

Law Enforcement for Unauthorized Gold Mining Actors

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Abstract

Illegal mining carried out without a permit is a violation of the law. Illegal mining is the extraction of natural resources carried out by individuals or companies without following government operational rules and procedures. This is tantamount to committing a crime against state property. This research aims to find out how effective law enforcement is against criminal acts. gold mining without a permit and knowing the obstacles to law enforcement. This research was conducted using empirical juridical methods. Greater South Sumatra Legal Academics, Court Judges and South Sumatra Regional Police were interviewed regarding the facts on the ground. Research shows that law enforcement is ineffective against unlicensed gold miners. This is proven by the number of cases which continues to increase every year, even though law enforcement has taken legal action. One of the obstacles in handling this case is that the perpetrator already had information before the investigation was carried out.

Keyword: Effectiveness, law enforcement, illegal Mining

Introduction

Law enforcement is a subsystem of the national law enforcement system which is basically part of national development policy. Law enforcement is basically the process of realizing ideas for the good of society. Dellyana, (1998) Efforts to realize the concept of justice in criminal law for the sake of legal security and public benefit are carried out in every legal relationship. Legal certainty (*Rechtssicherheit*), justice (*Gerechtigkeit*), and expediency are three components that must always be considered in law enforcement. One way of preventing crime is criminal law enforcement; It is used to reduce criminal acts and crimes.

Law enforcement must pay attention to justice, but law is not always synonymous with justice because law is general and binding on everyone. Legal certainty protects the judiciary against arbitrary actions, which means that someone will be able to obtain something they hope for in certain circumstances.

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The public hopes that law enforcement will be useful if it does not cause unrest in society (Iva Turisnur, 2018).

The mining sector is one area where a lot of law enforcement is carried out. The mining sector is the largest foreign exchange earner in Indonesia (Muryani, 2019). Mining is the process of extracting precious and valuable mineral materials from within the earth's crust, below the earth's surface, and above the water surface. Additional products from mining activities include gas and oil, coal, iron sand, tin ore, nickel, bauxite, copper, gold, silver, manganese, and so on (Sulton Ali, 2011). Basically, natural wealth must be managed optimally so that it can be used fairly and evenly (Gocha Narcky Ranggalawe, 2023). In Article 33 paragraph (3) of the 1945 Constitution, mineral mining regulates what is controlled by the state, including earth, water and other natural resources. Mineral and Coal Mining Law Number 4 of 2009 which has been amended by Law Number 3 of 2020 then regulates mining management (Government Regulation of the Republic of Indonesia, 2009). In addition, Law Number 11 of 2020 concerning Job Creation regulates that "The mining business itself is carried out based on a business permit from the central government, which business permits are carried out through the issuance of business registration numbers, standard certificates and permits. ." Government regulations, presidential regulations and ministerial regulations regulate further technical regulations regarding mine management (Niwele, 2021)

According to Law Number 3 of 2020 concerning Mineral and Coal Mining, Article 4 paragraph (1), "control of minerals and coal by the state as intended in paragraph (2) is carried out by the central government in accordance with the provisions of statutory regulations. Legislative Regulation Number 3 of 2020" (Government Regulations of the Republic of Indonesia, 2020). This shows that only the central government has the authority to control mineral and coal resources. However, previously Law Number 4 of 2009 had regulated the state's authority over mineral and coal resources as intended in Law Number 4 of 2009 (1) to be managed by the federal government and regional governments (Government Regulations of the Republic of Indonesia, 2009).

Article 263 of the Criminal Code and Law Number 3 of 2020 concerning mining in Article 160 which reads "Every person who has an IUP or IUPK at the Exploration activity stage but carries out Production Operation activities shall be punished with a maximum imprisonment of 5 (five) years in prison and a fine of Rp. 112,000,000,000.00 (one hundred and twelve billion rupiah). Apart from that, it also regulates things that are prohibited in mining, namely the criminal act of mining without a permit and the criminal act of exploitation without the right to be regulated. In Article 158 it is stated, "Anyone who carries out mining without a

permit, shall be punished with imprisonment for a maximum of 5 years and a fine of a maximum of IDR 112,000,000,000.00 (one hundred and twelve million rupiah), then the crime of submitting false data reports is regulated in Article 159 which reads "threatened by a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 112,000,000,000.00 (one hundred billion rupiah). Furthermore, criminal acts as an Exploration IUP holder are regulated in Article 36A which, among other things, states that you are obliged to carry out further exploration activities every year and provide a budget, and the criminal act of laundering mining goods (*mining loundring*) can be charged under Law Number 8 of 2010 Article 3 which is punishable by a maximum prison sentence of 20 years and a maximum fine of IDR 10,000,000,000,000,- and finally mining companies without IUP, IPR or IUPK are punished by a maximum prison sentence of 10 years and a maximum fine of IDR 10,000,000,000 (ten billion rupiah) as written in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) (Government Regulations of the Republic of Indonesia, 2009). Illegal mining often occurs throughout Indonesia, especially in Aceh Province, and South Sumatra Regency is the center. Gold mining in the Beutong forest area is carried out illegally or without permission from the government authorities. A total of 22 cases of illegal gold mining were reported by the South Sumatra Police throughout 2019-2023. Court data for 2019-2023 which includes 20 cases shows that illegal mining in Greater South Sumatra continues to occur every year

The South Sumatra Regional Police (Polda) succeeded in uncovering 43 cases of illegal mining in the South Sumatra region throughout 2023. Adliyah, (2023) 21 of these cases were uncovered by the Muara Enim Police. South Sumatra Regional Police Chief Inspector General A. Rachmad Wibowo expressed his appreciation to his police officers who succeeded in uncovering the illegal mining case in Bumi Sriwijaya. "Appreciation and thanks to the Muara Enim Police. "Of all cases (illegal mining in 2023), almost 50% were revealed by the Muara Enim Police."

When carrying out mining activities, you must pay attention to nature and the surrounding environment (Syaefudin et.al, 2020). The first step is to ensure a strong legal framework. This involves creating clear laws that define unauthorized mining and establish strict penalties for violations. In addition, environmental laws need to be strengthened to protect ecosystems from the negative impacts of illegal mining. In addition, regulatory measures are also necessary. It is important to establish clear guidelines for obtaining mining licenses and permits, and ensure that only qualified and responsible entities are granted permits to conduct mining. In addition, regular monitoring and reporting of licensed mining activities is

required to ensure compliance with environmental and safety standards. Law enforcement actions are also an important part of this plan. Forming a special unit in the police or establishing an institution that focuses on eradicating illegal mining is an important step. Law enforcement members should be given specific training on the challenges and techniques for dealing with illegal mining and provided with the necessary tools and resources. Cooperation between government agencies, including environmental, mining and law enforcement agencies, must also be improved.

The use of technology and surveillance is the next step. Satellite and drone imagery can be used to monitor mining activities in remote areas in real-time. Geographic Information Systems (GIS) can also be applied to map and track mining locations, both legal and illegal. Community involvement is very important. Public awareness campaigns should be conducted to educate local communities about the legal aspects of mining as well as the impact of illegal mining on the environment and health. Reporting mechanisms such as hotlines or online platforms must be provided so that the public can report illegal mining activities anonymously. Judicial action includes prosecution and punishment (Rosadi & Jailani, 2023). Ensure that those caught engaging in illegal mining are prosecuted quickly and that penalties are severe enough to deter future violations. Laws allowing the confiscation of assets obtained from illegal mining activities should also be implemented (Sulaiman, 2023)

Environmental restoration is also part of this plan. Rehabilitation programs must require companies or individuals responsible for illegal mining to carry out restoration of mined areas. A fund for restoration, possibly funded by fines from illegal miners, should also be established. International cooperation is very necessary, especially in border areas. Cooperation with neighboring countries to control illegal mining and participation in global initiatives aimed at reducing illegal mining and encouraging sustainable mining practices are essential. Implementation steps begin with a comprehensive assessment and planning of the current unlicensed mining situation. A strategic plan involving all stakeholders must be developed. Legislative action needs to be taken by reviewing and updating existing laws and regulations and ensuring the legal framework is harmonized across regions to avoid legal loopholes (Wicaksono, 2017).

Capacity building includes training for law enforcers and regulators as well as providing the necessary technological and financial resources. Law enforcement should include regular and unannounced inspections of mining sites and firm action against violators, including arrest and prosecution. Community involvement through education campaigns and community involvement in

monitoring efforts are also important. Apart from that, providing alternative livelihoods to reduce dependence on illegal mining is a necessary step. Ongoing monitoring and evaluation should be implemented to assess the effectiveness of law enforcement efforts and adjust strategies based on feedback and changing conditions. In conclusion, to effectively combat unlicensed gold mining, a coordinated approach involving legal, regulatory, law enforcement and community participation is needed. By implementing these measures, governments can protect the environment, enforce laws, and ensure that mining activities make a positive contribution to the economy. This is also in line with the procedures for processing mining materials as regulated in Article 2 of Law Number 4 of 2009 concerning Mineral and Coal Mining (Syafudin et.al, 2020).

Based on the opinion above, it shows that cases of illegal mining in Beutong District, South Sumatra Regency continue to increase every year. However, legal action has been taken against those carrying out illegal gold mining. However, this does not eliminate cases of illegal gold mining. Based on the opinion above, it shows that in 2019 there were 5 cases, then there were 9 cases in 2020. However, from 2021 to 2022 there was a decline, namely only in 2021 there were 3 cases and in 2022 there were 2 cases. The South Sumatra Regional Police received three cases in 2023. Even though there has been a decline in 2021–2022, illegal mining still occurs every year. This shows that the sanctions given to perpetrators are less effective. Based on the explanation above, the author wants to conduct further research on how effective law enforcement is against perpetrators of illegal gold mining and the obstacles that cause ineffective law enforcement.

Research Methodology

Legal research is an activity using scientific methods to discover legal rules, legal principles and legal doctrines in order to answer the legal issues faced (Deassy J.A, 2023). The author uses an empirical descriptive juridical approach in this research. The empirical research method is legal research that examines legal provisions. directly related to events that occur in society as a whole with the aim of finding facts that will be collected in this research (Respository, 2015). Empirical legal research is a type of research that collects facts from human life both through verbal behavior (interviews) and through observation of the behavior of the objects being observed. This research seeks solutions to certain problems (Siregar N.F, 2018). Primary, secondary and tertiary are the three legal ingredients that form empirical data (Chazwi Adami, 2002). The data source is the origin from which the data is obtained (Umboh, 2024). Sources of empirical legal research are respondents and resource persons; The main empirical research

consists of interviews with police officers, courts, and academics in Greater South Sumatra. Tertiary legal materials are a combination of primary and secondary legal materials. The second supporting data from primary data sources is called secondary legal material (Akbar, 2015).

Results and Discussion

Law enforcement against illegal gold miners in Greater South Sumatra Regency. Effectiveness is a goal that shows how successful an output is. A job can be said to be effective if it is able to provide success and receive high marks from the community as a service provider in accordance with the agreement. According to Mardiansmo in Liber Sonata, (2014) effectiveness can be interpreted as a measurable result from achieving a goal in a task. The effect of an output or output can be described in each program that is run.

Illegal mining is mining or extraction of natural resources (SDA) carried out by individuals or companies that do not have permits, operational procedures, government regulations, or good and correct mining principles, which are often referred to as *Good Mining Practice*. The impacts caused by illegal mining are economic, social and environmental. Illegal mining has an economic impact because it exploits natural resources on a large scale, distributes and sells illegal mining products. to avoid state taxes and damage market prices because the products they sell are usually cheaper than market prices. Decreased environmental quality, pollution, landslides and floods, as well as declining animal populations and habitats are examples of environmental impacts (Irwawan. Rokilah. Hasuri, 2023). Apart from that, illegal miners have a social impact on community activities around the mine. For example, communities and companies ignore the safety of workers and residents around mines, miners dig into the ground to create holes or tunnels that reduce oxygen availability, and miners who are not highly educated are at risk of safety. Apart from that, illegal mining also endangers local communities.

Legal Research in Practice by Bambang Waluyo was published in Jakarta by Sinar Graphics in 2002. 15:1 The book written by Mukti Fajar and Yulianto Achmad in 2010 was entitled "Dualism of Empirical & Normative Legal Research", published by Pustaka Siswa on page 280. In a study in Gowa Regency in 2020, Nurwahyuni Rahman studied the effectiveness of granting mining permits to the South Sulawesi Province One-Stop Integrated Services and Investment Service. :12 Chazwi, "Experiments and Statements (Criminal Law Lessons)", published in Jakarta by Rajswali Press in 2002, with the title "Adami" (Chazwi Adami, 2002).

The act of illegal mining is a legal criminal act against State property where this criminal act can harm the State Akbar, (2015) Among them are strict sanctions against perpetrators of illegal mining as regulated in Law Number 3 of 2020, including mining without a permit and criminal acts of exploitation without rights regulated in Article 158 it is stated that "a person who carries out mining without a permit." permit is subject to a maximum sentence of 5 years in prison and a maximum fine of IDR 100,000,000,000 (One hundred million rupiah), apart from that the criminal provisions that state administrative sanctions are regulated in Law and g Number 39 of 2009 concerning Administrative Sanctions. Forms of government coercion can be carried out in the form of: Advertisements temporarily stopping production activities, moving production facilities, closing waste water or emission channels, dismantling, confiscating goods or means of transportation that have the potential to cause violations. , Temporary suspension of part or all of the business and/or activities, Obligation to prepare DELH or DPLH, Other actions aimed at stopping violations and actions to restore the function of the Environment, Law Number 39 of 2009 concerning Environmental Protection and Management, will receive sanctions , one of which is administrative sanctions.

Every year, illegal gold mining occurs in Greater South Sumatra Regency. In 2019 there were 5 cases, then in 2020 it increased to 9 cases, then in 2021–2022 there was a decrease, namely 3 cases, and in 2022–2023 there was an increase. However, at the end of May there were three additional cases at the South Sumatra Regional Police, although in 2021-2022 there was a decrease. However, in 2023, illegal gold mining began. From court decision data on illegal cases in South Sumatra, suspects in 36 cases received a sentence of 1-1.5 years or one third of the maximum penalty. The number of suspects in this case, he said, had increased by 300%. Police arrested 66 suspects in 2023, up from 22 suspects last year. This year the police succeeded in confiscating 738 tons of coal compared to only 20 tons the previous year. "There is also quite a lot of evidence (coal) confiscated in 2023. "In 2022 it will be 20 tonnes, while in 2023 it will increase to 738 tonnes confiscated," he said. Another BB in the form of 2 cars was confiscated by the police in 2023, as many as in 2022. This year the police also confiscated 3 motorbikes, whereas in the previous year there were none. Then, the police confiscated 38 trucks throughout 2023. More than 6 times more than last year which was only 6 units.

Based on the opinion above, it shows that illegal mining continues to occur every year in Greater South Sumatra Regency. During an investigation at the South Sumatra Regional Police, Head of Criminal Investigation Unit Feri Sandrian admitted that he received information from residents about illegal

mining in the Beutong area, and he ordered his members to investigate several illegal mining locations. He then found out the identity of the alleged perpetrator, and after collecting information from residents and the results of investigations into the illegal mining location, the South Sumatra Police succeeded in finding the perpetrator through case investigation. After finding the perpetrator, Bareskrim conducted an investigation by interrogating the perpetrator to obtain evidence that there were other perpetrators who had not been arrested. Apart from that, they carried out investigations at the mine site to obtain accurate evidence. After that, all results of the investigation were handed over to the court (South Sumatra Police Data, n.d.).

Based on interviews with court judges such as Makmue, Law Number 11 of 2020 concerning Job Copyright which also regulates mining, and Law Number 32 of 2009 concerning the Environment, have an influence on mining case decisions. The judge also stated that for mining crimes, the judge stated that it could be called Administrative Criminal Law and not Major Criminal Law. In contrast to Law Number 11, 14 interviews with judges at the Greater South Sumatra District Court, Tangal on 15 May 2023.

In 2020, illegal mining can also be linked to Government Regulation Number 22 of 2021 concerning Implementation of Environmental Management and Protection and Law Number 32 of 2009 concerning Environmental Protection. The reason is that illegal mining can have an impact on the surrounding environment in Greater South Sumatra Regency. The large number of illegal mining cases in Greater South Sumatra Regency is due to a lack of supervision and light sanctions.

Adam Sani, South Sumatra Regency Law Scholar, explained that gold mining is still abundant in South Sumatra Regency, as can be seen from the large number of illegal mining locations found and the large number of mining companies in South Sumatra Regency that do not pay. Attention to mining permit regulations has resulted in a lot of illegal mining which only benefits a few people but harms many people. According to Adam Sani, the police are suspected of having certain individuals responsible for illegal mining in Greater South Sumatra Regency. As a result, they face a number of challenges in eradicating cases of illegal mining. He said, although various efforts have been made to eradicate illegal mining, law enforcement has not been effective because most of the individuals carrying out illegal mining come from the indigenous communities of Greater South Sumatra and it is suspected that there are officials who play a role behind the perpetrators. so that they can easily get any information (Ramadhan Ahmad Dani, 2023).

Based on the description above, it is clear that criminal acts of gold mining without a permit continue to occur every year. Although many cases have been decided in court and police investigations have been carried out, this has not stopped gold mining. This shows that law enforcement has not been effective against those who carry out gold mining without a permit.

According to L. Friedman's theory, there are three components that influence legal enactment, namely. The legal system forms legal structure institutions to assist various system functions. Law-making institutions in the legal structure consist of the DPR, executive, legislature, police, prosecutor's office and courts (Nusa Putra University, 2021)

Legal substance is what is made, carried out and decided by the court according to the law. Legal culture is defined as the relationship between people's behavior and applicable legal regulations. Legal culture is not far from standards in legal society. According to L. Friedman, this legal culture is divided into two parts, namely internal legal culture which includes the law of judges and prosecutors, and external legal culture which includes community law. However, according to L. Friedman's explanation of law, each legal concept is unique.

Friedman said law is a set of written or unwritten rules and standards about right, wrong, behavior, duties, responsibilities, and rights. According to Friedman's understanding, law is considered as something that is independent or not influenced by the order of social life. According to this view, legal structures and rules are at a theoretical level, while actions or behavior are at a real level. Friedman divides legal culture into two parts. First, internal legal culture which includes the legal culture of judges, lawyers and law enforcers in general. The second is external legal culture, which includes the legal culture of society as a whole (Nusa Putra University, 2021).

The structure and substance of the legal system are important, but they are only plans and not tools. Structure and substance are problematic because they are immobile; Both are representations of the legal system. There is no movement and truth in the imagination, and it is similar to a beautiful courtroom, frozen, stiff, and painfully prolonged (Pamungkas, 2018)

Friedman said legal culture refers to the attitudes, values and opinions of society with an emphasis on law, the legal system and several parts of the law (Nusa Putra University, 2021). Legal culture is the missing element that keeps the legal system alive. Legal culture is very important in influencing when, why, and where people use the law, legal institutions, or legal processes, or when they use other institutions or forego legal remedies. In other words, cultural factors play an important role in transforming a static legal structure and a set of static norms into

a living legal body. Putting the law into an image is the same as turning on an engine or winding a clock. Everything is changed by legal culture.

Friedman further provides an explanation of the perspective and principles of legal culture. Friedman describes the perspective as “situational legal culture.” This concept is related to the views and principles of the general public. “Internal legal culture” is the second concept. This concept includes the attitudes and principles of professionals who work in the legal system, such as lawyers, judges, law enforcers, and others. In addition, Friedman stated that the legal cultural situation is not the same. The law is seen from the perspective of different communities (Nusa Putra University, 2021) to solve community problems, especially illegal gold mining. Referring to L.Friedman's theory above, in terms of legal structure, the South Sumatra Regional Police have carried out the necessary investigations and inquiries in the case. illegal gold mining. Apart from that, the judge decided the case in accordance with laws and regulations in the mining sector and imposed sanctions that provide a deterrent effect for the perpetrators. Then in terms of legal substance, the law also clearly regulates sanctions for those who carry out illegal gold mining. Law Number 03 of 2020 concerning Western Minerals and Rocks and Law Number 02 of 2022 concerning Job Creation Aspects of legal culture, society and gold miners are also still lacking (PN Suka Makmue, 2023)

Observe and comply with legal standards so that you don't care about the rules and continue mining gold without a permit. Failure of Law Enforcement Against Individuals Who Mine Gold Without a License. Law enforcement is seen from its subject, so it can be interpreted broadly and narrowly, and is interpreted as a process of proving legal norms so that it becomes a guide for actors in acting. Law enforcement is an effort to realize justice, social benefits and legal certainty. Overall, the legal subject includes all the elements involved, but in a narrow sense the legal subject only involves certain law enforcement officials and ensures that the law enforcement process runs as it should. 19 Law enforcement becomes ineffective due to many obstacles and obstacles. Regulations, law enforcement, even certain individuals can be a source of obstacles.

The results of interviews with South Sumatra Police officers show that catching illegal mining perpetrators is quite difficult because they know every action the police take because illegal miners guard each mining location so that the perpetrators are not at the location when the police arrive. Until now, there is someone suspected of being involved in illegal gold mining in the district.

Adam Sani, a legal scholar from Greater South Sumatra, explained the difficulties currently faced in eradicating illegal mining perpetrators. According to him, because the mining location is in the middle of wilderness and far from

settlements, it is suspected that illegal gold miners have many important people who support their actions, especially in providing information. Illegal mining perpetrators feel it the most (Ramadhan Ahmad Dani, 2023).

There are three studies on legal effectiveness theory that examine and analyze the pros and cons of resolving legal problems. This theory is known as legal effectiveness. Successful implementation of the law, meaning that the law made has fulfilled the requirements and objectives of the law itself; Failure in Provisions that are made incorrectly when implemented is called implementation. Influencing factors are factors that influence whether the implementation of the law itself is good or bad, whether it is in accordance with society and the surrounding conditions. Factors that influence the success of the law depend on the success of the regulations that have been established, which consist of three substances, namely legal structure, legal culture and facilities.

Sondang Siagian states that effectiveness is the use of a consciously determined number of resources, facilities and infrastructure before producing a number of goods for the related services he proposes. Effectiveness shows the success of achieving or not in accordance with what was set, and the closer the results of the review are to the target, the more effective it is. Thus, effectiveness is multidimensional, so that the strategy chosen to increase effectiveness depends on the specificity or specificity of the problem factors to be solved. These factors include goals, people, values and the organizational system itself which are related to conditions of time, targets, quantity and quality.

Based on the definition of effectiveness as mentioned above, effectiveness is usually discussed in management and group or organizational activities. Effectiveness always refers to the goals of the organization and its survival. 24 Factors causing illegal mining in Greater South Sumatra Regency are the result of weak supervision, the economic needs of the community, and sanctions given to violators.

Conclusion

The perpetrators of unlicensed gold miners have still not been punished. This is shown by the number of cases of illegal gold mining which is increasing every year, even though legal efforts have been taken by the police and decided by judges in accordance with the law. One of the obstacles faced by law enforcement is that gold miners already know that an investigation will take place, making the investigation process even more difficult. Apart from that, there are certain elements who obstruct the legal process, and prosecutors do not provide enough evidence, making it difficult for judges to make decisions. Based on the findings above, I am of the opinion that law enforcement officers must comply

with the regulations stipulated in Law Number 8 of 1981 when conducting investigations and inquiries. Because in article 1 paragraph (5) it is stated that "an investigator is a series of investigative actions to search for data and find an incident that is suspected of being a criminal act in order to determine whether or not it can be carried out according to the regulated method." in this law, the court may not notify perpetrators of illegal gold mining that a raid will be carried out at the mining site. Especially if the court makes a decision in a case against a mining actor.

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