

THE EXISTENCE OF COMMUNITIES' HUMAN RIGHTS IN MINING AREAS

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Article	Abstract
<p>Article History: Submitted: September 2024 Reviewed: October 2024 Accepted: April 2025 Published: April 2025</p> <p>Keywords: Human Rights; Minerba Law; Mining Area Government.</p>	<p><i>This research is used to answer two problem formulations. First, what is the human rights approach to overcoming the dangers of mining in Indonesia. Second, how is law enforcement against the negative impacts of mining in Indonesia. The research method used in normative juridical research. The data used is secondary data by examining primary legal materials in the form of statutory regulations related to this issue and secondary legal materials in the form of articles or scientific papers, as well as tertiary legal materials. This research was analyzed using qualitative descriptive analysis after the data was obtained. The results of this research focus on two conclusions. The state is primarily obligated to protect and respect human rights as the fundamental rights of every individual. International legal instruments such as the ICCPR, UDHR, and CAT regulate state obligations regarding human rights, while at the national level, they are regulated in statutory regulations. As a legal state, Indonesia is also obliged to protect human rights, including the right to live in prosperity, a good and healthy environment, and health services. Mining is an activity that has a direct impact on the environment. Although the mining sector contributes to state income and employment, it is often associated with problems of environmental degradation. Administrative sanctions that can be imposed for violations in mining include written warnings, fines, temporary suspension of activities, and revocation of permits. The Minerba Law also regulates criminal sanctions, including imprisonment and fines.</i></p>

A. Introduction

Humans and the environment are two things that can not be separated. Humans need the environment to support their life. Activities carried out by humans involve environmental good in a direct or no direct way. Interaction between humans and the environment and humans, if done in a way that is not responsible, will harm balance and sustainability. The disturbance of balance and a sustainable environment, of course, will also impact life in man.

Speak about the correlation between human rights and environmental life, often culminating in discussing the right to environmental life and development rights. The second matter became popular for discussion side by side since the United Nations Conference on the Human Environment by the UN was held in 1972 in Stockholm, Sweden, more known as the Stockholm Conference 1972. The conference results are the Stockholm Declaration, which

includes planned actions and institutional and financial action recommendations. At the conference, 5 June was agreed to be the day of environmental life worldwide (World Environment Day).¹

Mining's characteristics are that it can be non-renewable and renewable. Mining that is not renewable can have a relatively greater risk, including an impact on the environment, as compared to other commodities in general. Non-renewable mining always looks for backup proven (proven reserves). Proven reserves reduce with production and increase with existing discoveries. Some risks in field mining are geology risk (exploration) related to uncertain invention reserves (production), technologies risk related to uncertain costs, related market risk with change price, and policy risk related to government with change in tax price. Risks related to quantities that influence profit business.²

The environmental impact of mining activities can be seen during exploration and exploitation. Mining activities often impact and damage the ecosystem. The damaged ecosystem is interpreted as an ecosystem that can not function optimally as it should. The environmental impact can be physically shaped by deforestation, declining fertility land, threats to biodiversity, water pollution (rivers, lakes, and seas), and declining air quality. The other impact was social, like the disappearance of the original society's livelihood as a result of mining, the loss of gold panning, and the existence of the conflict that occurred between the public and the company.³

Based on the perspective of the law in article 28H of the 1945 Constitution, the public is entitled to get a prosperous body and soul, stay in a good and healthy environment, and have the right to obtain health services. According to Koesnadi Hardjasomantri, the public right related to a good and healthy environment has two main functions, namely, the right to defend oneself from disturbance from outside that causes damage to the environment and the right to demand actions for the environment to be preserved restored and fixed.⁴

Mining can be seen from an open and closed system. Open mining (surface mining) is done above the earth's surface. Mining systems are generally open, especially in gold mining, because of dredged hills, mountains, etcetera. Dredging often uses dangerous and toxic substances (*B3*), such as mercury, which impacts the damaged environment. *B3* can be

¹ Munadjat Danusaputra, *Hukum Lingkungan* (Jakarta: Binacipta, 1985), 213-214.

² Jeanne Darc Noviyanti Manik, "Pengelolaan Pertambangan Yang Berdampak Lingkungan di Indonesia", *Jurnal Promine* 1, No. 1 (2018): 1-10, <https://Journal.Ubb.Ac.Id/Index.Php/Promine/Article/View/64>.

³ Reno Fitriyanti, "Pertambangan Batubara: Dampak Lingkungan, Sosial Dan Ekonomi", *Journal Redoks* 1, No. 1 (2018): 34-40, <https://Doi.Org/10.31851/Redoks.V1i1.2017>.

⁴ Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan* (Yogyakarta: Gadjah Mada Press, 2015), 102.

interpreted as toxic material because characteristics and conditions can potentially cause health problems and damage to property or the environment. In a closed system (underground mining), the process of extracting a type of goods is done by making a well or tunnel to layers of rock because the location of the goods is underground. The mining system is generally carried out in the oil and gas sector. It uses the pipe so that the surface looks not damaged, but the burial process or plant can impact the occurrence of landslides and floods.⁵

Environmental impacts, like frequent floods, threaten the public and land production. Also, society is disturbed by great-scale mining exploitation that speeds up floods and disturbance of land structures. These effects already showed in the cases of 2 (two) mine companies in Kluet Tengah Aceh. Namely, PT Multi Mineral Utama, which has a permit from 2010 to 2027, and PT Give Major Minerals, which has a permit from 2012 to 2032.⁶

The rampant development of mining activities in Indonesia that impact environmental rights is very concerning. In several areas in Indonesia, mining companies have activities in community areas. These conditions have actual and potential impacts on the sustainability of community life. Based on the background above, the title of this study is "The Existence of Communities' Human Rights in Mining Areas". The formulation of the problem to be studied is how the human rights approach is used to overcome the dangers of mining in Indonesia and how law enforcement is against the negative impacts of mining in Indonesia.

B. Method

The method used in this research is normative legal research. Normative legal research examines and reviews the applicable laws and regulations and applies them to a particular legal problem.⁷ Legal research is a process of placing positive law on issues raised by legal facts, and in general in legal research using analytical principles. The analysis used in this research is prescriptive analysis. Prescriptive analysis is intended to express arguments related to right or wrong, or what should be according to law on legal facts or events arising from the results of the research conducted.⁸ The data used is secondary data to study primary law material in the form of regulation related with the problem, secondary law material in the form of articles

⁵ Sharifah Rahmatillah and Tasbi Husen, "Penyalahgunaan Pengelolaan Pertambangan Terhadap Kerusakan Lingkungan Hidup Di Kecamatan Kluet Tengah", *Legitimacy* 7, No. 1 (2018): 152-153, <http://Dx.Doi.Org/10.22373/Legitimasi.V7i1.3969>.

⁶ *Ibid*, 163-164.

⁷ S Abdurrahman, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2003), 32.

⁸ Elisabeth Nurhani Butarbutar, *Metode Penelitian Hukum: Langkah-Langkah untuk Menemukan Kebenaran dalam Ilmu Hukum* (Bandung: PT Refika Aditama, 2018), 42.

or works written in scientific, and tertiary law material. These relevant sources will help produce a sharper and deeper analysis.

C. Analysis and Discussion

1. Human Rights Approach on Coping With Danger Mining In Indonesia

Article 1 point 1 of the Law Republic of Indonesia Number 39 of 1999 concerning Human Rights states that “Human rights is a set right inherent in the nature and existence man as creature Almighty God One and is His obligatory grace respected, upheld high and protected by the state, law, government and every person for the sake of honour as well as protection dignity and honour human beings”. According to Jan Materson, Human Rights are rights that are inherent and attached to human beings and without rights, humans cannot live as humans (human rights could be generally defined as those rights which are inherent and without which we cannot live as human beings).⁹ The country has obligations as primary responsibility against all violations of human rights. Human rights are fundamental rights inherent in every reasonable person that is regulated in a preventive and repressive way. Various human rights instruments in international law, like the ICCPR, UDHR, and Convention Against Torture/CAT, regulate related state obligations to human rights. National instruments that regulate state obligations related to human rights, such as the Constitution and act.¹⁰

Government Regulation Number 78 of 2010 concerning Reclamation and Post-Mining has explained that the principles of protection and management of the mining environment at least include:¹¹

- a. protection of the quality of surface water, groundwater, seawater, and soil and air based on environmental quality standards or environmental damage criteria by the provisions of laws and regulations;
- b. protection and restoration of biodiversity;
- c. guaranteeing the stability and security of overburden, tailings ponds, ex-mining land, and other artificial structures;
- d. utilization of ex-mining land by its designation;

⁹ Eko Hidayat, “Perlindungan Hak Asasi Manusia Dalam Negara Hukum Indonesia”, *Asas* 8, No. 2 (2016): 81, <https://Dx.Doi.Org/10.24042/Asas.V8i2.1249>.

¹⁰ Mukmin Muhammad, “Hak Asasi Manusia Dalam Hukum Positif Dengan Konsep Constitutional Importance”, *Meraja Journal* 1, No. 2 (2018): 31-38, <https://doi.org/10.33080/mrj.v1i2.10>.

¹¹ Central Government Indonesia, “Government Regulation Number 78 of 2010 concerning Reclamation and Post-Mining” (2010).

- e. paying attention to local social and cultural values; and
- f. the provisions of laws and regulations determine the protection of groundwater quantity.

According to Friedrich Julius Stahl, Indonesia is a country based on the law (*rechtssaat*), which upholds law supremacy. There are 4 (four) elements important thing to fulfil, one of which is that the state is obliged to guarantee the protection of basic Human Rights.¹² Basic Human Rights are an instinctive set of inherent rights in every human being. Humans and the state are obliged to uphold high human rights without exception. The International Covenant on Economic and Social Rights (CESCR) is part of The International Bill of Rights (International Human Rights Law), which has been agreed and drafted with objective use to give protection to human rights so that man can live as man whole, free, protected, safe, and alive healthy. This is as stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia: "Everyone has the right to live a prosperous life in birth and mind, to live, and to have a good and healthy living environment and to have the right to receive health services".

The right to life, as stated in Article 28A of the 1945 Constitution of the Republic of Indonesia, is the most natural right to be achieved. Other fundamental human rights to an adequate life include education, work, health, culture, etcetera. The Committee on Economic, Social, and Cultural Rights (CESCR) is an International Human Rights instrument that protects individuals or groups regarding economic, social, and cultural rights. The CESCR outline gives confession to rights for work, rights to education, rights to a decent life, rights to development culture, rights to a healthy environment, etcetera.¹³

A human rights-based approach considers the rights of affected individuals and communities while addressing environmental and safety issues related to mining. The framework under Minister of Energy and Mineral Resources Regulation No. 07 of 2014 and Minister of Energy and Mineral Resources Regulation No. 26/2018 can be aligned with this approach in the following ways:

- a. Right to a Healthy Environment: Mining companies must restore ecosystems and prevent hazards like land degradation and water pollution. Non-compliance should be treated as a violation of environmental rights.

¹² F. A. Hayek, *The Constitution of Liberty: The Definitive Edition* (London: The University of Chicago Press, 2011), 30.

¹³ Ashabul Kahpi, "Jaminan Konstitusional Terhadap Hak Atas Lingkungan Hidup di Indonesia", *Al Daulah: Jurnal Hukum Pidana Dan Ketatanegaraan* 2, No. 2 (2013): 144, <https://doi.org/10.24252/Ad.V2i2.1472>.

- b. Community Engagement and Participation: Mining activities impact local communities significantly. The regulation calls for consultation with affected stakeholders, respecting their information and participation rights. Addressing indigenous communities' rights is crucial, as they are often disproportionately affected by mining projects.
- c. Safety and Health: Mining often involves physical risks to workers and surrounding communities. Companies must prioritize occupational safety and invest in risk mitigation infrastructure.
- d. Economic and Social Rights: Post-mining rehabilitation should include programs supporting alternative livelihoods for workers and communities dependent on mining and providing fair compensation to affected parties when displacement or loss of livelihoods occurs.
- e. Transparency and Accountability: Companies must be transparent about their plans, financial guarantees, and actions. Enforcement mechanisms need to be strengthened to ensure compliance with the regulation.

The protection of a healthy environment in Indonesia is still problematic. This matter is based on empirical events that still cause many problems in the hazardous mining society. The mining industry has a lot of significant risks and dangers, from the beginning of planning until the end of the mines. Besides that, the mining industry is also known for industries that are capital¹⁴ and technology-intensive. One of the mining industries that become great danger is the coal industry. Coal is one of the industry mines that have a marked high economic. Even in 2022, Indonesia became a producing country with the enormous number 3 (three) in the world, amounting to 615 million tons after China produces 3.6 billion tonnes and India produces 886 million tonnes.¹⁵ That matter has both positive and negative impacts on Indonesian society. Positive impacts, namely mining activity, result in increases in foreign exchange. While impacting negatively, namely, the environment becoming broken and health problems caused by mining. Activities in mining result in the occurrence of damage to the

¹⁴ Wardani *et.al.*, "Overview Analisis Sistem Manajemen Keselamatan Pada Industri Pertambangan di Beberapa Negara", *Syntax Idea* 3, No. 2 (2021): 299, <https://doi.org/10.46799/syntax-idea.v3i2.1054>.

¹⁵ Adi Ahdiat, "These Are The Largest Coal Producing Countries In 2022," <https://Databoks.Katadata.Co.Id/Datapublish/2023/01/06/Ini-Negara-Penghasil-Batu-Bara-Terbesar-2022#:~:Text=According To>, accessed 3 September 2024.

environment, even leaving land used for mining with conditions that have been damaged, acidic, low fertility, and contain metal.¹⁶

One of the hazardous pollutants for the health of the human body is metal. The World Health Organization (WHO) and the Food Agriculture Organization (FAO) recommend not consuming food polluted with heavy metals. Heavy metal will harm creatures' lives. All heavy metals can become dangerous poisons to body creatures' lives if they are beyond the threshold permitted limits. However, apart from heavy metal, the body of creature life also needs this in a certain amount (not many), which, if not filled, will have fatal consequences for the continuity of life.¹⁷

There is also the mining gold industry, which PT Freeport Indonesia manages. Dangerous environment to the health and life of the public has become a problem in the PT Freeport mining area from era to era and has been covered by national media and even international media, including about:¹⁸

- a. Deforestation and pollution occur because the tailings are dumped directly into the Agabagong River, then shrink to the Aikwa River, and then to Sea Arafura;
- b. Mine tailings deposited directly into the Aikwa River, which resulted from flood and destroyed part of big forest plains and threatened life in the city of Timika;
- c. The existence of flood or waste dumping mine going to Lake Wanagong has caused the death of workers company, and its existence concerns the continuity life settlement term length below the lake;
- d. Pollution of acid rock drainage also threatens life because it pollutes the local water supply. The water supply originates from the area flow river (*DAS*), whose location is not far from PT Freeport's operations resulted in the occurrence of an improved level of copper in marine fauna.

Pollution has a considerable impact and threats to the lives of the public around mine. This is not following the mandate contained in the constitution as stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states: "Everyone has the right to live a prosperous life in birth and mind, to live, and to have a good and healthy living environment and to have the right to receive health services". The Minister of Energy and

¹⁶ Haryatie Sarie, "Potensi Bahaya Kontaminasi Logam Berat Di Lahan Bekas Tambang Batubara Yang Digunakan Sebagai Lahan Pertanian", *Buletin Loupe* 15, No. 02 (2019): 37, <http://Dx.Doi.Org/10.51967/Buletinloupe.V15i02.40>.

¹⁷ *Ibid*, 37-38.

¹⁸ Astuti, *et.al.*, "Implikasi Kebijakan Indonesia Dalam Menangani Kasus Pencemaran Lingkungan Oleh Pt Freeport Terhadap Keamanan Manusia Di Mimika Papua", *Journal of International Relations* 4, No. 3 (2018): 548, Doi:10.14710/jirud.v4i3.21080.

Mineral Resources Decree No. 111/K/MB01/MEM.B/2024, which regulates the replacement land plan and the environmental economic valuation of reclamation areas, represents a significant step toward ensuring sustainable and responsible mining practices. This regulation emphasizes the environmental restoration of mined areas and integrates economic principles to value ecosystems, fostering accountability in mining operations. Companies must quantify the environmental, social, and economic benefits restored through reclamation efforts, such as biodiversity recovery, water regulation, and community benefits.

2. Law Enforcement Against Impact of Negative Mining in Indonesia

The Constitution has ensured that everyone gets a good and healthy life. It is in harmony with The Stockholm Declaration of 1972, which states that: "Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and bears a solemn responsibility to protect and improve the environment for present and future generations...".¹⁹ Implementation of protection and management of the environment has become a right and obligation for every citizen, without exception. Article 67 of Law Number 32 of 2009 concerning Protection and Management Environment Life states that "everyone is obliged to look after sustainability function environment life as well as control pollution and/or damage environment life".²⁰

Mining is one of the activities utilized as a source of natural power that directly impacts the environment. Conversely, mining contributes significantly to donating state income and provision field efforts. On the other hand, the mining sector has black notes because it often touches on the problem of a degraded environment²¹. Illegal mining sites without permission and operational problem procedures.²² Each stage of activity in mining starts from the general investigation, exploration, study feasibility, construction, mining, processing and refining, transportation, and sales, up to activity post-mining, which has enormous potential for the existence of human rights violations.

¹⁹ The United Nations Conference on The Human Environment, Stockholm Declaration, UN General Assembly Resolutions 2994/Xxvii, 2995/ Xxvii And 2996/Xxii Of 15 December 1972.

²⁰ Central Government Indonesia, "Constitution Number 32 Of 2009 Concerning Protection And Management Environment Life" (2009).

²¹ Antara, "Klhk Reveals Reasons Why 59 Percent Of Indonesian Rivers Are Polluted Heavy," <https://bisnis.tempo.co/read/1488232/klhk-ungkap-penyebab-59-persen-sungai-di-indonesia-tercemar-berat>, accessed 3 September 2024.

²² Victoria Sherly Endrico Putri, "Analisis Pemidanaan Terhadap Tindak Pidana Pertambangan Batubara Tanpa Izin Usaha Pertambangan Studi Kasus Di Kutai", *Jurnal Ilmu Sosial Dan Pendidikan* 5, No. 1 (2021): 470, <https://doi.org/10.58258/jisip.v5i1.1754>.

The incident that damages environmental life caused by activity mining is one of the factors that occurred in the case of PT Adaro Energy Tbk. PT Adaro Energy Tbk is a company that mines coal in South Kalimantan, which has a land area of 31,380 hectares. A company carried out mining activities that contributed to the occurrence of disaster floods in South Kalimantan in 2021, which caused at least 24 people to die and 113,000 people to be displaced.²³ Besides the impact on environmental life, a problem that often occurs in touch with mining activity is that existing mining is illegal. According to Kompas.com, at least there are 15 cases of illegal mining or mining operations without permits in 2022. The investigation process was carried out by the East Kalimantan High Prosecutor's Office.²⁴ Various problems arising from illegal mining and insufficient environments harm the perpetrators and the public affected by mining locations.²⁵

A positive law comprehensively arranged about mining in Indonesia is Law Number 4 of 2009 concerning Mineral and Coal Mining, as has changed with Law Number 3 of 2020 concerning Changes to Act Number 4 of 2009 concerning Mineral and Coal Mining (*Minerba* Law). Furthermore, *Minerba* Law changed with Law Number 11 of 2020 Job Creation, which has been revoked with Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation. The *Minerba* Law generally allows mining enforcement to be done administratively and criminally. Provisions about administrative sanctions are set up in Chapter XXII Article 151 to Article 157, while criminal provision is set up in Chapter XXIII Article 158 to Article 164.

Administrative sanctions can be charged for several illegal mining activities in Article 151 of the *Minerba* Law. Furthermore, administrative sanctions for mineral and coal mining businesses and/or activities are also regulated in Chapter XXI Article 185 to Article 188 of the Regulations Government Number 96 of 2021 concerning implementing Mineral and Coal Mining Activity. Administrative sanctions can dropped on mining permission holders in the form of a written warning, acceptable, termination temporary part or all over exploration or operation production, and/ or revocation activity. Besides administratively, the *Minerba* Law also regulates criminal sanctions that include criminal imprisonment, fines, and additional

²³ Tuk Indonesia, "Record Footsteps Case Mining in Indonesia," <https://www.tuk.or.id/Wp-Content/Uploads/Rekam-Jejak-Kasus-Pertambangan.Pdf>, accessed 3 September 2024.

²⁴ Kompas.Com., "Three Big Companies Become Suspects Of Illegal Mining In East Kalimantan," <https://regional.kompas.com/read/2022/10/06/082014078/Tiga-Perusahaan-Besar-Jadi-Tersangka-Tambang-Illegal-Di-Kaltim>, accessed on 4 September 2024.

²⁵ Alvika Fatmawati Dwi Putri and Mujiono Hafidh Prasetyo, "Kebijakan Hukum Pidana Dalam Penanggulangan Tindak Pidana Di Bidang Pertambangan", *Jurnal Pembangunan Hukum Indonesia* 3, No. 3 (2021): 313, <https://doi.org/10.14710/jphi.v3i3.312-324>.

sanctions if robbery items are used in an act, confiscation benefits gained from a criminal act, and/ or obligation to pay costs incurred as a consequence act criminal.²⁶ These are some provisions regulated as criminal activity in the *Minerba* Law:

- a. mining without permission.²⁷ Mining activity is carried out without permission or known with PETI, threatened with criminal sanctions set up in Article 158 of Law Number 3 of 2020 concerning Changes to Law Number 4 of 2009 concerning Mineral and Coal Mining: criminal imprisonment for a maximum of 5 (five) years and maximum fine of Rp 100,000,000,000,000,00 (one hundred billion rupiah).
- b. do operation production in stages exploration, including accommodate, utilizing, process, refining, transport, sell which do not follow permission set up in Article 160 and Article 161 of the *Minerba* Law, threatened with criminal sanctions: criminal imprisonment of 5 (five) years and a maximum fine of Rp 100,000,000,000,000,00 (one hundred billion rupiah).
- c. transfer the license to others, threatened with criminal sanctions set up in Article 161A of the *Minerba* Law: criminal imprisonment of 2 (two) years and a maximum fine of Rp 5,000,000,000,000,00 (five billion rupiah).
- d. do no post-mining reclamation after permission revoked or ended, threatened with criminal sanctions based on Article 161B: criminal imprisonment of 5 (five) years and a maximum fine of Rp 100,000,000,000,000,00 (one hundred billion rupiahs).
- e. disturbing or hindering licensed mining activity, threatened with criminal sanctions based on Article 162: criminal imprisonment for 1 (one) year and a maximum fine of Rp 100,000,000,000,000,00 (one hundred billion rupiah).

Data from the Ministry of Energy and Mineral Resources in 2022 shows that more than 2,700 mines operate without permission and spread throughout Indonesia. 26 mining activities without permission can cause various social, economic, and environmental problems. In society, mining without permission potentially hinders development areas because conflict among those affected by mining activity also becomes a problem under regional spatial planning. Besides that, mining without permission can disturb society and damage the facilities generally and health because the material that is not managed well

²⁶ Central Government Indonesia, "Law Number 3 Of 2020 Concerning Changes to The Law Number 4 Of 2009 Concerning Mineral And Coal Mining" (2020).

²⁷ Yuwono Prianto, *et.al.*, "Penegakan Hukum Pertambangan Tanpa Izin Serta Dampaknya Terhadap Konservasi Fungsi Lingkungan Hidup", *Bina Hukum Lingkungan* 4, No. 1 (October, 2019): 13, [Http://Dx.Doi.Org/10.24970/Bhl.V4i1.80](http://Dx.Doi.Org/10.24970/Bhl.V4i1.80).

lowers the country's economy and causes damage to environmental life waiting for the eyes ahead.

Sudikno Mertokusumo explains that law must be implemented and enforced to become reality. Enforcement law alone has three elements. First, certainty law (legality), where applicable, may not deviate because the law aims to create order in society. Second, the benefits (*zweckmassigkeit*) mean enforcement law must create benefits for society. Third, justice (*lawfulness*) means law enforcement must be equal and balanced for everyone without discrimination.²⁸ The rise in mining cases in Indonesia can signal that preventive and repressive efforts to punish mining cases are not yet optimally carried out. One mining case without permission can be found in the decision of Bandung High Court Number 147/PID.B/LH/2020/PT BDG. The defendant is proven to have done a criminal act in the excavation land using heavy tool *Beco* without permission, as well as violating the regulation of the mining location, with permission in the name of PT KMA. Defendant holds Mining Permit of Operation Production For Sales No 540/Kep.18/10.1.02.0/BPMPT/2016 above name of PT BMU, where the coordinates are in different areas with the location defendant did excavation land. According to Article 158 of the *Minerba* Law, anyone who carries out mining without permission is subject to criminal imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp 10,000,000,000,000,00 (ten billion rupiah).

Furthermore, Articles 160 and 161 of the *Minerba* Law stipulated that an operation production in stages of exploration, including accommodating, utilizing, process, refining, transporting, sell which do not follow permission, can be threatened in the form of criminal imprisonment of 5 (five) years and maximum fine of Rp 100,000,000,000,000,00 (one hundred billion rupiah). In the verdict, the panel of judges at the Bandung High Court strengthened the decision of Bale Bandung District Court Number 781/Pid.B.lh.2019/PN.Blb with set defendant guilty of mining without permission based on Article 158 of the *Minerba* Law with criminal imprisonment for 1 (one) year and a fine amounting to Rp 75,000,000,00 (seventy-five million rupiah)

D. Conclusion

The human rights approach in addressing mining hazards in Indonesia is a primary obligation to protect and respect human rights as they are the fundamental rights of every individual. International legal instruments such as the ICCPR, UDHR, and CAT regulate state

²⁸ Sudikno Mertokusumo, *Mengenal Hukum (Suatu Pengantar)* (Yogyakarta: Liberty, 2007), 160-161.

obligations regarding human rights, while at the national level, they are regulated by acts and regulations. As a country of law, Indonesia is also obliged to protect human rights, including the right to a prosperous life, a good and healthy environment, and health services. The International Covenant on Economic and Social Rights (CESCR) protects the economic, social, and cultural rights of individuals or groups. However, protecting the right to a healthy environment is still problematic, especially in the mining industry. The coal and gold mining industry negatively impacts the environment, such as land damage, pollution, and heavy metal pollution. This contradicts the constitution's mandate, which guarantees a good and healthy environment. The impacts, including deforestation, pollution, flooding, and water pollution, threaten the lives of communities around the mine. This situation must be addressed immediately to realize the right to a healthy environment following the constitution.

Law enforcement against the negative impacts of mining in Indonesia can be subject to several sanctions. Administrative sanctions that can be imposed for violations in mining include written warnings, fines, temporary suspension of activities, and revocation of permits. The *Minerba* Law also regulates criminal sanctions, including imprisonment and fines, for violations such as mining without a permit, false reporting, production operations not by permits, transfer of permits, failure to reclamation and post-mining, and disrupting licensed mining activities. Cases of mining without permits and violations in the mining sector are still a problem in Indonesia. The impacts can include social, economic, and environmental problems, hindering regional development and causing conflict with surrounding communities. Law enforcement in mining has not been optimally carried out. Preventive and repressive efforts must be increased to prevent and punish violations in the mining sector.

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