

## THE ROLE OF THE POLICE IN ERADICATING ILLEGAL GOLD MINING ACTIVITIES IN POHUWATO REGENCY

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### ABSTRACT

This study aims to find out and analyze how law enforcement is against perpetrators of illegal gold mining activities in the Pohuwato Regency. Law enforcement against gold mining activities in Pohuwato Regency, was not effective yet, because based on the results of the study it was found that there were 33 active tools, in illegal mining, which was suspected to belong to a dozen people but has not been processed by law to this day. This is contrary to Article 158 of Law Number 4 of 2009 concerning Mining. To overcome the problems that occurred as described in the discussion, the researchers recommend a solution, namely Law enforcement related to illegal mining activities in Pohuwato Regency needs to be emphasized, this is so that there are no more people dare to carry out mining activities illegally and violate the law. In addition, the local government of Pohuwato Regency needs to pay more attention to mining activities by the people of Pohuwato Regency, by issuing People's Mining Areas (WPR) and Mining Business Permits (IUP), this is important so that people are not trapped in mining activities that violate the law and pollute the environment, besides the existence of IUP and WPR can improve the economy of the people of Pohuwato.

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## 1. Introduction

As a country that adheres to the Civil Law System tradition, in reading the Indonesian legal system, it must depart from the highest legislation hierarchy, namely the constitution embodied in the 1945 Constitution<sup>1</sup>, because it is one of the mandates of the Preamble to the 1945 Constitution as a sublime agreement for the formation of the Indonesian state.<sup>2</sup> Besides Pancasila as the nation's view of life in fostering an ethical and moral national life,<sup>3</sup> the constitution is present as a means of regulating life, both in individual life, social life, and state life as well as to protect human rights so that they become the constitutional rights of citizens.<sup>4</sup>

The law itself is present not only to regulate how the relationship between humans and humans or humans and groups but also regulates the relationship between humans and their environment, this is the pioneer to the formation of environmental law.

Environmental law has long been a subject of discussion in Indonesia in general and Gorontalo Province in particular, this was evidenced by the continuous adjustments to the Law on the environment in Indonesia, starting with Law Number 4 of 1982 Article 1 paragraph (1) concerning the Basic Provisions of the Environment that revised with Law Number 23/1997 concerning Environmental Management and the last is Law Number 32/2009 concerning Environmental Protection and Management (PPLH).<sup>5</sup>

But in fact, in Pohuwato Regency some people carried out illegal mining activities (Peti) brutally and have used heavy equipment based on research results there was 70 heavy equipment in the form of excavators being active in the Pohuwato illegal mining area, namely in the mining area of Dengilo Sub-district and Marisa Sub-district to be precise in the botudulanga mining, and mining in the Dengilo Sub-district area, due to the illegal mining activities.

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<sup>1</sup>Badu, L. W., Kaluku, J. A., & Kaluku, A. (2021). Perlindungan Hak-Hak Konstitusional Masyarakat Adat di Kabupaten Boalemo dalam Penerapan Sanksi Adat. *Jurnal Konstitusi*, 18 (1), 219-239. Hlm. 221

<sup>2</sup>Alhasni, M. R., Badu, L. W., & Nggilu, N. M. (2019). Menakar Peran Kepolisian Dalam Mencegah Tindak Pidana Pencabulan Terhadap Anak di Bawah Umur. *JURNAL LEGALITAS*, 12(2), 110-123, Hlm. 111

<sup>3</sup>Tome, A. H. (2020). Membumikan Pancasila: Upaya Pelembagaan Nilai Pancasila Dalam Kehidupan Masyarakat Desa. *Al-'Adl*, 13(1), 118-131.

<sup>4</sup>h Ahmad, A., & Nggilu, N. M. (2020). Denyut Nadi Amandemen Kelima UUD 1945 melalui Pelibatan Mahkamah Konstitusi sebagai Prinsip the Guardian of the Constitution. *Jurnal Konstitusi*, 16(4), 785-808. hlm. 787-788

<sup>5</sup>Bakung, D. A. (2012). Kebijakan Lingkungan di Provinsi Gorontalo Berdasarkan UU No. 32 Tahun 2009 Tentang Pplh. *Jurnal Legalitas*, 5(01).

According to many residents, the worst points from the flood impact occurred in 3 hamlets in Popaya Village, Dengilo Sub-district, Pohuwato. The flood had spread to the road near the *Kamis* Market Dengilo.

The Head of Regional Disaster Management Agency (BPBD) Pohuwato, Ramon Abdjul, who was asked for a response regarding this incident, said, That apart from the high rainfall, floods that occurred in Dengilo Sub-district occurred due to illegal gold mining activities near the Tihuo River.<sup>6</sup>

In addition to the Dengilo Sub-district, in the Ubuntu Sub-district, Pohuwato Regency has also experienced the same thing, namely flooding. According to the Head of the Regional Disaster Management Agency (BPBD) of Pohuwato Regency, Ramon Abdjul, flooding occurred due to deforestation and illegal mining activities in the mountains. This, said Ramon, made Karya Indah Village suffers a frequent flood every time it rained. "There were various things, some were due to deforestation, there were also mining. So it is feared that if it rains for one to two hours, there will be flooding," said Ramon to Kronologi.id<sup>7</sup>

Although it has had an environmental impact as well as a disaster, until the time of the illegal mining activity, strict law enforcement has not been carried out in the form of applying criminal sanctions as regulated in Article 158 of Law Number 4 of 2009

In Pohuwato Regency, several people carried out illegal mining processes and even used heavy equipment, for many years but have not been processed by law as the results of an interview with one of the local miners, Mrs. Naning Abubakar, she stated that there were several people who she knew as illegal miners who used the heavy equipment includes the following:

#### **Community Leaders and local miners**

<b>Miner Name</b>	<b>Mining Location</b>
Oya	Botudulanga Mining
Yosar	Botudulanga Mining
Aka	Botudulanga Mining

The miners mentioned above have not all been given strict legal sanctions by the police, based on the information from the Head of Public Relations of the Regional Police Gorontalo, Police Commissioner Wahyu Tri Cahyono, the Ditreskrim (director of special criminal detectives) of the Regional Police Gorontalo has detained two perpetrators of illegal miners in pohuwato, including the initials YR and S, the alleged perpetrator of an illegal gold mining

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<sup>6</sup>Dilansir Dari berita online dulohupa id. 04 mei 2021 Pukul 11:14 Wita

<sup>7</sup>Di lansir dari berita online Kornologi id. Pada 04 mei 2021 pukul 11:19

(PETI) business in Hulawa Village, botudulanga mining, Buntulia Sub-district, Pohuwato Regency.

According to the Head of Public Relations of the Regional Police Gorontalo, Police Commissioner Wahyu Tri Cahyono, the arrests of the perpetrators were based on monitoring. However, the question is why only YS and his employees were being prosecuted by the Regional Police Gorontalo, but two figures in the implementation of illegal mining, as mentioned in the interview table with local miners, were not treated the same way. Likewise with other miners who also carried out illegal mining as stipulated in Article 158 of Law Number 4 of 2009.

In other words, the people above in terms of managing illegal mining were kind of neglected and there was no law enforcement by the local police. So that their activities continue to carry out and continue to cause negative impacts on the environment and threaten human health. Therefore, this research emerged to answer the following questions; What factors causing the existence of illegal gold miners in Pohuwato Regency are, and how law enforcement against perpetrators of illegal gold miners in Pohuwato Regency is.

## **2. Research Method**

The type of research used by researchers in compiling this research was normative research, while the approaches used in this research were the statutory approach and the case approach. The analysis used in this research was descriptive data analysis using a qualitative approach to primary data and secondary data.<sup>8</sup> This research was carried out at the botudulanga mining, Ubuntu Sub-district, Pohuwato Regency, at the Regional Police Gorontalo.

## **3. The Factors Causing Illegal Mining Activities in Pohuwato Regency**

### **3.1 Economic Factors**

The main factor that caused the number of illegal gold mining activities is the economic factor to improve the welfare of life. Being a gold miner is considered more profitable and productive than working as a farmer. In addition, the number of unemployed, limited employment opportunities, and business opportunities also cause people to choose to work as illegal gold miners because they do not require large capital and do not require a high level of education, high skills, and have work experience.

One of the factors that trigger the activity of illegal miners or miners in Pohuwato Regency who work in agriculture are not sufficient in meeting daily life such as food needs, as well as school children's education, so it will cause people to look for jobs that can make money quickly, one of which is to be a miner.<sup>9</sup>

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<sup>8</sup>Mukti Fajar dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Empiris & Normatif*, Pustaka Pelajar, hlm.280

<sup>9</sup>Hasil Wawancara Bersama Ketua APRI Pohuwato "Limonu Hipy"

Based on the results of the study, the Pohuwato people chose to work as miners because of various factors such as not requiring high capital such as high levels of education, high skills, and having work experience. This was in line with the level of education of the people of Pohuwato Regency. The majorities were not in school or have not finished Elementary School. Only a few people have education up to Senior High School/equivalent. In addition, at this time, people are not interested in working in the agricultural sector because it takes a longer time. Working as a miner has the most dangerous risk, namely a mining accident that will cause death. However, due to economic problems, the community has no other choice to support their families.

### 3.2 Social Factors

Social factors also encouraged the people of Pohuwato to be involved in this illegal gold mining business, this was as the result of the author's research where it was found that some of the people of Pohuwato preferred to mine because the income is quite large, even not a few local people who have previously farmed have switched to mining business because their income is quite large. After all, the income of gold mining is much greater than the result of working in agriculture.<sup>10</sup> In addition, the existence of traditional miners by the local community has been going on for generations. The less harmonious relationship between legal/illegal mining and local communities. Misinterpretation of reform is defined as unlimited freedom.<sup>11</sup>

### 3.3 Legal Factors

Legal factors also encouraged people to get involved in illegal gold mining. People with low education do not understand the legal rules for mining activities, even though the mining business without a permit is illegal and prohibited by the Mining Law. Indonesia is a country based on applicable laws in every sector.

The mining sector is one sector that has regulations as stipulated in the mining law and has a legal basis for its operation. The law that applies in Indonesia, especially in the mining sector, has been written in many laws, one of which is the 1945 Constitution of the Republic of Indonesia, article 33 paragraph 3, "Earth, water and natural resources contained therein are controlled by the state and used as much as possible for the welfare of the people". From this statement, it can be seen that the mining product is a natural resource that is taken or excavated in the earth, which is used for the welfare of its people. However, this is not the case for small communities living around mining areas.

The results of the study showed that all respondents had different opinions about the law in the mining sector. The respondent's level of knowledge or

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<sup>10</sup>Hasil Wawancara Bersama Penambang Lokal Pohuwto "Naning Abukar"

<sup>11</sup>Hasil Wawancara, Bersama Ketua Apri " Limonu Hipy"

understanding of the law was very low. This was because respondents were not aware of any laws that regulate it. After all, they had limited access to information due to the difficulty of obtaining a quality level of education.

### **3.4 Factors of Government Concern**

There was no response or serious action from the local government regarding the existence of illegal mining practices in Pohuwato Regency. It can be seen according to the statement from the Chairperson of the Indonesian People's Mining Association (APRI) in Pohuwato Regency, he revealed that<sup>12</sup>: "So far we have been trying so that the miners have a People's Mining Area (WPR) and a Mining Business Permit (IUP), and we have included this administration into local government since 2013 and until now we are still fighting for it, it's just that the local government doesn't seem serious. Currently according to what we heard that the process is already at the ministry."

It can be seen from the period of this mining which has been running for almost 20 years. This means that so far according to the author, it is as if the local government has allowed this mining to take place without going through the licensing process. There are 2 gold mining points in Pohuwato Regency which according to the author's research are currently operating illegally and managed by the community. However, according to the author, the Regional Government seems to have neglected this activity. The inability of the local government to solve the problem of illegal mining activities in Pohuwato Regency has made illegal mining activities by the community increase.

### **4. Law Enforcement Against Gold Miners Perpetrator in Pohuwato**

The Central Government and Regional Governments in Indonesia need to make efforts to monitor the development of mining and mining growth illegally because we cannot deny that the wealth of natural resources in Indonesia is very large and abundant, making people tempted with mining. After all, the results of mining greatly guarantee the state's economy and life for miners, if mismanaged it can harm the state, and even most importantly it can endanger the community, and can also experience environmental damage around mining if it is carried out illegally which is not in accordance with the procedures of the Law determined by the Government of Indonesia.

The process to obtain economical minerals usually uses the extraction method, which is the process of separating minerals from rocks from other unnecessary minerals that are not needed. Minerals that are not needed will become mining industry waste and have a significant contribution to environmental pollution and degradation. The mining industry is an upstream industry that produces mineral resources and is a source of raw materials for downstream industries that are needed by mankind throughout the world. Meanwhile, mineral

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<sup>12</sup>Hasil Wawancara Bersama Ketua APRI Pohuwato "Limonu Hipy".

resources can be interpreted as resources obtained from the extraction of rocks on earth.<sup>13</sup>

Salim stated that in the mining business several stages must be passed before reaping the results from mining activities, namely<sup>14</sup>:

1. The general investigation is an attempt to investigate in general geology or physics, on land, water, and from the air, everything to make a general geological map or to determine signs of the presence of minerals in general.
2. The exploration business is all geological investigations of mining to determine more accurately the nature of the placement of the minerals.
3. The exploitation business is a mining business to produce minerals and utilize them.
4. The processing and refining business is working to enhance the quality of the minerals as well as to utilize and obtain the elements contained in the minerals.
5. The transportation business is all business of moving minerals and the results of processing and refining of minerals from exploration areas or places of processing/refining.
6. The sales business is all business of selling minerals and the results of processing/purifying minerals.

Mining activities consist of two types, namely mining activities carried out by business entities appointed directly by the state through Mining Authorization (KP) and Contracts of Work (KK), and mining carried out by the community manually. Mining activities by business entities are usually carried out using more sophisticated technology so that the expected results are more with a more efficient time allocation, while community mining is a mining activity using simple tools. Gold as one of the non-renewable resources, such as minerals, is also called a depleted resource is a natural resource that cannot regenerate biologically, one day it will run out.

Illegal mining so far in Indonesia is not a word that is rarely heard, or it can even be said that it is very common in Indonesia and is not a new topic of conversation anymore. There are many types of illegal mining, be it diamond, tin, coal and one of them is Illegal Gold Mining which is commonly abbreviated as PETI.

Gold mining is what we will discuss in-depth with what has happened in our environment because lately we often hear that of all illegal mining in Indonesia, gold mining is the most rapidly growing, but with a record in "Illegal" status.

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<sup>13</sup>Suryanto, Good Mining Practice, Konsep Tentang Pengelolaan Pertambangan yang Baik dan Benar, Studi Nusa, Semarang, 2010, hlm. 3

<sup>14</sup>Salim HS, Hukum Pertambangan di Indonesia, Raja Grafindo Persada, Jakarta, 2010, hlm. 38

Illegal Mining (PETI) is a mining business carried out by an individual, a group of people, or a foundation company with a legal entity that in its operation does not have a permit and government agencies in accordance with applicable laws and regulations. PETI was initiated by the existence of traditional miners, which later developed due to poverty factor, limited employment and business opportunities, the involvement of other parties who act as financial backers and backing, disharmony in the relationship between the company and the local community, as well as the prolonged economic crisis that was followed by misinterpretation of reform.

On the other hand, weaknesses in law enforcement and laws and regulations that prevent mining (by) the community have also contributed to the rise of PETI. Considering that PETI's activities do not apply mining principles correctly (good mining practice) and are almost untouched by laws, while on the other hand, minerals are non-renewable resources and in their exploitation have the potential to damage the environment (potential polluter), then what happened next were various negative impacts that not only harmed the Government, but also the wider community and future generations.

Environmental damage, waste of mineral resources, and moral decline are examples of negative impacts that harm the Government, society at large, and future generations. Especially for the government, these negative impacts are also added to losses due to loss of income from taxes and other levies, costs to repair the environment, harassment of authority, and loss of trust from foreign investors who incidentally became the backbone of the growth of the national mining sector. In the end, Indonesia lost one of the mainstays to encourage economic growth and lost the opportunity to reduce unemployment.<sup>15</sup>

Overcoming the PETI problem is always faced with a dilemma. This is because PETI is identical to the life of the lower class who do not have access to other economic resources due to the limited education, expertise, and skills they have. Closing business activities means adding to the long list of the number of unemployment and poverty while allowing them to continue operating means trampling on the prevailing laws and regulations.

Although they have different impacts, they both carry risks for the Government. On the other hand, efforts to accommodate the poor through People's Mining and Small-Scale Mining have not yielded optimal results. Besides being faced with internal problems, the lack of success of these two patterns is also caused by the existence of the financial backer amid the poor who continue to poison their lives. These financial backers can act as savior gods with the lure of money, even though in practice they apply the bondage system so that the poor are trapped and can no longer escape the financial backers' clutches. Starting from

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<sup>15</sup> <http://koperindag.karokab.go.id> Diakses Pada 8 Juli 2021 Pukul 3:06



this fact, a new approach is needed in tackling the PETI problem, which is humane, wise, fair, and prioritizes a social and community approach while still providing opportunities for the people to play a proportional direct role in mining business activities, without neglecting the principles of good and correct mining.

In Pohuwato Regency, precisely in the Ubuntu Sub-district, Dengilo Sub-district, and several other Sub-districts, there were illegal gold mining activities. Illegal gold mining there was very detrimental to residents and the environment because the waste produced was thrown away. The waste that is disposed of carelessly contains mercury so that it is disturbing the residents, especially the farmers in the mining area. Not only threaten health, but mercury from illegal mining also threatens water sources.

Communities around illegal mining in Pohuwato Regency, especially farmers whose fields have been filled with water used for processing gold in illegal mines, were certainly very disadvantaged, especially considering that existing mining activities used heavy equipment in the form of excavators, of course, this also harmed traditional miners who used simple tools. Kusnoto and Kusumodirdjo (1995) stated that mining activities in addition to increasing people's income, also have an impact on the environment. Supported by other experts, Supardi (2003) stated that environmental pollution as a result of mining management is generally caused by chemical, physical and biological factors. Pollution occurred more in the mining environment than outside the mining. Because the gold management process used barrels and spindles, mercury (Hg) and cyanide (SN) were used as the base material for gold metal binding.<sup>16</sup>

If reviewed from a legal perspective, the researcher concluded that mining activities in Pohuwato Regency were illegal and violated the law, so law enforcement by the police is very important, especially considering that illegal mining activities not only had an impact on law violations but also environmental pollution. indeed there was a dilemma in terms of determining policies in mining areas, on the one hand, mining is a source of community income, but on the other hand, it violated the law, then the most important thing is, the issuance of the People's Mining Area (WPR) and Mining Business Permits (WPR), which must be published by the local government, this is the most effective solution, in dealing with mining environmental and economic problems of the mining people.

## 5. Conclusion

Based on the research that has been conducted and the results of research regarding the existence of illegal mining activities in Pohuwato Regency, it was influenced by several factors including 1) Social Factors, namely the existence of

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<sup>16</sup> Ibid

traditional miners by the Pohnuwa people which has been going on for generations. The less harmonious relationship between legal/illegal mining and local communities. Misinterpretation of reform is defined as unlimited freedom.

2) Legal factors, namely the weakness of laws and regulations in the mining sector, which were reflected among others in the lack of partiality to the interests of the wider community and the absence of warnings against legal/illegal mining that did not utilize its business area. Weaknesses in law enforcement and supervision, this was reflected in the existence of heavy equipment activities in Pohnuwa Regency, and the weaknesses of law enforcement against illegal mining in Pohnuwa which tended to be neglected.

3) Economic factors, namely Limited employment opportunities in Pohnuwa and business opportunities that are in accordance with the level of expertise/skills of the Pohnuwa people, causing illegal mining activities in Pohnuwa.

4) The government's concern factor is that so far the local government has not provided full concern to the mining people, this was proven by the issuance of IUP and WPR, while the people of Pohnuwa Regency have been trying since 2013. Law enforcement against gold mining activities in Pohnuwa Regency has not been effective yet, because based on the results of the study it was found that 33 tools were active in illegal mining, which were suspected to belong to a dozen people but which until now have not been in the legal process and this is contrary to Article 158 of Law Number 4 of 2009 concerning Mining.

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