

Implementation of the Criminal Law on Illegal Mining to Protect the Wetland Environment in Central Kalimantan Province*¹

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ABSTRACT

Climate change has a negative impact on life and is becoming a global problem. The importance of the protection and conservation of wetlands has been agreed in the Ramsar Convention to address carbon emissions. The Indonesian government through the Ministry of Environment and Forestry will “Net Zero Emission” by 2060. This empirical normative research aims to understand the causes, effects, efforts and legal sanctions of perpetrators of illegal mining crimes in wetlands in Central Kalimantan Province. The results of the research conclude that there are still illegal mining crimes due to factors: economics, minimal employment, low legal awareness and working skills. Impact of illegal mining: environmental damage, social problems, triggering potential horizontal conflict and others. Efforts to tackle illegal mining crime are conducted preventively and repressively, but have not effectively resolved the problem. There is a need for decisive action and resolution of problems from the parties involved in the illegal mining issue in accordance with the Mineral and Coal Act. However, the state must continue to strive for the well-being of the people in accordance with the Constitution of UUD NRI of 1945.

Keywords: Law Enforcement, Illegal Mining, Wetlands.

I. Introduction

Kalimantan territory including Central Kalimantan Province has considerable natural resources potential especially mineral and coal. Therefore, many investors are interested in digging potential natural resources especially in the field of mining minerals and coals, because in the era of the 1970s already there are many large-scale companies that perform contracts in the mining field in the Central Kalimantan Province including PT. Hampalit Mas Perdana, operating in the territory of Katingan district and PT. Indo Moro Kencana in North Barito district. (usaha pertambangannya masih berlangsung sampai sekarang).

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For more than 30 years, Indonesia has adhered to a national development paradigm that puts economic growth as an indicator of success. In an effort to pursue such economic growth, Indonesia relies on natural resources. The increase in the added value of natural resources is not too much of a concern so that natural resource management policies pay too much attention to the fulfilment of human consumptive lifestyles and less attention to conservation principles resulting in the deterioration of quality, reserves and degradation of SDAs especially forestry and mining sectors.³

The great potential of natural resources in the region of Central Kalimantan Province especially mineral and coal not only attract the interest of investors in the field of mineral mining legally but also attracts the public interest both individually and groups to carry out mining activities illegally so as to result in the occurrence of illegal mining criminal acts in particular that are carried out in the wetland environment that exists in various areas in the territory of the Central Kalimantan Province. The problem of illegal mining in particular gold mining without permission (PETI) has been ongoing to this day and carries the impact of problems in Central Kalimantan Province such as environmental damage, social problems, health problems, even triggering potential horizontal conflict in communities in mining areas as well as other negative impacts.

With regard to the management of natural resources throughout the territory of the Republic of Indonesia, the central government has the authority to regulate the management as stipulated in article 33 of the Constitution of the State of Indonesia of 1945 stating that: "The land, water and natural resources contained therein are controlled by the State and used to a large extent for the well-being of the entire people".⁴

The Government has issued mineral and coal mining regulations as contained in the Law of the Republic of Indonesia No. 4 of 2009 on Mineral and Coal Mining as amended by the Law No. 3 of 2020. The gold mining activities that exist in some areas of Central Kalimantan Province have long been carried out both

³ Chay Asdak (2022). *Kajian Lingkungan Hidup Strategis, Jalan Menuju Pembangunan Berkelanjutan*. Yogyakarta. Gadjah Mada University Press. hal. 36

⁴ Penjelasan pasal 33 Undang Undang Dasar Negara Republik Indonesia Tahun 1945

by legal investors and by miners who are illegally engaged or commonly referred to as gold miners without permission. This goldmining activity is disrupted by various factors including: economic factors, difficulty in getting jobs, lack of other skills that people have especially in the interior, the high price of gold in the market also attracts the public interest in mining activity, also because of the low legal awareness of the public about the importance of environmental sustainability especially wetlands which are very necessary in order to maintain humidity to mitigate global climate change already experienced by various countries.

The activities of illegal gold mining entered the category of crime mining many are carried out in land, mountains (forests and gardens) besides it is also done in wetlands or waters (rivers, meadows, lakes and others) so the impact caused by the marks of illegal mining of gold in the territory of Central Kalimantan Province is very varied. Among them: damage to natural resources in particular natural resources forests, damage to the environment in particular river and lake waters due to the occurrence of deposits, erosion and drainage of river water due to residual mining waste has a mercury content that is very dangerous to life, occurrences of various kinds of disasters (landslides, floods), low production of fisheries caught in large rivers which has been hanging the life of fishermen in the river streams.

Illegal gold mining efforts can result in deaths for perpetrators of illegal mining activities due to minimal mining equipment and equipment (drums, inhalation of toxic gases from mining machines) as well as other social impacts such as being a target for drug network suppliers on the grounds of stimulants that can maintain the endurance and endurance of the users. Other social impacts can also occur as a result of illegal gold mining areas potentially social conflict between the citizens of the mining area as miners are citizens with different characteristics and cultures.

In fact, the government and the parties involved have undertaken various attempts to settle gold miners without permission in several regions in Central Kalimantan Province such as conducting joint inter-agency raids on the location of illegal mining, it was done in order to implement the Law of the Republic of Indonesia in particular the Law No. 4 of 2009 on Mineral Mining and Coal Mining

as amended by the RI Act No. 3 of 2020, such changes were made because the Act No.4 of 2009 was considered no longer in accordance with the development of problems and legal needs in mineral and coal affairs in Indonesia.

However, the efforts have not been able to stop the activities of illegal gold miners in some parts of Indonesia, including in the Central Kalimantan Province, because they are hampered by some of the factors outlined above. That is why this article is interesting to be followed by policymakers in both central and regional governments because it relates to the life aspirations of many people, especially those who are in the interior area where in the midst of the current economic turmoil makes illegal mining activities the only option in sustaining their lives. In view of these conditions and problems, the government has a responsibility and a solution in finding other livelihoods so that people's habits of being illegal miners can be shifted to other more vicious alternatives, and the government through the Ministry of Environment and Forestry has already committed to realizing net zero emissions. Therefore, even the slightest excessive mining activity carried out in wetland environments, in river-water areas, will result in environmental damage, hindering the efforts and hopes of the government to play a role and balanced carbon emissions in order to save lives.

On this basis, every mining undertaking should have referred to the Law No. 3 of 2020 on Amendments to the Act No. 4 of 2009 on Mining Mines and Coal, in order to realize the management of natural resources in particular resources in the natural environment of wetland sustainably because the guarantee of the sustainability of the natural resources is a right for future generations as guaranteed in the Law no. 32 of 2009 On the Protection and Management of the Living Environment.

II. Problems

Based on the background above can be addressed several problems among them:

- 1) Factors that promote the criminal act of illegal mining in wetland environment by the community in the region of the Central Kalimantan Province.
- 2) The negative impact of criminal acts of illegal mine in wetlands by the population in the area of the Middle Kalimantan Province.

- 3) To enforce the law for the perpetrators of illegal illegal mines in wet land environment and the apparatus already carried out by the relevant parties in the province.

III. Library Review and Theory Studies

1. Law Enforcement

The definition of law enforcement in general is the affairs (work and so on) that relate to mines. As explained in the Act No. 3 of 2020 on Amendments to the Law No. 4 of 2009 on Mining Mines and Coal that any mining activity or exploration is not in accordance with the provisions that have been established to undertake mining activities must be subject to mining permits. Exploration activities can be defined as mining activities in which the scale is intended to obtain or obtain thorough and detailed information about the location, form, dimension, quality distribution and measured resources of information on minerals as well as social and habitat environments.

Further in article 160 paragraph 1 of the law also affirms, that in an exploration activity because of mining must be based on a permit that has been issued by the relevant authority, namely Mining Enterprise Permit (IUP) or IUPK. Thus, legally carrying out exploration activities without the basis of an official license issue by the party or the related authority is a criminal offence that can be threatened with a penalty of imprisonment not longer than 1 year or a fine not more than Rs. 200,000,000. (dua ratus juta rupiah).

As Nina Herlina and Rima Duana explained in the journal Scientific Galuh Justice that the Law No. 32 of 2009 on the Protection and Management of the Environmental Life regulates the enforcement of environmental law on criminal (criminal) and non-criminally (out of criminal) attempts while the use of criminal sanctions is a subsider sanction or as a last resort (ultimum remidium) attempt to enforce environmental laws through non-penal attempts has some weaknesses

because civil proceedings take a long time while the criminal action on environmental pollution continues with its various adverse effects and the recovery of the environmental contamination takes a fairly long time and the imposition of administrative sanctions also affects the workers.⁵

Meanwhile, Diva Pitaloka in the Compilation Journal of Law explains, that in order to enforce the law the principles of implementation of international environmental law into national law have been seen in the Law No. 32 of 2009 on the Protection and Management of the Environment.⁶

2. Mining is an Activity

That involves excavation of mining goods from within the land. While gold mining is much done because in the modern era also played a role inining the stability of the country's economy. Gold has a stable selling value that even tends to keep rising, thus making gold one of the sources of revenue.

In the development there are some things underlying the changes to the Act No. 3 of 2020 on Amendments to the Law No. 4 of 2009 including that: *first*, that the minerals and coal that are in the territory of the United States of the Republic of Indonesia are resources and unrenewable natural wealth as a gift of the One God, which has an important role and fulfils the life desire of many people dominated by the state to support the sustainable national development and the prosperity of the people in a just way.

Second, that mineral and coal mining activities play an important role in providing tangible added value to national economic growth and sustainable regional development, the organization of which is still under the control of authority between the central government and the local government, licensing, protection of affected communities, data and mining information, surveillance and legal sanctions, so that the maintenance of mining mines and coals is less effective and can not deliver optimal added value.

⁵ Nina Herlina dan Rima Duana dalam Jurnal Ilmiah Galuh Justisi Fakultas Hukum Universitas Galuh Volume 10 Nomor 2 September 2022.

⁶ Diva Pitaloka, dalam Jurnal Kompilasi Hukum Universitas Mataram Volume 6 Nomor 2 tahun 2021 Halaman 76-87

Third, that the regulation on mining of minerals and coal regulated by the Law No. 4 of 2009 on Mining of Minerals and Coal is still unable to respond to developments, problems and legal needs in the maintenance of mining and coals so that changes need to be made in order to become an effective, efficient and comprehensive legal basis in mining maintenance.

The definition of mining as described in article 1, paragraph (1) of Act No. 3 of 2020 on Amendments to Law No. 4 of 2009 on Mining of Minerals and Coal is part or all of the stages of activities in the framework, management and undertaking of minerals or coal which includes general exploration, exploration, feasibility studies, construction, mining, processing and/or purification or development and/or exploitation, transportation and sale and post-mining activities.

3. Illegal Gold Mining and Wetland Environment

The term illegal mining or mining is mining activity carried out by a community or company without having a permit and not using the principle of good and correct mining. Also known as the term Gold Miners Without Permission (PETI) or mining without permission is a mining activity carried out either by individuals, a group of people, or a company, a lawful foundation that in its operation does not have permission from the authorized government agency according to the legislation of the invitation applicable.

Illegal mining activities that do not have permission from either the central government or the local government other than affecting environmental damage and natural resources do not contribute to the acceptance of the state or the region. In the Act No. 3 of 2020 on Amendments to the Law No. 4 of 2009 on Mining Mines and Coal, there are some new material charges including: 1) Regulations relating to the concept of mining law territory. 2) Authority for the management of minerals and coal; 3) Plan of management of mines and coals; 4) Assignment to State research institutions, BUMN, regional enterprises or enterprises to conduct research and research in the framework of WIUP preparation; 5) Strengthening of the role of BOMN; 6) Restructuring of licences in mining enterprises, including coal and minerals, new licences related to the

undertaking of stone for specific types or for specific purposes, as well as licences for people's mining, and 7) Strengthenment of policies related to environmental management of living mining activities, including the implementation of advertising and post-mining.⁷

The definition of wetland as described in article 1, paragraph (1) of the Ramsar Convention explains: wetland includes slopes, meadows, mudlands, and natural or artificial waters, whether permanent or temporary, with waters that are filled or flowing with fresh or salty water or salt water, including sea areas whose depth is not more than six meters at the time of the flood. The Ramsar Convention aims to ensure that wetlands are used wisely and sustainably and the main objective of this international convention is to stop the proliferation and destruction of wetlands and, basically, the Ramsar Convention seeks to guarantee the existence of wetland ecosystems.

Indonesia, an island state whose territory is dominated by wetlands, has joined the Ramsar Convention and has been bound since 8 August 1992. Wetland management in Indonesia refers to a national wetland management strategy and action plan based on five pillars: conservation, rehabilitation, and prudent use, benefit base and priority, community-based, integrated management and good governance. (good governance). Nevertheless, the complexity of illegal mining crimes, especially in wetland environments, is a problem in the preservation of wetland ecosystems.

IV. Discussions

The increasingly complex problem of illegal mining or mining criminal acts that are still being carried out in particular in wetland environments (lawns, mountains, rivers, lakes and others) in some areas throughout the territory of Indonesia including in the province of Central Kalimantan. While the conservation and protection of wetlands is a vital part of saving the planet from the effects of climate change and global warming.

⁷ Penjelasan Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan atas Undang-Undang Nomor 4 tahun 2009 tentang Pertambangan Mineral dan Batubara

Negative impacts and other environmental problems resulting from illegal mining activities, especially in wetlands, may occur because illegal mines do not perform the stages of mining operations as required, including the existence of a *Ijin Usaha Pertambangan* (IUP) or a *Ijin Usaha Pertambangan Rakyat* (IUPR) issued by the relevant authorities. Such illegal mining activities must have a negative impact on efforts to preserve and preserve the wetland environment and natural resources surrounding the illegal mine area because they do not take into account the mining principles as required by the Act No. 3 of 2020 on Amendments to the Law No. 4 of 2009 on Mining Minerals and Coal.

For example, there is no validity study because this stage is an important part of the mining activity in order to obtain detailed information on all aspects related to the mine area to determine the economic and technical validity of mining activities including analysis on environmental impact as well as post-mining planning. Mining activities also illegally do not know the analysis of environmental or administrative impact, while *amdal* is actually also a very important part in mining as it is a study on major impact and an important enterprise or planned activity on the living environment that is necessary for the process of decision-making on maintenance of enterprises or activities in particular mining.

Furthermore, illegal mining activities, especially in wetlands, usually also do not carry out the efforts and obligations of complaint as carried out by large-scale mining legally. The complaints activities are activities that are performed throughout the stage of the mining activity with the aim of regulating, restoring and repairing the quality of the environment and ecosystem so that it can function again according to its provisions. On the contrary, illegal miners ignore and tend to leave the location of mines without worrying about the sustainability of their functions and the quality of their environment, leaving environmental damage very worrying and the impact of which must be felt by the communities around the mines.

A. Factors Affecting

Illegal mining activities in wetlands are usually influenced by the lucky factor trying, there are times when lucky illegal mines get good results, but not a few illegal miners only get little results or even get no results at all. Since illegal mining criminal activities many are carried out without the presence of stages as well as mining efforts must be done carefully based on valid data, However, the reality of illegal mine criminal activity is still commonly carried on in some areas of wetland environment especially in the area of the River Stream Region (DAS) which contains minerals (especially precious metals) in Central Kalimantan Province.

The study of several sources of the library results of previous research and field studies that the author did find that there are several factors that cause illegal mining activities to continue to occur among them:

a) Economic factors

In some areas of the territory of illegal mined enterprises economic factors are usually the main reason why some people still hold illegal mine activities. The mining activities of the illegal community are carried out both individually and in groups. Illegal mining is becoming even more acute in the post-Covid-19 global economic downturn, with many people losing their jobs and seeing the mining industry as the only livelihood that people can make for family life.

b) No Permanent Employment.

Further, the fact that there is no permanent job for some of the people in the areas around the mining area also affects the marks of illegal mining activities. Because most of the people who hang their lives from illegal mining operations are usually those who have no jobs or livelihoods staying in their day-to-day so the easiest choice is to do mining either on their own or join other groups of illegal miners with a system for the results coordinated by the mines with the harvesting of the results that have been established and agreed jointly.

c) Lack of Skills

People who choose to be illegal miners mostly do not have other skills, because doing illegal mining business does not have to be equipped with special skills so that they can easily absorb a large number of labor. Even in certain areas where there are people's mining areas, these illegal mining

activities have become part of the daily life of the people, even the more fragrant young generation of school-age prefers to engage in illegal mine activities in the hope of getting big results instantly rather than continuing education to higher levels in order to prepare for a better future.

(d) Low Awareness of the Law

The low awareness of the legal community also affects the community so that it continues to engage in illegal mining activities. Some people still do not properly understand the criminal sanctions imposed on illegal mining offenders. The lack of legal awareness of the people led to illegal mining activities.

Although the public is aware that illegal mining activities are a criminal offence in the mining field, the public does not have the legal awareness not to engage in mining activity illegally. The observance and awareness of the law of the people is an important part of the enforcement of law in our country because no matter how good the rule of law is if it is not coupled with the legal consciousness of the citizens of its people then the implementation of the rules of law within the society will also be ineffective in the application of its law. It is therefore necessary for the parties concerned to socialize about the importance of legal awareness especially for the people around the mining area so that the public should understand that committing mining crimes is threatened with criminal sanctions as provided for in the Mineral and Coal Act of the Republic of Indonesia.

(e) The weakness of law enforcement

Is the key to the effectiveness of law. In order for law enforcement efforts against the perpetrators of illegal mining crimes to be fully implemented, in this matter the rule of law must be placed above everything.

The perpetrators of illegal mining enterprises who are proven to be in violation of the legislative regulations, especially the Mineral and Coal Mining Act and the Environmental Law, must be given strict sanctions so that the law can be enforced. It's important to guarantee legal certainty. The weakness of law enforcement also leads to a lack of impact on the perpetrators of illegal mining crimes, which have seriously damaged the sustainability of natural resources.

Law enforcement by the parties concerned should also be accompanied by efforts to resolve problems for illegal miners, for example by providing alternatives to other livelihoods, empowerment of people living around the River Stream Area (DAS) and others. Because it is the State's duty to guarantee a decent life and work for every citizen as guaranteed by the 1945 NRI.

B. The Impact of Illegal Mining

The illegal mine activity has caused a number of negative impacts in several areas, including:

a) Environmental Damage

of people's illegal gold mining surrounded by wetlands in some regions of Central Kalimantan Province can result in rapid ecological and environmental damage which can change the shape and topography and land surface conditions (land impact) especially in illegal mined areas. Illegal mining carried out on the surface of both gardens and forests can alter the structure of the soil to worse so that in a sufficiently long period of time soil fertility will be lost, besides it will also eliminate the primary function of the environment itself.

While mining activities carried out in wetland environmental areas both in river waters, slums and lakes will damage and pollute the water environment as waste mining (tailing) and mining material produces hazardous and toxic materials that can damage the environment and disrupt the water ecosystem. Mining in the river waters also damages river streams and results in deposits, erosion, and low catch rates for fishermen living along river flows in the mining area. Illegal mining activities that disregard environmental sustainability and the sustainability of natural resources are also contrary to the Environmental Law because a clean environment is a right of every individual and future generation guaranteed by law.

b) Health disorders

Illegal mining activities also have a serious impact on the occurrence of health disturbances for both the miners themselves and the local communities in which the mining activity is carried out. Mining activities carried out without proper mining studies and principles as laid down in the Mining and Coal Act will result in

pollution of either dust, or polluting smoke that pollutes the air and water, plus tailing water waste or residues of mining activities containing waste or toxic substances that are hazardous to human life and other living creatures. Many communities living around the mining area, both legally and illegally, suffer from health disorders ranging from mild to severe, such as skin diseases, itching, coughing, respiratory infections and so on.

(c) Social issues of social co-operation

The area where mining enterprises are undertaken, both legally and illegally, must have its own impact, including social impact in the community around the area of mining undertakings. This is because the gathering of miners from different backgrounds can cause friction and trigger potential horizontal conflict. Sometimes mining communities that are not locals or immigrants underestimate or do not understand the customs and traditions of local communities, thus provoking conflicts within communities. It is not uncommon that there are problems of disruption of order and security in the community surrounding the mining area.

The other social problem also arises when a fortunate mining community earns a lot of money and is used for purely recreational purposes, so that it is not uncommon for today's mining areas to become pockets of distribution of alcohol, illicit drugs or drugs so that they can trap miners in even more strange lives because of being drug addicts and the end will be a new problem for families and problems for communities living around the mining area.

(d) Changing Local Culture

As illegal mining activities and their impact in the mining area have a strong influence on the customs and culture of local communities around the mine area. With the income gained from the mines, the local people are becoming more and more accustomed to a modern, consuming and instantaneous life that has a great influence on the traditions and cultures as well as the local wisdom of the people who have been cared for and treated downward from one generation to the next.

C. Law Enforcement

1) Preventive Measures (Prevention)

In order to prosecute the perpetrators of illegal mining crimes in the Central Kalimantan Province territory, the parties concerned have taken humanitarian measures in this regard, undertaking efforts to prevent the occurrence of illicit mining in the territory of the Central Kalimantan Province.

This preventive effort is important for the relevant parties to ensure that the public, especially those in the mining area, understand the applicable legal rules and legal sanctions when committing illegal mining crimes. Preventive efforts, however, must be considered better than prosecution efforts accompanied by the imposition of certain criminal sanctions on perpetrators of illegal mining crimes.

2) Repressive Steps (Enforcement).

The punishment of a person who has committed a violation or offence in the public interest as provided for in the Code of Criminal Law (KUHP) or other laws, in particular the Law of the Republic of Indonesia No. 3 of 2020 on Amendment of the Law No. 4 of 2009 on Mining of Minerals and Coal, which provides criminal sanctions for perpetrators of crimes in the field of mining. Criminal sanctions for perpetrators of crimes in the field of mining are formulated in articles 158 to 165 of the Undang-Undang RI No. 3 of 2020 on Amendments to the Law No. 4 of 2009 on Mineral and Coal Mining.

In article 158 states:

Everyone who engages in mining without 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) is punishable by imprisonment for a maximum of 10 (ten) years and a fine of up to Rs 10,000,000,000.00 (ten billion rupiah).

Article 160 explains:

(1) Any person who performs exploration without having an IUP or IUPK as referred to in article 37 or article 74 paragraph (1) shall be sentenced to imprisonment for a maximum of 1 (one) year or a fine of up to Rs 200,000,000.00 (two hundred million rupees) (2) Every person who has a IUP of exploration but

performs production operations shall be punished with a penalty of maximum of 5 (five) years of imprisonment and a maximum fine of Rs 10,000,000.00 (sepuluh miliar rupiah).⁸

In the case of law enforcement against illegal miners or miners who are not accompanied by a Mining Enterprise License (IUP) or a People's Mining License (IPR) which is a permit to carry out mining operations in the people's mining territory with a large area of territory and limited investment. issued by the relevant authorities, this permit is the basis for carrying out the mining activity and of course the state has the right to give strict sanctions against the perpetrators of illegal mining crimes. Because as stated in article 33 of the Constitution of the Republic of Indonesia that the State controls the earth, water and natural resources contained therein include minerals and coal so that everyone who will undertake mining must abide by the rules in force as mandated in the Mineral and Coal Mining Act. Considering that mineral and coals are non-renewable natural resources and are national property controlled by the state for the greater well-being of the people. Thus, the state has the obligation to regulate, manage and utilize these natural resources to the greatest extent for the welfare of the society as the goal of the state in the opening of the UUDNRI in 1945.

However, as I Made Bayu Suantra in the journal *Analogi Law* edition volume 1 (3) pages 366-371 that the application of criminal sanctions is not merely to avenge the offender, because the system of setting the punishment of penalty in the criminal law system is not aimed at reprisal but also must contain the principles and purposes of the financing of the following: Prevention (preventive), Correction (corrective), Education (educative) and Depreciation (repressive), thus the awarded penalty must be able to give a sense of justice, the presence of regret and benefit to offenders.⁹

The penal sanctions for miners without permission are regulated on the basis of article 158 where any person who commits mining without authorization as referred to in article 35 is punishable with a maximum penalty of imprisonment

⁸ Penjelasan Undang Undang Nomor 3 tahun 2020 tentang Perubahan atas Undang Undang Nomor 4 tahun 2009 tentang Pertambangan Mineral dan Batubara

⁹ I Made Bayu Suantra, *Jurnal Analogi Hukum* Edisi Nomor 1 (3) Halaman 366-371.

of 5 (five) years and a maximum fine of Rs. 100.000.000,00 (one hundred billion rupees), articles 159, 160 and paragraphs (2) of the Law No. 4 of 2009.

Against the perpetrators of illegal mining crimes that occurred in several districts and towns in the Central Kalimantan Province, the parties involved have carried out investigations by holding joint raids by the parties concerned in order to carry out direct investigations against perpetrators of illegal minerals. Combined *razia* is usually carried out by stabbing and frying places that are illegal mining bags. Some offenders were sanctioned but more were warned not to repeat illegal mining activities. It is not uncommon for joint officers to destroy mining equipment with the intention of giving a *jera* effect so that illegal mining activities are not carried out again. But the reality is that these actions have not produced the maximum results that proved the illegal miners are still ready to return to mining activity again.

The law enforcement dilemma has been experienced to this day for the apparatus and other related parties in order to eradicate illegal mining criminal activities especially in wetlands in the Central Kalimantan Province. On the one hand, the apparatus must enforce the law inining the supremacy of the law, but on the other, it must also understand the conditions of societies that are actually in economic impasse and rely solely on the activities of mining enterprises to meet their life needs.

D. The Theory of the Welfare State

As presented by Jimly Asshiddiqie that the concept of the well-being state (welfare state) for the state of Indonesia is contained in the opening of the Basic Law of the State of the Republic of Indonesia in 1945. The fourth alenia reads: "Then rather than that to form an Indonesian state government that protects the whole of the people of Indonesia and the entire bloodshed of Indonesia, and to advance the common well-being, to enlighten the life of the nation...". In the concept of the welfare state it was then used as the foundation of the position and function of government (*bestuurfunctie*) in modern states. In the concept of the welfare state, the state is required to extend its responsibility to the social problems facing society.

The welfare state, as Latif put it in his Marsudi Dedi Putra, not only covers the way in which welfare or social services are organized, but also emphasizes that everyone has access to social services as a right. In accordance with these provisions, the Indonesian democratic ideals not only fight for emancipation and participation in the political sphere, but also for the emancipations and participations in the economic sphere. The fourth (nation) and the fifth (righteousness and justice) of Pancasila is an inseparable chain. So that the ideals of fair welfare and prosperity as the ultimate goal of the country of Indonesia should be realized by means of synergizing political democracy with economic democratic and social policies oriented towards nationality, justice and well-being. It is in line with the wishes of the founding fathers who want the proclamation of the State of the Republic of Indonesia as a state of prosperity.¹⁰

Regarding the concept of the welfare state presented above, it is clear that in order to realize the mandate of the Constitution of the State of the Republic of Indonesia of 1945 in order for the realization of social justice and well-being for the entire Indonesian people of course necessary legal policies of the government in favour of the weak society where the current conditions of society is bearing the burden of economic impasse due to the economic turmoil globally. Therefore, the policy of the State (Government) in the management of natural resources in particular in the mining sector and other natural wealth as enshrined in article 33 of the Constitution of the Republic of Indonesia of 1945 must be largely aimed at the prosperity and well-being of the entire people of Indonesia.

As Didik Sasono Setyadi explains, governments are low in action while the law is low in book. The Government (country) regulates: (a) all aspects of relations between its fellow citizens, (b) relations between the people with the territory and natural resources in which the natural resources are located and (c) relations and legitimacy of the government itself with its people.¹¹ In the context of the relations between people with territories and natural resource, the state must adhere firmly to the noble purpose that has been contained in the constitution (the basic law) of

¹⁰ Marsudi Dedi Putra. LIKHITAPRAJNA. Jurnal Ilmiah Volume 23 Nomor 2 September 2021 hal. 139.

¹¹ Didik Sasono Setyadi (2020). Filsafat Hukum, Negara dan Sumber Daya Alam. Eksistensi. Fungsi dan Tujuan Hukum dalam Perspektif Teori dan Filsafat Hukum. Jakarta. Kencana hal. 230

our country UUD NRI 1945 where the main objective of the regulation of the management of natural resources as described in article 33 is to the greatest extent for the prosperity of the people of Indonesia.

The presence of investments especially in the mining sector is also very important in order to promote development and economic progress for both the central government and the local government, however, at least the investment policy does not ignore sustainable development and the rights of local communities so that the policies issued should provide opportunities, also the opportunity to give the participation of local people in their participation in the management of natural resources for common well-being. Local communities with their respective local wisdom (ethics, norms, culture and customary laws) have proven to be determined in saving and managing existing natural resources. Therefore, such local efficiency should be observed, adopted in every policy making both at the level and at the central level in the region.

Seeing the increasing complexity of the mining problem in some areas of Indonesia we make the problem of mining especially illegal mining carried out in wetlands not only an interesting study not only in the study of docmatics or theory of law but also needs to study based on the legal philosophy.

E. Closing

of mining activities carried out without following the guidelines as defined in Act No. 3 of 2020 on Changes to Law No. 4 of 2009 on Mining of Minerals and Coal in particular in wetlands has a negative impact on efforts to preserve natural resources and preserve the ecosystem of wetlands.

- 1). The illegal mining crime accelerates the destruction of wetland ecosystems in the Central Kalimantan Province, thus affecting efforts to rescue wetland, which is vital in order to address the impact of climate change (global warming) and other negative impacts on life.
- 2). The causes of illegal gold mining in the Central Kalimantan Province are: (a) economic problems, (b) lack of fixed jobs, (c) inadequate skills, (d) low legal awareness, and (e) weak law enforcement for illegal mining offenders.

- 3) The impact of illegal mine crimes, including: (a) environmental damage especially in wetland environments, (b) health disturbances, (c) the occurrence of cultural changes in the community, (d) triggering social problems in the society.
- 4) The law enforcement efforts carried out by the apparatus related to: a) the formulation and socialization of the law as a preventive effort b) the punishment based on the rules in force as a repressive effort. In law enforcement, the apparatus and the parties involved are also ¹²advancing humanitarian action to society.

F. Rekomendation

Anticipated and avoided the increasing crime of illegal mining especially in wetland surroundings in the Central Kalimantan Province, then the local government and related parties more socialization and legal understanding on the importance of keeping wetland ecosystem to the people who engage in illegal mine activities so understand the importancy of adhering to the regulations of the legislation in force in view of the criminal threat to perpetrators of illegal mine crime is quite severe.

The government must monitor and pay attention to the social problems of the people in the people's mining area while providing solutions to the problems. As a measure of repression, the government through the associated apparatus must enforce the legislative provisions of the invitation to strictly punish the perpetrators of illegal mining in order to realize the supremacy of the law and the realization of the sustainable management of natural resources for the generations to come. Nevertheless, governments also have a duty and must continue to empower the people in an effort to enhance the capacity of the people, both individually and collectively, this is necessary to create a better life for the people.

Law enforcement measures and efforts and the imposition of criminal sanctions on illegal mining offenders will surely preserve natural resources especially wetland environmental resources in the Central Kalimantan Province so

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that they can support and implement government programmes in order to net zero emissions to anticipate global warming that threatens the safety of humanity around the world.

The Government should carry out regulatory functions as mandated in the Constitution of the NRI Basic Law of 1945 section 33 and give room for efforts to realize social welfare for the entire people including the welfare of traditional miners by giving the People's Mining Territory (WPR) which has promising mining potential outside the mining area that is in the wetland environment so.

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