

# LAW ENFORCEMENT AGAINST ENVIRONMENTAL DAMAGE DUE TO ILLEGAL MINING BASED ON THE PRINCIPLE OF DISTRIBUTIVE JUSTICE

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## A B S T R A C T

*Illegal mining is a mining activity that does not have an environmental permit and does not pay attention to social and ecological aspects. Illegal mining often generates economic benefits, but miners can only enjoy these, while the community does not get commensurate benefits. The burden of environmental damage done by miners tends to be borne by the community. This shows an imbalance in obtaining environmental benefits. Thus this research will examine law enforcement in terms of environmental damage caused by illegal mining, which is expected to provide an overview of the effectiveness of existing policies, as well as a review of law enforcement against environmental damage due to illegal mining in terms of the principle of distributive justice, which is expected to encourage policies and law enforcement in protecting a fair and sustainable environment.*

## INTRODUCTION

The environment plays an important role in supporting human life, such as providing natural resources, regulating the climate, and housing living things. So that the environment must always be maintained and preserved so that all living things on earth can live. Environmental damage has an impact on the lives of living things and environmental ecosystems. The impact of environmental damage includes loss of biodiversity, namely the loss of species and their habitats, environmental pollution, human health, reduction of natural resources, damage to infrastructure, and disruption of human activities.

Environmental damage can be caused by human activity and nature. Human activity in the form of forest burning, illegal logging that can reduce the function of the forest, throwing garbage in the river resulting in flooding, and mining can damage the surrounding environment to disturb the health of the people who live around it, and the soil is no longer fertile, resulting in land loss. While damage is caused by nature in the form of floods, volcanic eruptions, tornadoes, landslides, and earthquakes. Environmental damage can cause very serious damage that is difficult to repair.

In Indonesia, mining is one of the human activities that can have a negative impact on the environment and human health; uncontrolled exploitation, especially by illegal mining, has serious impacts. Illegal mining is mining that does not have an environmental permit and does not pay attention to environmental and social aspects. The activities carried out not only violate the law by not having an environmental permit but also violate the damage to the environment and threaten the sustainability of the environment as well as human activities and health.

In fact, data from the Ministry of Energy and Mineral Resources shows that until 2023, more than 2,700 illegal mining points were spread across Indonesia, especially Kalimantan, Sumatra, and Sulawesi. Law enforcement that is not firm

and often colored by bribery is one of the factors that make illegal mining actors feel safe to operate outside the rules. Other factors include unscrupulous involvement and corruption and ineffective and difficult regulations. (M. Haris Zakiyuddin, 2024) Illegal mining often generates economic benefits, but these can only be enjoyed by miners, while the community does not benefit commensurately. The burden of environmental damage done by miners tends to be borne by the community. This shows an imbalance in obtaining environmental benefits.

These legal issues indicate the need for strict law enforcement, providing sanctions against violators. Law enforcement in this context requires preventive or deterrent action aimed at reducing the number of violations and their impact on the environment, and repressive action as a step to sanction and provide a deterrent effect on illegal miners, and environmental recovery due to the impact of illegal mining activities.

Thus, this research will examine law enforcement in terms of environmental damage caused by illegal mining, which is expected to provide an overview of the effectiveness of existing policies, as well as a review of law enforcement against environmental damage due to illegal mining in terms of the principle of distributive justice, which is expected to provide encouragement to policies and law enforcement in protecting a fair and sustainable environment.

## **RESEARCH METHODS**

This research uses normative legal research, which is a form of legal writing that bases research on the characteristics of normative legal science that is carried out or aimed only at written regulations and other legal materials such as books and journals related to the research.

## **RESULTS AND DISCUSSION**

### **A. Law Enforcement Against Environmental Damage Due to Illegal Mining**

Mining is a business with high economic value and has proven to be a major contributor to Indonesia's economic growth. In addition, mining is one of the country's tactics in improving economic conditions in the country and increasing the economic value of the country. Mining also creates significant employment opportunities to increase people's income levels. In addition, mining also stimulates the growth of related sectors such as services and manufacturing (Setiawan, 2024).

Environmental damage by illegal mining often occurs in Indonesia, where it becomes one of the main obstacles in environmental law enforcement in Indonesia. Illegal or unlicensed mining is a social, economic, and environmental phenomenon in mineral and coal mining business activities in Indonesia. As happened in Katingan, Central Kalimantan, illegal gold mining cases cause damage to the environment, namely, decreased soil quality, erosion and landslides, reduced loss of ground cover vegetation, sedimentation, pollution and decreased water quality, and reduced land cover area of forest areas. (Sepawartono, Murati et al., 2024)

Illegal mining is an unauthorized mining activity that violates regulations and has widespread impacts. This practice occurs because of the high economic value of mining products but is carried out in an irresponsible manner and can damage the environment. (Cadizza & Pratama, 2024) Impacts that occur can include deforestation, water pollution, and loss of wildlife habitat and are often associated with human rights violations, such as labor exploitation and conflict with local communities. Illegal mining harms not only the environment but also the affected communities, hence the need for law enforcement.

Law enforcement is an action to realize the goals of justice, legal certainty, and social benefit. In addition, law enforcement is a process to enforce or function as

legal norms in real terms as guidelines in legal relations in the life of society and the state. Law enforcement aims to realize the ideas and concepts of law that people expect to be a reality. Law enforcement is a process that involves many things. (Hijriani et al., 2023) The process of applying the law is carried out by parties who have the authority to enforce the law to ensure that the law can be implemented, applied, and obeyed by every individual and community group. In the law enforcement process. The purpose of law enforcement is, of course, to maintain security, stability, and public order, as well as to ensure that every individual chooses the same rights. (Annisa, 2023)

Law enforcement is an effort to realize legal norms into reality in people's lives to ensure legal certainty, justice, and usefulness. The process includes enforcement of formal law relating to written regulations and material law covering the values of justice in society. Law enforcement can be carried out broadly by various institutions and parties involved or narrowly by law enforcement officials such as police, prosecutors, and judges. The goal is to create order, justice, and social welfare in society.

In the realm of law enforcement, a stage of realizing real law, especially in environmental law enforcement, includes apparatus to community compliance in applicable rules. The applicable rules cover the fields of law, namely administrative, civil, and criminal. Environmental law enforcement can be carried out preventively and repressively, according to its nature and effectiveness. Preventive enforcement means that active supervision is carried out on compliance with regulations without the direct occurrence of events. On the other hand, it also covers preventive and repressive matters related to its nature and usefulness. (Herlina & Duana, 2022)

Law enforcement in environmental damage due to illegal mining has been considered less than optimal, even though several regulations have stipulated sanctions for illegal mining actors, such as in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. In addition to the Law on environmental damage caused by illegal mining, the government, to respond to illegal mining cases in 2021, has regulated and formed a regulation through Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities and Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management.

## 1. Legal Structures

In illegal mining law enforcement, legal structures refer to institutions that have a role in mining law enforcement. These institutions are the Ministry of Energy and Mineral Resources, the police, the prosecutor's office, and the courts. Although there are law enforcement agencies that have the authority, coordination between agencies is still often considered weak. There are many cases of illegal mining involving unscrupulous law enforcement officers who are bribed to cover up illegal mining.

An example is the case of Harvey Moeis, who was involved in illegal mining. Although allegations of involvement in illegal practices have been widely reported, the legal process against him tends to be slow, and the punishment given is considered not proportional to the impact caused by the illegal activity. This shows that structurally, law enforcement agencies are still weak in combating illegal mining, especially when it involves certain economic and political interests.

## 2. Legal Substancy

Legal substance in illegal mining Law enforcement refers to regulations related to illegal mining. Some regulations governing illegal mining can be seen in:

- a) Law No. 4/2009 on Mineral and Coal Mining (amended by Law No. 3/2020);
- b) Law Number 32 Year 2009 on Environmental Protection and Management;
- c) Government Regulation No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities;

d) Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management.

Existing regulations are quite clear in stipulating that illegal mining is a criminal act that can be subject to criminal and administrative sanctions. Article 158 of the Minerba Law states that any person who conducts mining business activities without a license can be punished with a maximum imprisonment of five years and a maximum fine of Rp100 billion.

But in practice, there are many illegal mines that are only lightly penalized or even escape the law. Existing regulations are often not applied consistently, especially in cases involving large companies with strong networks. This can be seen in the Harvey Moeis case, which reflects how the substance of the existing law has not been able to ensnare large-scale illegal mining perpetrators with appropriate penalties. While small communities conducting unlicensed mining are often directly prosecuted, large-scale perpetrators who have connections with political elites can avoid severe punishment. This injustice shows that the substance of the law has not been applied evenly and is more likely to benefit certain parties.

### 3. Legal Culture

Legal culture refers to legal awareness and compliance with applicable laws. In the case of illegal mining, legal culture is influenced by several key factors that contribute to the weak implementation of the law on the ground. One of the most significant factors is the practice of corruption and nepotism. Many illegal mining cases continue because of bribery and corruption among officials and law enforcement. Perpetrators of illegal mining often have connections with authorities that allow them to avoid legal sanctions, even when their activities have been proven to violate regulations. This weakens the effectiveness of the law and creates public distrust of law enforcement officials. When people see that justice can be bought and the law is only sharp downwards but blunt upwards, they tend to lose faith in the justice system.

Besides corruption, the lack of public awareness is also a factor that worsens the legal culture in the context of illegal mining. Many local communities engage in this activity not because they intend to break the law, but rather because of a lack of alternative livelihoods. In areas with abundant mineral resources, illegal mining is often the only source of livelihood for residents. The lack of understanding of the environmental impacts of illegal mining is also a reason why this practice continues. The government's socialization of the dangers of illegal mining is often ineffective and does not reach the people who are involved in this activity. As a result, communities continue to carry out illegal mining without realizing that their actions are contributing to extensive environmental damage, such as deforestation, water pollution, and landslides. (Sulaiman, 2023)

Injustice in law enforcement is another factor that worsens the legal culture in the illegal mining sector in Indonesia. Laws are often enforced with double standards, where large companies that violate the rules can escape punishment, while small communities are severely sanctioned. (Kontras.Id, 2025) This further strengthens the issue of laws that favor those with economic and political power. Many in small communities who mine illegally to fulfill their daily needs are immediately prosecuted and severely punished, while large corporations that commit environmental destruction on a large scale are only subject to administrative sanctions or fines whose value is much smaller than the profits they make from these illegal activities.

The Harvey Moeis case is a clear example of how Indonesia's legal culture is still weak in upholding justice. Despite sufficient evidence and public pressure related to his illegal mining activities, the legal process was slow, and the punishment given was not proportional to the harm caused. This case highlights how big actors with strong political and economic networks often get preferential treatment in the legal process. In contrast, small communities conducting

unlicensed artisanal mining are met with harsh legal action, including detention and heavy prison sentences. This phenomenon reflects how the law in Indonesia still tends to favor those with access to power, while small communities become victims of a system that does not favor substantive justice.

With cases like Harvey Moeis, public trust in the legal system has declined. People see that although there are regulations governing mining, the implementation is not fair. When the law only becomes a tool for certain groups to perpetuate their power and wealth, it becomes increasingly difficult for small communities to get justice. This also creates an ongoing cycle of legal non-compliance, as communities see no incentive to comply with the law if only, they are punished while large-scale perpetrators remain free to operate.

Thus, based on the analysis in terms of legal structure, legal substance, and legal culture, it can be concluded that law enforcement against illegal mining in Indonesia still has many weaknesses. The legal structure is still weak due to poor coordination between related institutions and corrupt practices among officials. The substance of the law is quite clear, but its implementation is still far from ideal because it often only targets small-scale offenders and lets large-scale offenders go free. The legal culture that is still influenced by corrupt practices and injustice in law enforcement further worsens the situation.

## **B. Law Enforcement Against Environmental Damage Due to Illegal Mining in View of the Principle of Distributive Justice**

(Muthmainnah et al., 2020) The economic benefits of these activities tend to be centered on the financiers and entrepreneurs of illegally operating mines, while the surrounding communities must bear the long-term consequences, such as water pollution due to toxic waste disposal, soil degradation that hampers agriculture, and loss of biodiversity.

Thus, environmental law enforcement in environmental damage is closely related to the principle of distributive justice. Distributive justice emphasizes the fair distribution of environmental benefits and risks to all parties, including communities affected by environmental damage. In this case, law enforcement aims to sanction the perpetrators of environmental pollution or destruction, as well as restore the damage that has been caused. However, the main challenge lies in the weak law enforcement, both in terms of resources and execution of judgments, and the mismatch between policy and implementation.

Kuehn argues that environmental justice based on the taxonomy of justice is divided into 4 categories, namely distributive justice, corrective justice, procedural justice, and social justice. (Khalisah Hayatuddin and Serlika Aprita, 2023, p. 14) The principle of distributive justice is one of the important pillars in equitable environmental management. According to Kuehn, distributive justice emphasizes the equitable distribution of the benefits and burdens of environmental management among all groups in society. This principle includes considerations to ensure that vulnerable or disadvantaged groups are not disproportionately burdened by negative environmental impacts, while stronger groups enjoy greater benefits. Environmental justice as distributive justice demands a reduction in environmental risks rather than a redistribution of environmental risks and demands an equitable distribution of benefits from environmental protection and management efforts. (Azhar et al., 2023)

Distributive justice looks at how to share environmental burdens and benefits. Distributive justice emphasizes that certain groups of people, such as indigenous peoples or people living near mining sites, bear a disproportionate burden of environmental impacts while other groups benefit from those environmental impacts. To ensure that the most vulnerable are protected and appropriately compensated for their losses, fair decisions will seek to balance this division. Distributive justice demands a fair share of the benefits as well as the burdens felt by society; in the environmental context, it can be interpreted as companies must

be responsible for the burdens they have committed, such as the impact on environmental damage and the impact on public health. (Fahrenza, 2024).

Thus, from a distributive justice perspective, the state has the responsibility to ensure that no group is exploited or suffers losses due to policies or weak law enforcement against illegal mining. Therefore, law enforcement efforts must include not only sanctioning perpetrators of illegal mining but also environmental restoration and compensation for affected communities. This is in accordance with the principle of ecological justice, which asserts that those who damage the environment the most should be responsible for its restoration. (Said & Nurhayati, 2020).

Law enforcement against environmental damage due to illegal mining activities can be analysed and reviewed more deeply through the perspective of the principle of distributive justice, which focuses on the fair distribution of environmental benefits and burdens among all elements of society (Afinnas, 2023a).

The principle of distributive justice aims to ensure that environmental benefits and burdens are distributed fairly. In the context of environmental damage, this justice involves providing witnesses equal to the damage caused, compensating affected parties, and preventing further damage.

Law enforcement against environmental damage due to illegal mining activities can be analysed and reviewed more deeply through the perspective of the principle of distributive justice, which focuses on the fair distribution of environmental benefits and burdens among all elements of society. (Afinnas, 2023b) In this case, illegal mining often results in significant inequality, where there are certain parties who get huge economic benefits without considering the adverse impacts borne by the wider community, especially local communities living around the mining area.

So, law enforcement against damage caused by illegal mining based on the principle of distributive justice, illegal mining as a violator who violates environmental permits and has an impact on the environment, must be responsible for the burden they carry out, such as environmental damage, changes in environmental functions, and public health. Accountability can be done by restoring the environment and compensating people affected by health; the amount of compensation is based on how much impact is caused. Besides that, in terms of legal sanctions, mining must be punished according to how much impact is caused; enforcement of illegal mining does not have to be directly given criminal sanctions, but administrative sanctions such as written warnings and fines can be used. This is especially true for small-scale illegal mining.

The provision of sanctions by considering the distributive principle basically sees justice in terms of sharing the burden and risk of environmental impacts. If illegal mining is the perpetrator who makes damage and has an impact on the environment, the illegal mining company must be held accountable for its actions. That way, distributive justice has been applied.

Of course, the application of the principle of distributive justice in law enforcement against illegal mining must be accompanied by the activeness of law enforcement agencies such as the police to investigate and investigate illegal mining; the prosecutor's office can prosecute illegal mining by giving demands according to violations committed related to licensing and the impact caused to the environment and society; judges who give decisions; and besides that, there is also MOEF (Ministry of Environment and Forestry), which can formulate and implement environmental law enforcement policies. In addition to the cooperation and activeness of law enforcement agencies, a transparent enforcement process must also be carried out to prevent an enforcement process that is not running properly.

## CONCLUSIONS

Law enforcement against environmental damage due to illegal mining Law enforcement against illegal mining in Indonesia still has many weaknesses based on legal structure, legal substance, and legal culture, which is still influenced by corrupt practices and injustice in law enforcement further exacerbating the situation. Law enforcement against environmental damage due to illegal mining is the principle of distributive environmental justice, applying and ensuring that the burden and benefits of the environment are distributed according to the level of damage caused. This includes sanctions imposed by large-scale and small-scale illegal mining.

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