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Effort to Stop the Impact of Mining Activities Without Permission in Perspective Fulfilling the Right to the Good and Healthy Environment

**Yenny AS¹, Syariah Arabiyah², Anita Yuliastini³, Klara Dawi⁴,
Henny Damaryanti⁵**

Faculty of Law Universitas Panca Bhakti, Pontianak, Indonesia.

**¹yenny.upb@gmail.com, ²iyahalqadri@gmail.com, ³anitayulias-
astinj1979@gmail.com, ⁴klaradawi2019@gmail.com, ⁵hennykasdi@
gmail.com**

Abstract

Unlicensed mining has a very bad impact on people's lives. One of my interests is the destruction and / or pollution of the environment, so that the surrounding communities are in a bad and healthy environment. The focus of the issues raised is the impact of mining activities without these permits on the quality of environmental support resources, especially on fulfilling the right to a good and healthy environment for the community, and what policies can be carried out by the Government and relevant stakeholders. Through the socio legal research approach, it was found the fact that people living in the area around the mine were in a bad and healthy environment, where there were results of research that had been revealed on the nails and hair of people in the area around the mining area without indications of methyl mercuri. From the health aspect, this is certainly harmful and disturbs health. Not to mention the other environmental impacts that have resulted in the fulfillment of the right to a good and healthy environment as a human right being ignored. Responding to these issues as a manifestation of state responsibility requires the handling of an integrated and sustainable and releasing the sectoral ego.

Keywords: unlicensed mining impact, the right to a good and healthy environment, integrated handling

Esfuerzo Para Detener El Impacto De Las Actividades Mineras Sin Permiso En Perspectiva, Cumpliendo El Derecho Al Medio Ambiente Sano Y Bueno

Resumen

La minería sin licencia tiene un impacto muy malo en la vida de las personas. Uno de mis intereses es la destrucción y / o contaminación del medio ambiente, para que las comunidades circundantes se encuentren en un ambiente malo y saludable. El foco de los problemas planteados es el impacto de las actividades mineras sin estos permisos en la calidad de los recursos de apoyo ambiental, especialmente en el cumplimiento del derecho a un medio ambiente bueno y saludable para la comunidad, y qué políticas puede llevar a cabo el Gobierno y las autoridades pertinentes. partes interesadas A través del enfoque de investigación sociolegal, se descubrió el hecho de que las personas que viven en el área alrededor de la mina se encontraban en un ambiente malo y saludable, donde hubo resultados de investigaciones que se revelaron en las uñas y el cabello de las personas en el área circundante. El área minera sin indicios de metil mercurio. Desde el punto de vista de la salud, esto es ciertamente perjudicial y perturba la salud. Sin mencionar los otros impactos ambientales que han resultado en el cumplimiento del derecho a un medio ambiente bueno y saludable como un derecho humano ignorado. Responder a estos problemas como una manifestación de responsabilidad estatal requiere el manejo de un ego integrado y sostenible y la liberación del sector.

Palabras clave: impacto minero sin licencia, derecho a un ambiente bueno y saludable, manejo integrado

A. Introduction

The province of West Kalimantan is geologically located on the eastern border of the Sunda land which is the southern end of the “Asia Continent” known as one of the provinces in Indonesia that has natural potential, including the potential of mineral resources, and gold is one of the mineral potentials with relative economic value high.

The rise of gold mining activities, especially mining without permits, certainly has consequences for the surrounding environment, where the use of various chemicals in these activities will bring damage and changes to the ecosystem permanently. The fact shows that environmental pollution

caused by gold mining without permission is worrying, where river water is no longer suitable for use, because the level of mercury is already high and the impact of contaminated river water that can spread widely, especially the Kapuas river. This can occur because of the process of using gold mercury. The mercury if mixed with mud will become a poison-like substance called methyl mercuri. This is very dangerous for humans, because these substances can cause humans to be affected by various diseases.

The level of environmental damage caused by gold mining without these permits tends to be out of control, so that various possibilities can occur, ranging from destruction of various biota and soil fertility microorganisms to the change of ecosystem.

Research on mercury pollution in watershed Kapuas River has been done several times, among others by UNTAN Research Institutions, FMIPA-HEDS and Kalimantan Barat Local Government, where the results of the study show in Kapuas River disclosed mercury content in Kapuas River water has exceeded the threshold. Research on deep mercury content Kapuas River water, among them is done by Usman T (BP-FMIPA-UNTAN,2000) about determining mercury levels throughout Kalimantan Barat Kapuas River, showed that the highest mercury content was found in samples taken at the intersection of the Landak river and Kapuas River that is 199,27 ppb. Next T.R.Setyawati and Nofrita (F-MIPA-UNTAN, 2002) about the mercury content in some shells marketed in Pontianak, has been contaminated with mercury with a content of 0,196 ppm dan 0,686 ppm. The results of various studies show that mercury levels in the Kapuas river water have exceeded the threshold. The threshold of mercury content in raw water for drinking water is allowed by 82th Government Regulations of 2001 as big as 1 pg/l. Mercury content in Kapuas DAS from some research results revealed that it was influenced by waste from PETI activities. As also revealed from the results of the PPSDAK Pancur Kasih, FMIPA-UNTAN and Balai Riset dan Standarisasi Industri dan Perdagangan Provinsi Kalimantan Barat study conducted in 2003, that hair and nail samples from resident miners around the mine have been contaminated by mercury. This shows that the community is already in a bad and unhealthy environment.

Considering that the impact of mining activities without permits is very important for the preservation of environmental functions, both for the survival of human life, then efforts should be made to control environmental pollution and / or damage.

The environment has a very important life support function. Therefore,

its management and development are directed to maintain its existence in a dynamic balance through various safeguards and rehabilitation efforts, as well as efforts to maintain balance continuously. Besides that, development needs to be carried out by heeding the harmony between achieving long-term sectoral, regional and environmental development goals. Based on this condition revealed that in economic activities must pay attention to the balance between economic, social and environmental interests in order to realize sustainable economic development (Purba & Yenny, 2017)

The reality of increasingly unlicensed gold mining activities in people's lives, and to show the tendency of behavior deviations with the consequences of leading to environmental pollution and / or destruction, certainly needs to be studied how to counteract in order to control gold mining activities without permission so that the sustainability of environmental functions is maintained, and how make use of the law so that it can play a role in overcoming environmental problems in order to fulfill their rights to a good and healthy environment. The right to a good and healthy environment in this writing is examined in the perspective of human rights, where the protection and respect for human rights to the environment is a very important and fundamental aspect because the environment has all the limitations, so control over human behavior over the environment in the management of mineral resources in the field of mining becomes absolute.

B. Issues

The issues that will be revealed is:

- 1) What is the picture of unlicensed mining activities affecting the right to a good and healthy environment in West Kalimantan?
- 2) What policy steps must be taken to counteract the unlicensed mining activities that impacts on the sustainability of environmental functions?

C. Research Method

This research is socio-legal, which is to approach the problem not only in terms of legal norms, but also in terms of community behavior, using primary data and secondary data. The primary data is data obtained in field research. Secondary data such as regulations or policies relating to the problems to be examined. The overall data obtained was analyzed qualitatively with the intention of being able to find out and discover the hidden meanings behind the object of the research under study, namely the visible phenomena of deviant mining activities carried out by the community and

affect the sustainability of environmental functions.

D. Discussion and Analysis

D.1. Right to a Good and Healthy Environment in a Human Rights Perspective

The International Covenant on Economical and Social Rights (CESCR) has been compiled and agreed as part of The International Bill of Rights with a view to protecting human rights, so that humans can live as human beings naturally from a sense of security, protection and healthy living (Kahpi, 2013). The right to live as the most natural will not be achieved except for all basic rights, such as the right to health, work, education, food, housing and access to everyone. CESCR broadly speaking, it provides recognition of basic human rights, including among others a good and healthy environment.

Human rights and the environment have a direct relationship in improving the condition of the nation and state. This is because in the case of legal protection for human rights is also one way to protect the environment, so that human rights and the environment have dependence and interrelationship with one another.

Human rights are rights inherent in humans, without which we cannot live as humans. a definition that identifies human rights as those rights one possesses simply by being a human being (Dembour, 2010). Human rights are normally claimed for both their substantive and instrumental value. They are desirable in themselves and they are desirable as they realize other desirable objective (e.g. the right to education, the right to health or the right to free speech); but the qualify as human rights not just because they are intrinsically or instrumentally desirable but because they are recognized through an appropriate norm-creating process and the claims for themselves satisfy the tests of legitimacy and coherence , as discussed later (Sengupta, 2004)

With regard to human rights to the environment, by placing the state as a bulwark of human rights, in managing natural resources and the environment, the people must be placed as the main interests. The state fully acts as an instrument of administrators and organizers of policies aimed at protecting and promoting human rights for the environment. Thus the protection and respect for human rights to the environment becomes a very important and fundamental aspect. Why should environmental protection be treated as a human rights issue? There are several possible answer. Most

Obviously and in contrast to the rest of international environmental law, a human rights perspective directly addresses environmental impacts on the life, health, private life, and property of individual human rather than on other states or the environment in general (Boyle, 2012).

In its development, the conception of human rights on the environment was evident during the United Nations Conference on Environment and Humans in Stockholm, Swedia, June 5 – 6, of 1972 which sparked the Stockholm Declaration, where this conference is the starting point of the international community's awareness of the importance of environmental sustainability as a fundamental part of fulfilling human rights. The human rights to the environment are formulated in the first principle of the Stockholm Declaration, which has many rights "Man has the fundamental right to freedom, equality and adequate conditions of use, is an environment of a quality that permits a use of dignity and well being any has bears a solemn responsibility to protect and improve the environment for present and future generations....."(Sidoarjo, 2009)

Regulation of the right to the environment as human rights in Indonesia is stated in the constitution and other laws. 1945 Constitution Amendment Article 28 H (1) including mentioning "Every person has the right to live a healthy and prosperous life, live and get a good and healthy environment and have the right to obtain health services".

Besides that in the year of 1999, has been regulated 39th Law of 1999 about Human Rights, where is the article 9 paragraph (3) formulate: "everyone has the right to a good and healthy environment".

Furthermore, the regulation of the right to a healthy environment is normalized inside 32th Law of 2009 concerning Protection and Management of the Environment, which at the consideration "letter a" implies that "A good and healthy environment is a basic right of every Indonesian citizen as mandated in Article 28H of the 1945 Republic of Indonesia Constitution". Further Article 65 paragraph (1) 32th Law of 2009 states that everyone has the right to a good and healthy environment as part of human rights" (Agung Wardana, S.H.,L.L.M. Murdoch University, 2012). Yet health dan human rights areboth powerful, modern approaches to defining and advancing human well-being.(Leary, 2016)

Substantially the regulation of good and healthy rights to the environment as part of human rights has been accommodated in various laws. However, at the empirical level, pollution and environmental damage are environmental problems and arise as a result of human desire in their activities to build their own lives without thinking about the future impacts. "Building"

each can and has caused environmental problems that reduce, can even negate the benefits of development “. The right to a healthy life and the right to protection of life has been violated and ruled out (Atas, Hidup, Baik, & Sehat, 2011)

Various human rights violations in the environmental field have occurred in almost the order of community life. This violation should be interpreted as a threat to human civilization. In turn, it will accumulate and lead to violations of economic rights, social and cultural rights, civil and political rights (Atas et al., 2011)

As in West Kalimantan, the management of mineral resources in the mining sector has become a problem of environmental damage and pollution, especially mining activities carried out without permission.

D. 2. Overview of Mining Activities Without Permits and Environmental Impacts in West Kalimantan

In West Kalimantan there are 2 types of community mining, namely community mining that has obtained legal permits in the form of People’s Mining Permit and people mining that do not have permits, which is done by the local people / residents, using simple equipment, carried out traditionally, but the working area has not been proposed as a People’s Mining Area. This local mining is felt to need careful attention because on one hand this activity opens employment opportunities for lower-income people, while on the other hand that this activity if not fostered can potentially damage the environment.

The reality on the ground shows that sporadic mineral resources in West Kalimantan have mining activities by the community, not only local residents who work on mining activities, but many migrants from outside and no longer use simple tools, but have used mechanical equipment large and generally do not have permission from the government.

Thus, this activity cannot be classified as traditional community mining, which the government then referred to as unlicensed mining.

Permit mining is a complicated problem, especially that gold is economically high enough in the international market. With the increase in the international price of gold, not only the legal mining of gold has increased, there is also a sharp increase in the illegal exploitation of gold, and the association between the illegal mining and non-state armed groups has

been extensively documented by the media in recent years (Idrobo, Mejía, & Tribin, 2014)

On the one hand Mining activities without permits do not apply rules good mining practices and almost untouched by the law, while on the other side non renewable resources and in its exploitation has the potential to damage the environment, then what happens later is a variety of negative impacts that not only harm the Government, but also the wider community and future generations, so that communities around the mining area are no longer in a good and healthy environment.

Observation in the field shows the characteristics of mining activities without the permit, among others:

- a. Mining secondary gold deposits (gold sand) so that it is easy to move locations and always approach water sources.
- b. In mining operations, machine tools of up to 100 PK are needed so that the funders are required to operate. The amount of capital varies from 10 million to 50 million rupiah.
- c. In the implementation of mining activities, the people generally only act as laborers who earn daily wages.
- d. The gold mining activities by the people are carried out both individually and in groups (10-15 people) with their own capital and financed by the financiers / funders.
- e. These mining activities are carried out by local residents and some are carried out by residents who come or are brought in from other sub-districts or regencies in West Kalimantan, and there is a tendency that these activities are growing and uncontrolled and do not pay attention to the principles or nature of people's mining.

If look at a map of the administrative area of West Kalimantan, the Province of West Kalimantan consists of 12 districts and 2 cities.



From the map of the region above, the activity of PETI is spread in 11 districts / cities, except Kubu Raya Regency, North Kayong Regency and Pontianak City. This shows that the regency / city in West Kalimantan has almost evenly distributed mineral resources that have high economic value, but there are sporadic mineral resources at several subdistrict points as contained in the table mapped by the West Kalimantan Regional Police as follows:

Table : Point of Location of Unlicensed Mining in West Kalimantan

No	Regency / City	Point of Location of Unlicensed Mining	Description
1	Sambas	Subah Districts, Selakau and Tebas	
2	Singkawang	Singkawang Selatan Districts and Singkawang Timur	
3	Bengkayang	Lumar Districts, Monterado, Sanggau Ledo, Samalantan, Sungai Duri, Capkala, Sui Betung, Bengkayang and Teriak	
4	Landak	Kuala Behe Districts, Serimbu, Mandor and Meranti	
5	Melawi	Belimbing Districts, Ella and Menukung	
6	Ketapang	Sandai Districts, Sungai Laur, Simpang Hulu, Tayap, Matan Hilir Selatan, Tumbang Titi, Kendawangan and Manismata	
7	Sintang	Sepauk Districts, Dedai, Ketungau Hulu, Binjai Hulu, Tebelian, and Ketungau Tengah	
8	Sekadau	Sekadau Hilir Districts, Belitang Hilir, and Nanga Mahap	
9	Sanggau	Bonti Districts, Sekayam, Kapuas and Tayan Hilir	
10	Kapuas Hulu	Pengkadan Districts, Boyan Tanjung, Silat Hilir and Putussibau Selatan	
11	Mempawah	Toho Districts and Sadaniang	

Data Source: West Kalimantan Regional Police

The reality shows that the increasingly widespread exploitation of natural resources in the form of mineral mining materials illegally, the impact caused to the sustainability of environmental functions is greater. which not only harms the Government, but also the wider community and future generations.

As shown in the description of the environmental impact of the unlicensed mining activity below, the green expanse of the environment is only a

stretch of white sand from the former mining area which cannot be used anymore



The impact on the sustainability of environmental functions can occur from the preparation stage to the refining stage, because the implementation of gold mining activities without being equipped with the People's Mining Permit document does not pay attention to the technical requirements of mining, the most prominent impacts generally occur at the stage of excavation, processing and refining.

The results of the interview with the Apparatus of the Housing, Settlement and Environment Agency of West Kalimantan Province revealed the impacts of mining activities without permits, including on the soil components there could be local land surface disturbances in the form of landform changes from mild, moderate, severe to very severe. Holes occur on the soil surface in the form of ponds with varying depths that can reach a depth of about 10 meters. At the excavation stage, fertile land is buried by processing waste. There will be land use change where rice fields turn into deserts. Such conditions can result in loss of livelihoods as farmers and the emergence of critical land and erosion. Changes to land / land will lead to changes in soil quality and changes in spatial planning.

While the water component can change color (slightly yellow to black brown), smell (slightly smelly to very smelly), turbidity (slightly cloudy to muddy muddy), pH and dissolved solids. Water quality has decreased so that public health is disrupted. There will also be disruptions to bathing activities, as well as the silting of the river. The turbidity of the water increases and water can be contaminated with Hg (mercury). Conditions

like this can cause disruption to aquatic habitats and people can become restless. In the long term, it will result in a decrease in the health of the community around or along the watershed of mining activities.

In the air component, dust and smoke can occur from the results of combustion and noise from the water / sand suction machine. Within one working day it is estimated that this suction machine is able to move the soil more than 7 M3. Sedimentation can occur from mild to very large. Sedimentation can eventually cause disruption of water flow and the silting of the river so that transportation is disrupted.

In addition, mining activities are also carried out in areas near the river, resulting in the impact of river water pollution, both from the content of dissolved solids, suspended solids or mercury. Environmental pollution caused by gold mining is seen where river water is no longer feasible, because the water content is high. The mercury if mixed with mud will become a poison-like substance called methyl mercuri.

Mercury pollution is a pressing problem in the artisanal and small-scale gold mining sector. Mine operators depend on the metal to amalgamate gold but generally discard it freely into the natural environment (Hilson, Hilson, & Pardie, 2007). Which if the control efforts are not immediately carried out, it will have a wider impact on the sustainability of environmental functions, given the river Kapuas river is used by the West Kalimantan Regional Government to produce drinking water through the Regional Water Company.

Conditions in the field have shown that mining activities without permits have a significant influence on environmental conditions. The characteristics of the gold content in West Kalimantan that are scattered, low in intensity and are alluvial deposits, provide opportunities for the community to carry out illegal mining activities. This activity will have a large impact on the river body, such as increased sedimentation, damage to the river body and the entry of mercury into the river body.

In West Kalimantan, mercury is still used for the process of refining gold from people's mines. As the information obtained from the interviews with the West Kalimantan Regional Police ranks, setting 230 people as suspects from 96 cases in West Kalimantan in the period of 2018 .. The results of the investigation of the unlicensed mining cases, every day the miners get five to six grams gold. If multiplied by the number of miners who are currently suspects, 1,150 grams of gold are obtained daily.

West Kalimantan Regional Police apparatus launches, every gram of gold is valued at Rp380 thousand. This means that the circulation of money in

the mining area is around Rp.437 million. This number is certainly only an iceberg phenomenon. The information of the suspects rarely mentions the actual numbers, is believed to be even greater. All mercury used to bind gold, has been confirmed to be illegal.

D.3 Efforts to Prevent Unlicensed Mining as Fulfilling the Right to the Environment Good and healthy

The current environmental conditions and environmental policies greatly affect the right to life, the right to health, the right to work and education, the right to information, participation, and obtaining justice in the management of natural resources, as well as other human rights.

The right to a good and healthy environment in its fulfillment includes the physical environment and social environment. In the International Covenant on Economic, Social and Cultural Rights (ICESCR) explicitly, the theme "Environment" is stated in Article 12 which is one part of "the right of everyone to enjoy the highest standards of physical and mental health that can be achieved".

Thus, the Government and Regional Government must be able to provide environmental protection arrangements so that they can protect human rights at the same time, especially those relating to the right to life. The right to life is nothing but the right to a decent life and livelihood, which is a good and healthy environment.

The Regional Government should be given the authority to manage its own area, so that with that authority, the government can provide permits to manage the natural resources in the area. This is because the local government is considered to know more about the potential of natural resources in the region to be developed to improve the welfare of the community. Likewise, the local government must be responsible for matters that are within the range of its power, including in the management of mineral resources. As revealed by J.Kambey et al, "as the mining activity is illegal it would follow that the local authorities would have some responsibility to enforce closure of the mine" (Kambey, Farrell, & Bendell-Young, 2001).

4th Law of 2009 concerning Mineral and Coal actually has given the mandate to the Regency / City Government to regulate, determine the area of people's mining and granting community mining permits, so that the activities of mining business activities can be carried out guidance and supervision from the Regional Government based on good mining principles. But

after its release 23th Law of 2014 concerning the Regional Government, the regulation related to mining exploitation has changed, because the authority of the Regency / City Government regarding the mining business of the people is no longer there, so that the people's mining permit process for the community becomes tripped and through a long bureaucracy.

Responding to the rampant mining without permits that have a wide impact on the right to a good and healthy environment, constrained by the bureaucracy of the management of people's mining permits, of course, a strategic effort is needed to counteract this, including:

a) An active role of the Government, especially the Provincial Government of West Kalimantan, is required through the Department of Energy and Mineral Resources to coordinate integrally related to policy regulation, guidance and supervision as well as law enforcement on the rampant activity of Unlicensed Mining in the field. The synergy of integral coordination between relevant institutions is important in order to realize concrete steps in the handling of PETI that have an impact on the environment, through integrated action activities involving all stakeholders, through the Human Rights and Environmental Care Movement. An active role is needed for business actors in the mining sector who have mining business licenses to involve the community in conducting good mining operations and increase their role in providing social and environmental responsibility to the people in the mining area in order to live well and healthy.

b) The active role of the community is needed, especially in the area around the mining area in accessing their rights to a good and healthy environment as formulated in Article 65 32th Law of 2009 concerning Environmental Protection and Management, including the right to obtain environmental education, access to information, access to participation, access to justice, submit proposals and / or objections to mining activities that are expected to have an impact, make complaints due to suspected environmental pollution and / or damage to fulfill rights for a good and healthy environment.

E. Conclusion

Everyone has the right to live a healthy life, and the right to enjoy a healthy environment. The right to a good and healthy environment shows that human rights and the environment need each other so that by respecting human rights while protecting the environment. On the contrary, to protect the environment, human rights are also protected

The reality is that the fulfillment of the right to a good and healthy environment in the communities around the mining area without permits is not fulfilled, because the environment has been damaged and polluted, both on the soil components that can no longer be used, the air component or the water components that have been contaminated with meth mercury substance.

Therefore, a human rights and environmental care movement is needed in order to counteract the impact of unlicensed mining activities on the sustainability of its environmental functions, both through increasing the Role of the Government, Business Actors and the community in an integrated manner through a Human Rights and Environmental Action Plan.

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