



THE USE OF POLICE DISCRETION IN INVESTIGATIONS OF CRIME IN THE MINING SECTOR

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ABSTRACT

Criminal acts in the mineral mining sector in Indonesia are rife and have become public knowledge. These criminal acts include mining without a mining business permit, data manipulation practices at the exploration stage, mining in protected forest areas, limited production forests and laundering of mining products as well as reclamation and post-mining. The police play a very important role in carrying out law enforcement duties in the environmental sector. Sometimes, because of the lack of environmental knowledge, the police use discretion. Although acting based on the law is basically considered to be contrary to the granting of discretion to the Police, discretion, on the one hand, is considered to eliminate certain predictions regarding the results that will be obtained, but, on the other hand, it also ensures that the principle of legal certainty is maintained, which is wrong an important aspect of law. By using normative legal method, this research aims to find out the reasons behind the police's decision to use discretion in mining criminal cases, and to discover the implementation of Police discretion in the process of investigating criminal acts in the mining sector in Indonesia. The author finds that various factors influence the use of discretion by the Police, including the seriousness of criminal acts, availability of resources, environmental impacts, and the interests of the community and other stakeholders. Based on the context of law enforcement in the mining sector in Indonesia, the implementation of discretion by the Police includes various forms of approaches that are appropriate to the complexity and challenges faced. Several forms of discretion applied by the Police in the process of investigating mining crimes in Indonesia include determining case priorities in handling cases of mining crimes.

Keywords: police discretion, mining sector, crime investigation

INTRODUCTION

The living environment, basically, refers to a unit consisting of various physical areas containing living creatures, inanimate objects, and also humans and their behavior (Erwin, 2008). Natural resources, such as oil and gas, gold, copper, silver, coal, and others, are controlled by the state for the prosperity of the people (Article 33 paragraph (3) of the 1945 Constitution) (Salim, 2013). This provision has a noble spirit and essential religious meaning in the context of national and state life.

The environment is considered a gift from God Almighty for the people and

nation of Indonesia which must be protected and managed well so that it can function as a source of life and support for the welfare of society. This is necessary because environmental management in Indonesia must be carried out with the principle of maintaining the balance and function of the environment in order to support sustainable development and improve the quality of life of future generations (Hardjasoemantri, 1993).

Law is present in every human community, everywhere in the world. Whether in a primitive or very modern form, every society must have a legal

system. Therefore, law is something universal in its nature. Law cannot be separated from society, on the contrary, the two have a relationship that influence each other (Prasetyo and Barkatullah, 2009).

In Indonesia, regulations governing the protection of life are regulated in the UUPH which regulates 3 methods of law enforcement in environmental protection efforts, namely Administrative Law, Criminal Law, and Civil law enforcement (Machmud, 2012). Mineral and coal mining, as strategic natural resources, are controlled by the state and have become vital commodities. Law Number 3 of 2020 regulates the stages of mining activities, including exploration, mining and processing. This Law gives broader authority to the central government in managing natural resources in Indonesia, including responsible supervision (Kastro, 2019)

People's mining, which is carried out using simple methods and inherited from ancestors, is part of the history of mining in Indonesia. Even though it has been regulated in a legal regulation, sometimes irregular mining practices are still found in Indonesia, namely community mining.

People's mining has actually been known since time immemorial, namely since humans became aware of the use of minerals. It is said to be community mining because it is carried out in a simple form, both in the way of thinking, knowledge, and the equipment used is also simple. People's mining businesses are historically a legacy from ancestors that are known to this day, because almost all mining, especially minerals, metals and other gemstones in Indonesia, whether still active or no longer active, started with people's mining businesses.

Illegal mining practices often involve criminal acts such as mining without permits, manipulation of exploration data, mining in prohibited areas, laundering of mining products, and reclamation

problems.

Environmental protection is regulated in Law no. 32 of 2009, emphasizes that a good living environment is a citizen's human right. Environmental law supports sustainable development and the quality of life of future generations.

Law enforcement in environmental cases includes administrative, criminal and civil law. The role of the police in enforcing environmental law is very important, with the National Police having a role as investigators in environmental crime cases.

The North Sulawesi Regional Police handled various cases of illegal mining, demonstrating the law enforcement actions carried out by the regional police (Prasstyadi, 2021). The police use discretion in handling cases, taking into account the public interest and applicable regulations.

One of the well-known illegal mining cases in North Sulawesi in 2022 is the Illegal Gold Processing Case in Warukapas Village, Dimember District, North Minahasa Regency (Lontaan, 2022).

North Sulawesi Regional Police Chief Inspector General Setyo Budiyo, at the North Sulawesi Regional Police Headquarters, in Manado, said that the Team Unit 2 Subdit IV Tipidter Dit Criminal Investigation visited the gold processing location which did not come from holders of Mining Business Permits (IUP), Special Mining Business Permits (IUPK) and People's Mining Permits (IPR), then evidence was obtained in the form of 2 sacks of carbon and 126 sacks of raw material containing gold, 1 screening tool, 11 drum units and 6 gold processing barrels.

After carrying out an initial examination, collecting data and evidence, it was finally stated in Police Report Number: LP/A/645/XII/2022/SPKT.DIT RESKRIMSUS/POLDA NULUT, dated December 9 2022 and an Investigation Order Number: SP was issued. Sidik/74/XII/2022/DitÂ Reskrimsus, dated

December 9 2022, as the basis for carrying out the investigation process.

Individual discretion in police actions can influence the results of case investigations, but still ensures the principle of legal certainty is maintained. Illegal mining cases in North Sulawesi show the complexity in enforcing environmental law, including efforts to involve PPNS in handling these cases (Martinus, 2023). The government seeks to improve legal order and certainty in the environmental context.

Law as the basis for organizing national and state life is based on the principles of the rule of law contained in the 1945 Constitution. Law cannot be separated from society, because both influence each other in the context of Indonesian state administration.

Therefore, the author aims to find out the factors that influence the police's decision to use discretion in mining criminal cases and to discover the implementation of police discretion in the process of investigating criminal acts in the mining sector in Indonesia.

METHOD

The form of research used in this research is normative legal research or library research, namely research to obtain secondary data which is carried out by examining books and applicable laws and regulations.

Soerjono Soekanto is of the opinion that in the discussion of normative legal research, which is the character and scope of legal knowledge, in this case this knowledge is defined as a teaching system that discusses reality, which includes analytical science and prescriptive science, and legal knowledge is usually classified as science. prescriptive knowledge if the law is seen to only cover its specific normative side (Soekanto and Mamudji, 1994).

In writing this research, a statutory approach was used because the type of research is normative juridical research.

Data collection is carried out through library study and document study activities. Because this research only focuses on library data and documentation, without any field research, the explanation is qualitative in nature, namely the data is presented in the form of sentences to form an explanation of the results of the problem and finally several conclusions are made in the form of statement sentences.

RESULTS AND DISCUSSION

a. Use of Discretion by the Police in Mining Crimes

The quality of law enforcement human resources is a determining factor in the running of a Criminal Justice System, therefore increasing professionalism, integrity and discipline is an important effort that must be carried out continuously. Apart from that, it is necessary for every law enforcer to act proportionally and have independence, wisdom and good legal behavior, so that legal certainty, justice and the benefits of law as a legal system or basic values of legal ideals can be realized (Effendy, 2012).

Discretionary authority is power or authority exercised based on law, based on considerations and beliefs, with more emphasis on moral considerations than legal considerations. This discretion is not carried out outside the legal provisions, but remains within the legal framework.

In investigations, discretion is not something foreign to the police. Discretionary authority is often used by the police during investigations, especially when they face minor problems that are less efficient if processed formally, or that need to be resolved immediately. This discretion is useful because it makes police work more efficient and effective, considering the limited facilities and infrastructure that exist within the police agency. The influence of this discretion is profound in other components of the criminal justice system. This discretion is present during the

investigation and is influenced by various background factors.

In the context of mining crimes, police discretion is a policy that allows police officers to make decisions based on their judgment, taking into account various factors. The following are several factors that influence the Police's decision to use discretion in mining criminal cases based on the author's research at the Minahasa Police Station where the researcher works:

- a. **Seriousness of the Violation.** The police will assess the seriousness of the criminal act that occurred. Criminal offenses involving serious environmental damage or repeated offenses may require stricter action than offenses of a lesser nature. This factor can be seen in the criminal case of illegal mineral and coal mining in Ratatotok Satu village, Southeast Minahasa Regency, with the suspect SM carrying out excavations at the Liang Lobongan Plantation Location.
- b. **Social and Economic Impact.** Discretion can be influenced by the social and economic impact of the criminal act. If illegal mining activities have a significant negative impact on local communities or the local economy, the police may be more inclined to take stronger legal action. This driving factor can be seen in the case of illegal gold mining in the Bogani Nani Wartabone National Park, Bolaang Mongondow Regency.
- c. **Intentions and Motives of the Perpetrator.** The police often consider the intentions and motives behind the perpetrator's actions. Violations committed with malicious intent or great personal gain are usually processed more seriously than violations committed accidentally or due to lack of knowledge.
- d. **Perpetrator's Cooperation.** The perpetrator's attitude when faced with the legal process also influences the use of discretion. Perpetrators who are

cooperative and show remorse may receive more lenient treatment than those who are confrontational or try to obstruct the legal process.

- e. **Public Interest.** The police also consider the public interest in making decisions. For example, if decisive action is necessary to maintain public order or prevent greater environmental damage, the police may be more inclined to use their powers to the fullest extent.
- f. **Policies and Directions from Superiors.** Policy direction from police leadership or local government can influence the use of discretion. Policies that emphasize strict law enforcement or a more persuasive approach will guide police actions in the field.
- g. **Availability of Resources.** Practical factors such as the availability of human resources and logistics also influence decisions. In some cases, limited resources may lead police to choose more efficient approaches or seek alternative solutions to detention.
- h. **Applicable Legal and Regulatory Aspects.** Discretion must also take into account the existing legal and regulatory framework. The police must ensure that their decisions remain within the bounds of applicable law and do not violate individual basic rights.
- i. **Expert and Public Opinions.** Sometimes, opinions from environmental experts, legal experts, or input from the local community can influence police decisions. Support or pressure from society can be an important factor in the decision-making process.
- j. **Precedents or Previous Cases.** Experience from previous similar cases can also influence the use of discretion. If there is a precedent for how similar cases are handled, this can guide police in making decisions.

2. Discretion by the Police in the Process of Investigating Mining

Crimes in Indonesia

The concept of Law Enforcement is conceptually and theoretically based that the core and meaning of law enforcement lies in the activity of harmonizing the relationship between values which are described in stable and embodied rules and attitudes of action as a series of final stages of value translation, to create, maintain and maintain peaceful social life (Riyanto, 2006).

Police discretion is basically a policy in enforcing criminal law taken by the Police. Viewed as a policy process, criminal law enforcement is essentially policy enforcement, through several stages, namely (Felisiano and Paripurna, 2010):

- a. The formulation stage, namely the in abstracto law enforcement stage by the law-making body. This stage is also called the legislative policy stage.
- b. Application stage, namely the stage of application of criminal law by law enforcement officials from the police to the courts. This second stage can also be called the judicial policy stage.
- c. Execution stage, namely the stage of concrete implementation of criminal law by criminal implementing officials. This stage is called the executive or administrative policy stage.

The criminal law policy formulation stage involves several important stages to ensure that the resulting law is effective, fair and in line with community needs. This is done by first identifying the problem or issue that requires criminal law regulation, then conducting research and collecting data to understand the extent of the problem and its impact on society. After that, policy makers must analyze the causes and factors that contribute to the problem that has been identified by understanding the social, economic and cultural context related to the problem.

After the analysis is carried out, the

policy maker determines the goals to be achieved through the criminal law policy that will be created. Goals must be clear, specific and measurable by developing various policy alternatives that can be used to achieve the stated goals. Each alternative must be evaluated based on its effectiveness, efficiency and impact on society. The chosen policy must have support from key stakeholders and be accepted by society.

The role of Police Investigators in the criminal justice system is at the forefront and is the initial stage of the criminal justice process mechanism, namely "preliminary examination". The investigative tasks relate to arrest, detention, confiscation, examination of documents, examination of witnesses or suspects, assistance from experts (Sitompul, 2005).

Evaluation of the effectiveness and efficiency of policies regarding police discretion is contained in Article 14 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 1 of 2009 concerning the Use of Force in Police Actions regarding the control and supervision of discretion.

So if a criminal act occurs, investigators carry out activities that include (Djamin, 2007):

- a. Search for and find an incident that is suspected of being a criminal act.
- b. Determine whether or not an investigation can be carried out.
- c. Search and collect evidence.
- d. Make clear about the criminal act that occurred.
- e. Find suspected criminals.

Police discretion is the authority to make decisions based on their judgment in a particular situation, and its application in criminal law enforcement covers a wide range of actions and decisions. Based on the author's research within the North Sulawesi Regional Police, the application stage of implementing criminal policies, especially

police discretion, has been carried out in several forms, namely:

- a. Termination of Investigation (SP3). The police may decide to stop the investigation if it is found that the criminal act does not have sufficient evidence, or is not significant enough to proceed with further legal proceedings.
- b. Warning or Reprimand. Instead of taking the case to court, the police can give a warning or reprimand to the perpetrator of illegal mining, especially if the violation is considered minor and the perpetrator shows good faith in correcting the mistake.
- c. Administrative Arrangements. The police can choose to resolve problems through administrative channels, such as providing administrative sanctions or recommendations for improving mining operational procedures.
- d. Mediation or Out-of-Court Settlement. The police can direct the perpetrator and the injured party to resolve the problem through mediation or other dispute resolution mechanisms that do not involve formal court processes.
- e. Case Prioritization. In situations where resources are limited, the police may use discretion to prioritize cases that are considered more serious or have a wider impact, while postponing or ignoring cases that are considered less significant.
- f. Coaching and Education. The police may choose to provide education and guidance to perpetrators, especially if the perpetrators do not fully understand the applicable legal regulations or the impact of their actions.
- g. Providing Opportunities to Correct Mistakes. Perpetrators can be given the opportunity to correct their mistakes, for example by stopping illegal activities, returning the mining area to its original condition, or fulfilling the correct licensing requirements.

The execution stage of the exercise of

discretion by the police includes various actions taken based on situational assessments by police officers, to handle cases in the most appropriate, effective and fair manner. In the case of minor offences, police may choose to give a verbal or written warning to the offender rather than carry out formal detention or prosecution. The police can give verbal or written warnings to perpetrators of illegal mining, especially if the violation occurs for the first time or the impact is relatively small. This warning is accompanied by an explanation of the legal consequences if the violation is repeated.

Meanwhile, if we refer to the provisions of Article 1 paragraph (2) of the Criminal Procedure Code, it is stated that "investigation" is a series of actions by investigators in terms of and according to the procedures regulated in this Law to search for and collect evidence which, with that evidence, will shed light on the criminal act committed, happened and to find the suspect (Mulyadi, 2007).

Police in North Sulawesi provide opportunities for perpetrators of illegal mining crimes to repair the damage caused, such as rehabilitating damaged areas or removing mining equipment. They also provide education regarding mining regulations and environmental impacts to perpetrators, often with the help of relevant institutions for legal solutions. In some cases, the police directed dispute resolution through mediation or out-of-court settlement between mining companies and local communities regarding compensation or rehabilitation. The police use a persuasive approach to request a voluntary cessation of illegal activities and negotiate future compliance, including measures to address negative impacts such as environmental rehabilitation or compensation to affected communities.

It cannot be denied that discretion executed as above can have a negative impact on mining law enforcement. The

police are fully responsible for all discretionary actions they take as stated in Article 13 of the Regulation of the Chief of the National Police of the Republic of Indonesia Number 1 of 2009 concerning the Use of Force in Police Actions.

Accountability for police discretion is a crucial aspect in ensuring that actions taken by the police using discretion are carried out appropriately, fairly and in accordance with the law. Transparency is key, where the police must openly explain the reasons and legal basis underlying their use of discretion. Every decision taken using discretion must be clearly documented, including the evidence and considerations used.

The police are responsible to their direct superiors and the police organizational structure in the use of discretion. Internal monitoring mechanisms such as inspectorates or internal monitoring units are tasked with examining and evaluating the use of discretion. In addition, independent external bodies such as ombudsmen, police commissions, or other oversight institutions have a role in monitoring the use of police discretion. They can receive and investigate public complaints regarding abuse of discretion, because the use of discretion must be in line with applicable legal procedures and provisions and comply with human rights.

Adequate training regarding the use of discretion, including ethical aspects, human rights and principles of justice, is essential for the police. This training helps ensure that they understand when and how to use discretion appropriately.

Active communication with the public regarding policies and practices for the use of discretion is also needed. Regular meetings between the police and local communities to discuss security and law enforcement issues can increase transparency and trust. Community participation through public forums or community dialogue provides opportunities

for them to provide input regarding policies and practices in the use of police discretion.

The importance of public access to effective grievance and complaint procedures should not be overlooked. These procedures must be independent, easily accessible, and provide protection for whistleblowers who feel the use of discretion by the police is unfair or inappropriate.

Police who abuse their discretion or act outside their legal authority may be subject to appropriate sanctions or disciplinary action. These sanctions can take the form of a warning, suspension, or dismissal depending on the severity of the violation. In Article 23 paragraph (3) letter f number 1 of the Regulation of the Chief of Police of the Republic of Indonesia Number 14 of 2011 concerning the Code of Professional Ethics for the National Police of the Republic of Indonesia, it is stated that there are administrator sanctions in the form of dishonorable dismissal for those who violate the police professional code of ethics.

The use of discretion by the police in investigating criminal acts in the mining sector is an important aspect for handling criminal cases involving mining activities. Police are faced with complex challenges where they have to make appropriate decisions according to diverse situations. Police discretion can include case handling priorities, mediation approaches, appropriate investigative techniques, as well as prevention and education efforts.

Police discretionary considerations vary widely depending on the severity of the crime, the impact on the environment, and the interests of local communities and government policy. They may choose to emphasize handling cases involving serious environmental damage or organized crime in the mining sector to ensure optimal resource allocation.

The mediation approach is an effective alternative in handling conflicts

between mine owners, local communities, or other parties. Through mediation, the police facilitate dialogue between the parties involved to reach a peaceful solution that is acceptable to all parties, avoiding further escalation of the conflict.

However, the use of discretion also raises the risk of abuse of power and inequality in the treatment of similar cases. Therefore, transparency, responsibility and accountability in the use of discretion are very important. Police decisions must be based on objective and fair considerations, and comply with applicable laws and human rights.

Apart from that, the use of appropriate investigative techniques is also crucial in strengthening cases involving the mining sector. The police must be able to choose investigative tools that are appropriate to the complex mining environment to support the legal process with adequate evidence.

Prevention and education of mining actors regarding applicable rules and regulations is also an important part of police discretion. This helps reduce future legal violations and maintain environmental sustainability.

Alternative approaches such as mediation can speed up case resolution and reduce the workload on the criminal justice system. This shows the importance of wise decision making to achieve positive impacts for society and the environment as a whole in the context of law enforcement in the mining sector.

CONCLUSION

The police use discretion in mining criminal cases by considering several important factors which are the seriousness of the crime, resource availability, prevention and education for reducing future violations, environmental impacts and community interests. The appropriate use of discretion can help reduce environmental losses and social conflicts

that may arise. The use of discretion by the police in mining criminal cases is the result of careful evaluation of these factors.

The implementation of discretion by the Police in law enforcement in the mining sector in Indonesia includes several approaches adapted to the complexity and challenges faced, which are setting priorities in handling mining criminal cases, choosing appropriate investigative techniques for mining cases, applying a preventive approach by providing education to mining actors about the applicable rules and regulations as well as the negative impacts of illegal actions, offering alternative approaches, such as mediation, in resolving conflicts involving parties involved in mining activities.

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