



## Factors Affecting The Imposition Of Sanctions For The Crime Of Unlicensed Black Stone Mining

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**Abstract:** The purpose of the research is to find out what factors influence the imposition of sanctions for illegal mining crimes. The research method used in this research is the normative research method by taking a statutory approach. The results of this research are illegal mining, which is carried out by people or companies without having a license, operational procedures, government regulations, or Good Mining Practice principles, has an impact that is divided into three sides, namely economic, social, and environmental. The impact of the imposition of criminal sanctions on illegal mining crimes is stronger law enforcement in protecting natural resources and the environment. With strict criminal sanctions, it is expected to reduce or prevent the occurrence of illegal mining activities that harm the state and society. In addition, the imposition of criminal sanctions also provides a deterrent effect to criminal offenders and the wider community not to violate the law in mining activities. This is a hope to be able to create better and sustainable mining governance in Indonesia.

**Keywords :** Imposition of Sanctions; Criminal Offense; Illegal Mining

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# 1. Introduction

The control of minerals by the state contains the authority to regulate, manage, and observe mining or exploitation activities of minerals, as well as the responsibility to utilize them as best as possible for the welfare of the people.<sup>1</sup> This authority to control natural resources is exercised by the government. The concept of state control rights over all natural resources includes the understanding that the Indonesian people are entitled to benefit from the wealth owned by the state through the management of natural resources aimed at improving their welfare.<sup>2</sup>

Article 1 paragraph (1): Mining is part or all stages of activities in the context of research, management and exploitation of minerals or coal which include general investigation, exploitation, feasibility study, construction, mining, processing and refining, transportation and sales and post-mining activities.

Natural resource management, including mining, requires an official license from the government as one of its important aspects.<sup>3</sup> Mining covers a range of activities involving the research, management and exploitation of minerals or coal. The stages in mining may include general investigation, exploitation, feasibility study, construction, mining, processing and refining, transportation, sales, and post-mining activities. All of these activities must be carried out in accordance with licenses granted by the government as a form of regulation and supervision in the management of these natural resources.<sup>4</sup>

According to Law No. 4/2009 on Mineral and Coal Mining, mining involves various activities such as exploration, feasibility study, construction, mining, processing and refining, transportation, marketing, and post-mining. These activities have a significant impact on the environment and often generate mining waste that must be adequately managed. The mining industry is a major sector that produces mineral resources, and these resources serve as important raw materials for other industries that fulfill human needs. However, it is important to remember that mining can also cause serious environmental pollution and damage if not managed properly.<sup>5</sup>

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<sup>1</sup> Tri Hayati, *Era Baru Hukum Pertambangan: Di Bawah Rezim UU No. 4 Tahun 2009* (Yayasan Pustaka Obor Indonesia, 2015),

<sup>2</sup> Adrian Sutedi M.H.S. H., *Hukum Pertambangan* (Sinar Grafika, 2022).

<sup>3</sup> Laura Sharendova Gunawan, "Konflik Pertambangan di Indonesia: Studi Kasus Tambang Emas Martabe dan Upaya Meningkatkan Partisipasi Masyarakat dan Penegakan Hukum dalam Industri Pertambangan," *Jurnal Pendidikan Tambusai* 7, no. 1 (2023): 2062-74.

<sup>4</sup> Tri Hayati, "Hak Penguasaan Negara Terhadap Sumber Daya Alam Dan Implikasinya Terhadap Bentuk Pengusahaan Pertambangan," *Jurnal Hukum & Pembangunan* 49, No. 3 (30 September 2019): 768-87, <https://doi.org/10.21143/jhp.vol49.no3.2199>.

<sup>5</sup> Fikri Rosyad Fathurrahman, "Pengawasan Dan Penegakan Hukum Pada Pelaksanaan Reklamasi Dan Pascatambang Oleh Korporasi Nikel Ditinjau Dari Undang-Undang Nomor 3 Tahun 2020 Tentang Pertambangan Mineral Dan Batubara" (Thesis, Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/48499>.

Mining generally refers to activities that involve the extraction of minerals and other mining materials from the earth, with the aim of extracting the natural resources contained therein. Mining is the process by which extractable materials from the earth are extracted, while the term "mine" refers to the location or place where mining activities are carried out.

Unlicensed mining has serious adverse consequences for both the legal permit holder and the surrounding environment. Illegal mining not only violates the law, but also potentially jeopardizes the safety of workers due to the lack of compliance with adequate safety standards in mining activities. In addition, illegal mining can also cause negative impacts on the environment, such as landslides, flooding and decreased soil fertility. The existence of unlicensed mining or illegal mining also has the potential to cause social problems, security disturbances, and land damage. Such actions are considered crimes or criminal acts that harm society and must be dealt with legally.<sup>6</sup>

Mining activities are of concern to the Government of Indonesia, because mining is a crucial matter that can at any time eliminate justice for the entire Indonesian nation so that legal sanctions if you do not have a mining business license are very clear.<sup>7</sup> As was done by I and his co-defendant Huang Dingsheng alias Mr. Huang Chen Jinping alias Mr. Chen as the defendant as the second defendant for unlicensed mining management after establishing a company called PT. Wanhong Non Ferrous Recycling Utilization, then between Defendant I Huang Dingsheng alias Mr. Huang, son of Huang C haoxi and Defendant II Chen Jinping Alias Mr. Chen, son of Chen Xi Shu, divided the duties and roles of each in work matters, where Defendant Dingsheng alias Mr. Huang Huang was tasked with handling company affairs, while Defendant Chen Jinping alias Mr. Chen was tasked with finding mine sites with the main criteria focused on Chen Xi Shu. Mr. Chen was tasked with finding mine sites with the main criteria focused on mineral rocks termed in Chinese as "Tong Jin Kuang" or in Indonesian as "black stone" or "galena stone", because Defendant I and Defendant II knew exactly that there was high economic value from the copper content and other minerals in the galena stone, then to realize the goal of Defendant I and Defendant II who wanted to find galena stones, Defendant II communicated with Witness Suryanto alias Xiaochun An alias Aan who was in Gorontalo to discuss work issues, namely discussing mining locations and asking Witness Suryanto alias Xiaochun An alias Aan to look for black stones or galena stones to be taken and utilized.

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<sup>6</sup> Failin Failin Dan Anny Yuserlina, "Peranan Unit Tipidter (Tindak Pidana Tertentu) Dalam Mencegah Terjadinya Tindak Pidana Pertambangan Tanpa Izin Di Wilayah Hukum Polda Sumatera Barat," *Ensiklopedia Of Journal* 5, No. 4 (1 Juli 2023): 275–86, <https://doi.org/10.33559/Eoj.V5i4.1856>.

<sup>7</sup> Dwi Prilmilono dan Ahmad Zuhairi, "Konsep hukum pertambangan rakyat (studi di Kabupaten Lombok Barat)," *Jurnal IUS Kajian Hukum dan Keadilan* 4, no. 1 (2016), <https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/421>.

The study of Decision No. 177/Pid.Sus/2022/PN GTO is one of the interesting decisions to be analyzed in relation to the imposition of criminal sanctions on perpetrators of illegal mining crimes. And the Decision of the Sanggau District Court Number 341/Pid.B/LH/2021/PN Sag Against the Crime of Mining without a License, which is the same crime but has different penalties, so through the analysis of this decision, it can be seen how the process of imposing criminal sanctions on perpetrators of illegal mining crimes, as well as what factors influence the imposition of criminal sanctions.

By analyzing the decision, it is hoped that it can provide a better understanding of law enforcement related to illegal mining crimes in Indonesia. In addition, the results of this analysis can also be taken into consideration for relevant parties in formulating more effective policies in combating illegal mining crimes.

## **2. Method**

The research method used in this research is the normative research method by taking a statutory approach.<sup>8</sup>

## **3. Factors influencing the imposition of sanctions for illegal mining crimes in decision No. 177/Pid.Sus/2022/PN Gto**

Illegal mining is something that we have often heard about because it often occurs in our country which is spread in various regions in Indonesia which have potential in the mining sector.<sup>9</sup> Illegal mining that often and widely occurs is gold mining. Unlicensed Gold Mining or commonly abbreviated as PETI and Gold mining is a mine with the highest amount of pollution of mining materials.

Of course, mining without a license has a considerable impact, especially the negative impact on ecological and socio-economic aspects to local communities, especially those around the mine. In addition, unlicensed mining has a less environmentally friendly impression that only prioritizes 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.<sup>10</sup>

Factors that influence the imposition of sanctions for illegal mining crimes can include the following:

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<sup>8</sup> Zainuddin Ali, *Metode penelitian hukum* (Sinar Grafika, 2021).

<sup>9</sup> Herman Herman dkk., "Penegakan Hukum Terhadap Tindak Pidana Penambangan Mineral di Kawasan Hutan Tanpa Izin," *Halu Oleo Legal Research* 4, no. 2 (2022): 261–75.

<sup>10</sup> Merlin Paramita Damar, Fanley N. Pangemanan, dan Welly Waworundeng, "Fungsi Pemerintah Dalam Menertibkan Pertambangan Emas Tanpa Izin (Peti) Di Desa Laine Kecamatan Manganitu Selatan Kabupaten Kepulauan Sangihe," *GOVERNANCE* 2, no. 1 (13 April 2022), <https://ejournal.unsrat.ac.id/v3/index.php/governance/article/view/40167>.

a) Laws and Regulations

The imposition of sanctions for illegal mining crimes is based on the provisions stipulated in Law Number 4 of 2009 concerning Mineral and Coal Mining. This law states that conducting mineral and coal mining without a license or violating applicable provisions can be considered a criminal offense. In addition, there are also derivative regulations that regulate in more detail the criminal sanctions that can be given, such as Regulation of the Minister of Energy and Mineral Resources Number 11 of 2020 concerning Procedures for Settlement of Violations in the Mineral and Coal Sector.<sup>11</sup>

b) Violation of the law

The defendant committed the crime of illegal mining which is contrary to the law prohibited by Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining as amended by Law of the Republic of Indonesia Number 3 of 2020. This offense is one of the main factors that influence the imposition of sanctions.<sup>12</sup>

c) Defendant's involvement

Defendant I and defendant II were involved in the crime of illegal mining, both as the main perpetrator and as an assisting or participating party. Their involvement in the activities of processing, refining, developing, utilizing, transporting, and selling minerals and/or coal is a factor that affects the imposition of sanctions.

d) Absence of a valid license

The company conducting mining activities in this case does not have a Business License (NIB) for the Gorontalo Province area, but only has a license for the Palu area, Central Sulawesi Province. This shows that the mining activities carried out by the company are classified as illegal or unlicensed. This factor also influenced the sanction imposed on the defendant.

e) Level of Environmental Loss and Impact

The imposition of sanctions is also influenced by the level of losses caused by illegal mining crimes. Losses can include financial losses, environmental losses, or social losses. The greater the losses incurred, the more severe the sanctions.

f) Mitigation Factors

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<sup>11</sup> Alvika Fatmawati Dwi Putri dan Mujiono Hafidh Prasetyo, "Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Di Bidang Pertambangan," *Jurnal Pembangunan Hukum Indonesia* 3, no. 3 (2021): 312-24.

<sup>12</sup> Oheo Kaimuddin Haris dkk., "Pertanggungjawaban Pidana Penyalahgunaan IUP (Izin Usaha Pertambangan) yang Berimplikasi Kerusakan Hutan (Studi Kasus Putusan Nomor 181/Pid. B/LH/2022/PN. Unh.)," *Halu Oleo Legal Research* 5, no. 1 (2023): 290-306.

In imposing sanctions, mitigating factors can also be considered. Mitigating factors can be in the form of cooperation from the defendant, remorse shown, or reimbursement of losses that have been caused. These mitigating factors can influence the judge's judgment in determining a lighter sanction.

Following the examination of legal factors, it is crucial to consider the social factors that influence the imposition of sanctions in illegal mining cases. Social factors encompass the broader impact of the crime on the community and how justice is perceived by the public. These factors play a significant role in shaping judicial decisions, as the repercussions of illegal mining extend beyond legal boundaries and affect societal well-being. The following section will delve into the various social aspects that judges must take into account when determining appropriate sanctions for illegal mining activities.

a. Social Factors

Social factors include the social impact of illegal mining crimes and how the community perceives justice in the case.<sup>13</sup>

1. Impact on the Community Illegal mining often has significant negative impacts on the community, such as environmental damage, loss of livelihoods, and health problems. Judges must consider the extent to which the defendant's actions affect the welfare of the surrounding community.
2. Public Perception of Justice Public opinion can influence judges' decisions, especially in cases that receive widespread attention. Public perception of how fair the sanctions are will affect the community's trust in the judicial system.
3. Pressure from Interest Groups Environmental groups and civil society often advocate for stricter law enforcement against illegal mining perpetrators. Pressure from these groups can influence judges' decisions to impose harsher sanctions.

b. Economic Factors

Economic factors include the economic benefits derived from illegal mining activities and the economic losses caused by these activities.<sup>14</sup>

1. Economic Benefits for the Defendant Illegal mining is often carried out to obtain significant economic benefits. Judges must consider the extent

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<sup>13</sup> Alif Rosyad Sulthon, "Tinjauan Hukum Positif dan Hukum Islam terhadap Dampak Sosial Kegiatan Penambangan Pasir dan Batu di Kabupaten Klaten" (PhD Thesis, Universitas Islam Indonesia, 2023), <https://dspace.uui.ac.id/handle/123456789/47968>.

<sup>14</sup> Rahmat Dwi Purwanto, "Dampak Sosial Ekonomi dan Lingkungan Penambangan Batubara Ilegal di Desa Tanjung Lalang Kecamatan Tanjung Agung Kabupaten Muara Enim" (Skripsi: Universitas

of the benefits obtained by the defendant from these illegal activities in determining the amount of sanctions imposed.

2. **Economic Losses for the State** Illegal mining activities harm the state by losing potential revenue from taxes and royalties. These losses must be taken into account in the imposition of sanctions as a form of compensation or reparation.
3. **Economic Impact on the Community** In addition to losses for the state, the local community often suffers economic losses due to illegal mining. Damage to agricultural land, water pollution, and infrastructure damage are some examples of economic impacts that judges must consider.

c. **Individual Factors**

Individual factors include the background and personal conditions of the defendant that can influence the judge's decision in imposing sanctions.

1. **Criminal Record of the Defendant** The defendant's criminal history, including whether the defendant has previously committed similar offenses, will influence the severity of the sanctions imposed. Repeat offenders tend to receive harsher sanctions.
2. **Remorse and Cooperative Attitude** The defendant's cooperative attitude during the investigation and trial process, as well as the remorse shown for their actions, can be factors that mitigate the sanctions.
3. **Economic and Social Conditions of the Defendant** the economic and social conditions of the defendant, including family responsibilities and health conditions, can also be considered by the judge in imposing more humane sanctions.

Illegal mining, which is carried out by communities or companies without having a license, operational procedures, government regulations, or Good Mining Practice principles, has an impact that is divided into three sides: economic, social, and environmental.<sup>15</sup> The economic impact of illegal mining is the massive exploitation of natural resources, distribution, and illegal sale of mining products. This leads to evasion of state taxes and undermines market prices, as mined products are generally sold below market prices.

Environmental impacts include environmental degradation, environmental pollution, landslide and flood risks, and reduced animal populations and habitats. Illegal mining also contributes to widespread environmental degradation.

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Sriwijaya, (2015),  
[https://repository.unsri.ac.id/55611/2/RAMA\\_69201\\_07081002023\\_0031126609\\_0004057701\\_01\\_from\\_t\\_ref.pdf](https://repository.unsri.ac.id/55611/2/RAMA_69201_07081002023_0031126609_0004057701_01_from_t_ref.pdf).

<sup>15</sup> Ir Irwandy Arif, *Good mining practice di Indonesia* (Gramedia pustaka utama, 2021)

The social impacts of illegal mining are related to the activities of communities around the mine. For example, companies or communities involved in illegal mining often ignore the safety of mine workers and the surrounding community. Uncontrolled illegal mining can result in the formation of pits or tunnels that reduce oxygen availability.<sup>16</sup> In addition, miners who lack adequate education and training also risk their safety. Not only that, communities around illegal mines are also affected by the disruption of their livelihoods due to environmental damage.

The impact of the imposition of criminal sanctions on illegal mining crimes is stronger law enforcement in protecting natural resources and the environment. With strict criminal sanctions, it is expected to reduce or prevent the occurrence of illegal mining activities that harm the state and society.<sup>17</sup> In addition, the imposition of criminal sanctions also provides a deterrent effect to criminal offenders and the wider community not to violate the law in mining activities. This is a hope to be able to create better and sustainable mining governance in Indonesia.

## 5. Conclusion

Case study verdict No. 177/Pid.Sus/2022/PN GTO, there are considerations of judges in determining the imposition of criminal sanctions against perpetrators of illegal mining. These considerations are based on the principles of justice, legal certainty, and effective law enforcement. Judges consider various factors, such as the amount of state losses due to illegal mining and the level of guilt committed by the perpetrator. Illegal mining has a detrimental impact, both for official permit holders and the environment. Perpetrators of illegal mining can be subject to criminal sanctions in accordance with the provisions in Law Number 4 of 2009 concerning Mineral and Coal Mining. Criminal sanctions that can be given include imprisonment and fines. The factors that influence the decision of Decision Number 177/Pid.Sus/2022/PN Gto are laws and regulations, violation of the law, involvement of the defendant, absence of a valid permit, level of loss and environmental impact, and mitigation factors.

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<sup>16</sup> Dwi Fitriandhini dan Aprizon Putra, "Dampak Kerusakan Ekosistem Hutan Oleh Aktivitas Manusia: Tinjauan Terhadap Keseimbangan Lingkungan dan Keanekaragaman Hayati," *Jurnal Kependudukan dan Pembangunan Lingkungan* 3, no. 3 (2022): 217–26.

<sup>17</sup> Safitri Wikan, "Penegakan Hukum Pidana Berbasis Sustainable Ecological Development Dengan Plea Bargaining Terhadap Tindak Pidana Perusakan Lahan Tambang Di Kalimantan Selatan," *De Lega Lata: Jurnal Ilmu Hukum* 6, no. 1 (2021): 49–64.



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