



## Application of Criminal Sanctions Against Illegal Mining Perpetrators According to Law Number 3 of 2020

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**Abstract:** The purpose of this study is to determine and analyze the application of criminal sanctions against illegal mining actors according to Law Number 3 of 2020 in Dengilo District, Pohuwato Regency, and to determine and analyze the impact of illegal mining in Dengilo District, Pohuwato Regency. The type of research used in this study is empirical legal research using data collection techniques through direct observation and interviews with related parties. The results of this study show that the application of criminal sanctions in Kec. Dengilo is still not optimal, because there are still many perpetrators who continue to carry out activities secretly at the mine site. The miners carried out mining activities at night using heavy equipment even though it had been prohibited by the authorities. The government of Dengilo District, Pohuwato District, has made socialization efforts to the community regarding the provisions governing mining problems and sanctions for those who violate these provisions and has collaborated with the Pohuwato Regional Police in following up perpetrators of illegal gold mining crimes by the provisions of Law Number 3 of 2020. The impact caused by illegal gold mining in Dengilo District is positive: increasing local income, accommodating labor, and increasing community income. Negative impacts: river water pollution, damage to agricultural land, destruction of forest areas, causing casualties, causing landslides, and disrupting public health. Therefore, the government should facilitate and determine community mining areas.

**Keywords:** Sanctions; Criminal; Mining; Illegal

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## 1. Introduction

Indonesia is a country that has been blessed by God with natural wealth.<sup>1</sup> One of Indonesia's natural resources is mining.<sup>2</sup> Mining materials or excavated materials are controlled by the state, and state control includes the right to regulate, lead and supervise the management or extraction of excavated materials, as well as the obligation to use them for the benefit of the community.<sup>3</sup> Article 33 paragraph (3) means that minerals and earth energy as important natural resources in the jurisdiction of Indonesia are national wealth owned by the state.<sup>4</sup>

Given that minerals and coal are non-renewable natural resources, the regulation must be carried out in the best possible way, effective, open, and environmentally sound, and achieve the best results that can benefit the welfare of the people in a sustainable manner. In this regard, the government has issued laws and regulations, namely Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mining and Coal Mining, hereinafter referred to as the Mineral and Coal Law, becoming the legal basis for steps to improve and reorganize the governance and operation of mining and coal businesses.<sup>5</sup>

Gorontalo is one of the provinces in Indonesia that has the potential of gold mineral resources, in addition to other natural resources.<sup>6</sup> The gold potential is found in several districts, namely, Gorontalo Regency, North Gorontalo Regency, Pohuwato Regency and Bone Bolango Regency. In Pohuwato Regency the gold potential in this region is estimated to be 1,800,000,000m<sup>3</sup>, spread across Marisa, Taluditi Districts of Paguat, Popayato and Patilanggio.<sup>7</sup>

Mining management must be able to improve people's welfare, including mining activities managed by the people in the form of community mining which has been carried out illegally. Illegal mining that often occurs is gold mining or commonly

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<sup>1</sup> Aullia Vivi Yulianingrum et al., "Government Policies for the Natural Resource Management of Minerals and Coal Based on Social Welfare," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 20, no. 1 (January 3, 2022), <https://doi.org/10.31941/PJ.V20I1.1715>. 28.

<sup>2</sup> Simon F. Sembiring, *Jalan Baru Tambang: Mengalirkan Berkah Bagi Anak Bangsa* (Jakarta: Gramedia, 2009). 88

<sup>3</sup> Maya Lasena et al., "Cockfighting Gambling Criminal Acts Commitment," *Estudiante Law Journal* 4, no. 2 (June 1, 2022): 77-90, <https://doi.org/10.33756/ESLAJ.V4I2.16039>.

<sup>4</sup> Ahmad Ahmad, "Measuring The Application of Corporate Social Responsibility of PT. Gorontalo Minerals," *Estudiante Law Journal* 4, no. 2 (February 15, 2022): 132-45, <https://doi.org/10.33756/ESLAJ.V4I2.16489>.

<sup>5</sup> Sanawiah Sanawiah and Istani Istani, "Penegakan Hukum Pertambangan Tanpa Izin Berbasis Transendental," *Satya Dharma: Jurnal Ilmu Hukum* 5, no. 1 (June 30, 2022): 27-39, <https://doi.org/10.33363/SD.V5I1.799>. 28-29.

<sup>6</sup> Indah Amanah Poetri Soedasn Oei Pantouw and Ahmad Ahmad, "Perlindungan Hukum Terhadap Masyarakat Akibat Penambangan Emas Di Sungai Tulabolo Yang Tercemar Merkuri," *Borneo Law Review* 6, no. 2 (2022): 187-204, <https://doi.org/10.35334/BOLREV.V6I2.3242>.

<sup>7</sup> Fenty Puluhulawa and Amanda Adelina Harun, "Policy Formalization of Artisanal and Small-Scale Gold Mining (ASGM) Post-Ratification of Minamata Convention for Sustainability (Case Study of ASGM Gorontalo)," *E3S Web of Conferences* 125 (October 28, 2019): 02006, <https://doi.org/10.1051/E3SCONF/201912502006..1>.

abbreviated as PETI,<sup>8</sup> such as those in Dengilo District, especially in Popaya Village and Karya Baru Village. Based on preliminary observations, small-scale mining in Kec. Dengilo, specifically in Popaya and Karya Baru villages is included in the type of illegal gold mining (PETI) with an area of 57.22 Ha.<sup>9</sup>

Community mining carried out by the community in Dengilo District since 1957 has been operating in traditional ways, but since 2014 mining business actors began to use heavy equipment (excavators) to dig materials, causing the Tihu'o river to be polluted.<sup>10</sup>

Mining without a permit has a considerable impact, especially negative impacts on ecological aspects, especially those around mining, besides that mining without a permit has a less environmentally friendly impression that only affects personal or group interests in seeking profits in a short time without paying attention to the surrounding environment which will be polluted and have an impact on the wider community.

Because of this condition, law enforcement officials carried out control at the mine site, and in May 2023 Pohuwato Police officers succeeded in arresting 4 heavy equipment operators and in June 9 suspected illegal miners were determined to be included in the Panua Nature Reserve. The arrested perpetrators are still in the legal process stage. Despite the control by law enforcement officials, the perpetrators continued to carry out activities at the gold mining site using heavy equipment, and to trick the officers, the miners carried out activities at night and even the perpetrators did not coordinate with the village government.

Seeing these activities, the actions of the perpetrators in carrying out illegal mining include criminal acts that violate Article 158 of Law No. 3 of 2020, namely Whoever mines without a permit as referred to in Article 35 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000,000.00 (one hundred billion rupiah). The application of these sanctions is very necessary because illegal mining causes damage to the surrounding environment, such as polluted river water, landslides and so on.

Based on this description, the formulation of the problem is how to apply criminal sanctions to illegal mining actors according to Law Number 3 of 2020 in Dengilo District, Pohuwato Regency? and what is the impact of illegal mining in Dengilo District, Pohuwato District?.

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<sup>8</sup> Mohammad Syauqi Pakaya and Ahmad Wijaya, "Efektivitas Penegakkan Hukum Terhadap Lingkungan Hidup Dalam Pertambangan Emas Tanpa Izin Di Desa Popaya, Kecamatan Dengilo, Kabupaten Pohuwato," *Borneo Law Review* 6, no. 2 (January 2, 2022): 236-53, <https://doi.org/10.35334/BOLREV.V6I2.3246>.

<sup>9</sup> Interview with Mr. Nakir Ismail as Head of Dengilo Sub-District, July 24, 2023.

<sup>10</sup> *Ibid*

## 2. Method

The method used is an empirical legal research method. Empirical legal research is a study to obtain information directly from the public,<sup>11</sup> By observing the obvious facts about human behavior, both verbal behavior obtained from interviews and real behavior realized through direct observation.<sup>12</sup> This research was conducted in Dengilo District, Pohuwato Regency, especially in Popaya Village and Karya Baru Village. The reason is that in the area there is community mining (illegal). In legal research, the types and sources of data used, namely primary data and secondary data. Primary data is data obtained directly from the field or data obtained from the source either through observation and interviews.<sup>13</sup> Secondary data is supporting data in completing primary legal data obtained from official documents, literature, laws and regulations, and all information related to the object under study. Data analysis used in research is using qualitative descriptive analysis methods.

## 3. Application of Criminal Sanctions Against Illegal Mining Perpetrators According to Law Number 3 of 2020 in Dengilo District, Pohuwato Regency

Development activities generally require increasing natural resources, thus providing an impact in the form of pollution and environmental damage.<sup>14</sup> This situation results in reduced carrying capacity, carrying capacity, and productivity of the environment which ultimately becomes a social burden. When comparing the current natural and environmental conditions with conditions a few decades ago, it feels a very far difference.<sup>15</sup> Development on the one hand has brought great progress to the welfare of the people, but on the other hand has damaged the environment, one<sup>16</sup> of which is illegal mining.

The problem of illegal mining in Kec. Dengilo has had an impact on the environment, social community and law, because in practice illegal mining does not comply with applicable rules or norms, where miners have used heavy equipment at the mine site, thus potentially damaging the environment, one of which causes landslides. In the case of unlicensed gold mining, Article 158 of Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining will be applied. Article 158 of Law Number 3 of 2020 concerning Amendments to the Mining Law reads:

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<sup>11</sup> Bambang Sunggono, *Metode Penelitian Hukum* (Jakarta: Rajawali Press, 2012). 42

<sup>12</sup> Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Empiris Dan Normatif* (Jakarta: Pustaka Pelajar, 2010). 280.

<sup>13</sup> Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2009). 106

<sup>14</sup> Zamroni Abdussamad et al., "Pendekatan Cultural Studies Perlindungan Hukum Bagi Penyandang Disabilitas Di Kabupaten Boalemo," *Community Development Journal : Jurnal Pengabdian Masyarakat* 4, no. 2 (June 29, 2023): 5272-79, <https://doi.org/10.31004/CDJ.V4I2.16597>.

<sup>15</sup> Mohammad Abdi Lanjahi et al., "Analisis Yuridis Terhadap Perlindungan Ekspresi Budaya Tradisional Provinsi Gorontalo," *Perkara : Jurnal Ilmu Hukum Dan Politik* 1, no. 3 (August 20, 2023): 161-82.

<sup>16</sup> D. Nurwanti, Y. D., Zaelani, M. A., & Irawati, "Penegakan Sanksi Pidana Dalam Kasus Usaha Tambang Mineral Dan Batubara," *Amnesti: Jurnal Hukum* 4, no. 2 (2022): 133-43, <https://doi.org/https://doi.org/10.37729/amnesti.v4i2.2097>. 135.

"Whoever mines without a permit as referred to in Article 35 shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000,000.00 (one hundred billion rupiah)."<sup>17</sup>

Based on the data obtained, the Pohuwato Regional Police determined 4 suspects in May 2023. The four suspects RM (19), Sp (29), As (33) acted as operators, and GL (40) as the person in charge. Perpetrators carry out activities at the mine site using heavy equipment without a permit. Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining has regulated who can be punished, among others:<sup>18</sup>

- 1) Individual Person;
- 2) Management of legal entities; and
- 3) Legal Entity.

The articles imposed related to the Mining/Mining Law are Article 158, and Article 55 of the Criminal Code, with a penalty of 6 years in prison. If you look at the case, then the four perpetrators who have carried out illegal mining in Kec. Dengilo has fulfilled the elements contained in Article 158, namely whoever mines without a permit will be subject to criminal sanctions. The perpetrator has carried out illegal mining using heavy equipment that is not by the law, namely mining carried out by the perpetrator is carried out illegally which can hurt the environment. The sanctions applied to the perpetrators are seen by the role of each perpetrator as Article 55 of the Criminal Code. In Article 55 of the Criminal Code paragraph 1 that the perpetrators of the crime are divided into four groups:<sup>19</sup>

1. Persons who commit criminal offenses themselves;
2. People who tell others to commit are not criminals;
3. People who also commit criminal acts;
4. People who knowingly persuade or move others to commit a criminal offense.

The main element in this Article 158 or *bestanddeel delict* that must be proven is mining illegally, or if it is related to a community mining permit is that any person who conducts mining without a permit at a community mining site will be punished under the provisions of this article. Prison sanctions and fines imposed on perpetrators of unlicensed gold mining can be seen from the quality of mistakes and the role of the perpetrators because in the criminal act of unlicensed gold mining may be carried out by more than one perpetrator or *participation (deelneming)*. In this case, each perpetrator certainly has a different role of 3 people as operators and 1 person as the person in charge. Of course, the sanctions given must be different according to the role performed. In the application of Article 158, the imposition of criminal law is

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<sup>17</sup> Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

<sup>18</sup> Salim HS, *Hukum Pertambangan* (Jakarta: Raja Graindo Persada, 2004). 223

<sup>19</sup> Article 55 of the Criminal Code

cumulative, namely sentenced to 2 types of basic crimes, imprisonment and fines, if the fine is not paid by the defendant, it will be replaced with imprisonment.

The process of implementing criminal sanctions against illegal mining actors in Dengilo District, Pohuwato Regency went through several stages. The stages include::

#### 1. Research

Investigation is a series of investigator actions to find and find an event that is suspected to be a criminal event to determine whether or not an investigation can be carried out. In this case, investigators have investigated in Dengilo District, especially in Popaya Village and Karya Baru Village, that there has been a criminal act committed by the perpetrators, namely 3 perpetrators as operators and 1 person in charge of mining and using heavy equipment at the mine site, even though the mining area does not have a permit.

#### 2. Investigation

Investigation is a series of actions of investigators in the manner provided for in the law, to search and collect evidence to make light of the criminal act that occurred and to find suspects. Investigation is a process or first step in solving a crime.

Investigators are police officials or certain Civil Service Officials who are specially authorized by law to conduct investigations. The purpose of the investigation is to pinpoint anyone who has committed the crime and provide evidence related to the matter that has been committed. To achieve this purpose, the investigator will collect information about certain facts or events. From the investigation carried out, heavy equipment in the form of excavators was found in the area of the people's mining site in Kec. Dengilo, it is clear that it is contrary to what has been regulated in the provisions of Article 158, so the existence of this evidence makes it easier for the authorities to find the perpetrators.<sup>20</sup>

#### **4. Impact of Illegal Mining in Dengilo District, Pohuwato Regency**

Mining is one of the most reliable jobs after agriculture. However, it is very unfortunate that many abuse mining to get more profits and convenience by mining without a permit.<sup>21</sup>

Dengilo Sub-district is one of the sub-districts in Pohuwato Regency, has problems related to illegal gold mining, especially in Popaya Village and Karya Baru Village. Both villages are gold mining areas with abundant results, this attracts the attention of not only the local community but also attracts people outside Dengilo District to come to carry out mining activities. Illegal mining began with the existence of traditional miners, which then developed due to poverty, limited employment, and

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<sup>20</sup> The results of an interview with the Head of Operations (KBO) of the Pohuwato Ipda Yoontan Police Reskrim Robert Frans on October 27, 2023.

<sup>21</sup> Irwan Irwan, "Perizinan Pertambangan Emas Di Kabupaten Pohuwato," *Journal of Lex Theory (JLT)* 3, no. 1 (June 30, 2022): 33–45, <https://doi.org/10.52103/JLT.V3I1.958>. 3

business opportunities. This is what causes miners to continue to carry out these activities despite the prohibition from the authorities. The impact of activities caused by illegal gold mining in Dengilo District is divided into two, among others:

1) Positive impact

- a. Provide real added value for the economic growth of the mining community in the village. It is proven that most people have motorized vehicles and good houses.
- b. Accommodating labor, especially the community around the mining area. It can be seen that most of the people living around the mining area make a living as miners, even children who have dropped out of school have begun to join their parents to the mine.
- c. Increase the original income of the region/village. With the increase in the income of the miners, it can certainly increase the original income of the region/village. However, this last point has not been effective because of the mining carried out in Kec. Dengilo is only carried out secretly because it does not have a permit, so there is no contribution to the village.

2) Negative Impact

The negative impacts of illegal mining activities in Dengilo District include::

a. Swaga water pollution

Illegal gold mining automatically causes pollution of river water. Initially, the river in Karya Baru Village was used by the community to bathe, and wash, and even before there was PDAM water they used it for drinking. Everything changed after there was illegal gold mining. Tihuo River water is now polluted due to mining activities which causes the river water to turn brown, and turbid, so it cannot be used by the surrounding community. This is because in the process of processing gold, miners use mercury. Their reason is that using substances can speed up the process of processing gold. Changes in the color of river water to become cloudy due to the use of mercury are certainly harmful to public health.

b. Destruction of agricultural land

The impact of gold mining in Dengilo District causes farmers' rice fields around the mine to no longer be used<sup>22</sup> because they have been mixed with mud, causing the rice to become stunted so that rice growth is not optimal.

c. Soil pollution

The land in Karya Baru Village is polluted, namely there is a large hole that is only left to cause waterholes and with a very high acid content. The puddle

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<sup>22</sup> The result of an interview with Mr. Inton as a landowner in Popaya Village, on October 28, 2023.

water contains harmful chemicals. Toxic chemicals if in large quantities are toxic to plants which results in plants cannot develop properly. As a result of soil pollution, the plants on it will die.

d. Destruction of forest areas

Gold mining carried out in the Dengilo sub-district caused forest destruction. Because in the opening of the mining area, many trees were cut down, causing floods and droughts.

e. Inflicting casualties

Mining activities carried out in Kec. Dengilo uses manual techniques so that they are very dangerous and can threaten the safety of miners, In 2021 there was a landslide that caused 1 miner to die crushed by material. In addition, 1 child aged 10 years drowned in a former mining pit.<sup>23</sup>

f. Causes landslides

The location of gold mining in Dengilo District, especially in Popaya Village and Karya Baru Village, is carried out traditionally, and of course, mining activities carried out by miners have the potential to increase the threat of landslides, because based on the interview results that miners dig hills not in tiers, but they just dig and the mining area excavation openings that are irregular and form straight and hanging walls are very vulnerable to collapse/landslides So that it can threaten the life safety of miners.<sup>24</sup> Currently, residents have begun to dig soil or material using heavy equipment to a depth of about 10 meters but have not made efforts to reclaim or reforest the excavated area. And if there is no gold then miners immediately move to new land.

g. Threats to health

Gold processing in Kec. Dengilo uses mercury or called mercury. Mercury/mercury can speed up the process of processing gold, so even though it is prohibited miners still use the substance.<sup>25</sup> Heavy metals can cause an increase in chemical elements in the body of living things and of course can have an impact on public health in the mining site area, one of which causes skin diseases (itching and respiratory infections).

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<sup>23</sup> <https://newsnesia.id/bocah-10-tahun-di-pohuwato-tewas-tenggelam-dibekas-galian-tambang/> di akses tanggal 07 November 2023.

<sup>24</sup> Results of interviews with miners, Mr. Alan, and Mr. Kono, On November 3, 2023.

<sup>25</sup> Interview with miners, Mr. Alan, and Mr. Kono, on October 28, 2023.



## 5. Conclusion

The application of criminal sanctions against illegal mining actors in Dengilo District, Pohuwato Regency based on Law Number 3 of 2020 has been implemented by applicable regulations, namely not deviating from the elements and provisions of the relevant Law, even though there are still many mining actors who have not been caught. The impact caused by illegal gold mining in Dengilo District is divided into two, namely positive impacts and negative impacts. Positive impacts include: providing real added value for the economic growth of the mining community, accommodating labor, especially communities around the mining area, improving the standard of living and human resources around the mine, increasing micro businesses and services around the mine, and increasing the original income of the region/village. The negative impacts caused are river water pollution, damage to agricultural land, soil pollution, damage to forest areas, cause casualties, landslides, and health threats. Thus, the government should facilitate and determine community mining areas and provide education/socialization to the community regarding provisions governing mining problems and sanctions for violators.

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