

# Evaluating Policy and Legal Challenges in the Legalisation of Artisanal Small Scale Gold Mining in West Kalimantan

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**Abstract:** *This study investigates the legal challenges and policy frameworks surrounding artisanal smallscale gold mining ASGM in West Kalimantan, Indonesia. The research focuses on understanding current regulatory approaches, identifying barriers to the implementation of mining permits, and proposing policy reconstructions. Using normative research methods, the study reveals that full law enforcement, technological limitations, and weak government commitment are primary obstacles. A policy reconstruction is proposed to integrate environmental standards and global regulations, particularly aligned with the Minamata Convention, to promote sustainable mining practices. To achieve this goal, normative research methods were employed, focusing on reconstructing ASGM legalization policies. The results of this research: Firstly, the current policy setting for ASGM legalization in Indonesia is to provide People's Mining Permits (IPR) to both individuals and business entities. Secondly, several factors hinder the legalization of ASGM through IPR, including ineffective law enforcement, lack of technological support and infrastructure for nonmercury mining, weak government commitment, and inadequate guidance and supervision of IPR implementation. Thirdly, reconstruction of the ASGM legalization policy was carried out by forming special laws and regulations governing ASGM, facilitating IPR holders with the help of technology, funding, and marketing, integrating global legalization policies with the Minamata Convention, establishing a legal culture, and creating gold product certification regulations and SVLE, and developing mechanisms to evaluate and collaborate between ministry/department functions in ASGM management.*

**Keywords:** ASGM, mining policy, West Kalimantan, environmental sustainability, Minamata Convention

## 1. Introduction

Illegal/unlicensed small - scale gold mining (ASGM) in Indonesia, has always been a never - ending problem. The actions taken by the police have not been able to dampen the determination of the miners to dig up layers of soil to look for gold grains. The soaring price of gold has become a strong driving factor for miners to try their luck in breaking the law by conducting illegal mining. The mining area community then socially becomes the “heir” of mining activities by conducting small - scale gold mining (ASGM) as a source of livelihood. At the end of 2020, there were at least 120 non - legal gold mining locations (ASGM), with the number of miners reaching 1 million people throughout Indonesia. Gold production from ASGM reached 65 - 130 tons in 2010, almost the same as the national (legal) gold production of 119 tons in the same period. From this ASGM activity, the gold production reached 65 to 130 tons in 2010, almost the same as the national (legal) gold production in the same period, which was 119 tons. ASGM does not have a permit, so it is included in the illegal activity. Although it is possible that there are illegal activities that use modern tools and technology, the discussion in this article is limited to illegal ASGM, to focus more on legal protection for the community, improving the standard of living and welfare, and restoring the social conditions of the community.

The thing that often becomes the “image” of illegal ASGM is about the violation of the law and the environmental damage

it causes, so the approach taken is a law enforcement approach. Action after action has been taken against illegal miners. In 2022, the Criminal Investigation Directorate of the West Kalimantan Regional Police has arrested more than 209 suspects related to illegal gold mining, ranging from miners and receivers to gold jewelry producers and sellers. These law enforcement efforts have been carried out as an implementation of the main duties of the police and the mandate of the law. However, such massive law enforcement is still considered weak by some groups. When a major flood hit Sintang Regency in West Kalimantan at the end of 2021 (which was claimed to be the biggest flood in 50 years), illegal ASGM was even blamed as a causal factor.

Although law enforcement has been carried out massively, Dedi Mulyadi<sup>1</sup>, said that law enforcement against illegal ASGM is still weak. Some time ago, the area of illegal ASGM in Indonesia reached 8, 713, 167.58 Hectare. This data is a finding from the results of a working meeting with the Ministry of Environment and Forestry (KLHK) on January 20, 2021. The weak law enforcement against PETI is seen as the government's weak ability to enforce laws that legally normatively have the Minerba Law. As the word illegal is embedded in illegal ASGM, it means that the activity is illegal, prohibited, against the law, without permission, does not have land rights, without mining permits, without exploration permits, transportation, and trading. The impacts range from environmental damage, loss of state revenue, causing social conflict, to impacts on health and occupational

<sup>1</sup> Chairman of Commission IV of the Indonesian House of Representatives in charge of Agriculture, Environment, Forestry and Maritime Affairs for the 2019-2024 period

safety and security (K3). Based on the applicable positive legal regulations, criminal sanctions against violators can be imposed under Articles 158 to 164 of the Minerba Law.

Law enforcement should be integrated as a mitigation through rational efforts, both penal and non - penal. Therefore, the concept of legalizing illegal ASGM into People's Gold Mining needs to be studied and implemented through a mature program formulation process. The perpetrators of ASGM have submitted several IPR applications for the Mining Areas they own, but the applications have stalled, and the permits have not been obtained. Therefore, the researcher observes that the efforts made by the Government, both through law enforcement and empowerment of mining communities, have not formed a legal culture for managing mining/mineral products, especially gold, so it is necessary to reconstruct the legalization of ASGM policy through this research. This research is significant as it addresses the legal and environmental challenges of smallscale mining in a region heavily reliant on ASGM for livelihood. By proposing policy reconstructions, it seeks to balance community welfare, government interests, and environmental sustainability.

## 2. Method

This legal research uses a sociological qualitative approach which aims to understand the phenomena experienced by the research subjects. This method prioritizes research on secondary data, such as primary, secondary or tertiary legal materials.

## 3. Discussion

### 1) Environmentally Conscious Mining Sustainability Trough Legalization

The widespread use of mercury has accompanied the growth of the ASGM sector, placing Indonesia among the top three global pollutant emitters and posing serious health risks to miners and local community members. The Indonesian government has taken steps to phase out mercury and formalize the sector, but significant opportunities remain for policy revision, increased access to financial investment, and the development of a more responsible ASGM sector.

The legal principles of Minerba in Law Number 3 of 2020 are like the principles regulated in Article 2 of Law Number 4 of 2009 concerning Mineral and Coal Mining, namely: 1) the principle of benefit, justice and balance; 2) the principle of siding with the interests of the nation; 3) the principle of participation, transparency and accountability and 4) the principle of sustainability and environmental insight. Indonesia's natural resources must be utilized optimally for the prosperity of sustainable and environmentally friendly society, as stated in Article 33 Paragraph 3 of the Constitution of the Republic of Indonesia: "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. " Social and environmental justice must be the state's top priority,

according to Article 33 Paragraph 4 of the Constitution of the Republic of Indonesia.

With the support of Law No.3 of 2020 concerning Amendments to Law No.4 of 2009 concerning Mineral and Coal Mining, Presidential Regulation No.21 of 2019 concerning the National Action Plan for the Reduction and Elimination of Mercury (RAN - PPM) stipulates the reduction of mercury in the manufacturing, energy, and health sectors, as well as the elimination of mercury in the ASGM and health sectors. In addition, the use of mercury in the gold processing process is prohibited by the Decree of the Minister of Energy and Mineral Resources No.1827 K/30/MEM/2018 concerning Guidelines for the Implementation of Good Mining Engineering Principles.

Therefore, the legalization is carried out through formalization. Formalization is an effort to improve the governance of the PESK sector to comply with applicable regulations and create a responsible and sustainable PESK. The formalization process creates more sustainable income opportunities and safer conditions. Based on Article 32 Paragraph 2 letter c of the Minerba Law, the public (people) can obtain a People's Mining Permit (IPR). Article 38 states that the granting of Mining Business Permits (IUP) is given to the United Nations Development Programme (UNDP) UNDP is the UN's global development network, an advocacy organization for change and connecting countries to knowledge, experience, and resources to help communities build better lives. UNDP is in 166 countries; its center of activity is in New York to assist and provide solutions in facing national and global development challenges. (1) business entities, (b) cooperatives or (c) individual companies. IUP holders may carry out some or all mining business activities, namely (a) Exploration which includes general investigation activities, exploration, and feasibility studies, and (b) Production operations which include construction, mining, processing and/or refining or development and/or utilization as well as transportation and sales in accordance with the provisions of laws and regulations. Specifically for the sale of gold produced by cooperatives, a sales IUP is required.

### 2) Legalization of small - scale gold mining policies in the West Kalimantan region

The author refers to the research results of Ilham Ilmawan<sup>2</sup> (Geological Engineering, Gadjah Mada University) that in the West Kalimantan region the type and characteristics of gold ore deposits are primary deposits in the Bengkayang Regency area, with the results of his research that "gold - bearing quartz veins are genetically categorized into low - moderate sulfidation epithermal deposits. " This is important to know in relation to gold processing technology (non - mercury) that needs to be applied and developed in ASGM West Kalimantan to support the legalization program. However, in the Sanggau Regency area, based on research from the Conservation Research Program Group of the Geological Resources Center (2006) that in this area is generally covered by a layer of soil that generally covers alluvial deposits

<sup>2</sup> Ilham Ilmawan, 2021, Intermediate-sulfidation epithermal mineralization at Monterado goldfield in Western Borneo (Indonesia): Geological, mineralogical, and fluid

inclusionmicrothermometric perspectives, Geological Journal 58 (1):315-332 DOI:10.1002/gj.4594

containing gold with a thickness varying between 0.5 m to 1.5 m mainly consisting of quartz sand, quartz rock fragments, and other heavy minerals. Mining carried out between alluvial and primary mining both take place in this area; primary gold mining is generally carried out at former alluvial mine sites. Based on this research data, non - mercury gold mining technology is very possible to be carried out in the West Kalimantan region.

ASGM which should be done traditionally using simple equipment, has increasingly developed into gold mining using semi - mechanical equipment and the perpetrators are not only local people but also immigrants, especially those who act as financiers. Data from the Criminal Investigation Directorate of the West Kalimantan Regional Police shows that the equipment used in illegal ASGM activities cannot be said to be simple, excavators are deployed in one mining area, dompeng machines and high - pressure pumps are also deployed. Illegal ASGM is also often associated with the use of subsidized Solar fuel which is also a side illegal transaction from illegal activities.

For the West Kalimantan region, based on data from the Industry, Trade, Energy and Mineral Resources Service (Disperindag ESDM), there are three people's mining area (WPRs) that have been issued and have obtained people's mining permit (IPRs) which were given to Producer Cooperatives, that are:

- 1) "Setia Kawan Berlian" Producers Union
- 2) "Setia Kawan Bersatu" Producers Union
- 3) "Tahta Kencana Kapuas" Producers Union

However, it turns out that of the three IPRs that have been obtained in the Kapuas Hulu Regency area, none have carried out operational activities because they still must complete the work plan documents and are still constrained by regulations. Therefore, let alone operating to produce gold products as expected, with these obligations without prior assistance to the PESK miners, it is very likely that operations will be hampered and will not achieve their goals, because until now PETI activities are still ongoing in the Kapuas Hulu Regency area (and other regencies in West Kalimantan).

Meanwhile, law enforcement against illegal gold mining activities is carried out under the mandate of the Mineral and Coal Mining Law. Regarding illegal mining activities, it is regulated in Article 158 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba): "Any person who carries out Mining without a permit as referred to in Article 35 shall be punished with imprisonment of a maximum of 5 (five) years and a maximum fine of IDR 100, 000, 000, 000.00 (one hundred billion rupiah)." The number of suspects who were prosecuted and became suspects, consisting of workers, financiers, collectors, heavy equipment providers and providers of subsidized diesel fuel used in illegal mining activities can be seen in the table below:

**Table:** Number of Suspects from Illegal ASGM Law Enforcement in West Kalimantan 2019 – 2023

NO	WORKING UNIT	2019	2020	2021	2022	2023
1	Directorate Of Special Criminal Research	7	8	4	68	19
2	Pontianak Police Resort	0	0	0	0	1
3	Kubu Raya Police resort	0	0	0	0	1
4	Mempawah Police Resort	0	0	0	6	3
5	Sambas Police Resort	2	2	9	7	3
6	Sekadau Police Resort	1	2	18	11	9
7	Sanggau Police Resort	2	2	0	9	4
8	Sintang Police Resort	5	1	5	11	1
9	Melawi Police Resort	4	2	11	5	13
10	Singkawang Police Resort	2	6	3	12	2
11	Landak Police Resort	5	4	5	10	7
12	Bengkayang Police Resort	1	1	2	19	34
13	Kapuas Hulu Police Resort	1	1	1	8	9
14	Ketapang Police Resort	4	13	39	43	14
15	Kayong Utara Police Resort	0	0	0	0	1
AMOUNT		117	32	97	209	121

Based on research results, especially in the West Kalimantan region, efforts to achieve mercury reduction within a certain time have not been implemented, instead of implementing RAN - PPM, the province of West Kalimantan has not yet determined RAD - PPM. The proposal of WPR and the regulation of IPR are still stagnant. The people's mining policy is still focused on formal issues that have not been inspired by the historical, social, and cultural background of the mining community. Both the central and regional governments are still in the process of licensing formalities, regulations and policies are not fully implemented, even the existence of the national standard (SNI) ASGM non - mercury has not been socialized to the problem of regulations that are not yet synchronized, while illegal mining continues throughout the year, and the destruction of ecosystems and

the environment is still ongoing. Until it contributed to major flooding in the Kapuas Watershed, Sintang Regency at the end of 2021. The damage to the Kapuas Watershed is also supported by the fact that the results of research at the Directorate of Criminal Investigation of the West Kalimantan Regional Police that illegal ASGM was mostly carried out in forest areas/areas.

Therefore, the reconstruction of the illegal gold mining policy is as follows:

- Need to be aligned with other laws, especially regarding the Ratification of the Minamata Convention (Law No.11/2017 and Presidential Regulation No.21/2019 concerning RAN - PPM)

- The Provincial Government aids/mentoring so that IPR holders can carry out their business activities and fulfill the obligations mandated by the Law and other regulations. The Provincial Government facilitates capital, technology, and other needs in accordance with the provisions of the Minamata Convention Ratification Law (Law No.11/2017 and Presidential Regulation No.21/2019 concerning RAN - PPM)
  - Forming a legal culture in the production, distribution, and use (consumers) of gold based on environmental ethics
  - Analogized with SVLK, which is a tracking system designed by various parties responsible for ensuring that the wood circulating and traded in Indonesia is legal.
  - Develop an evaluation mechanism for the PESK Legalization policy for IPR holders based on the results of supervision by authorized institutions. For example, in production cooperatives that have IPR for people's gold mining, there is a Cooperative Supervisor who can contribute to the development and supervision of the cooperative's operations. The government must collaborate on different functions to realize the legalization of environmentally friendly PESK. For example, collaboration between the ESDM Service, LHK Service, Cooperative and UMKM Service, Industry, Trade and ESDM Service, Village and Disadvantaged Region Community Empowerment Service, etc.
- [7] Tri Hayati, *New Era of Mining Law Under the Regime of Law No.4 of 2009*, Jakarta: Yayasan Pustaka Obor Indonesia, 2015

#### 4. Conclusion

The policy framework for ASGM legalization in West Kalimantan remains underdeveloped, with significant barriers hindering the operationalization of existing permits. Key issues include inadequate law enforcement, lack of technological infrastructure, and weak government oversight. To promote sustainable ASGM practices, a reconstruction of the policy, aligned with global environmental standards, is recommended. Specifically, integrating the Minamata Convention and providing technical and financial support to local miners will help bridge the gap between regulatory goals and practical implementation.

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