
Law Enforcement Against Surveillance Of Illegal Gold Mining Crimes In Review Of Positive Law And Islamic Law (Case Study In Wasirawi Village, Masni District, Manokwari Regency, West Papua Province)

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ABSTRACT

The mining management system in Indonesia is pluralistic due to the various mining contracts or licenses currently in force. For this reason, it is necessary to take action in all components of the nation, including law enforcement, both in positive law and Islamic law. This research aims to find law enforcement against the supervision of illegal gold mining crimes by reviewing the perspective of positive law and Islamic law (case study in Wasirawi Village, Masni District, Manokwari Regency, West Papua Province). The method used in this research is a qualitative descriptive approach. The results of this study are as follows: *First*, the role of the government in curbing illegal nickel mining in Wasirawi Village, Masni District, Manokwari Regency, West Papua Province, from all functions, still needs to be stronger. The mining sector is very vulnerable to violations of the law. Therefore, regulations are formed that can regulate the mining business sector, namely in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. *Second*, MUI, as an institution that provides fatwas, issued a fatwa on the law of environmentally friendly mining on 26 May 2011. The fatwa states that mining activities that do not bring prosperity to the community are haram. In Islamic law, illegal miners are included in the realm of ta'zir punishment, so Ulil Amri can make Ijtihad to determine the type of punishment.

Keywords: Mining; Illegal; Criminal

I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia mandates that the earth's water and the natural resources contained therein be controlled by the state and used for the most significant benefit of the people's prosperity, as stated in Article 33 Paragraph (3) of the 1945 Constitution.¹ Mining is a promising source of income, but mining has a negative impact, especially on the environment, because almost every mining activity tends to damage the environment. Mining materials are classified into Mineral and Coal (Minerba) and Oil and Gas (Migas).²

The mining management system in Indonesia is pluralistic due to the various mining contracts or licenses currently in force.³ For this reason, it is necessary to take action in all components of the nation, including criminal law enforcement. Actions that are threatened with criminal law are actions that are threatened which absolutely must meet the formal requirements, namely matching the formulation of rules that the Criminal Code has determined if they are contrary to Law Number 4 of 2009 concerning Minerals and Coal and other regulations that have a criminal dimension and have material elements, namely contrary to the ideals of community association.⁴

The mining sector itself is one of Indonesia's most prominent foreign exchange earners. To conduct mining activities in Indonesia, you must have a mining business license (IUP). The laws and regulations governing minerals and coal in Indonesia, namely Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. This law has been further elaborated in government regulations.

With the emergence of illegal gold mining problems in Indonesia, MUI, as an institution that provides fatwa, issued a fatwa on the law of environmentally friendly mining on 26 May 2011. The fatwa states that mining activities that do not bring prosperity to the community are haram. Therefore, the state, especially law enforcement in this case, must be present and enforce the law against mining companies that do not have licenses in Indonesia.

The research results show that 7 (seven) mining crime cases were tried at the Manokwari Court in 2020, with 7 (seven) defendants whose verdicts had been finalized; none (nil) were tried in 2021-2022, and 9 (nine) cases were tried in 2023 with 43 (forty-three) defendants whose status was still in trial.

¹ Yahman, "Problematika Penegakkan Hukum Mengacu Pada Undang-Undang Nomor 4 Tahun 2019 Tentang Pertambangan Mineral Dan Batubara," *Arena Hukum* 6, no. 1 (2013): 102.

² Salim HS, *Hukum Pertambangan Di Indonesia*, 1st ed. (Jakarta: Raja Grafindo Persada, 2014). P. 44.

³ Salim HS, *Hukum Pertambangan Mineral & Batubara*, 1st ed. (Jakarta: Sinar Grafika, 2014). P. 1.

⁴ Moeljatno, *Perbuatan Pidana Dan Pertanggungjawaban Dalam Hukum Pidana*, 1st ed. (Yogyakarta: Bina Aksara, 1983). P. 24-25.

Based on the background stated above, there are two problem formulations related to illegal gold mining in Waserawi Village, Masni District, Manokwari Regency, West Papua Province. *Firstly*, how is law enforcement against the supervision of illicit gold mining crimes from a positive legal perspective? *Second*, how is law enforcement against the supervision of illegal gold mining crimes from the perspective of Islamic law?

The purpose of this paper is to find out more about matters relating to illegal gold mining in Waserawi Village, Masni District, Manokwari Regency, West Papua Province, including *first*, related to law enforcement against the supervision of illicit gold mining crimes in reviewing the perspective of positive law, and *second*, about law enforcement against the supervision of illegal gold mining crimes in reviewing the perspective of Islamic law.

II. RESEARCH METHODS

This type of research involves fieldwork and interviews. It uses data directly related to the supervision of law enforcement of illegal gold mining crimes in the Manokwari Regency Regional Government, West Papua Provincial Government, Manokwari Police, West Papua Police, and local customary law communities.⁵ The data is then analyzed interpretatively using theory, positive law, and Islamic law, which have been outlined. Then, conclusions are inductively drawn to answer existing problems.⁶ The author conducts research based on an empirical juridical approach, which analyzes the extent to which a regulation or legislation applies effectively.

This research uses primary and secondary data. Primary data is obtained directly from the Regency Government, Provincial Government, Polres, Polda, customary law communities, defendants, and other sources. Meanwhile, secondary data is obtained from literature studies of laws related to law enforcement against the supervision of illegal gold mining crimes. This research collects secondary data from literature in books, journals, and rules and regulations.⁷ Meanwhile, to collect primary data, this research directly conducts interviews.

The analysis used in this thesis is descriptive qualitative data analysis. This means data obtained through interviews and observations in the field supported by related regulations and literature research are arranged systematically and analyzed

⁵ Husaini Usman and Purnomo Setiady Akbar, *Metodologi Penelitian Sosial*, 1st ed. (Jakarta: PT. Bumi Aksara, 2006). P. 5.

⁶ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Universitas Indonesia Press, 1986). P. 112.

⁷ Saryono Hanadi, *Metodologi Penulisan Dan Penelitian Hukum*, 1st ed. (Purwokerto: Universitas Jenderal Soedirman, 2008). P. 9.

qualitatively to clarify the problems to be discussed. The data is then analyzed interpretatively using the theory and positive law outlined, and conclusions are inductively drawn to answer the existing issues.⁸

This research was conducted in several places, namely:

1. Manokwari District Government
2. West Papua Provincial Government, namely:
 - a. Energy and Mineral Resources Agency of West Papua Province.
 - b. Head of Legal Affairs of West Papua Province.
 - c. West Papua Provincial Environment Office.
 - d. Forest Service of West Papua Province.
 - e. Civil Servant Investigator (PPNS), West Papua Provincial Forestry Service.
3. Ministry of Forestry.
4. Manokwari Customary Law Community.
5. Manokwari Police.
6. West Papua Police.
7. Manokwari District Attorney's Office.
8. Manokwari District Court Judge.
9. Defendant.

III. RESULTS AND DISCUSSION

A. LAW ENFORCEMENT AGAINST SURVEILLANCE OF ILLEGAL GOLD MINING CRIMES IN REVIEW OF POSITIVE LAW PERSPECTIVES

1. Supervision of Illegal Gold Mining in Positive Law

The government's role in curbing illegal nickel mining in all functions still needs to improve in terms of regulation, services, and empowerment, both from the village government and the central government. Cases of illegal mining or mining without a license (PETI) in Indonesia occur in almost all regions. These unlawful mining cases arise due to the weak supervision of the local government, even though the PETI is likely to be noticed by state officials.

Environmental law enforcement in Manokwari Regency aims to punish environmental destroyers or polluters and prevent acts or actions that can cause environmental destruction or pollution. Therefore, ecological law enforcement is repressive (suppressing, restraining, and taking action) and preventive (preventing so that nothing happens).⁹

⁸ Soekanto, *Pengantar Penelitian Hukum*. P. 112

⁹ Siti Sundarl Rangkuti, *Hukum Lingkungan Dan Kebijakan Lingkungan Nasional*, 2nd ed. (Surabaya: Airlangga University Press, 2000). P. 209-210.

Supervision efforts of Civil Servant Investigators (PPNS), including Environmental PPNS, Forestry PPNS, Human Resources Energy PPNS (ESDM), and Civil Servant Officials in Manokwari Regency, West Papua Province, are indeed based on statutory regulations. In the supervisory function, Pam Swakarsa Civil Servant Investigators (PPNS) at agencies (government agencies) observe the implementation of environmental security, record data, and environmental security activities, implement environmental security systems, and use ecological security equipment. As regulated in Government Regulation of the Republic of Indonesia Number 43 of 2012 concerning Procedures for Implementing Coordination, Supervision, and Technical Guidance of Special Police, Civil Servant Investigators, and Forms of Private Security (in Article 11 to Article 15).¹⁰

Law enforcement supervision in the Law of the Republic of Indonesia Number 2 of 2022 concerning the Indonesian National Police¹¹, that the Police are related to functions and institutions by statutory regulations, such as security and public order, is a dynamic condition of society as one of the prerequisites for the implementation of the national development process to achieve national goals characterized by guaranteed security, order, upholding the law, and fostering tranquility which contains the ability to promote and develop the potential and strength of the community in counteracting, preventing, and overcoming all forms of violations of the law including illegal gold mining in Manokwari Regency, West Papua Province.

The rise of unlicensed mining activities (PETI) in several regions in Indonesia is suspected to be due to the omission and lack of supervision from the authorities. Manokwari Regency Police and West Papua Provincial Police, in monitoring illegal mining law enforcement, always work together with Civil Servant Investigators; the aim is to maintain security and public order, enforce the law, provide protection, protection, and services to the community, carry out arrangements, guarding, escorting, and patrolling illegal gold mining activities.

Illegal mining law enforcement in a broader context includes administrative law enforcement, civil law enforcement, and criminal law enforcement. Law Number 3 of 2020 Concerning Amendments to Law

¹⁰ "PP RI Nomor 43 Tahun 2012 Tentang Tata Cara Pelaksanaan Koordinasi, Pengawasan, Dan Pembinaan Teknis Terhadap Kepolisian Khusus, Penyidik Pegawai Negeri Sipil Dan Bentuk-Bentuk Pengamanan Swakarsa" (n.d.).

¹¹ "Undang-Undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Kepolisian Negara Republik Indonesia" (n.d.).

Number 4 of 2009 Concerning Minerals and Coal, in addition to recognizing the criminal act of mining activities without a permit, also regulates various other criminal acts, most of which are aimed at mining business actors. Only one type of criminal act aimed at permit-issuing officials in the mining sector, all of which can be categorized as illegal mining. Criminal provisions related to illicit mining of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal are regulated in Article 158, Article 160, Article 161, and Article 164. Countermeasures against events or cases related to illegal mining, showing efforts to take action against crimes in the field of illicit mining by using a criminal *policy* (*penal policy*).¹²

The corridor of administrative law enforcement is more at a preventive level, namely in the form of supervision and control of an activity or action that the regional government of Manokwari Regency, West Papua Province, must carry out. The concrete form of the supervision corridor in the context of mining administrative law enforcement through signs that have been imitatively regulated in the provisions of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal, as in Article 39, Article 78 and Article 79 concerning Mining Business License (IUP) or Special Mining Business License (IUPK). The signs contained in the Mining Business License (IUP) or Special Mining Business License (IUPK) are obligations that must be carried out by the recipient of the Mining Business License (IUP) or Special Mining Business License (IUPK). If they violate, the official who issued the permit has the right to impose sanctions.¹³

As the Regional Government, in carrying out its duties and authorities, upholds and practices Pancasila's implementation of the 1945 Constitution of the Republic of Indonesia, defends and maintains the integrity of the Unitary State of the Republic of Indonesia as stipulated in the Law of the Republic of Indonesia Number 32 of 2004 concerning Regional Government Article 27, and obeys and enforces all laws and regulations.¹⁴ Mining activities are significantly developed in Manokwari Regency. The results are very profitable for miners. However, this promising activity also impacts the destruction of the environment,

¹² Barda Nawawi Arief, *Masalah Penegakan Hukum Dan Kebijakan Penanggulangan Kejahatan*, 1st ed. (Bandung: Citra Aditya Bakti, 2001). P. 73.

¹³ HS, *Hukum Pertambangan Di Indonesia*. P. 266-268.

¹⁴ "Undang-Undang Republik Indonesia Nomor 32 Tahun 2004 Tentang Pemerintah Daerah" (n.d.).

including forests. When these activities are not carried out based on established regulations, they harm the central government and regional governments, including the Manokwari Regency and the West Papua Province community.

In the Government Regulation of the Republic of Indonesia Number 96 of 2021 concerning the Implementation of Coal Mineral Mining Business Activities, for holders of IUP in the Production Operation activity stage, it is mandatory to carry out the installation of WIUP boundary marks in the Production Operation activity stage, the location of mining and stockpiling activities in the Production Operation activity stage, changes must be made to the boundary mark with the installation of new boundary marks in the WIUP in the Production Operation activity stage, further provisions regarding the procedures for installing WIUP boundary marks in the Production Operation activity stage are regulated in a Ministerial Regulation.¹⁵

Miners who do not have official licenses from the local or central government must be dealt with firmly and subject to Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal; besides that, all parties involved, both workers and financiers, are subject to punishment and fines. The police also confiscate heavy equipment in the field; the confiscated heavy equipment is used as evidence that there is unlicensed gold mining. Law enforcement against unlicensed mining has received serious attention from the police, considering that the task of the Mining and Energy Office is only limited to supervising. Meanwhile, it is the police who take action.

2. Forms of Illegal Gold Mining Crime in Positive Law

The crime of conducting mining without a permit is a mining activity where the perpetrator does not have a permit, and his actions are a criminal offense. Any person who conducts mining without a permit shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000,000. (one hundred billion rupiah), or submitting reports incorrectly or submitting false information shall be punished with a maximum imprisonment of 5 (five) years and a maximum fine of Rp. 100,000,000,000. (one hundred billion rupiah). It is regulated in Law

¹⁵ “Peraturan Pemerintah Republik Indonesia Nomor 96 Tahun 2021 Tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral Batubara” (n.d.).

Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, Article 158 and Article 159.¹⁶

In addition to using criminal law, law enforcement against unlicensed mining in Manokwari Regency also uses administrative law, which is preventive and repressive. Preventive administrative law enforcement efforts against illegal gold mining. Preventive actions are carried out in Manokwari Regency, West Papua Province, in the following ways:

- a. The police conducted legal socialization/counseling regarding criminal provisions on unlicensed mining crimes in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal;
- b. Local government in the implementation of administration on illegal gold mining;
- c. Implementation of cooperation between local government and the police on illegal gold mining in the local area;
- d. Local police conduct routine operations against mining activities in every village and sub-district in Manokwari Regency, West Papua Province;
- e. Take action against the perpetrators of illegal gold mining without a license in the form of imprisonment, fines, and
- f. Confiscation of equipment used in illegal gold mining activities in Manokwari Regency, West Papua Province.

The mining sector is prone to law violations, both criminally and administratively. Therefore, regulations are needed that can strictly regulate the prohibitions in the mining business sector; of course, as a legal umbrella, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining has provided various regulations.

3. Implementation of Illegal Gold Mining Crime in Positive Law

In the application of criminal law enforcement, what must be considered, especially related to the suspect in the investigation process, is certainty about the suspect's identity, the truth of the information he provides, and the fulfillment of the rights of the suspect. Law enforcement carried out by Manokwari Police against suspects is part of the investigation process by the provisions of the Criminal Procedure Code. At the beginning of the investigation examination, the investigator confirmed

¹⁶ "Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Undang-Undang Nomor 4 Tahun 2009 Tentang Mineral Dan Batubara" (n.d.).

the suspect's identity. This is important so the law enforcement process does not make mistakes in arresting and detaining someone. As a result of fatal errors in law enforcement, the National Police can be prosecuted and demand compensation and rehabilitation. Even in human rights protection instruments, mistakes in the law enforcement process can be charged criminally.

Investigators at Manokwari Police Station also ensure the provision and protection of suspects' rights to reveal the whereabouts of investors in illegal gold mining. In examining the suspect, investigators questioned the need for assistance from legal counsel because the threat of punishment alleged to the defendant exceeds 5 years, namely a maximum imprisonment of 10 years.

So, by the provisions of the Criminal Procedure Code and the rights of the suspect, investigators at Manokwari Police try to fulfill the suspect's rights so that the examination is not legally flawed. Regarding the implementation of law enforcement in the examination process at the investigation level at the Manokwari Police Station, especially about the rights of the suspect as stipulated in the explanation of the Criminal Procedure Code and at the same time, the principle adopted by the Criminal Procedure Code, its implementation at the Manokwari Police Station has been realized since the investigator investigated the status of the suspect was raised at the investigation level to the person suspected of having committed the criminal act. During the investigation process, the investigator no longer considers the suspect as the Object of examination; in this case, it is evident that the investigator does not solely pursue the suspect's confession during the investigation. This paradigm shift places the suspect as the subject of examination, and the suspect is not considered guilty before a legally binding court decision.

If the suspect tries to evade and does not admit his actions, the investigator tries to prove and confront the testimony of witnesses and show evidence of the suspect's involvement; this is what is intended by the Manokwari Police Investigator with the burden of proof on the investigator, not on the suspect. In examining a suspect, an investigator must pay attention to the applicable information and not act outside of that information; one of these provisions is regarding the suspect's rights in the examination. The Criminal Procedure Code in Articles 14, 15, and 32 contains the suspect, defendant, and convict. In each suspect's position in the examination process, the word suspect is used when they are at the

preliminary examination level. When the suspect is still at the level of examination before the judge, the words convicted are used when the defendant has received a judge's decision that has obtained permanent legal provisions.

Investigators are focused on finding evidence and other evidence (BB) and trying to pursue the suspect's confession. In pursuing the suspect's confession, the investigator still pays attention to protecting the suspect's human rights. The Criminal Procedure Code (KUHAP) protects suspects' rights. Therefore, law enforcement officials must consider respect for the rights of suspects in the law enforcement process.

4. Constraints on Law Enforcement of Illegal Gold Mining Crime

The main problem in law enforcement lies in the factors that influence it, which positively or negatively impact the content of these factors. These factors, according to Soerjono Soekanto, are as follows:

- a. The legal factor itself, which is the law;
- b. Law enforcement factors, namely the parties who form and apply the law;
- c. Facility factors or facilities that support law enforcement;
- d. Community factors, namely the environment where the law applies;
- e. Cultural factors, namely as a result of the work of copyright and taste, are based on human charisma in the association of life.

Community, culture, and law enforcement are central points based on the above factors. This is because these components play an important role in law enforcement. Law enforcement also requires leadership at all levels that meets two requirements. Leadership is expected to be an effective driver for definite law enforcement actions and an example for the environment it leads regarding the integrity of the personality of people who obey the rules.

An essential aspect of the law enforcement framework is the process of law socialization and law education. Without being supported by awareness, knowledge, and understanding of legal subjects in society, no legal norms can be expected to be upheld and obeyed. Therefore, law's socialization and education agendas need to be developed separately to realize the idea of the rule of law in the future. Several factors related to this issue are (a) development and management of legal information systems and infrastructure based on information technology; (b) increased efforts to publish, communicate, and socialize the law; (c) development of legal

education and training; and (d) popularization of images and exemplars in the field of law.

5. Supervision Efforts Against Illegal Gold Mining in Review of Positive Law

Efforts to supervise the management of mineral and coal mining natural resources in Manokwari Regency always pay attention to the community environment around the area that will be used as a mining area. Therefore, licensing is a means of supervision and control in overcoming environmental damage due to mining.¹⁷ This means that the authority to grant licenses for natural resource management, especially the management of mineral and coal resources, still raises legal issues, especially with the licensing agency between the local and central governments. Realizing an energy and mineral resources sector that produces added value as a source of prosperity for the people through sustainable and environmentally friendly development is fair, transparent, responsible, efficient, and by high ethical standards.

Sustainable development is geared towards achieving three goals: economic goals, social goals, and ecosystem goals. The relationship between the three objectives and essential elements. This research is legal. Legal research aims to solve legal problems by identifying various regulations related to mining and the environment and analyzing court decisions related to mining and the environment.

Legislation in the mining sector and other related fields, as well as law enforcement, has not favored the community and the environment. There has been an overlap in applying statutory provisions in the mining sector, which has harmed the community, the environment, and the state. Losses in the form of environmental damage due to mining are difficult to recover and will burden future generations. Therefore, it is the responsibility of all components of society and the state to carry out serious law enforcement. It is necessary to harmonize legislation and regulations and severe law enforcement to realize environmentally sound development and sustainability of mining management in fulfilling the mandate of Article 33 of the 1945 Constitution of the Republic of Indonesia.

¹⁷ Hatta Muhammad, "Penegakan Hukum Pidana Terhadap Kejahatan Pertambangan (Illegal Mining) Mineral Dan Batubara Di Kuta Kartanegara" (Universitas Brawijaya, 2012).

B. LAW ENFORCEMENT AGAINST SURVEILLANCE OF ILLEGAL GOLD MINING CRIMES IN REVIEW OF THE PERSPECTIVE OF ISLAMIC LAW

1. Illegal Gold Mining in Islamic Law

The environment is a unity of all creatures created by Allah, which is also proof of His greatness. As caliphs on earth, we are required to protect the environment as one of the goals of life according to Islam, as Allah SWT says in Q.S. al-Baqarah verse 11, which means: "And when it is said to them: "Do not make earth damage." They replied: "Indeed, we are those who make improvements." Also, Q.S. al-Baqarah verse 30 means: "Remember when your Lord said to the Angels: "Indeed I want to make a caliph on earth." They said: "Why do you want to make a Caliph on the earth who will make mischief on it and shed blood while we are always praising and purifying you?" God said: "Surely I know what you do not know."

Law enforcement supervision in Islam has outlined several rules to ensure the success of law enforcement, including ensuring that all legal products are sourced from revelations. With the emergence of this problem, MUI, as an institution that provides fatwas, issued a fatwa on the law of environmentally friendly mining on 26 May 2011. The fatwa states that mining activities that do not bring prosperity to the community are haram. The issue to be answered in this research is how the MUI's legal istinbat method in issuing a fatwa on environmentally friendly mining. As written in Q.S. al-A'raf verse 56 about human behavior towards the environment, which means: "And do not make corruption on the earth, after (Allah) has repaired it and pray to Him with fear (will not be accepted) and hope (will be granted). Verily, the mercy of Allah is very near to those who do good."

In the Qur'an, several verses explain how we must be fair to all humans. Not only that, it is also mentioned in the hadith that the law must be equal, not allowed to compare only because of its social strata. The Prophet has also exemplified how to carry out a suitable and correct law according to Islamic law. Allah SWT says in Q.S. an-Nisa verse 135 which means: "O you who believe, be you who are truly upholders of justice, bear witness for Allah even if it is against yourself or your parents and relatives. If he is rich or poor, Allah knows better. So do not follow your lusts to deviate from the truth. And if you twist your words or are reluctant to bear witness, then surely Allah is All-Knowing of all that you do."

In the interpretation, according to the Tafsir of the Ministry of Religious Affairs, if in the previous verses, Allah ordered to be fair to

orphans and women, in this verse, Allah ordered to be fair to all humans. O you who believe! Be you indeed the upholder of justice among humanity as a whole, bearing witness to the truth for the sake of Allah, without discrimination, even against yourselves or even against those who are very close to you, such as your mothers and fathers and relatives, do not let that be a barrier for you to do justice. If the accused is rich, do not be influenced by his wealth; if he is poor, do not feel sorry for his poverty; Allah knows better.

2. Legal Equality in Islamic Law

In the eyes of Islamic law, all people are equal, whether they are Muslims, non-Muslims, men or women. There is no discrimination, impunity, or privilege. Anyone who commits a crime (jarimah) concerning the environment is punished according to the type of offense. It is narrated that once, a noblewoman from Makhzum committed theft. Their leaders asked Usamah bin Zaid to persuade the Prophet to lighten the punishment. The Messenger of Allah was angry and said: "Verily, what destroyed the people before you is that when an honorable person steals, they let him go, but if a weak person steals, they enforce the law against him. By the One in Whose hand is my soul, if Fatimah, the daughter of Muhammad, had stolen, I would have cut off her hand." (HR al-Bukhari)

3. Effective and Efficient Court Mechanisms in Islamic Law

The court mechanism in the Islamic legal system is effective and efficient. This can be seen from the fact that the judge's decision in the court is binding and cannot be overturned by any court decision. The ushul fiqh principle states: "Another ijtiḥad cannot overturn an ijtiḥad." The judge's decision can only be overturned if the decision violates the Sharia text or contradicts the facts. The judge's decision is based on Sharia law, which must be accepted willingly. Law is an integral part of faith; a Muslim is obliged to live in line with Sharia. This obligation can only be realized when he is aware of Sharia. Enforcement of the law becomes easier because every Muslim, both rulers and people, are required by their religion to understand sharia as a form of faith and obedience to Allah SWT and His Messenger.

4. Non-overlapping Judicial Institutions in Islamic Law

Qadhi is appointed by the Caliph or a structure authorized by the Caliph. Qadhi was generally divided into three: qadhi khushumat, qadhi hisbah, and qadhi mazhalim. Qadhi khushumat is responsible for resolving disputes concerning 'uqubat and mu'amalah cases. Qadhi hisbah is in

charge of resolving irregularities that harm the public interest. Qadhi mazhalim was responsible for resolving disputes between the people and the state, whether employees, government officials, or the Caliph. These institutions have authority and job descriptions that do not allow overlap. Qadhi hisbah and mazhalim can decide cases when they are on the spot, when there is a violation of the rights of the people, or when the ruler commits an act of injustice. This is because the cases handled by qadhi hisbah and qadhi mazhalim do not require the presence of the prosecution or the accused. Qadhi hisbah or mazhalim can impose sanctions once there is evidence of a violation.

5. They are not holding each other hostage in Islamic Law

The Islamic political system (Caliphate) ensures law enforcement runs effectively and efficiently. This is because all legal and political policies issued by the Caliph must be based on revelation to be free of interests. In addition, the Islamic political system does not recognize the division or separation of powers as in the democratic system of government (*trias politica*) to close the gap for institutional conflicts. In a democratic system of government, the division or separation of powers has opened up space for conflict between state institutions. Legislative institutions often hold executive policies hostage or vice versa. The reason is that each institution has a claim of authority and power over its institution. As a result, the executive, legislative, and judicial power elites are preoccupied with institutional conflicts until the interests of the people are sacrificed. It is not uncommon for each institution to maneuver downwards. Conflicts do not only occur at the level of the power elite but spread to the horizontal realm. Social chaos due to vertical conflict is inevitable. As for the Islamic political system, the Caliph is the highest authority in managing the people's affairs. The Caliph is authorized to resolve disputes between people and people, people and the state, and between state institutions. Every dispute must be resolved quickly because the Islamic leadership is single. The appointment and removal of state officials is also under the authority of the Caliph. The Caliph's decision must be obeyed. Anyone who disobeys is subject to severe sanctions.

6. Illegal Mining Law Enforcement in the Perspective of Islamic Law

Law enforcers rarely carry out the Islamic law approach, but many are still afraid if they hear it. However, this approach should be prioritized considering that the Republic of Indonesia is a state based on Pancasila, where the first principle is Belief in One God. Therefore, the approach of

Islamic law in law enforcement should be done.¹⁸ Law enforcement focuses more on legal philosophy, the values that live in society, awareness/attitude of legal behavior / social behavior, and education / legal science.¹⁹ Law enforcement is closely related to the judicial system because the judicial process enforces the law. So, it is identical to the “judicial power system” because “judicial power” is basically “power/authority to enforce the law.” The judicial system (law enforcement system), viewed integrally, is a unity of various sub-systems consisting of components of “legal substance” (legal substance), “legal structure” (legal structure), “legal culture” (legal culture), and the last is the values of legal culture (cultural component). What is meant by the values of “legal culture” in law enforcement is more focused on the values of legal philosophy, legal values that live in society, awareness/attitude of legal behavior / social behavior, and legal education/science.²⁰

What is meant by the approach of Islamic law as stated by Prof. Dr. Hazairin: “In the Republic of Indonesia, something that contradicts Islamic rules for Muslims or Christian rules for Christians/Catholics or contradicts the rules of Balinese Hinduism for Balinese Hindus or contradicts Buddhist decency for Buddhists should not occur or apply.”²¹ The author argues that law enforcers who carry out the science of law must be trustworthy. This means that the task undertaken is a responsibility from God that must be accounted for in the hereafter. God’s guidance in upholding justice (in the view of Islam), among others, is seen in Q.S. an-Nisa verse 58, which means “When you judge among men, then judge justly”; Q.S. an-Nisa verse 135, which means “Do not follow your lusts because you want to deviate from the truth/justice”; Q.S. al-Maidah verse 8 which means “Do not let your hatred for a people/group, encourage you to be unfair”; Q. S. ash-Syuura verse 15.S. ash-Syuura verse 15 which means “Fair treatment must be upheld against anyone, even against people who are not of the same religion”; and Q.S. al-Maidah verse 42 which means “And if you decide they’re (the Jews) case, then decide (the case) between them fairly, surely Allah loves the just.”²²

¹⁸ Barda Nawawi Arief, “What Is a Legal System” (Semarang: Fakultas Hukum Universitas Diponegoro, n.d.).

¹⁹ Barda Nawawi Arief, “Renstra (Rencana Strategik) Pembangunan Hukum Nasional Repelita VI (1994-1999)” (Semarang: Fakultas Hukum Universitas Diponegoro, n.d.).

²⁰ Arief.

²¹ Hazairin, *Demokrasi Pancasila*, 1st ed. (Jakarta: Bina Aksara, 1985). P. 34.

²² Hazairin.

Islamic law has been revealed by Allah to his Messenger Muhammad, meaning that many legal issues in this modern era have not been explicitly explained either in the Qur'an or hadith. This is the responsibility of jurists, who know that in Islam, two categories of law are known: laws relating to worship (vertical relations with Allah SWT) and muamalah law (human relations). The first is doctrinal / Taken for Granted (Taufiqy), while the second is ijtiḥad (can be developed) as long as no evidence prohibits it. Thus, in terms of applying and developing the science of divine law in this modern era, jurists can create it using Ijtiḥad.

There are at least four characteristics that must be possessed by law enforcers, including:

- a. Tabligh, law enforcers continuously socialize and educate the public about which actions are permitted and which are prohibited. Also, explain why an act of corruption is banned and forbidden by Islam.
- b. Amanah strictly maintains the principles of prudence and honesty in carrying out tasks so that law enforcers against illegal mining hold the nature of trust in every step in enforcing the law.
- c. Fathanah, including in illegal mining law enforcement, is a trait that is full of accuracy and politeness (rayah) and a sense of responsibility (mas'uliyah).
- d. Adhalah is a principle that law enforcers must own. Only with the principle of Adalah will the parties to the problem be satisfied, which ends with mutual acceptance of the judge's decision. With the principle of Adalah, justice is achieved.

The form of ta'zīr criminal sanctions is adjusted to the criminal offense and its impact on human benefit for law enforcement against illegal mining. Ta'zīr criminal sanctions for some crimes below the level of ḥudūd crimes are not allowed to impose more severe sanctions than the ḥudūd criminal sanctions. Islam imposes harsh criminal sanctions for offenses related to the rights of Allah or the benefit of many people to the environment for illegal mining in the concept of ḥudūd and ta'zīr. As for the criminal sanction of qishāsh, Islam applies the principle of justice between individuals. Because it is unrelated to the benefit of many people, in the concept of qishāsh, the victim can forgive the perpetrator. While crimes related to social benefit in ḥudūd and ta'zīr, forgiveness cannot be done, and punishment must be enforced.

Corruption is a criminal offense of betrayal of state property, including law enforcement in illegal mining (khiyānah), which has many

levels and frequencies. Ta'zīr criminal sanctions imposed by the ruler or judge should consider this. Reprimand (wah), beating (sharp), dismissal ('all), imprisonment (size), and crucifixion (should) can be imposed on corruptors at certain levels, as well as the death penalty can be sentenced to corruptors with a very detrimental amount and impact on the benefit of many people (cheddar mashallah al- ummah). Corruptors are equated (qiyās) with subversion perpetrators because they threaten the state's interests and many people. Ta'zīr with the death penalty can also be imposed on corruptors who commit crimes repeatedly after being punished more leniently. This kind of corruptor is likened to an alcoholic who continues to repeat his actions after several lighter sentences.

In Islamic law, the crime of corruption, including law enforcement and illegal miners, falls into the realm of ta'zir punishment so that Ulil Amri can make Ijtihad to determine the type of punishment for corruptors. Corruption is included in the ta'zir sentence because it has a unique characteristic different from the crimes that already exist in Islamic law, so Ulil Amri is authorized to determine the type of punishment by Ijtihad. The approach of Islamic law in eradicating corruption against illegal mining law enforcement and including illegal mining miners can be by applying existing concepts in the Qur'an or hadith. If the existing problem has a new nature and character, Ijtihad can be solved by including corruption penalties in the realm of ta'zir.

IV. CONCLUSIONS

From the explanation above, two conclusions can be drawn. Namely, *first*, the role of the government in curbing illegal nickel mining in Waserawi Village, Masni District, Manokwari Regency, West Papua Province from all functions still needs to improve in regulation, services, and empowerment both from the village government and the central government. The mining sector is very vulnerable to violations of the law, both criminally and administratively. Therefore, regulations were formed to regulate the mining business sector in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Factors that hinder the role of supervision of law enforcement criminal acts against illegal gold mining in Waserawi Village, Masni District, Manokwari Regency, West Papua Province are lack of cooperation in supervision and socialization, economic factors of customary rights communities, the terrain of illegal mining areas is very far. It requires high costs and understanding of local indigenous peoples (customary rights) of Law Number 3 of 2020 concerning

Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Efforts to supervise the management of mineral and coal mining natural resources in Manokwari Regency always pay attention to the community environment around the area that will be used as a mining area. Therefore, licensing becomes a means of supervision and control in overcoming environmental damage due to mining. *Second*, MUI, as an institution that provides fatwa, issued a fatwa on the law of environmentally friendly mining on 26 May 2011. The fatwa states that mining activities that do not bring prosperity to the community are haram. In Islamic law, illegal miners are included in the realm of ta'zir punishment so that Ulil Amri can make Ijtihad to determine the type of punishment. The Islamic law's approach to eradicating corruption against illegal mining law enforcement and including illegal miners can be applied in the Qur'an or hadith. If the existing problem has a new nature and character, then Ijtihad can be solved.

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