

# THE URGENCY OF STRENGTHENING MINING REGULATIONS WITH THE ULTIMUM REMEDIUM PRINCIPLE IN THE INDONESIAN CRIMINAL LAW SYSTEM

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## A B S T R A C T

*This research is motivated by the Ultimum Remedium Principle in mining regulations, which is considered no longer able to provide a deterrent effect to perpetrators of mining and environmental crimes. This research aims to examine the application of the ultimum remedium principle in mining regulations in Indonesia and analyze the effectiveness of law enforcement against violations in the mining sector in Indonesia. This research uses normative legal research methods. The results showed that the application of the ultimum remedium principle (the last means) for criminal law in Indonesian mining sector legislation is not appropriate because it has become one of the causes of weak law enforcement against criminal offences in the mining sector. This can be seen from the potential failure in maintaining the sustainability of mineral and coal natural resources and the preservation of ecosystems affected by mining activities that ignore the application of the principles of good mining practice. Criminal law enforcement as the ultimate remedy in handling mining crimes is not effective. This is more due to the position of criminal law in the mining sector legislation as the last means (ultimum remedium), where criminal law is only applied if the instruments of administrative law and civil law are unable to solve the problem at hand*

## INTRODUCTION

Indonesia has abundant natural resources, especially in the form of minerals and coal. These resources are classified as non-renewable, so they require optimal and sustainable management. (Soedarto et al., 2023) The Indonesian Constitution, through Article 33 paragraph (3) of the 1945 Constitution, emphasizes that natural resources must be controlled by the state for the welfare of the people. Therefore, the mining sector is expected to provide benefits to the community, although in practice many take place illegally. (Damar et al., 2022).

Mining involves a series of activities such as exploration, exploitation, processing, and sale of minerals. (Halistra et al., 2024) The mining industry is one of the main contributors to the country's foreign exchange, with the government obtaining revenue from taxes and non-taxes, while companies benefit from resource exploitation. (Praha et al., 2023) Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) stipulates that the management of this sector must be based on benefits, justice, siding with the interests of the nation, and the principles of sustainability and environmental awareness. However, the implementation of this principle is still far from expectations.

In reality, many mining activities ignore environmental aspects and community welfare. Land conflicts and environmental pollution often occur due to unsustainable exploitation. (Muthmainnah et al., 2021) Environmental damage due to mining can cause loss of biodiversity, resource crises, and prolonged social

conflicts. (Dymas et al., 2024) The decline in environmental quality also has an impact on the health, aesthetics, and economy of the community, which is often only felt after years. The Minerba Law stipulates administrative sanctions and fines for companies that violate environmental regulations. However, these sanctions are often ineffective because companies prefer to pay fines rather than stop their operations. In addition, law enforcement against environmental pollution is still minimal and more reactive than preventive. Affected communities often do not have adequate legal access to fight for their rights, while the government is less responsive in handling complaints.

One example of a case that reflects this problem is mining activities in Torobulu Village, South Konawe, Southeast Sulawesi. PT Wijaya Inti Nusantara (PT WIN) is accused of damaging the environment by carrying out aggressive mining that eliminates clean water sources for residents. Residents who reject this activity are criminalized by the company. (Maemunah, 2023) A similar case also occurred in Central Kalimantan, where rivers were polluted by coal mining waste due to weak supervision of the company's compliance with the Environmental Impact Analysis (Amdal). (Amirullah & Tni, 2024)

Existing regulations, including changes to the 2020 Minerba Law, tend to benefit mining companies more than ensuring their environmental responsibilities. Article 96, letter b, allows companies to only choose between reclamation or post-mining activities, without having to carry out both. In addition, mining contract permits can still be extended even if the company ignores the reclamation obligation. This shows that the existing sanctions do not provide a sufficient deterrent effect.

To achieve sustainable mining management, it is necessary to strengthen regulations and stricter law enforcement. Administrative sanctions must be strengthened with criminal action as a primary step, not just as a last resort. In addition, community involvement in the mining licensing process needs to be increased to ensure that exploitation of natural resources does not sacrifice environmental interests and people's welfare.

## **RESEARCH METHODS**

The research method used in this study is the normative legal research method with a statute approach and a conceptual approach. (Soekanto, 2023) Library research analyzes primary, secondary, and tertiary legal materials to carry out data collection techniques. The primary legal materials in this study consist of relevant laws and regulations, such as Law Number 3 of 2020 concerning Mineral and Coal Mining, Law Number 32 of 2009 concerning Environmental Protection and Management, and the Criminal Code.

Secondary legal materials include books, legal journals, and previous research related to mining regulations, the principle of *ultimum remedium*, and the effectiveness of law enforcement in the mining sector. Tertiary legal materials include legal dictionaries and encyclopedias that support the understanding of legal concepts and terms in this study. The legal material analysis technique used is qualitative analysis with a descriptive-analytical approach, namely systematically describing the data obtained to answer the problem formulation and provide solutions to the legal problems studied. This method aims to examine the application of the principle of *ultimum remedium* in mining regulations in

Indonesia and to analyze the effectiveness of criminal law enforcement against criminal acts in the mining sector.

## **RESULTS AND DISCUSSION**

### **1. Implementation of *Ultimum Remedium* in Mining Regulation in Indonesia.**

The crime of extortion (*pungli*) has a very close relevance to the crime of corruption, as explained in the text you provided. Extortion is a form of abuse of authority by public officials or individuals who have power, where they collect money from the community without a clear legal basis to obtain personal or group benefits. Mineral and coal natural resources play an important role in environmental sustainability and community welfare. The policies implemented in the management of these resources aim to ensure the sustainability and balance of the ecosystem for future generations. Sustainability in the mining sector must pay attention to economic, social, ecological, and regulatory aspects so that its use does not harm the next generation. In addition, a well-maintained ecosystem is a major aspect of resource management, considering that the impact of mining on land, water, forests, and the sea can threaten environmental balance.

Indonesia has abundant natural resources, but the distribution of benefits is not even. These resources are non-renewable, so excessive exploitation without wise management can cause scarcity or extinction (80). Therefore, management of natural resources must be carried out based on the principles of sustainability, justice, benefits, efficiency, transparency, and accountability. The state has an important role in controlling the use of these resources to achieve people's welfare. Mining law is closely related to environmental law, considering that every mining activity is required to maintain environmental sustainability. The increased use of natural resources through mining activities has the potential to increase pollution and environmental damage around the mining site. In this case, environmental law in Indonesia stipulates that administrative violations in environmental protection can be subject to criminal sanctions to strengthen the effectiveness of administrative law. Thus, criminal law functions as an *ultimum remedium*, or last resort, in enforcing environmental regulations. Law enforcement against environmental violations caused by mining activities is based on Law No. 32 of 2009 concerning Environmental Protection and Management. The general explanation of this law emphasizes that criminal law still pays attention to the principle of *ultimum remedium*, so it is used only if other legal efforts, such as mediation or administrative sanctions, are ineffective. Law enforcement in the environmental context is complex and requires a balance between enforcing legal norms and efforts to create harmony in community life. The Environmental Management Law gives the government the authority to impose administrative sanctions on business actors who violate environmental permits. Article 76 of the Environmental Management Law states that administrative sanctions can be in the form of written warnings, government coercion, freezing of environmental permits, and revocation of environmental permits. In addition, Law Number 3 of 2020, which is a revision of Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law), stipulates that criminal sanctions are applied as a last resort (*ultimum remedium*) in enforcing legal obligations for mining companies related to reclamation and post-mining.

Article 161B of the Minerba Law stipulates that individuals or business entities that do not carry out reclamation and post-mining obligations after their mining business permits have expired can be subject to a maximum prison sentence of five years and a fine of up to IDR100 billion. In addition, former mining business permit holders can be subject to additional penalties in the form of payment of funds for reclamation and post-mining. Other additional penalties

include confiscation of goods used in the crime, confiscation of profits obtained, and the obligation to pay costs arising from the crime.

The application of criminal sanctions shows that criminal law is only used if administrative sanctions are ineffective in resolving violations. However, in practice, administrative sanctions are more often used in resolving reclamation and post-mining disputes than criminal sanctions. Therefore, an evaluation of the effectiveness of the application of the *ultimum remedium* principle in the mining sector is needed to ensure that the policies implemented are truly able to maintain a balance between economic interests and environmental sustainability.

## **2. Effectiveness of Law Enforcement Against Violations in the Mining Sector in Indonesia**

In public service theory, law enforcement is a process to ensure that legal norms are truly implemented and function as behavioral guidelines in legal interactions in society and the state. Viewed from the subject, law enforcement involves various parties as legal subjects in every legal relationship. In addition, Maizardi explained that law enforcement can be understood from the object side. Objectively, the legal norms that are enforced include formal and material laws. Formal law relates to official and structured written laws and regulations, referred to as law enforcement in the narrow sense. Meanwhile, material law includes the values of justice in society. Law enforcement in the broad sense is not only oriented towards formal rules but also the values of justice in legal provisions and those that grow in community life. The concept of law enforcement seeks to align clear legal values with real actions, aiming to create and maintain public order. In its implementation, law enforcement must consider legal certainty, legal benefits, and legal justice. Legal certainty provides social order, while legal benefits ensure that the law protects and serves the community. Legal justice emphasizes that the law must be enforced by upholding the principles of justice, even though the law itself is not always identical to justice.

The government's responsibility in enforcing environmental law is regulated in Law No. 32 of 2009 concerning Environmental Protection and Management. Article 1, paragraphs 37, 38, and 39, state that the central government, in this case the president, is responsible for environmental protection policies. Environmental protection and management efforts include planning, utilization, control, maintenance, supervision, and law enforcement. Article 28H paragraph (1) and Article 33 paragraphs (3) and (4) of the 1945 Constitution also emphasize that the government is responsible for the welfare of the community and sustainable environmental management. The authority in Law No. 32 of 2009 states that the minister, governor, or regent/mayor, according to their authority, must supervise the compliance of those responsible for businesses and/or activities with environmental provisions. The minister can also supervise if there are serious violations in environmental protection and management. Instruments for preventing environmental pollution and/or damage consist of:

- 1) Strategic Environmental Assessment (KLHS);
- 2) Spatial planning;
- 3) Environmental quality standards;
- 4) Standard criteria for environmental damage;
- 5) AMDAL;
- 6) UKL-UPL;
- 7) Licensing;
- 8) Environmental Economic Instruments;
- 9) Environmental-Based Legislation;
- 10) Environmental-Based Budget;
- 11) Environmental Risk Analysis; and
- 12) Environmental Audit.

Environmental law enforcement faces major challenges, especially in natural resource management policies such as land, forestry, plantations, mineral and coal mining, and oil and gas. Utilization of these sectors often causes environmental problems. If a violation occurs, law enforcement needs to be carried out against the violated regulations and action against the perpetrators. Currently, criminal law is increasingly used as an instrument to control society through various regulations. However, although the criminal threat in environmental regulations is quite severe, its application to perpetrators of environmental crimes is often ineffective. Many perpetrators, especially large corporations, are only subject to administrative sanctions such as fines, which for them are not a big problem. As a result, environmental pollution and destruction continue without a significant deterrent effect. In practice, many mining activities violate the rules, such as what happened in Torobulu Village, Laeya District, South Konawe Regency, Southeast Sulawesi. PT Wijaya Inti Nusantara carries out massive mining without reclamation, causing open mining holes. This exploitation also has an impact on the loss of clean water sources and reduces fish catches for local fishermen. Similar problems occurred in the extension of coal operations of PT Kaltim Prima Coal, PT Arutmin, and PT Kendilo Coal Indonesia, which caused water and environmental pollution without strict sanctions from the government.

Efforts to prevent and enforce criminal law against perpetrators of environmental pollution need to be improved. The principle of *ultimum remedium*, which states that criminal law is the last resort after administrative and civil law, is often ineffective in ensnaring perpetrators of environmental crimes. Therefore, in certain cases, criminal law must become *primum remedium*, as implemented in several other countries that have abandoned the concept of *ultimum remedium* in dealing with environmental violations. Thus, criminal law enforcement must be the main instrument in environmental protection for the sustainability of natural resources and public welfare.

## **CONCLUSIONS**

The application of the principle of *ultimum remedium* (last resort) for criminal law in the legislation in the Indonesian mining sector is inappropriate because it has become one of the causes of weak law enforcement against criminal acts in the mining sector. This can be seen from the potential failure in maintaining the sustainability of mineral and coal natural resources and the sustainability of ecosystems affected by mining activities that ignore the application of the principle of good mining practice. Criminal law enforcement as an *ultimum remedium* in handling mining crimes is ineffective. This is more due to the position of criminal law in the legislation in the mining sector as the last resort (*Ultimum Remidium*) where criminal law is only applied if the Administrative Legal Instrument and Civil Law are unable to resolve the problems faced.

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