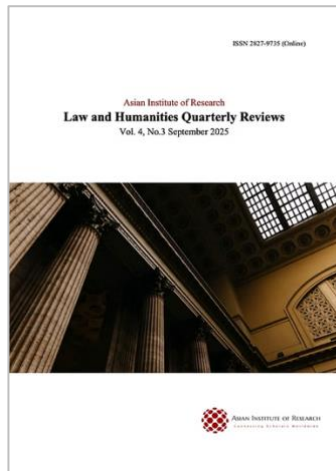




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Illegal Mining: Crimes Against Humanity and Environmental Risk

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Abstract

The coal mining sector is very much needed to support development. The mining sector contributes to the region's economy. This is one of the natural resources that cannot be renewed (Unrenewable Resources). For mining to last a long time, its utilization must be carried out wisely and in a planned manner, so that it can be passed on to future generations. Mining activities if not carried out properly can have negative impacts on the environment in the form of decreased land productivity, increased soil compaction, erosion and sedimentation, soil movement or landslides, disruption of flora and fauna, and disruption of coal mining health. Law Number 44 of 2009 concerning Minerals and Coal is still felt to not be on the side of the common people. The negative impact is felt in the environment and society. For this reason, Law Number 4 of 2009 must be understood substantively and progressively for community prosperity without damaging the environment. The function of the law in the field of environmental conservation is a social engineer. In this field, it is hoped that behavior will be created that is oriented towards environmental sustainability, natural biological resources, and their ecosystem for the benefit of the present and future generations. Based on Law Number 44 of 2009 concerning Mineral and Coal Mining, reclamation is one of the obligations of mining business permit holders.

Keywords: Illegal Mining, Coal, Environmental Risk, Against Humanity, Community

1. Introduction

Human rights are fundamental principles that are universally recognized and are the foundation for a just and dignified life. The rules regarding human rights in an international perspective are contained in the Universal Declaration of Human Rights (UDHR) of 1948. In the perspective of international law, human rights are seen as universal standards that must be adhered to by countries, but in practice their implementation differs because they are influenced by social, cultural and political in each country (Oxford et al., n.d.). Recognition of human rights in Indonesia has been regulated in the 1945 Constitution of the Republic of Indonesia that every individual has the right to civil, political, economic, social and cultural rights (Nazril et al., 2024). Article 28 of the 1945 Constitution of the Republic of Indonesia concerning human rights regulations in Indonesia, the state guarantees the fulfillment

of all human rights, however, in its implementation there are a number of obstacles such as the lack of public awareness of the importance of human rights, structural and political problems that hinder the provision of optimal protection for all citizens, especially vulnerable groups of women, children and minorities (Hefner, 2011). The guarantee of human rights fulfillment by international and national law in fact has not been able to meet the needs of the community. For example, Indonesia has mining that has an impact on the environment and society that has the potential to damage. Mining is part or all stages of activities in the context of managing and exploiting minerals or coal which include general investigations, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation and sales and post-mining activities (Pemerintah Republik Indonesia, 2021).

The mining sector is a money changer for the country's foreign exchange earnings, but mining also has a negative impact, especially on the environment, because almost every mining activity tends to damage the environment. In carrying out mining activities, a Mining Business Permit (IUP) is required, the process of which includes stages of general investigation activities, exploration, feasibility studies, construction as a material for assessing whether or not an agency or individual is entitled to obtain an IUP (Chandra et al., 2020b). Unlicensed mining activities are recognized as illegal mining crimes. Illegal mining has a negative impact on peace, stability, security, development, governance, rule of law, the environment and the economy and illegal mining is often accompanied by serious human rights violations and can cause severe environmental impacts, through deforestation, land degradation and pollution. In general, illegal mining has a negative impact on the local and global environment. In the local environment because it damages vegetation, causes extensive soil erosion and changes the microbial community. In the global environment through the release of coal bed methane. In addition to environmental problems, the existence of mining areas in a number of regions indicates the threat of poverty and potential conflict. The struggle for strategic resources such as mining materials by industry with the surrounding community is considered a potential conflict.

The impact of illegal mining as part of human rights violations can be categorized as crimes against humanity. Crimes against humanity are conceptually broader than genocide, ethnic cleansing and mass atrocity crimes. The idea of crimes against humanity has developed in response to the 20th century atrocities against human populations (Pillai et al., 2024). Based on the London Charter 1945, it is stated that crimes against humanity include murder, extermination, enslavement, deportation or other inhumane acts committed against the civilian population, whether before or during the war or persecution on political, racial or religious grounds in execution of any crime within the jurisdiction of the court, whether or not there is a violation of domestic law in the country where the crime was committed.

The research method used in the study of the form of legal protection for the rights of people who have lost their basic rights due to illegal mining activities will be presented in the first part. Furthermore, the second part will describe the anatomy of illegal mining and legal responses.

2. Forms of Legal Protection for Community Rights to Obtain Environmental Justice

The right to a good and healthy environment is a basic right as part of human rights. The concept of human rights is widely seen as having inherent universality. Muh Fachri Said, Muh Fauzi Ramadhan and Mariam Mgeladze, 'Human Rights Perspective in Guaranteeing Community Opinion Rights Against Mining Crimes (Illegal Mining)' 1075. The concept of human rights is something that must be understood in order to realize it in a more specific instrument (Hakim & Kurniawan, 2022). There are two aspects in forming environmental rights, namely substantive and procedural aspects. The substantive aspect is a substantial aspect of environmental rights, namely the right of every person to live well and healthily. The procedural aspect is the basis for realizing the fulfillment of environmental rights substantially. These procedural rights were agreed upon in Aarhus, Denmark in the Aarhus Convention 1998, the pillars included in procedural rights consist of access to information, public participation in decision-making and access to justice.

Respect for human rights in the context of the environment is a fundamental and crucial aspect. The environment has various limitations that require control of human behavior towards it. This control can be carried out through

various instruments, mechanisms and policies applied at the local, national and international levels, with the aim of achieving a balance known as sustainable development. By providing adequate protection for the human right to a healthy environment, a mutually beneficial and tolerant relationship will be created between humans and the environment, where both need and depend on each other.

Legal protection of the community's right to a good and healthy environment has been regulated in various legal instruments applicable at the international, national and local levels. The right to a good and healthy environment, as regulated in these international legal instruments, includes various provisions that support the sustainability and welfare of the community:

1. The Universal Declaration of Human Rights (UDHR) adopted on December 10, 1948 contains the basic principles of human rights and fundamental freedoms that serve as a reference standard for the common achievement of all peoples and nations. This document is considered a collective agreement that refers to the International Magna Carta in the context of human rights.
2. The United Nations (UN), which has been signed by 48 member states, has compiled statements of principles that serve as guidelines for humanity in treating each other. The Universal Declaration of Human Rights (UDHR) is considered a fundamental element in achieving a democratic civil society, because this document provides guidance for the international community to respect the rights of every individual, including the right to life, to obtain a decent living, to enjoy liberty and security, and to freedom of opinion and expression. In addition, the UDHR also includes aspects of the right to a good and healthy environment.
3. The right to the environment (HAL) refers to access to intact natural resources, which enable individuals to live and survive, including the right to a healthy ecology. This includes the rights of certain species as well as the right of individuals to enjoy and live in an environment of preserved quality.

The crime of mining without a permit, or better known as illegal mining, refers to mining practices carried out by individuals, groups or legal entities such as companies and foundations, which in their implementation do not have official permits from government agencies in accordance with applicable laws and regulations (K. A. Wibisono & Ma'ruf, 2021). This action can be subject to criminal sanctions for parties who violate the prohibition due to their mistakes. Therefore, any permit, recommendation or other form of approval given to individuals, groups or entities by government agencies outside the provisions of applicable laws can be categorized as illegal mining practices.

Illegal coal mining has been going on for a long time and has become increasingly rampant since the era of regional autonomy was implemented. Until now, there has been no proper solution to overcome the problem of illegal coal mining. Regulations and laws related to minerals and coal clearly contain administrative and criminal sanctions, but illegal coal mining activities still occur. Efforts to overcome illegal coal mining in Indonesia are the main and very important thing to create good mining activities and in accordance with applicable regulations and guidelines. Illegal mining perpetrators can be subject to administrative sanctions including written warnings, freezing of environmental permits, and revocation of environmental permits. In addition, they can also face severe sanctions in the form of an obligation to pay compensation and/or environmental restoration costs. Environmental protection can be understood as a systematic and comprehensive effort to maintain environmental functions and prevent environmental pollution and damage. In this context, environmental protection includes management that includes maintenance, monitoring and law enforcement. In this case, communities living in the mining area have the right to obtain health and well-being for themselves and their families, including a healthy environment and health care. In this case, the decreasing quality of the environment has threatened the survival of humans and other living things, so that serious and consistent environmental protection and management are needed by all stakeholders.

The right to a healthy and good environment, as regulated in various laws and regulations, reflects the obligation to protect the environment. This shows that the environment and its resources are shared wealth that can be utilized by every individual and therefore must be protected for the benefit of society and future generations. Protection of the environment and natural resources has a dual purpose, namely to fulfill the interests of society as a whole and also to fulfill the interests of individuals.

In terms of various illegal mining problems, the environment around the mine is increasingly damaged due to illegal mining activities that do not carry out environmental reclamation and take into account the soaring energy in the form of quite large fuels, this energy is used to transport mining materials from the mining location to the processing site. In underground mines, transporting materials to the surface, air ventilation and regulating the temperature of the mine hole to the ore terminal consumes a lot of energy. Overall, this ultimately releases CO₂ which contributes to global warming. In addition, mining activities have an impact on air quality, namely from blasting events, operational trucks being transported in open areas, uncovered tailing dams. All of this has released dust into the air and a number of radioactive elements in the ore can cause radiation. Smelters that operate without regard to work safety cause the release of heavy metals bound to sulfides into the air. Acid rain and acid fog are also often the impacts of mining activities.

Mining activities use a lot of water, although some of it is the result of recirculation. Minerals containing sulfides, due to contact with air, form sulfide acids that combine with trace elements. This condition has a negative impact on surface water and groundwater as a whole. Water pollution can also come from coal piles or coal waste, not to mention the blasting process that can increase the salt content of water and a number of toxins such as cyanide and mercury can permanently pollute water.

In Betham Theory (Pratiwi et al., 2022) that the pleasure (benefit) in question is a benefit that is positive in a rule (law) that has 4 (four) functions, namely: to provide subsistence, to produce abundance, to favor equality and to provide security. From the function of Betham's law, if it is associated with illegal mining, then coal mining businesses, including illegal ones, must be able to provide livelihood, welfare, equality and security, so that illegal mining that exists sociologically must be given an instrument to carry out its mining business activities legally.

Based on Betham's Theory, the problem of illegal mining can be resolved through regulatory reform policies that accommodate illegal mining to become legal and licensed miners through a coaching mechanism from related agencies and the implementation of strict supervision so that illegal mining does not occur and miners who have metamorphosed into legal and licensed miners carry out good mining practices (Law, 2018). In giving sanctions for illegal mining by implementing corrective justice, namely a form of justice aimed at providing sanctions, imposing obligations to restore or obligations to compensate those who cause losses to other parties. This should be implemented to address the negative impacts on the human rights of the community that have been violated through preventive and restorative measures (NCHR, 2022). A good quality of environment cannot be maintained without respect for human rights, and human rights cannot be achieved without a good and safe environment. Sutio Jumagi Akhimo, 'Hak Warga Negara Atas Lingkungan Hidup Sebagai Bagian Dari Hak Asasi Manusia' (2022) 5 Journal of Lex Theory (JLT) 122.

Environmental justice can be implemented based on 4 (four) perspectives, namely:

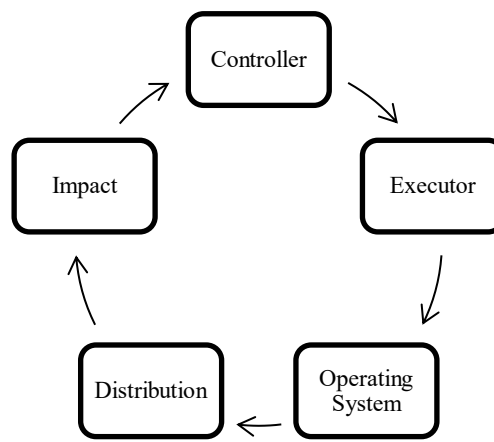
1. Distributive justice, namely providing a fair allocation for access and benefits from environmental resources and for the costs of environmental protection benefits for illegal mining actors.
2. Corrective justice, namely supervision of illegal mining actors by law enforcement officers who have caused losses until the compensation is complete.
3. Procedural justice, namely a process that can guarantee that the distribution of environmental and community compensation is carried out fairly.
4. Social justice that illegal mining perpetrators who have damaged the environment must be responsible for restoring the impact of the losses by means of land reclamation.

The right to a good and healthy environment is part of universal human rights. This right consists of substantive aspects, namely the right of every individual to live in a healthy environment, as well as procedural aspects that include access to information, public participation, and access to justice. Legal protection of environmental rights has been regulated in various national and international instruments, including the Universal Declaration of Human Rights (UDHR). One of the biggest threats to environmental rights is illegal mining, which causes environmental damage, air and water pollution, and increases carbon emissions that have an impact on global warming. Although

there are already regulations governing sanctions for perpetrators of illegal mining, this practice is still widespread due to weak supervision and law enforcement.

3. Anatomy of Illegal Mining and Legal Response

Anatomy is one of the subjects in biology that discusses the parts of the human body. (Ismawanto, 2017) These parts of the human body have their respective functions and uses. Likewise with illegal mining, just like the human body which has anatomy or frameworks that later form the systems found in the human body. Illegal mining also has frameworks or parts that form the illegal mining system. The following is a description of the process of illegal mining:



Graph 1: The Process of Illegal Mining

Based on the graph above, if seen as the anatomy of the human body that has a head, hands, feet, and so on. As understood that mining is a series of activities in the context of efforts to search, mine (excavation), processing, utilization and sale of mining materials. (Satwika & Wirasila, 2020)

In terms of anatomy of illegal mining, it describes First, the beginning of the existence of a controller or mastermind in this case the financier (illegal investor) or can also be called a mining mafia who will later regulate the network and distribution of mining results. This controller can also involve officials or law enforcement officers who play behind the scenes to provide protection against the illegal mining pattern. These actors have strong connections that penetrate the centers of power and government bureaucracy that are oligarchic, predatory, and patrimonialistic (As'ad et al., 2023).

Second, there are executors or field implementers. The executors consist of illegal miners who work to dig and extract minerals. In addition, there are heavy equipment operators who use excavators, trucks, machines and so on. To secure the actions of the executors, there is usually illegal security that guards the location from disturbances and legal action.

Third, enter the operating system, namely the mining process. In which there is exploration and excavation which is useful for finding mining resources in various places, such as in forests, rivers, or on community land. In addition, there is mineral processing that separates minerals from the soil and assistance in an illegal way. And waste disposal without an environmentally friendly system.

Fourth, distribution. After the operating system, the results of illegal mining will be distributed to illegal trade (black market) which has a network both domestically and abroad. To facilitate the distribution, it is usually also

supported by falsification of documents to enter the results of previous illegal mining into legal channels or to make it look as if the resulting mine comes from a legal process. Including falsification of permits, where permits must go through certain procedures determined by the government, as the permit giver. In addition to having to go through certain procedures, permit applications must also meet certain requirements determined unilaterally by the government or the permit giver (Charisma, 2021). Every mining business actor who wants to carry out mining must have a permit from the central government in this case the Minister. The provision of ownership of a mining permit is an absolute requirement that must be owned by business actors (Citranu, 2020).

Fifth, illegal mining has an impact on society, namely environmental damage such as deforestation, landslides, water and air pollution. The absence of waste disposal standards results in mercury emissions contaminating water sources and living things around them (Cariena et al., 2022). The environmental impact can also be social, namely the loss of livelihoods for communities who previously lived from forest products, agriculture or mining without permission carried out by the community. (Chandra et al., 2020a) In addition to causing environmental damage in the midst of society, illegal mining can also cause labor exploitation. Illegal mining workers often get improper efforts and no work safety (K. A. J. I. Wibisono, 2021). The behavior of illegal miners found in the field does not care about work safety, where in carrying out their activities, the perpetrators do not use personal protective equipment and work in unsafe conditions, such as working in mine holes without supports and digging under cliffs that are prone to landslides (Hardi & Mussadun, 2016). In addition to the impact on worker safety, illegal mining can also result in social conflict due to land disputes with local communities and clashes with authorities.

The impact of illegal mining has even claimed lives. As a result of illegal mining, which often does not carry out post-mining reclamation, it endangers the community living close to the illegal mining area, especially children who often become victims of unreclaimed mining pits.

Several series of illegal mining processes above illustrate that illegal mining is a form of organized crime controlled by parties who are not touched by the law. Where law enforcement against illegal mining perpetrators who damage the environment must be enforced immediately in order to create environmental justice for the community where the community will get their rights to the environment, especially to get environmental rights that are free from pollution and the right to participate and be involved in matters concerning an activity that will have an impact on the surrounding environment. Law enforcement is the process of making efforts to enforce or function legal norms in real terms as guidelines for behavior in traffic or legal relations in community and state life (Walujan et al., 2024).

Illegal mining is not an ordinary act, but rather a form of industrial crime that involves many components and has been a major problem for many years in society (Donnelly & Pirrie, 2024). Illegal mining not only results in the violation of people's environmental rights, but often becomes a place for other human rights violations (Céspedes-Baéz et al., 2022).

In legal normative terms, Indonesia has stipulated Law Number 4 year 2009 concerning Mineral and Coal Mining (Minerba Law), which was later amended by Law Number 3 year 2020. Mining Business according to the amended regulation is an activity that includes the stages of general investigation, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation and sales and post-mining (Sumanggi, 2023).

The regulatory changes also specifically regulate various regulatory aspects related to the mining sector. According to applicable positive law, illegal mining activities are classified as criminal acts in the mining sector which are prohibited under the Mineral and Coal Law and its amendments. Violations of these provisions can be subject to two types of sanctions, namely administrative sanctions and criminal sanctions. In addition, perpetrators also have the potential to receive additional sanctions (Saraya & Puspitasari, 2020).

Illegal miners who mine without a permit can be threatened with imprisonment and fines. This means that there is no explanation regarding other sanctions given in the form of an obligation to carry out reclamation and post-mining on ex-mining land. Who has the right to reclaim mining without a permit is still unknown. Unlike

perpetrators who already have a permit (Ira Fadila Rohmadanti, Ilham Dwi Rafiqi, I Kadek Ramadana Vikram Desta Saputra, 2023). For miners who have permits, according to the provisions of the laws and regulations, they are required to carry out reclamation and post-mining. In fact, it requires a guarantee fund that is deposited in a government bank as collateral in seeking reclamation and post-mining later. It should be noted that reclamation and post-mining activities are only intended for mining actors when applying for a permit. In other words, illegal mining is not included in it (Ira Fadila Rohmadanti, Ilham Dwi Rafiqi, I Kadek Ramadana Vikram Desta Saputra, 2023). Illegal mining is often carried out by mining actors who ignore aspects of work safety and the environment. Seeing the damage caused, they do not consider repairing the post-mining environment.

Administrative sanctions for illegal mining perpetrators include: (a) written warning; (b) fine; (c) temporary suspension of some or all exploration activities or production operations; and/or (d) revocation of IUP, IUPK, IPR, SIPB (Rock Mining Permit), or IUP for Sales. These sanctions can be imposed on holders of Mining Business Permits (IUP), People's Mining Permits (IPR), or Special Mining Business Permits (IUPK) who violate the provisions as stipulated in Article 151 of the Amendment to the Mineral and Coal Law. One of the violations that can be subject to sanctions is the use of IUP outside the provisions provided in the permit, as stated in Article 41 of the Mineral and Coal Law.

Criminal sanctions can be imposed on violators of the provisions in Article 158 to Article 164 of the Minerba Law. For example, Article 158 of the Amendment to the Minerba Law states that anyone who carries out mining without a permit as regulated in Article 35 can be subject to criminal penalties in the form of imprisonment for a maximum of 5 (five) years and a fine of up to Rp100,000,000,000.00 (one hundred billion rupiah). Article 35 of the revised Minerba Law regulates Business Permits issued by the central government. In addition to administrative and criminal sanctions, perpetrators of crimes in the mining sector can also be subject to additional penalties, including: (a) confiscation of goods used in the crime; (b) confiscation of profits obtained from the crime; and/or (c) the obligation to pay costs arising from the crime.

Another problem also arises when examining Article 158 of the Mineral and Coal Law which does not specifically regulate illegal mining that results in the loss of life. The provision only highlights the licensing aspect without providing sanctions that are expressly related to the fatal impacts of illegal mining activities without a permit. Therefore, there is a need for legal certainty in handling cases of illegal mining that result in loss of life (Aisah & Haryadi, 2023).

Law Number 3 year 2020, which is an amendment to Law Number 4 year 2009 concerning Mineral and Coal Mining, does not explicitly regulate legal liability if illegal mining results in someone's death. This regulation only focuses on the permit aspect, without considering the broader consequences for public safety.

In judicial practice, although Article 359 of the Criminal Code, which regulates negligence resulting in loss of life, can be applied, in fact in some cases this article is not used. This can be seen in the trial process, where the perpetrators are only subject to sanctions based on Article 158 of the Mineral and Coal Law which focuses on violations of mining permits, without considering the fatal consequences of the act. The inaccuracy in the application of this article indicates a legal vacuum in protecting the community and parties affected by illegal mining. Therefore, more comprehensive regulations are needed to ensure legal accountability for perpetrators of illegal mining resulting in loss of life, thereby providing better legal protection for the community.

The driving factors for illegal mining are as follows (Chadafi et al., 2024):

1. Economic Factors

Economic factors are often a strong driving force for illegal mining practices by the community (Lasah et al., 2021). The difficulty of getting jobs and business opportunities that match the level of expertise or skills of the lower class. Crime arises due to unbalanced economic pressures in society, resulting in illegal mining with tempting results.

2. Avoiding Taxpayers

One of the factors that causes illegal mining is the perpetrators who want to avoid the obligation to pay taxes that have been set by the Mining and Energy Service and the Regional Government. That the obligation and awareness of every citizen or legal entity in paying taxes, especially from mining business results, is one of the sources of Regional Original Income (PAD) which is then distributed and allocated through the State Budget (APBN) and the Regional Budget (APBD).

3. Difficulty in Obtaining Mining Business Licenses (IUP)

The complicated, time-consuming and expensive licensing process is one of the factors causing the rampant illegal mining. The license itself is a statement or agreement that allows its owner to conduct mining business (Nurmalasari et al., 2024).

4. Lack of Socialization of Legislation

One of the factors causing the rampant illegal mining crimes is the lack of socialization carried out by the Mining and Energy Service regarding legislation.

5. Weak Law Enforcement

Weak supervision and law enforcement seem to give leeway and do not deter illegal mining perpetrators. This is due to the low number of illegal mining cases that have been resolved.

The obstacles that are often experienced by the community regarding environmental damage are illegal mining actors who do not carry out reclamation, even though good and correct environmental management practices require a continuous and integrated process at all stages of activities that include some or all stages of activities in the context of research, management, general investigations, exploration, construction feasibility studies, mining, management and proper refining which constitute sustainable and environmentally aware mining management so as to reduce the negative impacts of mining activities. (Peraturan Pemerintah Nomor 78 Tahun 2010 Tentang Reklamasi Dan Pascatambang, 2010) Effective law enforcement requires cooperative support from all parties. **Presly Prayogo Sofia Degratsia Nataliia Lario, Lendy Siar, 'Penegakan Hukum Terhadap Tambang Emas Ilegal Yang Beroperasi Di Kawasan Hutan Lindung Di Kabupaten Poso' (2024) 13 Jurnal Fakultas Hukum UNSRAT Lex Privatum 1.** Lack of supervision and lack of firm sanctions for illegal mining perpetrators who have ignored post-mining responsibilities in the form of reclamation and restoring the quality of the damaged environment (Nugroho et al., 2023).

The role of local communities in carrying out illegal mining practices by relying on their livelihoods from these illegal activities. As in line with the theory of social reality of crime which explains that crime cannot be separated from economic factors and these crimes are committed only for profit but are detrimental to the environment and other living things (Setiadi, n.d.).

Lack of public awareness of the environment around them. Local communities ignore aspects of environmental damage, river pollution and the emergence of social problems due to illegal mining (Syaputra, 2020). There is no clear and detailed data on the number and location of illegal mining perpetrators. This is due to the difficulty of recording illegal mining cases, because the characteristics of this activity are not long-term operations and move around.

There is involvement of law enforcement officers in illegal mining practices by working together with illegal miners who provide large and very tempting rewards, which can cause state losses every year. The officers involved in helping illegal mining practices work together by informing illegal mining perpetrators to falsify mining business permit (IUP) documents and there is no supervision in the mining area. Generally, with the existence of a mining permit issued legally, there is no officer who will find cases of illegal mining, even though in that position mining has carried out large-scale exploitation.

The officers who work together with the illegal mining perpetrators also inform the schedule of the raids so that the illegal mining perpetrators can immediately hide from the mining location. The weak reactive attitude of the officers who are responsible for supervising the mining areas of Indonesia is one of the factors causing the rampant cases of illegal mining and environmental damage. Ultimately, the weak actions of the officers will harm the community. Even the community itself has tended to not believe in the law and participate in illegal mining actions such as those carried out by large business entities as a form of reactivity from business entities which are then

imitated by the community because of the weak control system of the surrounding community. Efforts to exploit mineral and coal resources without maintaining safety in the short to long term are a form of latent threat that must receive more attention from the government and the community.

Law Number 3 of 2020 concerning Minerals and Coal actually substantively regulates clearly the pattern, process, requirements, and procedures for licensing for all types of mining businesses. Although mining practices normatively emphasize the importance of people's interests, rights and participation, in practice the community often becomes the "victim" of mining activities (Taufiq & Disantara, 2023).

The concrete social reality of society is far more complex than what is covered by current laws and regulations, all forms of threats of sanctions for illegal mining perpetrators cannot be implemented perfectly. **Derita Prapti Rahayu and others, 'Countering Illegal Tin Mining with a Legal Formulation of Law Based on Local Wisdom in Bangka Belitung, Indonesia' (2024) 10 Cogent Social Sciences 1.** The regulation of mineral and coal mining in the law provides binding power for all Indonesian citizens. The problem that arises is at the level of implementation that has not been implemented (Fitriani, 2021). It is undeniable that the facts on the ground often show that illegal mining perpetrators are not touched by law enforcement officers. In fact, the implementation of law enforcement measures including systematic monitoring and dissemination of ecological data plays an important role in overseeing mining activities to ensure compliance with environmental mandates (Zainuddin, 2023).

Therefore, a normative and technical understanding is needed to minimize environmental damage, and a political ecology perspective that can be applied in law enforcement. This approach connects the definition of informal and illegal mining by considering changes and reassessing the level of environmental damage (Rohman et al., 2024).

International Rules

Fulfillment of life's needs that are carried out sometimes do not consider the impacts caused, especially on the environment. Economic burdens often have implications for the environmental burden felt by the community (Venzke & Venzke, 2021). Concerns regarding environmental security have become an international issue felt by people globally (Cusato, 2022).

Human awareness of the increasingly damaged environment began with the London Convention in 1933 and the Washington D.C. Convention in 1940. In addition, movements to address the environmental impacts of economic activities were carried out by international organizations such as the United Nations Economic Commission for Europe, studying waste disposal and pollution of inland waters in Europe, the Council of Europe, issuing the Declaration on Air Pollution Control, the European Water Charter and the European Agreement on the Restriction of the Use of Certain Detergents in Washing and Cleaning Products in 1968.

The emergence of the environmental awareness movement was then facilitated by the General Assembly by holding the first world conference on the environment in 1972 in Stockholm or better known as the Stockholm Conference 1972 (Stockholm, Sweden 5-16 June 1972). The existence of this conference became the starting point for worldwide recognition of the environmental crisis as an international problem. This conference culminated in the adoption of environmental and development principles, known as the Stockholm Declaration. This declaration laid the foundation for international norms governing the relationship between humans, other species on earth, and ecosystems. (Nations, 2023) Based on the points produced from the 1972 Stockholm Conference related to the issue of illegal mining, it is stated that non-renewable resources must be shared and not used up. This refers to the role of the government in maintaining the rhythm of the mining business permits (IUP) issued.

In addition to producing the Declaration on the Human Environment or the Stockholm Declaration, this conference also produced several other documents such as the Action Plan for environmental policy consisting of 109 recommendations, the Establishment of the Environmental Fund, the Establishment of the UN Environment Programme (UNEP) with a Governing Council and Secretariat, and the Declaration of Environmental Principles which focuses on international legal rules.

After the 1972 Stockholm Conference, international conferences began to be held in the environmental field, one of which was the 1982 Nairobi Conference. This conference produced the Nairobi Declaration which contained an appeal to the international community to be consistent in implementing the principles contained in the 1972 Stockholm Declaration.

The issue of global warming that began to attract world attention put pressure on the General Assembly. For this reason, the General Assembly formed the only negotiating forum between national governments on climate change issues known as the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change (INC/FCCC) in 1992. The climate change framework or the United Framework Convention on Climate Change (UNFCCC) was drafted by this committee which was then approved by 154 countries at the Earth Summit in Rio De Janeiro Brazil 1992. The approval of the UNFCCC at the Rio De Janeiro Summit which then came into effect in March 1994, marked the beginning of the Conference of the Parties (COP). This COP meeting is held annually, unless there is another agreement from the participating parties.

Basically, the concept of binding oneself to international rules through consent to be bound carried out by the subject of international law, in this case the state. No coercion can be carried out on a state to submit to international rules. This is because the needs of each country are different, so it is necessary to adjust certain circumstances to existing international rules.

National Rules

Recognizing the environment as part of human rights is universal in nature, which not only provides technical implications but also provides rational-philosophical implications, meaning that currently environmental protection to create living conditions is a universal moral code that is cross-border and crosses national and cultural boundaries (Raseukiy, 2023). Not only is it a global responsibility, every country should also make efforts to realize the right to the environment through its national regulations. A country must comply with procedural and substantive duties in dealing with environmental problems and their internal impacts. **John H Knox, 'HUMAN RIGHTS PRINCIPLES AND CLIMATE CHANGE' (2020) Environmental Principles and Policies 99.**

Environmental guarantees are also stated in Article 9 of Law number 39 year 1999 concerning Human Rights, which states that people have the right to a clean and healthy environment. This means that the state is obliged to protect, respect, and fulfill the right to the environment because humans have basic needs, such as the need for water, air, and a clean environment for daily activities (Fitri Darmawan, 2022).

Discussing national regulations, there have actually been several regulations to regulate mining activities and environmental management in Indonesia. First, there are special regulations regarding environmental protection and management which are regulated in the provisions of Law number 32 year 2009 concerning Environmental Protection and Management. This environmental protection and management law aims to protect the environment from damage and pollution. This law also regulates sustainable and insightful environmental management.

Second, Law number 4 year 2009 concerning Mineral and Coal Mining. This law regulates mineral and coal mining activities, including mining business permits and environmental management.

Third, there is Government Regulation number 22 year 2021 concerning the Implementation of Environmental Protection and Management. This regulation regulates the implementation of environmental protection and management, including the management of environmental impacts due to mining activities.

Fourth, Government Regulation number 101 year 2014 concerning Management of Hazardous and Toxic Waste. This regulation regulates the management of hazardous and toxic waste, including waste generated from mining activities.

Fifth, there is the Regulation of the Minister of Environment and Forestry number 104 year 2017 concerning Management of Environmental Impacts. This regulation regulates environmental impacts, including environmental impacts due to mining activities.

Sixth, Regulation of the Minister of Energy and Mineral Resources 7 year 2014 concerning Environmental Management in Mining Business Activities. The purpose of establishing this regulation is to regulate environmental management in mining businesses, increase public awareness and participation in environmental management in mining activities and reduce environmental impacts arising from mining activities.

These national regulations will basically be just regulations if they are not implemented optimally at the implementation level. The role of all parties is needed, starting from the government, law enforcement officers to the community must have the same goal in realizing the right to a good and healthy environment and not normalizing illegal mining in the midst of society.

Social reality shows that illegal mining practices are difficult to eradicate completely even though there are binding laws and regulations. Law enforcement in illegal mining cases is often not optimal due to various obstacles in the field, including weak supervision and lack of firmness of law enforcement officers. In fact, systematic monitoring and dissemination of ecological data play an important role in controlling mining activities to comply with environmental standards.

A deeper normative and technical understanding and the application of a political ecology perspective are needed in assessing the impact of environmental damage due to illegal mining. The principles of the 1972 Stockholm Conference emphasize that non-renewable natural resources must be managed wisely so that they are not wasted. The state has a great responsibility in ensuring that mining business permits are in accordance with applicable regulations. The right to a clean and healthy environment is a human right guaranteed in Law number 39 year 1999. Therefore, the state is obliged to protect and fulfill this right by strengthening regulations and supervision in order to create a balance between resource exploitation and environmental sustainability.

4. Conclusion

The right to a good and healthy environment is part of human rights that must be guaranteed by the state. However, the existence of illegal mining is a serious threat to the environment and human life. Although regulations have been made to regulate and sanction perpetrators, weak supervision and law enforcement make this practice still rampant. The impacts of illegal mining include environmental pollution, ecosystem destruction, and increased carbon emissions that contribute to climate change. The principles of the 1972 Stockholm Conference emphasize the importance of managing non-renewable resources wisely so that they are not wasted. Therefore, normative and technical understanding, as well as the application of a political ecology perspective, are needed in assessing the level of environmental damage and finding solutions. The state has a great responsibility to ensure that mining business licensing regulations are in accordance with applicable regulations.

The right to a healthy environment is also regulated in Law number 39 year 1999 concerning Human Rights, which emphasizes that the state is obliged to protect, respect, and fulfill these rights. Therefore, efforts to supervise, strict regulation, and firm law enforcement are very necessary to maintain a balance between resource exploitation and environmental sustainability.

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References

- Aisah, S. & Haryadi, H. (2023). Criminal Law Policy on Illegal Mining Causing Loss of Life According to Law Number 3 of 2020 concerning Mineral and Coal Mining. *PAMPAS: Journal of Criminal Law*, 4(3), 373–386. <https://doi.org/10.22437/pampas.v4i3.28672>
- Akhirno, S. J. (2022). Citizens' Rights to the Environment as Part of Human Rights. *Journal of Lex Theory (JLT)*, 5(2), 122–135.
- As'ad, M. U., Barsihanor, B., Sobirin, S. & Hergianasari, P. (2023). Oligarchy and Patronage Networks: The Dynamics of Coal Mining Policy in Tanah Bumbu Regency. *Politika: Jurnal Ilmu Politik*, 14(1), 1–17. <https://doi.org/10.14710/politika.14.1.2023.1-17>
- Cariena, R., Shrishti, S., Winata, T. P. & Rasji, R. (2022). A Legal Aspects of State Administration Regarding Illegal Mining During Covid-19: A Case Study of Botak Mountain. *Prosiding Serina IV UNTAR*, 19–28.
- Céspedes-Baéz, L. M., Prieto-Ríos, E. & Pontón-Serra, J. P. (2022). Informal Mining in Colombia: Gender-Based Challenges for the Implementation of the Business and Human Rights Agenda. *Business and Human Rights Journal*, 7(1), 67–83. <https://doi.org/10.1017/bhj.2021.62>
- Chadafi, S. M., Yasmirah, P. & Saragih, M. (2024). *Legal Analysis of Criminal Acts of Illegal Mining in Pidie Regency, Aceh (Analysis of Decision Number : 58 / Pid . B / Lh / 2022 / Pn . Sgi)*. 1(1), 630–647.
- Chandra, J. L., Sahari, A. & Fauzi, A. (2020a). *Illegal Mining Criminal Acts For Companies That Conduct Mining Without Permission*. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 3(2), 350–359.
- Chandra, J. L., Sahari, A. & Fauzi, A. (2020b). *Illegal Mining Criminal Acts For Companies That Conduct Mining Without Permission*. 3(2), 350–359.
- Charisma, R. L. (2021). Problems in Law Enforcement of Illegal Rock Mining Activities in Samarinda City. *Jurnal Fakultas Hukum Universitas Mulawarman*, 1(1), 1–18.
- Citrano. (2020). Small-Scale Mining Permits in the Context of the Application of Criminal Sanctions Citranu. *Satya Dharma: Jurnal Ilmu Hukum*, 3(2), 1–22.
- Cusato, E. (2022). Of violence and (in)visibility: the securitisation of climate change in international law. *London Review of International Law*, 10(2), 203–242. <https://doi.org/10.1093/lril/lrac015>
- Donnelly, L. J. & Pirrie, D. (2024). Crimes associated with geological materials: mining, minerals, metals and fossils. *Geology Today*, 40(4), 159–164. <https://doi.org/10.1111/gto.12487>
- Fitri Darmawan, K. (2022). Environmental Rights Versus Development Rights as Human Rights: Between Conflict and Balance. *Jurnal Poros Hukum Padjadjaran*, 3(2), 169–184. <https://doi.org/10.23920/jphp.v3i2.685>
- Fitriani, D. M. (2021). Normative Review Of Indigenous Community Rights In Mining Areas. *Estudiante Law Journal*, 3(2), 295–309. <https://doi.org/10.33756/eslaj.v3i2.15799>
- Hakim, L. & Kurniawan, N. (2022). Establishing an Indonesian Human Rights Legal Paradigm Based on Fundamental Human Obligations. *Jurnal Konstitusi*, 18(4), 869–897. <https://doi.org/10.31078/jk1847>
- Hardi, M. & Mussadun, M. (2016). Spatial Control of Mining Areas Against Illegal Gold Mining Activities in Pidie Regency. *Jurnal Pembangunan Wilayah & Kota*, 12(1), 61–72. <https://doi.org/10.14710/pwk.v12i1.11457>
- Hefner, R. (2011). *Civil Islam: Muslims and Democratization in Indonesia*. 1–286.
- Ira Fadila Rohmadanti, Ilham Dwi Rafiqi, I Kadek Ramadana Vikram Desta Saputra, A. K. (2023). Reclamation Responsibility for Illegal Mining in Indonesia: How Should It Take Place? *Indonesia Law Reform Journal*, 3(3), 68–87. <https://doi.org/10.22219/ljih.v30i1.18289>
- Ismawanto, L. Y. (2017). Android-based Human Body Anatomy Learning Media. *JATI (Jurnal Mahasiswa Teknik Informatika)*, 1(2), 55–60.
- Knox, J. H. (2020). HUMAN RIGHTS PRINCIPLES AND CLIMATE CHANGE. *Environmental Principles and Policies*, 99–112. <https://doi.org/10.4324/9781315065908-11>
- Lasah, N., Amin, M. J., Idris, A. & Nasir, B. (2021). Analysis of Illegal Mining Exploration in Kalian Luar Village, West Kutai Regency. *Journal of Government Science (GovSci) : Jurnal Ilmu Pemerintahan*, 2(1), 81–91. <https://doi.org/10.54144/govsci.v2i2.22>
- Law, M. (2018). *Icml 2 0 1 8*.
- Nations, U. (2023). *Illegal Mining and Trafficking in Metals and Minerals a Guide To Good Legislative Practices Acknowledgements*.

- Nazril, M. M., Juliandi, D., Hikmah, L. J., Nazmah, F. & Putera, M. L. S. (2024). *Implementation of Human Rights Law in Indonesia*. 1(4).
- NCHR. (2022). *Survey on the Human Rights Situation in Rwanda Mining Sector*.
- Nugroho, T., Maulana, J. F., Cakraningrat, K. & Ratnasari, Y. (2023). Building Public Legal Awareness in the Struggle for Environmental Justice in Mining in Trenggalek Regency. *SWARNA: Jurnal Pengabdian Kepada Masyarakat*, 2(7), 784–791. <https://doi.org/10.55681/swarna.v2i7.760>
- Nurmalasari, F., L, S. F. F. & Yusuf, M. (2024). Law Enforcement of Illegal Mining Crimes Against Environmental Damage in North Konawe Regency. *Gorontalo Law Review*, 7(1), 245–263. <https://doi.org/10.32662/golrev.v7i1.3265>
- Oxford, C. P., Law, W. & Harrisburg, L. (n.d.). *PUBLIC INTERNATIONAL*.
- Pemerintah Republik Indonesia. (2021). Government Regulation of the Republic of Indonesia Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities. *Kemenko Bidang Kemaritiman Dan Investasi*, 097597, 1–133.
- Government Regulation No. 78 of 2010 on Reclamation and Post-Mining, (2010).
- Pillai, A. V., Sharma, S., Mathew, G. & Challa, K. (2024). Crimes Against Humanity : Evolution , Prosecution , and Challenges for the International Criminal Court. *International E-Journal of Criminal Sciences*, 19(6), 1–17.
- Pratiwi, E., Negoro, T. & Haykal, H. (2022). Jeremy Bentham’s Utilitarianism Theory: Legal Purpose or Methods of Legal Products Examination? *Jurnal Konstitusi*, 19(2), 268. <https://doi.org/10.31078/jk1922>
- Rahayu, D. P., Rahayu, S., Faisal & Yanto, A. (2024). Countering illegal tin mining with a legal formulation of law based on local wisdom in Bangka Belitung, Indonesia. *Cogent Social Sciences*, 10(1), 1–13. <https://doi.org/10.1080/23311886.2024.2311053>
- Raseukiy, S. A. G. (2023). Legal Policies in Fulfilling the Right to a Clean, Healthy, and Sustainable Environment as a Universal Human Right. *Jurnal Hukum Lingkungan Indonesia*, 9(1), 1–24. <https://doi.org/10.38011/jhli.v9i1.508>
- Rohman, A., Hartiwiningsih & Rustamaji, M. (2024). Illegal mining in Indonesia: need for robust legislation and enforcement. *Cogent Social Sciences*, 10(1), 1–15. <https://doi.org/10.1080/23311886.2024.2358158>
- Said, M. F., Ramadhan, M. F. & Mgeladze, M. (2023). *Human Rights Perspective in Guaranteeing Community Opinion Rights Against Mining Crimes (Illegal Mining)*. *Icclb*, 1075–1085. https://doi.org/10.2991/978-2-38476-180-7_109
- Saraya, S. & Puspitasari, I. (2020). Criminal Law Enforcement Against Unlicensed Sand Mining Operators in the Kendal Police District. *Hukum Jurnal Mahasiwa*, 3(2), 1–12.
- Satwika, S. D. & Wirasila, A. A. N. (2020). Law Enforcement Against Illegal Small-Scale Mining. *Kertha Wicara : Journal Ilmu Hukum*, 9(12), 1–11.
- Setiadi, M. (n.d.). *POLICE STRATEGIES IN THE PERANAP SECTOR IN HANDLING CASES OF ILLEGAL GOLD MINING IN THE PERANAP DISTRICT (Case Study at the Peranap Police Station)*.
- Sofia Degratsia Nataliia Lario, Lendy Siar, P. P. (2024). LAW ENFORCEMENT AGAINST ILLEGAL GOLD MINES OPERATING IN PROTECTED FOREST AREAS IN POSO REGENCY. *Jurnal Fakultas Hukum UNSRAT Lex Privatum*, 13(01), 1–17.
- Sumanggi, D. (2023). Law Enforcement Against Illegal Coal Mining in the Samarinda Region , East Kalimantan. *Humaniorum*, 01(01), 29–35.
- Syaputra, D. (2020). The Problem of Unlicensed Gold Mining Reviewed from the Perspective of Environmental Crime and Ethics. *Wajah Hukum*, 4(1), 15. <https://doi.org/10.33087/wjh.v4i1.166>
- Taufiq, M. & Disantara, F. P. (2023). The Principle of People’s Authoritative Manifestation in Mining Management: An Inclusive Legal Perspective. *Sasi*, 29(3), 442–453. <https://doi.org/10.47268/sasi.v29i3.1329>
- Venzke, I. & Venzke, I. (2021). The law of the global economy and the spectre of inequality. *London Review of International Law*, 9(1), 111–134. <https://doi.org/10.1093/lril/lrab005>
- Walujan, F. M., Kapugu, B. A. & Gerungan, C. A. (2024). LEGAL REVIEW OF ILLEGAL MINING EXPLOITATION IN NORTH SULAWESI. *Jurnal Fakultas Hukum Universitas Sam Ratulangi Lex Privatum*, 13(3), 1–12.
- Wibisono, K. A. J. I. (2021). *Law Enforcement Against Illegal Mining Crimes in the Central Kalimantan Regional Police Jurisdiction*. Universitas Islam Sultan Agung.
- Wibisono, K. A. & Ma’ruf, U. (2021). The Law Enforcement Against The Crime Of Illegal Mining. *Law Development Journal*, 3(2), 424–430. <https://doi.org/10.30659/ldj.3.2.424-430>
- Zainuddin. (2023). Environmental Law Enforcement in Illegal Mining Cases in Indonesia. *International Journal of Criminal Justice Sciences*, 18(2), 40–56. <https://doi.org/10.5281/zenodo.4756304>