



GUIDANCE TO LOCAL GOVERNMENTS AGAINST UNLICENSED GOLD MINING

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Abstract: Illegal gold mining (PETI) has become a significant problem and a primary livelihood source for some communities. In this study, we will look at how local governments have made efforts to anticipate and overcome PETI, which has caused damage to the environment and public health. It will also see how the local government has interacted with the community and PETI business actors to stop illegal activities and develop more sustainable activities regarding order and legal protection. The research method used is juridical-empirical. Research data is obtained from legal materials, which include primary legal materials such as laws and regulations related to mining and the environment, as well as secondary legal materials such as literature, journals, and previous research reports. The results of this study show that the government needs to conduct educational socialization to increase public awareness about the adverse effects of illegal gold mining on the ecosystem and the surrounding community. The community can participate in law enforcement against unlicensed gold mining by providing information and reports on unlicensed gold mining activities to the authorities. Developing and promoting sustainable activities can curb PETI and ensure our communities' long-term health and prosperity.

Keywords: Illegal Gold Mining; Aspect Of Order; Legal Protection Aspect

1. Introduction

The Decree of the 1945 Constitution, especially in Article 33 paragraph (3), states that "The earth, water and natural resources contained in it are controlled by the State and used as much as possible for the prosperity of the people." ¹Indonesia is recognized as a country rich in natural resources such as minerals, water, and forests. These natural resources have been given by God Almighty to the nation and state of Indonesia for the prosperity and welfare of the people, as stipulated in the Preamble to the 1945 Constitution. Natural resource management in Indonesia is an integral part of the government's economic development program. Therefore, the enactment of natural resource management regulations is a manifestation of the government's policy implementation.

One of the natural resource management events is unlicensed gold mining activities (PETI). PETI is a mining business carried out by individuals, groups of people, or companies/foundations with legal entities that, in their operations, do not have a permit from a central or regional government agency by applicable laws. The activities carried out by PETI

¹ Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia



include extraction, processing of mining seeds, and amalgamation to obtain gold.² The emergence of PETI activities is complex to avoid because it is a mistake in the shape of the natural resources community and its environment. People with limited science and technology manage their mineral resources in their area. The positive impact of PETI activities can create jobs and improve the community's economy. However, this activity is not managed correctly and can cause negative consequences.³

The community carries out illegal gold mining on a large scale to meet their daily needs. This activity not only damages the environment but also has an impact on public health and safety. On the other hand, illegal gold mining also hurts the socio-economic conditions of the community, such as a decrease in income and quality of life. Due to these activities, people living around illicit mining gold areas often experience decreased income and quality of life.⁴ From the statement, it is explained that illegal gold mining activities result in negative impacts from several essential aspects, as well as showing the causes and effects related to illicit gold mining activities and the living conditions of the surrounding community.

Gold mining must follow the regulations regulated in Law Number 2009 concerning Mineral and Coal Mining, revised by Law Number 3 of 2020. Gold mining activities require a mining business license (IUP) issued by the central government or local government, depending on the scale and location of the mine. Government policies in natural resource management have not been aimed at improving people's welfare. One can be seen from the inconsistency of government policies at the provincial, district, and city levels in granting permits for natural resource management in the regions, especially in terms of granting mining business licenses. In general, the policies taken have not been able to accommodate all the aspirations of the community, especially the community around the mining area, to take advantage of the natural resources in their area.⁵

Based on the description above, the purpose of this journal is to find out how the provincial government coaches unlicensed gold mining in terms of order and legal protection.

2. Research Methods

This paper uses a normative legal research method with the following approaches: The statute approach examines all laws and regulations related to the legal issues being handled; the Conceptual approach looks at the views and doctrines that develop in legal science; and the Analytical Approach uses the proper process to break down a problem into elements necessary to complete it. Tracing legal materials uses literature study techniques, and the analysis of studies uses qualitative analysis.

² Junaidi Junaidi, "Unlicensed Gold Mining (PETI) and Family Welfare Around Mining Areas," *E-Journal of Resource and Environmental Economics* 11, no. 1 (2022): 61–74, <https://doi.org/10.22437/jels.v11i1.18988>.

³ Trisnia Anjani, "EFFORTS OF THE MERANGIN REGENCY GOVERNMENT IN OVERCOMING THE IMPACT OF UNLICENSED GOLD MINING (PEC) (Case Study on Pinhole Method Mining in Simpang Parit Village, Renah Pembarap District, Merangin Regency)," *Let's Fisip* 4, no. 2 (2017): 1–13.

⁴ Nining Sudiarti et al., "Analysis of the Socio-Economic Impact of the Existence of People's Gold Mines on the Community of Lito Village," *Economics & Business* 9, no. 2 (2021): 152–60.

⁵ Alva Viere Niwele, Fioren Mataheru, and Iqbal Taufik, "Countering Illegal Gold Mining," *SANISA Journal of Law Student Creativity* 1, no. 2 (2021): 54–64.

3. Results and Discussion

3. 1 Unlicensed Gold Mining (PETI)

Gold mining is one of the activities that can increase public revenue. However, these activities can also be detrimental if mining is not carried out and the correct waste treatment from gold ore processing is not followed. This activity will also harm land management after the mining process is improper. Unlicensed Gold Mining (PETI) is carried out by individuals, groups, or foundations/companies in their operations without a permit from a central or regional government agency by valid laws and regulations.

Based on the Jambi Provincial Regional Regulation, for example, Number 11 of 2019 CHAPTER XIV concerning Development, Supervision, and Control states that The Governor organizes guidance, supervision, and control over the implementation of mining management carried out by IUP, IPR, and IUPK holders by their authority based on the provisions of laws and regulations. Guidance, supervision, and control of mineral and coal mining management are also carried out periodically by the provisions of laws and regulations. Based on Article 71, the Governor gives authority to the regional apparatus in charge of energy and mineral resources affairs and coordinates with relevant agencies to supervise gold mining.⁶

In its implementation, the low supervision of local governments related to illegal gold mining can cause negative impacts in various aspects. It can impact the community's quality of life, especially if miners do not comply with occupational safety and environmental standards. This can lead to a decrease in the community's quality of life, including health and safety. Illegal gold mining can also disrupt the lives of local communities, especially if illegal miners do not comply with the rules and do not distribute the mining proceeds. This can lead to social tensions and conflicts between communities and illegal miners. Currently, some residents are affected by skin diseases such as itching and scabs. Not only that, the condition of the river water used to be very clear but since the operation of the illegal gold chest mine, the water condition has become cloudy. It can no longer be used for residents' activities. Even in the water, there are chemicals such as mercury and cyanide—the loss of water catchment areas in hilly areas and the destruction of landscapes. The soil condition has shifted or moved, which can minimize property and life casualties. Therefore, it is vital to supervise and stop illegal gold mining activities and raise public awareness of the importance of environmental protection and health.⁷

Illegal gold mining can cause severe environmental damage, such as deforestation and water and air pollution. This can have an impact on the quality of life of local communities and also on threatened ecosystems. Illegal gold mining activities can produce dust that can cause respiratory problems and increase the risk of work accidents. Miners who work in unsafe conditions and lack rest can experience fatigue and illness. Illegal gold mining can cause social conflicts between miners and local communities, as well as between miners and the government. This can happen because illicit miners do not have valid permits and do not

⁶ Jambi Provincial Regional Regulation Number 11 of 2019 concerning Mineral and Coal Mining Management

⁷ Iwan Fahsya and Basrowi, "The Impact of Illegal Gold Mining Mining," *Economic Media* 21, no. 2 (2021): 59–72.

comply with work safety standards. Illegal gold mining can also interfere with the community's social interests, such as customs and traditions. This can lead to changes in people's lifestyles and increase social tensions.⁸

Unlicensed gold mining often occurs due to the complexity of the requirements that people who want to do mining business must take care of. Several reasons make people unwilling to take care of mining business licenses: The process of environmental requirements has not been fully fulfilled by the mining party, and the licensing process is not easy and requires high costs. In addition, mining is taxed by the state to reduce the income of the mining community. Then, the mechanism for granting mining permits requires several stages, such as applying for an exploration and a mining business license for production operations. The continuation of the issuance of mining business licenses can be hampered by the period. And limited resources, social gaps, and limitations affect law enforcement. Mining often involves land or areas inhabited by indigenous peoples or landowners. Permit management can cause conflicts of rights to land or natural habitat resources between local communities and the government or mining companies.

3. 2 Aspects of Order

Legal order against illegal gold mining involves various steps the government and law enforcement take to deal with unlawful gold mining activities. The central and local governments must supervise mining activities per applicable laws and regulations. In the context of the Government's supervision of unlicensed gold mining, the legal order aspect is essential to ensure that applicable laws and regulations run mining activities. Government supervision of the implementation of mining business activities is divided into two types of supervision, namely:

- a. The minister's supervision of the governor, who is in charge of implementing mining business management in the era of regional autonomy, is in accordance with his authority.
- b. The supervision carried out by the government and regional governments is shown to mining business actors.

The central government is responsible for formulating national mining-related policies, including regulating mining permits, environmental protection, and the welfare of the surrounding community. The application of the law that the government can carry out can overcome gold mining activities that do not carry out mining business obligations based on Law Number 4 of 2009 concerning mineral and coal mining is to impose sanctions in the form of administrative sanctions in the form of written warnings containing the temporary suspension of some or all exploration activities or production operations and the revocation of mining business licenses along with the revocation of business licenses Mining. Officials with the right to impose sanctions are the government (minister) and the provincial government.

⁸ Nurul Hasnah Maulida et al., "The Socio-Economic Impact of Illegal Gold Miners on the Binawara Community," (*Periodic Publication of Social Science Education*) 2, no. 2 (2022): 54–65, <https://doi.org/10.20527/.v2i2.6120>.

Suppose the local government does not implement the provisions as intended in Article 151 and the results of the evaluation conducted by the minister as intended in Article 6 paragraph (1) letter j. In that case, the minister may temporarily suspend and revoke the mining business license following the provisions of the applicable laws and regulations.⁹

The Minister of Energy and Mineral Resources imposed administrative sanctions on IUP and IUPK holders. The imposition of administrative sanctions by the minister of energy and mineral resources is only against IUP holders whose mining business license area is located across provincial regions, and the official who issues the mining business license is the minister of energy and mineral resources itself. The Governor is only authorized to impose administrative sanctions on mining business license holders whose areas are located across districts/cities in one province. The regent/mayor is only authorized to impose administrative sanctions if the mining business license area is within one district/city area.

Legal order against illegal gold mining involves various steps the government and law enforcement take to deal with unlawful gold mining activities. The central and local governments must supervise mining activities per applicable laws and regulations. However, people still often do gold mining without a permit; one of the factors is the requirements for obtaining a complicated mining business license; then to take care of these requirements requires a high cost, and access to apply for it is pretty far because it is in the province while gold mining activities are carried out in remote areas. The time taken to take care of mining permits is quite long. Some people are more interested in the quick profits obtained from illegal gold mining activities without considering the long-term environmental consequences and the legal risks resulting from illegal gold mining.

Communities involved in unlicensed gold mining activities are often at high risk of unsafe working conditions, including work accidents and related diseases due to mining activities, such as mercury poisoning, which can cause long-term impacts on physical and mental health. When viewed from the social aspect, unlicensed gold mining activities have negative consequences, such as frequent conflicts between local communities and mining actors, because unlicensed gold mining often does not have a clear organizational structure, triggering competition between local communities. This happens because of the lack of understanding and communication between the community and the owners of gold miners, so few people depend on gold mining because it can be a source of income for the community. They have no other alternative to meet their economic needs, forcing them to mine gold without a permit.¹⁰

Supervision is carried out by supervisory officials appointed by the governor and functional officials of mine inspectors to carry out orders in gold mining. However, the performance of

⁹ Alvan Ryan Kambey, "THE GOVERNMENT'S TASK IN SUPERVISING GOLD MINING ACTIVITIES THAT DO NOT CARRY OUT THE OBLIGATION OF MINING BUSINESS LICENSES (IUP) BASED ON LAW NO. 4 OF 2009," *LEX ET SOCIETATIS* 8, no. 1 (May 18, 2020): 15–23, <https://doi.org/10.35796/les.v8i1.28467>.

¹⁰ Pahrudin HM et al., "Overcoming the Social Problem of Illegal Gold Mining through the Policy Triangle in Merangin Regency, Jambi.," *Journal of Governance Innovation* 5, no. 2 (2023): 251–70, <https://doi.org/10.36636/jogiv.v5i2.3025>.

these officials was not fully conveyed by the community in the gold mining area. Some reasons are that it is not done openly and transparently, so the local community does not get accurate and precise information. Then, it can cause environmental pollution and public health problems. Unauthorized gold mining activities carried out by the local community do not have direct access to information regarding the performance of gold mining officials, which the people of the gold mining area do not fully convey. Illegal gold mining activities reduce state revenue because no taxes or royalties are paid to the government. It also reduces the resources that can be allocated for infrastructure development and public services.

Local governments should have a role in tackling unlicensed gold mining activities, such as increasing intensive development efforts for the community and tightening supervision efforts over mining businesses. Local governments, as the leading sector in efforts to counter illegal gold mining activities, are required to be able to carry out their functions and roles by providing guidance and supervision of mining business activities within the scope of their jurisdiction. Second, it provides convenience for the community in obtaining mining permits, then changes the community's mindset to implement reasonable and environmentally friendly mining practices. Considering that the problem of illegal gold mining carried out by the community is very closely related to the socio-economic conditions of the community, efforts to overcome it must use a social and community approach so that the interests of the community can be appropriately accommodated and proportionately without ignoring the principles of good and correct mining practices (good mining practices).¹¹

Government policies in natural resource management that aim to improve people's welfare have not been completed. One of them can be seen from the lack of support from government policies both at the provincial, district, and city levels in granting permits for natural resource management in the regions, especially in terms of granting mining business licenses. In general, the policies made have not been able to accommodate all the aspirations of the community, especially local people who live around the mining area to exploit the natural resources in the area. Local governments can lose revenue from the mining sector. With unlicensed status, gold mining activities are considered illegal and are not subject to the obligation to pay taxes and other levies to the state. This causes state revenue from the mining sector very limited, considering the high tax revenue not taken from illegal gold mining.

3.3 Aspects of Legal Protection for Mining Actors, Communities, and the Environment

Legal protection for people carrying out gold mining without a permit is regulated in Law Number 4 concerning Mineral and Coal Mining, later updated to Law Number 3 of 2020, which governs management permits and sanctions related to mining activities. The Law regulates criminal sanctions for gold mining perpetrators without a license through fines and imprisonment. Article 158 states that anyone who conducts a mining business without a permit can be subject to imprisonment and fines.

¹¹ Alva Viere Niwele, Fioren Mataheru, and Iqbal Taufik, "Countering Illegal Gold Mining," *SANISA Journal of Law Student Creativity* 1, no. 2 (2021): 54–64.

Applying the law, only criminal sanctions are given to unlicensed gold mining business actors without any guidance from the government. As is the case, it is contained in the decision of the Bangko District Court Number 1/Pid.B/2014/PN. BK, for unlicensed gold mining business activities, was sentenced to 8 months imprisonment and a fine of Rp.750,000 with the provision that if the fine is not paid, it will be replaced with one month in prison to the defendant.¹² The government should guide the community first, such as socialization to provide an understanding of the importance of maintaining the ecosystem and preserving the environment. The government offers solutions for actors related to people's mining permits and assists people affected by illegal gold mining.

Unauthorized gold mining activities are carried out using mercury/mercury, which can endanger the quality of water that cannot be disposed of carelessly and threaten the health of humans and animals, such as fish in the river. In addition, unlicensed gold mining activities are often used using fossil-based machinery, which can increase air pollution levels and cause health problems for the surrounding community. Mercury or mercury is used to separate gold grains from sand materials. The certainty of getting protection for a good and healthy life is regulated in Article 28 H, paragraph 1 of the 1945 Constitution of the Republic of Indonesia, which reads: "Everyone has the right to live happily, born and mental, and to live and get a good and healthy living environment and the right to receive health services." The use of mercury is not balanced by knowledge from the community about the dangers of mercury, so without any protection, the community or the environment living around the location is at risk of being exposed to the dangers of mercury.

Government regulations that regulate the management of mercury include Government Regulation Number 74 of 2001 concerning the Management of Hazardous and Toxic Materials, which states that mercury is contained in hazardous and toxic content whose use is limited, and Government Regulation Number 101 of 2014 concerning the Management of Hazardous and Toxic Waste which states that the waste it contains must be managed because it contains mercury metal.¹³ People in unlicensed gold mining areas are disappointed with the local government because they have never opened a discussion room for the community and companies. Especially in discussing the impact that will occur in the future with the existence of gold mining companies. People who feel the effects of mining are not given the facilitation, efforts, and protective measures provided by the government. There has been no definite action by the local government to protect the community, mining actors, and ecosystems, as well as in terms of ecological aspects. The community must also increase participation in building awareness of environmental laws so that environmental damage and pollution can be sanctioned to conduct ecological restoration, fines, and government coercion before the permit is revoked.

¹² Bangko District Court Decision Number: 1/Pid.B/2014/PN. BK on the determination of the suspect Muhanip bin Solikhin

¹³ Indah Amanah Poetri Soedarno Oei Pantouw and Ahmad Ahmad, "Legal Protection for the Community Due to Gold Mining in the Mercury-Contaminated Tulabolo River," *Borneo Law Review* 6, no. 2 (2023): 187–204, <https://doi.org/10.35334/bolrev.v6i2.3242>.

The local government should provide legal protection to people negatively affected directly by unlicensed mining activities in the form of appropriate compensation. Then, they play an active role and responsibility to supervise mine management in the area so that mining activities can benefit many parties, both for the country and the community. The local government also empowers the community through trainings that provide life skills, capital assistance, and uncomplicated business licenses for mining activities. Legal protection for the environment must also be implemented by regulating the use of natural resources and protecting the environment from damage caused by unauthorized mining activities.¹⁴

Local governments must decisively force unlicensed gold mining to restore the environment damaged by their activities before providing a deterrent effect with criminal sanctions. Then, an order is also expected to be issued to suspend or close gold mining operations without a permit to stop activities that are detrimental to the environment for a long time. Cooperation between governments, law enforcement agencies, and environmental organizations can increase the effectiveness of legal protection against illegal gold mining. In this case, local governments should not be limited to providing socialization and counseling on laws and regulations in the mining sector and fostering and controlling illegal gold mining activities but instead directed towards intensive coaching and supervision efforts through cooperation with private mining companies and state-owned enterprises.

Changing people's mindset toward gold mining activities, the government is expected to provide opportunities for illegal miners to participate in business partnership programs with companies with business licenses. Mining (IUP or IUPK), so that illicit former gold mining actors whose activities are in the concession of mining companies become their subordinates. Mining business activities with certain conditions mutually benefit both parties (win-win solution), the community, and mining companies. Then, there is a need to increase the capacity and insight of the resources of the National Police and the TNI, especially the understanding of Indonesian law regulating mining, to supervise and overcome illegal gold mining crimes. As the spearhead in law enforcement efforts against illegal gold mining activities, the National Police and the TNI have a very strategic position considering their primary duties, functions, and authorities in conducting investigations and investigations of criminal acts in the mining sector.

Local governments can also provide socialization to local communities about the harmful impacts of using traditional mining methods, where the use of mercury in mining activities can have a fatal effect on the health of local communities and the surrounding environment. Then, control existing illegal mining to reduce the number of illegal mining. And provide training to the community on modern mining methods so that people can abandon mining methods that use mercury. The government must also increase the capacity of supervisory and law enforcement agencies to conduct regular inspections and supervise illegal gold mining activities, as well as ensure that the punishments and sanctions given are pretty strict and have a deterrent effect on the perpetrators of illicit gold mining activities.

¹⁴ Hana Aulia Putri, "Law Enforcement Against Unauthorized Gold Mining by the Singingi District Sector Police," *Lex Renaissance Journal* 5, no. 4 (2020): 863–76, <https://doi.org/10.20885/jlr.vol5.iss4.art8>.

4. Conclusion

Unlicensed gold mining refers to mining activities carried out without obtaining official permission from the government. Unauthorized gold mining often occurs due to non-compliance with applicable regulations. Even though there are already rules that regulate mining permits, some parties still carry out mining activities without licenses under laws and regulations. In this case, local governments must have apparent authority to manage the mining sector, including supervising and enforcing the law against unlicensed gold mining. In addition, local governments must also empower the community through trainings that provide life skills, capital assistance, and uncomplicated business licenses for mining activities.

Illegal gold mining activities carried out by the local community have been going on for many years and have become a hereditary heritage. Where the illicit, rampant gold mining activities carried out in traditional ways have had an enormous impact not only on the preservation of the environmental ecosystem but also on the lives of people around the mining area, including the threat of mining and mining accidents—the spread of diseases caused by contamination of harmful chemicals on soil and water. Illegal gold mining activities have led to decreased regional revenue from the mining sector, disrupted a conducive investment climate, and the emergence of various social conflicts. To optimize efforts to counter illegal gold mining activities, efforts can be made, among others, before applying criminal sanctions to parties involved in illegal gold mining activities, first given a warning or prohibition not to carry out these activities, then encouraged to make activity permits, if not done and continue to violate, criminal sanctions can be applied under the provisions contained in the regulations legislation. Then, the government can increase efforts to foster, supervise, and control the management of mining business activities and change the mindset of the community in carrying out mining activities through business partnership programs with companies holding mining business licenses so as to encourage the implementation of good mining practices with a healthy environmental perspective.

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