Journal of Social Work and Science Education
Volume 7 (1) 2026, 42-65
E-ISSN 2723-6919, P-ISSN 2746-0827

Integrating Restorative Justice into Mineral and Coal Mining Crime Resolution: A Normative Analysis for Sustainable Development in Indonesia

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Article History: Received on 1 October 2025, Revised on 1 November 2025, Published on 2 February 2026

Abstract: This study analysed the settlement of mineral and coal mining criminal acts through a restorative justice approach as an alternative to the conventional criminal justice system as well as It seeks to identify the distinctive characteristics of equitable settlement mechanisms and to develop a reformulated model that aligns with the principles of sustainable mining development. Using a normative juridical (doctrinal) research method, the study examines statutory regulations, judicial decisions, and scholarly works related to the settlement of mining crimes. The analysis involves both primary and secondary legal materials to evaluate the coherence between current legal norms and restorative principles. A prescriptive approach is applied to propose legal reform aimed at integrating restorative mechanisms into the mining law framework. Findings revealed that the Mining Law primarily focuses on punitive measures and has yet to regulate restorative justice mechanisms. Mining-related offenses encompass illegal mining, false data submission, failure to reclaim, and environmental destruction. The study shows that applying restorative justice through penal mediation, restorative conferences, and community-based dialogue can accelerate resolution, reduce costs, and address victims' needs while restoring social harmony. It provides a framework for government institutions to mediate mining disputes effectively while ensuring social and ecological recovery. The study contributes to the advancement of legal scholarship by bridging restorative justice theory with mining governance. It establishes a foundation for formulating future legal reforms that emphasize comprehensive, fair, and sustainable approaches to resolving mining-related criminal cases.

Keywords: Action Criminal Mining, Development Sustainable, Restorative Justice

A. Introduction

Settlement model criminal mining with restorative justice in frame development mining sustainable is For create system laws that do not only focused on sanctions criminal law, but also on the recovery of victims, balance environment and development sustainable economy (Thamrin et al., 2023). Approach This confess that crime mining often impact broad impact on society, the environment and the

economy, so that the solution must comprehensive and recovery oriented (Perini, 2022). Why? required thinking progressive law like this, thing This background behind by some matter: 1) limitations system justice criminal conventional where system justice criminal conventional often only focus on giving sanctions to perpetrator, without give adequate attention to victim recovery and impact social economy from crime mining; 2) damage environment consequence mining, if No managed with good, can cause damage severe environments, such as water, land and air pollution, as well disappearance diversity life; 3) Social conflict due to mining activity mining often cause conflict social between company mining, community local, and government, especially related with right on land, access to source Power nature, and division profit; 4) Challenges of sustainable development mining development sustainable need balance between growth economy, protection environment and welfare social. System settlement criminal offenses that only focused on sanctions no will support objective; and 5) Awareness of justice restorative, the concept of restorative justice emphasizes restoration relationships and recovery losses, increasingly get attention as more alternatives effective in finish cases criminal, including crime mining (Himawan & Lestari, 2023).

When this of course in a way general settlement action criminal with restorative justice approach is implemented in several action criminal or specificity of the perpetrato, namely: 1) Law No. 11 of 2012 concerning System Justice Child Criminal Procedure Code (SPPA). This law in a way special arrange application of RJ in handling case crimes involving child as perpetrator, with objective main For restore the condition of the victim and not only give punishment for the perpetrator; 2) Law No. 12 of 2022 concerning Action Criminal Violence Sexual (TPKS) this law arrange about restitution and compensation for victims of violence sexual, which is part from effort recovery via RJ; 3) Criminal Code (Law No. 1 of 2023) the new Criminal Code This also accommodates RJ principles , although No in a way explicit mention the term "Restorative Justice", however a number of chapter in the Criminal Code leads to efforts settlement external matters judicial process formal criminal law with involving parties related For reach justice for victims and perpetrators; 3) Regulation Police Regulation No. 8 of 2021. There are also Regulations The police are in charge implementation of RJ, at the level police; 4) Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020. Focus on termination prosecution case criminal through approach justice restorative. Regulations This regulate the mediation process, agreement between perpetrators and victims, and involving element public in settlement case. The Prosecutor's Office also formed receptacle named Restorative Justice House or RJ House as place For facilitate effort peace settlement case with involving various party related; 5) Regulation Supreme Court (PERMA) Number 1 of 2024. Arrange implementation justice restorative in court, including the judge's obligation to list the provisions of this PERMA in decision If mechanism justice restorative applied.

Importance approach Justice restorative in context law criminal aim for finish external matters court through mediation and approach dialogical, with focus on recovery connection between perpetrators and victims and fulfilment Community interests and recovery environment. As known mining including group non-renewable, because is Source Power natural resources (SDA) that are not can Renewable and limited resources that cannot be regenerated quickly, such as petroleum, coal, and many others. These resources are formed through natural processes that can last for millions of years. Exploitation of non-renewable natural resources will have an environmental impact, resulting in pollution and ecosystem damage. Pollution can occur due to the extraction, processing, and use of non-renewable minerals. Therefore, mining plays a role in transforming human civilization, while the discovery and processing of metals can accelerate major changes from a scientific and technological perspective to this day. Another important transformation in the mining world today is the transformation of mining, which is viewed as a non-renewable natural resource , into the context of sustainable development. Now we are familiar with the concept of sustainable mining, where non-renewable resources are transformed into other renewable resources (Shinya, 1998)

In Perspective Currently, mining is moving laterally into social, economic, and cultural areas. Referring to the mandate of Law No. 4/2009 concerning Mineral and Coal Mining, there are three important things that need to be realized regarding the transformation of mining benefits. First, is increasing added value (PNT), also known as down streaming, which creates a high multiplier effect, including job creation. Second, is preserving environmental functions to support Indonesia's growing population on a fixed land area. And third, is community development and empowerment (PPM) around mining areas, which assists the government in improving health services and education, as well as the ability of communities to become more empowered and independent (Prasetio et al., 2021).

In this connection Tommi Kauppila stated that Natural capital lost during mining can be replaced with other forms of capital, and revenues from mining are invested in reproducible capital or renewable energy-based substitutes. Lost natural capital during mining can replaced with other forms of capital, and income from mining invested in capital that can reproduced or replacement based energy renewable (Reijnders, 2021). Based on the description above with RJ approach as alternative settlement criminal mining or aimed at to specificity the perpetrator, the thing this is not yet Lots found.

B. Methods

This study uses a normative legal research method (juridical normative research) conducted through library research of legal materials. The research is prescriptive in nature, meaning it aims to produce recommendations on what should be done to address certain issues, typically in the form of arguments, theories, or proposals. Being

prescriptive indicates that the object of legal knowledge involves coherence between legal norms and principles, between laws and norms, and between individual conduct and legal norms. The study is normative and reform-oriented: it involves an intensive evaluation of the adequacy of existing legal rules and, where necessary, recommends changes. Specifically, the research evaluates regulations on the settlement of criminal cases in the mineral and coal mining sector as contained in Law No. 4 of 2009 on Mineral and Coal Mining (as amended by Law No. 3 of 2020). Both laws currently provide for the settlement of criminal cases through the litigation process; the study evaluates these provisions to recommend changes, including introducing alternative methods of criminal case settlement in mining that are simpler, faster, and more cost-effective, while aligning with restorative justice principles. Legal materials are drawn from primary, secondary, and tertiary sources. Primary legal materials include the 1945 Constitution of Indonesia; Law No. 4 of 2009 on Mineral and Coal Mining (State Gazette 2009/No. 4, TLN No. 4959) as amended by Law No. 3 of 2020 (State Gazette 2020/No. 147, Supplement No. 6525); Law No. 32 of 2009 on Environmental Protection and Management (State Gazette 2009/No. 140, TLN No. 5059); Law No. 41 of 1999 on Forestry (State Gazette 1999/No. 167, TLN No. 3888); Law No. 8 of 1981 concerning the Criminal Procedure Code (State Gazette 1981/No. 76, Supplement No. 3209); and relevant Supreme Court decisions (Nos. 7016 K/Pid.Sus/2, 2278 K/Pid.Sus/2019, and 927 K/Pid.Sus-LH/2021).

Secondary legal materials consist of scholarly works, legal commentaries, law journals, research reports, seminar papers, and legal articles (including online publications) that relate to the main issues of the study. Tertiary materials include legal dictionaries, Indonesian language dictionaries, and encyclopedias relevant to the discussion. Data collection is conducted through a bibliographic study, in which the researcher collects, studies, and takes notes from books, academic literature, and legislative documents related to the research problem specifically, the settlement of criminal cases in the mineral and coal mining sector within the context of sustainable mining development. The analysis of the legal materials is carried out systematically: primary legal sources are analyzed normatively and discussed descriptively through analytical methods; secondary sources are reviewed with reference to the main research problem; and tertiary sources are used to clarify terms and concepts. The interpretation method is applied to examine and interpret the relevant legislation in order to address the research questions and objectives.

C. Results and Discussion

Settlement of Mineral and Coal Mining Crimes Using the Restorative Justice Model

Types and Forms Violation of the Mining Law

To understand the complexity of mining law issues, it is necessary to distinguish between the concepts of violations and mining disputes, as they are distinct legal

concepts and can have different legal implications. A violation is an act that violates applicable laws or regulations. It can be an act committed by an individual or organization that violates the rights of others or the public interest. An example of a violation in the mining context is mining without a permit. A dispute is a disagreement or conflict between two or more parties with differing interests. This can be a dispute about rights, obligations, or different interests, such as land disputes, contract disputes, or labor disputes, which often occur in connection with mining activities.

The fundamental difference between a violation and a dispute lies in three aspects: nature - a violation is an unlawful act while a dispute is a disagreement between two or more parties; consequences - a violation may result in legal sanctions while a dispute may result in settlement through legal proceedings or negotiation; parties involved - a violation may involve an individual or an organization while a dispute involves two or more parties with differing interests.

In the Mining Law, the types of mining activity violations include: Illegal Mining (PETI) which is a mining activity without a valid permit, Submission of False Data/Information in the form of providing incorrect reports or information to the government, Conducting Production Operations in the Exploration Stage, Transferring Permits without a valid permit or notification, Not Conducting Reclamation and Post-Mining; Mining Activities in Forest Areas Without a Permit, Mining Laundering; and Accommodating, Utilizing, Processing minerals/coal without a valid permit.

Impact of Mining Violations

Violations of mining regulations, especially illegal ones, have broad and complex impacts. Environmental impacts include: ecosystem damage due to large-scale land clearing resulting in loss of vegetation, soil damage, and water pollution, erosion and landslides due to irresponsible activities, especially in areas with steep slopes, water and air pollution from mining waste such as ore processing residues and mine dust, loss of flora and fauna habitat that threatens protected species, drastic changes in the landscape such as loss of forests, changes in topography, and the formation of large mine pits.

Social impacts include: social conflict between local communities and mining companies or between competing community groups, security disturbances in the form of criminal acts such as theft, fighting and violence, health problems due to environmental pollution which causes respiratory, skin and digestive diseases, changes in community lifestyles such as population migration and the loss of traditional livelihoods, obstacles to development due to non-compliance with regional spatial planning (RT/RW).

Typology of Mining Disputes

Based on the characteristics of the parties involved, mining disputes can be classified into several categories: Criminal Law Disputes relate to criminal acts in mineral and coal mining activities, including violations of criminal regulations in the mining sector. An example is the act of obstructing mining activities, as stipulated in Article 162 of the Mineral and Coal Mining Law, which carries a maximum penalty of one year's imprisonment or a maximum fine of Rp100,000,000.00. Civil Law Disputes relate to contractual disputes in mining business, for example between the government and mining companies in the Work Contract (KK) or Mineral and Coal Mining Business Work Agreement (PKP2B), as well as contracts between business actors and other parties such as agreements to establish limited liability companies, mining service agreements, and share purchase agreements.

According to Ahmad Redi, mineral and coal mining disputes encompass nearly all aspects, including investment, trade, governance, forestry, industry, employment, the environment, and indigenous communities. These disputes involve nearly every sector of national and state life, relating to regional governance, relations between central and regional governments, cross-ministerial and institutional boundaries, state institutions, business actors, indigenous communities, local communities, and business actors (Sefa Dei & Restoule, 2019).

Types of Mining Crimes

Based on the 1945 Constitution, the state fully controls all natural resources contained within the earth and uses them to the greatest extent possible for the prosperity of the people. The mining sector, particularly minerals and coal (Minerba), is highly susceptible to legal violations, both criminal and administrative. Therefore, laws and regulations are needed that strictly regulate prohibitions in the mining business sector.

Regulation of mining crimes in Indonesia is a crucial aspect of preserving the environment. In recent years, mining activities have grown significantly in Indonesia, but so have the associated crimes. Mining crimes in Indonesia are regulated by Law 4/2009, which governs mining permits, environmental management, and criminal sanctions (Putri & Prasetyo, 2021).

The amendment of Law 4/2009 to Law 3/2020 aims to address various weaknesses in the implementation of mineral and coal mining, such as light sanctions for miners who violate regulations, complicated licensing processes, minimal post-reclamation obligations, and negative environmental impacts. Key changes include: eliminating regional government authority in mineral and coal management so that all authority is fully vested in the central government; and regulating sanctions against permit issuers who violate mining regulations (Rohman et al., 2024).

Specific Forms of Mining Crimes

The Criminal Act of Mining Without a Permit as regulated in Article 158 of the Mineral and Coal Mining Law states that mining activities without a permit can be punished with a maximum imprisonment of 5 years and a maximum fine of IDR 100,000,000,000.00. The existence of this article is based on the constitutional paradigm which states that land, water, and other natural resources are controlled by the state, so that the land that is the location of mining belongs to the state whose use must go through the required permits.

The crime of submitting false data or reports is regulated in Article 159 of the Mineral and Coal Mining Law, which carries a maximum prison sentence of 5 years and a maximum fine of Rp 100,000,000,000.00. Submitting reports is an obligation for mining business actors to the government, so providing false data or reports, including data manipulation, will be subject to criminal sanctions.

The crime of carrying out production operations during the exploration stage is regulated in Article 160 paragraph (2) of the Mineral and Coal Mining Law with a maximum prison sentence of 5 years and a maximum fine of IDR 100,000,000,000.00. This "cut-thru" action is a violation of procedures that must be followed in an orderly manner by business actors.

The crime of transferring a permit to another person is regulated in Article 161 A of the Minerba Law, which carries a maximum prison sentence of 2 years and a maximum fine of IDR 5,000,000,000.00. A permit serves as the evidence that underlies the implementation of mining activities, so only the permit holder is permitted to carry out mining activities.

The criminal act of not carrying out reclamation and post-mining is regulated in Article 161B paragraph (1) of the Minerba Law with a maximum prison sentence of 5 years and a maximum fine of IDR 100,000,000,000.00, plus additional penalties in the form of forced payment of funds in the context of carrying out reclamation and/or post-mining obligations.

The crime of obstructing legal mining activities is regulated in Article 162 of the Mineral and Coal Mining Law with a maximum criminal sanction of 1 year imprisonment or a maximum fine of Rp100,000,000.00. The Mineral and Coal Mining Law provides protection for the continuation of legal mining activities, but this article is considered a "rubber article" because the phrase "obstruct" is not given further explanation regarding the definition or criteria, thus giving rise to multiple interpretations and can open the floodgates of criminalization against communities who defend their living space/environment.

Restorative Justice Model in Resolving Mining Crime Cases

In conventional criminal case resolution, the focus is solely on the perpetrator, while the victim's rights are represented by the state. According to (Riyadi, 2024) restorative justice is a response to the perpetrator of a crime to repair losses and facilitate reconciliation between the parties. Restorative justice is a method philosophically designed to resolve ongoing conflicts by repairing the situation or the losses caused by the conflict (Zaman, 2024).

According to the Supreme Court, the principle of *restorative justice* is a principle of law enforcement in resolving cases that can be used as a means of recovery and has been implemented by the Supreme Court. The principle of restorative justice is an alternative to resolving criminal cases, where the focus of criminal proceedings is shifted from the criminal justice system to a process of dialogue and mediation.

Dialogue and mediation in restorative justice involve several parties, including the perpetrator, the victim, the perpetrator's or victim's family, and other relevant parties. Generally, the goal of legal resolution is to reach an agreement on the resolution of the criminal case and obtain a just and balanced legal decision for both the victim and the perpetrator. The primary principle of restorative justice is law enforcement that always prioritizes restoration to the original state and the restoration of good relationships within society.

Theoretical Concept of Restorative Justice

Agustinus explained that there are at least three concepts of restorative justice. First, restorative justice is seen as a process of resolving problems arising from a crime by bringing together victims, perpetrators, and other stakeholders in an informal, democratic forum to find positive solutions. Second, restorative justice is seen as a conception of justice that prioritizes reparation for harm rather than simply inflicting suffering on the perpetrator. Third, some believe *restorative justice* is *a way of life* , viewing *restorative justice* not only as a change in approach to crime but also as a more comprehensive approach to achieving a just society (DA, 2021).

Mark Umbreit states that restorative justice is a "victim-centered response to crime that allows victims, offenders, their families, and representatives of the community to address the harm and loss caused by the crime." John Braithwaite states that "Restorative Justice is a new direction between the " justice " and " welfare models ", then between " retribution " and " rehabilitation"(Lanier, 1998).

Implementation of Restorative Justice in Law Enforcement Institutions

The implementation of restorative justice in Indonesia has been regulated by each law enforcement institution: a) Circular Letter of the Chief of Police No. 8 of 2018

concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases stipulates that the principle of restorative justice cannot be interpreted as a method of peaceful termination of cases, but more broadly on fulfilling the sense of justice of all parties involved in criminal cases through efforts involving victims, perpetrators, and the local community as well as investigators/investigators as mediators. However, the definition of restorative justice in the Circular Letter of the Chief of Police was changed through Regulation of the Chief of Police No. 6 of 2019, where the community is not part of the case resolution; b) Prosecutor's Regulation No. 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice regulates the termination of prosecution in the interests of law in the event that there has been a settlement of the case outside the trial (*afdoening buiten process*), carried out by pursuing peace efforts offered by the public prosecutor to the victim and suspect without pressure, coercion or intimidation; c) Decree of the Director General of the General Courts No. 1691/DJU/SK/PS.00/12/2020 concerning the Implementation of Guidelines for the Implementation of Restorative Justice aims to provide *restorative justice guidelines* and encourage its increased implementation to fulfill the principles of fast, simple, and low-cost justice with balanced justice. According to the Supreme Court, the concept of *restorative justice* can be applied in cases of minor crimes with a maximum prison sentence of three months and a fine of Rp 2,500,000.

Structural Model of the Restorative Approach

According to Van Ness as quoted by Rufinus Hotmaulana Hutauruk, there are several models of restorative approaches as alternative choices in the criminal law system:

Unified System - A restorative approach replaces criminal justice by returning conflict to its rightful owners, allowing victims and offenders to determine the outcome of their conflict resolution. This model can be realized in two ways: the restorative system demonstrates its ability to handle all cases and is given sole responsibility; or the contemporary criminal justice system is transformed through new values into a restorative system.

Dual Track System - This model is an alternative companion to the existing criminal justice system, where restorative and traditional processes coexist, with the parties determining the process path of a particular case. Article 5 paragraph (1) of Law No. 11 of 2012 concerning the Juvenile Criminal Justice System implements the principle of restorative justice in the dual track system concept by prioritizing the resolution of juvenile criminal cases through the principle of restorative justice first.

Safeguard System - This model is designed to address crime through a restorative approach, where restorative programs are the primary means of addressing criminal issues. There will be a significant shift from a generally reduced criminal justice

system to a restorative justice system, but some cases will continue to be handled by the contemporary criminal justice system.

Hybrid System - This model processes the determination or conviction of a person within the general criminal justice system, then uses the concept of a restorative approach to determine the type of sanction. Both restorative responses and contemporary criminal justice responses are viewed as normative components of the justice system.

Case Resolution Mechanism Through Restorative Justice

According to Stephenson, Giller and Brown, there are four forms of case resolution mechanisms through restorative justice: Penal Mediation (Victim Offender Mediation) is a criminal case resolution process with the assistance of a neutral and impartial third party, helping the victim and offender communicate with each other in the hope of reaching an agreement. Mediation can occur directly or indirectly through a mediator (shuttle mediation).

Restorative Conference is almost the same as penal mediation, the only difference is the role of the mediator as a discussion guide, the existence of a guiding script and the presence of parties other than the perpetrator and victim (namely the families of each party).

Family Group Conferencing - The families of both parties (the perpetrator and the victim) make an action plan based on information from the perpetrator, the victim and professionals to discuss the consequences of the actions that have been carried out as well as a means of prevention so that it does not happen again.

Community Panel Meeting - A form of resolution by holding a meeting attended by community leaders, the perpetrator of the crime, the victim (if desired) and the perpetrator's parents to reach an agreement on correcting the error.

Characteristics of Mining Crime Victims

Matthew Hall states that victims of environmental crime have special characteristics: victims are not aware of their victimization so that victimization is often delayed; victims do not recognize who is to blame for their victimization; victims are affected by crime in large numbers which causes victimization to be serious; repeat offenses are part of victimization (Altman, 2023).

The position of victims of mining crimes is very weak because at every stage of the criminal justice process, victims are not directly involved in fighting for their rights. The role of victims of mining crimes, namely the environment itself, is almost forgotten, as generally, only individuals or groups of individuals are concerned about

victims of environmental conflicts. In the context of strengthening the position of victims of mining crimes, the application of restorative justice as a resolution to mining crime cases becomes highly relevant.

The Positive Value of Penal Mediation in Mining Crimes

Settlement of mining crimes through penal mediation can have positive value because it can resolve crimes quickly and relatively cheaply compared to settlement through the courts, focuses attention on the interests of perpetrators and victims in real terms and on their emotional or psychological needs, not only focused on their legal rights and obligations, provides the ability to reach consensus for perpetrators and victims to carry out the process and its results, provides results that are resilient and create better mutual understanding between perpetrators and victims in conflict, is able to eliminate conflict or hostility that often accompanies every coercive decision handed down by a judge in court.

Marc Galenter revealed that the resolution (of disputes/conflicts) in a society can be done anywhere, not only by the courts, but can be resolved by various forums in the social environment, which is based on what is called indigenous law . Not all settlements of criminal acts that occur in society are resolved through court procedures, in litigation the parties can choose settlement through the courts or outside the courts which are influenced by the prevailing culture in the society concerned.

Alfina stated that " The restorative justice approach in enforcing environmental crimes committed by corporations aims to restore the environment and the welfare of victims. The process taken begins with mediation with the characteristics of restorative justice together with the criminal justice system. According to (Kurniawan & Supanto, 2023) restorative justice approach in enforcing environmental crimes committed by corporations aims to restore the environment and the welfare of victims through a mediation process with the characteristics of restorative justice together with the criminal justice system.

Requirements for Settlement of Cases Through Restorative Justice

Settlement of cases through *Restorative Justice* requires the following requirements: willingness of all parties - all parties involved must agree to participate voluntarily, a sense of security and freedom from coercion, all parties must feel safe and there must be no coercion; fair and transparent procedures, each party must have an equal opportunity to speak and listen, trained counselors mediators or facilitators must have special training and skills, focus on accountability and recovery, the main goal is to encourage the accountability of the perpetrator and seek the recovery of the victim, protection of the victim's rights, the victim's rights must be respected and protected, handling of certain cases, this approach is more appropriate for cases with a lower

level of crime, cooperation with the conventional criminal justice system, based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System.

restorative justice paradigm aligns with the principle of criminal law as ultimum remedium , a last resort when administrative and civil legal remedies are ineffective. The application of criminal law should be limited as much as possible due to the inherent suffering it imposes, so its use is reserved for cases where other legal sanctions are inadequate.

Restorative justice focuses on rebuilding relationships after a crime, rather than exacerbating the rift between the perpetrator, victim, and community that characterizes today's modern criminal justice system. Restorative justice is a victim-centered response to crime that allows victims, perpetrators, families, and community representatives to address the harm caused by the crime.

Braithwaite states that " restorative justice is about healing rather than hurting, moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility, apology, and making amends ." Furthermore, " mostly it works well in granting justice, closure, restoration of dignity, transcendence of shame, and healing for the victim." The restorative justice model offers a promising approach to resolving mining-related criminal offenses within the broader framework of sustainable mining development (Dewi & Syukur, 2022)

Characteristics Settlement Case Action Criminal Equitable Mineral and Coal Mining

Legal Regulations for Settlement of Mining Crime Cases

Mining law enforcement is complex because it encompasses not only criminal proceedings but also administrative and civil law enforcement. Environmental law enforcement in the mining sector encompasses a broader scope than conventional criminal law enforcement. This is due to the multidimensional nature of the impacts of mining activities, which impact not only legal aspects but also social, economic, and environmental aspects.

Keith Hawkins proposed a fundamental paradigm for understanding law enforcement through two distinct systems or strategies. The first is compliance, characterized by a conciliatory style , and the second is sanctioning, characterized by a penal style. The conciliatory style approach , according to Block, cited by Hawkins, is remedial, a method of social repair and maintenance, providing assistance to people in trouble, addressing the need to ameliorate a negative situation. Meanwhile, penal control functions as prohibitions with punishment, accusatory in nature, with binary outcomes : all or nothing, punishment or nothing (Hardjasoemantri, 1989).

Preventive Law Enforcement Strategy in Mining

Preventive environmental law enforcement can be implemented through various instruments such as dialogue, discussion, outreach, and ongoing monitoring. More comprehensively, preventive environmental law enforcement leads to a supervisory system carried out by authorized parties. In the mining context, this supervision falls to officials issuing mining business permits in accordance with the hierarchy of authority stipulated in Government Regulation 38/2007 concerning the Division of Authority between the Central Government and Regional Governments and Law 4/2009 concerning Minerals and Coal.

Supervision under Law No. 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) reflects the integration of environmental aspects into every stage of mining activities. Mining activities generally encompass two main activities: first, exploration, which includes exploration itself and feasibility studies, and second, production operations, which regulate construction, mining, processing and refining, transportation, and sales.

Legislators have incorporated environmental values and requirements as an integral process that cannot be ignored in every stage of mining. This is evident in various provisions, including: the exploration phase requires information on the social and natural environment; feasibility studies require an Environmental Impact Assessment (EIA) and post-mining planning; production operations require environmental impact control measures in accordance with the feasibility study results; reclamation is a restoration activity carried out throughout the mining business phase; and post-mining activities are a systematic effort to restore environmental and social functions.

Obstacles and Challenges in Resolving Mining Conflicts

Resolving mining conflicts faces various obstacles and challenges that are closely related to the socio-cultural and economic systems that apply at mining sites. These obstacles include: first, communities in resolving mining conflicts tend to treat conflict as a secondary issue because in the end the community only wants compensation; second, generally mining businesses are owned by investors from outside and the local community only acts as the implementer, rarely investors come from the local community; third, the authority for mining enforcement has been transferred to the provincial government so that the district government does not have the authority and is only limited to helping when asked.

Criminal law policies for addressing environmental crimes, including coal mining crimes, face various limitations, particularly in policy implementation. These limitations are understandable, given the significant role of bureaucracy at this level. These limitations in criminal law enforcement can be complemented by policies that

do not involve criminal law enforcement, as crime prevention policies can be pursued not only through legal means but also through other means.

Crime prevention and mitigation must be carried out with an "integral approach" with a balance of "penal" and "non-penal" means. From a criminal policy perspective, the most strategic policy is through non-penal means because it is more preventative, while penal policies have limitations in being fragmentary, symptomatic, individualistic, more repressive, and require support from expensive infrastructure.

Alternative Settlement Through Non-Litigation Channels

Mining crime cases can also be resolved through non-litigation channels, such as mediation, arbitration, or customary law. Non-litigation can be a more effective and efficient option, especially in cases involving indigenous peoples or local communities. This approach provides greater scope for finding solutions that accommodate the interests of all parties involved.

Resolving mining crimes can also involve efforts to implement restorative justice, which is an effort to restore the condition of communities and the environment affected by the crime. Restorative justice can be implemented through various means, such as providing compensation, implementing land reclamation and rehabilitation programs, and returning land to indigenous communities or rights holders. This approach focuses more on restoration than punishment, thus providing more sustainable benefits for all parties involved.

Legal Arrangements for Settlement Case Action Criminal Mining and Completion Case Action Criminal Equitable Mining

Legal Regulations for Settlement of Mining Crime Cases

Mining law enforcement is multidimensional, relying not only on criminal channels but also encompassing administrative and civil law enforcement. Environmental law enforcement in the mining sector encompasses a broader scope than conventional criminal law enforcement, due to the complexity of the impacts of mining activities, which encompass not only legal but also social, economic, and environmental dimensions.

Comprehensive law enforcement encompasses both preventive and repressive measures. Environmental law enforcement is a strategic effort to achieve compliance with regulations and requirements in applicable general and individual legal provisions, through supervision and the application of administrative, criminal, and civil sanctions. The effectiveness of environmental law enforcement is closely related to the capacity of the apparatus and the level of public compliance with applicable regulations.

Keith Hawkins proposed a fundamental paradigm in understanding law enforcement through two different systems or strategies. The first is compliance with a conciliatory style as its characteristic, and the second is sanctioning with a penal style as its characteristic. Block, as quoted by Hawkins, stated that the conciliatory style is remedial, a method of social repair and maintenance, assistance of people in trouble, which is related to what is necessary to ameliorate a bad situation. Meanwhile, penal control functions as prohibitions with punishment, is accusatory in nature, with a binary result of all or nothing, punishment or nothing (Hardjasoemantri, 1989).

Preventive environmental law enforcement can be implemented through various instruments such as dialogue, discussion, outreach, and ongoing monitoring. More comprehensively, preventive environmental law enforcement leads to a supervisory system implemented by authorized parties. In the mining context, this oversight falls to officials issuing mining business permits in accordance with the hierarchy of authority stipulated in Government Regulation 38/2007 concerning the Division of Authority between the Central Government and Regional Governments and Law 4/2009 concerning Minerals and Coal.

Integration of Environmental Aspects in Mining Stages

Supervision under Law No. 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) reflects the integration of environmental aspects into every stage of mining activities. Mining activities generally encompass two main activities: first, exploration, which includes exploration itself and feasibility studies, and second, production operations, which regulate construction, mining, processing and refining, transportation, and sales.

Legislators have incorporated environmental values and requirements as an integral process that cannot be ignored in every stage of mining. This integration is evident in various provisions: in the exploration stage, information on the social and natural environment is required; feasibility studies require an Environmental Impact Assessment (AMDAL) and post-mining planning; production operations require environmental impact control measures in accordance with the results of the feasibility study; reclamation as a recovery activity carried out throughout the mining business stage; post-mining activities as a systematic effort to restore environmental and social functions; the granting of WIUP and WPN must take into account environmental carrying capacity; and the obligation to comply with tolerance limits and environmental carrying capacity.

Monitoring Mechanism in Mining Management

According to Article 141 of the Mineral and Coal Mining Law, the Government, through the Department of Energy and Mineral Resources, can supervise the implementation of mining businesses in the regions and can delegate authority to

provincial governments. This supervision covers fifteen comprehensive aspects, ranging from mining techniques, marketing, finance, mineral and coal data processing, mineral and coal resource conservation, mining occupational safety and health, mining operational safety, environmental management, reclamation and post-mining, and various other aspects concerning the public interest.

Government Regulation No. 55 of 2010 concerning the Development and Supervision of Mineral and Coal Mining Businesses divides supervision into three systematic categories. First, general supervision carried out by the government or regional government in accordance with their authority. Second, supervision of the implementation of mining business management which includes determining various areas and licensing. Third, supervision of the implementation of mining business activities which includes fifteen technical, administrative and environmental aspects (Nasir et al., 2023).

Mining crimes are defined as acts prohibited by regulations with sanctions for perpetrators, intended to protect mineral and coal mining activities and businesses. Subjects subject to criminal penalties in the mining sector are defined in Articles 158 and 163 of Law No. 3 of 2020, including: individuals, legal entity administrators, and legal entities.

The laws and regulations governing minerals and coal in Indonesia consist of Law No. 3 of 2020, amending Law No. 4 of 2009, which has been elaborated in various government regulations. Law 3/2020 stipulates seven forms of mining crimes that can be imposed on mining business actors.

First, the crime of carrying out mining without a permit as regulated in Article 158 of Law 3/2020 carries a maximum prison sentence of 5 years and a maximum fine of IDR 100,000,000,000.00; Second, the crime of submitting false report data based on Article 159 of Law 3/2020 with a maximum prison sentence of 10 years and a maximum fine of IDR 10,000,000,000.00; Third, the crime of laundering mining goods in forest areas which can be prosecuted under Law No. 8 of 2010 Article 3 with a maximum prison sentence of 20 years and a maximum fine of IDR 10,000,000,000,000; Fourth, the criminal act of not carrying out reclamation and post-mining as regulated in Article 161 B paragraph (1) of Law 3/2020 carries a maximum prison sentence of 5 years and a maximum fine of IDR 100,000,000,000.00, plus additional penalties in the form of forced payment of reclamation and/or post-mining funds; Fifth, it is a criminal offense to carry out production operations with only an exploration permit, because exploration activities include general investigations, exploration and feasibility studies, so that production operations without the proper permit constitute a violation of Article 160 of Law 3/2020 with a maximum penalty of 5 years imprisonment or a maximum fine of IDR 100,000,000,000; Sixth, the criminal act of transferring a permit to another person without notification to the government, as regulated in Article 161 A of the Minerba Law, carries a maximum prison sentence of 2 years and a maximum

fine of IDR 5,000,000,000.00; and Seventh, the crime of obstructing legal mining activities based on Article 162 of Law 3/2020 carries a maximum penalty of 1 year imprisonment or a maximum fine of IDR 100,000,000.00.

Just Settlement of Mining Crimes

Mining activities have significant potential to cause environmental damage. Therefore, to protect against environmental damage resulting from various activities and/or businesses, Law No. 32 of 2009 concerning Environmental Protection and Management regulates environmental crimes. These environmental crimes include those aimed at protecting against the impacts of mining activities as regulated in Law No. 32 of 2009 and Law No. 4 of 2009 concerning Mineral and Coal Mining.

Law 32/2009 provides the legal basis for firm action against pollution and environmental destruction caused by mining, including illegal mining. Meanwhile, Law 4/2009 stipulates criminal sanctions for unlicensed mining activities, such as imprisonment and fines. Environmental crimes that protect mining activities include: mining without a permit, environmental pollution, environmental destruction, conducting production operations during the exploration stage, failing to carry out reclamation and post-mining activities, and mining laundering.

Obstacles and Challenges in Resolving Mining Conflicts

Resolving mining conflicts faces various obstacles and challenges that are closely related to the socio-cultural and economic systems that apply at mining sites. These obstacles include: first, communities in resolving mining conflicts tend to treat conflict as a secondary issue because in the end the community only wants compensation; second, generally mining businesses are owned by investors from outside and the local community only acts as the implementer, rarely investors come from the local community; third, the authority for mining enforcement has been transferred to the provincial government so that the district government does not have the authority and is only limited to helping when asked.

Criminal law policies for addressing environmental crimes, including coal mining crimes, face various limitations, particularly in policy implementation. These limitations are understandable, given the significant role of bureaucracy at this level. These limitations in criminal law enforcement can be complemented by policies that do not involve criminal law enforcement, as crime prevention policies can be pursued not only through legal means but also through other means.

Crime prevention and mitigation must be carried out with an "integral approach" with a balance of "penal" and "non-penal" means. From a criminal policy perspective, the most strategic policy is through non-penal means because it is more preventative,

while penal policies have limitations in being fragmentary, symptomatic, individualistic, more repressive, and require support from expensive infrastructure.

Development Model for Settlement of Mineral and Coal Mining Criminal Cases

Alternative Concept for Settling Criminal Cases in Mineral and Coal Mining, seen from a policy process, criminal law enforcement is essentially policy enforcement through several stages: 1) The formulation stage is the stage of law enforcement *in abstracto* by the law-making body or the legislative policy stage; 2) The application stage is the implementation of criminal law by law enforcement officials starting from the Police, Prosecutor's Office to the Court or the judicial policy stage; 3) The execution stage, namely the stage of concrete implementation of criminal law by criminal enforcement officers or the executive/administrative policy stage.

The criminal justice system implemented as a reaction to a person's actions that violate legal norms has the ultimate goal of providing a deterrent effect, order, security or to create the enforcement of the rule of law. The imposition of criminal penalties in criminal cases is not sufficient only to be imposed on the perpetrator's actions that are contrary to the law or are unlawful and fulfill the formulation of the offense in the Law, but there is still a need for the condition that the person who committed the criminal act must have a mistake or be guilty (subjective guilt). Here the principle of "no punishment without fault" (Keine Strafe ohne Schuld or Geenstraf zonder schuld or Nulla Poena Sine Culpa) applies .

An alternative to resolving criminal cases using restorative justice and diversion approaches, restorative justice focuses on restoring relationships between the perpetrator, victim, and community, with the goal of creating a broader recovery than restitution. Diversion is the transfer of cases from the criminal justice system to a resolution outside the system, such as through mediation or conciliation, in the best interests of the child.

restorative justice approach prioritizes restoring relationships and balance between the perpetrator, victim, and community, not just punishment. The primary principle of resolving criminal offenses through a restorative approach is that a resolution must be able to penetrate the hearts and minds of the parties involved in the resolution process, enabling them to understand the meaning and purpose of reparation through restorative or preventative sanctions.

Martin Wright defines penal mediation as " a process in which victim(s) and offende(s) communicate with the help of an impartial third party, either directly (face-to-face) or indirectly via the third party, enabling victim(s) to express their needs and feelings and offender(s) to accept and act on their responsibilities ." This definition shows that penal mediation is a process in which victims and offenders meet and communicate with the help of a third party either directly or indirectly, making it

easier for victims to express their needs and feelings and enabling offenders to accept and take responsibility for their actions (Groenhuijsen, 2000).

Alternative criminal case resolution with the reintegrative shaming approach, reintegrative shaming developed by John Braithwaite aims to address the problem by encouraging the perpetrator to feel ashamed and responsible for his actions, but in a reintegrative way, namely helping the perpetrator to return to being part of society. This approach differs from approaches that emphasize punishment or "stigmatization", because reintegrative shaming seeks to restore and reintegrate the perpetrator into the community (Braithwaite, 2001).

Reintegrative Shaming approach involves a process in which society expresses disapproval of the perpetrator's actions while still respecting them as good individuals who have made mistakes. The primary goal is to encourage the perpetrator to feel shame, take responsibility for their actions, and then desire to correct those mistakes.

Reconciliation as the Aim of a Criminal Trial: Ubuntu's Implications for Sentencing, " argues that the Ubuntu approach, which translates as "I Am Because We Are," can be realized through a restorative justice approach . This approach emphasizes restoring relationships between the perpetrator, victim, and community, rather than solely focusing on punishment (Metz, 2019).

The Ubuntu approach emphasizes interdependence and unity within the community. In the context of restorative justice , this means that all parties share responsibility for resolving problems and restoring relationships. This approach helps restore a sense of security and togetherness within the community after a crime has occurred.

The Application of Alternative Mining Crime Case Resolution in Various Countries: Mining crime cases in various countries are not limited to criminal justice but can also be resolved through more flexible and restorative alternative resolutions. Australia has strict regulations and an effective law enforcement system for addressing mining crimes, including environmental protection and the rights of indigenous peoples.

As Geoff McGrath noted, in Australia, mining crime enforcement is a collaborative effort between state and federal agencies, with a focus on environmental and safety compliance. The Australian Federal Police (AFP), along with state agencies such as the Minerals Regulation Branch in South Australia, is responsible for investigating and prosecuting mining-related offences.

Australia developed the Multi-Door Courthouse system , as proposed by Chief Justice Robert French. The development of ADR in Australia has progressed comprehensively, as it is no longer centralized within the community but is now

connected to the courts. Court-based ADR, particularly court-based mediation, has been an established feature of the Australian justice system since the 1990s.

Reformulation of the Settlement of Criminal Cases in Mineral and Coal Mining, crime prevention efforts are essentially an integral part of community protection efforts (social defense) to achieve social welfare . The ultimate goal of criminal policy is "community protection" to achieve the main goal which is often referred to by various terms, such as "citizen happiness" , "a wholesome and cultural living" , " social welfare " or to achieve "equality " (Ono & Lee, 2016).

Barda Nawawi Arief explained that there are two central issues in criminal policy using penal/criminal law: determining what actions should be considered criminal offenses and what sanctions should be used or imposed on offenders. These two central issues cannot be separated from the integral concept of criminal policy with social policy or national development policy (Andrejs Vilks, 2019).

According to Sudarto, in determining criminal acts, the following things need to be considered: the use of criminal law must take into account the goals of national development, namely realizing a just and prosperous society; the acts that are attempted to be prevented must be undesirable acts; the use of criminal law must take into account the "cost and benefit principle"; and the use of criminal law must take into account the capacity of law enforcement agencies (Lanier, 1998)

Implementation of Restorative Justice in Mining

Mark Umbreit states that restorative justice is a "victim-centered response to crime that allows victims, offenders, their families, and representatives of the community to address the harm and loss caused by the crime." John Braithwaite states that "Restorative Justice is a new direction between the " justice " and " welfare models ", then between " retribution " and " rehabilitation " (Braithwaite, 2001). Restorative justice paradigm aligns with the principle of criminal law as ultimum remedium , a last resort when administrative and civil legal remedies are ineffective. The application of criminal law should be limited as much as possible due to the inherent suffering it imposes, so its use is reserved for cases where other legal sanctions are inadequate. Restorative justice focuses on rebuilding relationships after a crime, rather than exacerbating the rift between the perpetrator, victim, and community that characterizes today's modern criminal justice system. Restorative justice is a victim - centered response to crime that allows victims, perpetrators, families, and community representatives to address the harm caused by the crime.

Braithwaite stated that " restorative justice is about healing rather than hurting, moral learning, community participation and community caring, respectful dialogue, forgiveness, responsibility, apology, and making amendments ". Furthermore,

" mostly works well in granting justice, closure, restoration of dignity, transcendence of shame, and healing for victims ".

Basic Principles of Restorative Justice

Based on the "UN Resolutions and decisions adopted by ECOSOC at its substantive session of 2002", the basic principles of restorative justice include: a restorative process is any process in which victims and perpetrators, and if necessary including any individual or member of society harmed by a crime, participate together actively in solving problems arising from the crime with the help of a facilitator; a restorative justice program is any program that utilizes a restorative process and seeks to achieve an outcome in the form of an agreement; the parties are victims, perpetrators of criminal acts, and other individual members of society who are harmed by a criminal act; and a facilitator is any person who plays a role in facilitating the restorative justice process in a fair and impartial manner. Restorative justice programs can be used at any stage of the criminal justice system. Restorative justice processes are only used when there is sufficient evidence to prosecute the perpetrator and the victim and perpetrator are free and willing. Agreements must be reached voluntarily and contain reasonable and proportionate obligations. The restorative justice model offers a promising approach to resolving mining-related criminal offenses within the broader framework of sustainable mining development. By focusing on repairing harm and engaging all stakeholders, restorative justice can help address the negative impacts of mining activities while promoting a more sustainable and equitable approach to resource extraction.

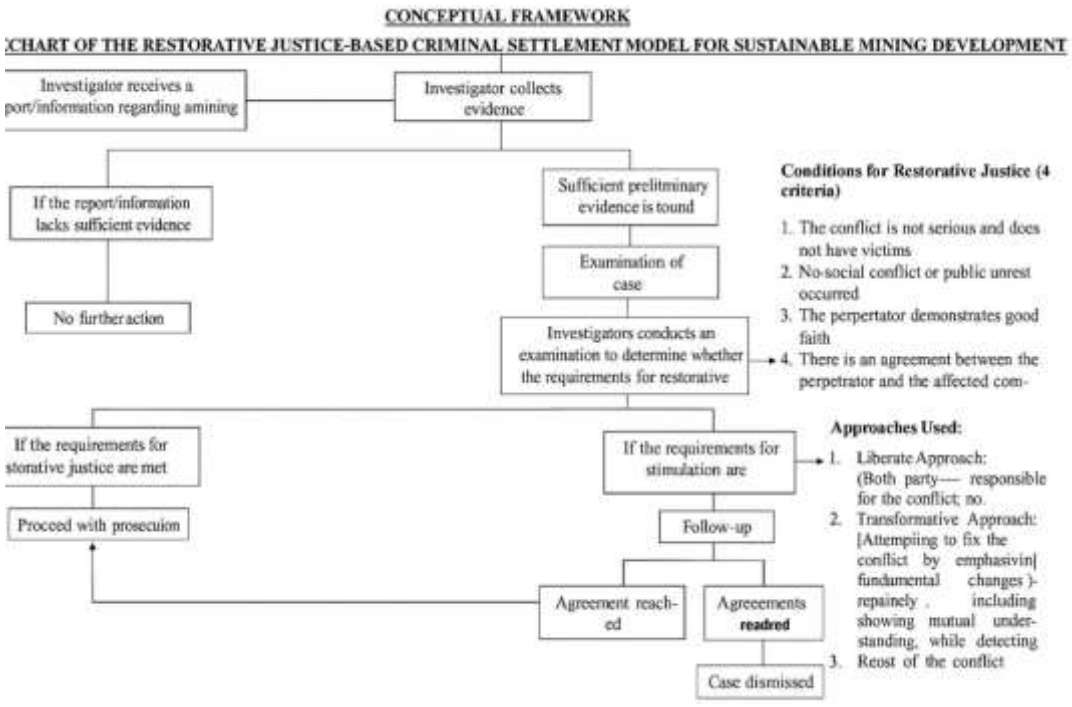

Figure 1. Conceptual Framework

D. Conclusion

The restorative justice model in resolving criminal acts in mineral and coal mining offers a more comprehensive and human-centered alternative compared to the conventional criminal justice system. Rather than focusing solely on punishment, restorative justice emphasizes repairing harm, restoring relationships, and achieving peace between the parties involved. The structural frameworks proposed by Van Ness—such as the unified system, dual-track system, safeguard system, and hybrid system—provide flexibility in adapting restorative mechanisms to the complex nature of mining cases. Settlement methods like penal mediation, restorative conferences, family group conferencing, and community panel meetings have demonstrated their effectiveness in achieving quick, cost-efficient, and mutually beneficial resolutions. These approaches focus on addressing the real needs of both perpetrators and victims while fostering mutual understanding and social harmony. Addressing criminal acts in the mining sector requires a multidimensional legal strategy that integrates criminal, administrative, and civil enforcement. Keith Hawkins's compliance paradigm underscores the balance between conciliatory and sanction-based enforcement styles. Preventive environmental law enforcement through dialogue, counselling, and continuous monitoring also plays a crucial role, as reflected in Article 141 of the Mineral and Coal Mining Law, which covers fifteen aspects of supervision ranging from mining techniques to environmental management. Nevertheless, the implementation of restorative justice in mining faces systemic challenges, including public apathy toward environmental conflicts, investor dominance, and the centralization of enforcement authority at the provincial level. To overcome these obstacles, an integral approach balancing penal and non-penal strategies is essential. Non-penal measures are more strategic due to their preventive and holistic nature, whereas penal policies remain fragmentary. Therefore, reformulating the model for resolving mining-related criminal acts is necessary to integrate alternative justice approaches that promote substantive justice.

E. Acknowledgement

We thank to all friends who supported us in this paper.

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