

## **The Nature of Gold Mining Licensing in Pohuwato District**

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### **ABSTRACT**

This research was conducted to: (a) To find out and analyze the nature of gold mining permits in the Pohuwato district. (b) To find out the form of gold mining licensing regulations in Pohuwato Regency. (c) To find out what factors influence gold mining permits in Pohuwato Regency. This study uses primary data through interviews with various agencies and business actors with legal entities and mining communities. In addition to interviews, researchers also collected data through questionnaires which were then combined with applicable laws and regulations. The results of this study indicate that: (1) The nature of gold mining permits in Pohuwato Regency is based on local wisdom principles. Regulations regarding gold mining permits must be based on local wisdom values to provide legal protection for artisanal miners. (2) The form of the Gold Mining Licensing regulation in Pohuwato Regency is based on Law number 3 of 2020 concerning amendments to Law number 4 of 2009 concerning mineral and coal mining, namely the determination of people's mining areas (WPR) and arrangements regarding the issuance of mining business permits fall under the jurisdiction of the central government. This rule has become a polemic in society, so it is necessary to have an effective, efficient, and just regulation. All arrangements regarding people's mining permits should be the authority of the regional government concerning the principles of decentralization and regional autonomy. (3) Factors influencing gold mining permits in Pohuwato Regency, namely regulatory factors, smallholder mining areas, and environmental damage. To achieve certainty, justice, and benefit in the management of gold mining in Pohuwato Regency, the Regional Government of Pohuwato Regency must immediately issue a regional regulation regarding permits for artisanal miners.

**Keywords:** Nature, Gold Mining Licensing.

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### **I. INTRODUCTION**

The State of Indonesia is based on law; this provision is guaranteed in the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), in Article 1 paragraph (3). As a legal state, Indonesia should protect all Indonesian people, including regulating the benefits of all aspects of life to provide prosperity for all Indonesian people. Indonesia's legal state is based on the concept of a welfare state, which aims for the greatest prosperity of the people. This is a constitutional mandate in Article 33 paragraph (3) which states that the land, water, and natural resources contained therein are controlled by the state for the greatest prosperity of the people. The state does not own but acts as the holder of power. So it is public, or the government applies (*berstuurdaat*). The Constitutional Court interprets "controlled by the state" to include the meaning of control by the state in a broad sense originating from and originating from the concept of the sovereignty of the Indonesian people over all sources of wealth, "earth and water and the natural resources contained therein," including the notion of public ownership by the collectivity of the people over the said sources of wealth. The people are collectively constructed by the 1945 Constitution of the Republic of Indonesia, which gives a mandate to the state to carry out policies (*beleid*) and management actions (*bestuurdaad*), regulation (*regelendaad*), management (*beheersdaad*) and supervision (*toezichthoudendaad*) for the greatest possible purpose. People's prosperity. The primary objective of state control in Article 33 paragraph (3) of the 1945 Constitution and Law no. 5 of 1960 concerning Basic Agrarian Regulations The President of the Republic of Indonesia emphasized that the right to control by the state is for the greatest prosperity of the people. Based on the mentioned objectives, the state should pay attention to the good faith of the people who control land that has been controlled and used, which must be respected and protected. What must be understood, internalized, understood, and realized is that the formation of a new law must be seen from

a positive perspective, namely born from the results of an evaluation of the previously applicable laws and regulations, because according to Roscoe Pond, that law functions as a tool of social engineering, namely an instrument community renewal (agent of change). That is, the law must be consistent and contain meaning following the ideals of social justice, which in the context of the management and control of minerals, standards of social justice are the meaning contained in Article 33 paragraph (3) of the 1945 Constitution.

The existence of the people in these lands is one manifestation of the goal of people's prosperity. The people's land can only be revoked or alienated from them solely for the public interest, namely for social and state interests. Muhammad Bakri<sup>1</sup> stated that according to its nature and principles, a state authority that originates from the right to control land by the state is in the hands of the Central Government. Autonomous regions (now Regional Governments) only have this authority if there is delegation (delegation) of the power to exercise land rights by the state from the Central Government to Regional Governments. This statement affirms the provisions of Article 2, paragraph (4) of the UUPA. Article 2, paragraph (4) of the UUPA emphasizes that the state mentioned above control rights can be delegated to autonomous regions and customary law communities, simply necessary and not contrary to national interests, according to the provisions of government regulations. Iman Soetikno, who gave an understanding of the right to control from the State, can be divided into active control rights and passive control rights, where passive control rights are "control rights from the state which include land with passive individual rights," meaning that above the land there has been individual or family rights, as well as other rights. Meanwhile the others. Active is "the right to control from the state, which includes land with individual rights if the land is left neglected/abandoned." The right to control from the state over land not owned by individuals or families with any rights that have not been cleared can also be classified as active tenure rights. In other words, if the state requires the land for the benefit of the people, then it can use the right to control from the state. The welfare state aims to guarantee the rights of citizens in today's modern era, depending on the availability of natural resources. The availability of natural resources is a determining factor in fulfilling the fundamental rights of citizens. Therefore, it is regrettable if the control of natural resources is only controlled by certain people who have much capital to manage natural resources without caring about the rest of society. According to Bagir Manan, state control over natural resources for the greatest possible prosperity of the people will realize the following state obligations:

1. All forms of utilization of land and water, as well as results of wealth, must significantly increase people's prosperity;
2. Protecting and guaranteeing all the rights of the people found in the bowels of the earth as natural wealth can be enjoyed and improve the well-being of the people;
3. prevent all actions from any party that will cause the people not to have the opportunity or lose their right to enjoy the wealth of nature.

Article 2 paragraph (2) of Law Number 5 of 1960 UUPA authorizes the government to regulate and plan the use, allotment, and maintenance of land affairs. This authority is what is meant by the right to control the state. Based on this authority, the government is obliged to make a general plan regarding the allotment and use of land, water, and airspace and the natural resources contained therein, as stated in Article 14, paragraph (1) of the BAL. In this sense, it is possible to change the function of land use, including changes to the use of agricultural land for non-agricultural purposes. One of the most important natural resources in ensuring prosperity in the Indonesian legal state in the current era of globalization island. The existence of land is an essential natural resource for the Indonesian state, which is regulated in Law Number 5 of 1960 UUPA, in Article 1 paragraph (1), states that "all land within the territory of the Indonesian State is the common land of all Indonesian people." Furthermore, Article 6 of the UUPA states that "All land rights have a social function." This article is further noted as one of the legal principles of land, termed the social function principle of land rights. The regulation of the social function of land rights in land law is a fundamental basis for the realization of land beneficial for the greatest possible prosperity of the people in a welfare state. Land rights give authority to use the land given to people or legal entities. In principle, the purpose of land use is to fulfill two types of needs, namely, to be cultivated and to build something. In this regard, BoediHarsono<sup>2</sup> argued that in addition to regional governments and customary law communities, the delegation of the implementation of some of the state's authority over land could also be carried out to authorities, state companies, and regional companies by granting specific land tenure with what is known as Management Rights. Article 9 paragraph (2) UUPA states that every Indonesian citizen, both male and female, has the same opportunity to obtain a right to land and to obtain benefits and results, both for himself and his family. In the Civil Code, there are two kinds of legal subjects, which include humans and legal entities. The legal subject or also called the retch subject is a

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<sup>1</sup>Muhammad Bakri. 2007. Land Rights by the State (New Paradigm for Agrarian Reform). Media Image. Jakarta.

<sup>2</sup>BoediHarsono. 1999. Indonesian Agrarian Law. Collection of Land Law Regulations. Jakarta. PT Bridge.

supporter of the rights and obligations of Law Number 5 of 1960 UUPA as the basis for state control rights over land, water, and space, including the natural wealth contained therein, including gold mining. Mining management cannot be separated from the ground. In implementing the principle of attachment, landowners within the state use their rights to underground space in the form of mastery of mineral deposits, in this case, limited to (hard minerals). Legal relations in the management of gold mining, related to mining regulations regulated in the BAL.

The concept of agricultural law, in a broad sense, includes mining law related to mining rights and their management. The agrarian concept refers to Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA). Construction of the Basic Agrarian Law in legal protection for the management of sustainable mineral and coal mining.

In the management of mineral and coal natural resources, of course, it will come into contact with the use and utilization of other natural resources, such as in the use of land on it, so that it does not rule out conflicts of interest and authority between agencies or departments, for example, related to mining permits granted by the government in this is under the Ministry of Energy and Mineral Resources, while related to land rights is regulated by the National Land Agency, there may even be conflicts with the rights of the people and customary law communities. If this conflict continues, the State's control over Natural Resources will not contribute as much as possible to the prosperity and welfare of all the people. In the management of mineral and coal natural resources, it is inseparable from the use of the land above it while the mineral and coal natural resources are underground, so it is necessary to know the laws governing land rights and the laws governing mining permits on them when you want to manage natural resources. Mineral and coal natural resources are under the ground so that there is no overlapping of land rights and mining permits granted by the government. The mining problem also needs to be separated from pastoral issues because mining activities are underground, and to carry out these activities must first obtain permission from the authorized official. In Article 4, paragraphs 1 and 2 of Law No. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, namely (1) Minerals and coal as non-renewable natural resources are national assets controlled by the state for the most excellent welfare of the people, (2) Control of minerals and coal by the state is carried out by the Central Government following the provisions of this Law. Mining permits are implemented in the form of Mining Business Permits (IUP), People's Mining Permits (IPR), and Special Mining Business Permits (IUPK). So if this permit is obtained by an entrepreneur or party who wants to conduct a mining business, then this is a mining right. To be able to carry out a mining business, a piece of land is definitely needed because mining activities are nothing but digging the ground. Most of the gold mines are located in the bowels of the earth. Article 134 Paragraph (1) of Law Number 4 of 2009 concerning Mineral and Coal Mining explains that rights to mining business permit areas (WIUP), people's mining areas (WPR), or Special Mining Business Permit Areas do not cover land surface rights. The mining business is carried out based on business permits from the Central Government, according to the explanation of article 35 of Law number 3 of 2020 concerning amendments to Law number 4 of 2009 concerning mineral and coal mining. Then in the elucidation of Article 137A paragraph (1), the Central Government settles land rights issues for Mining Business activities as referred to in Article 134, Article 135, Article 136, and Article 137. (2) Further provisions regarding the settlement of land rights, as referred to in paragraph (1), are regulated by Government Regulation.

There is a possibility of a conflict of interest in land use that is very open, where the government gives land rights and mining rights to two different people who are in the same place. On the surface of the land, the government provides ownership rights, business use rights, building use rights, or usage rights to someone, while below the land surface, the government gives mining rights (IUP, IPR, or IUPK) to other people. It is impossible for the owner of the right to mine to directly dig or drill the land because there is the owner of the right to the ground. Meanwhile, the owners of land rights, in general, also do not readily enter their yards and do mining. Moreover, land rights are granted before mining rights. Community participation in carrying out development, in the form of taking the rights owned by the community, for mining areas. This refers to Articles 6 and 14 of the UUPA, in land use or land allotment, so that the land is subject to city planning, namely for the development of the mining sector. The community must relinquish this ownership through grants or compensation. Mining is one of the mainstays of the Indonesian state after agriculture. But unfortunately, many abuse mining in Indonesia. To get more profit and convenience, they do mining without a permit. A mining business carried out in Unlicensed Gold Mining (PETI) is a mining business carried out by individuals, groups of people, or legal entity companies whose operations do not have permits from government agencies following applicable laws and regulations. Unlicensed Gold Mining (PETI) is increasingly rampant in areas that have abundant gold supplies. From western Indonesia to eastern Indonesia, many grandkids (illegal miners) are found in the regions that have gold supplies that can be exploited and affordable by them. It's no longer a secret that many illegal gold miners work regardless of the permits they should have beforehand. Unlicensed Gold Mining (PETI) has occurred in several areas that have had abundant gold wealth since ancient times, especially gold mining in Pohuwato Regency. Unlicensed Gold Mining (PETI) was initially caused by the emergence of the

existence of traditional miners, which later developed due to poverty, limited employment and business opportunities, the involvement of other parties acting as financiers and backers, and disharmony in the relationship between the company and the local community. Causing increasing concern about Unlicensed Gold Mining (PETI) in areas rich in gold, coupled with financial support from external parties so that this unlicensed gold mining runs smoothly. Management of gold mining land in Pohuwato Regency has been carried out by the community in locations that have gold content, such as plantation land, rice fields, cliffs, and mountains. Most of the Pohuwato people depend on gold mining, and this activity has become a daily activity for some members of the community. At present, the mining community has limited rights to manage land as a gold mining area considering that the local government considers the mining community to manage land as a gold mining area illegally, even though land management as a gold mining area has been carried out by the community for a long time and has even been passed down from generation to generation.

Land management as a gold mining area in Pohuwato Regency has become a polemic in the community. Because there are several groups of miners who already have business entities, both in the form of cooperatives and in the form of limited liability companies, already have legality in the Government to manage mining lands, while other community groups who work mining lands that are not yet legal entities are considered illegal even though they have managed it hereditarily. Hereditary, which is part of the inheritance of parents and family. So that some people think that the management of mining land can only be managed by groups of miners who have legal entities; in contrast, people who work mining land individually or in groups but do not have a legal entity, such as not being given the right to control the mining land, in the management of land as gold mining land, some have the status of private land and some only manage the mining land because they inherited the land from their parents and employers. The land management system as a gold mining area is carried out manually, which only relies on pumping machines and crowbars, which has been considered by some miners as an unproductive way to do this, considering that the location of mining land containing gold is already in the deepest layers of the soil. Some people took the initiative to carry out mining using heavy equipment such as excavators. However, the government considered that the use of heavy equipment would have a significant impact on the impact of soil damage in the gold mining area. In Article 15 of the BAL, it is explained that maintaining land, including increasing its fertility and preventing damage to it, is the obligation of every person, legal entity, or agency that has a legal relationship with the land, taking into account those who are economically weak. Therefore, the efforts being made by the government at this time are to prohibit people from mining using heavy excavators. Moreover, those who use these tools are primarily people who do not have mining permits. Therefore the author deliberately raises research with the title: *The Nature of Gold Mining Licensing in Pohuwato Regency*. To answer all legal issues related to gold mining licensing issues in Pohuwato Regency.

## **II. RESEARCH METHODS**

### **Research Type**

This type of research uses the type of empirical juridical legal research. Empirical juridical research is research that has an object of study regarding people's behavior. This study examines community behavior, namely behavior that arises as a result of interacting with the existing system of norms. This interaction appears as a form of community reaction to the implementation of a positive legal provision and can also be seen from community behavior as a form of action in influencing the formation of a positive legal provision.

### **Location and Time of Research**

This research is located in Gorontalo Province, Pohuwato Regency, Buntulia, and Dengilo sub-districts. The choice of location was based on the consideration that Pohuwato Regency is one of the largest gold mining areas in Indonesia, but its management has not been touched by large industries, such as gold mines in Papua. In addition to the local people already mining, there are also several gold mining companies exploring the mining land, which are suspected of having an abundance of gold metal, including PT Gorontalo Sejahtera Mining ("GSM") and PT. Golden Peak of Prosperous Farmers (PETS).

### **Data Types and Sources**

There are two types of data in this study; namely, the first is document data or literature study. This data is taken from library books and official documents belonging to the government or the private sector, which are in agencies or institutions related to mining. This data is in the form of books or official documents, which are used as references in writing this dissertation. Second, field data, namely data that is in the mining community by observing and reviewing the field directly, conducting interviews, or seeing now the condition of the mining where the research was carried out. Field data is data that is still raw because it is in the form of notes, namely records of facts in the field and the results of interviews which are then processed to become references in writing this dissertation. Field facts are raw data, so that data needs filtering to follow up on

whether the data can be included in writing or not. Because the facts in the field still need filtering so that they can become data that can be included as part of writing this dissertation. The legal materials used in the writing and research of this dissertation are primary legal materials and secondary legal materials. The primary legal material consists of regulations related to the writing of this dissertation, so these regulations are the basis for analyzing the writing of this dissertation. In contrast, secondary legal materials consist of materials obtained from reading books. Secondary legal material is supporting material consisting of theories used as material for analyzing legislation. The approaches in the book consist of the views of experts, which are then compiled to become a reference in diagnosing a problem related to the nature of gold mining permits in Pohuwato Regency.

### **Population and Sample**

In this study, the population is all people involved in gold mining activities in Pohuwato Regency. Because, in this study, the population was too large, a sample was drawn to represent the population as the object under investigation using a non-random method to obtain purposive sampling, namely by taking sample members in such a way that the sample reflects the characteristics of a previously known population. The samples taken in this study were from Buntulia District and Dengilo District, Pohuwato Regency. While the respondents in this study were around 100 people to support the questionnaire data. Researchers also interviewed government agencies, organizations, villages, and sub-districts. To help the data in this study, the authors conducted guided free interviews with 6 (two) other respondents as Sources considered capable of providing views on gold mining permits in Pohuwato Regency, namely:

1. Mining Companies and Communities
2. Lurah/District Head of Dengilo
3. Department of Energy and Mineral Resources of Gorontalo Province
4. Head of the Pohuwato Regency Land Agency
5. Pohuwato District Investment Office
6. Pohuwato District Environmental Office

### **Data Collection Techniques**

Data collection techniques are a very urgent part of the research itself. Data collection procedures used in this study were interviews, questionnaires, and documentation.

The data collected must have certain conditions. So as not to deviate from the existing problems. These conditions include:

1. Accurate means that it must reflect or correspond to the actual situation;
2. Up to date means to be on time;
3. Comprehensive means that it must be able to represent;
4. Relevance means that there must be a relationship with the problem to be solved;
5. Having a small error means having a high level of accuracy.

To collect data from research objects, the authors use the following methods:

#### **1. Interview Method**

The interview is a data collection technique through a one-way question-and-answer process, meaning that the questions come from the interviewee, and the answers are given by the interviewee. Interviews are a form of direct communication between researchers and respondents. Communication takes place in the form of questions and answers in a face-to-face relationship so that the movements and expressions of the respondents are media patterns that complement the words verbally. The interview technique or interview is a method used to obtain data by conducting direct interviews with interview informants (Interview), namely leading questions and answering or confirming to a sample of researchers in a systematic (structured) way. Interviews are interpreted as a way to collect information material carried out by asking questions orally, unilaterally, face to face directly, and with a predetermined direction.

#### **2. Questionnaire**

Researchers collect data by providing a list of questions for the sample to fill in according to their knowledge regarding the problem under study.

#### **3. Documentation Method**

This method can be interpreted as a way of collecting data by utilizing data from books and notes (documents). In this method, the researcher collects data and only transfers relevant written materials on the sheets prepared accordingly.

Documents are written records of various activities or events in the past. This method is used to obtain data about:

- a. A brief history of Gold mining in Pohuwato District.
- b. Data on the rights of gold miners.

- c. Gold mining license from the government.

This technique is used to obtain data related to the following:

- a. What is the essence of gold mining permits in Pohuwato Regency?
- b. What is the form of gold mining licensing regulations in Pohuwato Regency?
- c. What factors influence gold mining permits in Pohuwato District?

### **Data Analysis**

Data analysis techniques in this study used inductive qualitative analysis, namely an analysis based on the data obtained, and then a specific relationship pattern was developed. The steps that must be followed in data analysis are data reduction, data display, and conclusion drawing or verification.

#### **1. Data Reduction**

Data reduction activities, namely raw data collected from observations, interviews, and documentation, are classified, and then summarized so that they are easy to understand. This data reduction is a form of analysis that aims to sharpen, select, focus, and arrange data so that the conclusions of the research can be made and verified. Based on the above understanding, the writer can conclude that data reduction is summarizing the data collected from the field and then choosing the main things according to the research focus. In this study, the authors first want to know the overall factors of the problem of gold mining permits in Pohuwato Regency.

#### **2. Display Data**

Data display (data presentation), according to Miles and Huberman, states that the most frequently used for presenting data in qualitative research is with narrative text. Therefore, with the problems under study, the data will be presented in tables, metrics, graphs, and charts. Secondly, after reducing data, namely facilitating research to understand what happened in the field regarding gold mining permits in Pohuwato Regency.

#### **3. Conclusion Drawing/Verification**

The third step after qualitative data analysis is drawing conclusions and verification. The initial findings put forward are still temporary and will change if solid evidence is not found to support the next stage of data collection. However, if the conclusions put forward at the initial stage are supported by valid and consistent evidence when the researcher returns to the room to collect data, then the conclusions are credible.

## **III. RESEARCH RESULTS AND DISCUSSION**

### **The Nature of Gold Mining Licensing**

The Pohuwato Regency area of Gorontalo Province has gold mining locations such as those in Buntulia District and Dengilo District. In that area, there was a gold mine managed by the Dutch around 1930. Various miseries and oppression had occurred, so the people took the initiative to seize the mine from the Dutch around the 1950s. Until now, the mine has been managed by the Pohuwato mining community in general. Location People's mining is carried out by the community around Mount Pani and its surroundings. Administratively, the GunungPani area is included in the sub-districts of Taluditi, Buntulia, and Paguat, Pohuwato Regency, Gorontalo Province. The GunungPani mining area and its surroundings are located in the Panua Nature Reserve Area, which is a protection for the maleo bird (panua). Conditions in the field, the eastern part of the GunungPani hills is dense forest, the western part is partly covered with forest and cultivation, and some is in the form of settlements. Gold mining activities are carried out in two systems, namely deep mining and surface mining. Deep mining by taking quartz veins containing gold, surface mining with a gutter system, spraying or scraping, and mining in rivers by flowing water through a sluice box to catch drifting gold. Gold management is carried out in two ways, namely by using drums and by panning. The use of drums to process primary and secondary gold deposits, while panning is to process alluvial gold deposits/a mixture of gold and sand. Both of these management methods use an amalgamation process, namely, using mercury or silver as a medium to capture gold.

The mining area of Mount Pani and its surroundings is a hilly area with a dome-shaped geological structure. The mining location consists of several areas, including gold mining in Buntulia and Dengilo. The river flows generally disgorge around the top of Mount Pani, Left Ilota, Right Ilota, Baginite, Borose, Tomula, Mutiar, Kolokoa, Batudulanga, Taluduyunu, and Marisa rivers. The flow pattern is in the form of a radier, with the entire flow direction flowing to and gathering in the Buntulia and Marisa Rivers which flow through the middle of Marisa City, the capital of Pohuwato Regency. The location of gold mining activities in the GunungPani area is a mining business area both managed by KUD Dharma Tani Marisa, KP DU.360/Sulut, as well as individual smallholder mining. To reach the location of gold mining activities, from Gorontalo to Marisa City, you can use land vehicles via the Cross-Sulawesi road, 200 km from Gorontalo. From the City of Marisa to the location of GunungPani or the gold mining area, you can reach it by using a special field vehicle or motorbike with a distance of  $\pm 15$  km. The gold mining in Pohuwato Regency is not a mining that has just been discovered by the community. Gold mining has existed since Indonesia was not yet independent. Regarding the

mining location, according to information from the Secretary of KUD Dharma Tani, Mr. Usman stated that the community's mining location was found directly by the local community. The management of gold mining has been carried out for a long time. It has been carried out from generation to generation until now by the people around the gold mining area of Pohuwato Regency. At that time, Pohuwato Regency was formed based on Law Number 6 of 2003, dated 25 February 2003, which was signed by President Megawati Soekarno Putri. Then the total area of Pohuwato Regency is + 432,278 Ha which includes 13 (Thirteen) District areas with the capital city of Marisa District. At that time, mining companies entered to explore gold mining in Pohuwato Regency, such as PT Gorontalo Sejahtera Mining (GSM) which held a gold mining KK concession in Pani Block, Pohuwato Regency with gold ore reserves of 2.2 million troy oz with a mining area of 7,932.1 Ha. Besides PT GSM, PT PuncakEmasTani Sejahtera also has a gold mining permit with gold ore reserves reaching 2.5 million troy oz with a mining area of 100 hectares.

Table. 1 Gold Mining Business License in Pohuwato Regency

No	Company name	Mine Location	Wide	Investment Value
1	PT. Gorontalo Prosperous Mining (GSM)	Buntulia district	7,932.1 hectares	2,924,279,877,436,00
2	PT. PETS OF PROSPER FARMING (PETS)	Buntulia District	100 Ha	56,164,746,862,26

Source: Pohuwato District Investment Office 2022

The Company's gold mining location and the local community's gold mining location often experience disputes because some of the locations given by the government to companies are claimed by the community as their mining location. Although the local government will promise areas for people's mining. However, the community has its assessment regarding locations that have good gold content, so the community often conducts mining in the company's mining areas. Opening of gold mining land is carried out by the community by pocketing the "right" to open the land and buying it from the previous land owner. "Rights," in essence, is the power given by law to someone over something (objects/achievements), giving rise to a legal relationship between the two (subject-object relations). So if someone obtains a land right, then that person has inherent power over the land, which is accompanied by obligations ordered by law, and the acquisition of land rights in principle can be distinguished in

1. Original acquisition, namely original acquisition, for example, by clearing land (occupation);
2. The derivative acquisition is acquisition due to the transfer of rights legally, for example, buying and selling, exchanging, and so on.

The clearing of gold mining land by the community, according to their custom, has been carried out for a long time around the gold mining area, so that the party that had previously cleared the mining land area earlier has been considered as the holder of the rights to the mining location. If there are other parties who wish to mine gold in that location, then the permission of the mining location rights holder must be obtained. Some of the mining community claims that the mining site he manages has been purchased from the previous owner. Even some of the gold mining land is used as agricultural land that already has a certificate of ownership. Since Indonesia's independence in 1945, of course, there have been fundamental changes regarding the rights and control of land for mining, agriculture, and utilization as residential land. In the elucidation of the Constitution of the Republic of Indonesia, Article 33 paragraph (3) stipulates that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." This constitutional norm has directed the development of national natural resources, which are controlled by the state for the prosperity of the people. The two principles above are a unity that cannot be separated from one another. Separating the two would be counterproductive to the intended concept of state control. It could lead to a monopoly on natural resources by capital owners or foreign parties whose profits would only go abroad and be enjoyed by a handful of people and not by Indonesia's society and development. So the state, as the holder of the highest authority in the management of natural resources, aims to improve the welfare of its people. State power over the natural wealth contained therein as natural wealth in the form of gold metal is, of course, carried out by the government, both the central government and regional governments. The implementation of state authority and power is carried out by the government with reference to various laws and regulations relating to the utilization of natural resources, especially regarding the issue of gold mining.

The management of gold mining is carried out by the community, whose control is, of course, no longer allowed to be based on previous habits. After the independence of the Republic of Indonesia and since the issuance of the Law on minerals and coal, the environment and land, the management of gold mining land

must be in line with applicable laws. The elucidation of article 2 of Law no. 5 of 1960 concerning Basic Agrarian Regulations states that:

- 1) based on the provisions in Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1, the earth, water, and space, including the natural wealth contained therein, are controlled at the highest level by the State, as the organization of all powers. people.
- 2) The right to control from the State referred to in paragraph (1) of this article gives authority to
  - a. regulate and administer the allotment, use, supply, and maintenance of the earth, water, and space;
  - b. determine and regulate the legal relations between people and the earth, water, and space;
  - c. determine and regulate legal relationships between people and legal acts concerning the earth, water, and space.
- 3) The authority originating from the right to control the State referred to in paragraph (2) of this article is used to achieve the greatest prosperity of the people in the sense of nationality, prosperity, and independence in society and the legal state of Indonesia which is independent, sovereign, just and prosperous.
- 4) The implementation of the above-mentioned rights of control from the State can be delegated to autonomous regions and customary law communities, only necessary and not contrary to national interests, according to the provisions of Government Regulations.

Furthermore, in Article 4 paragraphs (1) and (2), UUPA explains:

- 1) On the basis of the state's right to control as referred to in Article 2, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people either alone or jointly with other people and legal entities.
- 2) The land rights referred to in paragraph (1) of this article give the authority to use the land in question as well as the body of the earth and water and the space on it, only for purposes that are directly related to the use of said land within limits according to This law and other higher legal regulations.

The issue of gold mining cannot be separated from land issues, although mining issues are regulated by a special law, namely the Law on Mineral and Coal Mining. In connection with the right to open land exercised by the local community, customary law was born regarding the control of gold mining sites. The habits carried out by the gold mining community in controlling gold mining sites are old habits that have been applied for generations and have become part of the values of local wisdom. According to the elucidation of Law Number 3 of 2020 concerning amendments to Law number 4 of 2009 concerning Mineral and Coal Mining in Article 10, it explains that:

- 1) Determination of WP as referred to in Article 9 paragraph (2) consists of:
  - a. WUP;
  - b. IN THE PR;
  - c. WPN; and
  - d. WUPK.
- 2) Mining Area Determination (WP), as referred to in Article 9 paragraph (2), is carried out:
  - a. in a transparent, participatory and responsible manner;
  - b. in an integrated manner and refers to the opinions of relevant government agencies, affected communities, and takes into account ecological, economic, human rights and socio-cultural aspects, as well as environmental perspectives; and
  - c. attention to regional aspirations

Then in the elucidation of Article 8 of Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 7 of 2020 concerning Procedures for Granting Areas, Licensing, and Reporting on Mineral and Coal Mining Business Activities it is explained that the proposed plan for establishing WIUP and/or WIUPK is coordinated by the Director General with governors and regents/mayors in the context of requesting WIUP and/or WIUPK recommendations. The recommendation by the governor, as referred to in paragraph (2), contains information regarding land use and community cultural characteristics based on local wisdom, including the carrying capacity of the environment in the Metal Mineral WIUP, Coal WIUP, and/or WIUPK. Determination of People's Mining Areas (WPR) for gold mining activities is not immediately determined without preceded by consensus deliberations with the mining community or miner's representatives. What's more, the determination of gold mining areas that have been given by mining companies is partly also a gold mining area that has been managed by the community for a long time.

Prior to the amendment to Law number 4 of 2009 concerning Mineral and Coal Mining, the regulation regarding People's Mining Areas (WPR) was explained in the Law in article 21, which reads: WPR, as referred to in Article 20, is determined by the regent/mayor after consulting with District/city Regional People's Legislative Council. Then it is further explained in Article 22, namely the criteria for determining the WPR are as follows:



- a. have secondary mineral reserves found in the river and between the banks and riverbanks;
- b. have primary metal or coal reserves with a maximum depth of 25 (twenty-five) meters;
- c. terrace deposits, floodplains, and ancient river deposits;
- d. the maximum area of the people's mining area is 25 (twenty-five) hectares;
- e. state the type of commodity to be mined; and/or
- f. is an area or place of people's mining activities that has been carried out for at least 15 (fifteen) years.

Then in the elucidation of Article 24 of Law number 4 of 2009 concerning Mineral and Coal Mining it is explained that areas or places where people's mining activities have been carried out but have not been designated as WPR are prioritized to be designated as WPR. However, after Law Number 3 of 2020 concerning changes to Law number 4 of 2009 concerning Mineral and Coal Mining the provisions of articles 21, 22 and 24 of Law number 4 of 2009 concerning Mineral and Coal Mining have been removed so that this has become a polemic in society. According to the village secretary of Karya Indah, Bantulia sub-district, Pohuwato district, there is no permit for community mining yet. So that the management of people's mining sites is a private location that has been controlled for generations, so ownership is not based on written evidence from the local government. Land ownership has been controlled for a long time, even before Indonesia's independence, land ownership has been controlled for generations from their ancestors. Then according to SoniSamoe, as the representative of the people's miners, when interviewed, said that mining permits from the government were only issued after the People's Mining Area was determined. According to him, the current problem is why until now the Government has not issued a People's Mining Area (WPR) designation for gold mining. Even though the community is currently expecting the legality of mining from the government. Based on the questionnaire data distributed by the researcher, 62 respondents obtained answers to questions from researchers regarding the legality/permit of gold miners in Pohuwato Regency as shown in table 2, namely:

**Table. 2** Opinion of respondents about the legality/permit of gold miners in Pohuwato Regency

Question	Answer	Respondent	%
<b>Do all gold miners in Pohuwato Regency have permits or legality</b>	Of	3	3 %
	Part	51	90 %
	Not	8	7 %
<b>Amount</b>		62	100%

Source: data processed 2022

From these data, it proves that of the 62 respondents who gave answers, there were 51 people who answered that only some gold miners in Pohuwato Regency had gold mining permits or legality with a percentage of 90% and only 3 people gave answers that all gold miners in Pohuwato Regency had have permits or legality with a percentage of 3%. Then only 8 people gave the answer that not all gold miners have gold mining permits or legality with a percentage of 7%. According to the researcher regarding the respondent's answers, currently licensing issues must be a concern of the government, because only some gold miners have mining legality or permits. Of course this should not be allowed to drag on because the management of gold mines by the community has generally been managed long ago even before Indonesia's independence. What's more, currently there are companies that already have mining permits to explore and exploit gold mining land in Pohuwato Regency. The government has the authority to make arrangements regarding the determination of gold mining areas both for companies and for local communities. However, all of this must be done by considering various characteristics, local wisdom values and information about community mining areas that have been managed by the community. Because if this is not done, the government will only prioritize the interests of large companies that will exploit gold mining sites without respecting the affected communities, economic aspects, human rights, and socio-culture.

As for the control of mining land carried out by the company in the area of the people's mining location, it must be resolved by deliberation with the provisions that the company temporarily rents the people's gold mining location or by providing compensation. However, the government's regulation states that some of the gold mining locations for companies are located in gold mining locations that have so far been managed by the people, while the planned location of the People's Mining Areas determined by the government are areas that have never been touched by humans or areas that have never been managed by the community. So that the mining community will not agree if the people's mining area determined by the government is a location that has never been touched by humans due to various factors, namely:

1. The mining location is very difficult to reach because it is still a wilderness.
  2. The community is convinced that the gold mining location that is being managed has a lot of gold content.
- Therefore, the management of gold mining areas carried out by the government certainly does not provide justice to the mining community. Supposedly the gold mining area that has never been touched by humans for

the time being is only a gold mining area plan. The government has the responsibility to open access or roads to the planned gold mining area. The government must also ensure that there is gold content in the location of the People's Mining Area Plan. The government must not give priority to the interests of companies that have just entered to explore and exploit gold mining areas in a way that the gold mining areas that have been managed by the community are given to companies while the mining community is relocated to gold mining areas that have never been managed by humans. People's miners certainly don't want to be relocated to gold mining areas planned by the government because they think that the location that has been managed for a long time is a location that clearly has gold content. By referring to the laws relating to the management of gold mining, the settlement of gold mining problems in Pohuwato Regency can only be completed if the laws and regulations relating to gold mining permits in Pohuwato Regency are in line with local wisdom values. According to Gadgil and Barks, that local wisdom cannot be separated from elements of local rules, local traditions, customs or cultural values which are evidence of the harmonious relationship between society and the environment. The linguistic understanding of local wisdom means local wisdom, which means local ideas that are wise, full of wisdom, of value, instilled and followed by the members of the community. Mining activity, whatever its form, cannot be separated from environmental problems, because in essence mining means changing the natural order. According to Article 9 of Law Number 3 of 2020 concerning amendments to Law number 4 of 2009 concerning Mineral and Coal Mining it explains that:

- 1) WP as part of the Legal Mining Area is the basis for determining Mining Business activities.
- 2) The WP as referred to in paragraph (1) is determined by the Central Government after being determined by the Provincial Government in accordance with their authority and in consultation with the People's Representative Council of the Republic of Indonesia.

The problem of illegal mining is still common in Pohuwato and even the owners of the previous mining lands were willing to sell the land they controlled from outsiders in the Pohuwato community. So that illegal gold miners in Pohuwato are no longer native to Pohuwato but also come from outside the Pohuwato area. The buying and selling system that is used is the buying and selling system under the hand. In Article 1320 of the Civil Code, an agreement of any kind, such as a sale and purchase agreement, must fulfill 4 conditions for a valid agreement, namely: the agreement of those who bind themselves, the ability to make an agreement, a certain thing, a lawful cause. Observing the buying and selling system carried out by illegal gold miners on previous land managers, of course, was only based on habit. Because the land being managed is not land with ownership rights as mandated in Law no. 5 of 1960 concerning Basic Agrarian Regulations. According to Irma Devita<sup>3</sup>Purnamasari, for land that will be used as a mining area, the land beneath it, goes back to Article 33 of the 1945 Constitution where this is controlled by the state so that if you want to process what is underground, then you must also be compensated/ replace it for what is above it, such as the land that is on it or whatever is on the land. Ownership of land for mining is of course different from ownership land for settlement and agriculture. Therefore, the owner of the land under which there is precious metal mining, of course, must also have a mining permit. Likewise, if it is in the national interest, the land owner must give up his land to be managed by the state while still receiving compensation for the release of land rights from the government. Currently, the government has not issued individual mining permits to local communities. According to article 62 of Government Regulation Number 96 of 2021 concerning Implementation of Mineral and Coal Mining Business Activities it states that:

- 1) IPR is granted by the Minister based on an application submitted by:
  - a. individual who is a local resident; or
  - b. Cooperative whose members are local residents.
- 2) The IPR application as referred to in paragraph (1) can only be submitted in areas that have been designated as WPR.
- 3) In 1 (one) WPR, 1 (one) or several IPRs may be granted.
- 4) Each applicant as referred to in paragraph (1) can only be given 1 (one) IPR.

Furthermore, in article 63 of government regulation number 96 of 2021 concerning the implementation of mineral and coal mining business activities it states that:

To obtain an IPR, the applicant must meet the requirements, which consist of:

- a. individuals, including:
  1. application letter;
  2. business registration number;
  3. copy of identity card;
  4. a statement letter from the local village sub-district stating that the applicant is a local resident;

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<sup>3</sup>Irma DevitaPurnamasariHukumonline Seminar on Wednesday, 12 February 2014, with the theme "Understanding the Ins and outs of Land Acquisition Practices in the Mining and Oil and Gas Business in Indonesia"

5. a statement of ability to comply with the provisions of laws and regulations in the field of protection and management of the environment and Mining safety; and
6. fiscal statement in accordance with the provisions of laws and regulations in the field of taxation.
- b. Cooperative, includes:
  1. application letter;
  2. business registration number;
  3. copy of identity card of Cooperative management;
  4. a statement letter from the local kelurahan/village stating that all cooperative administrators are local residents;
  5. statement of ability to comply with the provisions of laws and regulations in the field of protection and management of the environment and Mining safety; and
  6. fiscal statement in accordance with the provisions of laws and regulations in the field of taxation.

The delay in issuing gold mining business permits will certainly have implications for the disruption of gold mining activities carried out by individuals. Moreover, gold mining activities have been carried out since long ago. The legal consequences of not taking care of a mining business license and not issuing a mining business permit area. So individual gold mining activities are considered illegal in the eyes of the law. According to the District Head of Dengilo, Mr. Nakir Ismail, S.Pd., M.Sc, said that the People's mining area is very important. Then it is necessary to have competent institutions that oversee artisanal miners who can provide solutions for the community to carry out environmentally friendly mining. So far, there has been no institution empowering the community to carry out mining in an environmentally friendly manner. Instead, only a few entrepreneurs have come who have offered mining activities without caring about the consequences such as environmental damage and erosion. Then he said again that the government must openly provide or disseminate information regarding which gold mining areas are for companies and which are mining areas for the community. Even information circulating in the community says that most of the mining areas have been plotted by the company, so that on the basis of this confusing information, it becomes the basis for the community to plot mining locations which have been managed so far not to move on to the company. The Governor has long fought for the People's mining area, however this is difficult to fight for because according to information circulating in the community that the gold mining site has long been purchased by the company. Even though all vital natural resources may not be owned directly by any party but controlled by the state. Article 33 paragraph (3) of the 1945 Constitution confirms that the land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Bearing in mind that minerals and coal as natural resources contained in the earth are non-renewable natural resources, their management needs to be carried out as optimally as possible, efficiently, transparently, sustainably and environmentally sound, and just in order to obtain the greatest possible benefits for the people's prosperity in a sustainable manner. Then in article 4 paragraph (1) of Law number 3 of 2020 concerning Amendments to Law number 4 of 2009 concerning mineral and coal mining Minerals and Coal states that non-renewable natural resources are national assets controlled by the State for the amount of -great people's welfare. Then in the elucidation of Article 8 of the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 7 of 2020 concerning Procedures for Granting Areas, Licensing, and Reporting in Mineral and Coal Mining Business Activities it states:

- 1) Based on the results of the technical and/or economic evaluation as referred to in Article 7, the Director General prepares a proposed plan for establishing WIUP and/or WIUPK which contains:
  1. location;
  2. area and boundaries;
  3. information data compensation price; and
  4. land use information.
- 2) The Director General coordinates with the governor and relevant agencies the proposed plan to determine WIUP and/or WIUPK as referred to in paragraph (1) in the context of requesting WIUP and/or WIUPK recommendations.
- 3) The recommendation by the governor as referred to in paragraph (2) contains information regarding land use and community cultural characteristics based on local wisdom, including the carrying capacity of the environment in the Metal Mineral WIUP, Coal WIUP, and/or WIUPK.
- 4) The governor in providing the recommendations referred to in paragraph (3) must obtain a recommendation from the regent/mayor.
- 5) The regent/mayor provides the recommendation as referred to in paragraph (4) within 5 (five) working days of receiving the recommendation request.

- 6) If the bupati/mayor within a maximum period of 5 (five) working days does not provide the recommendation as referred to in paragraph (5), it is considered that he has approved the WIUP and/or WIUPK appointment.
- 7) Recommendations by relevant agencies as referred to in paragraph (2) contain information regarding land use in the WIUP and/or WIUPK to be determined.
- 8) The Director General based on the results of the coordination referred to in paragraph (2) proposes the determination of WIUP and/or WIUPK to the Minister by attaching:
  - a. WIUP and/or WIUPK coordinates;
  - b. map of WIUP and/or WIUPK;
  - c. information data compensation price; and
  - d. land use information.
- 9) Coordinates and maps of WIUP and/or WIUPK as referred to in paragraph (6) are prepared according to the format determined by the Director General on behalf of the Minister.

Related to the existence of several gold mining companies that have asked the government to carry out exploration and exploitation. So the gold mining area proposed and approved by the government must not cross the boundaries of the nature reserve area and the people's mining location. Because if this is done it will certainly have an impact on the destruction of protected forests, nature reserves and all the ecosystems in them including the habitat of the maleo bird which is also threatened with extinction. In addition, of course there will be land conflicts between the company and the local community. Therefore the determination of mining areas must refer to the opinions of relevant government agencies, affected communities, and take into account ecological, economic, human rights and socio-cultural aspects, as well as being environmentally sound and paying attention to regional aspirations. The management and utilization of natural resources to achieve the welfare of the state in general and the welfare of the people in particular must be carried out on an ongoing basis. Management should not be carried out on a massive scale without considering all the adverse effects that occur as a result of massive exploitation of gold mining land in the GunungPani area and its surroundings. There are several things that must be paid attention to by gold mining companies or communities in order to create a balance in the natural surroundings when mining gold, namely:

1. Gold mining locations should not be located at many points in the mining area on a massive basis because it will do so much damage to the culture of the soil and rocks around the mining. This is certainly not in line with the explanation of Article 15 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, namely maintaining land, including increasing its fertility and preventing damage to it, is the obligation of every person, legal entity or agency that has a legal relationship with land. that, taking into account the weak economically.
2. Wherever possible, former gold mining sites should be leveled or the deepest holes should be filled in.
3. The gold miners must be responsible for reforestation around the former mining land by planting various kinds of trees that can re-establish soil culture damaged by mining.

Community mining activities must receive serious handling in a systematic and coordinated manner in an activity program implemented with the aim of providing training and guidance to community mining activists through a mining model on a small scale. People's mining also requires the concept of management and arrangement of mining areas which are expected to anticipate industrial development. The people's mining is expected that the potential of minerals can be carried out effectively if it is managed by means of people's mining. People's mining is later expected to be able to improve the community's economy and can automatically increase regional income while still paying attention to the preservation of the natural environment. The implementation of mining activities is carried out in a limited area, namely in a community mining area (WPR) which is determined by officials to be allowed to carry out mining activities. At present the government has not determined the people's mining area but is only limited to planning, while companies that already have permit legality already have gold mining locations to be exploited.

#### **IV. Research Findings**

Associated with the existence of community mining carried out by the community. So the existence of artisanal miners will always exist in BumiPanua, namely Pohuwato Regency. Nearly half of the mountains in Pohuwato Regency have gold deposits. One source of livelihood for the community in Pohuwato Regency is through gold mining. Gold miners cooperate with each other in searching for precious metals, so that so far the miners have lived in harmony with each other. Mining, including non-renewable natural resources, has become a concern for the government. Because besides mining being part of the state's source of income, mining is also a concern of the government in order to preserve the environment. Since the enactment of Law of the Republic of Indonesia number 4 of 2009 concerning mineral and coal mining, the monitoring and regulatory system for

all mineral and coal mining including gold mining has become more intensive in the supervision and regulation of all mining activities. The legality of mining laws has become a concern of the government, both the central government and the provincial and district regional governments.

## **CLOSING**

### **Conclusion**

From a series of studies conducted by researchers, it was concluded that:

1. The essence of gold mining permits in Pohuwato Regency is based on the principle of local wisdom. Regulations regarding gold mining permits must be based on local wisdom values, in order to provide legal protection for artisanal miners.
2. The form of regulation for gold mining permits in Pohuwato Regency is based on Law number 3 of 2020 concerning amendments to Law number 4 of 2009 concerning mineral and coal mining, namely the determination of people's mining areas (WPR) and regulations regarding the issuance of mining business permits which are under the authority of the government. center. This rule has become a polemic in society so that it is necessary to have an effective, efficient and just regulation. All arrangements regarding people's mining permits should be the authority of the regional government with reference to the principles of decentralization and regional autonomy.
3. The factors that influence gold mining permits in Pohuwato Regency are:
  - a. Regulatory Factors: a regulation that is fair and uncomplicated is needed so that community mining in Pohuwato can have legal permits from the Government.
  - b. The People's Mining Area Factor: the determination of the people's mining area (WPR) must still involve all components of the state because previously some gold mining areas have been controlled and managed by the community for generations and some even have certificates of ownership.
  - c. Environmental factors namely environmental sustainability must be a concern for all gold miners so that with the issuance of a gold mining permit there must also be a commitment from the miners to preserve the gold mining area.

### **Suggestion**

1. To achieve certainty, fairness and benefit in the management of gold mining in Pohuwato Regency, the authority regarding gold mining licensing issues is no longer entirely from the Central Government. The Principles of Decentralization, the Principles of Regional Autonomy are the basis for establishing policies related to permits for artisanal miners in the Regional Government.
2. Regarding the determination of People's Mining Areas from the Central Government, the researcher suggests that to minimize the occurrence of conflicts between companies and artisanal miners, coordination and consolidation between all components of state institutions starting from the central government, DPR RI, Provincial Governments, Regency Governments, Provincial DPRD, the Regency DPRD is urgently needed because the occurrence of disputes and disputes in the future is caused by injustice in making regulations on mining issues.

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