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Original Article

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Juridical Analysis of Non-Compliance and Implications with South Kalimantan Regional Regulation on Mining Activities

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Abstract
In accordance with the law of regional regulations of Kalimantan Selatan number 5 year 2019 that caused a deep legal impact in regard to the legality of operation of mining in the regulated area. Practice such as mining without permit (PETI), forgery of permit, violation of the environment and/or land grabbing outside of the claim reflects the structural weakness in law enforcement and governance. This issue can cause legal uncertainty and credibility of the framework of regional regulations. Further violations in a broader sense also have a direct impact on the trust of investors in the local sector because of its legal uncertainty, unhealthy business competition and risk of environment and social aspect. Investors will think twice and hesitate on investing even if South Kalimantan is rich in mineral and mining sources, due to the weak law enforcement, risk, reputation and future potential conflict regarding areas and permit. As investors prefer a legal certainty to protect their rights, fair competition and predictable jurisdictions. If there is no thorough reformation, healthier institution coordination and improved enforcement mechanism, South Kalimantan will have a chance of economic and ecological setback in a long period of time that can weaken the appeal of the mining industry.

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Introduction

The mining sector is a highly important component of Indonesia's national development plan, especially in resource-endowed regions such as South Kalimantan. As a region endowed with huge coal and other mineral reserves, South Kalimantan has long been a target of domestic and foreign investors in mining operations. However, these natural resources must be balanced with serious adherence to applicable legal standards for ensuring the sustainability, legality, and accountability of mining operations. Regional Regulation (PERDA) No. 5 of 2019 of South Kalimantan has been promulgated to provide clear legal grounds regulating the issuance of mining permits and conducting mining activities in the province.

The aforementioned PERDA was enacted due to the rising concerns regarding unregulated and environmentally degrading mining operations. Regulation is intended to promote legal certainty, administrative management, and sustainable resource utilization in the mining sector. This PERDA specifically makes provision for licensing processes, standards, obligations, and obedience penalties. Nevertheless, non-compliance is rampant. Majority of mining operations in South Kalimantan continue to expand either without the legally mandated licenses or in violation. This rampant non-compliance raises very serious questions of law concerning the legality and legitimacy of such operations according to both regional and national legal orders. Furthermore, it poses to usurp the regulatory authority of the

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provincial government and undermines the state's duty to provide for the welfare of the environment and the rights of the concerned groups. (Zuchri & Erwandi, 2023)

Juridically, non-compliance with PERDA No. 5 of 2019 triggers a series of legal repercussions. These range from administrative sanctions, civil liability, to potential criminal prosecution. The legality of mining activities undertaken without proper permits becomes highly dubious, even bordering on the illegal ab initio. These activities can further be in conflict with national law, namely Law No. 3 of 2020 concerning Mineral and Coal Mining, and hence create an inconsistency between decentralized regional autonomy and centralized legislative domination. This legal uncertainty can also put the state at risk of possible disputes, such as those under international investment law, if foreign investors view the regulatory regime as unpredictable or arbitrary. (Sulistiyono & Silitonga, 2019)

The illegal mining activity—commonly referred to as "PETI" (Penambangan Tanpa Izin)—is now firmly entrenched in parts of South Kalimantan. These illegal activities are often facilitated by weak enforcement, corruption, and the lack of institutional capacity to track and control extensive and often remote mining concessions. Thus, despite the existence of explicit legal provisions, implementation and enforcement of PERDA No. 5 of 2019 are severely impaired in practice. Legal theory emphasizes that the legitimacy of a legal norm is not only determined by its formal adoption but also by its effectiveness and acceptance in society. A rule which is repeatedly disobeyed can lose its normative authority, undermining the legal system as a whole. In the South Kalimantan example, the systematic violation of mining regulations reflects a disconnect between legal norms and social or economic realities on the ground. Such disconnect raises significant questions regarding legal effectiveness, regulatory legitimacy, and the need for institutional reform.

Exploring the impact of non-compliance with PERDA No. 5 of 2019 requires examination of both the doctrinal and empirical dimensions of the topic. Doctrinally, an analysis of the legal texts, principles, and hierarchy of norms can shed some light on the legal consequences of such non-compliance. Empirically, an investigation of actual instances of illegal mining and responses of concerned authorities can reveal the gap between law in the books and law in action. Both elements contribute to a full appreciation of the legal questions at stake, the issue of non-compliance must be viewed against Indonesia's decentralized system of law. Provincial governments, in line with the regional autonomy policy, enjoy the authority to promulgate and implement regional regulations. The authority, nonetheless, must be exercised alongside national legislation and policy. Any contradiction or inconsistency between regional regulation and national legislation may leave room for legal ambiguity and enforcement issues.

Harmonization of PERDA No. 5 of 2019 with national mining law thus becomes a matter of utmost importance. While the regional law attempts to address local conditions and requirements for regulation, it is also subject to the national legal framework, particularly in terms of licensing and regulation of mining activities. To what extent PERDA No. 5 of 2019 is aligned with national law will directly affect its enforceability and validity in court or administrative proceedings, the administrative law's function in the regulation of mining operations cannot be overstated. Mining permits, as administrative instruments, are central to the legal regulation of mining operations. Legality of such permits—and operations, by extension—is based on issuance in accordance with procedural and substantive requirements set in the relevant laws and regulations. Deviation from these requirements can invalidate the permit, expose the mining operator to sanctions and lawsuits. (Hartanto & Susanto, 2021)

According to the legal protection perspective, non-compliance with mining regulations also has implications regarding the rights of third parties, including indigenous peoples, local communities, and environmental organizations. The absence of legitimate permits typically goes hand-in-hand with environmental degradation, land disputes, and social tensions, which in turn may result in claims before the law on the basis of environmental law, tort law, or constitutional rights. It is the duty of the state, through its regulatory authorities, to avoid these abuses and provide effective redress to the victims, the principle of "due process" must be respected in enforcing the regulations on mining. Punishments for any contraventions of PERDA No. 5 of 2019 should follow the principles of legality, proportionality, and fairness in procedures. Arbitrary or discriminatory enforcement may jeopardize the enforceability of the regulation and invite review by the courts or constitutional challenge.

Against this backdrop, a comprehensive juridical analysis of non-compliance with PERDA No. 5 of 2019 is timely and a matter of urgency. This would provide a better insight into the strengths and weaknesses of the existing law.

The study should also quantify the effectiveness of legal remedies that can be used to respond to violations. Administrative appeal, judicial review, or public interest litigation are some of these remedies. Responsiveness and accessibility of the remedies are crucial determinants of the rule of law in mining and the credibility of regional regulations, the crossing of public and private law components of mining regulation cannot be disregarded. Despite the primary substance of the legal regime in environmental and administrative law, contracts between private entities and the state or the mining enterprise can also be affected by breaches of regulation. Breach of contractual obligation may result in contract termination, responsibility for damages, or harm to reputation. (Ikrima, 2023)

The problem of enforcement is arguably the most challenging aspect of mining regulation. Despite good rules on paper, enforcement in practice typically does not work due to insufficient resources, political will, or interagency coordination. Strengthening legal institutions and transparency in the licensing process are thus crucial to compliance and legality. Another issue is the existence of conflicting interests between economic development and environmental conservation. Mining is a lucrative business that brings enormous revenues to regional governments.

The role of civil society and the media in exposing illicit mining activities also must be dealt with. Public scrutiny can prove to be an effective way of promoting accountability, especially where there are official regulatory mechanisms but these are weak or under attack. Legal empowerment of impacted communities may also enhance compliance and deter transgressions, the local legislation such as PERDA No. 5 of 2019 should be periodically checked and updated so that it remains responsive to changing legal, economic, and environmental conditions. Reforms in the law, through empirical evidence and stakeholder opinions, can shut loopholes in regulation and tighten enforcement capacity.

Method

This research employs a normative juridical method (otherwise known as doctrinal legal research), focusing on discussion of pertinent legal norms and legislation. This research strategy is appropriate in view of the central purpose of this study, namely to review the existing law and regulation, or rather the South Kalimantan Regional Regulation No. 5 of 2019, and other relevant national laws such as Law No. 3 of 2020 on Mineral and Coal Mining. Hence, the focal point of this study is the law as a structured and hierarchical system of norms.

The study utilizes a statute approach and a conceptual approach. The statute approach is utilized for analyzing consistency, coherence, and hierarchical relation between South Kalimantan Regional Regulation No. 5 of 2019 and national mining legislations. Information used within this study includes secondary legal sources, which include primary, secondary, and tertiary legal sources. According to Hans Kelsen primary legal materials include binding legal documents such as 1945 constitutional law. Secondary legal materials include academic writings, such as legal textbooks. Tertiary legal materials include legal dictionaries, encyclopedias, and indexes to legislation. Legal sources are collected during library research, by a visit to both physical and online legal sources.

This method facilitates a comprehensive doctrinal examination of the national and regional legal mechanisms governing mining activities in South Kalimantan. It also facilitates a normative examination of how non-compliance with Regional Regulation No. 5 of 2019 affects the legality of mining activities. The outcomes produced using this methodology are expected to improve regulatory compliance and improve legal certainty in mining activities.

Discussion

The Legal Implications of Non-Compliance with South Kalimantan Regional Regulation No. 5 of 2019 on Mining Permits and Operations

The economy of South Kalimantan mining has enormous potential due to natural resources that surround the area, mainly coal and minerals. This potential is subject, however, to the availability of a reliable legal framework as well as the effective enforcement of the regulations. Compliance with regulations of mining does not only protect the environment as well as preserve social justice but also has the central role to contribute to ensuring legal certainty as well as good governance—two indispensable ingredients towards attracting and maintaining investor confidence. (Yulianingrum et al., 2023)

In the context of investment, particularly foreign direct investment (FDI), the assurance of legal stability and regulatory certainty is a prerequisite for long-term financial investment. Investors are generally risk-averse investors who seek regimes where the rule of law reigns, contracts are respected, and regulatory hazards are eschewed. The presence of non-compliance, and more so in the guise of illegal mining, necessarily undermines these assumptions and creates an uncertain business climate that deters prospective investors.

Illegal mining in South Kalimantan has become a structural problem, both for small-scale mining and, in other instances, for networks having broader economic and political networks. These practices often avoid environmental studies, licenses, and mandatory interactions with the communities. Therefore, they not only result in environmental degradation and social upsets but also cause a distortion of free competition in mining. Legal mining businesses are compelled to compete with illegal ones, which do not bear the same regulatory expenses, a disincentive to legitimate business activities.

The existence of widespread illegal mining may send a message to investors that the region suffers from low institutional capacity, capture by the regulator, or even deep-seated corruption. This perception is particularly destructive in the global investment environment, where companies must comply with international due diligence standards and environmental, social, and governance (ESG) practices. Failure to demonstrate sound regulation of the mining sector can hurt the image of both the host nation and any company operating within it.

Investors also turn to the enforceability of contracts and the predictability of regulatory action as measures of legal reliability. Where there are poor regional regulations, such as South Kalimantan Regional Regulation No. 5 of 2019, which are weakly enforced or routinely breached with impunity, this sends a negative signal regarding the strength of the legal system. It suggests that even if laws exist on paper, their de facto application might be erratic or discretionary—something investors seek to avoid. (Pantouw et al., 2024)

Rule of law does not simply imply that there are legal rules, but that those in power move to implement these rules fairly and across the board. Where illegal mining persists where illegal mining is supposed to be banned, it talks of regulatory failure and possibly lack of political will. It erodes investor confidence because it means that legitimate operators cannot rely on the state to defend their legal entitlements or ensure the integrity of markets, illegal mining is also associated with land disputes, particularly when activities encroach on lands already licensed to legal mine operators or conflict with indigenous and community lands. Such disputes increase the risk of litigation, increase the perceived risk of carrying out business in the region, and increase the likelihood of litigation, administrative lag, or even violence, all of which have a negative impact on the investment climate.

Environmental degradation resulting from uncontrolled mining also involves long-term economic penalties that discourage investment. Water pollution, loss of forests, and soil erosion could generate regulatory retaliations through moratoriums on new permits or more stringent environmental licensing provisions. Although policy-wise such action would be justified, it might be perceived as aggressive or arbitrary by investors when implemented reactively rather than within the framework of a clearly outlined legal strategy.

The second serious factor to take into account is the reputational risk that shareholders face when they are associated with regimes that have a reputation for criminal activity or weak rule of law. The majority of institutional investors today operate under ESG mandates that compel them to balance not just profit, but ethical and legal considerations in their investing as well. (Akhmaddhiana et al., 2021) A sector of illegal mining practice can thus be excluded from consideration altogether, regardless of its mineral potential.

The perception of South Kalimantan as a province with high illegal mining activity can create capital flight, lower reinvestment rates, and averseness of new market entrants. Even old investors may postpone expansion plans or withdraw from the region if they feel that the regulatory framework cannot ensure protection of their interests. This experience leads to underdevelopment and lost opportunities for the economic growth of the region, government action is critical in rebuilding investor confidence. This includes strengthening the enforcement provisions under Regional Regulation No. 5 of 2019, increasing transparency in the permitting process, and ensuring uniform imposition of sanctions on illegal operators. There is a need for effective coordination between law enforcement, regulatory bodies, and local governments to shut down illegal operations and demonstrate commitment to legal and sustainable mining.

Public-private collaboration can also serve as a form of governance aimed at strengthening the sector's governance. Through partnering with responsible mining companies to enable monitoring and compliance, local governments can improve capacity without stretching themselves too thin. Such partnership may also serve to leverage a space for increasing educational efforts towards enhanced compliance and formality in the small-scale operation of mining whenever necessary. (Gunawan, 2023)

To further ensure legal certainty, judicial relief should be readily accessible and effective in terminating conflicts arising from failure to comply with rules. Administrative courts, for instance, should be able to resolve conflicts in cases of licensing impartially and without unnecessary delay. The ease of access to an effective system of conflict resolution strengthens investor confidence in the sensitivity and impartiality of the judiciary.

In the actual mining practice life of South Kalimantan, non-compliance with current regulations, particularly Regional Regulation No. 5 of 2019, occurs in a variety of forms. Among the most common and deep-rooted types of violation is illegal mining activities, or what people call Pertambangan Tanpa Izin (PETI). These activities are most likely performed by individuals or small-scale groups that lack any mining permit or environmental permit. PETI is prevalent in remote areas with less supervision, exploiting loopholes in regulation and enforcement capacity. Not only do such activities violate administrative and environmental regulations, but they also inflict widespread ecological damage, such as deforestation, water contamination, and soil erosion.

A second form of regulatory non-compliance is forgery or falsification of licensing documents. These are at times attained through connivance with certain officials or through systemic weaknesses in the permit monitoring system. In other cases, companies hold exploration licenses but conduct extraction activities, hence contravening the extent and purpose of their licenses. (Azizah, 2022)

Other mining operations have also been known to encroach on territories outside their legally established concession areas. This involves the use of heavy machinery to extract minerals from lands adjacent to those not covered by the original permit. Such a violation not only constitutes administrative malfeasance but can also attract criminal liability under national mining and environmental laws.

Failure to comply with technical and environmental stipulations is also rampant in the mining sector of South Kalimantan. The majority of operators fail to implement sound environmental management strategies as established in their Environmental Impact Assessment (AMDAL) documents. These consist of ignoring obligations like post-mining land reclamation, proper waste treatment, and water conservation. There are instances of companies releasing mining waste directly into rivers without treatment, thus violating regional bylaws and national environmental legislation such as Law No. 32 of 2009 on Environmental Protection and Management. These practices not only annihilate biodiversity but also the health and livelihood of the surrounding communities.

In administrative and mining law, mining activities carried out in the absence of valid permits are considered illegal and, as such, have no legal basis within the Indonesian legal system. Law No. 3 of 2020 Amending Law No. 4 of 2009 on Mineral and Coal Mining mandatorily states that any party conducting mining operations is required to obtain the necessary mining business permits, e.g., the Izin Usaha Pertambangan (IUP), Izin Usaha Pertambangan Khusus (IUPK), or other licenses as set by law. The absence of such permits renders any mining activity not only illegal but also subject to administrative and criminal sanctions. This provision is buttressed by South Kalimantan Regional Regulation No. 5 of 2019, which localizes the national norm by establishing specific procedures and requirements that are relevant to the regional context.

Mining activities carried out without a valid permit, or those which operate in violation of the terms of an issued permit, are classified as unauthorized exploitation of natural resources. Administratively, they can be directed to stop immediately, administrative penalties imposed, and equipment or mined minerals confiscated. The concerned agencies, including the regional mining inspectorate (Inspektur Tambang) and local government units, have the mandate to impose enforcement measures to force compliance. In addition, Article 158 of Law No. 3 of 2020 establishes criminal sanctions of imprisonment and fines for operating mining activities without the required IUP or IUPK. (Butar Butar, 2010)

The legal effect of operating without the proper permit goes beyond administrative sanction; it invalidates any protection or recognition legally granted to a legitimate business entity. Businesses found to have violated lose access rights to judicial formal solution mechanisms, contract enforcement, and lawful claims of the exploited mineral resources. All contracts entered into based on such illegal conduct are in danger of being declared void ab initio on the basis of their illegitimate purpose, according to Article 1320 of the Indonesian Civil Code, stipulating the lowest standards of a valid contract, including a legal cause, even if a company is licensed but the said license was illegally obtained—e.g., forged documents, misstating technical capabilities, or bribery of the regulatory bodies—the license can be withdrawn. In this case, the principle of contrarius actus allows the licensing agency to withdraw the license according to prevailing administrative rules. This cancellation is not subject to review by the courts, though the holder of the permit may appeal against the decision to the State Administrative Court (Pengadilan Tata Usaha Negara). Once it becomes legally effective, cancellation has retrospective effect and renders all acts done under the cancelled permit ineffective.

The judicial uncertainty resulting from illegal mining activities also affects linked legal persons and financial interests, including investors, contractors, and financiers. Parties utilizing unlicensed operators actively might be held complicit or negligent in accordance with the principle of culpa in contrahendo, especially where due diligence duty was not performed in a proper manner. In this regard, that there is no appropriate permit not only impeaches the legality of the mining activity in accordance with law but also constitutes broader legal hazards to third parties.

Legal certainty is among the foundations of the rule of law and administration. It is the idea that laws are predictable, clear, and enforced uniformly in the way legal subjects and legal persons can plan activities with confidence in the stability and reliability of the legal framework. In the context of South Kalimantan mining law, namely PERDA No. 5 of 2019, the ongoing disobedience of mining stakeholders constitutes a direct threat to this principle.

If regional regulations are enacted through legitimate legislative processes but subsequently ignored or enforced half-heartedly, they create a legal atmosphere marked by uncertainty and arbitrariness. Legal regulations lose their efficacy when not accompanied by consistent and believable enforcement mechanisms. In such a scenario, compliance becomes optional, and the law loses its position as a binding code of conduct, which this undermines the integrity of the general regional legal order.

The principle of Rechtsstaat, or rule of law, demands that everyone and everything, state organs included, be subject to and under the law. If mining persons or entities take the law into their own hands and behave in the absence of commensurate legal sanctions, the principle of equality before the law is defeated. This selective enforcement erodes public confidence in government institutions and generates perceptions of impunity, particularly when abuses are permitted due to political or economic interests, irregularity in law enforcement could create a culture of legal relativism, in which actors begin to view rules as bargaining chips rather than as obligations. This has dangerous implications in activities like mining, which carry high stakes in environmental sustainability, public safety, and intergenerational equity. If mining actors can circumvent the law with impunity, the legitimacy of environmental and spatial planning policies is effectively eroded. (Erika, 2018)

Rule of law is also closely connected with economic governance and investment. Investors seek jurisdictions where there are predictable rules and neutral resolution of disputes. Inability to apply PERDA No. 5 of 2019 in a consistent manner continues to discourage responsible investment and reward rent-seeking activities. With the regional governments not exercising control over illegal activities, the regulatory regime lacks credibility and legal compliance becomes a cost and not a benefit to market players, the doctrine of legal certainty includes the idea that individuals must be aware of what the law is and how it will be applied. Unless PERDA No. 5 of 2019 is applied in a consistent and transparent manner, the transparency of the law is de facto negated. In some cases, mining operators may be uncertain as to which requirements are mandatory and which are discretionary at the local level. This uncertainty can lead to real confusion or can be used to excuse non-compliance.

This legal vacuum has wider implications for environmental justice and community rights. The affected communities that suffer environmental degradation. Their arguments in a court of law are defeated not so much by the absence of legal norms, but by the institutional reluctance or incapacity to apply those norms. This is a denial of substantive justice and illustrates the fragility of legal protection for vulnerable communities. The legality of the legal system is not only founded upon the text of the law but also on its enforceability. PERDA No. 5 of 2019 contains comprehensive provisions on licensing procedures, environmental obligations, and sanctions. Nevertheless, the operationalization of these provisions depends on the commitment of administrative and judicial institutions to apply them objectively and systematically. Without such commitment, the most well-designed regulation is rendered a mere empty shell.

The lack of enforcement undermines the deterrent effect of legal sanctions. If violators of mining laws can mine with minimal risk of punishment, the cost-benefit analysis favors non-compliance. This economic rationale exacerbates the problem and reinforces a cycle of regulatory collapse. The consequence is not only the degradation of natural resources but the breakdown of regulatory authority. The inability of regional governments to impose effective sanctions under PERDA No. 5 of 2019 can also reflect structural issues such as weak budgetary capacity, political interference, or bureaucratic fragmentation. These constraints must be eliminated through institutional reform and capacity-building initiatives so that regional regulations are not merely symbolically but functionally enforceable. (Hakim et al., 2023)

Legal certainty and the rule of law complement one another. Where legal rules are habitually violated or ignored, discretion takes the place of certainty, and the law is robbed of its normative power. This undermines democratic governance and the legitimacy of the legal system as a whole. In this context, the consistent application of PERDA No. 5 of 2019 is not just a matter of administrative compliance, but a precondition for the preservation of legal order and public accountability.

A functional rule of law regime demands not only the presence of rules, but also accountability, transparency, and mechanisms for redress. The regional states must strengthen their oversight roles and make sure that enforcement agencies act without fear or favor. Legal institutions must be empowered to hold to account both state and private actors who compromise the legal regime, regardless of status or affiliation.

The Influence of Non-Compliance with Mining Regulations Particularly Illegal Mining on Investor Confidence in South Kalimantan's Mining Sector

Compliance with the rule of law is a fundamental pillar in the development of a healthy investment climate, particularly in industries that are extremely capital-intensive and carry high risk such as mining. International and domestic investors place significant value on the existence of an orderly legal framework and consistent enforcement of the rules as a sign of political and economic stability. Here, compliance with mining laws and local rules, including South Kalimantan Regional Regulation No. 5 of 2019, is less a matter of form and more a matter of strategy in order to achieve trust and credibility in the industry. Without stringent compliance with regulatory requirements, the mining sector will be risky and inhospitable to long-term investment.

Mining operations involve massive initial capital investments, extensive project life cycles, and are highly interlinked with environmental and social concerns. These characteristics demand high legal certainty in order to be able to assure the investment safety. Legal certainty, being a fundamental law concept, enables investors to be capable of assessing probable risks and rewards with certainty that their rights and commitments shall be enforced and protected. By comparison, if the mining regulations are administered erratically or widely disregarded—as charged in most of South Kalimantan—the climate for investment becomes volatile. Random administration of the law deters formal sector entry and may prompt investors to divest capital into governance regimes of more well-run economies (Rahman, 2023)

Regulatory compliance in proper fashion increases transparency and accountability of mine management. It gives certain directions for procedures under licensing, environmental obligations, employees' rights, and society interface. Investors are now being held accountable by host governments, as well as by shareholders, financiers, and global value chains that demand ethical and sustainable extraction of resources. A system of regulation that provides assurance of consistency in upholding such standards is thus a relative plus in attracting responsible and long-term investors. Conversely, regulatory failure can expose investors to reputational risk, legal dispute, and financial loss, increasing the cost of doing business.

Pertambangan Tanpa Izin (PETI) or illegal mining activities have been an ongoing and complex issue in South Kalimantan. These activities are conducted without the required mining business permits as mandated by Law No. 3 of 2020 on Mineral and Coal Mining and Regional Regulation (PERDA) No. 5 of 2019. PETI activities often give no consideration to core legal, environmental, and safety procedures, causing material legal, environmental, and socio-economic impacts. Their prevalence is not only a sign of weaknesses in the enforcement of regulations but also a result of underlying issues having to do with governance, economic inequality, and coordination in law enforcement.

The geographical extent of unlawful mining in South Kalimantan is vast, and hotspots have been reported in districts like Tanah Bumbu, Banjar, and Hulu Sungai Tengah. These districts are mineral and coal-rich and have been the center of unlawful extraction activities for several years. Many PETI activities occur within forest conservation, protected areas, or communal land, thereby being in contravention of land use and spatial planning regulations. In others, land that had been used as mining concessions but never reclaimed is occupied by illegal groups who continue to extract resources without regard to regulatory frameworks. (Safira Mukaromah et al., 2024)

Modus operandi of illegal mining actors vary. Some PETI players operate independently with minimal equipment, but others operate under more formal arrangements backed by financiers, local elites, or even corrupt sectors of the bureaucracy. There are also cases of "shadow mining," where companies with expired or illegally obtained permits continue to operate under the guise of legality. Furthermore, cases of permit fraud where small-scale mining permits (IPR) are being used to hide large-scale illicit activities have also been reported. Such a highly engineered scheme makes it difficult to detect and prosecute PETI actors and requires collaboration among agencies.

Statistics gathered by the Ministry of Energy and Mineral Resources (ESDM) as well as law enforcement agencies attest to the enormity of the problem. According to a 2023 report by the South Kalimantan Mining Inspectorate, over 80 such illegal mining sites were discovered throughout the province, and coal was the most often extracted commodity. Civil society groups have also raised examples of massive environmental devastation—from deforestation to water pollution, as well as erosion of soils—caused by PETI operations, which are also carried out without environmental impact assessments (AMDAL) or reclamation requirements. Despite occasional police presence, PETI recurrence suggests deeper regulatory failure and deterrence deficiency problems.

South Kalimantan illegal mining poses a direct threat to lawful mining investors, undermines the legitimacy of local regulations, and degrades natural environments. It skews competition for lawful operators, deprives the state of revenue in the form of unreported extraction of resources, and endangers people due to uncontrolled blasting, flooding, and landslides. PETI needs to be tackled by more than individual enforcement but by structural change, improved licensing regimes, stricter controls, and enabling local communities. Only through a wide-ranging and sustained effort can the cycle of illegality be broken and the rule of law be re-established in the regional mining sector.

The spread of illegal mining activities in South Kalimantan represents a serious legal and economic risk that rings across different stakeholders like local governments, communities, and prospective investors. These dangers do not only arise from the direct violations of statutory and regulatory requirements but also from the snowballing implications of unregulated extraction on institutional integrity, economic certainty, and environmental sustainability. Legally, PETI operations constitute a direct breach of national mining law (Law No. 3 of 2020), local laws such as PERDA No. 5 of 2019, and associated environmental regulations. The inability of the state to exercise authority over such activities reflects a failure in the rule of law, and therefore a bolstering of legal uncertainty and undermining of the legitimacy of formal institutions of governance. (Farhan, 2023)

One of the direct legal threats is in the field of land conflict. Illegal mining is usually on land with conflicting legal claims, such as conservation forests, customary lands, or land designated for licensed mining activities. These overlapping lands usually create community, private investor, and state conflicts. Lack of legal clarity and enforcers to settle these disputes increases tension, sometimes resulting in social unrest. Additionally, the lack of control over these illegal activities gives an impression that there are negotiable laws or are under political will, thus weakening the homogeneity of public policy in mining.

From an economic perspective, illegal mining distorts the investment environment by introducing unwanted competition and scaring away formal sector participation. Formal investors, who are bound to satisfy strict licensing procedures, environmental requirements, and tax compliance, are disadvantaged when competing with PETI players who enjoy lower costs and no regulatory pressures. This undermines the profitability and viability of formal mining activities, which may drive away responsible investors. The consequent decline in legitimate mining investment has direct impacts on local revenue streams, employment, and the construction of associated infrastructure.

Illegal mining poses long-term economic risks as environmental degradation is a factor, unregulated mining tends to lead to deforestation, soil erosion, water pollution, and loss of biodiversity. These harms impacted agricultural production and public health, adding more budgetary expenses to local authorities and lowering the quality of life. Environmental harm also lowers the attractiveness of South Kalimantan as a site for investments, particularly when investors are increasingly becoming influenced by environmental, social, and governance (ESG) considerations. The province's reputation can be a deterrent to foreign direct investment and moral capital; the presence of large-scale illicit mining introduces an element of policy uncertainty. Investors require assurances that the legal framework that regulates their activities will be applied consistently and that their rights will be secured by law. However, when the application of rules is selective or arbitrary—so that PETI operators can proceed with impunity—it provides a signal to investors that government systems are uncredible. Such ambiguity is compounded by frequent changes in enforcement priorities, shifting political will, or divided inter-agency coordination, all of which make long-term planning for investment highly risky.

Conclusion

Non-compliance with South Kalimantan Regional Regulation No. 5 of 2019 has led to significant legal consequences for the legitimacy of mining operations in the region. Activities such as illegal mining (PETI), permit forgery, environmental violations, and encroachment on non-concession lands not only breach administrative and criminal laws but also undermine the legal certainty necessary for a functional rule of law. These violations reflect structural weaknesses in enforcement and governance, threatening the credibility of the regulatory framework and the effectiveness of regional legal norms.

The widespread nature of illegal mining and regulatory breaches in South Kalimantan directly impacts investor confidence by creating legal uncertainty, distorting market competition, and escalating environmental and social risks. Investors are deterred by the lack of consistent law enforcement, reputational risks associated with unregulated operations, and potential legal conflicts over land and permits. Without substantial legal reform, stronger institutional coordination, and enhanced enforcement mechanisms, the region risks long-term economic and ecological setbacks that could further weaken the attractiveness of its mining sector to responsible investment.

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