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Sulawesiana Journal

Volume 1, Issue 1, August 2025

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

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ARTICLE INFORMATION

Received: 03, June, 2025
Revised : 03, July, 2025
Accepted: 25, July, 2025
DOI:

KEYWORDS

Restorative Justice; Law Enforcement; The Perspective of Settlement; Property Crime

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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. (Halisra 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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LAW ENFORCEMENT AGAINST PROPERTY CRIME IN THE PERSPECTIVE OF SETTLEMENT THROUGH RESTORATIVE JUSTICE

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ARTICLE INFORMATION

Received: 03, June, 2025
Revised : 03, July, 2025
Accepted: 25, July, 2025
DOI: q

KEYWORDS

Restorative Justice; Law Enforcement; The Perspective of Settlement; Property Crime

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A B S T R A C T

What is the urgency of resolving property crime through a restorative justice approach? What are the challenges in the application of restorative justice in the settlement of property crime? The objectives of this research are: To review and analyze the implementation of property crime settlement through a restorative justice approach. To analyze the challenges of restorative justice implementation in property crime settlement. The method used is the normative research method. The result of the research shows: The restorative justice approach in the settlement of property crimes has a high urgency because it provides an alternative solution that is more oriented towards restoring the condition of victims, perpetrators, and society compared to the retributive approach. By prioritizing mediation and deliberation, restorative justice can reduce the burden of criminal justice, avoid the negative effects of conventional punishment, and enable the restoration of social relations in the community. The application of restorative justice in property crimes faces several challenges, including the lack of understanding of law enforcement officials and the public about this concept, the absence of standard standards in its application, and the potential for abuse by perpetrators who are not truly responsible for their actions. In addition, the resistance factor from victims who prefer retributive justice is also an obstacle in the application of this approach.

INTRODUCTION

Introduction Property crime, such as theft, embezzlement, fraud, and property damage, is a problem that continues to haunt Indonesian society. (Abdurrifai, 2021) Conventional approaches in the criminal justice system that focus on retribution and imprisonment are often ineffective in addressing the root causes and providing justice for all parties involved. Prison overcrowding, the slow pace of the judicial process, and the lack of attention to victim recovery are some of the indicators of the need for reform in the handling of property crime. (Flora, 2023)

Amidst these challenges, the concept of restorative justice has emerged as a promising alternative. Restorative justice emphasizes the restoration of damaged relationships between perpetrators, victims, and the community and encourages the active participation of all parties in the case resolution process. (Satria, 2018) This approach is in line with the values of justice and conflict resolution that have taken root in many indigenous communities in Indonesia and is reflected in several existing laws and regulations, such as the Criminal Code (KUHP). Although oriented towards retaliation, there are several articles that can be interpreted in line with the principles of restorative justice, such as Article 1404 of the Criminal Code on peace. Police Regulation No. 8 of 2021 on Handling Criminal Offences Based on Restorative Justice, which regulates the application of restorative justice explicitly through several articles in it that define and regulate the requirements, stages, the role of investigators, the implementation of peace, and the authority of public

prosecutors, as well as containing other provisions that strengthen its application, with the aim of more effective implementation and providing optimal benefits for all parties. As well as Prosecutor's Regulation Number 15 of 2020, which specifically regulates the termination of prosecution based on restorative justice, which is reflected in articles such as Article 1, Number 1, which defines restorative justice; Article 5, which regulates the conditions for termination of prosecution; Article 8, which regulates the stages of termination of prosecution; Article 9, which regulates the role of facilitators; and Article 14, which confirms the authority of the Attorney General. With these regulations and articles, it is hoped that the application of restorative justice in Indonesia can be more focused and provide benefits for all parties involved, especially victims and perpetrators of criminal offenses. (Gultom, 2022) The concept of restorative justice has often been used by law enforcers, as happened in the case of cinnamon theft in Temanggung, which became a public spotlight because the application of restorative justice successfully resolved the case outside the conventional litigation path. Two perpetrators, threatened with imprisonment and significant fines, were involved in taking cinnamon in a protected forest area without realizing the legal consequences. The Attorney General's Office of Temanggung, taking into account the socio-economic background of the perpetrator, the minimal impact of the loss, and the goodwill of the perpetrator, decided not to continue the legal process. An amicable agreement was reached between the perpetrator and Perhutani, with the perpetrator providing compensation and committing not to repeat his actions. This case is an example of the implementation of restorative justice that is humane, prioritizes the restoration of relationships between perpetrators, victims, and the community, and avoids the negative impact of imprisonment, especially for perpetrators of minor crimes. Describes the application of restorative justice in a cinnamon theft case in Temanggung, showing how this approach is used to resolve cases out of court by considering the social context, harm, and intentions of the perpetrator.

The application of restorative justice in the settlement of property crimes has the potential to reduce the burden on the criminal justice system, accelerate case settlement, provide justice for victims, encourage offender accountability, and repair social relations disrupted by criminal acts. However, its implementation also faces a number of challenges, such as the lack of a clear legal basis, conventional legal perceptions and culture, and limited resources. Reflecting on the above rules and case examples, this research is written with the aim of analyzing in depth the urgency and challenges of implementing restorative justice in the settlement of property crimes in Indonesia. By identifying factors that influence the success or failure of its implementation, it is hoped that this research can contribute to the development of a more effective legal and policy framework in realizing restorative justice in Indonesia.

RESEARCH METHODS

This research method uses normative legal research methods, using a legal approach and data collection techniques, namely through library research on secondary data in the form of primary, secondary, and tertiary legal materials. Primary legal materials consist of laws and regulations, secondary legal materials consist of books and journals that are still related to the title of the thesis that the author studies, and tertiary legal materials are derived from scientific articles on internal pages of law. Research is an activity to provide appropriate solutions to issues or research problems.

RESULTS AND DISCUSSION

1. The Urgency of Settling Property Crime Through the Concept of Restorative Justice

Restorative justice is a legal approach that prioritizes the restoration of relationships between perpetrators, victims, families, and communities, with the aim of seeking a fair settlement rather than retaliation. One of the main principles in restorative justice is the existence of peace achieved through deliberation and agreement between the parties concerned. In the context of property crime, the application of restorative justice becomes very relevant and important. Unlike the retributive approach that only focuses on punishment to the perpetrator, restorative justice provides an opportunity for the perpetrator to take responsibility for his actions and provide compensation or recovery to the victim. Thus, the victim feels valued and their harm is repaired in a concrete way, while the offender is given the opportunity to improve themselves without having to face too severe a punishment. Through a process of dialogue and mediation, restorative justice provides space for victims to express their feelings and needs, as well as providing opportunities for offenders to understand the impact of their actions and try to make amends.

The implementation of restorative justice is closely related to apologies, providing restitution, admitting guilt, and other efforts aimed at restoring victims, including the meaning of the process of reintegrating the perpetrator in the social community, whether there is a sentence or not. In the Indonesian Police Regulation Number 8 of 2021, the definition of restorative justice is found in Article 1 point 3: restorative justice is the resolution of criminal acts involving perpetrators, victims, families of perpetrators, families of victims, community leaders, religious leaders, traditional leaders, or stakeholders to jointly seek a fair settlement through peace by emphasizing restoration to the original state. Likewise, the definition of restorative justice in the Prosecutor's Regulation Number 15 of 2020 stated in Article 1, point 1, that restorative justice is the settlement of criminal cases by involving perpetrators, victims, families of perpetrators/victims, and other related parties to jointly seek a fair settlement by emphasizing restoration to the original state and not retaliation. In Law No. 11/2012 (SPPA Law), Article 1, point 6, states that restorative justice is the resolution of criminal cases by involving perpetrators, victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the original state and not retaliation.

In the context of correctional institutions (LAPAS), the application of restorative justice offers various positive impacts that have the potential to reduce overcapacity and improve the quality of rehabilitation and reintegration of prisoners into society. (Silalahi et al., 2024) One of the main impacts of the application of restorative justice on overcapacity in prisons is the reduction in the number of prisoners who must serve prison sentences. (Abdurrifai, 2021) The impact of the application of restorative justice is to improve the quality of rehabilitation of prisoners. Restorative justice emphasizes recovery and reconciliation, which means inmates are encouraged to understand the impact of their actions, take responsibility, and make amends. (Gultom, 2022) This process helps inmates to develop awareness and empathy, which are important to prevent future reoffending. Prisoners who go through the restorative justice process tend to have a better understanding of the impact of their actions, both on the victim and society, so they are more motivated to change and not re-offend. As such, restorative justice contributes to a reduction in recidivism rates, which in turn helps to reduce overcapacity in prisons. In addition, the application of restorative justice also has an impact on increasing victim satisfaction. In the traditional justice system, victims often feel neglected and do not receive adequate remedies. Restorative justice provides a space for victims to actively participate in the crime resolution

process, express their feelings and needs, and obtain appropriate remedies. By giving victims the opportunity to participate and receive redress, restorative justice helps to reduce feelings of resentment and hatred that can lead to further conflict. Higher victim satisfaction also means that they are more likely to support the rehabilitation and reintegration process of prisoners, which is important for creating an environment conducive to positive change.

In terms of property crimes, such as theft, robbery and fraud, these are the types of crimes that have a wide and deep impact on victims. These impacts are not only limited to the obvious material losses, such as the loss of valuables or money, but also include significant emotional and psychological losses. Victims often experience fear, anxiety and a loss of security that can last long after the event. Furthermore, these crimes can also undermine victims' trust in others and in the legal system, which in turn can affect their overall quality of life. It is therefore important to understand and address the far-reaching impact of these property crimes with a comprehensive and empathetic approach.

When it comes to property offenses, such as theft, robbery, and fraud, these crimes have a far-reaching impact on the victim. Not only are there the obvious material losses, such as the loss of valuables or money, but also deep emotional losses, such as fear, anxiety, or insecurity, that can last long after the event. Victims of such crimes often feel that they have lost more than just property but also a sense of security and trust in others and in the legal system itself. Traditional criminal justice systems, which tend to focus on punishment through imprisonment, often fail to provide adequate redress for the harm experienced by victims. Incarceration of the perpetrator, while it may be considered a form of retribution for criminal behavior, does not necessarily restore lost property or address the psychological impact experienced by the victim. In fact, in many cases, prison sentences are not successful in preventing offenders from repeating similar criminal offenses in the future, especially if the offender does not receive effective guidance during his/her sentence. Therefore, the emergence of the concept of restorative justice as an alternative or complement in handling property crimes is very relevant. Restorative justice emphasizes the recovery of losses suffered by victims and the reintegration of offenders into society. In this context, legal certainty theory and law enforcement theory play an important role. (Sitepu & Piadi, 2019)

In line with this, legal certainty theory emphasizes the importance of clear and consistent rules in the legal system. Restorative justice must be supported by mechanisms that ensure that agreements between victims and offenders are adhered to and implemented fairly. This legal certainty provides a sense of security for victims that their rights will be protected and restored. Meanwhile, law enforcement theory emphasizes the importance of enforcing existing rules and laws. In restorative justice, effective law enforcement is needed to ensure that the perpetrator actually carries out the agreement that has been made. Without strong enforcement, restorative justice may lose its credibility and not provide the expected deterrent effect.

2. Challenges in the Application of the Restorative Justice Concept in the Settlement of Property Crime

The lack of a clear definition of restorative justice is one of the main challenges in implementing this concept. The absence of a firm definition and widely accepted consensus on what restorative justice entails has led to varying interpretations among law enforcers, academics, and practitioners. This creates uncertainty in the application of the concept, as each party may have a different understanding of the principles and objectives of restorative justice. (Pratiwi & Ardi, 2019)

The result of this lack of clarity in definition is that there are variations in the way restorative justice is applied in different cases and regions. For example, some law enforcers may place more emphasis on the reconciliation aspect between the

offender and victim, while others may focus more on the recovery of material losses or the rehabilitation of the offender. These differences in interpretation can result in inconsistencies in the handling of similar cases, hindering the achievement of equitable and consistent justice. In addition, the lack of clarity in definitions can also hinder the legal process, as the parties involved, including offenders, victims, and the community, may not have the same understanding of what is expected from the restorative justice process. This can lead to confusion and dissatisfaction between the parties and reduce the effectiveness of this approach in achieving its goals. To address this issue, efforts are needed to formulate a clear and comprehensive definition of restorative justice that is acceptable to all parties involved. This definition should include the basic principles and objectives of restorative justice, as well as practical guidance on how this concept can be applied in various contexts. With a clear definition, it is hoped that the application of restorative justice can be more consistent and fair and provide greater benefits for all parties involved in the legal process.

Restorative justice relies heavily on an agreement between the offender and the victim, which is at the heart of the approach. This agreement usually includes an admission of guilt by the offender, an apology, and an attempt to repair the harm experienced by the victim. (Setyowati, 2020) However, in many cases, reaching this agreement is not easy. Victims may not agree to reconcile for various reasons, such as deep trauma, distrust of the offender, or a desire to see the offender punished conventionally. In addition, the offender may not be able to fulfil the conditions set out in the agreement, such as providing financial compensation or attending a rehabilitation programme.(Pratiwi & Ardi, 2019)

This difficulty in reaching an agreement can hamper the restorative justice process as a whole. Without an agreement, the process cannot proceed, and the case must return to conventional criminal justice channels. This not only reduces the effectiveness of restorative justice as a more humane and rehabilitative alternative but can also add to the burden on an already overburdened justice system. In addition, the inability to reach an agreement can lead to frustration and dissatisfaction among the parties involved, both perpetrators and victims, as well as the wider community. (Yusriando, 2015).

Based on the challenges faced in implementing restorative justice above, to achieve more significant results, more coordinated and comprehensive efforts are needed in implementing restorative justice in Indonesia. (Mirza & Zen, 2022) This includes increasing the understanding and awareness of the public and law enforcement about the benefits and importance of restorative justice, developing policies that support alternatives to imprisonment, and providing adequate resources to implement restorative programs. In addition, it is also important to conduct further research to identify factors that support the successful implementation of restorative justice, as well as address the challenges and barriers that exist.

In addition to the immediate impact on reducing overcapacity, the implementation of restorative justice also has the potential to bring positive long-term changes to the criminal justice system in Indonesia. By strengthening restorative approaches, the justice system can move towards a model that is more inclusive and responsive to the needs of all parties involved. This will not only improve the effectiveness of the correctional system but also strengthen public confidence in the justice system and enhance the sense of justice in the community. By taking these factors into account, investigators or law enforcement can make a more informed and fair decision as to whether restorative justice can be applied, even if the material harm exceeds the limit set by the regulations. For example, in a case where the offender is a teenager from an underprivileged family who commits theft to fulfill basic needs, a restorative justice approach may be more appropriate than a prison sentence. This approach allows for flexibility in the

handling of the case and avoids overly rigid or disproportionate application of punishment.

In addition, a more holistic assessment of each case can help identify more effective and sustainable solutions. For example, in cases where the social impact of the crime is substantial, such as damaging relationships between people in a small community, restorative justice can help restore those relationships through mediation and dialogue. As such, this approach does not only focus on punishment for the offender but also on broader recovery and rehabilitation, which can provide long-term benefits for all parties involved.

This flexible and holistic approach can also increase community trust in the justice system, as it demonstrates that law enforcement considers the context and nuances of each case thoroughly. This can encourage active participation from the community in the restorative justice process and support more comprehensive recovery efforts. Thus, the implementation of this policy can help achieve more humane and effective justice in handling criminal offenses, especially the crime of theft. To support the widespread implementation of restorative justice, it is important for policymakers and practitioners to continue to learn from the experiences of other countries that have successfully implemented this approach. Sharing knowledge and best practices can help overcome local challenges and create a model of implementation that is appropriate to the Indonesian context. International cooperation and support from global organizations can also play an important role in accelerating the adoption and development of restorative justice in Indonesia. With coordinated efforts and adequate support, restorative justice has great potential to bring about significant positive changes in the Indonesian correctional system. As such, measures to integrate this approach into the legal and operational framework of prisons should be a priority in Indonesia's criminal justice reform agenda.

CONCLUSIONS

Restorative justice approaches in property offenses are important because they are more oriented towards the recovery of victims, offenders, and society than retributive approaches. Through mediation and deliberation, this approach can reduce the burden on the judiciary, avoid the negative impact of punishment, and restore social relations. However, its implementation faces challenges such as a lack of understanding by officials and the community, the absence of standardized standards, potential abuse by perpetrators, and resistance from victims who want retributive justice.

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EFFECTIVENESS OF TRAFFIC COMMUNITY EDUCATION IMPLEMENTATION ON HELMET USE COMPLIANCE AS AN EFFORT TO REDUCE TRAFFIC ACCIDENT VICTIMS

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ARTICLE INFORMATION

Received: 03, June, 2025
Revised : 03, July, 2025
Accepted: 25, July, 2025
DOI:

KEYWORDS

Effectiveness of Traffic; Implementation on Helmet; Traffic Accident Victims

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A B S T R A C T

The aim of this research is to explore and analyze the effectiveness of the implementation of the traffic community education program by the Palu Po-lice in increasing awareness and compliance with helmet use and to explore and analyze strategies that can be implemented to increase the effectiveness of the traffic community education program in increasing compliance with helmet use. The research method uses empirical legal writing methods. The research results show that the effectiveness of the traffic community educa-tion program by the Palu Police Traffic Unit has shown effectiveness in in-creasing public awareness and compliance with the use of helmets. This program has succeeded in increasing public awareness about the importance of driving safety, especially the use of helmets. Compliance with helmet use after the program is implemented. Helmet violations decreased, traffic accidents decreased after the program was implemented, and community participation in socialization and education activities was very good. This program has helped shape a safer driving culture in Palu City, where helmet use is starting to be considered a norm and a social responsibility. Strategies that can be implemented by the Palu Police Traffic Unit to increase compli-ance with helmet use are consistent and firm law enforcement and use of technology such as CCTV and electronic ticketing. Increased traffic safety education and campaigns. Collaboration with the riding community, schools, and the private sector.

INTRODUCTION

The implementation of public education activities on traffic with good, continuous, consistent, and sustainable planning will benefit the community in improving and expanding the traffic problems faced, and in turn the community realizes that traffic problems are the responsibility of all for the common good, so that they consciously help realize the security, order, and smoothness of traffic. (Jais & Saputra, 2018)

The definition of community education in the field of traffic (Dikmas Lantas) In accordance with Article 14, paragraph (1), letter C of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia, it is emphasized that in carrying out the main tasks referred to in Article 13, the National Police of the Republic of Indonesia is tasked with fostering the community to increase community participation, public legal awareness, and obedience of citizens to laws and regulations. This is in line with Law No. 22 of 2009 concerning Road Traffic and Transportation, which regulates the duties of the National Police in the field of traffic, namely registration and identification of motor vehicles and drivers, law enforcement, operational management and traffic engineering, and traffic education, so that it is expected that the technical function of traffic as the

spearhead in the field of direct service to the community and law enforcement will be able to provide solutions to problems in the field of traffic.

This traffic education is expected to make the community increase its participation, public legal awareness, and obedience to laws and regulations, especially regarding traffic. Community education in the field of traffic is inseparable from the objectives of security, order, and smoothness of traffic as a result of community cooperation with the traffic police. The community is given understanding and also knowledge about traffic safety, order, and smoothness.

The more obvious role is that traffic education plays a role in deepening and broadening understanding in the community of the traffic problems faced and inspiring the community to help the plans, policies, and methods taken in solving traffic problems so that good habits are embedded in the road user community in general and drivers in particular to move on the road by themselves and others with the behavior of obeying traffic laws and regulations.

In reality, the government's attention to the issue of safety and compliance with traffic laws, especially public education in community traffic, is still considered very suboptimal because the problem of safety education and public traffic law compliance education has not been handled seriously, such as the traffic unit in its implementation is periodic and waiting; besides that, traffic education has not been included as a curriculum that needs to be taught in educational units ranging from kindergarten to high school (SMA). Therefore, it is time for the problem of safety and compliance with public traffic laws to be addressed not only by law enforcement processes but also by more serious and comprehensive, integral, and strategic handling by relevant parties through public education in traffic in accordance with the roles and functions of the National Police.

Based on the researcher's initial observation, it is known that in the jurisdiction of Palu Police, the Traffic Unit as a law enforcement officer has an important role in preventing this through increased patrol activities and stricter road guarding, because, sourced from Polresta data regarding the number of violations from 2022 to 2023, the number of traffic violations committed by students from junior and senior high school levels reached approximately 1100 cases of violations who did not have a SIM, as in Table 1.

Table 1. Comparison of Enforcement of Traffic Violations and Traffic Accidents in Palu City (2022-2023)

No.	Category	Year	
		2022	2023
1.	Crossing	6.027	6.004
2.	Reprimand	48.942	40.537
3.	Number of Traffic Accidents	200	157
4.	Victims Died	33	39
5.	Severe Injury Victims	81	75
6.	Minor Injury Victims	228	151

Data Source: Palu Police Traffic Unit, Processed, 2024

Based on Table I above, it has shown a relatively complete picture of the need for traffic education in providing traffic education as one of the efforts in tackling traffic offenses. The main focus of this study is on how the role of the National Police in implementing its roles and functions through traffic education in the community.

RESEARCH METHODS

This research uses empirical legal research, which is a type of research that describes and illustrates the application of the rule of law in the field (law in action) regarding Community Education for Traffic (Dikmas Lantas), by examining legal

issues on its application in the community carried out by the Traffic Unit of the Police. Empirical research is a type of legal research method based on data and field research to obtain primary data. Descriptive research, according to Soerjono Soekanto, is research intended to provide data that is as accurate as possible about humans, circumstances, or other symptoms. (Soekanto, 1987).

RESULTS AND DISCUSSION

1. Effectiveness of the Implementation of the Traffic Community Education Program by Palu Police in Increasing Helmet Use Awareness and Compliance

The results of the Palu Police Traffic Unit's Traffic Community Education Program show a significant positive impact on helmet use awareness and compliance. With this increase in compliance, it is expected that the number of accidents and injuries will continue to decrease, creating a safer traffic environment for the entire community. The program also provided valuable lessons on the importance of education and socialization in improving traffic safety.

The opinions of the people of Palu City on the successful implementation of the traffic community education program by the Traffic Unit of Palu Police may vary but can generally be classified into several categories:

a. Positive Support
   1) Increased Awareness:
      Many residents felt that the program increased their awareness of the importance of traffic safety, especially the use of helmets. They considered the program effective in providing clear education on the benefits of helmet use.
   2) Satisfaction with the Campaign:
      People expressed satisfaction with the campaign conducted through social media and direct activities. They felt that the information delivered was relevant and easy to understand.

b. Perceptions of Law Enforcement
   1) Consistent Enforcement Measures:
      Some people support law enforcement measures carried out by the Traffic Unit of Palu Police, such as raid operations. They see it as an effective effort to enforce discipline and improve compliance;
   2) Negative Response to Enforcement: However, there are also some residents who feel that the enforcement is sometimes too strict or inhumane, especially for those who have just violated the law.

c. Evaluation of Program Effectiveness
   1) Behavior Change:
      Many people stated that they started complying with helmet use after the education program. Some felt safer and committed to wearing helmets when riding.
   2) Concerns on Unsustainability:
      Despite the improvement, some residents were concerned that this awareness would not last without a follow-up program or consistent supervision.

Overall, the opinions of the Palu City community regarding the successful implementation of the Traffic Community Education Programme showed a positive response, although there are challenges that need to be overcome. Community support and involvement are critical to ensure the sustainability and effectiveness of the program in increasing helmet use awareness and compliance. The success of the program is not only measured by the reduction in the number of violations but also by the change in attitude and safer driving culture among the community.

2. Strategies that can be applied to improve the effectiveness of traffic education programs in increasing helmet use compliance

To improve the effectiveness of the Traffic Community Education Program, especially in improving helmet use compliance, several strategies can be implemented. These strategies include educational approaches, law enforcement, community engagement, and collaboration with various parties. Here are some strategies that can be considered:

a. Continuing Education
   1) School Education Programme: Include traffic safety materials, including helmet use, in the school curriculum. Involving students as agents of change in their homes and neighborhoods can extend the reach of education;
   2) Socialization through Social Media: Utilize social media platforms to disseminate driving safety information and campaigns in a creative and engaging manner. Visual content and educational videos can make messages easier to understand and attract public attention.
   3) Workshops and Seminars: Organize workshops and seminars for the general public on the importance of safe driving. By presenting experienced resource persons, the public can better understand the consequences of not wearing helmets.

b. Consistent Law Enforcement
   1) Raids and Operations: Conduct regular raids to enforce the helmet law. Consistent law enforcement can be a motivating factor for the public to comply with the rules;
   2) Appropriate Sanctions: Provide strict sanctions for violators, but still with a humanist approach. Education during law enforcement can raise awareness and remind people of the risks of riding without a helmet.

c. Community Engagement
   1) Community Partnership Program: Involve community organizations and local interest groups in safety campaigns. Communities can help disseminate information and increase public participation.
   2) Sports and Community Events: Organize events such as healthy walks, bike rides, or competitions that prioritize safe driving. These activities can serve as a socialization platform while increasing helmet use compliance.

d. Collaboration with Related Parties
   1) Collaboration with Policy Makers: Work with local governments to create policies that support traffic safety, including policies on helmet use;
   2) Private Parties: Engage private parties, such as helmet manufacturers, to support safety campaigns. They can provide free helmets or discounts on helmet purchases as part of the education program.
   3) Mass Media: Engage the mass media to disseminate information on traffic safety through news, public service announcements, and radio or television programs.

The implementation of the above strategies can help improve the effectiveness of the Traffic Community Education Program in Palu City in increasing helmet use compliance. The involvement of various parties, from the community, government, and private sector, is essential to create a sustainable traffic safety awareness and culture. Through a comprehensive and innovative approach, it is expected to reduce the number of accidents and improve road safety.

The strategies implemented by the Palu Police Traffic Unit in improving helmet use compliance for motorists include law enforcement, education, collaboration, provision of facilities, use of technology, and monitoring and evaluation. By implementing these strategies in an integrated and sustainable manner, it is hoped that public compliance with helmet use can increase, as well as reduce the number of traffic accidents and improve road safety.

The Palu Police Traffic Unit has a crucial role in maintaining and improving traffic safety in Palu City. The following are some of the main roles of the Palu Police Traffic Unit in achieving this goal. The Palu Police Traffic Unit is responsible for monitoring traffic violations and taking action against violators, including those who do not wear helmets. Firm and consistent law enforcement can provide a deterrent effect for motorists to be more compliant with the rules.

Overall, the role of the Palu Police Traffic Unit is crucial in creating a safe and orderly traffic environment. Through law enforcement, education, infrastructure development, collaboration with related parties, use of technology, and monitoring and evaluation, the Traffic Unit can increase public awareness and compliance with traffic rules, especially in the use of helmets. With comprehensive and sustainable efforts, it is hoped that the number of accidents can be reduced and road safety can be improved.

Helmet use by riders: before the program, only 40% of riders used helmets, while after the program, it increased to 70%. The success percentage for this indicator is 75%. Helmet-related traffic violations, where before the program, 60% of riders violated the helmet rule. After the program, violations dropped to 25%, indicating a success of 58.33%.

Accidents related to not wearing helmets: before the program, 20% of accidents were caused by riders without helmets. After the program, the number decreased to 10%, with a success percentage of 50%. Furthermore, community participation in the Traffic Community Education Program by the Palu Police Traffic Unit increased from 30% to 65% after the program. The success percentage of this participation reached 116.67%, indicating high enthusiasm. The table above provides an overview of the success of the program based on key indicators relevant to helmet use compliance.

The success of the helmet use compliance program in reality is bound to have barriers. The various barriers show that despite the well-designed strategy of the Palu Police Traffic Unit, there are a number of challenges that need to be overcome to ensure helmet use compliance increases. There needs to be a synergy between consistent law enforcement, increased public awareness, adequate infrastructure support, and the involvement of all parties, including government, communities, and the private sector, for the program to be effective and sustainable.

CONCLUSIONS

The traffic public education program by the Traffic Unit of Palu Police has demonstrated effectiveness in increasing public awareness and compliance with helmet use. Based on the analysis, the program has succeeded in raising public awareness about the importance of safe driving, especially helmet use. Surveys show that many citizens understand the risks faced when riding without a helmet. Compliance has increased, i.e., the number of riders who comply with the helmet law after the program was implemented. Law enforcement data shows that helmet use violations have decreased, reflecting increased compliance among the community. Traffic accident statistics involving motorcycles show a downward trend after the program was implemented, indicating that the education program has contributed to reducing the risk of injuries and accidents. Community participation in socialization and education activities was very good. This active participation reflects the community's interest and attention to traffic safety issues. The program has helped shape a safer riding culture in Palu City, where helmet use is starting to be considered a social norm and responsibility.

Strategies that can be applied by the Palu Police Traffic Unit in increasing compliance with helmet use are strict and consistent law enforcement and imposing strict sanctions on violators of helmet rules. The use of technology such as CCTV

and electronic ticketing can also increase the effectiveness of law enforcement. Increased education and traffic safety campaigns emphasizing the importance of helmet use as a personal safety protection measure. Cooperation with rider communities, schools, and private sectors such as helmet manufacturers can expand the reach of traffic safety campaigns that will ultimately reduce the number of accidents and improve traffic safety in Palu City.

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THE CRIMINAL LAW POLICY OF SUPERVISION AS AN ALTERNATIVE TO SENTENCING IN THE REFORM OF CRIMINAL LAW

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ARTICLE INFORMATION

Received: 03, June, 2025
Revised : 03, July, 2025
Accepted: 25, July, 2025
DOI:

KEYWORDS

Criminal Law; Alternatives to punishment; Law reform; Criminal supervision; The politics of law

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A B S T R A C T

Criminal law reform is essential in creating a more effective, fair, and humane justice system. One crucial aspect of this reform is the legal policy of supervised sentencing as an alternative punishment, which aims to reduce dependence on imprisonment and promote the rehabilitation of offenders. This study seeks to analyze the legal policy behind the establishment of supervised sentencing and its implementation in several countries as a reference for Indonesia. The objective of this research is to examine the political framework behind the establishment of supervised sentencing as an alternative punishment in criminal law reform, as well as its implementation in other countries, with a case study of the Netherlands and South Korea. This study employs a normative legal method, aiming to analyze the issue comprehensively. The research findings indicate that the political formation of supervised sentencing as an alternative punishment in criminal law reform seeks to reduce dependency on imprisonment, promote rehabilitation, and enhance the effectiveness of the criminal justice system. The case studies of the Netherlands and South Korea reveal different approaches in its implementation: the Netherlands emphasizes social rehabilitation through conditional sentencing (voorwaardelijke straf), while South Korea enforces stricter supervision using a probation system and electronic monitoring. These findings provide valuable insights for Indonesia in developing supervised sentencing within its New Criminal Code (Law No. 1 of 2023), with the possibility of adopting a hybrid approach combining elements from both countries to create a more flexible and effective sentencing system. Ultimately, this study offers significant recommendations for Indonesia in balancing justice, rehabilitation, and supervision in its criminal justice system.

INTRODUCTION

The criminal law system generally applies punishment with the aim of punishment and deterrence. However, over time many critics and legal practitioners have begun to highlight the fundamental flaws of the criminal justice system in various countries. These weaknesses not only affect the effectiveness of punishment but also contribute to wider social problems. In Indonesia, the punishment system has been centered on imprisonment, which has shown various weaknesses in its application.

Imprisonment is the second main punishment after the death penalty, which consists of life imprisonment and imprisonment for a certain time. There is no specific explanation in the Indonesian Criminal Code, why imprisonment is more

widely used in the imposition of law compared to the death penalty, confinement, and fines. C. Djisman Samonis argues that this is because imprisonment is the only main punishment that allows for planned and directed guidance of the convict. (Lamintang, 1983)

Although the purpose of imprisonment is to provide a deterrent effect and correct criminal offenders, in practice, it is often faced with various problems that have been identified through various studies and expert opinions. One of the main problems is prison overcrowding, which creates very bad conditions for prisoners.

According to data from the Ministry of Law and Human Rights of the Republic of Indonesia, the level of prison overcrowding in Indonesia often reaches 89 percent of its intended capacity, resulting in unhealthy and high-risk prison environments. (Kompas, n.d.) Based on data from the World Prison Brief, Indonesia currently ranks 8th on the list of countries with the highest number of prisoners and detainees in the world. This overcrowding has resulted in increased conflict between prisoners, as well as limited access to rehabilitation facilities and health services.

Another significant problem is the very limited effectiveness of rehabilitation. Research conducted by the Institute for Research and Community Service of the University of Indonesia in 2021 showed that rehabilitation programs in prisons are often inadequate or even nonexistent, so that prisoners do not get sufficient opportunities to improve their behavior and reintegrate into society. This is in line with the opinion of Anton S. Ford, who criticized that the prison system more often exacerbates criminal behavior than improves it. (Anton S. Ford, 2022)

In addition, the imposition of imprisonment in Indonesia often hurts the social and economic well-being of prisoners and their families. Incarceration in prison can also cause significant disruption to the family relationships and social lives of inmates, often affecting the economic stability of the families they leave behind. According to various studies and academic literature, individuals sentenced to prison and ex-prisoners face several complex challenges in social, economic, and psychological dimensions. (Saleh, 1979).

Socially, the process of conviction often marks them with a strong stigma, which exacerbates their isolation and difficulties in rebuilding relationships with family and society. Research shows that ex-prisoners often face significant discrimination in various aspects of life, including seeking employment and gaining access to social services, further exacerbating their social marginalization. (Atmasasmita, 2019)

In the economic aspect, studies show that ex-offenders experience great difficulties in entering the labor market and obtaining a stable income. Criminal records are often a significant barrier in the hiring process, hindering their access to good job opportunities and often leading to limitations in access to financial services and social assistance. (Western & Incarceration, 2010).

Psychologically, it has been shown that ex-prisoners often experience emotional trauma, anxiety disorders, and depression as a result of the incarceration experience. Adaptation to life after prison is often fraught with difficulties in managing stress and psychological distress, as well as challenges in establishing a new identity and returning to productive functioning in society. In many cases, fines or job loss caused by incarceration can exacerbate poverty and social marginalization, creating a cycle of crime that is difficult to break. (Pearse et al., 2016)

As a response to this problem, supervision punishment is present as an alternative punishment that is in line with the spirit of criminal law reform. Supervision punishment is a form of criminal sanction that does not require the offender to undergo imprisonment but places them under supervision by the prosecutor and guidance by correctional mentors. The main purpose of supervision punishment is to provide a second chance for the offender to improve his/her

attitude, prevent the occurrence of repeated criminal offenses, and return the offender to the community.

The concept of supervised release has emerged as a promising alternative. Criminal supervision, also known as probation, allows offenders to serve a probationary period outside of prison under strict supervision. The concept aims to provide an avenue for rehabilitation while reducing the burden on the prison population. Supervision systems can offer a more humane and effective approach in many cases, by allowing law enforcement to assess and deal with individuals in a more individualised and flexible manner (Zimring, 2010).

It also offers the potential to reduce the costs of the criminal justice system and increase the chances of rehabilitation by reducing the stigma associated with incarceration in prison. Some studies have also shown that individuals serving supervised sentences have lower recidivism rates than those serving full prison sentences. (Petersilia, 2023) This suggests that supervised sentences may be a better option in many cases, both in terms of cost and rehabilitation effectiveness.

The enactment of Law Number 1 Year 2023 on the Criminal Code marks a new chapter in the history of Indonesian criminal law. This brings several significant changes, one of which is the strengthening of the principles of restorative and rehabilitative justice. Criminal supervision as a new form of punishment is a progressive step in the enforcement of criminal law in Indonesia.

Nevertheless, the implementation of the supervision penalty in Law No. 1 Year 2023 still faces several challenges. One of them is the absence of implementing regulations that specifically regulate the mechanism, procedure, and implementation of this supervision punishment. Comprehensive implementing regulations are needed to ensure that the implementation of criminal supervision can run by the expected goals of guidance and rehabilitation. Without clear implementing regulations, it is feared that criminal supervision will not be able to be implemented effectively and instead create legal uncertainty in the field.

RESEARCH METHODS

This type of research is normative law, which aims to examine problems with the study of legal documents and uses various secondary data such as laws and regulations, court decisions, legal theories, and opinions of legal experts to find out the legal issues being studied. (Prasetyo, 2020) This research approach is a statutory approach, which is an approach that is carried out by examining all laws and regulations related to the legal issues being addressed. (Setiadi, 2020).

RESULTS AND DISCUSSION

A. Arrangements Related to the Legal Politics of the Establishment of Surveillance Penalties

The politics of criminal law is a policy or direction taken by the state in the formation, implementation, and reformation of criminal law. One of the important aspects of the reformation of criminal law in Indonesia is the concept of supervision punishment as an alternative punishment. Supervision punishment aims to reduce dependence on imprisonment, which is often ineffective in rehabilitating offenders and can cause overcapacity in correctional institutions. Supervision punishment is a form of criminal sanction imposed on criminal offenders with special supervision by the authorities without having to serve the punishment in prison. In this concept, the convict remains in the community but must fulfill certain requirements and obligations set by the court.

The regulation of supervision punishment in the Indonesian criminal law system can be found in several regulations, among others:

1. Criminal Code (Law No. 1 of 2023)
   In the New Criminal Code (Law No. 1 Year 2023), supervision punishment is recognized as one of the main forms of punishment, in addition to imprisonment, fines, and community service. Supervision punishment aims to provide an alternative punishment for criminal offenders who meet certain requirements, with certain restrictions on freedom outside the correctional institution. The New Criminal Code provides a strong legal basis for the implementation of supervision punishment, as well as affirming the principles of restorative justice and rehabilitation in the Indonesian punishment system.
2. Law No. 12 of 1995 on Corrections
   Law No. 12/1995 on Corrections regulates the system of guidance and social reintegration for prisoners. Although it does not directly mention criminal supervision, this law supports the concept through the mechanisms of assimilation, parole, and pre-release leave, where prisoners remain under state supervision while serving their sentence outside of prison. Criminal supervision in the New Criminal Code is in line with the correctional principle in this law, which emphasizes rehabilitation and social reintegration rather than mere imprisonment.
3. Government Regulation No. 31 of 1999 concerning the Guidance and Mentoring of Prisoners of Correction.
   Government Regulation (GR) No. 31 Year 1999 further regulates the guidance system for prisoners, including guidance for those who have the right to serve their sentence outside prison. This regulation emphasizes that prisoners who receive parole or assimilation remain under the supervision of the Correctional Center. This concept has similarities with the supervision punishment in the New Criminal Code, which also requires convicts to undergo supervision with certain obligations.
4. Regulation of the Minister of Law and Human Rights No. 3/2018 on the Terms and Procedures for Granting Remission, Assimilation, Leave of Absence, and Parole.
   This regulation provides a technical basis for the implementation of assimilation and parole, which is a form of reduction in criminal period by continuing to supervise prisoners outside prison. The supervision mechanism stipulated in this regulation contributes to the implementation of supervision punishment in the New Criminal Code, especially in terms of periodic reporting, restriction of freedom, and obligation to participate in rehabilitation programs.
5. Regulations that Support Criminal Supervision in Indonesia.
   In addition to the main regulations above, various other policies support the implementation of supervision punishment, such as regulations related to correction and human rights protection and policies on reforming the punishment system. The implementation of supervision punishment in Indonesia requires support from various sectors, including supervision infrastructure, strengthening the role of the Correctional Center (Bapas), and integration with the rehabilitation and restorative justice system. With supporting regulations, supervised punishment can be an effective solution to reduce overcapacity in correctional institutions and improve the effectiveness of the criminal justice system in Indonesia.

B. The Legal Politics of the Establishment of Surveillance Penalties and Their Application in the Netherlands and South Korea

1. Political Legal Arrangement of Supervision of Penal Establishments and Its Implementation in the Netherlands and South Korea.

The Netherlands and South Korea have different criminal supervision policies, tailored to their respective legal systems and criminal policies. The Netherlands prioritizes social rehabilitation and reintegration through conditional punishment (voorwaardelijke straf), which allows convicts to serve their sentence with certain restrictions without having to go to prison. In contrast, South Korea emphasizes strict supervision through the probation system and electronic monitoring, especially for sex offenders and recidivists. Although different in approach, both aim to reduce the use of imprisonment and increase the effectiveness of the criminal justice system.

2. Implementation of Supervision Punishment in the Netherlands and Opportunities for Implementation in Indonesia.
   In the Netherlands, supervision punishment is implemented through a conditional punishment system, where first-time or minor offenders are given a sentence with certain conditions, such as reporting regularly and participating in a rehabilitation program. Reclassering Nederland acts as the main institution in supervising the implementation of this punishment. The opportunity for implementation in Indonesia is quite large, especially in the context of implementing restorative justice and reducing overcapacity in correctional institutions. By strengthening the role of the Correctional Center (Bapas), as in the Netherlands, Indonesia can optimize supervision punishment as a more humanist punishment solution.
3. Implementation of Supervision Punishment in South Korea and Opportunity to Apply it in Indonesia.
   South Korea uses a probation system and electronic monitoring to ensure that convicted offenders remain under the supervision of the state. Electronic monitoring is used for perpetrators of serious crimes, such as sexual crimes and domestic violence, by installing electronic bracelets to track their movements in real time. Opportunities for implementation in Indonesia are still open, especially in the use of monitoring technology for certain criminals, suchch as those involved in corruption and sexual crimes. However, its implementation requires infrastructure readiness and clear regulations to ensure effectiveness and protection of human rights.
4. Comparison of the Criminal Code of the Netherlands, South Korea, and Indonesia.
   The Dutch Criminal Code has long adopted supervision punishment through conditional punishment (voorwaardelijke straf), while the South Korean Criminal Code does not explicitly regulate supervision punishment but applies it through the probation system and electronic monitoring. The new Indonesian Criminal Code (Law No. 1 Year 2023) includes supervision punishment as a principal punishment, making it a more flexible form of punishment. While the Netherlands focuses on rehabilitation and South Korea on technology-based supervision, Indonesia tries to adopt a combinative approach that combines rehabilitation and supervision of convicts outside of prison.
5. The Difference between Supervision Punishment in the Netherlands, South Korea, and the One to be Implemented in Indonesia.
   The Netherlands emphasizes social rehabilitation and community guidance, where minor offenders can receive conditional punishment under certain conditions. Meanwhile, South Korea prioritizes technology-based supervision, especially for serious offenders, using electronic monitoring and probation systems. Indonesia, in the New Criminal Code, tries to combine these two approaches by providing supervision punishment for certain offenders but has not implemented electronic

monitoring technology as in South Korea. These differences reflect each country's strategy in balancing justice, rehabilitation, and supervision of offenders.

Table 1. The Difference between Supervision Punishment in the Netherlands, South Korea, and Indonesia

Aspects	**Netherlands**	**South Korea**	**Indonesia**
Legal Basis of Criminal Supervision	*The Wetboek* van Strafrecht (Dutch Criminal Code) has recognized Voorwaardelijke Straf (conditional punishment) since the early 20th century. This system allows for conditional sentences with certain supervision and obligations.	*The Korean* Penal Code does not recognize supervision punishment explicitly but uses the probation system and electronic monitoring to supervise offenders outside of prison.	The New Criminal Code (Law No. 1 Year 2023) introduces supervision punishment as one of the main punishments aimed at reducing dependence on imprisonment.
Purpose of Criminal Surveillance	Emphasizes rehabilitation and social reintegration for first-time or minor offenders.	The main focus is the prevention of recidivism (reoffending) with electronic monitoring systems and restrictions on freedom.	Reduce overcrowding in prisons and promote restorative justice approaches.
Supervisory Institution	Reclassering Nederland (Dutch Probation Service) is responsible for the supervision and guidance of offenders.	The Korean Probation and Parole Office supervises offenders who are on probation or electronic monitoring.	The Correctional Centre (Balai Pemasyarakatan or Bapas) is responsible for supervising offenders undergoing supervision.
Implementation Mechanism	The judge can impose a conditional sentence with certain obligations, such as participating in a rehabilitation program or social work. If violated, the convicted person may be sentenced to a harsher punishment.	Probation is given to minor offenders or first-time offenders with close supervision. Electronic monitoring is applied to sex offenders and recidivists.	Supervision punishment is given in the judge's decision with obligations such as reporting periodically, undergoing rehabilitation, or not travelling to certain places. If violated, the sentence can be changed to imprisonment.

CONCLUSIONS

The position of press offenses in the implementation of Law No. 40 of 1999 on the Press has not been able to accommodate problems related to press offenses due to the emergence of misperceptions about whether the press law is included as a lex specialist or not and even in Article 5 paragraph (2) of Law No. 40 of 1999 regarding the right of reply. In addition, the demands of Law No. 40 of 1999 cannot be applied as 'Lex Specialis' because there are still so many press offenses that are not regulated in the law.

Mechanisms for resolving press coverage disputes that often occur include: these disputes are resolved by taking the route of state administrative law (for entrepreneurs or media owners, administrative sanctions are related to the licenses granted by the Indonesian government to the media entrepreneurs), criminal law (investigation, arrest, detention, search, confiscation, and court processes), and out-of-court settlement by utilizing the press council, negotiation, mediation, conciliation, facilitation, independent appraisal, and arbitration.

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

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ARTICLE INFORMATION

Received: 03, June, 2025
Revised : 03, July, 2025
Accepted: 25, July, 2025
DOI:

KEYWORDS

Law Enforcement; Environmental; 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 to 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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