

## RESPONSIVE LAW ENFORCEMENT IN PREVENTING AND ERADICATING ILLEGAL MINING IN INDONESIA

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### ABSTRACT

**Purpose:** The objective of this study is to assess and appraise the efficacy of responsive law enforcement in the context of preventing and eliminating illegal mining activities in Indonesia.

**Theoretical Framework:** The mining industry plays a significant role in contributing to the national income. However, it is vital to acknowledge that mining activities can also have adverse effects on the environment, natural resource conservation, and even the overall economy of a country. One of the mining enterprises that can potentially give rise to these issues is unauthorized mining.

**Methods:** Illegal mining is a transgressive activity that encompasses the essential components of a penal offense, hence necessitating the involvement of law enforcement agencies to safeguard the long-term viability of development in Indonesia. This study employs the Normative Research Method, specifically utilizing library materials as primary data sources in the science field. These materials are categorized as secondary data, and the research approach adopted is library research.

**Results:** The findings of this study demonstrate the significant ramifications of illicit mining activities in Indonesia across three primary dimensions: economic, environmental, and social. The economic impact includes loss of state revenue and unfairness in business competition. Environmental impacts include ecosystem degradation, water and soil pollution, and threats to biodiversity.

**Conclusions:** To overcome this problem, a responsive law enforcement approach is needed, including community involvement, flexibility in handling situations, prevention and education, transparency, collaboration, and adequate sanctions. With collaboration between government, communities, and stakeholders, Indonesia can achieve sustainable and equitable development while tackling illegal mining.

**Keywords:** law enforcement, responsive law, environment, illegal mining.

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## APLICAÇÃO RESPONSIVA DA LEI NA PREVENÇÃO E ERRADICAÇÃO DA MINERAÇÃO ILEGAL NA INDONÉSIA

### RESUMO

**Objetivo:** O objetivo deste estudo é avaliar e avaliar a eficácia da aplicação da lei com capacidade de resposta no contexto da prevenção e eliminação de atividades de mineração ilegal na Indonésia.

**Estrutura teórica:** A indústria mineira desempenha um papel significativo na contribuição para a renda nacional. No entanto, é vital reconhecer que as atividades de mineração também podem ter efeitos adversos sobre o meio ambiente, conservação de recursos naturais e até mesmo sobre a economia geral de um país. Uma das empresas de mineração que pode potencialmente dar origem a esses problemas é a mineração não autorizada.

**Métodos:** A mineração ilegal é uma atividade transgressiva que abrange os componentes essenciais de um delito penal, necessitando, portanto, do envolvimento de agências de aplicação da lei para salvaguardar a viabilidade a longo prazo do desenvolvimento na Indonésia. Este estudo emprega o Método de Pesquisa Normativa, especificamente utilizando materiais de biblioteca como fontes primárias de dados no campo da ciência. Esses materiais são categorizados como dados secundários, e a abordagem de pesquisa adotada é a pesquisa em biblioteca.

**Resultados:** Os resultados deste estudo demonstram as ramificações significativas das atividades de mineração ilícita na Indonésia em três dimensões primárias: econômica, ambiental e social. O impacto econômico inclui a perda de receitas do Estado e a concorrência desleal no setor empresarial. Os impactos ambientais incluem a degradação do ecossistema, a poluição da água e do solo e as ameaças à biodiversidade.

**Conclusões:** Para superar esse problema, é necessária uma abordagem responsiva de aplicação da lei, incluindo o envolvimento da comunidade, flexibilidade no tratamento de situações, prevenção e educação, transparência, colaboração e sanções adequadas. Com a colaboração entre o governo, as comunidades e as partes interessadas, a Indonésia pode alcançar um desenvolvimento sustentável e equitativo ao mesmo tempo que combate a mineração ilegal.

**Palavras-chave:** aplicação da lei, lei responsiva, meio ambiente, mineração ilegal.

### 1 INTRODUCTION

Natural resource management is a human endeavor that involves the exploration, management, and optimal utilization of natural resources, including water, air, and land, with the ultimate goal of enhancing the well-being of individuals (Altieri, 2002; Olalekan et al., 2019). The principle mentioned is stipulated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. According to this provision, the state assumes ownership of the earth, water, and natural resources. These resources are intended to be utilized to improve the people's welfare. In order to foster economic growth and well-being among Indonesia's populace, engaging in a diverse range of production and business endeavors that contribute to overall development (Najicha, 2021; Tegnan et al., 2021). The mining sector is a significant industry component, exerting a crucial influence.



Indonesia has a substantial array of mining resources, including silver, gold, oil, copper, natural gas, and coal (Suryantoro & Manaf, 2022; Yuniar, 2021; Akili & Achmad, 2023).

Mining in Indonesia can be grouped into three different scales: large-scale mining, medium-scale mining, and small-scale mining, often called community mining (Ali, 2018). Although small-scale mining is generally carried out with limited equipment and facilities, this activity sometimes involves large areas because it involves local communities (Andrew, 2003). The impact of small-scale mining can also create environmental problems, primarily when illegal mining occurs in certain areas. When we consider environmental protection and management, problems such as illegal mining can disrupt the functioning of environmental ecosystems (Transoco et al., 2009).

According to McKay and Bhasin (2001), the extraction of minerals and coal in Indonesia holds significant importance as a non-renewable strategic natural resource, serving as a crucial commodity to fulfill the diverse requirements of numerous individuals. According to Absori et al. (2022), the mining definition can be found in Article 1, 1 of Law Number 3 of 2020, an amendment to Law Number 4 of 2009 about Mineral and Coal Mining. The article above defines mining as a comprehensive set of operations encompassing all phases involved in administering and extracting minerals or coal. The activities encompassed within this domain encompass a wide range of processes, such as preliminary research, surveying, assessing viability, building infrastructure, extracting resources, processing raw materials, purifying substances, advancing operations, utilizing outputs, transporting goods, engaging in sales, and undertaking post-mining endeavors (Nasir et al., 2022).

According to Omalu and Zamora (1999), within the framework of mining legislation, it is stipulated that non-renewable natural resources are seen as a kind of national wealth under the state's ownership. Consequently, the responsibility for their administration is entrusted to the government. The government plays a crucial role in developing policies, as well as regulating, managing, and supervising resource utilization, all to promote the well-being of the populace. The execution of mining operations is conducted by corporations possessing Mining Business Permit Areas (WIUP) (Triatmojo et al., 2020).

The recent amendment to Law Number 03 of 2020, which modifies Law Number 4 of 2009 about Mineral and Coal Mining, has conferred enhanced jurisdiction to the central government in the administration of natural resources within the confines of the



Republic of Indonesia. This expanded authority encompasses the areas of oversight, regulation, and monitoring, thereby imposing heightened accountability on the central government (Fernando et al., 2023). This phenomenon establishes a novel paradigm wherein the central government has expanded jurisdiction to execute governmental operations autonomously. According to Sihombing and Hadita (2021), the revision to Law Number 4 of 2009 regarding Mineral and Coal Mining pertains to administrative matters, as stated in Law Number 3 of 2020. Consequently, to engage in mining activities, getting an IUP (mine business permit) from the respective Regent or Mayor, Governor, and Minister is imperative (Junaidi et al., 2023).

However, in the implementation of mining, only some carry out permits following legislation. In reality, many Mineral and Coal mining business activities still do not have mining business permits (Owen & Kemp, 2013). There are negative impacts caused by mineral and coal mining activities without permits, namely damage to the environment due to areas where mining areas being eroded, causing erosion, waste from mining processing can also pollute the environment, industrial activities that use fossil fuels produce CO<sub>2</sub> which can cause a greenhouse effect and global warming, reducing the quality of life of residents (Yildiz, 2020).

Illegal mining without permits must receive attention from the government. Illegal mining is carried out without permits, operational procedures, and government regulations (Aspinall & Eng, 2001). Based on this, the government should have tried to deal with this matter. However, the absence of government regulations and policies at either the provincial or district level in granting permits to manage natural resources in the regions, especially in business cases, has had a huge impact on the land located in the area around mining locations (Irsan & Utama, 2019).

In addition to this, the cultivation of legal awareness, which is a product of legal culture, can instill in individuals the conviction that compliance with the law is not just motivated by the fear of penalties but rather stems from the recognition that transgressing the law entails a violation of the rights of fellow human beings. According to Friedman (1975), One of the provisions stipulated in the 1945 Constitution is the requirement for the government and all sectors of society to assume responsibility for safeguarding and overseeing the environment in the pursuit of sustainable development, thereby ensuring that the Indonesian environment continues to serve as a valuable asset and vital support system for the Indonesian populace and other organisms (Nurjaya, 2007). The



environmental degradation and pollution resulting from human activities significantly infringe upon the entitlements of future generations to access and experience a pristine and salubrious environment. These detrimental actions manifest in several forms, including the impairment and depletion of ecological processes and the overall well-being of ecosystems. This episode supports the necessity of implementing law enforcement measures in the context of gold mining, highlighting the significance of increasing attention to this matter (White, 2013).

The importance of this research lies in efforts to overcome the negative impacts caused by illegal mining in Indonesia. Recently, the Indonesian government has taken various actions to control illegal mining, including drafting stricter regulations and increasing law enforcement. However, there are still significant challenges in carrying out these law enforcement efforts, such as corruption in the legal system, lack of resources, and lack of coordination between institutions (Pauzin et al., 2022). Therefore, this research is directed at analyzing the effectiveness of responsive law enforcement in overcoming the problem of illegal mining in Indonesia. Through a deeper understanding of this issue, we can identify critical obstacles that need to be overcome and formulate constructive policy recommendations to strengthen efforts to prevent and eradicate illegal mining. The results of this research will provide valuable guidance for the government, law enforcement, and other stakeholders in dealing with this severe problem to protect the environment, natural resources, and a sustainable economy in Indonesia.

## **2 LITERATURE REVIEW**

### **2.1 LAW ENFORCEMENT**

Law enforcement refers to the systematic undertaking of activities that enforce and uphold legal standards as prescribed guides for behavior in many contexts, such as traffic regulations and legal relations within social and governmental spheres (Koh, 1998). The concept commonly referred to as law enforcement appears to primarily emphasize the coercive measures employed by law enforcement personnel in implementing stringent responses to criminal prosecution. The concept of law enforcement, as described, exhibits a limited scope, as it assigns the duty of ensuring compliance with laws solely to legal authorities. In a comprehensive sense, law enforcement pertains to the domain of tangible actions, behaviors, or deeds that align with



established laws or norms. Nevertheless, the government assumes the role of a security actor to uphold and reinstate societal order, according to Shavell (1993).

Law enforcement is a process or effort to uphold the law or norms in society for the continuity of social and state life (Brown, 1927). Law enforcement is often carried out in a constitutional state so that the sovereignty of the law is always maintained. All communities must recognize legal sovereignty because the law is a means to improve society to achieve justice, certainty, and benefits in law enforcement. Law enforcement officers are essential for maintaining sovereignty (Abbot & Snidal, 2000). The law is the supreme commander for the rule of law; therefore, it is necessary to enforce the law so that it is always obeyed and obeyed by the legal community.

Law enforcement itself can be interpreted as an activity that harmonizes the relationship between the values contained in the legal rules in society and manifests an attitude of disrespect for the series of final stage value translations to maintain a peaceful social life ( Dougan, 2000). Law enforcement can be fulfilled if the law can run well. Law enforcement includes, firstly, good law enforcement, namely law enforcement officers who are tough and able to carry out law enforcement well following statutory regulations. Second is adequate legal equipment. The third is a society that is aware of the law and complies with all applicable laws and regulations, and the last is the government bureaucracy that supports law enforcement.

## 2.2 RESPONSIVE LAW

The concept of responsive law gained prominence through Philippe Nonet and Philip Selznick's (2001) scholarly contributions in their seminal publication, "Law and Society in Transition towards Responsive Law." The individuals above employed this terminology to critique legal theory that excessively emphasizes formalities while disregarding practical realities. According to Nonet and Selznick, the perception of law is frequently characterized by its constraining and inflexible nature. Responsive law is a legal approach that focuses on achieving specific outcomes that extend beyond the boundaries of the law. In the context of responsive law, establishing the legal order is achieved through negotiation rather than through the imposition of subordination. The defining feature of responsive legislation entails identifying and examining underlying values that may be latent within regulations and policies. In their responsive legal model, Nonet and Selznick (2001) argue that they express dissent towards theories that they



perceive as conventional and rigid interpretations. The production of legal products with a responsive nature entails a participatory process that seeks to involve various segments of society, including individuals and community groups. Additionally, these products should embody aspirational qualities, reflecting the desires and aspirations of the community. This implies that the legitimacy of the ruler's power does not solely rely on the endorsement of the legal product. Responsiveness can be understood as providing services and attention to social needs and interests identified and encountered by the general population rather than being determined by government officials. Responsiveness can be understood as a dedication to upholding the law from a consumer-oriented standpoint (Nonet et al., 2017).

Responsive law differentiates itself from autonomous law by emphasizing the role of objectives in law. Nonet and Selznick (2001) talk about the sovereignty of purpose. Lawmaking and application are no longer ends in themselves, but their importance is a consequence of their larger social purposes. Purposive law is result-oriented and thus veers sharply from the image of justice as tied to consequences. According to Nonet and Selznick (2001), acceptance of intent requires unifying legal authority and political will. Suppose the intention refers to the function of government. In that case, populism refers to the very determining role of people's participation in law and government and the final value at stake, namely the achievement of a cultural political community that does not reject humanitarian problems and in which there is a place for all. Widespread norms can be interpreted as a legal statement of an ethic that respects humans as the highest value for political life in the modern world.

In the specific context of law enforcement in Indonesia, the concept of responsive law posits that the enforcement of laws must be carried out with utmost dedication and commitment, leaving no room for half-hearted efforts. The execution of legal statutes encompasses more than mere enforcement, as it necessitates a consideration of societal sensitivities. The law encompasses not simply a set of regulations but also several logical frameworks. According to Maturbongs et al. (2018), more than the mere enforcement of jurisprudence is required, and it is imperative to supplement law enforcement with knowledge from the social sciences. Pursuing an adaptable and responsive legal framework has emerged as a continuous endeavor within contemporary legal philosophy. According to Jerome Frank (1995), the primary objective of legal realists is to enhance the responsiveness of law to societal demands. The number 34. The attainment of a



responsive law necessitates ongoing efforts at the implementation stage to ensure its alignment with principles of justice and human rights. Hence, the necessity for the enactment and effective execution of progressive legislation is evident. There exists a strong association between responsive law and progressive law. On one side, the legal framework caters to the concerns and affiliations of the populace. However, on the other hand, it exhibits a more assertive and progressive approach in its implementation, particularly by law enforcement authorities.

### 2.3 ILLEGAL MINING

Individuals, groups of people, or companies/foundations with legal entities whose operations do not have permits from central or regional government agencies following applicable laws conduct mining activities without a permit (Banchirigah, 2008). People's mining activities are included in small-scale mining because the mining scale is tiny, but this does not mean it can be mined without government permission. Even though mining is traditionally conducted, environmental damage can result if the mining area is not limited (Obeng et al., 2019).

Without a permit, mining activities are known as illicit mining in English. In terms of terminology, illegal mining consists of two words: illegal, which means unlawful, prohibited, or contrary to the law, and mining, which refers to excavating soil or rock containing valuable metals. The definition of mining crimes without an illegal mining permit, namely crimes in the mining industry committed by individuals, groups of individuals, or legal entity foundation companies whose operations do not have permission from government agencies following applicable laws and regulations, carries the threat of criminal sanctions for anyone who inadvertently violates this prohibition (Wibisono & Ma'ruf, 2021).

According to the Mining and Mineral Law, all mining operations involving strategic and vital minerals are prohibited without a valid mining license. Those who violate the provisions of this law may be subject to criminal penalties as stipulated in Article 158 of Law Number 4 of 2009, which states: Anyone who carries out a mining business without a Mining Business Permit, People's Mining Permit, or Special Mining Business Permit as intended in Article 37, Article 40 paragraph (3), Article 48 and Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) of this law shall be punished by imprisonment for a maximum limit of ten billion rupiah (IDR 10 billion).





### 3 METHOD

The present study employs a normative juridical research method relying on library-based research. Normative legal research is alternatively referred to as doctrinal legal research. In this legal research, the term law is frequently seen as either the content outlined in statutory laws (referred to as law in books) or as a set of rules or norms that serve as standards for socially acceptable human conduct (Budianto, 2020). Normative legal research typically relies on secondary data as its primary source of information. This secondary data includes primary legal documents, secondary legal materials, and what is commonly referred to as tertiary data. Primary legal materials refer to legally binding materials that hold significant authority in the legal system. In the context of Indonesia, the primary legal materials encompass the 1945 Constitution of the Republic of Indonesia, Law Number 3 of 2020 about Amendments to Law Number 4 of 2009 regulating Mineral and Coal Mining, and several other regulations. The methodology employed in this study is the statutory approach, which involves a comprehensive examination of all relevant laws and regulations about the legal matter at hand. A legal concept analysis approach is utilized to analyze the issues discussed concerning Indonesian positive law. The author employs a qualitative analytical approach in this study, which does not involve quantitative computations. Instead, the author elucidates and illustrates the issues highlighted in the paper utilizing verbal explanations.

### 4 RESULTS AND DISCUSSION

#### 4.1 NEGATIVE IMPACT OF ILLEGAL MINING IN INDONESIA

The area is experiencing a gradual escalation of environmental issues. The absence of a mining business permit for mineral and coal mining operations necessitates considering environmental factors and preserving the surrounding ecosystem during mining activities. The processes for processing mining resources, as stipulated in Article 2 of Law Number 4 of 2009 on Mineral and Coal Mining, provide evidence. Mineral and/or coal mining operations are governed by principles prioritizing 1) the attainment of benefits, justice, and equilibrium; 2) alignment with national interests; 3) active engagement, transparency, and responsibility; and 4) the promotion of sustainability and environmental friendliness.

Mining activities in Indonesia continue to be viewed unfavorably by the local community, primarily due to illegal mining practices and the absence of proper permits,



exacerbating the adverse consequences of such activities (Marcus, 1997). Illegal mining refers to the extraction of minerals or natural resources by enterprises that lack the necessary permits, operational protocols, adherence to government legislation, or adherence to sound mining principles, also known as Good Mining Practice (GMP). Illegal mining has been found to have three distinct dimensions of impact: economic, social, and environmental (Antwi-Boateng & Akudugu, 2020).

#### **4.1.1 Economic Impact**

Indonesia is blessed with abundant natural resources, and the mining sector is one of the main pillars of this country's economy. Revenue from the mining sector, including oil, gas, minerals, and coal, is essential for the State Revenue and Expenditure Budget (APBN). However, when we talk about illegal mining, we face serious challenges that are detrimental to the country economically and environmentally. Illegal mining often involves the large-scale exploitation of natural resources without official permission or approval. Illegal mining actors distribute and sell their mining products in the illegal market, which avoids paying taxes and royalties to the government and distorts market prices. This creates unfairness in legitimate business competition and harms legal mining companies that have complied with all tax regulations and obligations (Samuel et al., 2012).

Apart from being detrimental to the government and legal companies, illegal mining also impacts local communities. While illegal mining may provide a short-lived livelihood for some people, this activity is often unsustainable and can damage traditional livelihoods such as agriculture or fishing. In addition, the health impacts of exposure to toxic substances used in illegal mining can also burden the health system and cost medical care. Overall, the economic impact of illegal mining in Indonesia is a severe problem that requires the government, society, and various related parties' attention to overcome this problem to achieve sustainable and fair development.

#### **4.1.2 Environmental Impact**

The environment is the most disadvantaged impact of illegal mining. These impacts include (Baddianaah et al., 2023):

- a) Decreasing Environmental Quality



The destructive impact of illegal mining on natural resources and the environment is severe. Much illegal mining uses highly destructive methods, such as cyanide and mercury, resulting in severe ecosystem damage. One of the main responsibilities of the legal mining industry is to reclaim and restore affected areas. The use of cyanide and mercury in illegal mining pollutes soil and water and causes deep degradation in soil structure. Mining waste destroys nutrients and minerals essential for plant growth, making the soil infertile and unable to support optimal plant growth. As a result, agricultural productivity is hampered, and the environment around illegal mining areas experiences lasting damage. Apart from that, severe environmental degradation also threatens the sustainability of the ecosystem. Forests, rivers, and agricultural land affected by illegal mining may take a long time to recover if they recover at all. This can result in loss of habitat for local flora and fauna and negative impacts on water ecosystems that can affect communities that depend on these water resources.

b) Environmental pollution

Management of waste from illegal mining activities is one of the most destructive aspects of this activity. Uncontrolled practices in illegal mining often involve toxic chemicals, such as cyanide and mercury, used in mineral extraction. The main problem is that there are often no restrictions placed on the use of these toxic substances. As a result, waste from illegal mining can easily pollute river flows around mining areas, creating detrimental impacts on the water and land environment. Polluted river flows will continue to flow until they reach the ocean, which can then cause severe damage to marine ecosystems. A damaged marine environment can impact fish populations and other marine creatures, disrupting food chains and the sustainability of marine resources. Apart from that, water and land pollution caused by illegal mining waste also has severe health impacts on the people living around the mining area. Polluted water can contain toxic substances contaminating local drinking and agricultural water sources, potentially endangering human health.

c) Causing Landslides and Floods

Illegal mining activities often occur in areas that do not comply with regulations and seriously impact the environment and infrastructure. First, illegal mining can damage the soil structure, making it unstable and vulnerable to landslides. Uncontrolled mining activities often involve deep and extensive excavation, which can disrupt slope stability and encourage destructive landslides. In addition, excavations that do not comply with



government regulations are often left without backfilling, creating large holes that pose a risk of flooding when the rainy season arrives. Thus, uncontrolled illegal mining damages the natural environment and can endanger the safety and welfare of the people living around the illegal mining area (Gavriletea, 2017).

d) Reduced Animal Population and Habitat

The selection of illegal mining locations is often carried out without considering the natural habitat of wildlife, which severely impacts ecosystems and biodiversity sustainability. Illegal mining destroys the natural habitat for various species of fauna and flora in the region. These mining activities sometimes cause these species to be directly disturbed or even become extinct. Changes in land use and degradation of the natural environment result in the loss of food and shelter resources for many living creatures, disrupting food chains and entire ecosystems. Thus, illegal mining damages the physical environment, threatens biodiversity, and contributes to the extinction of valuable species.

#### 4.1.3 Social Impact

Illegal mining in Indonesia has a very significant social impact. One of the most visible impacts is the loss of traditional livelihoods by local communities living around illegal mining areas. These areas are often rural, where people depend on agriculture, fishing, and other local economic activities. Illegal mining activities that damage the environment and pollute natural resources can disrupt these livelihoods. Damaged agricultural land and polluted fishing resources threaten the sustainability of these traditional livelihoods, and local communities often face economic hardship. Apart from that, public health aspects are also a serious concern. The use of toxic chemicals in illegal mining, such as cyanide and mercury, can endanger the health of people living in mining areas. Exposure to these toxic substances can result in various serious health problems, including organ damage, respiratory problems, and neurological impacts. Local communities exposed to these health risks often do not have adequate access to health services.

Another social impact is social conflict, which often arises in illegal mining areas. Competition between illegal mining groups, disputes over resources, and tensions between local communities and those involved in these illegal activities can disrupt social stability and create regional insecurity. Therefore, addressing illegal mining requires strict



law enforcement and broader efforts to assist local communities in overcoming the economic and health challenges this illegal activity faces.

#### 4.2 RESPONSIVE LAW ENFORCEMENT IN PREVENTING AND ERADICATING ILLEGAL MINING IN INDONESIA

The importance of having a responsive law enforcement system in contemporary society cannot be overstated, as it is a fundamental requirement for the law to maintain its authority and influence over the functioning of society, the nation, and the state. The concept of law as commander denotes the prominent position of law in society, enabling it to effectively uphold the principles of justice and contribute to establishing a thriving societal framework. In their work, Philippe Nonet and Philip Selznick present the concept of responsive law as a form of state legislation that can adapt and incorporate society's values, principles, traditions, and interests. This characteristic enables it to align with the democratic governance system established by the ruling government, particularly in implementing legal development policies.

In the specific context of law enforcement in Indonesia, the concept of responsive law posits that the enforcement of laws must be carried out with utmost commitment and dedication, leaving no room for half-hearted efforts. The execution of legal statutes encompasses more than mere enforcement, necessitating a conscientious consideration of societal implications. The law encompasses not simply a set of regulations but also several logical frameworks. The assertion is made that the mere application of legal principles needs to be revised and that law enforcement should incorporate knowledge from the social sciences to be more comprehensive. Pursuing a legal framework adaptable and sensitive to societal needs has emerged as a continuous endeavor within contemporary legal philosophy. According to the assertions made by Jerome Frank (1889-1957), the primary objective of legal realists is to enhance the level of responsiveness of the law to the demands and requirements of society. The attainment of a responsive legal framework necessitates ongoing efforts at the implementation stage to ensure its alignment with principles of justice and other dimensions.

The growing prevalence of unauthorized or illegal mining, sometimes called Illegal Mining, in multiple regions has generated apprehension among numerous stakeholders. This statement holds relevance not only for local communities and environmental campaigners but also for the central government and regional



administrations, encompassing districts and cities. The inadequate implementation of legislation about illicit mining causes concerns among the general public about the government's efficacy in eliminating unauthorized mining activities. From a normative juridical perspective, it is worth noting that Indonesia has already implemented Law No. 4 of 2009, commonly referred to as the Minerba Law, which governs the extraction of minerals and coal. This legislation has undergone subsequent amendments through Law No. 3 of 2020, explicitly addressing modifications to the Minerba Law. These legal frameworks comprehensively regulate various aspects of mining activities, encompassing all relevant regulatory considerations.

The administrative penalties imposed on individuals engaged in illegal mining activities include (a) issuance of a written warning, (b) imposition of fines, (c) temporary suspension of exploration activities or production operations, either partially or entirely, and (d) revocation of licenses such as IUP, IUPK, IPR, SIPB (Rock et al.), or IUP for Sales. Administrative penalties may be levied upon individuals possessing Mining Business Permits (IUP), People's Mining Permits (IPR), or Special Mining Business Permits (IUPK) for contravening certain restrictions outlined in Article 151 (Modifications to the Minerba Law). One of the parties involved is found to be utilizing a Mining Business Permit (IUP) that exceeds the scope authorized by the issuance of said permit, as stipulated in Article 41 of the Minerba Law.

In addition, individuals found to violate Articles 158 to 164 of the Minerba Law may be subject to the imposition of criminal sanctions. Following Article 158 of the Mineral and Coal Law, individuals who engage in mining activities without the necessary permit, as outlined in Article 35, are subject to punitive measures. These measures include a maximum prison sentence of five years and a maximum fine of IDR 100,000,000,000.00 (one hundred billion rupiah). The subject of regulation in this instance is Business Licensing, provided by the central government, as stipulated in Article 35 of the Minerba Law following its revisions. In addition to administrative and criminal sanctions, individuals who commit mining crimes may also face supplementary legal consequences, including (a) the seizure of assets utilized in the commission of criminal activities, (b) the confiscation of illicit gains derived from criminal activities; and/or (c) the imposition of financial obligations to cover expenses resulting from criminal activities. The article above describes the laws outlined in the Mineral and Coal Law. These provisions align with the regulations stipulated in criminal law, particularly with regard to the criminal



punishments specified in Article 10 of the Criminal Code, which pertain to fundamental and supplementary penalties.

The issue at hand pertains to legal regulations concerning diverse prohibitions on criminal activities within the mining industry, alongside disparities in the severity of penalties. The enforcement of these laws is perceived as inadequate and even feeble, owing to several factors, including suboptimal supervision and sluggish on-site response. There are signs of purported involvement by organized criminal elements within the mining industry. Administrative and criminal sanctions are often unsuccessful in preventing and eradicating illegal mining for a number of reasons that require a more responsive approach. First, administrative sanctions are usually lighter, such as fines or revocation of business permits, which are often needed to deter illegal mining actors who can make large profits in a short time. They may feel that the risk of administrative punishment is still acceptable in the cost-benefit calculation. Second, criminal sanctions, such as prison, have limits in their effectiveness because they require strong evidence and a lengthy judicial process. Illegal mining often occurs in areas that are difficult to monitor, so gathering adequate evidence can be difficult. In addition, the justice system is often overloaded with other cases, resulting in slow legal processes.

Implementing law enforcement measures under the Mineral and Coal Law, aimed at addressing these offenses, ensuring justice, and achieving effectiveness, is lacking in efficacy. Nevertheless, in response to criminal activity, the pursuit of law enforcement must be ongoing. The effective implementation of law enforcement necessitates the rational integration of various efforts to combat criminal activities effectively. Responsive law enforcement is seen as able to meet these expectations. Responsive law enforcement in preventing and eradicating illegal mining in Indonesia requires a more holistic and deeper approach than simply implementing the rule of law. This is closely related to the recognition that illegal mining practices are not only a legal problem but also a phenomenon influenced by various social, economic, and environmental factors.

First, it is essential to understand that illegal mining often arises due to complex social and economic conditions. Communities involved in illegal mining may see it as the only option to earn a living, especially in areas lacking other economic opportunities. Therefore, responsive law enforcement must include measures that address economic inequality, provide employment alternatives, and provide education and training to help local communities break out of the cycle of these illegal practices.



Furthermore, the environmental dimension must also be taken into account. Illegal mining often profoundly damages the natural environment, polluting water and soil, and disrupting ecosystems. Responsive law enforcement must ensure that disturbed ecosystems are restored and reduce adverse environmental impacts. This requires collaboration with environmental agencies and scientists who understand the environmental impacts of mining activities.

Lastly, public awareness and participation in law enforcement are also essential. Communities who know their rights and understand the negative impacts of illegal mining can play a role in reporting illegal activities, thereby assisting law enforcement officials in their actions. Therefore, information campaigns and legal education are essential to responsive law enforcement.

In more detail, how a responsive law enforcement approach can be applied in the context of preventing and eradicating illegal mining in Indonesia by:

1. **Community Engagement:** Police and law enforcement must collaborate with local communities, especially those directly affected by illegal mining. They need to listen to complaints and input from the community and work together to identify illegal mining locations and the actors involved.
2. **Flexibility and Handling of Situations:** Responsive law enforcement requires the police to have the ability to adapt law enforcement strategies according to changing situations. This may involve active patrols to detect and respond to illegal operations and decisive handling of emerging situations in illegal mining.
3. **Prevention and Education:** Responsive law enforcement will include prevention elements besides law enforcement. This could mean educating communities about the negative impacts of illegal mining on the environment and their health and identifying the factors that encourage people to engage in illegal mining.
4. **Transparency and Accountability:** Maintaining transparency in law enforcement efforts against illegal mining is essential. The police must explain their actions to the public and be prepared to take responsibility for them. Regular reports on law enforcement and its outcomes can help build public trust.
5. **Multidisciplinary Collaboration:** Illegal mining often involves various issues, including environmental, economic, and social. Therefore, responsive law





enforcement can involve various parties such as the Department of the Environment, tax authorities, and non-governmental organizations concerned with environmental issues. This allows for a more holistic treatment of the issue.

6. **Deterrent Penalties:** Law enforcement must also provide harsh sanctions to make people think twice before getting involved in illegal mining. This may include criminal penalties, financial sanctions, or revocation of business licenses.

By adopting a responsive law enforcement approach that includes the above elements, Indonesia can be more effective in preventing and eradicating illegal mining while ensuring that such efforts are fair and transparent and consider the needs of local communities and their environmental impact.

## 5 CONCLUSION

Illegal mining in Indonesia has severe negative impacts, especially in economic, environmental, and social aspects. Economic impacts include loss of state revenue, unfairness in business competition, and negative economic impacts on local communities. Environmental impacts include ecosystem damage, environmental pollution, landslides, floods, and reduced animal populations and habitats. Social impacts include loss of traditional livelihoods, health problems, and social conflict. Responsive law enforcement is key in preventing and eradicating illegal mining. This approach must involve various elements, including community involvement, flexibility in handling situations, prevention and education, transparency, multidisciplinary collaboration, and sufficiently harsh sanctions. In addition, responsive law enforcement must consider economic, environmental, and social aspects in enforcement efforts. By implementing a holistic and integrated, responsive law enforcement approach, Indonesia can more effectively address the problem of illegal mining while also ensuring environmental sustainability, social justice, and the welfare of local communities.



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