

The Criminal Act of Illegal Mining of Sand and Grosok

by lidya uinsa

Submission date: 13-Dec-2023 06:15PM (UTC+0700)

Submission ID: 2257776388

File name: 11.pdf (164.39K)

Word count: 5890

Character count: 32148



2 The Criminal Act of Illegal Mining of Sand and Grosok

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ABSTRACT

The control of minerals and coal by the state as referred to in Paragraph (1) is organized by the Government and Regional Governments. The purpose of this research is to understand and analyze the management of river sand mining and grosok in accordance with applicable laws and regulations in Indonesia, also examine and analyze criminal law enforcement on illegal mining of river sand and grosok. This research is included in normative legal research. The results showed that to conduct community mining activities in river sand mining according to Law No. 4/2009 concerning Mineral and Coal is Article. 1 number 10; Article. 1 number 12; Article. 20; Article. 21; Article. 22; Article. 24; Article. 25; Article. 26; Article. 35; Article. 67; Article. 68; Article. 69; Article. 70; Article. 72; Article. 73; Article. 104; Article. 131 and Article 132 with their criminal sanctions are contained in Article. 158, Article, 159 and Article. 165. The investigation of criminal act of illegal mining of river sand and grosok by police officers of the Directorate of Special Criminal Investigation of East Java Regional Police resulted in the conclusion that there was a criminal act of illegal mining by everyone who conduct the mining without a permit, as referred to in Article 158 of Law of Republic Indonesia No. 3/2020 concerning amendments to Law of Republic Indonesia No. 4/2009 concerning Mineral and Coal Mining, which has been amended by Law of Republic Indonesia No. 11/2020 concerning Job Creation.

Keywords: *Criminal Offence, Illegal Mining, Sand Mining*

INTRODUCTION

In Article 33 Paragraph (3) of 1945 Constitution of Republic Indonesia stipulates that "The land, water and natural resources shall be under the authority of State and will be utilized to greatest extent for citizens prosperity." This provision shows that the government has the authority to control and ensure the availability of natural resources for the benefit of the community. In its authority, the government has regulated and provided the regulation in the implementation of natural resource exploitation in mining sector in Indonesia through Law Number 4 of 2009 concerning Mineral and Coal Mining. In Article 1 number 1 of Mineral and Coal Mining Law explains that "Mining is part of activities in research, management and exploitation of minerals or coal which include general investigations, exploration, feasibility studies, construction, mining, processing and refining, mining and sales, as well as post-mining activities." In the Mineral and Coal Mining Policy, the local Government has authority related to licensing only if the task is delegated to the Regional Government.¹

Meanwhile, in Article 4 Paragraph (1) of Mineral and Coal Mining Law as a non-renewable natural resource is a national wealth controlled by the state for the citizen welfare. The control of minerals and coal by the state as referred to in Paragraph (1) is organized by the Government and Regional Governments. Mining excavation material in Indonesia has a very diverse type due to differences in location, geographical conditions, mineral content, and the formation process of the mining land. The mining operations also resulted in the loss of a variety of biota types that are crucial for providing environmental services like the production of forest products, soil stability, preservation of the hydrological cycle, and carbon sequestration.² The Government Regulation (PP) No. 23/2010 concerning the Implementation of Mineral and Coal Mining Business Activities is grouped the mining commodities into five group, such as mineral radioactive, including radium, thorium and uranium, metallic minerals, including gold and copper, Non-metallic minerals, including diamond and bentonite, Rocks, including: andesite, clay, dredged soil, gravel excavated from the hill, river gravel, dredged sand, And coal, including bituminous rock, coal, and peat.

The terminology of class C excavation material previously regulated in Law No. 11/1967 has been changed based on Law No. 4/2009, to rock, then the use of the term class C excavation material is no longer appropriate and is replaced with rock. Currently, rock commodities have an equally important role, especially in

¹ Septiana Sari and Darminto Hartono Paulus, "Pandecta Licensing Policy on Mineral and Coal Mining in the Concept of Division of Authority," *Pandecta: Research Law Journal* 17, no. 2 (2022): 189–197.

² Sukarman Sukarman, Rachmat Abdul Gani, and Asmarhansyah Asmarhansyah, "Tin Mining Process and Its Effects on Soils in Bangka Belitung Islands Province, Indonesia," *Sains Tanah - Journal of Soil Science and Agroclimatology* 17, no. 2 (December 30, 2020): 180, <https://jurnal.uns.ac.id/tanah/Article/view/37606>.

providing material support for infrastructure development, including the establishment of road infrastructure facilities, housing construction, and office buildings. Minister of Energy and Mineral Resources Regulation No. 05/2017 on Increasing Mineral Value Through Domestic Processing and Refining Activities explains in more detail about the types of rock mining materials:

Article 2

- (1) The implementation of mineral and coal mining business activities is aimed at implementing policies to prioritize the use of minerals and/or coal for domestic interests.
- (2) Mineral and coal mining as referred to in Paragraph (1) is grouped into 5 (five) classes of mining commodities:
 - a. Radioactive minerals include radium, thorium, uranium, monazite, and other radioactive minerals;
 - b. Metallic minerals include lithium, beryllium, magnesium, potassium, calcium, gold, copper, silver, lead, zinc, tin, nickel, manganese, platinum, bismuth, molybdenum, bauxite, mercury, wolfram, titanium, barite, vanadium, chromite, antimony, cobalt, tantalum, cadmium, gallium, indium, yttrium, magnetite, iron, galena, alumina, niobium, zirconium, ilmenite, chromium, erbium, ytterbium, dysprosium, thorium, cesium, lanthanum, niobium, neodymium, hafnium, scandium, aluminum, palladium, rhodium, osmium, ruthenium, iridium, selenium, telluride, strontium, germanium, and zenotin;
 - c. Non-metallic minerals include diamond, corundum, graphite, arsenic, quartz sand, fluorspar, cryolite, iodine, bromine, chlorine, sulfur, phosphate, halite, asbestos, talc, mica, magnesite, yarosite, ochre, fluorite, ball clay, fire clay, zeolite, kaolin, feldspar, bentonite, gyArticleum, dolomite, calcite, chert, pyrophyllite, quartzite, zircon, wolastonite, alum, quartz stone, perlite, rock salt, clay, and limestone for cement;
 - d. Rocks include pumice, tras, toseki, obsidian, marble, perlite, diatomaceous earth, fullers earth, slate, granite, granodiorite, andesite, gabbro, peridotite, basalt, trachite, leucite, clay, clay, pumice, opal, chalcedony, chert, quartz crystal, jasper, chrysoprase, eroded wood, gametes, jade, agate, diorite, topaz, large quarry mountain stone, gravel quarried from hills, river gravel, river stone, sifted river gravel without sand, dredged sand, tidal sand, natural sandy gravel (sirtu), selected fill material (soil), local soil fill, red soil (laterite), limestone, onik, sea sand, and sand that does not contain metallic mineral elements or non-metallic mineral elements in significant quantities in terms of mining economics; and
 - e. Coal includes solid bitumen, asphalt rock, coal and peat.
- (3) The changes to the classification of mining commodities as referred to in Paragraph (2) shall be stipulated by the Minister.

Currently, river sand mining activities are very developed. The results obtained are very beneficial for improving the community welfare, especially for miners. However, there is a problem that must be considered by the government, regarding the problem of illegal river sand mining. Illegal mining that conducted without permits, operational procedures, and regulations from the government will causes losses to the state because it exploits natural resources illegally, distributes and sells the mining products illegally for avoiding the state taxes. This is causing frequent cases of illegal river sand mining crimes. The mining in Indonesia can contribute significantly to state revenues when it managed properly in accordance with procedures. In addition, it can improve the economy of the community around the river.³ Illegal River sand mining activities still occur in a number of river basins in East Java region, especially river sand mining in Sugiwaras Village, Ngancar, Kediri. In fact, the damage caused by illegal mining activities is very large. River sand mining is the extraction of sand (and gravel) from the drainage network of a river.⁴ The sand mining in rivers that do not pay attention to ecology will disrupt the river ecosystems.

Sand in the river's bottom serves a number of purposes, one of which is to stop water from flowing, which is especially helpful when there have been significant rains and the water discharge has increased. The rate of water flow will increase along with a rise in river water discharge. Without any barriers to slow the water's flow, the river's banks will suffer the significant damage. It is different with sand mining in rivers that are continuously supplied by volcanoes, which if not mined, it can cause flooding. When the people mine sand from rivers that come from dead mountains, it can cause the flow rate of the river to increase, which can cause severe damage along the river. The damage that often occurs when the water flow is very large without anything to stop it, there will be many landslides along the banks of the river. When the river flow hits the bridge, it will cause the bridge collapsing. From the two possibilities above, there will be many lives that may be threatened, along with the economic and social impacts that might be destroyed.

On Thursday, January 13th, 2022 at 13.30 WIB, members of Unit II of Subdit IV Tipidter Ditreskrimsus Polda Jatim conducted an inspection at the mining location owned by Mr. Hari Priyanto in Sugihwaras district, Kediri City which is allegedly not equipped with a permit, as regulated in Article 158 of the Law of Republic Indonesia No. 3/2020 concerning amendments to the Law of Republic Indonesia No. 4/2009 regarding Mineral and Coal Mining, as amended by Law No. 11/2020 about the Job Creation. In Mineral and Coal Mining Law Article 34 Paragraph (1), it is explained that the definition of license is a license to conduct mining business as regulated in Mineral and Coal Mining Law, which is issued by authorized officials, by Governor or Minister in accordance with Mining Business

³ Salim, *Hukum Pertambangan Di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2014).

⁴ E.S. Rentier and L.H. Cammeraat, "The Environmental Impacts of River Sand Mining," *Science of The Total Environment* 838 (September 2022): 155877, <https://linkinghub.elsevier.com/retrieve/pii/S0048969722029746>.

License Area (WIUP) under their respective authority". In Mineral and Coal Mining Law Article 34, it is explained that mining businesses are grouped into Mineral and Coal mining. Whereas in Mineral and Coal Mining Law Article 34 Paragraph (2) it is explained that mineral mining is classified as Radioactive mineral mining, Metal mineral mining, Non-metallic mineral mining, and Rock mining. Article 35 of Mineral and Coal Mining Law describes the types of mining businesses conducted in the form of IUP (Mining Business License), IPR (People Mining License), and IUPK (Special Mining Business License).

Criminal provisions are regulated in Mineral and Coal Mining Law Chapter XXIII Article 158 to Article 165. The criminal provisions contained in this law regulate many permit issues, called Mining Business License (IUP), People Mining License (IPR), and Special Mining Business License (IUPK). Article 158 of Mineral and Coal Mining Law states that "every person who conducts mining business without an IUP, IPR, or IUPK as referred to in Article 37, Article 40 Paragraph (3), Article 48, Article 67 Paragraph (1) Article 74 Paragraph (1) or Paragraph (5) shall be sentenced with a maximum imprisonment of 10 (ten) years and a maximum penalize of IDR. 10,000,000,000 (ten billion rupiah). Law enforcement in illegal river sand mining is the duty of law enforcement officials, which require the support from the society itself. There are five factors that influence the law enforcement, such as:

1. Legal substance, i.e. laws and regulations,
2. Legal structure factor, called law enforcers (who apply the law),
3. Facility factors that support the law enforcement,
4. Community factors, the environment where the law is applied, and
5. Cultural factors, called the results of work, creation, and taste based on human spirit in the association of life

The integrity of law enforcement officials is more important than the actual content of legislation. The Public Service Integrity Framework's major objective is to strengthen policies and guidelines for managing integrity and to advance moral behavior in the public sector.⁵ The criminal law enforcement is essentially a policy enforcement through several stages:

1. The formulation stage is the inabstracto law enforcement by the government. This stage can also be called the legislative policy stage.
2. The application stage is the application of criminal law by law enforcement officials from Police, Prosecutors' Office to the Court. This second stage can also be called the judicial policy stage.

⁵ Ramolobi L.G. Matlala, Duxita Mistry, and Arnold Phala, "Measuring the Integrity of Law Enforcement Officers in Gauteng Province," *The International Journal of Social Sciences and Humanities Invention* 3, no. 11 (November 14, 2016): 2969–2980, [http://valleyinternational.net/thijsshi/v3-i11/5 theijsshi.pdf](http://valleyinternational.net/thijsshi/v3-i11/5%20theijsshi.pdf).

3. The execution stage, which is the stage of concrete implementation of criminal law by the criminal implementation apparatus. This stage can be called the executive or administrative policy stage.

According to Barda Nawawi Arief, the definition of punishment is broadly defined as a process of giving or imposing punishment by a judge, it can be said that the punishment system includes all statutory provisions that regulate how the criminal law is enforced or concretely operationalized as the sanctioned to the perpetrator.⁶ Punishment may cause an increase in freedom, for preventing crimes, which threaten the citizens' freedom.⁷ This means that all statutory regulations regarding substantive criminal law, formal criminal law and criminal implementation law can be seen as a unified criminal system.

Based on the background above, the researcher will conduct research related to the criminal act of illegal sand and *grosok* mining. The purpose of this research is to understand and analyze the management of river sand mining and *grosok* in accordance with applicable laws and regulations in Indonesia. Also, to understand and analyze criminal law enforcement on illegal mining of river sand and *grosok*.

RESEARCH METHODOLOGY

To answer the formulated problems in this research, a normative legal research method is used that refers to legal norms to understand the application of legal norms, which in this case exist to change the situation and offer potential solutions to solve any concrete societal problems. Normative legal research focuses on the positive aspects of the law and examines how positive legal provisions are implemented in society through the application of deductive reasoning analysis.⁸ In this research, the problem approach used is a statutory approach (statue approach) conducted by examining all laws and regulations related to the legal issues. The collection of legal materials is conducted by literature research to find the theoretical basis of research problems by exploring laws using several books, journals, newspapers or documents. The method used to analyze legal materials is normative qualitative, from legal materials that have been collected in accordance with the problems studied, then analyzed qualitatively to produce a conclusion to answer the problems discussed.

⁶ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana*, Cetakan 6. (Jakarta: Kencana, 2017).

⁷ David Chelsom Vogt, "The Natural Meaning of Crime and Punishment: Denying and Affirming Freedom," *Criminal Law and Philosophy* (November 24, 2021), <https://link.springer.com/10.1007/s11572-021-09624-2>.

⁸ Ifan Eldin Khaq and Ahmad Hidayat, "The Law Enforcement Against an Illegal Online Loans Platform," *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 3 (2022).

RESULT AND DISCUSSION

The Management of River Sand Mining and *Grosok* in Accordance with Indonesian Legislation

The management of river sand mining and *grosok* in accordance with applicable laws and regulations in Indonesia are stipulated as follows:

a. 1945 Constitution

Article 5 explains that:

- (1) The President has the authority to submit the draft laws to the House of Representatives.
- (2) The President enacts government regulations to implement the law as intended.

Also explained in Article 33

- (1) The economy is organized as a joint venture based on kinship principle.
- (2) The production and that control the citizens lives are controlled by the state.
- (3) The land, water and natural resources contained are controlled by the state and used for the greatest prosperity of its people.
- (4) The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental perspective, independence, and maintaining a balance of progress and national economic unity.
- (5) Further provisions concerning the implementation of this Article shall be regulated by law.

b. Law No. 4/2009 on Mineral and Coal Mining

Regulations for conducting community mining activities in river sand mining according to Law No. 4 of 2009 concerning Mineral and Coal Mining are:

- 1) Article 1 point 10, contains a formula for a people's mining license called (IPR);
- 2) Article 1 point 12 contains the formulation of the area in artisanal mining (WPR);
- 3) Article 20 contains every community mining activity conducted in a WPR
- 4) Article 21 contains the rules for determining community mining areas;
- 5) Article 22 contains rules on the criteria for determining WPR;
- 6) Article 24 regulates the areas and places of artisanal mining activities that have been worked on, but have not been designated as WPR and must be prioritized to be designated as WPR;
- 7) Article 25 regulates the guidelines, procedures, and determination of WPR, which are under the authority of the Regent/Mayor after consultation with the Regency/City government;
- 8) Article 26 regulates the criteria and mechanism for determining WPR, which is stipulated in Regency/City Regional Regulation;

- 9) Article 35 regulates the implementation of mining in the form of a community mining license (IPR);
 - 10) Article 67 regulates the legal entities that are entitled to apply for IPR;
 - 11) Article 68 regulates the area of the community mining area (WPR);
 - 12) Article 69 regulates the rights of IPR holders;
 - 13) Article 70 and Article 71 regulate the obligations of IPR holders;
 - 14) Article 72 regulates the procedure for granting IPR, which is issued in the Regency/City Regional Regulation;
 - 15) Article 73 regulates training and coaching;
 - 16) Article 104 regulates the prohibition of processing and refining in mining;
 - 17) Article 131 and Article 132 regulate the amount of tax paid by IPR holders; with the sanctions contained in Articles 158, 159 and 165 of Law No. 4/2009 on Mineral and Coal Mining.
- c. Government Regulation No. 37 of 1986 Concerning the Transfer Part of Mining Government Affairs to Regional Government Level I
Government Regulation No. 37 of 1986 states that:

Article 2

- (1) Some Government affairs in Mining are handed over to Regional Level I, in accordance with the provisions stipulated in this Government Regulation.
- (2) The transfer of affairs mentioned in Paragraph (1) is handled by the Minister of Mining and Energy based on the evaluation made by the Minister of Home Affairs regarding the region's capacity to accept it.

Article 3

Additionally, a Level I Regional Government may delegate some of the matters mentioned in Article 2 to a Level II Regional Government in its area.

Article 4

- (1) The affairs handed over as referred to in Article 2 include policies to regulate, manage and develop the business of consideration of class c excavation materials, as long as they are not located offshore and/or whose exploitation is conducted in Foreign Investment in accordance with applicable laws and regulations.
- d. East Java Regional Regulation No. 1 Year 2005 Concerning the Control of Mining Business of Group C Excavated Materials in River Areas in East Java Province

Article 2

Controlling the class C excavation material mining industry is an endeavour to govern the implementation of class C excavation material mining in protecting and securing rivers for the river functions can serve the community's interests.

Article 3

The Article 2 referenced the control of class C excavation material mining business that aims to reduce the mining activities and give local communities access to using class C excavation material manually or traditionally in order to secure, preserve, and prevent damage from mining to rivers, irrigation structures, and other public facilities.

Controlling the class C/rock mining industry is conducted in order to secure and protect the river and ensure that it serves the community's needs. According to Article 3, it is important to limit mining activity near rivers and give local residents the chance to use Class C excavation materials and rocks traditionally in order to foster a sense of community, protect rivers and irrigation structures or other public buildings, and prevent damage from mining.

Article 4

The mining business management license area includes:

- (1) River areas are under the authority of East Java Provincial Government;
- (2) River area under the authority of PERUM Jasa Tirta I.

Article 5

- (1) Every class C excavation material mining business in the river area is conducted after obtaining a permit from the Governor.
- (2) Mining License as referred to in Paragraph (1) is granted for these activities:
 - a) Exploitation;
 - b) Transportation.
- (3) The license is granted to cooperatives come from local community, known by the Head of Village/Lurah and local sub-district head.

Article 6

- (1) The requirements to obtain a license as referred to in Article 5 Paragraph (1) are:
 - a) Written application to the Governor equipped with a letter of identity, deed of the cooperative establishment, map of the location, and type of mining product transportation;
 - b) Other equipment that will be further regulated by Governor Regulation.
- (2) License application procedures will be stipulated by the Governor
- (3) The license as referred to in Article 5 Paragraph (1) shall be issued after:
 - a) Consideration from Regent/Mayor concerned;

- b) Obtain the technical recommendations from Public Works Office of Irrigation or Perum Jasa Tirta I according to their respective authorities;
- c) Acquire an environmentally recommendation from Bapedal.

Article 7

- (1) The mining business as referred to in Article 5 Paragraph (1) is conducted manually/traditionally and does not use mechanical equipment.
- (2) Mining activities on rivers, sand pockets, and lava pockets that must be conducted by using Group C Excavation Material due to their nature and conditions are excluded from the provisions mentioned in Paragraph (1). Mining activities may use mechanical equipment or heavy equipment.
- (3) The activities as referred to in Paragraph (2) may be conducted by:
 - a) Provincial Government, Agency, Department, and the Institution responsible for the river or other places in accordance with applicable regulations;
 - b) Legal Entities/Persons who hold a Regional Mining License (SIPD) that was issued before the implementation of this regional regulation, until the license's expiration date.
- (4) The activities as referred to in Paragraph (2) and Paragraph (3) letter a may also be conducted through cooperation with third parties or cooperatives that have obtained a license in accordance with applicable regulations.

Article 8

- (1) The Regional Mining License issued to Cooperative in accordance with Article 5 Paragraph (3) shall be implemented at the location specified in the Regional Mining License (SIPD).
- (2) In accordance with this Regional Regulation, other communities from outside the region that engaged in mining operations in the river area may work with regionally accredited community cooperatives in the area.
- (3) The cooperation as referred to in Paragraph (2) shall be conducted in accordance with applicable provisions.

Article 9

According to technical guidance from PU Irrigation Service or Perum Jasa Tirta I and Bapedal, the duration of execution of the mining license is decided based on calculations of the potential of Class C excavated materials, river conditions, and environmental circumstances.

Article 10

- (1) The license as referred to in Article 5 Paragraph (1), expires and is no longer valid because:
 - a) The expiration of validity period

- b) Group C excavation material reserves are depleted and or no longer suitable for mining;
 - c) Returned by the permit holder;
 - d) License revocation.
- (2) The Provincial Government may halt mining operations that are still being conducted within the licensing period in the interests of the State, the environment, and the general public, subject to the following conditions:
- a) Notify them in advance of the planned activity;
 - b) Provide compensation in accordance with the ability/reasonableness based on a stipulated agreement.
- (3) The license holder is responsible for conducting the requirements of the license once it has expired as mentioned in Paragraph (1).
- e. Government Regulation No. 23/2010 on the Implementation of Mineral and Coal Mining Business Activities

Article 2

- (2) Mineral and coal mining as referred to in Paragraph (1) is grouped into five classes of mining commodities:
- a) Radioactive minerals include radium, thorium, uranium, monazite and other radioactive minerals;
 - b) Metal minerals include lithium, beryllium, magnesium, potassium, calcium, gold, copper, silver, lead, zinc tin, nickel, manganese, platinum, bismuth, molybdenum, bauxite, mercury, wolfram, titanium, barite, vanadium, chromite, antimony, cobalt, tantalum, cadmium, gallium, indium, yttrium, magnetite, iron, galena, alumina, niobium, zirconium, ilmenite, chromium, erbium, ytterbium, dysprosium, thorium, cesium, lanthanum, niobium, neodymium, hafnium, scandium, aluminum, palladium, rhodium, osmium, ruthenium, iridium, selenium, telluride, strontium, germanium, and zenotin;
 - c) Non-metallic minerals include diamond, corundum, graphite, arsenic, quartz sand, fluorspar, cryolite, iodine, bromine, chlorine, sulfur, phosphate, halite, asbestos, talc, mica, magnesite, yarosite, ochre, fluorite, ball clay, fire clay, zeolite, kaolin, feldspar, bentonite, gyArticleum, dolomite, calcite, chert, pyrophyllite, quartzite, zircon, wolastonite, alum, quartz stone, pearlite, rock salt, clay, and limestone for cement;
 - d) Rocks include pumice, tras, toseki, obsidian, marble, perlite, diatonic earth, fullers earth, slate, granite, granodiorite, andesite, gabbro, peridotite, basalt, trachite, lousite, clay, pumice, opal, chalcedony, chert, quartz crystal, jasper, chrysoprase, eroded wood, gametes, jade, agate, diorite, topaz, large quarry mountain stone, gravel excavated from hills, river gravel, river stone, sifted river gravel without sand, dredged sand,

tidal sand, natural sandy gravel (sirtu), local soil fill, red soil (laterite), limestone, onik, sea sand, and sand that does not contain metallic mineral elements or non-metallic mineral elements in significant quantities in terms of mining economics; and

e) Coal includes solid bitumen, asphalt rock, coal, and peat.

(3) The Minister must specify any changes to mining commodities are classified in accordance with Paragraph (2).

Article 4

To obtain IUP, IPR, and IUPK as referred to in Article 3 Paragraph (1), the applicant must fulfil the administrative, technical, environmental, and financial requirements.

Criminal Law Enforcement on Illegal Mining of River Sand and Grosok

According to the 1945 Constitution, law enforcement refers to the total action of law enforcement executors towards the formation of law, justice, and protection of human dignity as well as order, peace, and legal certainty. Criminal law enforcement is related to the idea of protecting society against crime. To maintain a balance between state interests, general interests, and individual interests, criminal law enforcement attempts to uphold the norms of criminal law as well as all values that are behind the norm. This effort is constrained by the "area of no enforcement" through criminal procedural law or other special provisions.⁹ Law enforcement is theoretically involved in the action of changing the values connection that is laid out in rules that are stable and evident. Law enforcement is closely related to the existence of legal certainty in understanding, interpreting and enforcing legislation as a state legal system. Law enforcement is also related to the benefits of law and the realization of justice in the community.¹⁰ Criminal law enforcement on illegal mining of river sand and *grosok* by police officers of special criminal investigation directorate of East Java Police through investigation and inspection process.

a. Investigation

According to Article 1 Paragraph 5 of the Criminal Code, an investigation is a series of investigator actions to seek and find an event suspected of being a criminal offense in order to determine whether or not an investigation can be conducted according to what is regulated in this Law. Then, an investigation is a series of actions taken by law enforcement officials, called police who have the duty as investigators to collect various information to

⁹ Carolina Da Cruz, "Legal Aspects of Justice in Criminal Law Enforcement," *Jurnal Pembaharuan Hukum* 6, no. 3 (December 30, 2019), <http://jurnal.unissula.ac.id/index.php/PH/Article/view/396-405>.

¹⁰ Indah Sri Utari and Ridwan Arifin, "Law Enforcement and Legal Reform in Indonesia and Global Context: How the Law Responds to Community Development?," *Journal of Law and Legal Reform* 1, no. 1 (October 31, 2019): 1–4, <https://journal.unnes.ac.id/sju/index.php/jllr/Article/view/35772>.

determine whether or not a case is continued in the investigation process. KUHAP states that investigation is one of the ways or methods of the investigation function that precedes other actions, in the form of arrest, detention, search, seizure, examination of letters, summoning of examination actions and case file submission to public prosecutor. There is no need for an investigation when someone is caught in the act because it is obvious that they have committed a crime.

b. Inspection

Article 1 Point 2 of Law No. 8 of 1981 concerning Criminal Procedure states that inspection is a series of investigatory conducted in accordance with the manner established by this legislation to look for and gather information that mitigates the criminal offense that happened and to identify the suspect. Investigation is a police action to reach facts or uncover crimes by asking who, what, where, how and why the crime was committed. In other terms, an investigation is the procedure used to acquire materials and evidence in order to develop a clear picture of a crime. An accusation of a criminal offense must be supported by reasonable evidence in order for it to be proven in court. Then, the investigations or enquiries are used to gather such evidence.

The facts, the discussion of the case analysis and legal analysis that are highly supportive and mutually reinforcing with witness testimony, hints, and the evidence seized with the suspect's statement Mr. Hari Priyanto Bin Suripno, the investigator concluded that on Thursday, January 13, 2022 at around 13:30 WIB in Sugihwaras District, Kediri, there has been a criminal act of illegal mining without a license, as referred to in Article 158 of the Law of Republic Indonesia Number 3 of 2020 concerning amendments to Law of Republic Indonesia Number 4 of 2009 regarding Mineral and Coal Mining, which has been amended by the Law of Republic Indonesia Number 11 of 2020 referring to Job Creation.

CONCLUSION

The regulations for conducting artisanal mining activities in this case river sand mining according to Law No. 4 of 2009 concerning Mineral and Coal Mining are Art. 1 point 10; Article. 1 point 12; Article. 20; Article. 21; Article. 22; Article. 24; Article. 25; Article. 26; Article. 35; Article. 67; Article. 68; Article. 69; Article. 70; Article. 72; Article. 73; Article. 104; Article. 131 and Article 132 with criminal sanctions contained in Article. 158, Article, 159 and Article. 165. The investigation of criminal act of illegal mining of river sand and *grosok* by police officers of Special Criminal Investigation Directorate of East Java Police resulted that there was a criminal act of illegal mining by means of every person who conduct the mining without a license, as referred to in Article 158 of the Law of Republic Indonesia Number 3 of 2020 concerning amendments to the Law of Republic of Indonesia Number 4 of 2009 regarding Mineral and Coal Mining, which has been

amended by the Law of Republic Indonesia Number 11 of 2020 referring to Job Creation.

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