

# Reclamation Responsibility for Illegal Mining in Indonesia: How Should It Take Place?

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## Abstract

*Illegal mining is one of the problems in natural resource management in Indonesia. The enactment of Law Number 3 of 2020 concerning the Amendment to Law Number 4/2009 concerning Mineral and Coal Mining (UU No. 4/2009) further strengthens the concept of ecosystem protection, one of which is through reclamation and post-mining obligations. However, in the current law, there is confusion regarding the assignment of reclamation responsibility. The purpose of this paper is to examine how the concept of legal responsibility for illegal mining, and provide justification or consideration of the urgency of reclamation responsibility for illegal mining. This research employed a normative method and statutory, case, and conceptual approaches. The results of the study indicate that there is a legal vacuum in the current mining regulations regarding reclamation responsibility for illegal mining. The concept of responsibility for reclamation in Law no. 3/2020 is only charged to legal mining but does not cover illegal mining, causing many mine pits to be left unattended, and this situation has claimed many lives. Parties involved in Illegal mining in Indonesia should not only be burdened with liability but also environmental obligations or responsibilities in the form of reclamation and post-mining from illegal mining activities carried out. The first thing that can be done by the Government is to amend Law No. 3/2020 by expanding the concept of recovery responsibility to ensure that it can cover illegal mining. The imposition of reclamation responsibility for illegal mining is expected to provide maximum recovery for the ecosystem around the former mine.*

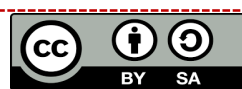
**Keywords:** Responsibility; Reclamation; Illegal Mining;

## Abstrak

Pertambangan ilegal merupakan salah satu masalah dalam pengelolaan sumber daya alam di Indonesia. Lahirnya Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan Atas Undang-Undang Pertambangan Mineral dan Batubara sebelumnya (UU No. 4/2009) semakin memperkuat konsep perlindungan ekosistem salah satunya melalui kewajiban reklamasi dan pasca tambang. Akan tetapi, dalam aturan hukum saat ini terdapat kerancuan mengenai pembebanan tanggung jawab reklamasi. Tujuan penulisan ini adalah untuk mengkaji bagaimana konsep pertanggungjawaban hukum pertambangan ilegal, dan memberikan justifikasi atau pertimbangan urgensi tanggung jawab reklamasi untuk pertambangan ilegal. Metode penelitian dalam penelitian ini adalah penelitian normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan konseptual. Hasil penelitian menunjukkan bahwa terdapat kekosongan hukum (*legal vacuum*) dalam aturan pertambangan saat ini mengenai tanggung jawab reklamasi

bagi pertambangan ilegal. Konsep tanggung jawab reklamasi dalam UU No. 3/2020 hanya dibebankan kepada pertambangan legal namun tidak menjangkau pertambangan ilegal. Hal ini menyebabkan banyak lubang tambang yang dibiarkan yang merenggut banyak korban jiwa. Pelaku pertambangan ilegal di Indonesia seharusnya tidak hanya dibebani tanggung jawab pidana, melainkan kewajiban atau tanggung jawab lingkungan dalam bentuk reklamasi dan pasca tambang dari kegiatan tambang ilegal yang dilakukan. Hal pertama yang dapat dilakukan oleh Pemerintah adalah melakukan perubahan terhadap UU No. 3/2020 dengan memperluas konsep tanggung jawab pemulihan sehingga dapat juga menjangkau pertambangan ilegal. Pembebanan tanggung jawab reklamasi bagi pertambangan ilegal ini diharapkan dapat memberikan pemulihan yang maksimal bagi ekosistem sekitar bekas tambang.

**Keywords:** Pertanggungjawaban; Reklamasi; Pertambangan Ilegal;



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## A. INTRODUCTION

Indonesia is one of the countries with abundant mineral and coal deposits, scattered in almost all regions of Indonesia, including Kalimantan, Java Island, Sumatra, Jayapura, and Papua.<sup>1</sup> This wealth of natural resources plays an important role in advancing the prosperity of the Indonesian people. The natural wealth in Indonesia is controlled by the state for the sake of advancing the welfare of the people, as cited from Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia ("The 1945 Constitution of the Republic of Indonesia"), stating "Earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people".<sup>2</sup> However, issues hampering the exploration and utilization of natural resources in Indonesia remain, and the existence of artisanal mining doing illegal small-scale mining operations benefitting certain investors is among other issues.<sup>3</sup> Investors provide capital to local communities or migrants from outside the area to allow for mineral exploration without an official license.<sup>4</sup>

Such illegal mining practices pollute the environment and alter the environmental physical condition, where ex-mining holes may form.<sup>5</sup> The former mining pits often claim the lives of the residents of the surrounding community. From 2011 to 2018, these pits or former

<sup>1</sup> Indah Dwi Qurbani & Ilham Dwi Rafiqi, "Prospective Green Constitution in New and Renewable Energy Regulation," *Legality: Jurnal Ilmiah Hukum* 30, no. 1 (2022): 68–87, <https://doi.org/https://doi.org/10.22219/ljih.v30i1.18289>.

<sup>2</sup> Ira Fadilla Rohmadanti, Febriansyah Ramadhan, and Ilham Dwi Rafiqi, "Disharmony of Domestic Refining Provisions for Mineral and Coal in Indonesian Laws and Regulations," *Pandecta: Jurnal Penelitian Hukum* 17, no. 1 (2022): 1–17, <https://doi.org/10.15294/pandecta.v17i1.31236>.

<sup>3</sup> Indah Dwi Qurbani & Ilham Dwi Rafiqi, "Bisnis Sektor Sumber Daya Alam Dan Hak Asasi Manusia Di Indonesia: Realitas Dan Tantangan," *Media Juris* 5, no. 2 (2022): 259–84, <https://doi.org/10.20473/mi.v5i2.34348>.

<sup>4</sup> Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani, Willy Naresta Hanum "Legal Policy of Old Wells Petroleum Mining Management Based on Social Justice in Realising Energy Sovereignty," *Sriwijaya Law Review* 6, no. 2 (2022): 286–303, <http://dx.doi.org/10.28946/slrev.Vol6.Iss2.1745.pp286-303>.

<sup>5</sup> Ami A. Meutia, Royke Lumowa, Masayuki Sakakibara "Indonesian Artisanal and Small-Scale Gold Mining—A Narrative Literature Review," *International Journal of Environmental Research and Public Health* 19, no. 7 (2022): 3955, <https://doi.org/10.3390%2Fijerph19073955>.

mine excavations killed 32 people located throughout the East Kalimantan region. Then in 2018, based on data from the Energy and Natural Resources Office of Energy and Mineral Resources of East Kalimantan, at least 539 ex-mining pits were found throughout East Kalimantan.<sup>6</sup> In addition, in South Kalimantan, a puddle of ex-mine acid water was found in an area of 20 hectares with a length of 963 meters and a circumference of 2,243 in diameter as shown by satellite imagery. The former mining pit was simply abandoned without being closed.<sup>7,8</sup> In general, Satellite Imagery Data found at least 3,033 ex-mining pits including coal mines spread throughout Indonesia. Of these, around 1,735 coal pits are in East Kalimantan.<sup>9</sup>

Government Regulation in Lieu of Law Number 2 of 22 Concerning Job Creation and Government Regulation Number 78 of 2010 concerning Reclamation and Postmining ("PP Reclamation and Postmining 2010") regulates the obligation to carry out reclamation and post-mining.<sup>10</sup> Article 1 Number 26 of the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation defines reclamation as an activity carried out throughout the stages of the mining business to organize, restore and improve the quality of the environment and ecosystem to ensure that it can duly function. The purpose of this reclamation is to create sustainable development while maintaining environmental quality based on environmental principles.<sup>11,12,13</sup>

Even though reclamation obligations have been regulated in mining activities. The current regulations impose reclamation obligations only on companies that have a legal mining business or a permit, as referred to in Article 161B Paragraph (1) of the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the Amendment to Law Number 3 of 2020 concerning Mineral and Coal Mining, which stipulates that "Any person whose IUP or IUPK is revoked or expires and does not carry out: a. Reclamation and/or Postmining; and/or b. Placement of Reclamation guarantee funds and/or post-mining guarantee funds shall be subject to imprisonment for a maximum of 5 years and a maximum fine of Rp100,000,000,000.00 (one hundred billion rupiah). Whereas illegal or unlicensed mining activities in the context of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation only carry criminal responsibility under Article 158 of the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the Amendment to Law Number 3 of 2020 concerning

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<sup>6</sup> Kementerian Lingkungan Hidup dan Kehutanan, "Bahaya Lubang Bekas Tambang," Perpustakaan Emil Salim, 2018.

<sup>7</sup> Agrona Renantera Prasetyo, "Pertanggungjawaban Pidana Terhadap Hilangnya Nyawa Di Lubang Bekas Pertambangan," *Recidive: Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 10, no. 3 (2021): 220–27, <https://doi.org/10.20961/recidive.v10i3.58964>.

<sup>8</sup> Faisal Faisal, Derita Prapti Rahayu, and Yokotani Yokotani, "Criminal Sanctions' Reformulation in the Reclamation of the Mining Community," *Fiat Justisia: Jurnal Ilmu Hukum* 16, no. 1 (2022): 11–30, <https://doi.org/10.25041/fiatjustisia.v16no1.2222>.

<sup>9</sup> Pusat Studi Hukum Energi dan Pertambangan (PUSHEP), "Perkara Sektor Pertambangan Ilegal Dominasi Pelanggaran Hukum Pertambangan Sepanjang Tahun 2020," 2021.

<sup>10</sup> Irfan Nur Rachman, "Politik Hukum Pengelolaan Sumber Daya Alam Menurut Pasal 33 UUD 1945," *Jurnal Konstitusi* 13, no. 1 (2016): 195, <https://doi.org/10.31078/jk1319>.

<sup>11</sup> Muhamad Muhdar, "Aspek Hukum Reklamasi Pertambangan Batubara Pada Kawasan Hutan Di Kalimantan Timur," *Mimbar Hukum* 27, no. 3 (2015): 472–86, <https://doi.org/10.22146/jmh.15883>.

<sup>12</sup> Mohammad Jamin et al., "The Impact of Indonesia's Mining Industry Regulation on the Protection of Indigenous Peoples," *Hasanuddin Law Review* 9, no. 1 (2023): 88–105, <https://doi.org/10.20956/halrev.v9i1.4033>.

<sup>13</sup> Mohammad Jamin et al., "Legal Protection of Indigenous Community in Protected Forest Areas Based Forest City," *BESTUUR* 10, no. 2 (December 21, 2022): 198–212, <https://doi.org/10.20961/BESTUUR.V10I2.66090>.

Mineral and Coal Mining. The legal vacuum of not having reclamation or post-mining obligations for illegal mining activities proves that Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation still has many problems. The impact that will result from this legal issue will result in a permanent change in the physical condition of the environment, where ex-mining holes form. In addition, this legal issue can also burden the government because it has to spend more on reclamation and post-mining recovery. Some parties may argue that reclamation and post-mining charges for illegal mining are included in the "additional punishment" imposed along with the criminal sentence declared in a court decision. Based on the initial investigation conducted on the decisions of the criminal court on illegal mining, no reclamation charges were found for illegal mining activities, generally only related to criminal sanctions. This shows that in terms of procedural law, there is no standard to impose a penalty by imposing a burden on illegal mining to carry out reclamation and post-mining.

From these problems, this paper will first review the concept of reclamation responsibility in mining activities that applies under current legislation. The legal responsibility of illegal mining actors will be more specifically explained, followed by an explanation of the urgency of imposing reclamation and post-mining responsibilities in illegal mining. This paper is expected to contribute to the management of sustainable natural resources in Indonesia and serve as a reference for the government to make consideration in the improvement of the legislation on the mineral and coal mining sector.

## **B. METHOD**

This research employed a normative-legal method, where the concept of law is defined as rules written in the applicable laws and regulations. In other words, law is conceptualized as a norm or rule that forms the basis according to which humans behave.<sup>14</sup> Primary legal materials consist of basic principles and laws and regulations, government regulations, and other subordinate regulations, while secondary legal materials involve draft laws, research results and opinions of legal experts. Dictionaries and encyclopedias were also used as the tertiary legal materials.<sup>15</sup>

## **C. RESULTS AND DISCUSSIONS**

### **1. Legal Responsibility For Perpetrators Of Illegal Mining**

Mineral and coal law has fundamentally been experiencing lengthy dynamics and change. In 1960, the government passed the first law on mining—the government ordinance replacing law no 37 of 1960 concerning mining. This possesses nationalistic and anti-west characteristics, but during the new order, the law concerned has already tarnished the nationalistic spirit and attracted foreign investment. The MPRS settlement Number XXII/MPRS/1996 concerning the renewal of wisdom of fundamental monetary economy and development mentions the potential of capital, technology, and foreign expertise in benefitting to manage the potent national

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<sup>14</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, Cetakan ke (Jakarta: Kencana, 2017). page. 23

<sup>15</sup> Depri Liber Sonata, "Metode Penelitian Hukum Normatif Dan Empiris: Karakteristik Khas Dari Metode Penelitian Hukum," *Fiat Justisia: Jurnal Ilmu Hukum* 8, no. 1 (2014): 25–27, <https://doi.org/10.25041/fiatjustisia.v8no1.283>.

resources for the development of Indonesia; moreover, Law Number 11 of 1967 concerning fundamental terms of mining explains that minerals are part of Indonesia's wealth and must be used to the greatest for the prosperity of the people. Furthermore, minerals are mapped into three groups under the same law: a. oil, tin, nickel, and radioactive minerals; b. metallic minerals not included as strategic minerals; c. minerals not listed as vital and strategic or non-metallic minerals. Following the development of the Law of Fundamental Mining of 1967 scrapped and replaced by Law Number 4 of 2009 concerning mineral and coal mining ("**2009 Minerba Law**"), this change is at least emphasized in several aspects such as environment, divestment, management, and refinement to increase the added value of downstream and impose an administrative penalty on the violations committed by permit holders and penalty on those issuing permits.

The Law concerning Minerals and Energy determines that there is an obligation for a person or a company to get a permit before establishing a mining enterprise. Several permits that could be granted by the government are special mining enterprise (IUPK), Artisanal Mining Permit (IPR), and normal mining enterprises permit (IUP). When a legal subject does not possess a permit for its mining enterprise, such a situation could be classified as illegal mining that violates the law. The classification in mining enterprise is divided into 3: a. Illegal mining involves digging and/or mining activities performed by a company or people without permits and violating good mining practices; b. Mining without permits 'peto', activities performed by an individual or particular groups, companies or foundations that have legal entities whose operation, did not possess a permit from the government; and c. Artisanal mining with artisanal mining permit (IUPR) operated by people using traditional tools within a mining region ("WPR").<sup>16</sup> Principally, artisanal mining permits are not restricted to legal entities, but local people can also be entitled to the rights to run artisanal mining activities. Such mining activities take place within the WPR. The executor of mining activities is also obliged to own an artisanal mining permit or IPR and follow good mining practices. Thus, mining activities operating without a permit are deemed illegal and are subject to a criminal penalty, fine, or other kinds of penalty according to the law in place.

It is essential to know that several perpetrators can influence the growth, development, and continuation of PETI<sup>17,18</sup>:

- a. The mining enterprise has been in operation for generations, triggering an opinion believing that the land is inherited, thereby not needing any permits;
- b. The capital gained for the enterprise is relatively small and the mining operation is done in a simple/traditional fashion;
- c. The jobs and expertise provided by the enterprise's owner are inadequate;
- d. The digging gives ease in marketing minerals;

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<sup>16</sup> Keris Aji Wibisono and Umar Ma'ruf, "The Law Enforcement Against The Crime Of Illegal Mining," *Law Development Journal* 3, no. 2 (2021): 424, <https://doi.org/10.30659/ldj.3.2.424-430>.

<sup>17</sup> Ahmad Redi, "Responsive Law Enforcement in Preventing and Eradicating Illegal Mining in Indonesia," *Journal of Law and Sustainable Development* 11, no. 8 (September 29, 2023): 1–21, <https://doi.org/10.55908/sdgs.v11i8.1436>.

<sup>18</sup> Yudha, Subekti, and Noenik Soekorini, "Criminal Law Enforcement Against Perpetrators of Illegal Mining in Sukodadi Village, Kabuh, Jombang," *Journal Of Law Theory And Law Enforcement* 2, no. January (2023): 57–67, <https://doi.org/10.56943/jlte.v2i1.265>.

- e. Poor legal understanding of the regulations governing mining; and
- f. Getting the permit via bureaucracy is complicated, time-consuming, and costly.

A mining enterprise permit shortened into IUP is issued by authorized officials in accordance with the law. In terms of those rightfully holding permits, according to Article 38 of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the Amendment to Law Number 3 of 2020 concerning Mineral and Coal Mining, three parties that could receive IUP are legal entities, cooperation, and companies owned by persons. This permit is further divided into 2 categories, namely exploration and production operation, as determined by Article 36. Mining activities with no enterprise permit violate legal provisions. That obligation applies to parties determined to receive the permit or a penalty can be imposed on those performing mining activities without permits. Violators can be subject to detention or fines as set out in Article 158 of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the Amendment to Law Number 3 of 2020 concerning Mineral and Coal Mining, stating "every person that operating illegal mining without a permit as referred to by article 35 will be prosecuted with the maximum five-year imprisonment and a Rp100.000.000.000 (one hundred billion rupiahs) fine". The provision from the article concerned is related to criminal penalty with 2 terms, namely element and *beestandel*.<sup>19</sup> Element is directly proven in the provision of the article of the law relating to written or unwritten conduct, while *beestandel* represents elements from written conduct only done in *expert verbis*. The primary element in that article is categorized as a *bestanddelen delict* where the way to prove an act is specifically directed to illegal mining or artisanal mining industry that holds no permit as explained in Article 35 of Mineral and Coal Mining Law 2009.<sup>20,21</sup> Even though the penalty is already determined and given accordingly, it does not mean the judge who examines and presides over the illegal mining case could apply it freely. The precedence of that criminal penalty is applicable as a final solution "Ultimum remedium" in enforcing the obligation of mining companies to exercise reclamation and postmining.<sup>22</sup> The enforcement of this criminal penalty could be done if the administrative penalty is deemed to be inadequate to solve the violation committed. According to the application, an administrative penalty is often used rather than a criminal penalty in the form of a written warning, temporary or permanent cessation of mining activities, and revocation of a mining permit.

Imprisonment, fines, and additional penalties may also be imposed in the case of violations of the mining permit concerned. The currently existing law also states that additional criminal penalty is also applicable in the form of expropriation of assets, profits, or other costs incurred to cover the damage caused by criminal activities. These conditions are regulated under Article 164 of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job

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<sup>19</sup> Eddy O. S. Hiarij., *Prinsip-Prinsip Hukum Pidana* (Yogyakarta: Cahya Atma Pustaka, 2016). Hlm. 129

<sup>20</sup> D. Haryadi, Ibrahim, and Darwance, "Environmental Improvement Policy through the Obligation of Post-Tin Mining Reclamation in the Islands of Bangka Belitung," *IOP Conference Series: Earth and Environmental Science* 1175, no. 1 (2023), <https://doi.org/10.1088/1755-1315/1175/1/012021>.

<sup>21</sup> Mahrus Ali et al., "Punishment without Culpability in Environmental Offences," *Cogent Social Sciences* 8, no. 1 (2022): 1–15, <https://doi.org/10.1080/23311886.2022.2120475>.

<sup>22</sup> Ahmad Joni, "Implementasi Kewajiban Reklamasi Pemegang Izin Usaha Pertambangan (IUP) Berdasarkan Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara Di Provinsi Riau," *Jurnal Gagasan Hukum* 2, no. 2 (2020): 204, <https://doi.org/10.31849/jgh.v2i02.8559>.

Creation, the Amendment to Law Number 3 of 2020 concerning Mineral and Coal Mining. Other than that penalty, special provisions are given to legal entities so the violation could be charged with aggravation to the management of the legal entity concerned. There is also alternative deliberation by judges who are in charge of investigating and trying the illegal mining case. The result of this trial may impose additional criminal penalty as stated in Article 163 of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the Amendment to Law Number 3 of 2020 concerning mineral and coal mining:

(1) In the event that the criminal act referred to in this chapter is committed by a legal entity, in addition to imprisonment and fines against its management, the punishment that can be imposed on the legal entity concerned is imposed in the form of a fine with aggravating punishment added with 1/3 (one third) of the portion of the maximum fines imposed as referred to in the provision.

(2) In addition to fines as referred to in paragraph (1), legal entities may be subject to additional penalties in the form of:

- a. revocation of business license; and/or
- b. revocation of legal entity status.

Mining activities carried out in forest areas also possess their own legal basis and arrangement that is specially regulated. Mining activities carried out without a permit in forest areas in the form of exploration or general survey of mining materials violate the provision regulated under Article 50 paragraph (1) of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, as the Amendment to Law Number 3 of 2020 concerning Mineral and Coal Mining.<sup>23</sup> The permit in question is the land-use permit published by the minister on the approval of the People's Representative Council as regulated under Article 38 paragraphs (3) and (5). A legal entity that violates the provision also could be charged especially with criminal penalty, as based on Article 78 paragraph (6) which reads "Whoever deliberately violates the provisions referred to in Article 38 paragraph (4) or Article 50 paragraph (3) letter g, is subject to the maximum ten—year imprisonment and a fine of up to Rp5,000,000,000.00 (five billion rupiah)". Against legal entity or legal enterprise, criminal penalty and prosecution are directed towards the management as a group or individual that could be charged with the penalty of mining crime as many as 1/3 (one per third) from the main sentence imposed. Every property involved in the crime will later be impounded by the states according to the court ruling through auction.

The Forestry Law of 1999 also regulates administrative penalties according to criminal conduct, including survey and exploration of minerals without a permit. Penalty other than criminal charges is the existence of an obligation for perpetrators to pay some compensation. These costs arise as a result and are adjusted to the level of damage caused. The entire cost of compensation referred to is used by the State to carry out forest restoration, rehabilitation, and other actions needed to restore the environment. Mining companies that have permits are obliged to carry out reclamation and post-mining of ex-mining land. A form of violation by a company that does not carry out its obligations may be subject to sanctions. These sanctions may be imposed not only on those who fail to perform the reclamation, but they are also related

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<sup>23</sup> Herman, Oheo Kaimuddin Haris, Sabrina Hidayat, Handrawan, Heryanti, and M. Fadli Masulili, "Penegakan Hukum Terhadap Tindak Pidana Penambangan Mineral Di Kawasan Hutan Tanpa Izin," *Halu Oleo Legal Research* 4, no. 2 (2022): 265, <https://doi.org/10.33772/holresch.v4i2.47>.

to the provision of reclamation and post-mining plans that are not implemented. Provisions for administrative sanctions regarding these actions are specified in Article 151 Paragraph (1) Government Regulation in Lieu of Law Number 2 of 2022 concerning job creation, the Amendment to Law Number 3 of 2020 concerning mining and coal Job.

The act mentioned refers to Article 99 of the 2020 Minerba Law, particularly in the phrase that reads Each IUP and IUPK holder is required to submit a reclamation plan and post-mining plan when applying for a Production Operation IUP or Production Operation IUPK, and the implementation of reclamation and post-mining activities is carried out in accordance with the allotment of post-mining land.

Apart from being stated in the Minerba Law, mining businesses are also required to have an EIA permit, considering that mining businesses or activities have serious impacts on the environment with the category of criteria specified in Article 22 of Law Number 32 of 2009 concerning Environmental Protection and Management (2009 Environmental Law) as amended by a Government Regulation in Lieu of Law.<sup>24</sup> Law Number 2 of 2022 concerning Job Creation reads:

- (1) Every business and/or activity that has a significant impact on the environment must have an Environmental Impact Analysis (AMDAL).
- (2) Significant impacts are determined based on the following criteria:
  - a. the size of the population that will be affected by a planned business and/or activity;
  - b. the area of impact distribution;
  - c. the intensity and duration of the impacts;
  - d. the number of other environmental components that will be affected;
  - e. cumulative nature of impact;
  - f. reversal or non-reversal of the impact; and/or
  - g. other criteria in accordance with the development of science and technology.

As mentioned, illegal mining is an act that violates the provisions of the applicable laws and regulations. This action has consequences for imprisonment, fines, aggravation, and administrative sanctions as additional sanctions. Given that illegal mining can affect the economy, politics, and even sociology directly or indirectly, these sanctions are due to the fact that mining businesses carried out can cause various problems to the surrounding environment in various forms and characteristics:<sup>25</sup>

- a. There has been a change in the ecological balance of the surrounding area, and this change may also happen in the short term in land surface condition and topography ;
- b. Mining can cause disturbances through smoke and dust which can contaminate water and air. Toxic substances are contained in mine waste and wastewater tailings. Disturbances can also come from loud noises from mining equipment and explosives;
- c. There is a possibility of landslides, mine explosions, earthquakes, and mine collapses if the local area geology and work safety are not seriously supervised. This disaster can also be caused by negligence and/or mistake.

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<sup>24</sup> Nabila Aulia Rahman, Zainal Arifin Mochtar, Ilham Dwi Rafiqi, Mohamed Yayah Jalloh "Legal Politics of Environmental Licensing Governance After Job Creation Law," *Hang Tuah Law Journal* 6, no. 2 (2022): 123–34, <https://doi.org/10.30649/htlj.v6i2.109>.

<sup>25</sup> Luh Putu Suryani I Made Bayu Sucantra, I Nyoman Sujana, "Sanksi Pidana Terhadap Tindak Pidana Pertambangan (Menurut Undang-Undang No. 4 Tahun 2009 Tentang Minerba)," *Jurnal Analogi Hukum* 1, no. 3 (2019): 369–70, <https://doi.org/10.22225/ah.1.3.2019.366-371>.



Illegal mining is carried out by an irresponsible company or person. Generally, after illegal mining, the perpetrators do not return to repair the environmental damage they have caused, thereby resulting in losses that affect the community. Such conduct violates the provisions set out in Article 69 paragraph (1) letter a of the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the Amendment to Law Number 32 of 2009 concerning Environment Law because of the environmental pollution caused.<sup>26</sup>

As explained above, in terms of the punishment, the perpetrators can be subject to a maximum of five-year imprisonment and/or a maximum fine of Rp100,000,000,000,- (one hundred billion rupiah). In addition, additional punishment can also be imposed under the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation in the form of confiscation of goods, confiscation of profits, and/or paying some costs incurred as a result of these actions. Legal entities that are addressed to management either jointly or individually may be subject to an additional penalty of 1/3 (one-third) of the main sentence imposed. In addition to punishment, administrative sanctions can also be imposed on perpetrators who do not carry out reclamation and post-mining. The sanctions include written warnings, fines, temporary suspension of all Exploration or Production Operation activities, and/or revocation of permits to carry out Sales. Meanwhile, illegal mining conducted in forest areas can be subject to imprisonment for a maximum of 10 years and/or a maximum fine of Rp5,000,000,000,000,- (five billion rupiah). In addition to the punishment, additional sanctions may also be imposed in the form of an obligation to pay compensation. The amount of compensation is based on the level of damage caused by illegal mining. In such a case, the compensation is then left to the State to carry out environmental restoration, rehabilitation, or other necessary actions.

Moving on from criminal sanctions and administrative sanctions, mining without a permit can trigger a lawsuit to take place. Surrounding communities affected by environmental damage due to illegal mining can file a lawsuit with the local district court based on Unlawful Acts, Article 1365 of the Indonesian Civil Code on the basis of the perpetrator's guilt, stating "Every act that violates the law and causes harm to others requires the person who caused the loss because of his mistake to replace the loss". Henceforth, the provisions for proceedings before the court refer to the Civil Procedure Code, taking into account the relative competence, namely the position/legal territory of the illegal miner as the defendant so that it can determine the district court which has the authority to examine and adjudicate the case filed.

## **2. Imposition of Reclamation Responsibility for Illegal Mining**

Philosophically, the implementation of mining is an effort to utilize natural resources in a sustainable manner and pay attention to the surrounding environment. Exploration utilization of natural resources is very damaging to the environment. The process of mining business activities must pay attention to the principles of environmental insight for the long term so that in accordance with the objectives of Article 33 Paragraph (3) of The 1945 Constitution of the Republic of Indonesia, the welfare and prosperity of the Indonesian people are used entirely for the people of Indonesia and this article is the active role of the state in maintaining the economy

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<sup>26</sup> Febriansyah Ramadhan, Ilham Dwi Rafiqi "Antinomy of Community Participation Rights in the Law on the Environmental Sector," *Jurnal Daulat Hukum* 4, no. 3 (2021): 171–88, <http://dx.doi.org/10.30659/jdh.v4i3.17212>.

for prosperity and welfare of society, protection and social fulfillment of Indonesian citizens.<sup>27</sup> Meanwhile, sociologically, Indonesia already has a lot of natural wealth so many foreign companies or investors from abroad want to control and seek profits. Indonesia still has environmental problems caused by increasingly uncontrolled mining permits. This happens because of the rampant opening of mining lands that are not aware of the impacts on the environment. Hundreds of thousands of hectares of mining areas all over the archipelago have been damaged by the production of illegal mining (mining without a permit), resulting in land damage, denser soil, erosion and sedimentation, landslides, disruption of flora and fauna and significant losses, affecting the community around the mining area. In a juridical scope, the implementation of mining business activities already has a legal basis under the Mineral and Coal Law despite frequent submission to the Constitutional Court for Judicial Review. The Constitutional Court with Constitutional Court Decision Number 25/PUU-VIII/2010 has given consideration to the provisions of Article 22 letter e and letter f, namely the phrase "and/or" which is an area or place of community mining activities that have been carried out for at least fifteen years. These provisions hinder people's rights to participate and meet economic needs through mineral and coal mining activities because not all artisanal mining activities have been carried out for at least 15 years.<sup>28</sup>

As per the Amendment to the 2020 Mineral and Coal Mining Law, the state has a function in controlling policies, especially regarding management, management and supervision, as explained in the Constitutional Court Decision Number 001-021022/PUU-1/2003, stating: Management (*bestuursraad*) has the duty of the state to carry out its authority such as issuing and revoking licensing facilities (*vergunning*), licenses (*licentie*), and concessions (*concessie*), and regulation (*reglandaad*). The state has the legislative authority of the House of Representatives with the government and regulations, and Management (*beheersdaad*). The state owns shares (*shareholding*) and has direct involvement in the management of State-Owned Enterprises for people's prosperity. The State and government Supervision (*toezichthoudensdaad*) supervise and control natural resources in accordance with the maximum allocation for the prosperity of the people.<sup>29</sup>

There is one law that regulates the mining sector technically, namely Government Regulation Number 55 of 2010 concerning the Guidance and Supervision of the Implementation and Management of Mineral and Coal Mining Businesses ("PP Pembinaan Supervision and Management of Minerba 2010"). Technically, supervision is carried out by officials who have the authority based on applicable laws. Technically in the field, direct supervision is carried out by the Mining Inspector together with supervisory officials in the environmental and reclamation fields. Supervision as referred to under Article 28 paragraph (1), includes: a. environmental management and monitoring in accordance with environmental management documents or environmental permits owned and approved; b. structuring,

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<sup>27</sup> Ilham Dwi Rafiqi, "Pembaruan Politik Hukum Pembentukan Perundang-Undangan Di Bidang Pengelolaan Sumber Daya Alam Perspektif Hukum Progresif," *Bina Hukum Lingkungan* 5, no. 2 (2021): 320–21, <https://doi.org/10.24970/bhl.v5i2.163>.

<sup>28</sup> Febriansyah Ramadhan, Ilham Dwi Rafiqi, "Study of Constitutional Court Decisions Cancelling All Norms In The Law," *Legality: Jurnal Ilmiah Hukum* 29, no. 2 (2021): 232, <https://doi.org/10.22219/ljih.v29i2.15434>.

<sup>29</sup> Ahmad Redi, "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam," *Jurnal Konstitusi* 12, no. 2 (2015): 404, <https://doi.org/10.31078/jk12210>.

restoring and repairing land according to its designation; c. determination and disbursement of reclamation guarantees; d. post-mining management; e. determination and disbursement of post-mining guarantees; and f. compliance with environmental quality standards in accordance with statutory provisions.

Mineral and coal mining has an important role and position as well as positive impacts on the surrounding area and on a national scale. However, mining activities also cause negative impacts of the exploration phase of mining activities, such as a. demolition of land that changes the surface of the land (land impact); b. accumulation of garbage or waste; c. the occurrence of erosion on the highway due to excavation activities; d. disturbed fauna habitat; e. air pollution/pollution; and f. air in the trench. In addition to the negative impacts on the exploration stage, mining activities (in the mining and milling phase) also have negative impacts, such as, among others, a. risk of loss of wildlife habitat; b. the occurrence of a reduction in water discharge as utilized by the local community; c. deposition (sedimentation) and erosion (erosion) in lakes and rivers; d. environmental damage as a result of toxic protection in damaged waste containers; e. potential for the formation of acid in the mine wall. Accumulation of heavy metals in trenches or tamping devices results in cyanide accumulation; f. cyanide which contaminates groundwater and surface water; g. heaps of leftover rock causing the displacement of soil in the waste disposal area; and h. dust and noise.

The various negative impacts caused by illegal mining have become one of the government's special concerns. The President with his authority has assigned the Ministers, the Attorney General, the Police, the Governors and the Regents/Mayors to take action to overcome the problems. In addition, the President also instructed that all mining activities without permits be stopped with the duties and authorities of each official. The instructions were explained directly by the President as stated in the First Paragraph of the Presidential Decree of the Republic of Indonesia Number 44 of 2004 concerning the Dissolution of the Coordination Team for Mining Countermeasures Without Permits, Misuse of Fuel Oil and Destruction of Electricity Installations and Theft of Electricity. Regarding these problems, the President formed a Central Integrated Team to run the program. The instruction also states to involve the community in dealing with mining problems without cross-sectoral/agency permits. A regional integrated team was set to carry out a program to eradicate illegal mining in order to eradicate illegal mining and encourage the implementation of good mining governance and to maintain and protect the good image of the government (good governance), to create harmonization as state administrators".<sup>30</sup>

Academic Draft of Bill Number 3 of 2020 concerning Job Creation, the Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining, implies that mining activities are systematic, complex activities, and have a high risk for the environment. Changes to the environment due to mining activities and environmental disturbances certainly require special efforts to restore the environment to its original state. The reclamation of ex-mining land has the goal of producing a better ecosystem and it is being strived to be better than at first. Mining activities have the power to change the environment enormously so it requires careful total

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<sup>30</sup> Oheo K Haris, "Good Governance (Tata Kelola Pemerintahan Yang Baik) Dalam Pemberian Izin Oleh Pemerintah Daerah Di Bidang Pertambangan," *Yuridika* 3, no. 1 (2015): 58–83, <https://doi.org/10.20473/ydk.v30i1.4879>.

planning from the start to post-mining. That reclamation is progressive according to post-mining land use. So it appears that the difference between reclamation and post-mining can be done at each stage of mining depending on the environmental conditions due to mining activities. The implementation of reclamation activities must comply with the principles of protecting the quality of surface water, groundwater, seawater, soil and air in accordance with statutory provisions, protecting and restoring biodiversity, guaranteeing the stability and safety of overburden deposits, tailings ponds, ex-mining land, and other material structures, utilization of ex-mining land according to its designation, taking into account local socio-cultural values and protection of the quantity of groundwater. Each reclamation and post-mining requires funds or guarantees in accordance with the concept of statutory regulations that the implementation of reclamation and post-mining is an obligation that must be carried out by IUP and IUPK holders who are obliged to place guarantee funds. This concept has weaknesses because it has opened a loophole for IUP/IUPK owners to ignore reclamation on the pretext that they have implemented a guarantee fund placement.

Article 2 Paragraph (1) and Paragraph (2) of the 2010 PP Reclamation and Postmining states that only Exploration IUP and Exploration IUPK holders are required to carry out reclamation. The reclamation is carried out on disturbed land in accordance with the exploration activities that have been carried out. In addition, holders of Production Operation IUP and Production Operation IUPK are also obligated to carry out reclamation and post-mining activities. Where reclamation and post-mining are carried out for open pit mining and underground mining. As for reclamation and post-mining technically, this is also further regulated in Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities.

The application for a reclamation plan is submitted by the holder of an Exploration IUP and an Exploration IUPK after the feasibility study has been completed. The application is submitted to the Minister, governor or regent/mayor in accordance with their authority. Prior to carrying out reclamation and post-mining, it is mandatory to prepare a plan that adheres to the principles of protection and management of the mining environment, and the principles of occupational safety and health as stated in Article 3 paragraph (1) PP Reclamation and Postmining 2010. Reclamation plans that have been prepared for at least 5 years. This is every year included in the reclamation plan. The reclamation planning, described in Article 7 Paragraph (4) PP Reclamation and Postmining 2010, at least contains land use after and before mining, planning for land clearing, reclamation implementation program for disturbed land which includes land outside the former mine and ex-mining land both permanent and temporary, program success criteria, and reclamation implementation budget. Specifically regarding land outside the former mine, at least it includes overburden stockpiling, mining material storage areas and temporary storage areas, roads, factories and purification and processing installations, buildings as supporting facilities, housing and offices, ports, as well as tailings and/or deposition or landfill. The legislation states that IUP and IUPK holders are required to provide guarantees when carrying out reclamation and post-mining activities. The guarantee is divided into 2, namely the reclamation guarantee and the post-mining guarantee. The reclamation guarantee is then divided into 2 parts, namely the exploration stage reclamation guarantee and the production operation stage reclamation guarantee. The guarantee is in the

form of a time deposit placed at a state-owned bank. Mining activities that result in environmental pollution need to be included in the substance of the 2020 Minerba Law. So far, content materials that result in environmental pollution are subject to sanctions, and they are only regulated in the Environmental Protection and Management Law, while for companies or individuals without permits, there is no reclamation. As previously explained, mining perpetrators without permits and illegal mining are only subject to sanctions in accordance with applicable laws. These sanctions can take the form of imprisonment, fines, aggravation, or administrative sanctions. There is no provision stating that there is a reclamation obligation for mining perpetrators without permits and illegal mining. These sanctions can be found starting from Article 151 to Article 165 of the Government Regulation Number 2 of 2022 concerning Job Creation as the Amendment to Law Number 3 of 2020 concerning mineral and coal mining. However, articles 152 and 157 were deleted after changes were made to Government Regulation Number 2 of 2022 concerning Job Creation. Within these articles, forms of criminal sanctions can be imposed according to the classification of the actions committed. Sanctions included in the article are criminal sanctions and administrative sanctions.

Some examples of cases regarding the absence of obligations or even the absence of implementation of reclamation and post-mining for illegal mining perpetrators are given in the following: *First*, Case on Decision no 183/pid.sus/2022/pn.tgt, group A coal mining activity Monday, August 22 2022 at 11.30 WITA I Jusman Madudut Situmorang received an order from H. Muhammad Ridhuan to carry out coal mining in the concession area of PT. Kendilo Coal Indonesia Riye River Bending Block, Kuaro District, Paser Regency, East Kalimantan. Muhammad Ridhuan at the location operating one unit of the Sany brand SV215C excavator carried out mining activities and was supervised by H. Muhammad Ridhuan as the person in charge of the field for mining activities carried out by I Jusman Marudut Situmorang. The mining activity began with conducting land clearing and excavating/overburdening coal using a yellow Sany brand SV215 excavator at a location designated by H. Muhammad Ridhuan. I Jusman Marudut Situmorang piled up coal to be loaded/hailed into a Dump Truck by Irwansyah's men and immediately taken away. Then on Monday 22 August 2022 at 11.30 WITA, Feriyanto Sazli and Dony Trio Pambudi, were tasked with carrying out security activities at PT. Kendilo Coal Indonesia and to the location of mining activities that I Jusman Marudut Situmorang was working on. Coal mining activities were carried out by I Jusman Marudut Situmorang and Muhammad Ridhuan at the coordinate point 393650E 9792907S which is located in the PT. Kendilo Coal Indonesia Bertitit Sungai Riye Block, Kuaro District, Paser Regency, East Kalimantan with an area of 1,869 ha with no Mining Business Permit (IUP), Artisanal Mining Permit (IPR), or Special Mining Business Permit (IUPK). Coal mining produces approximately 500 tons to 1000 tons. The actions of I Jusman Marudut Situmorang and H. Muhammad Ridhuan were punishable under Article 158 of the 2020 Minerba Law Jo. Article 55 Paragraph (1) to 1 Law Number 8 of 1981 Concerning Criminal Procedure Code. In this case, the Panel of Judges decided that I Jusman Marudut Situmorang and H. Muhammad Ridhuan had received five months' imprisonment and a fine of Rp. 5,000,000.00 (five million rupiahs).

*Second*, group A tin mining case, Decision no 129/pid.sus.2022/pn.mtk. On August 10, 2022 Ardi Yanto at 20.30 located at PT. GSBL (Gunung Sawit Bina Lestari) Air Belo Village,

Muntok District, West Bangka Regency carried out mining without a permit in Block F 23/24 Oil Palm Plantations. Tin sand mining activities were first carried out by turning on the water machine, followed by inserting the rajuk eye pipe with the monitor hose into the ground to suck the soil containing tin minerals using a spiral tool and check the tin sand that flowed through the spiral hose into the carpet using a plastic bowl and separating soil with lead sand put in a half drum for washing. The tin sand produced by Ardi Yanto was approximately 27 kilograms. Ardi Yanto's actions were punishable under Article 158 of the 2020 Minerba Law Jo. Article 55 Paragraph (1) 1st of the Criminal Code. The Panel of Judges decided that Ardi Yanto's actions were sentenced to one year in prison and a fine of Rp. 1,000,000.00 (one million rupiah).

*Third*, Mining case which caused pollution in Makassar, North Molucca, Northern Sumatra, Sangihe Island of Northern Sulawesi, and Eastern Kalimantan throughout 2020, the Mining Advocacy Network for short JATAM recorded at least 45 mining conflicts. The conflict resulted in 69 people being criminalized and more than 700,000 hectares of land damaged due to mining with a permit. Referring to the South Sulawesi region, one of the areas experienced a negative impact due to mining, where the community stated that there was a very significant reduction in fish catch by fishermen. Residents said that at least before the existence of mining, fishermen could bring in as many as 10 fish they caught, but since the existence of mining, it has decreased drastically. This means that mining has an impact on the surrounding economy and the environment, namely the abrasion of 27 houses and public facilities on the coastline. In North Maluku, there is environmental damage caused by air pollution. This resulted in residents suffering from various diseases, shortness of breath, and vomiting blood. The damage also occurred in the North Sumatra region due to zinc ore mining. One of its mining activities is the construction of sewage dams close to agriculture, settlements and water sources for the surrounding community. In addition, areas that have a high level of risk of earthquakes also become a contributing factor in the occurrence of environmental damage. It must also be realized that nature is something that cannot be changed and/or predicted with certainty, but human actions can change and create environmental damage.

It is clear that illegal mining perpetrators who carry out mining without a permit are subject to imprisonment and fines. This means that there is no explanation regarding other sanctions given in the form of obligations to carry out reclamation and post-mining of ex-mining land. Who has the right to reclaim mining without a permit remains to be seen. Which is different from perpetrators who already have permits. For miners who have permits, according to statutory provisions, they are obliged to carry out reclamation and post-mining. In fact, it requires a guarantee fund to be kept in a government bank as collateral in seeking reclamation and post-mining later. However, the application that occurs is that only a handful of companies implement reclamation and post-mining of the former mining land. In general, companies consider that the reclamation guarantee funds that have been provided can cancel their obligations,<sup>31</sup> and this seems to be the burden and responsibility of the government. This is what makes most companies not carry out their obligations, which should mean that the guarantee fund does not erase the obligations in carrying out reclamation and post-mining.

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<sup>31</sup> Ririn Aswandi Rizqa Ananda Hanapi, Husnul Khatimah Ahmad, "Komisi Pengelola Dana Jaminan Reklamasi Dalam Upaya Pemulihan Wilayah Bekas Tambang Batu Bara," *Jurnal Legislatif* 3, no. 1 (2019): 155–56, <https://doi.org/10.20956/jl.v3i1.10212>.

Bearing in mind that the guarantee fund is one of the prerequisites for accountability in carrying out reclamation and post-mining, this fund will be returned if the company has indeed carried out its obligations. These actions could harm the surrounding community from various aspects.

Legislation, specifically the 2020 Minerba Law, states that mining perpetrators have an obligation to plan reclamation and post-mining as well as reclamation and post-mining guarantee funds when submitting applications for IUP and IUPK.<sup>32</sup> In the event that the plan is not implemented, then certain officials can appoint a third party to carry out reclamation and post-mining. The appointment uses the guarantee fund that has been given as reclamation and post-mining operational costs. It should be noted that reclamation and post-mining activities are only aimed at mining perpetrators when applying for permits. In other words, illegal mining is not included in it. The appointment of a third party to carry out the reclamation and postmining activities is contrary to the provisions in PP Reclamation and Post-mining 2010. This Government Regulation states that reclamation and post-mining activities are mandatory for mining perpetrators who have applied for an IUP or IUPK permit according to the plan submitted.

Illegal mining or PETI is mostly carried out by mining perpetrators who rule out work safety and environmental aspects. Following the damage caused, they do not consider repairing the post-mining environment. Illegal mining does not guarantee and assist in promoting economic growth in the surrounding community because the workers, owners, and also its capital mostly come from outside the mining area.<sup>33</sup> The existence and consequences caused by illegal mining, as a matter of fact, have worsened the perspective of mining in Indonesia. This affects legal and responsible companies because they often receive accusations following various environmental damages caused. Furthermore, these companies are often treated the same as the perpetrators of illegal mining, resulting in an injustice to those who should be fully responsible for their actions.

Regulations regarding imprisonment and fines are in practice very helpful to judges. With the existence of sentencing provisions, judges can consider properly the severity or lightness of the sentence imposed on the perpetrator according to his actions. Criminal sanctions as stated in the articles are also interpreted as a list that must be examined first before imposing a sentence by a judge. The criminal sanction is imposed by the judge at the end of the trial after going through the stages to deter the violators and guarantee justice. The imposition of criminal sanctions by the judge who examines and adjudicates the case is not based solely on revenge. Criminal punishment is professional with special values, namely education (*educative*), eradication (*repressive*), prevention (*preventive*), and correction (*corrective*).<sup>34</sup> By imposing criminal sanctions such as imprisonment, fines, up to aggravating sanctions and additional sanctions, it is hoped that this will be able to provide and realize a sense of remorse, benefit, and justice.

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<sup>32</sup> Ahmad Joni. *Op.Cit.*, hlm. 200-201

<sup>33</sup> Igun Nahan, "Tinjauan Yuridis Terhadap Pelaksanaan Reklamasi Setelah Ada Usaha Pertambangan Tanpa Izin," *Wasaka Hukum: Jendela Informasi Dan Wawasan Hukum* 7, no. 1 (2019): 38.

<sup>34</sup> Alvika Fatmawati Dwi Putri & Muljono Hafidh Prasetyo, "Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Di Bidang Pertambangan," *Jurnal Pembangunan Hukum Indonesia* 3, no. 3 (2021): 317, <https://doi.org/10.14710/jphi.v3i3.312-324>.

Based on the existing facts, regulations regarding mining already exist, but they cannot solve environmental problems caused by illegal mining. The main issue of environmental damage due to illegal mining will remain even though mining complies with the provisions of the applicable laws and regulations. Problems regarding whether mining is illegal or legal are only administrative in nature because the problem lies in the environmental damage. So, regardless of the form of mining, results prioritize the consequences for the surrounding environment and recovery by means of rehabilitation, reclamation, or other means. This is certainly a problem for the government in establishing legislation that specifically regulates that reclamation and post-mining must be aimed at illegal mining or mining without a permit other than mining with a permit. This was done considering that the mining world basically has various positive and negative impacts, both on the surrounding community and nationwide.

Humans basically will do everything to gain the greatest pleasure and to avoid suffering as much as possible. Punishment can be accepted on the condition that it provides hope and deterrence against a greater crime. Likewise for mining perpetrators, not only can imprisonment and fines be imposed on miners with permits, but aggravating crimes and administrative sanctions are also applicable. This must be interpreted that mining without a permit can be subject to more severe sanctions. Mining without a permit, in addition to violating the provisions requiring licensing, can also cause damage to the surrounding environment, where mining perpetrators without a permit can easily leave without accountability. Also, if an arrest can be made and the trial process is followed, there is no obligation to execute reclamation and post-mining. Mining with a permit could have a greater and more positive impact than mining without a permit.

The author is of the opinion that perpetrators of mining without permits can be subject to criminal sanctions of imprisonment and fines that are heavier than those applied to mining with permits. In addition, there must be provisions that regulate obligations and responsibilities for mining without a permit to carry out reclamation and post-mining. Thus, punishment is not only focused on punishing the perpetrators but also as an effort to restore the environmental damage that has been done, given that environmental damage requires a long recovery. In addition, environmental damage can result in losses for the surrounding community and does not even cover the possibility of losses on a national scale. Losses could take many forms, affecting the economy and people's welfare.

#### **D. CONCLUSION**

Fundamentally speaking, there is no provision stating that there is a reclamation obligation for mining perpetrators without permits and illegal mining. These sanctions can be found starting across Article 151 to Article 165 of the Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation, the Amendment to Law Number 3 of 2020 concerning mineral and coal mining. It is different from mining that possesses a permit, as the law states that there is an obligation to carry out reclamation and post-mining. In fact, it requires a guarantee fund to be kept in a government bank as collateral in seeking reclamation and post-mining. Suggestions that can be given are that mining perpetrators without permits can be subject to a criminal penalty of imprisonment and fines that are heavier than those applied to mining with permits. In addition, there must be provisions that regulate obligations and



responsibilities for mining without a permit to carry out reclamation and post-mining. Thus, punishment is not only focused on punishing the perpetrators but also as an effort to restore the environmental damage that has been done given that the recovery of the environmental damage can be lengthy. There needs to be a policy by the government by amending Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation as the Amendment to Law Number 3 of 2020 concerning mineral and coal mining. New regulations regarding the obligation to carry out reclamation and post-mining of illegal mining perpetrators need to be taken into account.

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