

Enforcement of Illegal Mining Laws (A Model Based on Pancasila Justice)

Agung Sugiarto¹⁾ & Denny Suwondo²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: Agungsugiarto1111@gmail.com

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: DennySuwondo.std@unissula.ac.id

Abstract. *Illegal mining is an environmental crime that has a huge impact on the survival of living things around it, in the form of damage to land, water and air ecosystems. Law enforcement against illegal mining must continue to be carried out as a deterrent effect for perpetrators and the public who will carry out these prohibited activities. However, law enforcement must be based on the principles of justice. Indonesia has a state foundation, namely Pancasila, which in its principles are the ideals of the nation's founders who wanted harmony within the state, one of which is contained in the fifth principle of Pancasila "Social Justice for All Indonesian People". This research aims to determine and analyze the model of illegal mining law enforcement based on Pancasila justice in the West Kotawaringin Regency area. The approach method used is sociological juridical, analytical descriptive research specifications. The data used is primary data and secondary data. Data collection methods are field studies and literature studies. The data analysis method uses qualitative analysis. As analytical tools, Lawrence M. Friedman's legal system theory and the Pancasila theory of justice are used. The results of the research show that law enforcement does not have to be completely normative so that it seems rigid and punitive in providing a deterrent effect on perpetrators, but nowadays, with the continued development of society and the environment around it, it requires law to be a solution in resolving problems that occur in society. . As the basis of the state, Pancasila, which has principles in it, is the ideal of the nation's founders in*

creating harmony within the nation and state. So justice-based law enforcement is the best solution that guarantees the rights of every citizen and the environment from problems of damage caused by illegal mining.

Keywords: *Enforcement; Illegal; Justice; Mining.*

1. Introduction

Humans and the environment are two inseparable words, where both have the nature of mutual influence and influence. The influence of the environment on humans is more passive, while the influence of humans on the environment is active.

Human life cannot be separated from the state of the natural environment around it. In other words, the state of the natural environment greatly influences human life.¹Any activity related to living creatures, especially humans, always has a function, role and position related to their environment.²One of the important issues in globalization is environmental issues. Humans are the main cause of environmental damage and pollution.³

In order to realize the welfare of the people, environmental law is an instrument of state administration in environmental protection and management. Environmental law is a guideline in the context of environmental protection and management. Environmental protection and management norms are guidelines in the implementation of environmental licensing.⁴

Illegal mining often we know as illegal mining for developing countries that have many natural resources derived from fossils until now is still an unresolved problem. With the existence of legal instruments that have not become the best solution in solving this problem, making some alternatives that may be able to support existing regulations. In several writings related to law enforcement against illegal logging crimes, there are still not many that highlight the justice-based settlement side and are only limited to policies regarding existing regulations, for example Alvika Fatmawati Dwi Putri and Mujiono Hafidh Prasetyo in their article entitled "Criminal Law Policy in Handling Criminal Acts in the Mining Sector" explain that the ideal criminal law policy in handling mining crimes in the future must see the importance of regulating affirmation regarding legal qualifications, provisions regarding the repetition of criminal acts or

¹Wisnu Arya Wardhana. 1995. Impact of Environmental Pollution. Yogyakarta: Andi Offset. P. 5.

² RM Gatot P. Soemartono. 1996. Indonesian Environmental Law Jakarta: Sinar Grafika. P.1.

³A. Sonny Keraf. 2001. Environmental Ethics. Jakarta: PT Kompas Media Nusantara. P.1.

⁴Rusdiyanto. 2015. Environmental Problems in Indonesia Facing the Era of Globalization. Journal of Legal Horizons, Vol.6, No.2 December 2015. P. 216.

recidivists, corporate responsibility, types of criminal sanctions in the form of criminal sanctions and actions so that the criminal provisions in the Law on Minerals and Coal are worthy of being stated as a complete set of means. The idea of formulating the renewal of criminal acts of pollution in the future, in Law Number 4 of 2009, is expected to provide a basis for law enforcers in providing ideal decisions.⁵

Meanwhile, in another article according to Rachmad Safa'at and Indah Dwi Qurbaniin his article entitled "Alternatives for Resolving Mining Disputes (Study in Lumajang Regency, East Java Province)" explains that the results of the study of mining conflicts in Lumajang Regency can be concluded that conflict is a sharp dissociative process that emphasizes opposition, but conflict as a form of social process has a positive function for society. It depends on the problem and also on the social structure concerning the goals, values or interests of the conflict, where the conflict is expected to result in a readjustment of the norms and social relations in the conflicting groups according to the needs of each group. A tolerant attitude is needed in efforts to handle conflicts as a way to find out the sources of the problems that bring conflict which provide a path to achieving stability and integrity in society.⁶ Studying conflict issues with speed in responding to conflict situations can be believed to be able to engineer so that conflicts do not develop into violent conflicts. Violence will not occur when the conflict issues that develop are immediately addressed, both by the Lumajang Regency government and the local police. The temporary cessation of mining by the district government and the Provincial Government is the right solution in open conflict situations, which is followed up by conducting a comprehensive study of natural resource potential, finding regulations that can accommodate many interests, and managing natural resources. Consistency of policies and actions from the local government is needed.⁷

By looking at some of the writings above and then looking at the conditions that are still happening to this day, an alternative companion is needed so that it is hoped that law enforcement against illegal mining crimes can run optimally.

2. Research Methods

The approach method used in this research is a sociological juridical method (sociological research) which emphasizes field practices related to legal aspects or applicable legislation regarding the research object being discussed and looks

⁵Alvika Fatmawati Dwi Putri and Mujiono Hafidh Prasetyo. 2021. Criminal Law Policy in Handling Criminal Acts in the Mining Sector. *Journal of Indonesian Legal Development*, Volume 3, Number 3, 2021. Pp. 321-322.

⁶ Rachmad Safa'at and Indah Dwi Qurbani. 2017. Alternative Resolution of Mining Disputes (Study in Lumajang Regency, East Java Province). *Constitutional Journal*, Volume 14, Number 1, March 2017. P. 163.

⁷ *Ibid.* Pg. 164.

at the applicable legal norms which are then connected to the reality and facts found in community life and discusses how the law operates in society.⁸

The specifications of this research are descriptive research, namely research that describes the characteristics of an individual, conditions, and symptoms of a particular group to determine the spread of a social symptom in society.

The data collection method used, the type and source of data in this study are primary data which the author obtained directly from the first source and secondary data which the author obtained from official documents, books, research results in the form of reports, and so on.

The data collection methods used in this study are primary data and secondary data. Primary data is obtained through interviews, observations and secondary data is obtained through literature studies and data analysis.

3. Results and Discussion

In terms of terminology, illegal mining consists of two words, namely illegal, which means unauthorized, prohibited, or contrary to law, and mining, which means excavation of parts of the land containing valuable metals in the soil or rocks. Therefore, what is meant by illegal mining in this context is mining activities carried out without state permission, especially without land rights, mining permits, and mineral exploration or transportation permits. Illegal mining has impacts, including environmental damage, loss of state revenue, the emergence of social conflict, and impacts on health, safety, and occupational safety/K3.⁹

Based on applicable positive law, illegal mining is one of the criminal acts in the mining sector that is prohibited in Law Number 4 of 2009 concerning Mineral and Coal Mining and Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. There are 2 (two) types of sanctions for violators of the prohibition provisions in the 2 Laws on Mineral and Coal Mining, namely administrative sanctions and criminal sanctions. In addition, perpetrators can also be subject to additional sanctions. Administrative sanctions for perpetrators of illegal mining are:

- a. Written warning;
- b. Fine;
- c. Temporary cessation 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.

⁸Amuruddin and Zainal Asikin. 2003. Introduction to Legal Research Methods. Jakarta: Raja Grafindo Persada. P. 21.

⁹Marisa Dian Peratiwi and Edi Setiadi. 2019. "Law Enforcement of Illegal Mining Practices". Journal of Legal Science Proceedings, Volume 5, No. 1. Pg. 134.

Administrative sanctions may be imposed on holders of Mining Business Permits (IUP), People's Mining Permits (IPR), or Special Mining Business Permits (IUPK) for violations of several provisions as stated in Article 151 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. One of them is using a Mining Business Permit (IUP) other than that permitted by the granting of the IUP (Article 41 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining).

Meanwhile, criminal sanctions can be imposed on violators of Article 158 to Article 164 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, for example, basically stipulates that anyone who carries out mining without a permit as referred to in Article 35 shall be subject to a maximum imprisonment of 5 (five) years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah). Article 35 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining in this case regulates Business Licensing granted by the central government. In addition to administrative sanctions and/or criminal sanctions, perpetrators of mining crimes may also be subject to additional penalties in the form of:

- a. Confiscation of goods used in committing a crime;
- b. Confiscation of profits obtained from criminal acts; and/or
- c. Obligation to pay costs arising from criminal acts.

The problem is that with the existing legal regulations related to various prohibitions on criminal acts in the mining sector and the various threats of sanctions, it turns out that in resolving the problem of illegal mining, it is still felt to be ineffective in law enforcement, and even seems weak due to various factors, such as the problem of less than optimal supervision and slow action in the field, as well as indications of alleged gamesmanship by mining mafia figures.

The above problems will continue to exist if the duties and functions of the state have not been carried out properly and optimally. Law enforcement against Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining that already exists should be an effort to overcome these crimes, fulfill a sense of justice and be effective, as if powerless when implemented. However, as a state reaction to crime, law enforcement must continue to be pursued. Law enforcement ideally requires rational efforts that need to be integrated with each other in order to eradicate these crimes. Efforts in this context are in the form of criminal or penal efforts and non-criminal or non-penal efforts.¹⁰

¹⁰Prianter Jaya Hairi. 2021. Law Enforcement of Illegal Mining Crimes. Brief Info, Vol. XIII, No.15/I/Puslit/August/2021. Pg. 3.

In the crime of Illegal Mining, both efforts, both criminal or penal efforts and non-criminal or non-penal efforts, should be implemented by the government in parallel. This means that both need to be done simultaneously, considering the massive violations that have occurred in various regions in Indonesia and the various modes that are also increasingly varied.

According to Barda Nawawi Arief in Titiek Guntari, efforts to combat crime through the penal route place more emphasis on the repressive nature (action/eradication/suppression) after the crime has occurred, while the non-penal route places more emphasis on the preventive nature (prevention/deterrence/control) before the crime occurs.¹¹

Combating crime by means of criminal law means holding elections to achieve the results of criminal law which are good in the sense of fulfilling the requirements of justice and efficiency.¹²

Crime prevention using non-penal means is in the form of prevention without punishment and influencing public views on crime and punishment through the mass media.¹³

Considering that efforts to combat crime through non-penal channels are more of a preventive measure for the occurrence of crime, the main target is to address the conducive factors that cause crime. These conducive factors, among others, are centered on social problems or conditions that can directly or indirectly cause or foster crime. Thus, macro and global, non-penal efforts occupy a key and strategic position in overcoming the causes and conditions that give rise to crime.¹⁴

These non-penal efforts can be done in several ways or methods, for example in the form of improving human resources. The formation and improvement of these human resources can be started early, by including them in the basic education curriculum. It is hoped that as early as possible the community will have knowledge and shared responsibility in seeing what is and is not allowed to be done as good citizens. In particular, the education that is most emphasized is related to religious and moral education.

Rational efforts to overcome crime from society are also called criminal policies which are essentially part of law enforcement policies in a broad sense (covering both criminal law, civil law, administrative law and others). In addition, because the goal is to protect society to achieve social welfare, law enforcement policies are also included in the field of social policy. Thus, social policy, law enforcement policies and criminal policies have the same ultimate goal, namely protecting

¹¹ Titiek Guntari. 2022. Penal and Non-Penal Efforts in Overcoming Environmental Crimes. Jurnal Advokatura Indonesia, Vol 1 No 1 2022. Pg. 60.

¹² *Ibid.* Pg. 60.

¹³ *Ibid.* Pg. 60.

¹⁴ *Ibid.* Pg. 60.

society to achieve social welfare. Therefore, social policy, law enforcement policies and criminal policies must be integrated policies.¹⁵

Identification of several aspects or forms of community protection to achieve welfare are as follows:¹⁶

1. Viewed from the perspective of the need to protect society from anti-social acts that are detrimental and dangerous to society, an opinion or theory has emerged that the aim of criminal law and criminal law is crime prevention/crime suppression/crime enforcement/crime control;
2. Viewed from the perspective of protecting society against the dangerous nature of people (the perpetrators), then the opinion arises that the purpose of punishment is to improve the perpetrator/rehabilitation/reformation/treatment of offenders/reduction/social readaptation/resocialization/correction/release. Improving the perpetrator means changing or influencing his behavior so that he returns to obeying the law;
3. Viewed from the perspective of the need to protect society against abuse of power in using criminal sanctions or reactions to criminal offenders, it can be said that the purpose of criminal law is to regulate or limit the arbitrariness of the authorities and the general public in reacting to offenders. It is also often said that criminal law is intended to provide a channel for realizing motives for revenge or to avoid revenge.
4. Another aspect of community protection is the need to maintain balance or harmony of various interests and values that are disturbed by crime. It can be said that the purpose of criminal law is to maintain or restore social balance.

As stated by Barda Nawawi Arief, the concept of an integral crime prevention policy contains the consequence that all rational efforts to overcome crime must be an integrated whole. This means that the policy to overcome crime by using criminal sanctions must also be combined with other efforts that are "non-penal". These non-penal efforts can cover a very broad field in all sectors of social policy or national development. The main objective of these non-penal efforts is to improve certain social conditions that indirectly have a preventive effect on crime. Thus, viewed from a criminal perspective, all non-penal preventive activities actually have a very strategic position. Failure to work on this strategic position will actually have fatal consequences for crime prevention efforts.¹⁷

¹⁵*ibid.*Pg. 61.

¹⁶Barda Nawawi. 1994. Legislative Policy in Tackling Crime with Imprisonment. Bandung: Alumi. Pp. 93-95.

¹⁷*ibid.*Pg. 36.

Barda Nawawi Arief explained this non-penal effort which has a very strategic position as follows:¹⁸

"That these non-penal efforts must be aimed at making society a healthy social and living environment (materially and immaterially) from criminogenic factors. This means that society with all its potential must be used as a crime prevention factor or anti-criminogenic factor which is an integral part of the entire criminal policy."

Viewed from the perspective of non-penal efforts, this means that it is necessary to explore, develop and utilize all potential support and community participation in efforts to make the extra legal system or informal and traditional system that exists in the community more effective and develop it.¹⁹

In addition to non-penal efforts that can be taken by making society healthy through social policies by exploring various potentials that exist in society itself, non-penal efforts can also be explored from various other sources that also have the potential for preventive effects. Other sources include the press or mass media, the use of technological advances (known as techno-prevention) and the use of potential preventive effects from law enforcement officers.²⁰

The potential that exists in society is certainly an added value owned by Indonesia, with a variety of ethnic groups, customs, cultures making each region have customary laws that are binding in that region. Therefore, the government must explore what exists and is desired by the community, because the development and growth of the country are also determined by shared ideals.

According to Lawrence M. Friedman, the effectiveness and success of law enforcement depends on 3 (three) elements of the legal system, namely:²¹

1. Legal structure.

The structural system that determines whether or not the law can be implemented properly. The legal structure based on Law Number 8 of 1981 includes: a). Police, b). Prosecutor's Office, c). Courts and Criminal Execution Agencies (Lapas).

2. Legal substance

What is meant by substance is the rules, norms, and real patterns of human behavior that are in the system. So the substance of law concerns the applicable laws and regulations that have binding power and become guidelines for law enforcement officers.

3. Legal culture.

¹⁸*Ibid.*Pg. 13.

¹⁹*Ibid.*Pg. 13.

²⁰*Ibid.*Pg. 14.

²¹M. Friedman, Lawrence. 2011. *Legal System: Social Science Perspective*. Bandung: Nusa Media. Pp. 4 – 7.

Legal culture according to Lawrence M. Friedman is a person's attitude towards law and the legal system - their beliefs, values, thoughts, and expectations. Legal culture or legal culture is the atmosphere of social thought and social power that determines how law is used, avoided or abused. Legal culture is closely related to the legal awareness of society. The higher the public awareness of the law, the more the legal culture is formed and changes the psychology of society towards the law.

By looking at the opinion of Lawrence M. Friedman above, the three things above must be owned by a country if the country positions the law as the basis of a country. With the existence of legal order, the order and system in the country will run according to the ideals of the nation's founders.

Good law is also inseparable from the state's protection of every citizen. Equality and justice are fundamental to how the state protects the human rights of every citizen in carrying out its actions at all times. The measure of justice is often defined differently between individuals and justice itself varies, in various different spaces and fields, for example justice in the fields of economics, socio-culture, law and so on. Sometimes each individual will be different when in reality asked to choose which justice is the main one and must exist at the same time, this depends on which side the individuals assess based on their needs, educational background, and so on.

Therefore, there needs to be a balance of justice between individuals and society that cannot be separated from each other. Assessing justice in a society is never possible without a bond between one individual and another.

In the effort to eradicate illegal mining crimes that occurred in the Arut Utara District, Kotawaringin Barat Regency, Central Kalimantan Province, what must be ensured is how the role and position of the Kotawaringin Barat Police together with the Arut Utara District together with all community leaders and traditional leaders resolve this problem without reducing the sense of justice in the community. Matters related to the community's economy and which include the livelihoods of many people are very sensitive issues and must be carried out with the right and appropriate methods, because in reality every individual who feels that their economic interests are disturbed by regulations that they think are not the best solution, will have an impact on the conflict between the community and the state apparatus in the field. This has often happened in Indonesia regarding conflicts between the community and the state, for example in cases of eviction and relocation of houses on riverbanks.

The area of North Arut District is currently increasingly worrying. Where illegal miners have dared to mine in places not far from the capital of North Arut District. This is done with various modes, for example in carrying out its operations between miners and land owners working together to carry out this illegal mining, so that there is no party that is harmed by this illegal mining.

That with the increasingly massive illegal mining in its area, it has changed the paradigm of society in utilizing and processing existing natural resources. Currently, people are more interested in getting quick income, either as miners or land owners without thinking about the impact of the remaining illegal mining in the future. Meanwhile, with the increasingly massive illegal mining in its area, the only thing that can be done at this time is to protect customary lands and forests from land encroachment by illegal miners, while other efforts are still in the form of appeals to the people in their area.

From the several problems mentioned above, there are efforts from the West Kotawaringin Regency Government in an effort to involve indigenous communities in regional development, including providing authority from indigenous communities through customary institutions in efforts to protect and preserve the environment, namely by issuing Regional Regulation Number 8 of 2022 concerning Empowerment, Preservation, Development of Customs and Customs and Peace.

As for some of the explanations above, it makes the right momentum in the effort to eradicate illegal mining in the West Kotawaringin Regency area. So that appropriate programs are needed so that people who used to work in illegal mining switch to other work sectors which in the future the quality of life and economy will increase and it is hoped that illegal mining crimes will continue to decline over time and environmental conditions will recover and be sustainable.

4. Conclusion

Law enforcement is an effort by the state to guarantee the rights and justice of every citizen. However, in its journey, alternative companions are needed so that it is hoped that law enforcement against illegal mining crimes can run optimally. Non-penal efforts that are preventive in nature are alternative solutions that are fair to the community and the environment itself and the form of programs created that are friendly to the community and the environment.

5. References

- Amuruddin and Zainal Asikin. 2003. Introduction to Legal Research Methods. Jakarta: Raja Grafindo Persada.
- Arya Wardhana, Wisnu. 1995. Impact of Environmental Pollution. Yogyakarta: Andi Offset.
- Guntari, Titiek. 2022. Penal and Non-Penal Efforts in Overcoming Environmental Crimes. Jurnal Advokatura Indonesia, Vol 1 No 1 2022.
- Hairi, Prianter Jaya. 2021. Law Enforcement of Illegal Mining Crimes. Brief Info, Vol. XIII, No.15/I/Puslit/August/2021.
- Keraf, A. Sonny. 2001. Environmental Ethics. Jakarta: PT Kompas Media Nusantara.

- M. Friedman, Lawrence. 2011. *Legal System: Social Science Perspective*. Bandung: Nusa Media.
- Nawawi, Barda. 1994. *Legislative Policy in Tackling Crime with Imprisonment*. Bandung: Alumni.
- Peratiwi, Marisa Dian and Edi Setiadi. 2019. "Law Enforcement of Illegal Mining Practices". *Journal of Legal Science Proceedings*, Volume 5, No. 1.
- Putri, Alvika Fatmawati Dwi and Mujiono Hafidh Prasetyo. 2021. *Criminal Law Policy in Handling Criminal Acts in the Mining Sector*. *Journal of Indonesian Legal Development*, Volume 3, Number 3, Year 2021.
- RM Gatot P. Soemartono. 1996. *Indonesian Environmental Law*. Jakarta: Sinar Grafika.
- Rusdiyanto. 2015. *Environmental Problems in Indonesia Facing the Era of Globalization*. *Jurnal Cakrawala Hukum*, Vol. 6, No. 2 December 2015.
- Safa'at, Rachmad and Indah Dwi Qurbani. 2017. *Alternative Resolution of Mining Disputes (Study in Lumajang Regency, East Java Province)*. *Constitutional Journal*, Volume 14, Number 1, March 2017.