations, the limited ability of law enforcement, minimal supporting infrastructure facilities, low legal and environmental awareness, and negative culture in the social life of illegal miners and the elite. In relation to illegal tin mining, the enforcement of law depends on the functions of three important elements – government, law enforcers, and

the local community – which play their roles under social, cultural, political, and economic pressures.

B. The formulation of illegal tin mining criminal policy which improves the welfare of the local community in Bangka Belitung

Criminal policy is an integration of penal and non-penal policies. Based on the analysis and discussion of penal and non-penal policies, as well as the results of the comparative analysis, the formulation of illegal tin mining policy which improves the welfare of the local community in Bangka Belitung is presented in the following figure.



IV. CONCLUSIONS

1. Efforts to control illegal tin minings in Bangka Belitung Province have been carried out, but the results are not optimal and more oriented towards action/enforcement at the downstream. This is caused by many factors, such as the weak juridical in laws and local regulations, the limited ability of law enforcement, minimal supporting infrastructure facilities, low legal and environmental awareness, and the problems of negative culture in the social life of illegal miners and the elite. In relation to illegal tin mining, the enforcement of law depends on the functions of three important elements – government, law enforcers, and the local community – which play their roles under social, cultural, political, and economic pressures. For example, there might be transactional politics in the release of tin mining licences. Law enforcement is also affected by the complexity of economic, social, political, and environmental pressures. The roles of the community are divided into two: the pros and the cons. Although there are different interests of the two, in terms of the formulation of a better policy, they have the same standpoint/view. The practitioners of illegal tin mining also need clear and simple regulations which allow them to do legal tin mining activities.
2. The formulation of illegal tin mining policy which can improve the welfare of the local community in Bangka Belitung comprises integral policy through the substantial reformation of law, reformation of law

structure, and reformation of law culture. The three reformations are implemented through penal and non-penal policies which are integrated and use a comparative approach – comparing regions or countries.

- a. Penal policies consists of three policies. First, the formulation policy of criminal law, covering the reformulation of criminal law policy in local regulations and laws on mineral minings. It formulates the qualifications of the offences, the formulation of criminal sanctions with a specific minimum pattern and alternative cumulatives, as well as making the guidelines for legal sentences. Secondly, the implementation policy, consisting of three strategic policies, which are the improvement of the quality and quantity of human resources and supporting infrastructures, prevention at the upstream, prioritizing prevention and enforcement at the downstream of tin industry. Third, execution policy includes the individualization of criminal executions for convicted illegal tin minings, mental development, development of legal and environmental awareness, and creative economic skills.
- b. Non-penal policies consists of five strategic-preventive policies: tin mining governance which is environmentally friendly and sustainable, guidance and supervision policy, mining area zoning policy, post-mining development policy, and preventive policy by the media.
- c. The results of some comparative studies which could become recommendations for future criminal policy are: (1) the four important aspects which should be mandatory for mining activities – the aspects of environment, protection of the rights of indigenous people, contribution to the empowerment of the community, and legal mining licenses; (2) violations of mining licenses are classified based on the scale of mining activities and the legal sanctions; (3) formulating the crimes of obstructing authorized mining officers; (4) formulating environmental violations and the violations of health and safety work standards as crimes in mining laws; (5) formulating legal

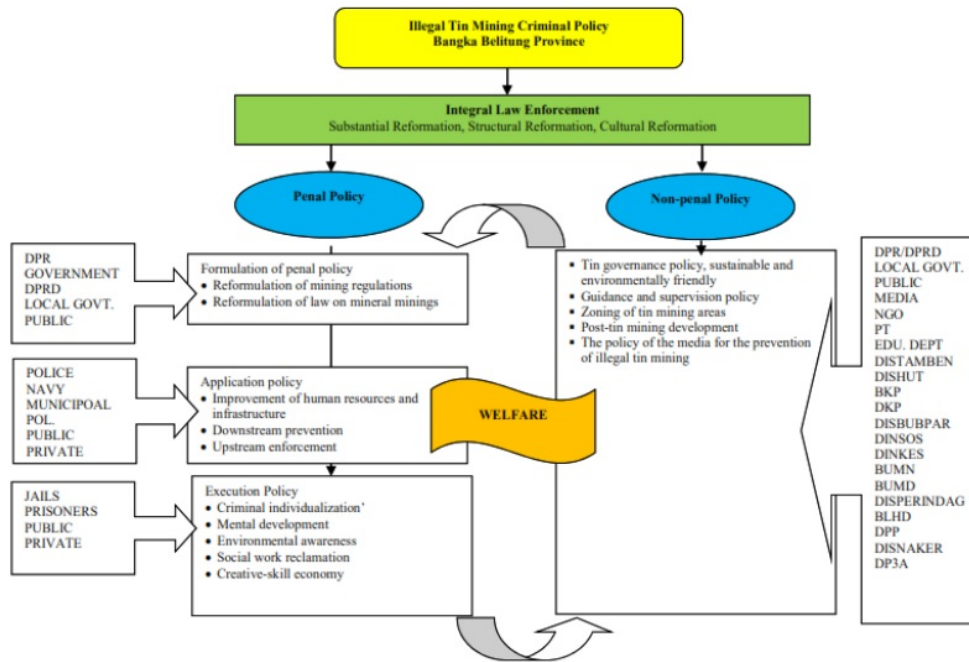
criminal sanctions for re-violations of laws or regulations; (6) replacing imprisonment with fines for 1-3 month sanctions; (7) formulating legal criminal sanctions cumulatively-alternatively; and (8) formulating corporate responsibility clearly and unequivocally.

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