

# The Implementation of Customary Sanction "*Pengocek Torun*" in Dayak Simpakng Community to Settlement of Illegal Gold Mining Ketapang Regency

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**Abstract.** In Indonesia Mining Law, if mining activities occur without a permit, the act is a criminal offense regulated by Law Number 4 in 2009 concerning Mineral and Coal Mining. However, in empirical practice, there is a settlement of the case of unlicensed gold mining using legal instruments in the form of traditional sanctions like in Kualan Hulu Village, Simpakng Hulu Subdistrict, Ketapang Regency. This study is normative because it uses secondary data. Normative legal research is legal research involving the law as a system of building norms. The Norm system is about the principles, norms, rules of legislation, court decisions, agreements, and doctrines. Secondary data used in this study include legislation relating to unlicensed gold mining, documents, and writings relating to the cases studied. The result of the study revealed that although Indonesia has Law Number 4 in 2009 concerning Mineral and Coal Mining in the act of unauthorized Gold Mining activities (PETI), the application of customary law in providing sanctions against PETI perpetrators is still evident. One of the cases is in Kualan Hulu Village, Simpakng Hulu Subdistrict, Ketapang Regency, where customary sanction by the local community is applied to "torun-tackers" against PETI perpetrators and considered effective to create a sense justice. Thus, the values contained in customary law can actually be adopted in the formation of mining law to develop a sense of justice as a legal objective.

**Keywords:** *traditional sanction, unlicensed gold mining*

## INTRODUCTION

Natural resources are one of the essential factors that play a role in determining the formation of human encroachment to date. In every culture and ethnicity, there are various views on the concepts of mastery and management. The concept of cosmology and the worldview of natural resources, especially land, in several ethnic groups in Indonesia are similar. The land is viewed as an

integral entity or as an ecosystem [1]. In general, the management of natural resources carried out by an indigenous community recognizes the existence of various tenure and use status. The form and status of the mastery of natural resources can be divided into four groups: (1) public property (open access), (2) state property, (3) private or private property, and (4) communal property [2].

Mining is one of the main sectors in Indonesia after agriculture. However, a number of parties have been abusing mining in Indonesia, gaining profit and convenience by conducting illegal mining. Unlicensed Gold Mining (PETI) is a form of mining activity that is increasingly prevalent in Indonesia's regions that have the potential of mineral resources in the form of gold. In this case, the activity is oriented to extracting natural wealth without following proper procedures.

Unlicensed Gold Mining (PETI) is a mining business carried out by individuals, groups, or companies without permission from a government institution or not following applicable laws and regulations. PETI begins with traditional miners' presence, which is developed due to poverty or limited employment and business opportunities. On the other hand, weaknesses in law enforcement and legislation also contribute to increasing unlicensed mining activities like PETI. PETI activities that do not follow the official mining rules have resulted in environmental damage, waste of mineral resources, and mining accidents. This results in disaster if it is not appropriately managed [3].

In Indonesia Mining Law, if mining activities occur without a permit, the act is a criminal offense, as stated in Law Number 4 in 2009 concerning Mineral and Coal Mining. However, in practice, the settlement of the case of unlicensed gold mining uses legal instruments in the form of the application of traditional sanctions. It happened in Kualan Hulu Village, Simpakng Hulu Subdistrict, Ketapang Regency, where the settlement of the PETI case, traditional sanctions were applied and considered effective by the local community. This customary law is expected to be a win-win solution without depending on the rigid and procedural law.

The problem in this research is: How is the implementation of the sanction of "Pengocek Torun" in the DayakSimpakng community to settle the unlicensed gold mining case in Kualan Hulu Village, Simpakng Hulu District, Ketapang Regency?

### METHOD

This study is normative because it uses secondary data. **The Norm system is about the principles, norms, legislation, court decisions, agreements, and doctrines** [4]. Secondary data used in this study include legislation relating to unlicensed gold mining, documents, and writings relating to the cases studied.

Data were analyzed using descriptive qualitative method. The authors present and explain the data obtained from the study of literature, manifested in a logical and systematic description. Once the required data were collected, the next step was analyzing to clarify the settlement of the problem. The conclusions were drawn deductively from general to specific things. At this stage, the legal materials worked on and utilized in such a way to successfully conclude the truth that can be used to address the issues raised in the study.

### RESULT & DISCUSSION

According to Sukandar Rumidi, a mining business is all business carried out by a person, legal entity, or business entity to extract mining materials to further exploit it for human interests. Meanwhile, mining activities are a series of activities ranging from finding and studying feasibility to the use of minerals for the benefit of companies, surrounding communities, and the government (regional and central) [5]. The mining industry itself is an upstream industry that produces mineral resources and is a source of raw materials for downstream industries needed by people throughout the world. One of the mining products having a high economic value, as stated above, is gold, causing a lot of gold mining phenomenon without permission.

Illegal gold mining is a gold exploration activity carried out by a person or group of people without permission from the authorities [6]. Furthermore, Joseph F. Castrilli states that the mining laws are:

*"The basis for implementing environmental protection concerning mining activities, including exploration, construction, reclamation, and rehabilitation activities"* [7].

According to Supramono, mining law has four types of legal principles that become the mining business's primary objectives, namely [8]:

#### 1. Benefits, Justice and Sustainability

The principle of benefit in mining is a principle that shows that in conducting mining, it must be

able to provide maximum benefits for increasing the people's prosperity and welfare. The principle of justice is that in doing mining, it must give equal opportunities proportionally for all citizens without anyone being excluded. This is a manifestation of Pancasila's values, precisely the 5th precepts, which reads "justice for all the people of Indonesia." Furthermore, the principle of balance is that in conducting mining activities, one must pay attention to other fields, especially those directly related to their impact. It means that mining exploration must pay attention to aspects of environmental impact analysis (EIA).

#### 2. Alignments to the interests of the State

This principle says that mining activities must be oriented to the interests of the State. Although using foreign capital, foreign workers, and external planning when conducting a mining business, the activities and results are only in the national interest.

#### 3. Participatory, Transparency, and Accountability

First, the participatory principle mentions that in carrying out mining activities, a community's participation is needed to formulate policies, management, monitoring, and supervision of their implementation. Secondly, transparency is openness in conducting mining activities. It is hoped that the wider community can obtain accurate, transparent, and honest information. The community can provide input to the government. Third, the principle of accountability is mining activities carried out in the right ways to be accountable to the state and the community.

#### 4. Sustainable and Environmentally Friendly

The principle of sustainable and environmentally friendly is to integrate economic, environmental, and socio-cultural dimensions in the overall mineral and coal mining business to realize present and future prosperity.

The driving factors for the presence of PETI can be grouped into:

#### 1. Social factors, where PETI activities are considered a hereditary work carried out by the local community. There is an unharmonious relationship between official mining and the local community, and there is a misinterpretation of reform, which is interpreted as freedom without limits;

#### 2. Legal factors, namely the community's ignorance of the laws and regulations in force in the mining sector, which among others are reflected in the lack of siding with the interests of the wider community and the absence of a warning against official mining that does not utilize its business area (idle land); and the occurrence of weaknesses in law enforcement and supervision;

3. Economic factors are caused by limited employment and business opportunities in accordance with the level of expertise and skills of the community around the mine; poverty in various ways, namely economically weak, knowledge and skills; the existence of third parties who use poverty for specific purposes.

Economic factors can be regarded as the main factor of the increasingly widespread PETI activities inseparable from the continued increase in gold prices in Indonesia, which can be seen in Figure 1 below[9]:

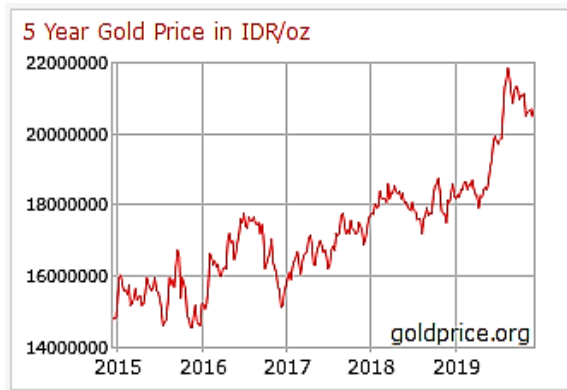


Figure 1. Gold Prices in Indonesia (2015-2019)

Gold, as one of the types of mineral resources described above, has high economic value. The types and benefits of mineral resources for modern human life are increasingly high and increasing following the country's prosperity and welfare [10]. PETI activities as a mining business carried out without having a permit from a government agency have several problems as follows [11]:

1. Safety is not guaranteed because when processing gold, workers use toxic chemicals, such as cyanide and mercury;
2. Minimal working capital is evident because it is only borne by a pit owner or machine owner; and
3. The miners work with simple or traditional techniques so that innovation is difficult and without adequate safety equipment.

Indonesia Mining law is based on the affirmation in the Indonesian constitution as affirmed in Article 33, paragraph 3 of the 1945 Constitution, which reads:

*"The earth, water, and natural resources contained therein are controlled by the State to be used as much as possible for the prosperity of the people."*

Management and control of natural resources have been built through the spirit of the 1945 Constitution Article 33 paragraph 3, with the main aim of maximizing the prosperity of the people. This mandate is the basis for the formation of mining policy, namely Law No. 11 of 1967 concerning the principal of mineral and coal

mining, which was later replaced by Law No. 4 of 2009 concerning mineral and coal mining.

According to Saleng,[12] the formation of Law number 4 of 2009 concerning mineral and coal mining is a consequence of the birth of Law Number 32 of 2004 concerning local government and law No 33 of 2004 concerning the financial balance between the Central Government and Regional Governments as regulated in PP Number 25 of 2000 concerning the authority of district/city and provincial governments as autonomous regions.

Based on Indonesian law, if mining occurs without a license, the act is a criminal offense written in Article 158 of Law Number 4 in 2009 concerning Mineral and Coal Mining, which reads:

*"Every person who conducts mining business without IUP, IPR or IUPK as referred to in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or (5) is convicted with a maximum of 10 years imprisonment and a maximum fine of Rp 10,000,000,000.00 (ten billion rupiahs) "*.

In the implementation of law enforcement against PETI activities in Indonesia's territory, there is also a settlement of cases against PETI activities through customary law. The phenomenon of unlicensed gold mining occurred in Kualan Hulu Village, Simpakng Hulu District, Ketapang Regency. Based on the customary law of DayakSimpakng, someone who has been mining gold without permission is subject to traditional sanctions "*pengocektorun*," which is applied by :

1. Funding all traditional rituals as a sign of apology to God for the destruction of the forest due to human activity.
2. Paying 20 reals with a nominal of 2,000,000 and 20 flowers carved plates.
3. The customary head confiscates the tools used for gold mining activities.
4. Replace all forest damage with the gold mining area.
5. Returns all gold results obtained during gold mining. In one day, the mining is subject to 7 grams of gold.

Furthermore, based on the results of an interview with RajutKukun, a Custom Tomonggong in Kualan Hulu Village, Simpakng Hulu District, Ketapang Regency, sanctions for gold mining without permission are traditional sanctions of "torun seekers." These sanctions are quite effective if implemented and proven in other villages in the Simpankng Hulu District [13].

According to customary law, the settlement of cases is commonly known as a restorative approach (restorative justice), namely justice that seeks to restore the condition to its original condition, benefit, and win all parties and is not confined to rigid and procedural law. Through restorative justice, it is possible to resolve criminal cases

through mechanisms, such as mediation between the perpetrator and the victim or the injured community. Furthermore, according to BagirManam, the meaning of restorative justice is [14]:

1. How to prevent the offender from going to jail because the fact revealed prison is not the right place to solve their problems. Many of the prisoners commit criminal acts again when they were released from prison.
2. How to do it. Even if they can be free from prison, the perpetrators are still responsible for their actions.

#### CONCLUSION

Based on the discussion above, it can be concluded that although the State has Law Number 4 of 2009 concerning Mineral and Coal Mining in the act of unauthorized Gold Mining activities (PETI), the application of customary law in providing sanctions against PETI perpetrators is still evident, as found in Kualan Hulu Village, Simpakng Hulu Subdistrict, Ketapang Regency. In this area, the customary sanction of "torun-tackers" is applied against PETI perpetrators and considered effective in creating a sense of justice. Thus, the values contained in customary law can actually be adopted in the formation of mining law to develop a sense of justice as a legal objective.

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