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Problems of Participation Qualification and Sentencing Proportionality in Unlicensed Mineral Mining Offences

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ABSTRACT

Unlicensed tin sand mining activities in East Belitung frequently involve multiple perpetrators with varying roles and degrees of participation. This situation demands the careful application of the participation doctrine (deelneming) to ensure that criminal sentences proportionally reflect each actor's culpability. This study analyzes the accuracy of the deelneming doctrine and the judicial reasoning underlying sentencing in Verdict No. 48/Pid.Sus-LH/2025/PN Tdn and Verdict No. 49/Pid.Sus-LH/2025/PN Tdn. The research employs a normative legal method with a descriptive-analytical character using case, statutory, and conceptual approaches. Findings reveal that prosecutors and judges both applied Article 55 paragraph (1) point 1 of the Criminal Code in conjunction with Article 161 of Law No. 3 of 2020, albeit from different perspectives. The co-perpetrator (medepleger) classification for truck drivers in Verdict No. 48 is inaccurate given the absence of double opzet and meeting of minds. Conversely, the medepleger classification of the tin collector in Verdict No. 49 is correct. Sentencing in both verdicts does not fully reflect the proportional difference in culpability, leaving the legal objectives of justice, utility, and legal certainty insufficiently balanced.

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1. INTRODUCTION

Tin is a strategic commodity that for centuries has been the backbone of the economy of the Bangka Belitung Islands. Tin exploration in this archipelago has taken place since the era of the Dutch East Indies Government in the 17th century, and its official management by the Indonesian government began in 1952 (Basri et al., 2024). The community's dependence on the tin mining sector is very strong; consequently, when regulatory controls were relaxed particularly after the issuance of Minister of Industry and Trade Decree Number 146/MPP/Kep/4/1999, which revoked tin's status as a strategic commodity unlicensed unconventional mining practices (TI) spread massively (Sulista, 2019).

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 on Mineral and Coal Mining (hereinafter referred to as the Minerba Law) expressly requires every business actor to obtain an official permit, whether in the form of an IUP, IUPK, or IPR (Pemerintah Republik Indonesia, 2020).

Violations of this obligation are subject to criminal sanctions of up to five years' imprisonment and/or a maximum fine of Rp100,000,000,000, as stipulated in Article 161. Nevertheless, these relatively severe sanctions have not automatically halted the widespread practice of unlicensed mining in the field. Data from the Bangka Belitung Regional Police recorded at least 27 cases of tin smuggling throughout 2023, with state losses reaching Rp78 billion (Redi, 2016).

One prominent characteristic of illegal mining offenses is their organized nature and the involvement of multiple parties simultaneously, ranging from field miners, shaking table owners, collectors, transport drivers, to middlemen. This situation directly intersects with the doctrine of participation (deelneming) as regulated in Articles 55 and 56 of the Criminal Code. Satochid Kartanegara defines deelneming as a situation in which a single criminal offense involves several persons or more than one individual, while Moeljatno (2006) emphasizes that not everyone involved in the occurrence of a criminal act can automatically be regarded as a participant within the meaning of those two articles.

The complexity of applying the theory of participation emerged in two cases adjudicated by the Tanjungpandan District Court: Decision Number 48/Pid.Sus-LH/2025/PN Tdn and Decision Number 49/Pid.Sus-LH/2025/PN Tdn. Both cases stem from the same series of criminal acts involving unlicensed tin sand mining, yet they involved defendants with significantly different roles. In Decision Number 48, the defendant was a transport driver who was instructed to carry the tin without knowing its legal status. Meanwhile, in Decision Number 49, the defendant was a collector who actively purchased, processed, and sold illegal tin sand worth hundreds of millions of rupiah. Notably, both were classified as co-perpetrators (medepleger) under Article 55 paragraph (1) point 1 of the Criminal Code (Putusan Pengadilan Negeri Tanjungpandan Nomor 48/Pid.Sus-LH/2025/PN Tdn, 2025).

The similarity in the qualification of participation attributed to two perpetrators with differing levels of involvement and differing mental attitudes raises serious questions regarding the accuracy of the application of the theory of deelneming and the proportionality of sentencing (Cahyani Tute et al., in Sinurat, 2025). Based on this background, this study addresses two questions: (1) How was the theory of deelneming applied in the two decisions? (2) Do the judges' considerations in imposing the sentences reflect proportional justice?

2. METHODS

This study falls within the category of normative (juridical-normative) legal research, namely research that views law as a system of norms and examines it through written legal materials (Disemadi, 2022; Poddar, 2025). Normative research was chosen because the primary focus of this paper is to assess the accuracy of the application of substantive legal provisions, particularly the rules on participation under the Criminal Code, to the facts revealed in the two court decisions under review. The nature of this research is descriptive-analytical, aiming to provide a systematic and factual description while simultaneously conducting a critical evaluation of the application of legal norms. Three approaches are employed concurrently: the case approach, to thoroughly examine the two court decisions that have obtained permanent legal force; the statute approach, to analyze the Criminal Code and the Minerba Law; and the conceptual approach, to understand relevant legal doctrines, particularly the theory of participation. The legal materials used consist of primary legal materials, namely the two court decisions and statutory regulations; secondary legal materials, such as textbooks, academic journals, and interviews with the Head of the General Crimes Section of the East Belitung District Attorney's Office and a judge of the Tanjungpandan District Court; and tertiary legal materials, including legal dictionaries and encyclopedias. All legal materials were analyzed using a qualitative descriptive method (Maldonado et al., 2021; Soren, 2021).

3. FINDINGS AND DISCUSSION

a. Chronology and Case Background

Decision Number 48/Pid.Sus-LH/2025/PN Tdn involved six defendants, all of whom worked as freight transport drivers. The defendants were contacted by Jon Leo at the instruction of Suryadi alias Supot to transport tin sand from a warehouse in Damai Baru Hamlet, Damar District, East Belitung Regency, to the Stop File Batu Besi location. Each defendant was promised a wage of Rp1,000,000.00 to Rp1,500,000.00 per truck unit, which would only be paid after the transportation was successfully completed (Putusan Pengadilan Negeri Tanjungpandan Nomor 48/Pid.Sus-LH/2025/PN Tdn, 2025).

On the day of execution, eight trucks were loaded with approximately 63,874 kg of tin sand. Before the transportation process was completed, the police secured all vehicles along with their drivers in the fishermen's harbor area on Jalan Batu Besi. The defendants never received any payment, did not know the origin of the tin sand they were transporting, and had no direct relationship with Suryadi alias Supot as the principal offender who initiated and controlled the entire transportation scheme (Putusan Pengadilan Negeri Tanjungpandan Nomor 48/Pid.Sus-LH/2025/PN Tdn, 2025)

Decision Number 49/Pid.Sus-LH/2025/PN Tdn presented a qualitatively different situation. The defendant, Deddy Wilianto alias Weli, acted as a tin sand collector who actively built a business network with Suryadi alias Supot as the main buyer. The defendant collected tin sand from illegal miners in Kelapa Kampit District, processed and separated it using his own shaking table, checked the Sn/Oc content, and independently arranged the transportation process to Suryadi's warehouse. The defendant successfully carried out two sales transactions valued at Rp534,728,100.00 and Rp470,196,000.00 respectively, the proceeds of which were fully received and personally enjoyed (Putusan Pengadilan Negeri Tanjungpandan Nomor 49/Pid.Sus-LH/2025/PN Tdn, 2025).

b. Application of the Theory of Deelneming in the Two Decisions

1) The Prosecutor's and Judges' Approaches in Qualifying Participation

Based on an interview with the Head of the General Crimes Section of the East Belitung District Attorney's Office, Agung Nugroho, S.H., M.H., the prosecutor employed a *splitsing* mechanism (severance of case files) to disentangle the roles of each perpetrator individually. The benchmark for determining the form of participation rested on an objective juridical aspect: assessing the factual contribution of each defendant to the commission of the crime as formulated in Article 161 of the Minerba Law. This objective approach aligns with the objective theory of participation, which places the manifestation of the act as the primary parameter for distinguishing a *medepleger* (co-perpetrator) from a *medeplichtige* (accomplice) (Saraswaty, 2024).

In contrast, Judge Richard Achmad Shahfroellah, S.H., of the Tanjungpandan District Court adopted a different perspective by placing the defendants' mental attitude (*mens rea*) as the primary basis for determining the form of participation. The judge reasoned that any defendant who consciously and jointly carried out a series of acts leading to the crime as referred to in Article 161 of the Minerba Law deserved to be classified as a co-perpetrator (*medepleger*). This subjective approach is consistent with Hieraiej's (2016) view that mental attitude constitutes the central element in determining the existence of co-perpetration, and it is further reinforced by the subjective theory of participation, which emphasizes the perpetrator's intent (*animus*) as the distinguishing criterion (Ananda et al., 2023).

2) Analysis of the Application of *Medepleger* to the Drivers (Decision No. 48)

The validity of a *medepleger* qualification requires the fulfillment of what (Ramadhan, 2021) describe as *double opzet*: first, intent directed toward cooperation (awareness of coordination among perpetrators to realize a criminal offense); and second, intent directed toward the crime itself (awareness that the act committed contributes to the occurrence of the offense). *Medeplegen* does not require prior planning (*dolus premeditatus*), what must be proven is the existence of mutual understanding among the perpetrators and tangible cooperation in achieving a common objective

(Ramadhan et al., 2025). In this context, (Pratiwi, 2022) also emphasizes that if one of these forms of intent is not fulfilled, then co-perpetration does not exist, even if the criminal act objectively occurred.

When these requirements are tested against the trial facts in Decision Number 48, there is no indication that the element of *double opzet* was fulfilled by the drivers. The trial facts consistently demonstrate that the defendants were unaware of the unlawful nature of the tin sand being transported, did not know its origin or ultimate destination, and had no direct relationship with the principal offender, Suryadi alias Supot. The agreement between the defendants and Jon Leo was purely transactional-administrative in nature namely, a freight service wage agreement unrelated to any profit derived from the crime (Putusan Pengadilan Negeri Tanjungpandan Nomor 48/Pid.Sus-LH/2025/PN Tdn, 2025). With the absence of the element of *willens en wetens* (intent and knowledge) on the part of the drivers, the application of *medepleger* to them becomes doctrinally inappropriate.

A more appropriate construction to describe the drivers' position would instead point toward *doenplegen* (indirect perpetration/causing another to commit the act). In this theory, Jon Leo would occupy the position of *manus domina* (indirect perpetrator/*doenpleger*), while the drivers would function as *manus ministra* (the executors/material perpetrators). The doctrine of *doenplegen* explains that the instrument used is a person who cannot be fully held responsible because he lacks the intent (*opzet*) required for the relevant crime. This construction is more consistent with the trial facts than the *medepleger* qualification imposed by the panel of judges.

3) Analysis of the Application of *Medepleger* to the Collector (Decision No. 49)

The condition of the defendant in Decision Number 49 differs substantively. The trial facts show that the defendant fully knew that the tin sand purchased from miners lacked lawful permits, yet he continued the collection, processing, and sale activities for economic gain. The first form of intent (directed toward cooperation) is evidenced by active coordination in the form of intensive communication, price negotiations, and repeated transactions between the defendant and Suryadi alias Supot, reflecting a *meeting of minds* among the perpetrators. Meanwhile, the second form of intent (directed toward the crime) is demonstrated by the defendant's knowledge of the illegal origin of the tin sand being traded (Putusan Pengadilan Negeri Tanjungpandan Nomor 49/Pid.Sus-LH/2025/PN Tdn, 2025).

Emphasizes that the concept of co-perpetration under Article 55 of the Criminal Code encompasses any person who intentionally provides a significant contribution to the commission of a crime, even if not directly performing the material act. In the context of illegal mining, a collector who provides the market and capital may be categorized as a *medepleger* because, without such involvement, mining activities would lack the economic incentive to continue. A similar view is expressed by (Pratiwi, 2022), who require awareness of cooperation and intent to realize a criminal act as two cumulative conditions for fulfilling the elements of *medeplegen*. Both conditions are clearly fulfilled by the defendant in Decision Number 49; therefore, the qualification of *medepleger* against him is appropriate and doctrinally justifiable.

c. Judicial Considerations and the Proportionality of Sentencing

1) Juridical Considerations

In Decision Number 48/Pid.Sus-LH/2025/PN Tdn, the panel of judges upheld the first charge, namely Article 161 of the Minerba Law in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. The court held that the elements of Article 161 were fulfilled based on the fact that the defendants transported tin sand of unclear origin pursuant to an agreement with Jon Leo. The element of co-perpetration (*turut serta melakukan*) was deemed satisfied because the defendants consciously contributed to the transportation and had agreed upon remuneration (Putusan Pengadilan Negeri Tanjungpandan Nomor 48/Pid.Sus-LH/2025/PN Tdn, 2025). The panel also imposed an additional penalty in the form of confiscation of the vehicles pursuant to Article 164 of the Minerba Law, considering that the offense caused financial loss to the state.

In Decision Number 49/Pid.Sus-LH/2025/PN Tdn, the panel concluded that the elements of Article 161 of the Minerba Law were proven through the act of selling minerals not originating from a licensed holder. The acts of collecting, processing, and transporting were viewed as an inseparable series of factual actions from the act of sale (Putusan Pengadilan Negeri Tanjungpandan Nomor 49/Pid.Sus-LH/2025/PN Tdn, 2025). The judges emphasized that the defendant had full knowledge of the unlawful origin of the tin sand, thereby fulfilling the elements of intent and participation convincingly. However, although the defendant clearly enjoyed profits amounting to hundreds of millions of rupiah, the panel did not impose confiscation of the criminal proceeds as permitted under Article 164 of the Minerba Law.

2) Non-Juridical Considerations

The judges' non-juridical considerations included the defendants' background, the intensity of their involvement, and whether they derived benefit from the offense (Wagian, 2015). In Decision Number 48, the fact that the drivers had not received any payment was considered a mitigating factor, while their contribution to the chain of illegal mining activities was regarded as an aggravating factor. In Decision Number 49, the court explicitly stated that the defendant's enjoyment of the proceeds of the crime constituted an aggravating circumstance, while his admission of guilt was taken into account as a mitigating factor.

Table 1. Comparison of Judicial Considerations and Sentencing

No.	Aspect	Decision No. 48 (Drivers)	Decision No. 49 (Collector)
1	Qualification of act	Participation in storing minerals without a permit	Participation in selling minerals without a permit
2	Element of fault	No *willens en wetens* to realize the criminal act	Clear intent accompanied by the desire to obtain profit from illegal tin sales
3	Aggravating factors	Contributed to the chain of illegal mining activities	Directly enjoyed the proceeds of the crime
4	Mitigating factors	Had not received any benefit from the act	Admitted guilt and promised not to reoffend
5	Sentence imposed	1 year imprisonment + Rp10,000,000 fine + confiscation of vehicles	1 year 10 months imprisonment + Rp30,000,000 fine + confiscation of vehicles

3) Assessment from the Perspective of the Objectives of Law

When the sentencing in these two decisions is examined through the framework of Gustav Radbruch, who formulated justice, utility, and legal certainty as the three fundamental values of law that must be harmoniously realized, several substantive weaknesses emerge. Radbruch asserted that when these three values conflict, priority must first be given to justice, then utility, and finally legal certainty (Firdaus, 2025).

From the perspective of justice, proportional sentencing requires that the burden of punishment correspond to the degree of culpability. John Rawls emphasizes that justice cannot be achieved when a heavier burden is borne by a party with a lower degree of fault (Reidy, 2023). The facts in these cases suggest the opposite tendency: the drivers in Decision Number 48 who theoretically were more appropriately characterized as executors of orders were subjected to additional punishment in the form of vehicle confiscation, whereas the collector in Decision Number 49, who enjoyed profits amounting

to hundreds of millions of rupiah, was not subjected to confiscation of criminal proceeds as allowed under Article 164 of the Minerba Law (Sinurat, 2025).

From the standpoint of legal utility, sentencing that fails to significantly reflect differences in levels of culpability risks weakening the deterrent effect. When perpetrators of illegal mining perceive that the risk of punishment is relatively light compared to the economic gains obtainable, the probability of recidivism increases (Pratiwi, 2022). This condition is inconsistent with the objectives of punishment in the mining sector, which should be oriented toward environmental restoration and the prevention of similar practices.

From the aspect of legal certainty, two cases arising from the same series of criminal acts that result in nearly identical participation qualifications despite significantly different levels of culpability create legal uncertainty. The public and legal practitioners may find it difficult to predict the standards of proof and sentencing weight applied by judges in similar cases, thereby calling into question the consistency and predictability of the judicial system (Laode et al., 2025; Sucipto, 2025).

4. CONCLUSION

First, the application of the theory of *deelneming* in Decision Number 48/Pid.Sus-LH/2025/PN Tdn and Decision Number 49/Pid.Sus-LH/2025/PN Tdn demonstrates differing perspectives between the prosecutor and the judges. Both approaches did not thoroughly examine the requirement of *double opzet*, which constitutes an absolute prerequisite for qualifying conduct as *medepleger*. The classification of the drivers as *medepleger* in Decision Number 48 is considered inappropriate, as neither a *meeting of minds* nor *double opzet* was established on their part; a more theoretically accurate construction would be *doenplegen*, with Jon Leo positioned as *manus domina* and the drivers as *manus ministra*. Conversely, the qualification of the collector as *medepleger* in Decision Number 49 was appropriate, as both elements of intent were clearly fulfilled. Furthermore, the judges' sentencing considerations in both decisions did not fully reflect proportional differences in the degree of culpability; although juridical and non-juridical aspects were taken into account, the penalties imposed did not demonstrate a significant gradation corresponding to the differing levels of involvement and economic benefit obtained by each defendant, resulting in an imbalance in fulfilling the three fundamental legal values articulated by Gustav Radbruch justice, utility, and legal certainty.

Public prosecutors and judicial panels should undertake a more comprehensive analysis of each perpetrator's role and mental attitude before determining the appropriate qualification of participation, with particular emphasis on explicitly examining the element of *double opzet* in both indictments and judicial reasoning to ensure that participation classifications genuinely reflect the empirical reality of the case (Fahrurrozi & Gare, 2019). Additionally, legislators should formulate comprehensive sentencing guidelines within the domain of mineral and coal mining offenses, ideally including operational definitions of each prohibited act, measurable standards of proof, and proportional sentencing ranges based on the degree of culpability and the harm caused; such guidelines would help minimize sentencing disparities and strengthen legal predictability.

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