PROTECTION AGAINST INTIMIDATION OF LOCAL COMMUNITIES DEFENDING THEIR LAND RIGHTS FROM COAL COMPANIES IN TANAH BUMBU DISTRICT

THESIS



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WHY IS THERE NO INTIMIDATION PROTECTION FOR LOCAL PEOPLE WHO DEFEND THEIR LAND RIGHT TO COAL COMPANIES IN TANAH BUMBU DISTRICT

CONFLICTS

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Karya ilmiah ini saya ajukan kepada Tim Penguji dalam utan Pendadaran yang diselenggarakan oleh Fakultas Hukum Universitas Islam Indonesia. Sehubungan dengan hal tersebut dengan ini saya menyatakan:

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بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

Success does not belong to smart people.

Success belongs to those who always try.

DEDICATION

بِسْمِ اللَّهِ الرَّحْمَٰنِ الرَّحِيمِ

This thesis is wholeheartedly dedicated to:

Allah Subhanallah wa ta'ala

Thanks to Allah for giving me this opportunity, strength, and patience without Allah we are nothing.

Thanks to my parents who always support me under any circumstances.

My alma mater, Indonesian Islamic University;

All lecturers and staff of the Faculty of Law at the Islamic University of Indonesia,

Who has taught me and guided me and helped me through my studies;

All friends and comrades in arms,

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Final Project in the form of a thesis entitled "**PROTECTION AGAINST INTIMIDATION OF LOCAL COMMUNITIES DEFENDING THEIR LAND RIGHTS FROM COAL COMPANIES IN TANAH BUMBU DISTRICT**" This is structured as one of the requirements forobtaining a Bachelor of Laws degree at the Faculty of Law, the Islamic Universityof Indonesia.

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ABSTRACT

This research is entitled PROTECTION AGAINST INTIMIDATION OF LOCAL COMMUNITIES DEFENDING THEIR LAND RIGHTS FROM COAL COMPANIES IN TANAH BUMBU DISTRICT. The formulation of the problems posed are: The formulation of the problems raised are: 1. What is the form of legal protection for the community related to coal mining activities against intimidation by mining companies in Tanah Bumbu District? 2. How should the law protect local communities in mining conflicts related to coal mining activities from intimidation by mining companies in Tanah Bumbu District? The purpose of this research is to analyze the form of legal protection for the community related to coal mining activities that are detrimental to the community around the mining site, as well as to find a settlement of disputes over claims for compensation for the community around the mining site. This research is primarily a normative legal study, in which the method used must be centered on legal documents as the main source. This study uses legal, historical, conceptual, and comparative approaches: The legal approach is used in this study to answer the first and second problem formulations. The first formulation of the problem is used to analyze how the law protects against intimidation of commoners. In addition, this approach is also used to find and analyze how to overcome this problem so that there are no more victims. The research results found forms of protection law against the community for coal mining activities and the responsibility of coal mining companies that harm the community around the mining site is associated with the decision of the Batulicin District Court in resolving disputes related to mining activities. A historical approach is used in this study to analyze the development of mining law in Indonesia, especially coal mining and the number of small communities who are victims. A conceptual approach is used in this study to analyze the second problem formulation related to the choice of developing a national criminal law instrument for the criminalization of common people.

Keywords: Dispute Resolution; Legal protection; Mining.

CHAPTER I
INTRODUCTION

A. BACKGROUND

Indonesia is a unitary country that has thousands of islands separated by straits and seas, this is a condition of the geographical environment which is the basic source of the diversity of tribes, cultures, races, and groups in Indonesia (Cultural Diversity). Each island has different tribes and cultures with its own territorial ownership. With this diversity, it is undeniable that the use of territorial land is very much needed.

Land for human life contains multidimensional meaning. First, economically, land is a means of production that can bring prosperity. Second, politically, land can determine one's position in community decision-making. Third, as cultural capital, it can determine the high and low social status of its owner. Fourth, land has a sacred meaning, because at the end of life everyone will return to the land.[1]

The role of land in human life is the parent of all basic needs' other than food and clothing needs. Land can be valued as permanent assets, as assets have sustainable economic value for the future. Despite the economic value, land has other values that can support the prosperity and welfare of the community.

[1] Heru Nugroho,2001, *Menggugat Kekuasaan Negara,*Muhammadiyah University Press,Surakarta:Hlm. 237

However, just because land is in high demand, it does not mean that anyone can easily own and control it. It is clearly explained the importance and boundaries of land for the community and the state as the highest Community Organization in Indonesia as outlined in Article 33 paragraph (3) of the 1945 Constitution which states that"

In this context, the state is given the authority to regulate, as well as organize the allocation, use and maintenance of natural resources with the aim of providing welfare to the community. However, the implementation of the phrase "as much as possible for the prosperity of the people" still needs to be questioned. The reality reveals that people living around the use of natural resources feel more losses, both physical and economic losses that have been felt for generations.[2] In addition, government policies in the land sector are strongly influenced and intervened by multinational companies.

The perspective of the capitalist regime which sees land as a commodity tends to remove land from the inherent social ties that potentially result in harm to the aspects of life in society. Sooner or later, it will in turn lead to turmoil of resistance.[3] Vertical/structural disputes are disputes between indigenous/small communities who control economic resources such as forests, rivers, mining resources, livestock

[2] Rusdin Alauddin, "Perlindungan Hak-Hak Masyarakat Lingkar Tambang Berdasarkan Konstitusi di Provinsi Maluku Utara*", Jurnal Konstitusi*, Vol. II No. 2, November 2011, Jakarta: MKRI, hlm. 125.

[3] Noer Fauzy Rachman dan Laksmi Savitri, "Kapitalisme dan Pengembangan, Perampasan Tanah Global, dan Agenda Studi Gerakan Agraria, dalam Hak Asasi Manusia dan Fundamentalisme", Jurnal Dignitas, Vol. VII, No. 2, Tahun 2011, Jakarta: ELSAM, hlm. 14.

grazing areas, shrubs, and agricultural lands versus the State of Indonesia/Indonesian government (both as actors to guarantee rights and/or company interests), while horizontal issues are disputes that occur between local communities of different alliances, for example disputes between local communities in the Tanah Bumbu district in South Kalimantan and a coal mining company.[4]

The dimensions of land conflicts between land rights holders facing the Government and entrepreneurs tend to shift as a result of the ever-changing land configuration, resulting in the emergence of many conflicts of interest that continue to develop with various modes and patterns, so a dispute resolution approach method that can provide justice is needed. Thus, legal certainty is a must for the community on the one hand and entrepreneurs on the other.

Update Consortium Data Agrarian Affairs, in 2007, there were 1,753 cases of agrarian disputes involving around 10 million people.[5] Records of the National Land Agency (BPN), until 2012 there were still 4,005 cases of land

[4] *Loc.cit*

[5] Dianto Bachriadi, "Tendensi Dalam penyelesaian Konflik Agraria di Indonesia: Menunggu Lahirnya Komisi Nasional Untuk Penyelesaian Konflik Agraria (KNuPKA)", Jurnal Dinamika Masyarakat, Vol. III No. 3, Tahun 2004, Jakarta: Kementerian Riset dan Teknologi; lihat juga Elita Rahmi, "Tarik Menarik antara Desentralisasi dan Sentralisasi Kewenangan Pemerintah Daerah dalam Urusan Pertanahan", Jurnal Hukum, Vol. 16, Edisi Khusus Oktober 2009, Yogyakarta: FH UII, Fakultas Hukum UII, hlm. 141.

disputes that occurred in Indonesia.[6] This dispute with various modes even resulted in victims.

This also happened in North Maluku Province, the typology of land conflicts that arose was related to the government and investors vs. community rights holders. The conflict was motivated by the tendency to take sides with the local government in the utilization/ management of natural resources potential through the policy of granting location permits/ mining business permits for investment which results in the shifting of the function of agricultural land and reduced people's access to land. In addition, the practice of acquisition of land for interests is not based on the equality principle in the transaction, but the principle of land acquisition for project interest which according to Imam Koeswahyono often ignores non-legal variables highly relevant to and influencinglegal variables.

Criminalization in criminology is a process when there is a change in the behavior of individuals who tend to become criminals and become criminals. In the development of its use, criminalization undergoes neologisms, which is a situation when a person can be declared a criminal or criminal due to a forced interpretation of the legislation, through the assumption of the interpretation of treatment as a formal criminalization in the legislation[7], for example, The influx of investors from

[6] Imam Koeswahyono, "Melacak Dasar Konstitusional Pengadaan Tanah untuk Kepentingan Pembagunan bagi Umum," Jurnal Konstitusi, Vol. 1 No. 1, Agustus 2008, Malang: PPK Fakultas Hukum Universitas Bra Wijaya.

plantations and coal mining in East Kalimantan tends to have a negative impact on people's lives. This can be seen from several cases that ended in conflict.

"In many cases of land disputes, the company often directs the conflict horizontally, the company pits the community against each other. If that method does not work, the company will criminalize the residents,".

According to the Coalition's monitoring, as of mid-2015, four cases of alleged criminalization of residents or groups of residents in East Kalimantan trying to defend their natural resources (SDA) have been collected. First, the case of criminalization of the Paser indigenous people. This case started from the report of PT. Kideco Jaya Agung (KJA) to the East Kalimantan Regional Police for one of the heirs of the land owner who performed the Belian Paser traditional ritual with the residents of Songka Village, the majority of whom are the Paser indigenous people. Based on the company's report, the police named Nurbayati a suspect under Article 162 of the Minerba Law because it was deemed to have hindered mining activities carried out by PT. KJA.

Second the seizure of 134 hectares of land belonging to 2 farmer groups, namely the Rimba Raya farmer group and PPM in Teluk Dalam, Muara Jawa, Kutai Karta Negara (Kukar), which has been going on since 2005. Until now, the residents have not received justice. the mining company, Bina Mitra Sumberarta and land mafias involved in this case were reported in August 2013 with allegations that they were involved and used fake land titles in their activities. Regarding the residents' reports, the residents were even criminalized by the police and allegedl

Involved one the police officers. Until now, the residents have never been informedof the case progress since this case was reported to the Kukar Police, and there weremany more cases occurred[1]. and even this case of intimidation occurred in my area, where there was no reporting on the intimidation in the media or newspapers, where the victims of the forced land sale were my own mother and the surrounding community in my village, and this case occurred in South Kalimantan, district spice land, kuranji sub-district, mustika village.

Natural resources that exist physically can be utilized for the benefit of human beings in maintaining a better life, if the utilization is used in accordance with the needs and consider the effect on the surroundings and community activities related to plantation activities, agriculture, or community housing around the mine This crime seems common but it extremely harms small communities and indigenous people since this has become a habit and there is no accountability from the company, legal entities, or local government to protect them

Before Law no. 4 of 2009 was abolished and prohibited by the Minerba Law, if a company or individual wish to carry out mining activities in an area, they must first obtain permission from the local Regency or Municipal Government. Then, the Regional Government in each mining location has the task of conducting guidance, conflict resolution and even monitoring of mining businesses.

If there is a conflict between a mining company and the community in a mining area, the local government acts as a mediator. So, whenever there is a public report regarding a violation committed by the mining company, if proven guilty,

8. https://www.mongabay.co.id/2015/06/30/hentikan-kriminalisasi-masyarakat-yang- perjuangkan-kedaulatan-sda/

the regional government has the authority to temporarily suspend or even revoke the Mining Business Permit (IUP).

One of the problems of modernity is environmental problems. In the last few decades, nature has become a real threat to the survival of mankind. The existence of mining activities, in part, benefits many parties, both the state and society, but the fact is that in every mining activity there are affected by it.[9] The impact

Coal mining does not only appear when mining activities take place, but also after mining operations and before mining starts, where as an example of the case Dozens of residents in Pulau Tambako Village, Bombana Regency, Southeast Sulawesi, claimed to be intimidated into releasing their land to sell to a steel processing company with price IDR 7,000 per square meter. Several unscrupulous officials from various agencies were reported to have participated in directing residents to immediately sell the land.

and, a case that has been around for a long time in my own area. The land dispute case belonging to H. Sutarji and residents of Sebamban village with the company PT Sinar Mas Tbk and one of its subsidiaries, namely PT Borneo Indobara (Sinar Mas Group).

According to the Head of SWI Tanah Bumbu Muslim Main, his party will help voice out compensation rights that must be obtained from one of the landowners, namely Haji Sutaji, who has rights to land in the PKP2B mining concession area owned by PT Borneo Indobara (BIB).

9. Absori Absori, Khudzaifah Dimyati, dan Ridwan Ridwan, "Makna Pengelolaan Lingkungan Perspektif Etik Profetik," Al-Tahrir 17, No. 2 (2017): hlm. 333.

"According to information obtained directly from Haji Sutaji, along with the people who were affected by land acquisition, who at that time carried out the Action in front of the PT. Sinar Mas compensation that must be paid by PT BIB has not been finalized until now, "explained the SWI Tanah Bumbu chairman again, Wednesday (17/01/23).

"PT BIB must as soon as possible resolve land grabbing cases for affected communities who own land in the area," he said. According to Muslim, in accordance with the 2020 Minerba Law, owners of mining business permits, both IUP-OP and PKP2B, are required to pay compensation to residents who live around the mining site. "According to information obtained from the land owner when confirmed by H. Sutaji who represented the community in 2013, there had been a negotiation of a compensation agreement between PT BIB and residents who lived around the mining site," said Muslim. The company at that time agreed to pay compensation of Rp. 10 billion per month to several residents affected by the mining. In the second month, the compensation was still paid correctly, but in the third month, the compensation was only paid half or Rp. 5 billion," said Muslim quoting from H. Sutaji's statement during a visit to the SWI Tanbu Office.

H. Saraji continued and the community members hoped that PT Sinar Mas Tbk, which oversees PT BIB, would check, and recheck the mining site owned by PT Borneo Indobara (BIB) to resolve the alleged unresolved issue of compensation payments.

"According to the information we received from H. Sutarji, he will uphold the principle of the presumption of innocence. If compensation for H. Sutaji's land has not been finalized, his party will ask for assistance from the Tanah Bumbu Regency Government, through Regent Abah Zairullah Azhar," said Muslim in an angry tone.

And from the case above, residents who did not want to sell their land were intimidated. Some of the plants in their garden were immediately cut down. In fact, some were threatened and wanted to be beaten," said Darwiah, who is also the resident coordinator. Together with two other residents, Darwiah reported arbitrary actions to the community and some who did not want to give up their land would be forcibly evicted for coal mining.

companies have committed against communities in mining areas. Through the new Minerba Law, not only will local communities be depleted of their natural wealth by a handful of mining conglomerates, those who try to refuse their area to be exploited will be subject to criminal penalties.

So, what is the focus of this thesis is the legal protection of local communities who are often intimidated over their land rights. There is community concern about mining activities in their area, among other things, the mining process is feared to damage agricultural land, plantations, and housing around mining areas, they do not want to sell land for the future and so that there are no cases where there are many local people who are intimidated by mining companies regarding land selling rights.

B. Formulation of the problem

Based on the background, there are two problems that can be formulated:

1. What is the form of legal protection for the community related to coal mining activities against intimidation by mining companies in Tanah Bumbu District?
2. How should the law protect local communities in mining conflicts related to coal mining activities from intimidation by mining companies in Tanah Bumbu District?

C. Research Objectives

1. Knowing the legal protection of local communities with mining, so that cases of intimidation by local people are not always ignored.
2. Resolving issues that are not heard, even called very closed because media rarely exposes this case so that this case does not appear and has no legal force, and aims to minimize victims of intimidation for the cri

D. Benefits of research

In relation to the research objectives, this research is expected to provide benefits theoretically and practically:

a. Theoretically

Theoretically, it will contribute to the development of law science in general and the science of law. Furthermore, it can be a reference for other researchers to conduct further studies related to the implementation and application of the law and educate the public that there are laws that regulate intimidation, protect local communities in mining conflicts, so they are not silenced by intimidation cases. local people.

b. Practically

Practically, the public can take advantage of this research by using it as a source of information to better understand regulations/rules related to the law regarding intimidation, to prevent or anticipate problems before they occur.

E. Terms and Definitions

intimidation	the intimidation formula is also known. For example, the term 'threat of violence' is defined in Law Number 21 of 2007 concerning the Eradication of the Criminal Act of Trafficking in Persons ("TPPO Law"). Here, threats of violence are interpreted as any unlawful act in the form of words, writing, pictures, symbols, or bodily movements, either with or without the use of means that induce fear or curb one's essential freedoms.[10]

[10] Law Number 21 of 2007 concerning the Eradication of the Criminal Act

	The word intimidation contains the meaning of forcing, bullying, or threatening. The search that we conducted on the Criminal Code ("KUHP"), especially Book II (Crime), did not find the entry "intimidation" listed directly. In Indonesian criminal law, 'intimidation' is generally defined as 'by force or threat of violence' (door geweld or door bedreiging met geweld). This formulation, for example, is found in Article 146 of the Criminal Code regarding the use of 'force or the threat of violence' to disrupt legislative sessions: Whoever with violence or threats of violence dissolves a meeting of a legislature body, government body or people's representative body formed by or on behalf of the government, or forces said bodies to take or not take a decision or expels the chairman or members of said meeting, shall be punished by a maximum imprisonment of nine years.
mining	Mining is part or all the stages of activities in thecontext of research, processing and exploitation of minerals or coal which includes general investigation, exploration, construction feasibility studies, mining, processing, and refining,transportation, and sales, as well as post-mining activities.[11] In the Big Indonesian Dictionary, what

[11] Henry Campbell Black, Black Law Dictionary, Fifth Edition, Sint Paul Minn: West Publishing Co., 1979, hlm. 337.
[12] Undang-Undang No. 4 tahun 2009 (UUPMB), pasal 1 angka (1)

	is meant by mining is digging (taking) minerals from the ground. Then, Abrar Saleng stated thatthe mining business is essentially an attempt to extract minerals from the earth.[12]
customary land	Customary land is land with the members of the customary law community concerned. The right ofcontrol over the land of the customary customary land is customary land rights. These customary land rights consist of customary rights and customary property rights. Meanwhile, customary rights are the rights of a customary law community over the land environment of their territory which gives certain authority to customary rulers to regulate and lead the use of the land area of the legal community. These customary rights consist ofthe right to clear land or forest and the right to collect forest products. Customary property rights are individual rights and communal rights. An understanding of customary land law or customary land law is an important contribution, especially foreducation and studies in the field of law. Starting from two legal systems according to a conventional

[13] Abrar Saleng, Hukum Pertambangan, UII Press, Yogyakarta, 2004, Hal:90

	perspective, namely the customary law system andthe national legal system. This is because the two community legal institutions (community) customary law (adatrechtsgemeenscap) and community collective rights (community) law over land (bescikkingsrecht) in question are legalinstitutions according to the national legal system. Both institutions are related to land law. Talking about Land Law, in Indonesia the main provisions must refer to Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). [13]
land dispute	Land disputes or land disputes can be formulated as disputes or hostilities that make land rights the object of dispute. The implementation of rights andobligations in a legal relationship is often the source the emergence of legal disputes over land, namely if someone's rights granted by material laware violated, the interests of someone protected bymaterial law are denied. 16 Conceptually born rights support the existence of a legal relationship between legal subjects and legal objects. [14]

[14] Hukum pertanahan adat / Dr. Rosnidar Sembiring, S.H., M. Hum.Sembiring, Rosnidar, 1967-(pengarang)Depok: PT Raja Grafinfo Persada, 2017. Hak cipta 2017, pada penulis

[15] Mertokusumo dalam (Nia Kurniati) MediasiArbitrase" Untuk Penyelesaian Sengketa Tanah

F. Originality Of Research

Lelisari conducted a similar study in 2021 with the title "Setbacks in Corporate Social Responsibility Regulations in the Mineral and Coal Mining Sector". The revised Law Number 3 of 2020 on the amendment to Law Number 4 of 2009 regarding Mineral and Coal Mining as a result of discussion by the Working Committee has reshuffled 143 articles out of a total of 217 articles, meaning that 82% of the articles have been amended in Law Number 4 of 2009. This law is neither participatory nor transparent, so it is not in favor of implementing corporate social responsibility. This study aims to analyze and review corporate social responsibility arrangements in the mineral and coal mining sector.[17]

Fifink Praiseda Alviolita conducted a similar study in 2022 with the title "Protection of Indigenous Law Community Rights Against Criminalization in Defense Ulayat Land". This study raises the issue of how the rights of indigenous peoples are constitutional rights guaranteed in Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. However, empirical facts and data show that in defending their traditional rights on *ulayat* lands there are still cases of criminalization by officials. The traditional law of indigenous peoples does not just

[16] https://journal.unnes.ac.id/nju/index.php/pandecta/article/view/4190/3711

stop to be respected and appreciated rhetorically, but the government should be able to find the root causes of agrarian conflicts that occur in various parts of Indonesia and should be present in fulfilling the protection of the rights of indigenous peoples, especially in criminalizing treatment in defending their *ulayat* lands.[18]

Ria Casmi Arrsa conducted a similar study in 2014 with the title "Indications of The Criminalization of Human Rights Defenders in Agrarian Disputes". This study raises the issue of how to protect the law within the framework of freedom of expression in public in order to prevent the practice of criminalizing human rights defenders. The decision is considered a bad precedent considering that criminalization has resulted in the cessation of human rights defense activities, while violations of human rights actually end in the practice of impunity.[19]

Summary for those previous similar studies can be seen in the table below**:**

Previous Similar Studies	**Details**
Setbacks in Corporate Social Responsibility Regulations in the Mineral and Coal Mining Sector	facts show that corporate consumption of natural resources reaches more than 30 percent of what nature/environment can provide. The world is now starting to experience difficulties in getting clean water, tropical forests are dwindling, rare animal extinctions, air pollution and climate change. Article 1 paragraph 28a contains new

[17] Copyright (c) 2022 Fifink Praiseda Alviolitahttp://www.jrkhm.org/index.php/humanity/article/view/2/8

[18] Ria Casmi Arrsa https://jurnal.komisiyudisial.go.id/index.php/jy/article/view/93/7

Lelisari	provisions that threaten the community's living space because all activities ranging from investigations to mining are included in the community's living space.
Protection of Indigenous Law Community Rights Against Criminalization in Defense *Ulayat* Land: Fifink Praiseda Alviolita Copyright (c) 2022 Fifink Praiseda Alviolita http://www.jrkhm.org/index.php/humanity/article/view/2/8	This study raises the issue of how the rights of indigenous peoples are constitutional rights guaranteed in Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.
Indications of The Criminalization of Human Rights Defenders in Agrarian Disputes: Ria Casmi Arrsa	This study raises the issue of how to protect the law within the framework of freedom of expression in public in order to prevent the practice of criminalizing human rights defenders. The decision is considered a bad precedent considering that criminalization has resulted in the cessation of human rights defense

Ria Casmi Arrsa https://jurnal.komisiyudisial.go.id	activities, while violations of human rights actually end in the practice of impunity.

G. Literature Review

Land and land issues also have their own social space. These social spaces include the state, constitution and communities referred to as "outside the state", (Satjipto Raharjo, 2010: 152). The state is a big vessel for land and its problems. The existence of a social structure that is still full of social inequality also provides a stake in land disputes. This structure displays social layers in such a way that there is a significant gap between the haves and haves-not groups, not only economically, but also socially and politically. In conflicts, a kind of strong sociological argument usually applies, namely the hash out ahead, or in Javanese asoe gedhe won karabe (Satjipto Rahardjo, 2010: 154).

Conflict or it can be said that mining disputes come from the, which can be interpreted again that a dispute or conflict is a conflict that occurs in the implementation of mining activities (H. Salim, 2012: 210). Mining activities are activities that are never free from disputes. This is because mining companies are seen as companies that wallow in money and guarantee the future for the people living around the mines.

Land conflicts based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 11 of 2016, explained in Article 1 point 3 that land conflicts, hereinafter referred to as conflicts, are land disputes between individuals, groups, groups, organizations, legal entities,

or institutions that have a tendency or have had a broad impact. The settlement of selected land cases in this land dispute involves the National Land Agency directly.

1. **Intimidation**

Lexically intimidation is defined as an act of frightening or threatening. Based on the developed doctrine and jurisprudence, threats use force, even if only a little. In recent times the Hoge Read's decision can be concluded that the threat must meet the following requirements:

a. The threat must be uttered in such circumstances, to create an impression on the person being threatened, even if the threat can harm his personal freedom; And

b. The intent of the actor was intended to create that impression Intimidation According to Laws and Regulations

The word intimidation contains the meaning of forcing, bullying or threatening. The search that we conducted on the Criminal Code ("KUHP"), especially Book II (Crime), did not find the entry "intimidation" listed directly. In Indonesian criminal law, 'intimidation' is generally defined as 'by force or threat of violence' (door geweld or door bedreiging met geweld). This formulation, for example, is found in Article 146 of the Criminal Code regarding the use of 'force or the threat of violence' to disrupt legislative sessions:

Any person who with violence or threats of violence dissolves a meeting of a legislature body, government body or people's representative body formed by or on behalf of the government, or forces said bodies to take or not take a decision or expels the chairman or members of said meeting, shall be punished by a

maximum imprisonment of nine years.[20]

2. Intimidation According to Doctrine (Expert View) and Jurisprudence.

In doctrine, there are several views regarding the element of 'by force or threat of violence'. D. Simons argues that violence is any use of bodily force that is not too insignificant, or not too light. TJ Noyon and GE Langemeijer argue that geweld is an optreden krachtdalig or an act of acting with power. However, according to these two Dutch criminal experts, not every use of force can be included in the definition of violence. For example, if only light exertion.[21]

The problem is, the law does not provide an explanation of how the threat of violence (bedreiging met geweld) is carried out.[22] As a result, its meaning has developed in jurisprudence. According to Hoge Raad, several arrests made the conditions for theexistence of the threat, namely:

a. The threat must be uttered in such circumstances, to create an impression on the person being threatened, even if the threat can harm his personal freedom;

b. The intent of the actor was intended to create that impression.

For example, the act of threatening to shoot someone dead if the person being threatened does not comply with the wishes of the threat. This act is an act of threatening with violence. If he does fire a shot, that shot doesn't always erase the fact that the perpetrator actually meant it to make a threat. Such was the view of the Hoge Raad in his arrest on 14 June 1926.[23]

[20] R. Soesilo. *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal.* Bogor: Politeia, 1994.
[21] Dikutip dari PAF Lamintang dan Theo Lamintang. Delik-Delik Khusus Kejahatan Terhadap Kepentingan Hukum Negara. Edisi kedua. (Jakarta: Sinar Grafika, 2010), hal. 334
[22] Lamintang dan Theo Lamintang, hal. 334.
[23] . Soesilo, hal. 256-257

The phrase 'forcing people' can also be seen in Article 368 paragraph (1) and 369 paragraph (1) of the Criminal Code. Article 368 paragraph (1) of the Criminal Code: Whoever with the intention of wanting to benefit himself or another person by violating rights, forcing a person by force or threat of violence, so that person gives goods which are totally or partly the property of the person himself belonging to another person or so that person makes debts or writes off debts, shall be punished for extortion with a maximum penalty of nine years.[24]

3. Indonesia's New Criminal Code Introduces Corporate Crime

On the heel of a lengthy debate and despite the controversy surrounding it, Law No. 1 of 2023 on Indonesian Criminal Code ("Law 1/2023") has been promulgated on 2 January 2023. Law 1/2023 replaces the previous Criminal Code, which dates to the Dutch colonial era.

One notable change brought about by Law 1/2023 is the recognition of the concept of corporate crime in Indonesia. As many know, the old Criminal Code does not recognise corporations as legal subjects that can be liable for crimes. Indeed, the definition of criminal perpetrators was limited and confined to individuals, which means that typically, the management of a corporation will bear the criminal responsibility.

The discussion below will examine the concept of corporate crime in Indonesia under Law 1/2023.

[24] Muladi, Kapita Selekta Hukum Pidana, (Semarang: Badan Penerbit Universitas Diponegoro,

a. Corporations as Legal Subjects under Law 1/2023

As mentioned earlier, corporations may now be subject to criminal liability under Law 1/2023. This contrasts with the old Criminal Code, which only recognised crimes committed by a corporation's management or the individuals directly involved in the crime.

Besides limited liability companies, the term "corporation" in Law 1/2023 encompasses foundations, cooperatives, state-owned and regional government-owned enterprises, civil partnerships, firms, and other equivalent entities.[25]

b. Concept of Corporate Crime

Article 46 of Law 1/2023 defines a corporate crime as any criminal act committed by:

1) a member of a corporation's management that has a functional position within the structure of such corporation;
2) any person that has a working relationship or any other relationship that allows him/her to act for and on behalf of the corporation;
3) any person acting in the interest of the corporation;
4) any individual that ordered the crime; and
5) the controller and/or beneficial owner of the corporation.

[25] *Undang-undang (UU) Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana*

c. Application of Criminal Sanction

With regards to the application of criminal sanctions on corporations, Law 1/2023 sets out the requirements on when a corporation may be criminally liable, namely when:

1) the alleged crime falls within the scope of the corporation's business or activity as specified in its articles of association or any other provisions applicable to the corporation;
2) the alleged crime unlawfully benefits the corporation;
3) the alleged crime is accepted as the corporation's policy;
4) the corporation does not take preventive measures to prevent the damages from occurring and ensure compliance with the law; and/or
5) the corporation allows the alleged crime to occur.

The above requirements are not cumulative. As a result, the sanctions will apply even if a corporation only satisfies one of the above requirements.

4. Criminalization Criteria

Dealing with criminalization issues should consider a few criteria.The criteria put forward by Sudarto are as follows:

a. The use of criminal law must create a just and prosperous society based on Pancasila. At least the criminal law aims to prevent and overcome crime for the welfare and protection of the community.
b. Actions that are prevented must be the actions that bring harms (material or spiritual) to the community.
c. Principle The use of criminal law takes into account costs and results (cost benefit principle).[29]

Meanwhile, according to Moeljanto, criminalization in the criminal law reform process must have three criteria, namely:

a. Determination of an act as a prohibited act (criminal act).
b. criminal threats and criminal penalties to prevent the violation of prohibitions.
c. the government the state instruments should be really able to actually carry out the criminal threat if it turns out that the existing prohibitions are violated.[30]

5. Types of Criminal Acts in the Mining Sector

The Mining Law, in addition to discussing the criminal act of illegal mining, has various other criminal acts that are mostly directed at mining industry

[26] Sudarto, Kapita Selekta Hukum Pidana, 44-48.

[27] Moeljatno, Asas-Asas Hukum Pidana, (Jakarta: Bina Aksara, 1999),

players, and only one crime is directed at officials who issue permits in the mining sector. The types of criminal acts in mining are as follows:[31]

1) Criminal Act of Carrying Out Mining Without a Permit

   As already mentioned, the state has control over the earth, water and the natural resources contained therein, as well as mining. Referring to this, anyone who organizes mining activities in accordance with the regulations has permission from the previous state administrator or local government. If there is mining activity and the party carrying out the activity does not hold any permits, then the action can be categorized as a criminal act based on Article 158 of the Minerba Law which states that: Everyone who conducts a mining business without a Mining Business Permit (hereinafter abbreviated as IUP), People's Mining Permit (hereinafter abbreviated as IPR) or Mining Business Permit (IUPK) as referred to in Article 37, Article 40 paragraph (3), Article 18, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be subject to imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).[32]

2) Crime of Conducting Exploration Without Rights

   Carrying out mining business activities must obtain a permit, and for each permit issued two activities must be carried out - exploration and exploitation. Exploration activities include general surveys, exploration

[28] Gatot Supramono, 2012, *Hukum Pertambangan Mineral dan Batu bara di Indonesia*, cetakan ke-1, Rienaka Cipta, Jakarta, hlm.248.

[29] Pasal 158 Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batu bara

and feasibility studies. Exploration refers to the various stages of mining business activities to obtain detailed and accurate information regarding the location, shape, size, mass distribution, and measurable resources of mining materials, as well as information about the social and environmental environment (Article 1 point 15). Such permits are based on permits issued by the government, namely IUP or IUPK, and inspection without such permits is a criminal offense and must be punished in accordance with Article 160 paragraph (1) of the Minerba Law, a fine of up to one year in prison or a fine of Rp. 200,000,000 .00 (two hundred million rupiah).[33]

3) Crime of Hindering Mining Business Activities

Mining business actors who obtain permits from officials have the authority to carry out activities according to the specified area. The mining business activities occasionally do not operate smoothly due to interference from local residents. One of the causes of the disturbance is road damage due to heavy vehicles, rivers and rice fields being covered by excavated soil, and crop yields being damaged. Those who feel aggrieved usually protest in various ways in order that mining activities do not continue. Actions that disrupt mining industry activities are criminal offenses and are punishable by Article 162 of the Minerba Law, a maximum penalty of 1 year in prison and a fine of Rp. 100,000,000.00 (one hundred million rupiah). The impact of community intervention,

[30] *Ibid.*

mining entrepreneurs will feel uneasy because the mining project cannot be carried out and must be reflected in a psychological analysis so that entrepreneurs can avoid possible risks. for example, the roads running through the project should be repaired immediately before they are badly damaged, so that the community will definitely be happy.

4) Criminal Acts Relating to the Abuse of the Authority of the Licensing Officer.

   The criminal provisions discussed above mainly target the actions of the recipient/holder of a mining permit. In addition, the Minerba Law also regulates criminal acts against officials, as stated in Article 165 which reads:

   anyone who issues an IUP, IPR, or IUPK that contravenes this law and abuses their authority is subject to a criminal sanction of a maximum of 2 years in prison and a maximum fine of Rp. 200,000,000.00. Abuse of power is widespread, but granting permits to officials is restricted to as long as they only issue IUP, IPR or IUPK. The purpose of regulating this type of crime is that the officials can work properly and provide benefits to the community in an appropriate manner.[34]

5) Criminal Acts the Perpetrators of Legal Entities

   A legal entity is a group of people associated with an organization. If the establishment of an organization is authorized by the government, then the organization is called a legal entity. For companies in the form of

[31] *Ibid,* hlm.252.

limited liability companies, the ratification of the establishment contract is carried out by the Minister of Law and Human Rights and announced in the press of the Republic of Indonesia. Legal entity activities carried out by management. Because legal entities are considered human beings, legal entities can become criminals, and those who are responsible for everything that happens are the administrators.

In relation to criminals in the mining sector, legal entities can act as violators in accordance with Article 163 paragraph (1) of the Minerba Law. However, the law does not explain the definition of a legal entity. The term legal entity is mentioned in the meaning of business entity, namely in Article 1 paragraph (23) which reads:

Business Entity is any legal entity engaged in the mining sector established under Indonesian law and domiciled within the territory of the Unitary State of the Republic of Indonesia.

Legal entities here are executors of criminal acts in the mining industry, the punishment given by judges is not only imprisonment, but also fines for those who manage them. In addition, legal entities will be subject to fines whose weight is added to 1/3 of the maximum penalty fine decided, and judges can impose additional fines on the legal entities by revoking their business license and/or their status.[35]

[32] *Ibid.*

6. Mining Concept

a. Definition of Mining

Mining is part or all of the stages of activities in the context of research, processing and exploitation of minerals or coal which include general investigation, exploration, construction feasibility studies, mining, processing and refining, transportation and sales, as well as post-mining activities.[36] kamus besar bahasa indonesia, what is meant by mining is digging (taking) mining goods from the ground.[37]

From the definitions of mining above, it can be seen that mining is an attempt to extract and utilize excavated materials. To put it another way, in essence, the development of the mining and be utilized efficiently and optimally for the maximum benefit. people's prosperity.

It is known that Mineral resources are non-renewable resources. Therefore, its mining application is expected to be able to maintain a balance and safety of performance and environmental preservation and the surrounding community. [38]Several factors that affect the mining business are as follows:

1) Changes in the tax system.
2) Policies in the environment.
3) Bad economic situation.

[33] Undang-Undang No. 4 tahun 2009 (UUPMB), pasal 1 angka (1)
[34] Departemen Pendidikan dan Kebudayaan, Op. Cit, 1990, Hal:890
[35] Jacky miner, Teori Pertambangan I, (online) http://www.http./teori-pertambangan-i.html,

4) Poor deposit or metal prices.

5) Unstable political situation.

b. Types of Mines

Indonesia is rich in natural resources, especially from mining products. Types of objects called mining goods, produced from mining in our homeland, among others are:

1) Coal Mining

Coal mining activities are long-term activities, involve high technology and are capital intensive. Apart from that, the fundamental characteristics of the coal mining industry are clearing land and changing the landscape so that it has the potential to have an impact on the environment, social and economy of the community. Environmentally, the existence of coal mining has an impact on changes in the landscape, a decrease in soil fertility, a threat to biodiversity, a decrease in water quality, a decrease in air quality and environmental pollution. The post-operation mining industry also leaves mine pits and acid mine drainage. Former coal mining pits have the potential to cause environmental impacts related to water quality and quantity. The social impacts of coal mining include conflicts that occur between communities and companies, declining quality of public health, changes in people's mindsets and changes in social structure in society. The existence of coal

mining activities is able to become a pioneer of the economy, encourage regional development, provide regional and national economic benefits, provide supporting business opportunities, build new infrastructure, provide employment opportunities, open isolation of remote areas and increase knowledge by transferring technology to communities around mining. [39]

2) Crude oil

Crude oil that has just come out of an exploration well

contains a variety of different chemical substances either in the form of gas, liquid or solid. More than half (50-98%) of these substances is carbon. The main compounds contained in petroleum are aliphatic, alicyclic and aromatic (Supriharyono 2000). Petroleum is found together with natural gas. Petroleum that has been separated from natural gas is also called crude oil.Crude oil can be distinguished by:

A. Light crude oil, contains low levels of metals and sulphur, islight in color and is runny (low viscosity).

B. Heavy crude oil, containing high levels of metals and sulphur,has a high viscosity so it must be heated to melt.[40]

3) Gold Seed

[39] 318767-coal-mining-environmental-impact-ddaa3d1e.pdf
[40] http://eprints.polsri.ac.id/966/3/BAB%20II.pdf

One of the main types of mining goods is gold. It can even be regarded as a reserve of a country's wealth. Gold is made into jewellery with a very high selling value. Even the price has never decreased and tends to continue to rise. Not infrequently gold is used as a long-term investment because it has a fairly high opportunity.

4) Nickel

Nickel is a metal whose use is widely mixed with iron to make it rust-resistant and to make steel, mixed with copper to make brass and bronze. In addition, nickel is used to make coins.

5) Iron ore

The iron items in our homes are originally made of small iron ores eventually processed into iron blocks and moulded as needed.

In the classification of mining products according to Law Number 4 of 2009 concerning mineral and coal mining, in fact it does not explicitly regulate the division of mineral groups as in Law Number 11 of 1967. The classification of minerals is regulated based on mining business groups, according to article 4, namely:

a. Mining businesses are grouped into:
   1) Mineral mining;
   2) Coal mining;
b. Mineral mining as referred to is classified into:

1) Radioactive mineral mining;
2) Metal mineral mining;
3) Mining of non-metallic minerals;
4) Rock mining.[41]

7. Division of Authority between Central Government and Local Government

Prior to the enactment of Law Number 22 of 1999 concerning Regional Government, the central government had the authority to manage mining natural resources. This is because the government system prior to the enactment of Law 22 of 1999 was centralized. The official authorized to grant the permit is the minister, in this case the Minister of Energy and Mineral Resources. However, since the enactment of Law Number 22 of 1999, the authority in granting permits has been delegated to the regional government (provincial, district/city) and the central government in accordance with their respective authorities.[42]

In Law Number 11 of 1967 there is no regulated authority from local governments in mining management, but Articles 6, 7, and 8 of Law Number 4 of 2009 concerning Mineral and Coal mining regulate in detail the authorities of the government, provincial and district governments /city in mining management.[43]

[41] Sudrajat Nandang, Teori dan Praktik Pertambangan Indonesia, Pustaka Yustisia, 2013, Yogyakarta. Hal 77.
[42] H. Salim HS, 2004, Hukum Pertambangan di Indonesia, PT. RajaGrafindo Prasada, Jakarta, Hal 49-50.
[43] Ibid, hal 50.

The authority of the central government in the management of mineral and coal mining article 6 includes:

a. Determination of national policies;
b. Making laws and regulations;
c. Determination of national standards, guidelines, and criteria;
d. Establishment of a national mineral and coal mining permit system;
e. Determination of WP carried out after coordinating with the regional government and consulting with the House of Representatives of the Republic of Indonesia;
f. Granting IUP, fostering, resolving community conflicts, and supervising mining businesses located across provincial areas and/or sea areas more than 12 miles from the coastline;
g. Granting of IUP, fostering, resolving community conflicts, and supervising mining businesses whose mining locations are in cross-provincial areas and/or sea areas more than 12 miles from the coastline;
h. Granting IUP, fostering, resolving community conflicts, and supervising mining production operations that have direct environmental impacts across provinces and/or in a sea area more than 12 miles from the coastline.
i. Granting of Exploration Mining Business License (IUPK) and Production Operation Special Mining Business License (IUPK);
j. Evaluation of Production Operation Mining Permits issued by local governments;

k. Determination of production, marketing, utilization, and conservation policies;
l. Establishing policies for cooperation, partnership, and community empowerment;
m. Formulation and determination of non-tax state revenue from mineral and coal mining business results;
n. Fostering and supervising the management of mineral and coal mining carried out by local governments;
o. Fostering and supervising the preparation of regional regulations in the mining sector;
p. Inventory, investigation, and research and exploration in order to obtain data and information on minerals and coal as materials for the preparation of WUP and WPN;
q. Management of geological information, information on potential mineral and coal resources, as well as mining information at the national level;
r. Guidance and supervision of post-mining land reclamation;
s. Preparation of the national level mineral and coal resource balance;
t. Developing and increasing the added value of mining business activities; and
u. Increasing the capacity of government officials, provincial governments and district/city governments in the management of mining businesses.

The provincial authorities in the management of mineral and coal mining in article 7 include:

a. Making regional laws and regulations;
b. Granting IUP, fostering, resolving community conflicts and supervising mining businesses across regencies/municipalities and/or sea areas from 4 to 12 miles;
c. Granting IUP, fostering, resolving community conflicts and supervising mining business production operations whose activities are located across regencies/municipalities and/or sea areas from 4 miles to 12 miles;
d. Granting IUP, fostering, resolving community conflicts and supervising mining businesses that directly impact the environment across districts/cities and/or sea areas from 4 miles to 12 miles;
e. Inventory, investigation and research as well as exploration in order to obtain data and information on minerals and coal in accordance with their authority;
f. Management of geological information, information on potential mineral and coal resources, as well as information on mining in the province/region;
g. Preparation of balance sheet of mineral and coal resources in the province/region;
h. Developing and increasing the added value of mining business activities in the province;
i. Development and improvement of community participation in mining business by taking into account environmental sustainability;
j. Coordination of licensing and supervision of the use of explosives in mining areas in accordance with their authority;

k. Submission of information on the results of the inventory, general investigation, and research and exploration to the Minister and the Regent/Mayor;
l. Submission of information on production results, domestic sales, and exports to the Minister and Regents/Mayors;
m. Guidance and supervision of post-mining land reclamation; and
n. Increasing the capacity of provincial government apparatus and district/city governments in the management of mining business.

The authority of district/city governments is regulated in Article 8 of Law Number 4 of 2009 concerning Minerals and Coal, including:

a. Making regional laws and regulations;
b. Granting IUP and IPR, fostering, resolving community conflicts and supervising mining businesses in regencies/municipalities and/or sea areas up to 4 miles away;
c. Granting IUP and IPR, fostering, resolving community conflicts and supervising production operation of mining businesses whose activities are located in regencies/municipalities and/or sea areas up to 4 miles away;
d. Inventory, investigation and research, as well as exploration in order to obtain data and information on minerals and coal;
e. Management of geological information, information on mineral and coal potential, as well as information on mining in regencies/municipalities;
f. Preparation of balance sheet of mineral and coal resources in regency/municipal areas;

g. Development and empowerment of local communities in mining businesses by taking into account environmental sustainability;
h. Optimal development and improvement of added value and benefits of mining business activities;
i. Submission of information on the results of inventories, general investigations, and research as well as exploration and exploitation to the Minister and the Governor;
j. Submission of information on production results, domestic sales, and exports to the Minister and the Governor;
k. Guidance and supervision of post-mining land reclamation; and
l. Increasing the capacity of district/city government apparatus in the management of mining business.

The authority of the Regency/City is carried out in accordance with the provisions of the applicable laws and regulations. Although local governments are given the authority to manage mining, all policies related to mining are still dominated by the central government. For example, the regent/mayor and the mining company sign the contract of work in the area of authority of the district/city government but all matters relating to the substance of the contract of work have been determined by the central government. This means that the Regency/City government cannot develop the substance of the contract of work based on regional needs.[44]

[44] Ibid, hal 53.

H. Research Methods

1. Type of Research

This research is bearing mainly a normative legal study, in which the methods that are applied shall be centered on legal documents as the primary source.

2. Approach of Research

This study uses a legal, historical, conceptual, and comparative approach. The legal approach in this study aims to answer the first and second problem formulations. The first problem formulation is used to analyze how the legal protection against criminalization of small communities. In addition, this approach is also used to find and analyze how to overcome this problem so that there are no more victims. The historical approach in this study aims to analyze the development of mining law in Indonesia, especially coal mining and many small communities are victims. The conceptual approach aims at analyzing the second problem formulation related to the choice to develop a national legal instrument on the criminal law for the criminalization of small communities. A comparative approach is used to analyze the relationship between central government and criminal mining laws.

3. Sources of Data

a. Primary source of data

Derived from generally accepted laws and regulations, namely regulations related to the supervision of mining companies in

particular, regional regulations that regulate and central regulations regarding the criminalization of mining against small communities.

b. Secondary source of data

The secondary data in this study are in the form of books or journal articles that support and provide information on primary legal materials.

c. Tertiary source of data

Tertiary Law materials are in the form of dictionaries, encyclopedias.

d. Data Collection

The process of data collection is done through both library studies and, if possible and only to some certain extent, small-scale field studies would also be conducted.

e. Data Analysis

In the process of data deduction at the time of drawing the conclusions of this study, qualitative analysis methods are used. This is done by describing the data and information obtained through explanations or explanations that are judged based on the law, the opinions of experts, and accompanied by the researcher's arguments.

4. Systematic of the Writing

The writing of this paper is organized as follow:

CHAPTER I – INTRODUCTION

This very first chapter presents the bedrock of the research. Not only it sets out the current legal issue that makes up the core of the research which then leads to the research problems as presented, but it also delivers the methods applied in this research, and why is it necessary to conduct an in-depth study of this particular topic. A number of prior studies on similar aspects is also presented in order to imply a degree of originality in this work.

CHAPTER II – THEORETICAL FRAMEWORK

This section analyzes the formulation of the problem posed. Furthermore, grouping of legal sources and theoretical framework is carried out. Then a comparative analysis was carried out. The results of the analysis will be used to answer the problem formulation. provide an overview of the contents of the thesis.

CHAPTER III – ANALYSIS

This chapter discusses the main legal sources that have been collected and grouped according to the theoretical framework that has been presented previously. a comparative analysis is carried out on the general review analysis that has been carried out in Chapter II. The results of this analysis process will be used to answer the formulation of the problems.

CHAPTER IV – CLOSURE

The final chapter re-strengthens the writer’s argument on the paper redefining conclusion and recommendation

CHAPTER II

WHY IS THERE NO INTIMIDATION PROTECTION FOR LOCAL PEOPLE WHO DEFEND THEIR LAND RIGHT TO COAL COMPANIES IN TANAH BUMBU DISTRICT

A. Definitions of Criminal Offense

Indonesia is a constitutional state, so administrators, communities and legal entities must comply with applicable laws. However, in fact many people violate existing laws and regulations. Violated regulations can be divided into civil, administrative, and criminal. Communities, individuals, orlegal entities that commit criminal acts or violate the law in the criminal field are called criminal acts. Criminal acts in English are called criminal acts or criminal offenses, while criminal acts in Dutch are called *strafbaar feit* which means actions related to crime.

Here are some experts' opinions regarding the definition of a crime:

a. According to Teguh Prasetyo, crime is defined as "Behavior that is punished under the rule of law and must be punished. What is meant by behavior here is not only active behavior (doing something that is actually prohibited by law), but also negative behavior (not doing what required by law).[45]

b. According to Moeljatno, criminal acts are the acts that only include actions. a criminal act here only refers to the nature of the act, the nature

[45] Teguh Prasetyo, 2013, *Hukum Pidana*, PT Raja Grafindo Persada, Jakarta, hlm.50.

of which is prohibited with the threat of punishment if violation occurs.[46]

c. Utrecht contended that a crime is a criminal event and is often referred to as a crime because of negligent behavior that results from this negligence.[47]

d. According to Wirjono Prodjodikoro, a crime is an act in which the perpetrator gets a criminal sentence, so that the perpetrator is said to be the subject of a crime.[48]

e. Vos stated that criminal acts are human behavior that is punished by criminal law.[49]

f. Pompe interpreted "strafbaar feit" as a violation of norms (disturbing law and order) carried out intentionally or unintentionally by perpetrators. In this case, when the decision is made against the perpetrator, he maintains law and order and guarantees legal interests.[50]

a. Criminal Offense Definition

The elements of a crime are divided into theoretical and statutory angles. The theoretical point of view is the thinking of a legal expert, while the law point of view is how the reality of criminal behavior is formulated into criminal behavior in existing laws and regulations.

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[46] Moeljatno. 1984.Asas-*asas Hukum Pidana di Indonesia*, cetakan ke-3, Eresco, Jakarta-Bandung, hlm.50.
[47] Moeljatno, 2005, *Asas-asas Hukum Pidana*, Bina Aksara, Jakarta, hlm.20.
[48] Wirjono Prodjodjokro, 1981, *Tindak Pidana Tertentu di Indonesia*, Jakarta-Bandung, hlm.50.
[49] Andi Hamzah, 2004, *Asas-Asas Hukum Pidana Edisi Revisi*, Rineka Cipta, Jakarta, hlm.97.
[50] Erdianto Effendi, 2014, *Hukum Pidana Indonesia Suatu Pengantar*, PT. Refika Aditama, Bandung, hlm.97.

b. Elements of a Criminal Act According to theoretical point of view, Adami Chazawi formulates the elements of a crime from various opinions of legal experts:

a) According to Moeljatno, the criminal elements are as follows:

1. Deeds
2. What is prohibited; (by rule of law)
3. Criminal threats (for those who violate the prohibition)

b) According to Jonkers, the criminal elements include:

4. deed (which)
5. Against the law (associated with)
6. Mistakes (made by people who can)
7. Accountable

c) Schravendijk put forward the following elements:

8. Behavior (person)
9. Contrary to legal convictions
10. Threatened with the law
11. Performed by people (who can)
12. Blame/fault.

Even though the details of the three formulations above seem different, basically there is still one thing in common, namely the elements related to a person's behavior cannot be separated from those related to that person.

c. Elements of Criminal Acts in the Act.

According to Lamintang the criminal acts contained in the Criminal Code (hereinafter abbreviated as the Criminal Code) can be broken down into 2 types of elements - subjective elements and objective elements.[51]

3. The subjective element is an element that is attached to or related to the actor and includes all the contents contained in his mind. The subjective elements of a crime include:
    - Intentional or accidental (dolus or culpa)
    - Intent or *Voornemen* on an attempt or *pogging* as referred to in Article53 paragraph (1) of the Criminal Code
    - Various purposes or *ogbrands* as contained, for example, in the crimesof theft, fraud, extortion, counterfeiting and others
    - Planning in advance or *voorbedachte raad* as contained in the crime ofmurder according to Article 340 of the Criminal Code
    - The feeling of fear is included in the formulation of a crime accordingto Article 308 of the Criminal Code.
4. Objective elements are elements related to circumstances, in which behavior must be adjusted to what was done from the crime, including:
    - The nature of breaking the law or *wederrechtelicjkheid*
    - The quality of the perpetrator, for example the situation as a civil servantin a crime of office according to Article 415 of the Criminal Code or the

[51] P.A.F. Lamintang, 1997, *Dasar-Dasar Hukum Pidana Indonesia*, Citra Aditya Bakti, Bandung, hlm. 193-194.

situation as an administrator or commissioner of a Limited Liability Company in a crime according to Article 398 of the Criminal Code

- Causality is the relationship between a crime as a cause and a reality asa result.

3. Types of Crime

The Criminal Code itself has divided criminal acts or crimes into two categories - crimes and violations in the "Second Book" and "Third Book" respectively. Then These articles are grouped according to the purpose of prevention criminal offenses in the Criminal Code. For example, the first chapter of the second book is a crime against national security, so this is series of crimes against national security.[52]

1. Crimes and Offenses

   The Criminal Code places crimes in the second book and violations in the third book, but does not explain what crimes and violations are. Crime is a *rechtsdelict* or legal offense, namely an act that violates a sense of justice, such as killing, injuring another person, committing theft and so on. While violations of wet delict or statutory delicts are things that have been determined by laws and regulations, such as when driving a motorcycle must wear a helmet or have a driver's license while driving a vehicle.[53]

2. Formal Offenses (Formal) and Material Offenses (Material)

[52] Teguh Prasetyo, 2018, *Hukum pidana*, cetakan ke-9, PT Raja Grafindo Persada, Depok, hlm.58.

Formal offenses are criminal acts that have been completed or in other words, the focus is on the behavior itself without blaming the actions and the result is just a fluke. As Article 160 (sedition) if the sedition is over, it doesn't matter what incites to follow such sedition, Art 362 (theft), and Articles 209- Article 210 (bribery). The other side of material offenses is their focus on the consequences of prohibition. if the consequences have occurred then the crime is deemed to have been completed or ended or in other words what is prohibited in this delict are the consequences and the behavior is a problem, for example Article 338, the most important thing is one's death can be done by choking, stabbing, shooting, and others.[54]

3. *Dolus delict* and culpa delict

   Dolus offenses are offenses that contain an element of intent or other similar words as known to them and others, for example in Article 162, Article 197, Article 310, Article 338, while the culpa offense is an offense containing negligence such as Article 359, Article 360, Article 195 which it sometimes uses the term error[55]

B. Minerba Law Regulations

1. Mining in Indonesia

   Indonesia is one of the countries that has abundant and largest natural wealth in the world. One of these natural resources is in the mining sector, especially in the mineral and coal sectors. Mining is

[54] *Ibid*, hlm.59.
[55] *Ibid*, hlm.60.

one of the attractions for foreign investors to invest in Indonesia. The distribution of natural resources (SDA) from mining is spread throughout Indonesia. Mining is very important for the government because this sector is a resource that has the potential to improve the country's economy. Thus, the government as a regulator must be able to manage the mines properly.

2. Mineral and Coal Regulation in Indonesia

   The management of natural resources in Indonesia is based on Article 33 paragraph (3) of the 1945 Constitution which expressly states that: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

   In the management and regulation of the mining sector, the Indonesian state stipulates Law No. 11 of 1967 concerning Basic Mining Provisions.

   However, as post-reform thinking progresses, Law no. 11 of 1967 was deemed to not fit the government's political-economic conditions that were ongoing at that time, especially in the mining sector, so that Law No. 4 of 2009 concerning Mineral and Coal Mining was enacted.

   In Law No. 4 of 2009 there are new provisions that regulate the relationship between the state and investors.

3. Revision of Minerba Law

This revision of Law No. 4 of 2009 has been included in the national legislation program (prolegnas) since 2015.

However, this revision reaps the pros and cons. For Investors, this revision is a bright path for investors in developing their businesses because the provisions contained in the revision are easier and more profitable.

On the other hand, the community thinks that the revision of the Minerba Law contains the interests of expanding investment and mining exploitation, and ignorance of people's rights.

The revision of Law No. 4 of 2009 concerning Mineral and Coal Mining or the Minerba Law, was passed into law at the DPR Plenary Meeting on May 12 2020 to become Law Number 3 of 2020 on the amendment to Law Number 4 of 2009 regarding Mineral and Coal Mining.

4. Substance Changes in the Minerba Law

   In the body of the revised Minerba Law there are changes to the formulation of norms that are refined and consist of 15 regulatory points.

   First, related to the control of minerals and coal. In the discussions it was agreed that control over minerals and coal would be held by the central government through the functions of policy, regulation, administration, management and supervision.

Second, the mining area is agreed as part of the legal mining area. Third, there is a guarantee from the central government and regional governments (*Pemda*) not to make changes to the use of space and areas of the mining business permit area (WIUP), Including community mining areas (WPR) and special mining permit areas (WIUPK) that have been stipulated, as well as guaranteeing the issuance of other permits needed in the implementation of mining business activities.

Fourth, regarding the WPR, if previously it was given a maximum area of 25 hectares and a maximum depth of 25 meters, through the revision of the Minerba Law it is given a maximum area of 100 hectares. Then it has metal mineral reserves with a maximum depth of 100 meters.

Fifth, mining business is carried out based on business permits from the central government. The types of permits in the revised Minerba Law consist of mining business permits (IUP) and special mining business permits (IUPK). Regarding the granting of permits, the central government can delegate the authority to issue business permits to the Governor.

Sixth, with regard to the Regional Government's share of the proceeds of mining activities, if the provincial government used to receive a 1 percent share, now the revised Minerba Law allows the share increases to 1.5 percent. Seventh, there is an obligation for the

Minister to provide mining data and information to support the preparation of mining areas (WP); develop science and technology; and transferring mining technology. Eighth, there is an obligation for IUP and IUPK holders to use mining roads in carrying out mining business activities.

Ninth, there is an obligation for IUP and IUPK holders to allocate funds for the implementation of community development and empowerment programs, the minimum amount of which is determined by the Minister.

Tenth, it is obligatory for business entities holding Production Operation IUP or Production Operation IUPK whose shares are owned by foreigners to divest 51 percent of their shares.

Eleventh, it is obligatory for holders of Production Operation IUP and Production Operation IUPK to provide mineral and coal reserve resilience funds used for discovery of new reserves.

Twelfth, with regard to reclamation and post-mining activities, the holder of a Production Operation IUP or Production OperationIUPK before shrinking or returning their WIUP or WIUPK is required to carry out reclamation and post-mining until a 100 percentsuccess rate is achieved. Likewise, ex-IUP or IUPK holders who have expired are required to carry out reclamation and post-mining activities until they achieve a 100 percent success rate, and place post-mining guarantee funds.

Thirteenth, the responsibility for managing the budget, infrastructure, and the operation of the mine inspector in carrying out supervision is borne by the Minister.

Fourteenth, unlicensed mining activities which were previously subject to a maximum prison sentence of 10 years and a maximum fine of IDR 10 billion have been changed to a maximum of 5 years and a maximum fine of IDR 100 billion. Or reduce corporal punishment, but increase the maximum value of fines.

Fifteenth, since the law was enacted there have been several things, such as IUP, IUPK, IPR, IUP Production Operations specifically for transportation and sales, and IUJP (Mining Service Business Permits) that existed before the enactment of this Law are declared to remain valid until the permit expires.

Sixteenth, local communities who have suffered losses due to mining company activities are not only unable to report to the regional government anymore. Even worse, it can be seen from the wording of Article 162 of the Minerba Law No. 3 of 2020, that people who try to interfere with mining activities in any form can be reported back by the company and subject to criminal penalties, even fines of up to 100 million rupiah.

This very unreasonable rule actually swayed and was appreciated by the President, in the midst of rampant injustice and criminalization that many companies have committed against communities in

mining areas. Through the new Minerba Law, not only will local communities be depleted of their natural wealth by a handful of mining conglomerates, those who try to refuse their area to be exploited will be subject to criminal penalties.

Then IUP, IUPK, IPR, Production Operation IUP specifically for transportation and sales, and IUJP that existed prior to the enactment of this Law, must comply with provisions related to business licensing in accordance with the provisions of this Law within a period of 2 years from the enactment of the Law.

In the Minerba sector, the main legislation that applies is the Minerba Law (Law) namely Law no. 4/2009, which has been amended through the issuance of Law no. 3/2020. The Minerba Law was issued as a direct observation of Article 33 of the 1945 Constitution on the Mineral and Coal Mining (Minerba) sector.

At the PP (Government Regulation) level, there are several reference regulations for the Minerba sector, one of which is PP No. 23/2010 concerning Implementation of Minerba Business Activities. This PP has been amended several times, with the last amendment being stipulated by PP No. 8/2018. The government also publishes several other PPs as derivative regulations of the Minerba Law, including PP No.22/2010 and PP No. 55/2010.

In relation to implementing regulations, there are several Ministerial Regulations (Ministerial Regulations) that serve as references, including

the Minister of Energy and Mineral Resources Regulation concerning Mineral and Coal Exploitation (ESDM Regulation No. 25/2018, the latest amendment to the Minister of Energy and Mineral Resources Regulation No. 17/2020) and the Minister of Energy and Mineral Resources concerning Evaluation of the Granting of IUP (Permit Mining Business (Permen ESDM No. 43/2015).[56]

a. Mining business is an activity to optimize the utilization of mining natural resources (minerals) found in Indonesian soil.[57] In Law Number 4 of 2009 concerning Mineral and Coal Mining Article 1 paragraph (1) it is stated that mining is part or all of the stages of activity in the context of research, management and exploitation of Mineral or Coal which includes general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, as well as post-mining activities.[58] It can be ascertained that the mining business is business-oriented, because there is an investor willing to invest in the mining sector, which has previously calculated profit and loss.[59] The existence of mines is generally located in rural areas far from villages, usually in the mountains and labor is rarely around. The mining business is a kind of natural resource exploitation business activity which includes the stages of site investigation activities, mining

[56] https://heylawedu.id/blog/revisi-undang-undang-minerba-apa-saja-perubahannya
[57] Salim HS, Op.Cit., hal. 53.
[58] Pasal 1 ayat (1) Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara.
[59] Gatot Supramono, *Op.Cit*., hlm. 14

construction, processing, refining, transporting, and selling of mining materials.[60] In addition, this mining activity is closely related to the environment life, because the work of the mining is nothing more than the activity of digging the soil/earth to take the mining object. If the mining is completed, then the mining activities do not stop there. The miner is obliged to return the soil to its original state. Mining has several characteristics, namely: non-renewable, has a relatively higher risk and its exploitation has a relatively higher environmental and physical impact than the exploitation of other commodities in general. Due to its non-renewable nature, mining entrepreneurs are always looking for reserves new.[61] This causes several kinds of risks in the mining sector, such as: exploration risks related to the search for production reserves, technology risks related to cost uncertainties, market risks related to price changes and government policy risks related to changes in taxes and domestic prices. These risks relate to the magnitudes that affect business profits, namely production, prices, costs and taxes. To put it simply, businesses with a higher risk demand higher returns on profits. Mining activities become paradoxes in life, on the one hand they provide benefits, on the other hand they lead to environmental problems, when exploitation is carried out excessively.

[60] Pasal 1 ayat (6) Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara

[61] Adrian Sutedi, *Op.Cit*., hlm. 43.

Environmental impacts due to mining exploitation become an environmental problem resulting in pollution and environmental damage, such as deforestation, polluting water (rivers, lakes and seas) and polluting the air for energy. These environmental impacts can also be social in nature, namely the loss of livelihoods for people who previously lived from forest products,.[62] According to Law Number 23 of 1997 concerning Environmental Management Article 1 paragraph (14), environmental destruction is an action that causes direct or indirect changes to its physical and/or biological characteristics which leads to malfunctions of the environment in supporting sustainable development.[63] For example, in a simple way, residents can pan for gold. The environmental impacts of mining differ from one type of mine to another other. Existing mines are far below the earth's surface such as oil and gas mines (oil and gas) so mining is done by drilling wells. Therefore, mining relatively does not require large areas on the surface. There are mines that are excavated on the surface or mines by tunneling near the surface such as coal, copper, gold and others so that they require relatively large areas on the surface and as a result the physical and social environmental impacts are greater.

b. Types of Criminal Acts in the Mining Sector

[62] N.H.T. Siahaan, *Hukum Lingkungan dan Ekologi Pembangunan*, Ed. Kedua, Erlangga, Jakarta, 2004, hlm. 281.
[63] Pasal 1 ayat (14) Undang-Undang Nomor 23 Tahun 1997 Tentang Pengelolaan Lingkungan Hidup.

besides discussing illegal mining crimes, there are also various other crimes, most of which are directed at mining industry players, and only one crime is directed at officials who issue permits in the mining sector. The types of criminal acts in mining are as follows:[64]

a. Criminal Act of Carrying Out Mining Without a Permit

   As already mentioned, the state has control over the earth, water and the natural resources contained therein, as well as mining. Referring to this, anyone who organizes mining activities in accordance with the regulations has permission from the previous state administrator or local government. If there is mining activity and the party carrying out the activity does not hold any permits, then the action can be categorized as a criminal act based on Article 158 of the Minerba Law which states that:

   Everyone who conducts a mining business without a Mining Business Permit (hereinafter abbreviated as IUP), People's Mining Permit (hereinafter abbreviated as IPR) or Mining Business Permit (IUPK) as referred to in Article 37, Article 40 paragraph (3), Article 18, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) shall be punished with imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp.10,000,000,000.00 (ten billion rupiahs).[65]

[64] Gatot Supramono, 2012, *Hukum Pertambangan Mineral dan Batu bara di Indonesia*, cetakan ke-1, Rienaka Cipta, Jakarta, hlm.248.

[65] Pasal 158 Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batu bara

b. Crime of Conducting Exploration Without Rights

Carrying out mining business activities must obtain a permit, and for each permit issued, two activities must be carried out - exploration and exploitation. Exploration activities include general surveys, exploration and feasibility studies. Exploration refers to the various stages of mining business activities to obtain detailed and accurate information on the location, shape, size, mass distribution, and measurable resources of mining materials, as well as information on the social and environmental (Article 1 point 15). Such permits are based on permits issued by the government, namely IUP or IUPK, and inspection without such permits is a criminal offense and must be punished in accordance with Article 160 paragraph (1) of the Minerba Law, a fine of up to one year in prison or a fine of Rp. 200,000,000 .00 (two hundred million rupiah).[66]

c. Criminal Act as the Holders of Exploration Mining Permit do not Carry out Production Operations

Basically, someone who carries out mining business activities mines land by cultivating it, then sells the mining income and makes a profit from the sale. As mentioned above, mining business activities include exploration and exploitation. Therefore, there are two additional business development phases that must be carried out according to activity procedures

[66] hlm.249.

exploration then exploitation. In this regard, especially after carrying out exploration activities, IUP holders used for exploration cannot carry out production operations until a production IUP is obtained. Each violation will be punished under Article 160 paragraph (2) of the Minerba Law with a maximum penalty of 5 years in prison and a fine of Rp. 10,000,000,000.00 (ten billion rupiah). According to this rule, the government uses it as a means of controlling mining companies that do not have permits when carrying out exploration activities as followed by direct permits to carry out production operation activities but do not have an exploitation mining business permit.

d. Crime of Hindering Mining Business Activities

Mining business actors who obtain permits from officials have the authority to carry out activities according to the specified area. However, the activities sometimes do not run smoothly due to interference from local residents. One of the causes of the disturbance is road damage due to heavy vehicles, rivers and rice fields being covered by excavated soil, and crop yields being damaged. Communities who feel aggrieved usually protest in various ways in order that mining activities do not continue. Actions that disrupt mining industry activities are considered criminal offenses and are punishable by Article 162 of the Minerba Law, a maximum penalty of 1 year in prison and a fine of Rp.

100,000,000.00 (one hundred million rupiah). The impact of community intervention, mining entrepreneurs will feel uneasy because the project cannot be carried out and must be reflected in a psychological analysis so that entrepreneurs can avoid possiblerisks. for example, the roads running through the project should be repaired immediately before they are badly damaged, so that the community will definitely be happy.[67]

e. Criminal Acts Relating to the Abuse of the Authority of the Licensing Officer.

The criminal provisions discussed above mainly target the actions of the recipient/holder of a mining permit. In addition, the Minerba Law also regulates criminal acts against officials, as stated in Article 165 which reads:

anyone who issues an IUP, IPR, or IUPK that contravenes this law and abuses their authority is subject to a criminal sanction of a maximum of 2 years in prison and a maximum fine of Rp. 200,000,000.00.

Abuse of power is indeed widespread, but the granting of permits to officials is restricted as long as they only issue IUP, IPR or IUPK. The purpose of regulating this type of crime is that these officials can work properly and provide benefits to the community in an appropriate manner.

[67] *Ibid.*

f. Criminal Acts of the Perpetrators of Legal Entities

A legal entity is a group of people associated with an organization. If the establishment of an organization is authorized by the government, then the organization is called a legal entity. For companies in the form of limited liability companies, ratification of the establishment contract is carried out by the Minister of Law and Human Rights and announced in the press of the Republic of Indonesia. Legal entity activities carried out by management. Because legal entities are considered human beings, legal entities may become criminals, and those who are responsible for everything that happens are the administrators.

In relation to criminals in the mining sector, legal entities can act as violators in accordance with Article 163 paragraph (1) of the Minerba Law. However, the law does not explain the definition of a legal entity. The term legal entity is mentioned in the meaning of business entity, namely in Article 1 paragraph (23) which reads:

Business Entity is any legal entity engaged in the mining sector that is established under Indonesian law and domiciled within the territory of the Unitary State of the Republic of Indonesia.

Legal entities here are executors of criminal acts in the mining industry, the punishment given by the judge is not only imprisonment, but also fines for those who manage it. In addition, legal entities will be subject to fines whose weight is added to 1/3 o

the maximum penalty fine decided, and judges can impose additional fines on the legal entities by revoking their business license and/or their status.

1. Intimidation is lexically defined as the act of frightening or threatening. Based on our research, there is no entry 'intimidation' in Book II of the Criminal Code. However, there are several articles that contain the phrase 'with violence or threats of violence' which is interpreted as intimidation by the perpetrator towards the witness/victim. However, the legislators did not provide an explanation of how violence or threats of violence weIntimidation is lexically defined as the act of frightening or threatening. Based on our research, there is no entry 'intimidation' in Book II of the Criminal Code. However, there are several articles that contain the phrase 'with violence or threats of violence' which is interpreted as intimidation by the perpetrator towards the witness/victim. However, the legislators did not provide an explanation of how violence or threats of violence were carried out.re carried out.

A. Negative Impacts of Mining on the Environment

1) Mining activities will certainly damage the environment

To obtain mining products, it is necessary to dig into the earth. No wonder the excavations have formed holes, tunnels, to basins that are not small in size. In addition, the environment around the mining area is damaged. As happened on the island of Borneo, there are many pools formed as a result of coal excavation.

Many of these pools are not backfilled with soil so that when it rains and for a long time, eventually the former excavations turn into ponds. Other examples can be found on hills or mountains, where soil is dredged and taken to be sent to several areas. So do not be surprised if there are no more hills or mountains. as a result, when the rains come, natural disasters such as landslides and floods cannot be avoided anymore, because there are no rainwater catchment areas available.[71]

2) Changes in the structure of the earth's surface

As it is known, mining means digging to find natural resources that are in the earth. This activity will definitely change the shape of the earth's landscape, especially for mining activities that use open pit or open pit mining techniques. For example, the loss of rivers due to stockpiling of material or extreme silting occurs and hills that turn into roads or lowlands.

3) There is environmental pollution

[71] https://ilmugeografi.com/geologi/dampak-negatif-pertambangan-terhadap-lingkungan

There have been countless cases caused by mining activities, one of which is environmental pollution. river pollution is one of the environmental pollutions as a result of mining waste immediately discharged into the river without any prior processing; the river that carries mining waste will continue to flow to the ocean. The result can be more fatal, namely the seawater ecosystem is damaged. It's nowonder that many coral reefs and fish die from mining waste poisoning.Not only are rivers polluted, but large vehicles transporting mining products cause air pollution due to flying dust.

The vehicles used are of course large in size, so it's not surprising that when a vehicle passes, it will produce dust that flies so that the air becomes dirty and unfit for humans to breathe. The soil loses nutrients and minerals as a result of mining waste which damages the soil structure. as a result, the land cannot be replanted with plants and crop productivity is hampered. Another pollution is noise pollution which causes high volume noise in the area around the mine. If left unchecked, it is certain that environmental pollution will become very severe.

4) Safety is being threatened

The negative impacts of mining can also threaten the safety of mining workers and residents who live around the mine. Why is that? When mining gold, miners will dig the earth to form a long, narrow and winding tunnel, of course, the supply of oxygen in the tunnel is very limited.

No wonder many workers suffocate due to lack of oxygen or other risks, namely the collapse of the tunnel so that it buries the workers. Outside, the land and trees around the mining area have also disappeared. As a result, when it rains the water cannot be accommodated by the soil. if this continues, great dangers are threatening residents who live near the mine, such as flash floods and landslides.

5) Loss of biodiversity

Before the discovery of natural resources that lie beneath the earth, namely mining products, most of these areas were far from residential areas so that the fauna and flora that lived there were not disturbed. However, after mining activities began, many faunas and flora disappeared or even died due to the destruction of their habitat. Thus, now many native Indonesian flora and fauna are threatened with extinction. Various efforts have been made to preserve them, but all of this is not in accordance with the ongoing mining activities. If left unchecked, it is possible that the biodiversity around mining will disappear and become extinct over time.

1. Problems with the Minerba Law which are detrimental to the wider community

Discussions regarding the Minerba Law have received action from various audiences, ranging from local communities around the mines, farmers, fishermen, and various NGOs.

Despite receiving protests and criticism from the wider community, the DPR still insists on passing the revision of the Minerba Law No. 3 of 2020,

which was later signed by the President on June 10, 2020. the content of the articles in UU 162 Minerba is very controversial and even ignores environmental sustainability and is far from the goal of general public welfare.

1) Communities Can No Longer Protest against Local Government

   Before Law no. 4 of 2009 was terminated and replaced with the Minerba Law, a company or individual must first get permission from the local Regency or City Government, if they want to carry out mining activities in an area. later the Regional Government in each mining location has the task of conducting guidance, conflict resolution and even monitoring of mining businesses.

   Now, with the role of the local government, if there is a conflict between a mining company and the community in a mining area, the local government can act like a mediator. So whenever there is a public report regarding a violation committed by a mining company, if proven guilty, the regional government has the authority to temporarily suspend or even revoke the Mining Business Permit (IUP).

   Unfortunately, with the enactment of Minerba Law No. 3 of 2020, starting now, if there are people harmed as a result of the actions of mining companies, whether it's in the form of environmental destruction or conflicts over land disputes, the regional government will no longer be able to take any action because all mining authority is regulated by

the central government, no longer the local Regency or Municipal Government.

So currently, people who want to protest related to mining activities in their area must report to the central government or at least the province even though so far most of the mining locations are in remote areas and even outside Java. This rule is very far from the logic of good governance, because people who live in mining areas cannot do much when their environment is damaged by the actions of mining companies.

2) The Risk of Being Politicized If Refusing a Mining Company

When it rains, it pours; not only can local people who have suffered losses due to mining company activities that have damaged their living space. They can no longer be able to report to the regional government. Even worse, it can be seen from the wording of Article 162 of the Minerba Law No. 3 of 2020, that people who try to interfere with mining activities in any form can be reported back by the company and subject to criminal penalties, even fines of up to 100 million rupiah.

This very unreasonable rule actually swayed and was appreciated by the President, in the midst of rampant injustice and criminalization that many companies have committed against communities in mining areas. Through the new Minerba Law, not only will regional communities be depleted of their natural wealth by a handful of mining conglomerates, those who try to refuse their area to be exploited will be subject to criminal penalties.

3) Mining Companies Can Still Operate Even though They Are Proven to Damage the Environment

There are other regulations that seem to spoil entrepreneurs in terms of responsibility for repairing ex-mining land. The rules for repairing ex-mining land consist of two separate activities, namely reclamation and post-mining activities. Before discussing the issue of regulations that benefit mining entrepreneurs, it is necessary to understand the difference between Reclamation and Post-mining Activities.

Reclamation is an activity to restore the ecosystem so that it can function again as before, while post-mining activities are activities to repair ex-mining land to restore environmental functions and social functions according to local conditions throughout the mining area.

According to the rules of Law No. 4 of 2009, mining companies are required to carry out all reclamation and post-mining activities as well as deposit reclamation and post-mining guarantee funds. Despite such a regulation, in fact there are still many violations in the field in the form of holes in former coal mines being left open and turning into giant lakes that claim lives.

Instead of reinforcing the Reclamation and Post-mining Activities regulations, instead of penalizing companies that do not repair ex-mining land, miraculously the government actually has made a new regulation that exempts mining entrepreneurs from destroying the environment by changing the contents of the Act. As written in the Minerba Law Article

96 letter b, the company's obligation to repair ex-mining land is currently only carrying out one of the repair obligations. Mining companies can freely choose between Reclamation Activities or Post-mining Activities. Not only that, companies that are proven to be negligent and do not carry out reclamation or post-mining activities, in fact, can still extend their contract permits. In fact, in accordance with Article 169A of the Minerba Law, under the pretext of increasing state revenue, the government has instead provided guarantees for contract extensions in the form of KK and PKP2B 2 times 10 years.

4) Mining Companies Can Make Profits as Much as Possible, Even Get 0% Royalty Guarantee

It can be said that Minerba Law No. 3 of 2020 is the best gift from the government for entrepreneurs and bad news for mining communities in Indonesia. How could it not be, as if it wasn't enough to give tickets for massive and destructive exploitation of natural resources to a handful of conglomerates of mining entrepreneurs, the government has clearlygiven the green light to actors who exploit non-renewable natural resources in Indonesia free of charge.

In Article 128A of the Job Creation Law No. 11 of 2020 in lieu of the Minerba Law, it is explained that business actors who can increase the added value of coal will receive preferential treatment in the form of imposing a royalty of 0%. Even though so far, the royalties determined

by the government for mining entrepreneurs are part of state revenue and as regional income through the Profit-Sharing Fund mechanism.

It is obvious that through the Minerba Law Number 3 of 2020 as well as several amendments to the Articles in the Job Creation Law, the Central Government together with a handful of conglomerates of mining entrepreneurs are very eager to finish off the remaining natural resources in Indonesia. Instead of protecting the environment from catastrophic ecological damage, the Government is even more enthusiastic about exploiting it as much as possible without caring about the future of the people in the mining area.[72]

2. Meaning Conflict scope

a. Conflict and Its Scope

Differences that occur between individuals and groups often lead to incompatibilities which eventually lead to conflict. Conflicts often arise in everyday life. If they are left unfinished without any resolution, the conflicts can become a serious problem and harm many parties. The scope of the conflict itself contains the meaning, types, causes, and methods of conflict resolution.

b. Definition of Conflict

Basically, conflict theory appears as a form of reaction to the growth of structural functionalism theory which is considered to pay little

[72] https://www.walhi.or.id/menyoal-4-masalah-uu-minerba-yang-merugikan-masyarakat-luas

attention to the phenomenon of conflict as a symptom in society that needs attention. Setiadi and Kolip (2011: 364), say that conflict theory is a perspective in sociology that views society as a system consisting of parts or components that have different interests where one component tries to carry out the interests of another so as that fulfill their interests or obtain the maximum profit.

Etymologically, conflict comes from the Latin *configere* which means hitting each other. According to Antonius, et al (in Rahmantyo, 2012: 13) conflict is an action of one party which results in blocking, hindering, or disturbing other parties and this can occur between community groups or in interpersonal relationships. According to Maftuh (2004) stating that in conflict, social interaction between individuals or groups is more influenced by differences than by similarities. Meanwhile, according to Scannell in Rahmantyo (2012), conflict is a natural and normal thing that arises because of differences in perceptions, goals or values in a group of individuals. So, it can be concluded that the notion of conflict is an act of one party that interferes with another party in the process of social interaction that is influenced by differences in perceptions and goals.

Conflict is divided into two types, namely intrapersonal conflict (intrapersonal conflict) and interpersonal conflict (interpersonal conflict). Intrapersonal conflict is the conflict that occurs within the

individual himself, for example when the beliefs held by the individual conflict with the cultural values of society, or his desires do not fit his abilities. This intrapersonal conflict is psychological in nature, which if not managed properly can interfere with the psychological health or mental health (mental hygiene) of the individual.

Meanwhile, interpersonal conflict is the conflict that occurs between individuals (Hunt and Metcalf in Rahmantyo, 2012). This conflict occurs in every social environment, such as in the family, peer group, school, community, and country. This conflict can be in the form of conflict between individuals and groups, both within a group (intragroup conflict) and between groups (intergroup conflict). Interpersonal conflict is conflict between a person and another because of conflicting interests or desires. So, this often happens between two people of different status, position, field of work and others. This interpersonal conflict is a very important dynamic in organizational behavior as this kind of conflict will involve several roles from several members of the organization which will affect the process of achieving the goals of the organization. This is often related to the way individuals deal with the pressures to achieve conformity imposed on them by their work groups.[73]

[73] https://eprints.umm.ac.id/49601/3/BAB%20II.pdf

c. The conflicts that arise in the mining sector never seem to end. The 2020 year-end notes (Catahu) released by the Mining Advocacy Network (Jatam) recorded 45 cases of mining conflicts. According to Jatam coordinator, Merah Johansyah, the number has increased almost 5 times compared to last year, namely 11 conflicts.

   If counted from 2014-2019 during President Joko Widodo's reign, there were 116 recorded mining conflicts. The area of mining conflicts throughout 2020 reached 714,692 hectares.

   There were several types of mining conflicts that occurred throughout 2020, including pollution and environmental destruction in 22 cases; land grabbing 13 cases; criminalization of people who refuse to mine 8 cases; and termination of employment (PHK) 2 cases. Of these, 13 cases involved the military or police.

   In addition, the death toll in ex-mining pits in 2020 has increased by 24 people. In total, from 2014-2020 there were 168 mining pit victims. From the results of mapping through satellite imagery and concession overlays and field sampling, Jatam found that there were 3,092 mining pits throughout Indonesia.

   Jatam also criticized the issuance of mining permits without considering the risk of disasters, such as earthquakes, tsunamis and floods. Jatam noted that at least 104 mining concessions are in areas at risk of earthquakes and 11 coal-fired power plants were built in tsunami-prone areas. Likewise with the floods in South Kalimantan,

Jatam found 70 coal mining concessions along the Tabalong, Balangan, Upper North River, Central to Banjar River basins.

"In all of South Kalimantan, Jatam has mapped 814 mining holes that are gaping and contributing to flooding," Jamil continued.

Based on data from the information system for borrow-to-use forest areas (SIPKH), Jatam found that until June 2020 there were 1,034 units of permits for borrow-to-use forest areas (IPPKH) in 34 provinces with an area of nearly 500 thousand hectares. IPPKH is a permit to use a forest area that is granted by an official at the ministerial level for non-forestry purposes, including oil palm and mining. This permit has the potential to create a conflict of interest for Ministers from political parties or corporate oligarchs in the mining sector[74]

3. Mining In Islamic Perspective

1. The Qur'an explains that humans were created as caliphs on earth. The obligation of humans as caliphs on earth is to protect and manage the earth and everything in it to be used properly. In this case the caliphate as a duty from Allah to take care of the earth must be carried out in accordance with the will of the creator and the purpose of the creator.[75] The natural wealth that God has given to humans is very diverse, both

[74] https://www.hukumonline.com/berita/a/ini-empat-jenis-konflik-pertambangan-sepanjang-tahun-2020-lt600ff8e000976?page=2

[75] Harun Nasution*, Ensiklopedi Islam Indonesia*, Djambatan, Jakarta, 1992, hlm. 187.

natural wealth in the form of fauna, flora and mining.[76] Today environmental problems have become global issues that concern various sectors and human interests. This is based on the many cases of natural disasters and environmental damage that are associated with humans as the subjects who manage the environment. Human behavior that is less responsible for the environment results in damage to the environment.

The Qur'an clearly explains the basic religious philosophy relating to the management of natural resources According to An-Nabhani,[77] the limited amount of forest and mining materials are public property and managed by the State, the results must be given to the people in the form of cheap goods in the form of subsidies for the community's primary needs such as education, health and public facilities. the concept of Taskhir and Istikhlaf as a reference in fostering human interaction with Nature This nature was created by Allah long before humans were created. This universe was created by the Khaliq and is subject to His commands. However, humans as caliphs on this earth often forget to maintain the mandate in leading and protecting this world. Not surprisingly, nowadays a lot of damage to nature and its consequences turn on humans themselves. This damage occurs because of a lack of understanding of the values of Islamic teachings, because these values are currently polluted by dirty souls. Taskhir means that humans are

[76] Yusuf Qardhawi, *Peran Nilai dan Moral dalam Perekonomian Islam*. Terj, Didin Hafidhuddin dkk, Robbani Press, Jakarta,1997, hlm. 138.
[77] Taqyuddin an-Nabhani, *Membangun Sistem Ekonomi Alternatif Perspektif Islam*, Terj. Moh. Maghfur Wachid, cet. ke-7, Risalah Gusti, Surabaya, 2002, hlm. 252.

given the authority to take advantage of the universe in order to achieve the goals of their creation in accordance with Divine guidance. The Qur'an confirms that Allah created the universe and its inhabitants with a specific purpose (QS. Shad. 27). “And We did not create the heavens and the earth and what is between them without wisdom. That is the opinion of the disbelievers, so woe to the disbelievers because they will go to hell." Istikhlaf relates to God's assignment to humans as vicegerent of the Earth. Both of these concepts provide an illustration so that humans do not do anything arbitrary to the environment. Humans must act in accordance with *sunatullah*, namely by maintaining the balance and harmony of the universe with the environment so that damage does not occur. Mining of natural resources may not be carried out in excess of the standard requirement, but must pay attention to the aspects of sustainability of life and for the next generation, as well as to preserve nature and balance the ecosystem. Thus, mining utilization is not explored and exploited on a large scale which exceeds the proper needs.

Exploitation of natural resources (gold mining) is closely related to benefit based on Islamic juris (*fuqoha*), in which the dominant consideration in terms of benefit is justice. Justice (*al-adlah*), freedom (*alphurriyah*), and equality (*al-musawah*) is the cornerstone of Islamic teachings. Etymologically *maslahat* is a single word from the word *al-masalih*, which means the word *shalah*, namely "bringing good" as *maslahah*. In the context of the study of *usul fiqh*, the word *maslahan*

becomes a technical term which means "the various benefits intended by shari'ah in establishing law for humans which include the aim of preserving religion, soul, intellect, offspring, and assets, as well as preventing things that could result in someone escaping from these five interests. According to Wael B. Hallaq, [78]the theory of *mas'lahah* is a legal domain in the treasury of Islamic scholarship which is experiencing a very important development. Hallaq noted that the relatively systematic concept of *maslahah* was put forward by al-Ghazali, even though it had previously been formulated by Imam Malik. Furthermore, in its development, this theory by al-Syathibi was able to be developed by uniquely and creatively marrying industrial logic and *maslahah* doctrine.

According to al-Ghazali, the benefit of ammah is something that attracts benefits and prevents harm to the public. Thus, the instrument of government action in the form of mining business permit authority is expected to be able to provide the greatest benefit for the prosperity of the people. In the Islamic view, forests and minerals are public property that must be managed by the State and the results must be returned to the people in the form of cheap goods or subsidies for primary needs, such as education, health and public facilities. The paradigm of private-based management of public property natural resources must be changed to the

[78] Wael B. Hallaw, *law and Legal Theory in Classical and Medieval Islam*, Variorum Publishing Limited, USA, 1994, hlm. 196.

management of public ownership by the State while remaining oriented towards resource sustainability.

2. Islamic Perspective Regarding Environmentally Friendly Mining

The concept of the Islamic religion, towards environmental protection, begins with an illustration of a teacher giving an explanation to his students about the environment "the tree must be cared for, preserved and not cut down, not because it provides shade to us but must be respected as a creation of Allah SWT", based on the Hadith of Rasulullah SAW "Whoever loves what is in the earth then he will be loved by everything in the sky". The environment is one part of the earth, so it must be maintained and preserved as a form of concern to manifest love and compassion for Allah's creation. In this case, moral behavior in the Islamic religion, gives a warning for this or that action related to the environment that may be carried out.[80]

Minerals are given by God to be utilized for human welfare. In the Qur'an, this is explained in several verses, including in QS. Ar Ra'd (13): 17, which meansAllah has sent down water (rain) from the sky, then the water flows in the valleys according to their size, then the current carries floating foam. And from what (metal) they melt in the fire to make jewelry or tools, there is (also) foam like the foam of the stream. Thus, Allah makes a parable (for) the true and the false. As for the froth, it will

[80] Siti Kotijah, Islam dan Lingkungan Hidup Dibidang Pertambangan, "*Yuridika": Volume 26 No 2*, Mei-Agustus 2011. hlm. 132.

disappear as something that is worthless, as for those that benefit humans, then they will remain on earth. Thus, God made parables.

In the utilization of mining natural resources, almost all companies are currently focusing more on economic factors than environmental moral and ethical factors. Environmental preservation efforts are carried out only at the level of science and technology to reduce the existing environmental impact. In essence, in preventing pollution and environmental damage, it must be based on a systematic mining plan that considers aspects of environmental damage from exploration to reclamation. The Islamic religion has very clear views and concepts regarding the protection and management of the natural resource environment, because humans are basically the caliphs of Allah on earth who are ruled not only to prevent deviant behavior (*nahi munkar*), but also to do good behavior (*amr ma'ruf*).[80]

The management of mining natural resources should take balance and sustainability into account because the damage to mining natural resources by humans must be accounted for in this world and the hereafter. This principle is based on Q.S. Al-Rum (30): 41 that: "There has been damage on land and at sea caused by human hands. Allah wants them to feel some of the (results of) their actions, so that they return to the right path?

The implementation of Islamic mining must be based on the specified process and mechanism. Mining activities begin with a feasibility study process that involves community stakeholders (stakeholders), then it is carried out in an

[80] *Ibid*.

environmentally friendly way (green mining), does not cause damage and environmental pollution through continuous monitoring, and followed by reclamation, restoration and rehabilitation. In addition, the utilization of mining products must support national resilience and create social welfare in accordance with the mandate of the Constitution.

4. Intimidation in Islamic legal perspective

Intimidasi adalah hal yang tidak mengenakkan, dengan mengetahui hakikat ini saja kita sudah bisa ambil kesimpulan bahwa itu hal yang terlarang. Dalil pun banyak, diantaranya;

الْمُسْلِمُ مَنْ سَلِمَ الْمُسْلِمُونَ مِنْ لِسَانِهِ وَيَدِهِ

"Seorang muslim (yang baik) adalah yang tangan dan lisannya tidak menyakiti orang lain" [HR Bukhari 10]

يَسِّرُوْا وَلاَ تُعَسِّرُوْا، وَبَشِّرُوْا وَلاَ تُنَفِّرُوْا

"Mudahkanlah dan jangan kalian persulit, berilah kabar gembira dan janganlah kalian membuat orang lari" [HR Bukhari 69]

Karenanya kita dianjurkan untuk berbuat lembut (baik itu nada bicara, atau kata-kata), Rasūlullāh shallallāhu 'alaihi wa sallam bersabda;

إِنَّالرِّفْقَ لاَيَكُونُ فِي شَيْءٍ إِلاَّ زَانَهُ وَلاَ يُنْزَ عُ مِنْ شَيءٍ إِلاَّ شَانَهُ

"Sungguh, segala sesuatu yang dihiasi kelembutan akan nampak indah. Sebaliknya, tanpa kelembutan segala sesuatu akan nampak jelek" [HR Muslim 2594]

Bahkan mengancam bagi yang tak bisa bersikap lembut,

مَنْ يُحْرَمِ الرِّفْقَ يُحْرَمِ الْخَيْرَ

"Barangsiapa yang tidak memiliki sifat lembut, maka tidak akan mendapatkan kebaikan". [HR Muslim 2592]

CHAPTER III

FINDING AND RESULTS

A. Legal Protection for the Local Community

Problems regarding the local community's interest in their land which mining companies seek to own are no longer a rare thing in Indonesia. Legal cases like this have occurred very frequently, ranging from coercion of land sales by verbal means, to using physical means in the form of intimidation or violence perpetrated by individuals on orders from the mining company. As a rule of law, this should be a problem that must be immediately resolved and regulated in legislation by the Government of Indonesia.

Companies wishing to open a business in a certain area should use methods that are still permitted by law, not by means of violence, threats or intimidation. The use of external personnel to execute company requests is also one of the methods taken by the mining company in obtaining community land.

Local communities, on the other hand, also need to have legal power over their respective lands. Ownership of land titles is crucial and very important to be owned by everyone in the local community whose land will be purchased by the company. The strength of the local community in the eyes of the law is assessed from the ownership of the title to the land.

Several laws in Indonesia already have rules that presumably can protect local communities in this case. Such as the threat and intimidation article in the Criminal Code, the article on land rights regulated in the Agrarian Law, as well as legal protection for filing a lawsuit against the law in the Civil Law.

1. Legal Protection for Local Communities through UUPA

As previously mentioned, local communities can have legal protection if these communities can prove their ownership of the land through documents that are legal in the eyes of the law. This is stated in Article 16 Paragraph (1) of the Basic Agrarian Law concerning land ownership. In that article it is stated that:

"The land rights referred to in article paragraph (1) are:

a. right of ownership,

b. Cultivation Rights,

c. building rights,

d. usufructuary rights,

e. Lease,

f. land clearing rights,

g. the right to collect forest products,

h. other rights that are not included in the rights mentioned above which will be stipulated by law as well as temporary rights as mentioned in article 53." [84]

Based on this article, the laws and regulations have regulated the existence of several rights that can be legally owned and recognized by Indonesian people, in this case it means that local communities have several land rights in accordance with statutory regulations. If one of these rights is owned, then the local community must have the

[84] Pasal 16 Ayat (1) Undang-Undang Pokok Agraria tentang kepemilikan tanah

full right to inhabit or control a plot of land without any threat or intervention from any party.

Basically, the right to control is a form of relationship in law over control of an object in real terms where in this case the control is used to fulfill one's own interests. In the sense of this right to control, it also includes the function to exercise physical control over the object under his control, in this case a piece of land. One of the principles contained in the right to control is the power to make efforts to defend his rights against parties who try to intervene in the form of interference with the object under his control.[85]

Article 6 UUPA explains that basically all land rights have a social function that must exist. Article 6 provides an important explanation of land rights. This article briefly explains how land rights are social in nature and based on ideas that form the basis of the National Land Law. According to the Elucidation of Article 6 of the UUPA, all land rights, including property rights, have a social function.

The general explanation is based on the social function of land rights. This means that it is unjustifiable that someone has the right to any land to use it solely for personal gain, especially if doing so will harm the community. Compared to their rights, the use of land must be adapted to circumstances and characteristics in order to produce welfare and happiness for individuals, communities, and the state. However, this does not mean that the public or community interests must be more important than individual interests. In addition, the agrarian law takes individual interests into account. Individual and societal interests must be balanced to achieve the goal of prosperity. Justice and happiness for everyone.

[85] Irawan Soerodjo, Hukum Pertanahan Hak Pengelolaan Atas Tanah (HPL) Eksistensi, Pengaturan dan Praktik, LaksBang Mediatama, Yogyakarta, 2014, hal.5.

Local people who experienced forced land purchases and were accompanied by this intimidation when viewed through the UUPA, of course, have violated the explanation of Article 6 paragraph 1 of the UUPA. This is stated because it can be seen from the previous explanation that the public interest must be one of the factors that must be considered in land use rights. In this case the company is not allowed to force its will to use a land and moreover the ownership of the land does not belong to the company itself.

The legal protection offered through the Basic Agrarian Law through Article 6 paragraph 1 is that if the community group has legal rights to control a land, then that right cannot be disturbed. The right referred to in this case is a letter of title to the land because the ownership right in it has the nature of controlling to use or not use the land without any interference from other parties.

2. Legal Protection for Local Communities through Civil Law

Apart from legal protection through the UUPA, Indonesian law also regulates civil matters, namely through filing a PMH (Act against the law) lawsuit against parties who commit acts that are considered against the law.

Book III of the Civil Code, Articles 1365–1380 of the Civil Code regulate acts that violate the law, which are included in agreements resulting from laws. According to Article 1365 of the Civil Code, "An unlawful act committed by a person who through his fault has caused harm to another person" is the definition of an unlawful act.

Article 1365 of the Civil Code only discusses unlawful acts, namely when there is a person who suffers a loss where the loss is obtained through an unlawful act committed by another person against the person who suffered the loss, that person is allowed to file a claim for compensation through the District Court. Therefore, the article does not regulate unlawful acts, but only regarding the conditions for filing claims for compensation as a result of unlawful acts.

According to the Civil Code, an unlawful act is a type of engagement that arises from a law as a result of unlawful human actions. The tort itself is known as

"onrechtmatige daad" in Dutch and "tort" in English. Tort just means "wrong". However, in the legal field, the word tort is modified in such a way as to include civil wrongs that do not stem from a default in contract. Therefore, it is comparable to understanding what is unlawful in the Netherlands or in other Continental European countries. The Latin word "torquere" or "tortus", as well as the French word "bad" are derived from the French word "wrung", which means "mistake" or "accident".[84]

Based on the brief explanation regarding PMH above, it can be correlated with the legal case being researched that the local community can file an Unlawful Act lawsuit with the District Court for the actions taken by the Mining Company because it has committed an unlawful act, namely forcing residents to sell their land by committing act of intimidating and threatening the residents of Tanah Bumbu.

This illustrates that the local community of Tanah Bumbu can also ask for legal protection through a civil aspect by suing the related mining company to the local District Court for threats and intimidation by the company in a PMH lawsuit.

3. Legal Protection for Local Communities through Criminal Law

In the Criminal Code there are articles that regulate criminal acts of threats, articles regarding threats are found in Book II of the Criminal Code, namely in articles 368 and 369 concerning the Crime of Extortion and Threats.

Article 368 Paragraph (1) of the Criminal Code reads, "Anyone who, with the intention of unlawfully benefiting himself or another person, forces another person with violence or threats of violence, to give something which is wholly or partly the property of another person, or so that giving debts or writing off receivables, is punishable by a maximum imprisonment of 9 years"[85]

[84] Munir Fuady, *Pendekatan Kontemporer*, Citra Aditya Bakti, Bandung, 2002.
[85] pasal 368 tentang Tindak Pidana Pemerasan dan Pengancaman

Article 369 concerning the Crime of Extortion and Threats in this Criminal Code reads [86] :

1. Whosoever with the intention of benefiting himself or others by violating rights, forces people with threats to insult verbally or insults in writing or with threats to reveal secrets, so that that person gives something, which wholly or partly belongs to that person himself or belonging to another person, or so that that person makes a debt or writes off a debt, is punished with a maximum imprisonment of four years.

2. This crime is only prosecuted on the complaint of the person charged with the crime.

Based on the sound of the article regarding threats, it was found that there were two elements, namely objective and subjective elements, these elements are described as follows:

A. Objective Elements

Coerce people with threats:

i. Menista

ii. Blaspheme with letters; or

iii. Unlock secrets

So that person:

i. Give him something that belongs to him or someone else's;

ii. Get rid of debts;

iii. Create debt;

B. Subjective Element

[86] Pasal 369 tentang Tindak Pidana Pemerasan dan Pengancaman dalam Kitab Undang-Undang Hukum Pidana

The subjective element in question is the intention to provide an advantage to oneself or others in violation of the law. Compared to getting something by force, this act of coercion is getting something by threat rather than by force.

The difference between these two articles lies in how to get the intended goods. In Article 369 threats are made by using insulting threats, insulting with letters and disclosing secrets, while in Article 368 using violence or threats of violence.

In criminal law there are several elements that must be met so that a case can be charged with criminal articles or referred to as a crime. These elements include the existence of a subject, the presence of an element of error, an act that is against the law, an action that is prohibited or required by law/legislation and those who violate it are subject to criminal penalties, as well as the existence of a certain time, place, and condition.[87]

Based on this article, the local community of Tanah Bumbu can file a report using the threatening article with the condition that they fulfill the elements previously mentioned. The Tanah Bumbu community must also submit a subject who is the perpetrator of the threat. This is because in the perspective of criminal law a company cannot be punished but there must be one main actor who commits certain crimes. In this case the local community of Tanah Bumbu cannot convict the entire PT. BIB as reporting subject.

In the implementation of legal protection in this aspect of criminal law, the Tanah Bumbu community can report to local regional police offices such as the precinct, regional police, regional police, or even the national police headquarters. However, in this report the people of Tanah Bumbu must fulfill the elements needed to fulfill the need for the use of criminal articles as previously mentioned in this research.

[87] Sianturi, S.R, *Asas-asas hukum pidana di Indonesia dan penerapannya*, Storia Grafika, Jakarta, 2002, hlm. 208

Based on the results of the search that has been carried out by researchers by looking at the criminal code and reflecting on the legal case at hand, it can be seen that the local community of Tanah Bumbu has the opportunity to submit a report on threatening acts committed by individuals from PT. BIB to the nearest police station to immediately carry out an investigation by the police whether there was a crime or not so that the threats and intimidation that occurred in the Tanah Bumbu area could be resolved immediately.

INTERVIEW TRANCRIP

Resource person: Sri Murdani

Interview to : 1

Time : 09.00 – 10.30

Day/Date : Monday, 03 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer : Andika Amin Putra Reformasi

Andika : Selamat pagi bu, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan ibu terkait penelitian saya ibu tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Sri : Ohh… ya, boleh. Nanti kalau ada yang bisa saya jawab ya saya jawab.

Andika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Sri : iya mas, boleh

Andika : baik ibu, apakah ibu bisa meperkenalkan diri singkat?

Sri : Baik mas, Nama saya Sri murdani, saya warga desa Mustika, Rt 06, Rw03.

Andika : Apakah Ibu asli orang sini atau pendatang?

Sri : Saya Asli orang sini mas cuman emang waktu kecil lahri di Bali, namun di bawa ibu bapaka saya pindah kesini dulu udah lama.

Andika : Baik ibu

Andika : Em… ini langsung keintinya aja ya Ibu ya?

Sri : Iya

Andika : jadi ibu, saya ingin menanyakan kronologi yang terjadi kepada ibu, pada kasus penjuala tanah terhadap perusahan BIB ibu, bagaimana kronologinya, tolong di jelaskan singkat.

Sri : Iyaa, Pada saat itu masih kepala desa bapak iwan sulaiman, ada pembagian tanah di daerah hutan di perbatan 2 desa, yaitu desa sebamban kampung dengan desa mustika, nah pada saat itu saya memiliki 8 hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon sawit di lahan saya tersebut.

Andika : setelah itu apa yang terjadi ibu? Apakah tanah tersebut memiliki surat2 ibu?

Sri : iya pada saat itu posisi tanah belum ada segelnya, akan tetapi pada saat periode kpla desa selanjutnya, di urus segel tanah tersebut dan akhirnya smua segel tanah saya jadi.

Andika : lalu Apa yang terjadi selanjutnya ibu, mengenai kabar jual beli tanah oleh perushaan?

Sri : dan setelah itu saya dapat kabar oleh kepla desa, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu ibu langsung setuju terhadap penjuala tanah ibu?

Sri : Pada saat itu saya sudah biacara kepada anak2 saya, minta solusi cuman katanya kalo ga di jual tanah tersebut akan tetap di gusur dan malah mendapatkan kerugian yang besar karena tidak dapat uang sepser pun apabila, kekeh tida menjual lahan tersebut.

Andika : apakah ibu mendapatkan intimidasi atau tekanan, dan pada saati itu siapa yang melakukan hal tersebut ibu?

Sri : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang tagar tidak rugi sama sekali, yang

menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanah udah panen skitar 11 kali.

Andika : Kira2 apakah ibu masih ingat berapa kali mereka meintimidasi ibu,

Sri : kalo saya emnag cuman sekali, karena saya waktu itu nyerah aja, saya berpikir orang desa gatau apa2 tetang seperti in, bapak sudah ga ada, yang saya bingung surat tanah saya udah jadi akan tetapi prusahaan tersebut bilang bahwa tanah itu milik mereka. Dan yang saya pikir kalo emang tanah itu milik mereka knapa mereka repot2 mau ganti rugi.

Andika : Emm seperti itu kronologinya baik-baik. Ibu saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu ibu. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari Ibu lagi, gapapakan ibu?

Sri : Ooh iya mas silakan silakan.

Resource person : Bapak mesadi

Interview to : 3

Time : 11.00 – 12.00

Day/Date : Monday, 04 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer : Andika Amin Putra Reformasi

Andika : Selamat pagi Bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan Bpak terkait penelitian saya Bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Mesadi : Ohh… ya, boleh. Saya kurang tau banyak dan tanah saya waktu itu cuman 2 hektare cuman kalo saya bisa jawab saya akan jawab.

Abdika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Mesadi : iya mas, boleh kan kenal sampean saya hahaah

Andika : hahah iya baik bapak, apakah bapak bisa meperkenalkan diri singkat?

Mesadi : baik mas, Nama saya singkat saja mesadi , saya warga desa Mustika, Rt 05, Rw 03

Andika : Apakah bapak asli orang sini atau pendatang?

Mesadi : Saya Asli sini

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

Mesadi : Iya mas boleh,

Andika : inggih bapak baik, jadi bapak , saya ingin menanyakan kronologi yang terjadi kepada Bapak, pada kasus penjuala tanah terhadap perusahan BIB Bapak, bagaimana kronologinya, tolong di jelaskan singkat.

Mesadi : Iyaa, saya jelasin singkat aja ya mas, Pada saat itu, saya memiliki skita 3 hektar tanah pada saat itu saya memiliki tanah 4 hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon sawit di lahan saya tersebut. 2 hektar saja saya tanamkan sawit 2 hekatrnya masih tidak ada apa2. Saya berniat menanam pohon duren cuman uang buat beli bibitnya belum ada.

Andika : setelah itu apa yang terjadi Bapak? Apakah tanah tersebut memiliki surat2 bapak?

mesadi : untuk segel tanah udah jadi waktu tahun 2018- 2019 gitu saya agak lupa dan emang surat tanah tersebut di bikin di desa sebalah saya kurang inget dan pada saat itu yang ngurus banyak orang.

Andika : lalu Apa yang terjadi selanjutnya Bapak, mengenai kabar jual beli tanah oleh perushaan?

Mesadi : dan setelah itu saya dapat kabar oleh kepla desa dan warga desa lain, bahwa lahan tersebut akan di gusur oleh Prusahaan untuk pembangunan jalan, biasa mas banyak duit bikin jalan di atas tanah perkebunan yang sudah banyak di tanamin sawit , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu Bapak langsung setuju terhadap penjuala tanah tersebut dan apa respon warga pada saat itu?

Mesadi : Pada saat itu saya sudah biacara kepada warga desa saya, dan kami mencari solusi akan tetapi tidak bisa, emang harus di jual karena di ancam tetap di gusur karena ingin di bikin jalan pertambangan pas di atas lahan kami, dan sialnya yang di ganti rugi lumayan mahal adalah pohon sawit dan lahan saya setngah masih ksosong dan untuk ganti rugi tanah, cuman 5 juta 1 hektare. Cuman ada ayang bilang kalo emang itu tanah dulu pnya hak milik perushaan tersebut kana tetapi anehnya mereka mau repot2 ganti rugi , kami orang kecil mas gatau apa2 soal gitu.

Mesadi : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang tagar tidak rugi sama sekali, yang menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanam baru mau berbuah dan pohon karetnya sudah mai saya sadap.

Andika : Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi Bapak, ?

Gusti wik : kalo saya ngga langsung mendapatkan karena pada saat itu saya lagi di ladang tidak ikut rapat bersama pihak prusahaan.

Andika : Emm seperti itu kronologinya baik-baik. Bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Mesadi : Ooh iya mas silakan silakan datang saja krumah saya.

Resource person : Bapak warno

Interview to : 4

Time : 15.00 – 16.00

Day/Date : Monday, 04 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer: Andika Amin Putra Reformasi

Andika : Selamat pagi Bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan Bpak terkait penelitian saya Bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Mesad : Ohh… ya, boleh. Saya kurang tau banyak dan tanah saya waktu itu cuman 2 hektare cuman kalo saya bisa jawab saya akan jawab.

Andik : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Warno : iya mas, boleh kan kenal sampean saya hahaah

Andika : hahah iya baik bapak, apakah bapak bisa meperkenalkan diri singkat?

Warno : baik mas, Nama saya singkat saja mesadi , saya warga desa Mustika, Rt 05, Rw 03

Andika : Apakah bapak asli orang sini atau pendatang?

Warno : Saya Asli sini

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

Warno : Iya mas boleh, yang saya paham aja ya mas, jangan terlalu berat bahasanya ahahha.

Andika : inggih bapak baik, jadi Bapak , saya ingin menanyakan kronologi yang terjadi kepada Bapak, pada kasus penjuala tanah terhadap perusahan BIB Bapak, bagaimana kronologinya, tolong di jelaskan singkat.

Warno : Iyaa, saya jelasin singkat aja ya mas, Pada saat itu, ada pembagian tanah di daerah hutan di perbatan 2 desa, nah pada saat itu saya memiliki tanah 4 hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon sawit di lahan saya tersebut. 2 hektar saja saya tanamkan sawit 2 hekatrnya masih tidak ada apa2. Saya berniat menanam pohon duren cuman uang buat beli bibitnya belum ada.

Andika : setelah itu apa yang terjadi Bapak? Apakah tanah tersebut memiliki surat2 bapak?

Mesadi : untuk segel tanah udah jadi waktu tahun 2018- 2019 gitu saya agak lupa dan emang surat tanah tersebut di bikin di desa sebalah saya kurang inget dan pada saat itu yang ngurus banyak orang.

Andika : lalu Apa yang terjadi selanjutnya Bapak, mengenai kabar jual beli tanah oleh perushaan?

Warno : dan setelah itu saya dapat kabar oleh kepla desa dan warga desa lain, bahwa lahan tersebut akan di gusur oleh Prusahaan untuk pembangunan jalan, biasa mas banyak duit bikin jalan di atas tanah perkebunan yang sudah banyak di tanamin sawit , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu Bapak langsung setuju terhadap penjuala tanah tersebut dan apa respon warga pada saat itu?

Warno : Pada saat itu saya sudah biacara kepada warga desa saya, dan kami mencari solusi akan tetapi tidak bisa, emang harus di jual karena di ancam tetap di gusur karena ingin di bikin jalan pertambangan pas di atas lahan kami, dan sialnya yang di ganti rugi lumayan mahal adalah pohon sawit dan lahan saya setngah masih ksosong dan untuk ganti rugi tanah, cuman 5 juta 1 hektare. Cuman ada ayang bilang kalo emang itu tanah dulu pnya hak milik perushaan tersebut kana tetapi anehnya mereka mau repot2 ganti rugi , kami orang kecil mas gatau apa2 soal gitu.

Warno : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang tagar tidak rugi sama sekali, yang menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanam baru mau berbuah dan pohon karetnya sudah mai saya sadap.

Andika : Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi Bapak, ?

Warno : kalo saya ngga langsung mendapatkan karena pada saat itu saya lagi di ladang tidak ikut rapat bersama pihak prusahaan.

Andika : Emm seperti itu kronologinya baik-baik. Bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Warno : Ooh iya mas silakan silakan datang saja krumah saya.

Resource person : Bapak, Gusti wik

Interview to : 5

Time : 15.00 – 16.00

Day/Date : Monday, 03 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer: Andika Amin Putra Reformasi

Andika : Selamat pagi Bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan Bpak terkait penelitian saya Bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Gusti wik : Ohh… ya, boleh. Saya kurang tau banyak dan tanah saya waktu itu cuman 2 hektare cuman kalo saya bisa jawab saya akan jawab.

Andika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Gusti wik : iya mas, boleh

Andika : baik bapak, apakah bapak bisa meperkenalkan diri singkat?

Gusti wik : baikik mas, Nama saya Gusti wik, saya warga desa Mustika, Rt 02, Rw 04.

Andika : Apakah bapak asli orang sini atau pendatang?

Gusti wik : Saya Aslinya suku bali mas cuman emang emang lahri disini dan besar di sini.

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

Gusti wik : Iya mas boleh, pskr bshsds yang saya paham aja ya mas , jangan terlalu bahasa hukum heehhe.

Andika : inggih bapak baik, jadi bapak , saya ingin menanyakan kronologi yang terjadi kepada Bapak, pada kasus penjuala tanah terhadap perusahan BIB Bapak, bagaimana kronologinya, tolong di jelaskan singkat.

Gusti wik : Iyaa, saya jelasin singkat aja ya mas, Pada saat itu, ada pembagian tanah di daerah hutan di perbatan 2 desa, yaitu desa sebamban kampung dengan desa mustika, nah pada saat itu saya memiliki 2 h hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon sawit di lahan saya tersebut. Emang ada di sebalahnya saya memiliki 3 hektare cuman saya tanamin karet.

Andika : setelah itu apa yang terjadi Bapak? Apakah tanah tersebut memiliki surat2 bapak?

Gusti wik : iya pada saat itu posisi tanah belum ada segelnya, akan tetapi pada saat periode kpla desa selanjutnya, di urus segel tanah tersebut dan akhirnya smua segel tanah saya jadi.

Andika : lalu Apa yang terjadi selanjutnya Bapak, mengenai kabar jual beli tanah oleh perushaan?

Gusti wik : dan setelah itu saya dapat kabar oleh kepla desa dan warga desa lain, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu Bapak langsung setuju terhadap penjuala tanah tersebut dan apa respon warga pada saat itu?

Gusti wik : Pada saat itu saya sudah biacara kepada warga desa saya, dan kami mencari solusi akan tetapi tidak bisa, emang harus di jual karena di ancam tetap di gusur karena

ingin di bikin jalan pertambangan pas di atas lahan kami, dan sialnya yang di ganti rugi lumayan mahal adalah pohon sawit dan lahan saya setngah saya tanamain pohon karet.

Gusti wik : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang tagar tidak rugi sama sekali, yang menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanam baru mau berbuah dan pohon karetnya sudah mai saya sadap.

Andika : Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi Bapak,

Gusti wik: kalo saya ngga langsung mendapatkan intimidasi akan tetapi warga yang lain yang malkukan rapat dengan pihak prusahaan, yang di ancam jika tidak dijual maka tidak akan dapat duit sepser pun dan lahan akan tetap di gsuru dan di ratakan.

Andika : Emm seperti itu kronologinya baik-baik. Bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Gusti wik : Ooh iya mas silakan silakan datang saja krumah saya.

Resource person : Bapak basuki

Interview to : 6

Time : 10.00 – 11.00

Day/Date : Monday, 05 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer : Andika Amin Putra Reformasi

Andika : Selamat pagi Bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan Bpak terkait penelitian saya Bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Basuki : Ohh… ya, boleh. Saya kurang tau banyak dan tanah saya waktu itu cuman 2 hektare cuman kalo saya bisa jawab saya akan jawab.

Andika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Basuki : iya mas, boleh

Andika : baik bapak, apakah bapak bisa meperkenalkan diri singkat?

Basuki : baikik mas, Nama saya Gusti wik, saya warga desa Mustika, Rt 02, Rw 04.

Andika : Apakah bapak asli orang sini atau pendatang?

Basuki : Saya Aslinya suku bali mas cuman emang emang lahri disini dan besar di sini.

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

Basuki : Iya mas boleh, pskr bshsds yang saya paham aja ya mas , jangan terlalu bahasa hukum heehhe.

Andika : inggih bapak baik, jadi bapak , saya ingin menanyakan kronologi yang terjadi kepada Bapak, pada kasus penjuala tanah terhadap perusahan BIB Bapak, bagaimana kronologinya, tolong di jelaskan singkat.

Basuki : Iyaa, saya jelasin singkat aja ya mas, Pada saat itu, ada pembagian tanah di daerah hutan di perbatan 2 desa, yaitu desa sebamban kampung dengan desa mustika, nah pada saat itu saya memiliki 2 h hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon sawit di lahan saya tersebut. Emang ada di sebalahnya saya memiliki 3 hektare cuman saya tanamin karet.

Andika : setelah itu apa yang terjadi Bapak? Apakah tanah tersebut memiliki surat2 bapak?

Basuki : iya pada saat itu posisi tanah belum ada segelnya, akan tetapi pada saat periode kpla desa selanjutnya, di urus segel tanah tersebut dan akhirnya smua segel tanah saya jadi.

Andika : lalu Apa yang terjadi selanjutnya Bapak, mengenai kabar jual beli tanah oleh perushaan?

Basuki : dan setelah itu saya dapat kabar oleh kepla desa dan warga desa lain, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu Bapak langsung setuju terhadap penjuala tanah tersebut dan apa respon warga pada saat itu?

Basuki : Pada saat itu saya sudah biacara kepada warga desa saya, dan kami mencari solusi akan tetapi tidak bisa, emang harus di jual karena di ancam tetap di gusur karena

ingin di bikin jalan pertambangan pas di atas lahan kami, dan sialnya yang di ganti rugi lumayan mahal adalah pohon sawit dan lahan saya setngah saya tanamain pohon karet.

Basuki : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang tagar tidak rugi sama sekali, yang menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanam baru mau berbuah dan pohon karetnya sudah mai saya sadap.

Andika : Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi Bapak,

Basuki : kalo saya ngga langsung mendapatkan intimidasi akan tetapi warga yang lain yang malkukan rapat dengan pihak prusahaan, yang di ancam jika tidak dijual maka tidak akan dapat duit sepser pun dan lahan akan tetap di gsuru dan di ratakan.

Andika : Emm seperti itu kronologinya baik-baik. Bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Basuki : Ooh iya mas.

Resource person : ibu, juariah

Interview to : 7

Time : 09.00 – 10.30

Day/Date : Monday, 6 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer: Andika Amin Putra Reformasi

Andika : Selamat pagi bu, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan ibu terkait penelitian saya ibu tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda berkenan untuk diwawancarai?

Juariah : Ohh,iya, boleh. Tapi agak maaf masa bahasa indonesia saya kurang baku.

Andika : Baik, jika saya merekam wawancara ini, apakah anda berkenana

Juariah : iya mas, boleh

Andika : baik ibu, apakah ibu bisa meperkenalkan diri singkat?

Juariah : Baik mas, Nama saya juariah, saya warga desa Mustika, Rt 08, Rw 03.

Andika : Apakah Ibu asli orang sini atau pendatang?

Juariah : Saya Asli orang jawa mas cuman saya masih muda sudah tinggal disini bersama kedua orang tua saya.

Andika : Baik ibu

Andika : Em… ini langsung keintinya aja ya Ibu ya?

Juariah : Iya baik mas

Andika : jadi ibu, saya ingin menanyakan kronologi yang terjadi kepada ibu, pada kasus penjuala tanah terhadap perusahan BIB ibu, bagaimana kronologinya, tolong di jelaskan singkat.

Juariah : Iyaa, saya memiliki lahan di daerah tersebut berjumlah 2 hekatr, dan belum saya tanam apa – apa, maka dari itu saya lumayan merasa di rugikan lah , dan ingin tidak memjual akan tetapi terpaksa takut di gusur.

Andika : setelah itu apa yang terjadi ibu? Apakah tanah tersebut memiliki surat2 ibu?

Juariah : iya pada saat itu posisi tanah belum ada segelnya, akan tetapi pada saat periode kpla desa selanjutnya, di urus segel tanah tersebut dan akhirnya smua segel tanah saya jadi.

Andika : lalu Apa yang terjadi selanjutnya ibu, mengenai kabar jual beli tanah oleh perushaan?

Juariah : dan setelah itu saya dapat kabar oleh kepla desa, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu ibu langsung setuju terhadap penjuala tanah ibu?

Juariah : Pada saat itu saya sudah biacara kepada anak2 saya, minta solusi cuman katanya kalo ga di jual tanah tersebut akan tetap di gusur dan malah mendapatkan kerugian yang besar karena tidak dapat uang sepser pun apabila, kekeh tida menjual lahan tersebut.

Andika : apakah ibu mendapatkan intimidasi atau tekanan, dan pada saati itu siapa yang melakukan hal tersebut ibu?

Juariah : ngga mas saya ikut – ikut yang lain aja jual tanah karena takut ga dapet uang sama sekali.

Andika : Kira2 apakah ibu masih ingat berapa kali mereka meintimidasi ibu,

Juariah : kalo saya emnag cuman sekali, karena saya waktu itu nyerah aja, saya berpikir orang desa gatau apa2 tetang seperti in, bapak sudah ga ada, yang saya bingung surat tanah saya udah jadi akan tetapi prusahaan tersebut bilang bahwa tanah itu milik mereka. Dan yang saya pikir kalo emang tanah itu milik mereka knapa mereka repot2 mau ganti rugi.

Andika : Emm seperti itu kronologinya baik-baik. Ibu saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu ibu. Mungkin nanti kalo ada data yang kurang,

saya bisa mewawancari Ibu lagi, gapapakan ibu?

juariah : Ooh iya mas silakan silakan.

Resource person : Bpak Nengah dorten

Interview to : 8

Time : 15.00 – 16.00

Day/Date : Monday, 06 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer : Andika Amin Putra Reformasi

Andika : Selamat pagi Bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan Bpak terkait penelitian saya Bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Nengah dorten : Ohh… ya, boleh. Saya kurang tau banyak dan tanah saya waktu itu cuman 2 hektare cuman kalo saya bisa jawab saya akan jawab.

Andika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Nengah dorten : iya mas, boleh

Andika : baik bapak, apakah bapak bisa meperkenalkan diri singkat?

Nengah dorten : baik mas, Nama saya nengah dorten, saya warga desa Mustika, Rt 04, Rw 02.

Andika : Apakah bapak asli orang sini atau pendatang?

Nengah dorten : Saya Aslinya suku bali mas cuman emang emang lahri disini dan besar di sini.

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

Nengah dorten : Iya mas boleh, pskr bshsds yang saya paham aja ya mas, jangan terlalu bahasa hukum heehhe.

Andika : inggih bapak baik, jadi bapak, saya ingin menanyakan kronologi yang terjadi kepada Bapak, pada kasus penjuala tanah terhadap perusahan BIB Bapak, bagaimana kronologinya, tolong di jelaskan singkat.

Nengah dorten : Iyaa, saya jelasin singkat aja ya mas, Pada saat itu, ada pembagian tanah di daerah hutan di perbatan 2 desa, yaitu desa sebamban kampung dengan desa mustika, nah pada saat itu saya memiliki 2 h hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon sawit di lahan saya tersebut. Emang ada di sebalahnya saya memiliki 3 hektare cuman saya tanamin karet.

Andika : setelah itu apa yang terjadi Bapak? Apakah tanah tersebut memiliki surat2 bapak?

Nengah dorten : iya pada saat itu posisi tanah belum ada segelnya, akan tetapi pada saat periode kpla desa selanjutnya, di urus segel tanah tersebut dan akhirnya smua segel tanah saya jadi.

Andika: lalu Apa yang terjadi selanjutnya Bapak, mengenai kabar jual beli tanah oleh perushaan?

Nengah dorten : dan setelah itu saya dapat kabar oleh kepla desa dan warga desa lain, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu Bapak langsung setuju terhadap penjuala tanah tersebut dan apa respon warga pada saat itu?

Nengah dorten : Pada saat itu saya sudah biacara kepada warga desa saya, dan kami mencari solusi akan tetapi tidak bisa, emang harus di jual karena di ancam tetap di gusur karena ingin di bikin jalan pertambangan pas di atas lahan kami, dan sialnya yang di ganti rugi lumayan mahal adalah pohon sawit dan lahan saya setngah saya tanamain pohon karet.

Nengah dorten : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang tagar tidak rugi sama sekali, yang menekan adalah pihak

prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanam baru mau berbuah dan pohon karetnya sudah mai saya sadap.

Andika : Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi Bapak,

Nengah dorten : kalo saya ngga langsung mendapatkan intimidasi akan tetapi warga yang lain yang malkukan rapat dengan pihak prusahaan, yang di ancam jika tidak dijual maka tidak akan dapat duit sepser pun dan lahan akan tetap di gsuru dan di ratakan.

Andika : Emm seperti itu kronologinya baik-baik. Bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Nengah dorten : Ooh iya mas.

Resource person : bapak jamir

Interview to : 9

Time : 15.00 – 16.00

Day/Date : Monday, 08 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer : Andika Amin Putra Reformasi

Andika : Selamat pagi Bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan Bpak terkait penelitian saya Bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

jamir : Ohh… ya, boleh. Saya kurang tau banyak dan tanah saya waktu itu cuman 2 hektare cuman kalo saya bisa jawab saya akan jawab.

Andika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Jamir : iya mas, boleh

Andika : baik bapak, apakah bapak bisa meperkenalkan diri singkat?

jamir : baik mas , Nama saya Jamir, saya warga desa Mustika, Rt 04, Rw 02.

Andika : Apakah bapak asli orang sini atau pendatang?

jamir : Saya Aslinya suku bali mas cuman emang emang lahri disini dan besar di sini.

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

Jamir : Iya mas boleh, pskr bshsds yang saya paham aja ya mas , jangan terlalu bahasa hukum heehhe.

Andika : inggih bapak baik, jadi bapak , saya ingin menanyakan kronologi yang terjadi kepada Bapak, pada kasus penjuala tanah terhadap perusahan BIB Bapak, bagaimana kronologinya, tolong di jelaskan singkat.

jamir : Iyaa, saya jelasin singkat aja ya mas, Pada saat itu, ada pembagian tanah di daerah hutan di perbatan 2 desa, yaitu desa sebamban kampung dengan desa mustika, nah pada saat itu saya memiliki 2 h hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon sawit di lahan saya tersebut. Emang ada di sebalahnya saya memiliki 3 hektare cuman saya tanamin karet.

Andika : setelah itu apa yang terjadi Bapak? Apakah tanah tersebut memiliki surat2 bapak?

jamir : iya pada saat itu posisi tanah belum ada segelnya, akan tetapi pada saat periode kpla desa selanjutnya, di urus segel tanah tersebut dan akhirnya smua segel tanah saya jadi.

Andika : lalu Apa yang terjadi selanjutnya Bapak, mengenai kabar jual beli tanah oleh perushaan?

Jamir : dan setelah itu saya dapat kabar oleh kepla desa dan warga desa lain, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu Bapak langsung setuju terhadap penjuala tanah tersebut dan apa respon warga pada saat itu?

jamir : Pada saat itu saya sudah biacara kepada warga desa saya, dan kami mencari solusi akan tetapi tidak bisa, emang harus di jual karena di ancam tetap di gusur karena ingin di bikin jalan pertambangan pas di atas lahan kami, dan sialnya yang di ganti rugi lumayan mahal adalah pohon sawit

dan lahan saya setngah saya tanamain pohon karet.

Jamir : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang tagar tidak rugi sama sekali, yang menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanam baru mau berbuah dan pohon karetnya sudah mai saya sadap.

Andika ; Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi Bapak,

Jamir : kalo saya ngga langsung mendapatkan intimidasi akan tetapi warga yang lain yang malkukan rapat dengan pihak prusahaan, yang di ancam jika tidak dijual maka tidak akan dapat duit sepser pun dan lahan akan tetap di gsuru dan di ratakan.

Andika : Emm seperti itu kronologinya baik-baik. Bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Jamir : Ooh iya mas.

Resource person : bapak hariawadi

Interview to : 10

Time : 15.00 – 16.00

Day/Date : Monday, 09 july 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer : Andika Amin Putra Reformasi

Andika : Selamat pagi Bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan Bpak terkait penelitian saya Bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Hariawadi : Ohh… ya, boleh. Saya kurang tau banyak dan tanah saya waktu itu cuman 6 hektare cuman kalo saya bisa jawab saya akan jawab.

Andika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Hariawadi : iya mas, boleh

Andika : baik bapak, apakah bapak bisa meperkenalkan diri singkat?

hariawadi : baik mas, Nama saya Hariawadi, saya warga desa Mustika, Rt 05, Rw 02.

Andika : Apakah bapak asli orang sini atau pendatang?

hariawadi : iya mas saya asli orang sini.

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

hariawadi : Iya mas boleh, yang saya paham aja ya mas.

Andika : inggih bapak baik, jadi Bapak , saya ingin menanyakan kronologi yang terjadi kepada Bapak, pada kasus penjuala tanah terhadap perusahan BIB Bapak, bagaimana kronologinya, tolong di jelaskan singkat.

hariawadi : Iyaa, saya jelasin singkat aja ya mas, Pada saat itu, ada pembagian tanah di daerah hutan deket perkebunan sawit/ Alas, saya memiliki total 6 hektar tanah, akan tetapi karena ada penggusuran ini saya terpaksa jual smua tanah saya dengan harga 1 hekatre 5 juta karena belom di tanamin sawit.

Andika : setelah itu apa yang terjadi Bapak? Apakah tanah tersebut memiliki surat2 bapak?

hariawadi : iya mas tanah saya tersebut sudah memiliki segel sekitar 4 hekatre.

Andika : lalu Apa yang terjadi selanjutnya Bapak, mengenai kabar jual beli tanah oleh perushaan?

Hariawadi : dan setelah itu saya dapat kabar oleh kepla desa dan warga desa lain, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui. Akan tetapi karena tanah saya masih kosong jadi yang di ganti rugi hanya lah tanah dengan nominal 5 juta rupiah 1 hektar.

Andika : apakah pada saat itu Bapak langsung setuju terhadap penjuala tanah tersebut dan apa respon warga pada saat itu?

hariawadi : iya mas saya gamau ribet, takut juga ngelawan perushaan besar mas gabisa apa2.

hariawadi : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang tagar tidak rugi sama sekali, yang menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanam baru mau berbuah dan pohon karetnya sudah mai saya sadap.

Andika ; Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi Bapak,

hariawadi : kalo saya ngga langsung mendapatkan intimidasi akan tetapi warga yang lain yang malkukan rapat dengan pihak prusahaan, yang di ancam jika tidak dijual maka tidak akan dapat duit sepser pun dan lahan akan tetap di gsuru dan di ratakan.

Andika : Emm seperti itu kronologinya baik-baik. Bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Hariawadi : Ooh iya mas.

And there is also a case of a subsidiary of BIB, namely a PPA company which does the same thing, buying and selling land using intimidation or threats to the community around the Kuranji sub-district, Tanah Spice Regency, where there are 2 cases that occurred in that area which at the same time are the sources for this research, where interviews were conducted online, where they were victims of their land being stolen or forcibly bought by the company.:

Resource person: Haji saibur

Interview to : 11

Time : 09.00 – 10.30

Day/Date : Wednesday, 25 October 2023

Location : Desa Blok B., Kec. Kuranji, Kab, Tanah bumbu

Interviewer : Andika Amin Putra Reformasi

Andika : Assalamualaikum Wr.Wb bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya datang ke sini untuk wawancara dengan bapak terkait penelitian saya bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Haji saibur : Ohh… ya, boleh. Nanti kalau ada yang bisa saya jawab ya saya jawab.

Andika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Haji saibur : iya mas, boleh

Andika : baik bapak, apakah bapak bisa meperkenalkan diri singkat?

Haji saibur : Baik mas, Nama saya saibur rahman, saya warga desa Mustika, Rt 06, Rw03.

Andika : Apakah bapak asli orang sini atau pendatang?

Haji saibur : saya dulu ikut program transmigrasi mas, waktu masi muda dari bali ke sini.

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

Haji saibur : Iya mas, silahkan

Andika : jadi bapak, saya ingin menanyakan kronologi yang terjadi kepada bapak, pada kasus penjuala tanah terhadap perusahan PPA bapak, bagaimana kronologinya, tolong di jelaskan singkat.

Haji saibur : Iyaa, Pada saat itu masih kepala desa bapak iwan sulaiman, ada pembagian tanah di daerah hutan di perbatan 2 desa, yaitu desa sebamban kampung dengan desa mustika, nah pada saat itu saya memiliki luas lahan 4 hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon sawit di lahan saya tersebut.

Andika : setelah itu apa yang terjadi bapak? Apakah tanah tersebut memiliki surat2 bapak?

Haji saibur : iya pada saat itu posisi tanah belum ada segelnya, akan tetapi pada saat periode kpla desa selanjutnya, di urus segel tanah tersebut oleh anak saya dan akhirnya smua segel tanah saya jadi.

Andika : lalu Apa yang terjadi selanjutnya bapak, mengenai kabar jual beli tanah oleh perushaan?

Haji saibur : dan setelah itu saya dapat kabar oleh kepla desa, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu ibu langsung setuju terhadap penjuala tanah bapak?

Haji saibur : Pada saat itu saya sudah biacara kepada anak2 saya, minta solusi cuman katanya kalo ga di jual tanah tersebut akan tetap di gusur dan malah mendapatkan kerugian yang besar karena tidak dapat uang sepser pun apabila, kekeh tida menjual lahan tersebut, dan warga yang lain pun mengatakan hal yang sama.

Andika : apakah bapak mendapatkan intimidasi atau tekanan, dan pada saati itu siapa yang melakukan hal tersebut ibu?

Haji saibur : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang agar tidak rugi sama sekali, yang menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanah udah panen skitar 8 kali panen mas.

Andika : Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi bapak,

Bapak saibur : kalo saya emnag cuman sekali, karena saya waktu itu nyerah aja, saya berpikir orang desa gatau apa2 tetang seperti in, bapak sudah ga ada, yang saya bingung surat tanah saya udah jadi akan tetapi prusahaan tersebut bilang bahwa tanah itu milik mereka. Dan yang saya pikir kalo emang tanah itu milik mereka knapa mereka repot2 mau ganti rugi.

Andika : Emm seperti itu kronologinya baik-baik. bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Haji saibur : Ooh iya mas silakan silakan.

Resource person: I gusti ngurah

Interview to : 12

Time : 10.30 – 11.00

Day/Date : Wednesday, 25 October 2023

Location : Desa Mustika., Kec. Kuranji, Kab, Tanah bumbu

Interviewer : Andika Amin Putra Reformasi

Andika : Selamat pagi bapak, saya Andika Amin Putra mahasiswa UII. Keperluan saya menelpon bapak di sini untuk wawancara dengan bapak terkait penelitian saya bapak tentang intimidasi jual beli tanah di Desa Mustika. Apakah Anda ingin diwawancarai?

Pak gusti : Ohh… ya, boleh. Nanti kalau ada yang bisa saya jawab ya saya jawab.

Andika : Ya, jika saya merekam wawancara ini, apakah anda berkenana

Pak gusti : iya mas, boleh

Andika : baik bapak, apakah bapak bisa meperkenalkan diri singkat?

Pak gusti : Baik mas, Nama saya saibur rahman, saya warga desa kuranji, Rt 04, Rw03.

Andika : Apakah bapak asli orang sini atau pendatang?

Pak gusti : saya dulu ikut program transmigrasi mas, waktu masi muda dari bali ke sini.

Andika : Baik bapak

Andika : Em… ini langsung keintinya aja ya bapak ya?

Pak gusti : Iya mas, silahkan

Andika : jadi bapak, saya ingin menanyakan kronologi yang terjadi kepada bapak, pada kasus penjuala tanah terhadap perusahan PPA bapak, bagaimana kronologinya, tolong di jelaskan singkat.

Pak gusti : Iyaa, Pada saat itu masih kepala desa bapak iwan sulaiman, ada pembagian tanah di daerah hutan di perbatan 2 desa, yaitu desa sebamban kampung dengan desa mustika, nah pada saat itu saya memiliki luas lahan 2 hektar tanah, dan pada saat itu langsung saya bersihkan dan tanamkan pohon karet di lahan saya tersebut.

Andika : setelah itu apa yang terjadi bapak? Apakah tanah tersebut memiliki surat2 bapak?

Pak gusti : iya pada saat itu posisi tanah belum ada segelnya, akan tetapi pada saat periode kpla desa selanjutnya, di urus segel tanah tersebut oleh anak saya dan akhirnya smua segel tanah saya jadi.

Andika : lalu Apa yang terjadi selanjutnya bapak, mengenai kabar jual beli tanah oleh perushaan?

Pak gusti : dan setelah itu saya dapat kabar oleh kepla desa, bahwa lahan tersebut akan di gusur oleh Prusahaan , dan akan di berikan ganti rugi pohon sawitnya 1 , dengan jumalh harg yang di stujui.

Andika : apakah pada saat itu ibu langsung setuju terhadap penjuala tanah bapak?

Pak gusti : Pada saat itu saya habis dari ladang, dan tiba2 denger berita ini dan saya kaget , saya langsung mikir gapap pasarah aja karena banyak urusan di ladang saya bngung juga masalah org besar mas.

Andika : apakah bapak mendapatkan intimidasi atau tekanan, dan pada saati itu siapa yang melakukan hal tersebut ibu?

Pak gusti : pada saat itu saya cuman dikasi tau kepla desa dan emang kepala desa juga hrus menjual tanahnya agar tetap mendapaktan uang agar tidak rugi sama sekali, yang menekan adalah pihak prusahaan ada oknum atau perwakilan dari prusahaan yang mendatangin lahan pada saat itu, intimidasinya yaitu kalo ga mau jula tanah kami tidak dapat speserpun dan akan tetap di gusur , sdangkan sawit yang saya tanah udah panen skitar 8 kali panen mas.

Andika : Kira2 apakah bapak masih ingat berapa kali mereka meintimidasi bapak,

Pak gusti : kalo saya mas dri awal emang pasrah karena lahan saya emang sedikit dan cuman terdapat pohon karet, gbrani juga mas saya.

Andika : Emm seperti itu kronologinya baik-baik. bapak saya rasa sudah mencukupi datanya. Terima kasih banyak sudah meluangkan waktu bapak. Mungkin nanti kalo ada data yang kurang, saya bisa mewawancari bapak lagi, gapapakan bapak?

Pak gusti : Ooh iya mas silakan silakan.

B. Law protect local communities in mining conflicts related to coal mining activities from intimidation by mining companies in Tanah Bumbu District?

Problems regarding local communities whose rights are threatened by mining companies are no longer a rare thing these days. There are many similar problems that occur in Indonesia. As an example of the case is the problem that occurred in this Tanah Bumbu area. In this case there was coercion on the local community of Tanah Bumbu in terms of selling their land owned by the company which in this case is PT. BIB or also known as Borneo Indobara Company.

In the management of natural resources, principles and objectives must be established. The Minerba Law clearly regulates the system of mineral and coal mining management activities. The following are some things that are acceptable for mineral and coal mining activities:

a. Its utilization, justice that must be shared equally, its balance
b. Always put the rules and interests of the whole nation first
c. Participation, and also must have intelligent or broad insight into the environment so that there are no parties arbitrarily processing natural resources
d. Transparency and accountability

The big question arises when researchers decide to investigate this, how can this happen so often and how the law should be able to protect local people from things like this. In this section the author will elaborate on some of the findings on regulations that can protect local communities from mining-related conflicts and what communities can do in response to this.

1. Regulation on Legal Certainty for Mining Business Players

Indonesia has a lot of minerals. Gold, silver, copper, oil, natural gas, coal and other minerals fall into this category. Minerals are owned by the state.[88]Article 33 of the 1945 Constitution, which is often referred to as "the right to control the state", provides a constitutional basis for the state to control natural resources.

Mining companies in Indonesia are allowed to process an area to excavate minerals and coal if the company already has a permit to do business.[89] Regarding these permits, Indonesia already has regulations that regulate the running of the licensing process to the implementation of mining activities. Indonesia already has regulations governing which conditions are permissible and not in carrying out mining activities. The regulations governing this are Law no. 4 of 2009 concerning Mineral and Coal Mining.

Law No. 4 of 2009 concerning Mineral and Coal Mining regulates various permits, including Mining Business Permits (IUP), Special Mining Business Permits (IUPK) granted to companies, and People's Mining Permits (IPR) issued to local communities, to carry out mining operations. Business entities, cooperatives, individuals and community groups can carry out mining business with a business license.[90]

As previously mentioned, permits are required for any mining venture. This is regulated in Article 1 paragraph (7) of Law Number 4 of 2009 concerning Mineral and Coal Mining, which states that "Mining Business Permits (IUP) are permits granted to conduct mining business in the mineral and coal mining sector." This

[88] H. Salim HS, Hukum Pertambangan di Indonesia, Jakarta: Rajawali Pers, 2014, h. 1.
[89] Firmansyah Arif, Concept of the Form of a Mineral and Coal Mining Company in the Perspective of Basic Laws 1945, *Jurnal Konstitusi*, Volume 17, Nomor 3, September 2020, hal. 498.

[90] Undang-Undang No. 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara

means that every company that wants to carry out mining activities is required by law to have a permit.

This permit is necessary because every mining activity has a negative impact that must be considered and minimized. The negative impacts in question include environmental damage because areas that are targeted for mining will erode, causing erosion, waste generated from mining processing can also pollute the environment, and industrial activities that use coal as fuel. [91]In addition, with this license, a mining company is bound by law so that it cannot carry out activities that are prohibited by laws and regulations. In this case, what is meant is all kinds of activities that are considered against the law, including activities that threaten and intimidate local communities.

Mining companies that carry out mining activities in an area in Indonesia without a permit as previously mentioned in this study can be said to be companies that carry out illegal activities or can also be called carrying out actions that are against the law.

Mining companies can be subject to criminal acts because of these actions. As noted above, the state has the right to control land, water and other natural resources, including mines. Therefore, everyone who wants to do mining must first ask for state or government permission.

As a crime, Article 158 of the Mining Law states that anyone who carries out a mining business without an IUP, IPR, or IUPK as referred to in Articles 37, 40 paragraph (3), 48, 67 paragraph (1), or 74 paragraph (1)) or paragraph (5) shall

[91] Fajar Agus, Penegakan Hukum Terhadap Tindak Pidana Pertambangan Mineral dan Batubara Ilegal di Kota Cirebon, *Diktum : Jurnal Ilmu Hukum,* Volume 8 No. 1, 2020, hlm. 111

be punished with imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).[92]

2. Legal Protection for the Community

Ownership of a land title is very crucial and important, especially in dealing with problems such as in this research. Intimidation and threats made by companies against local communities will boomerang for the perpetrators if the community has certainty in the eyes of the law in the form of ownership of a land title. This is a major force in the eyes of the law for local communities to defend and fight for their rights as landowners.

Mining companies will not be able to force people to buy land as long as the community still has ownership documents for a land because this is legal and protected by law. If there are threats or intimidation by other parties, the public has the right to submit a report to the authorities regarding the criminal act of threatening in accordance with Articles 368 and 369 concerning the Crime of Extortion and Threats.

3. Law enforcement that applies in Indonesia without Partiality

Basically, law enforcement is an attempt to make rules apply as guidelines for behavior in legal relations or interactions in the life of society and the state[93]. Law enforcement is very influential on how the results of the existence of a legal product, without good and appropriate law enforcement, the results of the hope of forming a legal product will not be achieved.

[92] Gatot Supramono,"Hukum Pertambangan Mineral Dan Batubara Di Indonesia", Jakarta:Rineka Cipta, 2012. hlm 248.

[93] Muhammad Yusuf HS, Penegakkan Hukum Terhadap Tindak Pidana Pertambangn Gol.C Tanpa Izin (Studi Kasus Tahun 2014 S/D Tahun 2016 di Kab.Gowa), Makassar: Universitas Hasanuddin,2017. Hlm.65

For example, Indonesia already has various kinds of legal products, one of which is criminal law, in more detail the law on the crime of threatening to use force. In this regulation, anyone who commits an act of threatening to use violence will be subject to imprisonment and/or a fine, but if in the implementation process there is no discipline and appropriate law enforcement, the regulation will be in vain and cannot be implemented properly. In other words, law enforcement has an important role in ensuring the emergence of the expected results of a legal product.

The State of Indonesia as a state in the form of a rule of law should be able to describe how law enforcement has values that are in accordance with the principles contained in the meaning of the rule of law. Enforcement of criminal law is an attempt to realize the ideal concept of certainty, justice and legal advantages to become a reality and has criminal consequences if violated.[93]

Law Number 8 of 1981 concerning the Criminal Code (KUHAP) regulates the criminal law enforcement system. The Criminal Procedure Code regulates all stages of the criminal justice process, starting from the investigation process to the implementation of court decisions. The Criminal Procedure Code also regulates how the judicial process must be carried out within the framework of the principle of justice that treats all people equally, with certainty, fairness and humanity.

In fact, Article 28 D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Every person has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law", and the Criminal Procedure Code regulates the rights of defendants and suspects in the trial process.

[93] Dellyana Shanty, *Konsep Penegakan Hukum*, Yogyakarta: Liberty, 1998, hlm. 37.

Departing from this, it can be found that law enforcement is very important to ensure the realization of legal ideals in order to create an atmosphere of just and safe life. In addition, local people's rights can also be protected if law enforcement can run well and in accordance with the principles of the rule of law.

4. In Indonesian criminal law, 'intimidation' is generally defined as 'by violence or threat of violence' (door geweld or door bedreiging met geweld). This formulation, for example, is found in Article 146 of the Criminal Code regarding the use of 'violence or the threat of violence' to disrupt legislative sessions:

5. Any person who, by force or threat of violence, dissolves a meeting of a law-forming body, government body or people's representative body, which is formed by or on behalf of the Government, or forces those bodies to take or not take a decision or expels the chairman or members of the meeting. , is threatened with a maximum imprisonment of nine years.

CHAPTER IV

CONCLUSIONS ANDA SUGGESTIONS

A. Conclusions

Based on the description in the discussion above, it can be concluded that:

1) Article 162 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining can be an easy article to criminalize and intimidate small communities in mining areas compared to mining companies. Any form of disturbance, no matter how small, can land them in prison for a minimum of 1 year or a maximum fine of 100 million rupiah. The concentration of regulations in the central government makes conflicts between entrepreneurs and communities more profitable for mining companies.
2) Legal Protection of Local Communities through UUPA, through Civil Law, through Criminal Law can be a basis for communities to obtain their rights in terms of losses suffered due to the existence of mining companies
3) The law needs to position the local government as a mediator in the conflicts that occur so that the interests of the small community can also be fought for.

5. Suggestion

From cases of intimidation and criminalization that occur against small communities in mining areas, there are several suggestions that can be taken into consideration.

1) The government needs to tighten supervision over the granting of permits and operations of mining companies so that matters that have the potential to harm the community and the environment can be resolved immediately.

2) Detailed outreach needs to be carried out to small communities in mining areas, so that conflicts can be avoided

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