



**For The Sake of Survival:  
Illegal Gold Mining Exploitation Crimes from Environmental Fiqh  
in South Aceh Regency**

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**Abstract:** Criminal acts of illegal mining in East Labuhahaji District, South Aceh, continue to be carried out by the community without paying attention to the negative impacts on the surrounding environment, which can result in losses for the benefit of the community. This article aims to analyze the factors and impacts of illegal gold mining on the environment of the people of Labuhan Haji Timur District, South Aceh Regency, in terms of environmental fiqh. Data was obtained through interviews and analyzed critically. The research results show that the factors causing people to carry out illegal gold mining in East Labuhanhaji District are low economic life and community education, minimal socialization regarding mining prohibitions, and minimal public awareness of religious values regarding environmental damage. Illegal gold mining has a negative impact in the form of deforestation, making it prone to flooding and damage to plantation land. Judging from environmental fiqh, the criminal act of illegal gold mining in Labuhan Haji Timur District, South Aceh Regency, is an act of jihad that is contrary to Islamic law because it hurts environmental damage and the benefit of the community at large. Therefore, in Islamic law, illegal gold mining can be subject to sanctions in the form of *ta'zir*.

**Keywords:** Illegal Mining, Crime, Environmental Fiqh

**Abstrak:** Tindak pidana penambangan ilegal di Kecamatan Labuhahaji Timur Aceh Selatan terus dilakukan oleh masyarakat, tanpa memperhatikan dampak negatif terhadap lingkungan sekitarnya yang dapat mengakibatkan kerugian bagi kemaslahatan masyarakat banyak. Artikel ini bertujuan menganalisis faktor dan dampak penambangan emas ilegal terhadap lingkungan masyarakat Kecamatan Labuhan Haji Timur Kabupaten Aceh Selatan ditinjau dari fiqh lingkungan. Data diperoleh melalui wawancara dan dianalisis secara kritis. Hasil penelitian menunjukkan bahwa faktor penyebab masyarakat melakukan penambangan emas ilegal di Kecamatan Labuhanhaji Timur ialah kehidupan ekonomi dan pendidikan masyarakat yang rendah, minimnya sosialisasi larangan penambangan dan minimnya kesadaran masyarakat terhadap nilai agama tentang kerusakan lingkungan. Penambangan emas ilegal memberikan dampak negatif berupa terjadinya pengundulan hutan, mengakibatkan rawan terjadinya banjir serta kerusakan lahan perkebunan. Ditinjau dari fiqh lingkungan, tindak pidana penambangan emas ilegal di Kecamatan Labuhan Haji Timur Kabupaten Aceh Selatan ialah suatu perbuatan jarimah yang bertentangan dengan hukum Islam, karena berdampak buruk terhadap kerusakan lingkungan dan kemaslahatan masyarakat banyak. Oleh karena itu dalam hukum Islam penambangan emas ilegal dapat dikenakan sanksi berupa ta'zir.

**Kata Kunci:** Penambangan Ilegal, Kejahatan, Fiqh Lingkungan

## **A. Introduction**

Mining is some or all stages of activities in the context of research, processing, and exploitation of minerals, including general investigations, exploration, construction feasibility studies, mining, processing and refining, transportation and sales, and post-mining activities. The mining industry is also prone to environmental damage; some mining is even carried out without permits (illegal).

In Indonesia, the involvement of local communities in gold mining activities can be traced back a long time. The community's mining business is ongoing and can now be found in various places with various mining products.<sup>1</sup> One of the illegal mines that has a big impact on people's lives and the environment is new gold mining located in the Alur Peulumat mountains, East Labuhan Haji District, South Aceh Regency. As an area that gave birth to Sufism scholars with Islamic boarding schools that produced thousands of students spread throughout Aceh and even Southeast Asia, of course, this is something interesting to research, considering that illegal gold mining is in the community's living environment, which is known to be religious.

This illegal mining was discovered precisely in 2019. The initial discovery of this gold mine was carried out by the local community, whose area was previously part of a

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<sup>1</sup>Husni Thamrin, Sukanto Satoto, and Usman, "Arrangement for Settlement of Unlicensed Gold Mining Crimes Through A Restorative Justice," 2023; Johanna Espin and Stephen Perz, "Environmental Crimes in Extractive Activities: Explanations for Low Enforcement Effectiveness in the Case of Illegal Gold Mining in Madre de Dios, Peru," *Extractive Industries and Society* 8, no. 1 (2021); Iqbal Tawaka dan Edi Setiadi, "Analisis Yuridis Pertanggungjawaban Pidana Terhadap Pelaku Pertambangan Ilegal Di Kabupaten Bogor Dihilungkan Dengan Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara," *Bandung Conference Series: Law Studies*, 2022.

mining location managed by the company. The revocation of the company's permit has forced some people in several villages in East Labuhan Haji District to carry out traditional gold-digging efforts using traditional tools accompanied by drilling machines, insets, and other facilities.

Based on initial observations made by the author from the end of 2019 until now, almost all people, from youth and teenagers to adults, are involved in mining activities without permits. However, the problem is that not only ordinary people but also village officials, residential officials, and even sub-district officials participate in these illegal mining activities.<sup>2</sup>

Apart from being contrary to Sharia values, illegal mining should not be carried out by the community as outlined by law. This is as stated in Article 158 of Law Number 4 of 2009 concerning Mineral and Coal Mining which states that "Every person who carries out a mining business without an IUP, IPR or IUPK as intended in Article 37, Article 40 paragraph (3), Article 48, Article 67 paragraph (1), Article 74 paragraph (1) or paragraph (5) is punishable by a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 10,000,000,000.00 (ten billion rupiah).<sup>3</sup>

One of the reasons illegal gold mining is prohibited is environmental damage and pollution, such as damage to water used by the community. This environmental damage occurs because gold mining activities are carried out traditionally by the community. Even though it is carried out traditionally, mining activities have had a wide impact, not only in the form of surface and groundwater pollution but also on the socio-economic life of the community.<sup>4</sup>

This also happens to gold mining in East Labuhan Haji District; many environmental harms are experienced, such as water pollution caused by a mixture of mercury and natural damage in the form of landslides due to illegal gold-digging, and can even result in death for miners due to being buried. dugouts.

Even though there are no specific arguments regarding illegal gold mining, this does not mean that this does not have legal effects. Islam has regulated human relationships with their creators and relationships between humans and the surrounding environment. The Qur'an also shows the necessity to foster an appreciative relationship with nature through an attitude of respect for its more spiritual meaning.<sup>5</sup>

This problem is often related to environmental fiqh. *Fiqh al-bi'ah*, or environmental jurisprudence, is a set of rules regarding human ecological behavior established by competent scholars based on detailed arguments to achieve the benefit of life with an ecological nuance. Environmental fiqh is part of contemporary fiqh, intended to address environmental issues from a more practical perspective by

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<sup>2</sup>Observations at the Gold Mining Location in Labuhan Haji District, March 5 2023.

<sup>3</sup>Article 158 Law Number 4 of 2009 concerning Mineral and Coal Mining

<sup>4</sup>Daan P. van Uhm and Rick C.C. Nijman, "The Convergence of Environmental Crime with Other Serious Crimes: Subtypes within the Environmental Crime Continuum," *European Journal of Criminology* 19, no. 4 (2022);

<sup>5</sup>Nurcholish Madjid, *Pintu-Pintu Menuju Tuhan* (Jakarta: Paramadina, 1995), 148-49.

providing standards (laws and regulations) for interacting with the environment. Restoration or rehabilitation of a damaged environment is another part of the substance of *fiqh al-bi'ah*, namely, the conservation of a damaged environment.

This research is very important to carry out because it can be seen from the many negative effects of illegal mining in East Labuhan Haji District, such as environmental damage, natural disasters, and even loss of life. Therefore, it is necessary to study in more depth how illegal gold mining in Hajj Harbor is from an environmental fiqh perspective and an Islamic criminal aspect.

## B. The Concept of Environmental Fiqh

Environmental fiqh (*fiqh al-bi'ah*) comes from Arabic which consists of two words (compound sentences; *mudhaf* and *mudhaf ilaih*), namely the words fiqh and al-bi'ah. Linguistically, "fiqh" comes from the words *faqih*-*yafqahu*-*fiqhan* which means al-'*ilmu bi al-syai'i* (knowledge of something), *al-fahmu* (understanding). Meanwhile, in terms of terms, fiqh is the science of practical sharia laws taken from *tafshili* (detailed) postulates.

The word "*al-bi'ah*", can be interpreted as the living environment, namely the unity of space with all objects, forces, conditions and living creatures, including humans and their behavior, which influence nature itself, the continuity of life and the welfare of humans and creatures. other life. From here, we can understand that *fiqh al-bi'ah* or environmental fiqh, is a set of rules regarding human ecological behavior<sup>6</sup> established by competent scholars based on detailed arguments to achieve the benefit of life with an ecological nuance.<sup>7</sup>

*Fiqh al-bi'ah* (environmental) is a constructive framework for Muslims in understanding the natural environment, the earth where they live and subsist. The law of environmental conservation is *fardhu kifayah*,<sup>8</sup> so that building people's understanding of the importance of maintaining water and land conservation by protecting forests from exploitation, from deforestation and illegal logging is a religious obligation. Protecting the entire forest ecosystem within it is part of what religion recommends. Make all these efforts a moral obligation towards fellow creatures of God that are worth worshipping.<sup>9</sup>

Thus, ignoring the environment is the same as committing a disgraceful act that is strictly prohibited by religion. The perpetrator violated the *sunnatullah*, denied the existence of creation, and humanity, and at the same time went against the harmony of

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<sup>6</sup>E. Kula, "Islam and Environmental Conservation," *Environmental Conservation* 28, no. 1 (2001); Labeeb Bsoul et al., "Islam's Perspective on Environmental Sustainability: A Conceptual Analysis," *Social Sciences* 11, no. 6 (2022).

<sup>7</sup>Muhaemin Latif et al., "Environmental Theology and Its Relevance to Islamic Law: Perception of Makassar Muslim Scholars, Indonesia," *Samarah* 7, no. 3 (2023).

<sup>8</sup>Abdul Basir Mohamad, "Environmental Preservation and Water Pollution from the Islamic Perspective," *Samarah* 7, no. 2 (2023).

<sup>9</sup>Sukarni, *Fikih Lingkungan Hidup: Perspektif Ulama Kalimantan Selatan* (Jakarta: Kemenag RI, 2011), 212.

God's simple creation. This paradigm of constructive thinking using religious teachings as its basis is what is meant by the 'environmental jurisprudence paradigm,' of course, in a broad and open sense. Finally, religion is expected to play a significant role in efforts to save the environment. Once again, of course, through interpretation that is smarter, wiser, and open to all interpretations of new and actual problems.<sup>10</sup>

Fiqh is one of the Islamic sciences (*al-'ulum al-syari'ah*) which is very dominant in the lives of Muslims. It has offered a framework for an approach to the environment. However, environmental discourse (*al-bi'ah al-hayatiyyah*) is not discussed and studied specifically in a separate chapter but is spread across several sections within the subject matter of fiqh science.<sup>11</sup>

There are four pillars of discussion of fiqh itself which relate to the arrangement of life in this world, namely:

1. Rub'u al-ibadat, the relationship between creatures and the Khaliq.
2. Rub'u al-Mualamat, relationships, managing relationships with others.
3. Rub'u al-Munakahat, human relationships with the family environment.
4. Rub'u al-Jinayat regulates orderly human interactions that guarantee safety and tranquility in life.

The Qur'an provides spiritual information for humans to be friendly towards the earth because the earth is a place for the survival of humans and other living creatures. This information signals that humans must continually protect and preserve the world and the environment so that it does not become damaged, polluted, or even extinct because this is the mandate given to humans by Allah SWT. In other words, Islam has provided a system or order of life that is democratic in all things, including democracy towards the earth (nature). Therefore, efforts to develop ecological jurisprudence must continue to prevent the acceleration of the environmental crisis.

As a scientific discipline that regulates human relationships with God, human relationships with themselves, human relationships with other humans, and human relationships with the environment around them, the formulation of environmental jurisprudence is important to provide enlightenment and a new paradigm for managing the environment through religious teachings that are by sharia laws. The formulation and development of environmental fiqh (*fiqh al-bi'ah*) is an urgent choice amid ecological crises caused by human greed and careless use of technology.<sup>12</sup>

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<sup>10</sup>Abdul Majid bin Aziz Al-Zindani, *Mukjizat Al-Qur'an Dan As-Sunnah Tentang IPTEK*, 1st ed. (Jakarta: Gema Insani Press, 1997), 194.

<sup>11</sup>J A YUSDANI, "The Environmental Crisis In The Perspective Of Contemporary Islamic Studies In Indonesia," *Russian Law Journal*, 2023; MAHRUS ALI ET AL., "Punishment without Culpability in Environmental Offences," *Cogent Social Sciences* 8, no. 1 (2022); HANAFI AMRANI, "Criminal Policy on Environmental Crimes: Indonesia's Perspective," *Academic Journal of Interdisciplinary Studies* 11, no. 3 (2022).

<sup>12</sup>Mohamad Saifudin Mohamad Saleh et al., "Islamic Environmental Reporting and News Sources in Malaysian Newspapers," *International Journal of Islamic Thought* 22 (2022); ARTHUR SANIOTIS, "Muslims and Ecology: Fostering Islamic Environmental Ethics," *Contemporary Islam* 6, no. 2 (2012); IMRAN HAYAT

To compile environmental fiqh (*fiqh al-bi'ah*), several things need to be considered.

#### 1. Reconstructing the meaning of caliph

In the Qur'an, it is emphasized that being a caliph on this earth is not to commit destruction and bloodshed. But to build a life that is peaceful, prosperous, and full of justice. Thus, humans who cause damage on this earth automatically tarnish human attributes as caliphs (QS. al-Baqarah: 30). Even though nature was created for the benefit of humans, it is not permitted to be used arbitrarily. Thus, destruction of nature is a form of denial of the verses (glory) of Allah and will be kept away from His mercy "Meaning: And do not cause damage on the face of the earth, after (Allah) has repaired it and pray to Him with fear (it will not be accepted) and hope (it will be granted). Indeed, Allah's mercy is very close to those who do good." (QS. al-A'raf: 56)

#### 2. Environmental destroyers are ecological infidels (*kufr al-bi'ah*)

Destroying the environment is the same as denying (disbelief) the greatness of Allah (QS. Shaad: 27). "Meaning: And We did not create the heavens and the earth and what is between them without wisdom, that is what the disbelievers think, so woe to the disbelievers because they will go to hell" (Q.S Shaad: 27).

This verse explains that understanding nature in vain is the view of disbelievers. Moreover, he even destroyed nature. The word infidel is not only addressed to people who do not believe in Allah but also denies all the blessings He has given to humans, including the existence of the universe. "Meaning: And (remember too), when your Lord announces, "Indeed, if you are grateful, We will certainly increase (favors) to you, and if you deny (My favors), then Verily My punishment is very painful" (Q.S Ibrahim: 7).

Environmental fiqh seeks to make people aware that environmental problems cannot be separated from their responsibility, and it is a mandate they carry out to preserve and protect nature, which the most loving and merciful Creator gave as a place for humans to live their lives on this earth. things humans do so that the environment and nature are no longer damaged.

The stages of environmental conservation efforts by the community are:

#### 1. Strengthening intellectual and spiritual values

The success of an environmental conservation/preservation project is largely determined by the intellectual and spiritual dimensions that drive a human's actions and determine the quality and motivation of his or her consciousness. Environmental wisdom teachings that can strengthen intellectual and spiritual aspects include the concepts of monotheism, *khalifatullah fil-ardh*, *syukr*, *afterlife*, *ihsan*, *amanat* and *rahmatan lil 'alamin*. The operation and implementation of monotheism manifest the

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et al., "The Role Of Islamic Environmental Ethics In The Alleviation Of Climate Challenges And The Preservation Of Ecosystem," *Russian Law Journal* 11, no. 11s (2023).

mandate and attitude of *Ihsan*. In this way, their deeds will ultimately be held accountable in the afterlife.

Yusuf Qardhawi describes the concept of *ihsan* as a pillar of environmental conservation. It is defined in two terms: (1) protecting and maintaining it perfectly; (2) *Ihsan means paying attention, loving, caring, and respecting*. Qardhawi did not explain explicitly how the concept of *ihsan* operates.<sup>13</sup>

## 2. Strengthening the concept of *maslahah* in environmental fiqh

The concept of environmental fiqh formulated by Muslim intellectuals reflects the dynamics of fiqh related to changes in context and situation. There are two formulation methods used to build environmental fiqh, namely *mashlahah* and *maqasid asy-syari'ah*. The concept of *mashlahah* is very closely related to *maqasid al-syariah*, because in a simple sense, *mashlahah* is a means of caring for *maqasid al-syariah*.<sup>14</sup>

Concrete examples of this *mashlahah* are total maintenance or protection of the five primary needs (*ushul al-khamsah*), (1) protection of religion (*hifzh al-din*), (2) protection of the soul (*hifzh al-nafs*), (3) protection reason (*hifzh al-'aql*), (4) protection of descendants (*hifzh al-nasl*) and (5) protection of property (*hifzh al-mal*). These five things are the objectives of sharia (*maqasid ash-syariah*) which must be maintained.<sup>15</sup>

Environmental maintenance is an effort to create benefits and prevent harm. This is in line with the *maqasid al-syari'ah* (goals of religious sharia) formulated in *kulliyāt al-khams*, namely: *hifzh al-nafs* (protecting the soul), *hifzh al-'aql* (protecting the mind), *hifzh al-mal* (protecting wealth/property), *hifzh al-nasb* (protecting descendants), *hifzh al-din* (protecting religion). According to him, preserving the environment is required to protect the shari'ah's five objectives. Thus, all behavior that leads to environmental destruction is an act that threatens life, reason, property, lineage, and religion. In environmental preservation, Yusuf Qardhawi even emphasized the application of sanctions in the form of imprisonment (*al-ta'zir*) for perpetrators of environmental damage determined by the government (*waliyyul amr*).<sup>16</sup>

## 3. Scope of environmental fiqh studies

The object of study of the environment in *fiqh al-bi'ah* must cover all environmental problems, which are basically as follows:

- a. Introduction to the "anatomy" of the environment (the intricacies of physical parts and their relationships as discussed in ecology and related disciplines), such as

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<sup>13</sup>Yusuf Al-Qaradhawi, *Islam Agama Ramah Lingkungan* (Jakarta: Pustaka Al-Kautsar, 2001), 67–68.

<sup>14</sup>Jasser Auda, *Maqasid Shariah as Philosophy of Islamic Law: A Systems Approach*, ed. I (London: IIIT, 2007).

<sup>15</sup>Jasser Auda, *Maqasid Al-Shari'ah a Beginner's Guide* (London-Washington: The International Institute of Islamic Thought (IIIT), 2008); Muhammad bin Ali Al-Shashi Al-Qaffal, *Mahasin Al Syariah Fi Furu' Al Syafiiyah : Kitab Fi Maqashid Al Syari'ah* (Lebanon: Dar Al-Kutub Al Ilmiyah, 2007).

<sup>16</sup>Hamzah et al., "Sustainable Development of Mangrove Ecosystem Policy in South Sulawesi from the Perspectives of Siyāsah and Fiqh Al-Bi'ah," *Juris: Jurnal Ilmiah Syariah* 22, no. 2 (2023).

rivers, seas, forests, mountains, water, land, air, and the balance of ecosystems, including living creatures (organisms) in inside, like animals and plants. This part of the appreciation, partly theological as its foundation and paradigm, is a collaboration of scientific and religious knowledge. First (scientific) knowledge, such as about land (geography, geology, and geotechnical), air and weather (meteorology and geophysics), and water (oceanography or oceanology), becomes necessary because of religious texts (the Koran and hadith) does not talk about it, except in very limited discussions (such as scientific hints in *al-tafsir al-'ilmi*). Meanwhile, *fiqh al-bi'ah* is assumed to be built based on sufficient and precise knowledge about environmental aspects to determine its laws about human management. The second knowledge (religion) concerns natural forms and phenomena in the narrative of the texts of the Qur'an and hadith, but not in the scheme of *fiqh* (permissible or not), such as nature as a "sign" (father, sign) and as a medium of introduction to the acknowledgment of the existence of God.<sup>17</sup>

- b. Utilization and management (*tasharruf*) of natural resources (PSDA). What is referred to above as "natural resources" includes the definition of natural elements, such as land (including land resources and solid waste), water (rainwater, groundwater, rivers, waterways, and the sea), air (including layers of ozone and the release of greenhouse gases), and various energy sources (sun, wind, fossil fuels, water, handling nuclear problems, etc.), as well as all resources that can be utilized and affect human life and living organisms. Natural resources can be divided into two categories: the green group, which relates to forest or plant resources; the blue group, which relates to marine resources; and the brown group, which relates to mining and energy resources. In this section, *fiqh al-bi'ah* formulates how to conserve (*ri'ayah*) nature, namely keeping it in as original a condition as possible as it came from, including in handling its resources.<sup>18</sup>
- c. Restoration or rehabilitation of damaged environments. Another substantive part of *fiqh al-bi'ah* is the conservation of a damaged environment. The old Islamic jurisprudence has contributed to this regarding land in the concept of *ihya al-mamat* (literal: "bringing life to a dead land"). However, environmental problems are not only limited to that but are broader, such as handling water pollution (classical jurisprudence is only a "consumptive" treatment for worship, even though "everything that determines the perfection of carrying out obligations is also obligatory", such as only sorting water, which can be used for purification and which cannot), air pollution, the extinction of certain animals or plant species.

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<sup>17</sup>Wardani, "Menformulasikan Fiqh Al-Bi'ah (Prinsip-Prinsip Dasar Membangun Fiqh Ramah Lingkungan)," *Buletin Al-Islamiyah: Media Kajian Dan Dakwah Universitas Islam Indonesia*, January 2009, 13.

<sup>18</sup>Wardani, "Menformulasikan Fiqh Al-Bi'ah (Prinsip-Prinsip Dasar Membangun Fiqh Ramah Lingkungan)."



## C. Illegal Gold Mining in Islamic Criminal Law and Indonesian Criminal Law

### 1. Illegal Gold Mining in Islamic Criminal Law

Criminal acts in Islamic criminal law (*fiqh jinayah*) are known as *jarimah*. The word *jarimah* is a synonym of the word *jinayat*. In terms of terms, it is defined as an act prohibited by sharia', whether it is detrimental to life, property, or anything else. More specifically, *jarimah* is defined as crimes that violate Sharia law, and perpetrators are punished through the court process.

Islamic law divides the *jarimah* into three groups, including; *jarimah hudud*, *jarimah qisas-diyat* and *jarimah ta'zir*. The three groups of *jarimah* originate from several things, including the al-Quran, Hadith, and Ijtihad. First, *jarimah hudud* is a finger threatened with hadd punishment, namely a punishment that has a predetermined type and amount of punishment and is fixed. Second, *jarimah qishash-diyat* is a finger threatened with the punishment of qishash or diyat. Third, *jarimah ta'zir*. This *jarimah* includes actions whose type is determined, and the form of punishment is left to the judge's discretion. Therefore, this act is threatened with the punishment of *ta'zir*.<sup>19</sup>

The punishment in *ta'zir* is not determined by size or level, meaning determining the lowest and highest limits is left entirely to the judge (ruler). Thus, *syar'i* delegates to the judge to determine the forms and punishments for the perpetrators of *jarimah*. In Islamic law, the meaning of sanctions or punishment will be given to perpetrators of mining without a permit because of crimes and violations of Sharia law. The heaviest *ta'zir* sanction is the death penalty, while the lightest is a warning. The severity of the *ta'zir* sanctions is determined by their benefits. In this case, the actions must be considered, including the quality and quantity, the perpetrator, the person or community who is the victim, the place and time of the incident, and why and how the perpetrator committed the crime of illegal mining.

Illegal mining activities in Islamic criminal law can be considered environmental destruction. The Word of Allah in the Qur'an, Surah al-A'raf: 56, explains that destruction is a violation or a form of exceeding limits. Therefore, this verse continues the guidance of other verses by stating the prohibition against destruction.<sup>20</sup>

According to Yusuf al-Qardhawi, protecting the environment is the same as protecting the soul, mind, offspring, and property. The rationality is that if aspects of the soul, mind, heredity, and property are damaged, human existence in the environment becomes tarnished. The concept of environmental fiqh formulated by Muslim scholars reflects the dynamics of fiqh related to changes in context and situation. Two formulation methods are used in environmental fiqh, namely *mashlahah* and *maqashid al-sharia*. Therefore, this writing focuses more on the environment from the perspective of Islamic law, especially towards the Maqashid Al-Syariah method.<sup>21</sup>

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<sup>19</sup>Muhammad Syahrur, *Al-Kitab Wa Al-Qur'an: Qira'ah Mu'asharah* (Qahirah: Sina li al-Nasyr wa al-Ahali, 1992).

<sup>20</sup>van Uhm and Nijman, "The Convergence of Environmental Crime with Other Serious Crimes: Subtypes within the Environmental Crime Continuum."

<sup>21</sup>Al-Qaradhawi, *Islam Agama Ramah Lingkungan*.

The Indonesian Ulema Council (MUI) is one of the institutions that has quite intense attention to efforts to preserve the environment; MUI's important role includes the issuance of the MUI Fatwa, which specifically pays attention to environmental issues. Among the MUI FATWAs on this issue include: (1) MUI Fatwa Number 22 of 2011 concerning Environmentally Friendly Mining, (2) MUI Fatwa Number 04 of 2014 concerning Preserving Endangered Animals to Maintain Ecosystem Balance, (3) MUI Fatwa Number 41 of 2014 concerning Waste Management to Prevent Environmental Damage, and (4) MUI Fatwa Number 30 of 2016 concerning Laws on Forest and Land Burning and Their Control.

If we look carefully, several important points mentioned in the MUI Fatwa include:<sup>22</sup>

- a. Destructing forests and land that can cause damage, environmental pollution, loss to other people, health problems, and other negative impacts is haram.
- b. Facilitating, allowing, and/or taking advantage of the burning of forests and land, as referred to in number one, is haram.
- c. Committing land destruction, as referred to in number one, is a crime, and the perpetrator is subject to sanctions according to the level of forest and land damage caused. Control of forest and land fires as intended in the general provisions of the law is mandatory.

In principle, land use may be carried out with the following conditions:

- a. Obtain legal rights for utilization
- b. Obtain a utilization permit from the authorized party by applicable regulations.
- c. Intended for the benefit
- d. Does not cause damage or bad impacts, including environmental pollution.
- e. Utilization of forests and land that does not comply with the conditions in point five is unlawful.<sup>23</sup>

## *2. Illegal Gold Mining in Criminal Law in Indonesia*

Definition of Mining in Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining: "Mining is some or all stages of activities in the context of research, management, and exploitation of minerals or coal which includes general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, as well as post-mining activities."<sup>24</sup>

Mining businesses include General research, exploration, exploitation, processing and refining, transportation, and sales (article 14). Mining is carried out based on a mining authority (article 15 of the Mining Law), namely, the authority given to an entity

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<sup>22</sup>MUI Fatwa Number 30 of 2016 concerning the Law on Forest and Land Burning and Its Control

<sup>23</sup>Supian Ramli, "MUI Dan Fatwa Tentang Lingkungan Hidup," *PROSIDING Koferensi Internasional Fatwa*, 2018, 249.

<sup>24</sup>Law Number 4 of 2009 concerning Mineral and Coal Mining

or individual to conduct a mining business (article 2 letter I of the Mining Law). Mining authority is granted by a Decree of the Minister of Mining (and Energy) (article 15 paragraph (2) of the Mining Law).<sup>25</sup>

The mining business is an activity in the context of controlling minerals or coal, including the stages of general investigation, exploration, feasibility studies, construction, mining, processing and refining, post-mining transportation, and sales. Mining businesses are divided into two, namely, mineral mining and coal mining.

Illegal Mining is a criminal act, criminal act, or criminal incident in mineral and coal mining business activities. This dispute is related to criminal provisions in laws and regulations in the field of mineral and coal mining, both in law and in regional regulations, which allow criminal provisions to be regulated in both legal instruments.<sup>26</sup>

Studies on legal sources for mineral and coal mining can be divided into two types, namely: 1. Legal sources for mineral and coal mining, which originate from the laws in force in Indonesia, and Legal sources for mineral and coal mining, which originate from applicable laws in other countries. The main mineral and coal mining law source in Indonesia is Law Number 4 of 2009 concerning Mineral and Coal Mining.

Law Number 4 of 2009 concerning Mineral and Coal Mining is a provision or law that replaces Law Number 11 of 1967 concerning Basic Mining Provisions. Law Number 11 of 1967 concerning Basic Mining Provisions is no longer by current developments.

The philosophical basis is established by Law Number 4 of 2009 concerning Mineral and Coal Mining, namely:

- a. That the minerals and coal contained in the legal mining area of Indonesia are non-renewable natural wealth as a gift from God Almighty, which has an important role in fulfilling the livelihoods of many people because the State must control their management to provide real added value to the national economy in business achieve prosperity and welfare of the people fairly;
- b. That mineral and coal mining business activities, which are mining business activities other than geothermal, oil and groundwater natural gas, have an important role in providing real added value to national economic growth and sustainable regional development;
- c. That by considering national and international developments;
- d. Law Number 11 of 1967 concerning Basic Mining Provisions is no longer appropriate, so changes are needed to legislative regulations in the field of mineral and coal mining that can manage and exploit mineral and coal potential independently, reliably, transparently, competitively, efficiently, and environmentally friendly, to ensure sustainable national development.

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<sup>25</sup>Suparto Wijoyo, *Hukum Lingkungan: Kelembagaan Pengelolaan Lingkungan Di Daerah* (Surabaya: Airlangga University Press, 2005), 31.

<sup>26</sup>Ahmad Redi, *Hukum Penyelesaian Sengketa Pertambangan Mineral Dan Batubara* (Jakarta: Sinar Grafika, 2017), 54.

The provisions contained in Law Number 4 of 2009 concerning Mineral and Coal Mining are further explained in Government Regulations and Presidential Regulations. The government regulations in question include:<sup>27</sup>

- a. Republic of Indonesia Government Regulation Number 22 of 2010 concerning Mining Areas.
- b. Republic of Indonesia Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities.
- c. Government Regulation of the Republic of Indonesia Number 55 of 2010 concerning the Development and Supervision of Mineral and Coal Mining Business Management.
- d. Republic of Indonesia Government Regulation Number 75 of 2010 concerning Post-mining Reclamation.

In Law Number 4 of 2009, 7 (seven) articles regulate criminal matters, namely Articles 158 and 165 of Law Number 4 of 2009. Some of these provisions are as follows:

- a. Every person who carries out a mining business without an IUP, IPR, or IUPK shall be imprisoned for a maximum of 10 (ten) years and a fine of IDR 10,000,000,000.00 (ten billion rupiah).
- b. Every holder of an IUP, IPR, or IUPK who intentionally submits a report that is his or her obligation incorrectly or submits false information shall be punished by imprisonment for a maximum of 10 (ten) years and a fine of a maximum of IDR 130,000,000,000.00 (ten billion rupiah).
- c. Every person who explores without having an IUP or IUPK will be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 200,000,000.00 (two hundred million rupiah).
- d. Every person who has an Exploration IUP but carries out production operations will be punished with imprisonment for a maximum of 5 (five) years and a fine of a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).
- e. Every person or holder of a Production Operation IUP or Production Operation IUPK who accommodates, utilizes, carries out processing and refining, transports, or sells minerals and coal that are not from the holder of an IUP, IUPK or permit shall be punished by imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah).
- f. Any person who obstructs or disrupts the mining business activities of an IUP or IUPK holder who has fulfilled the requirements for completing land rights before carrying out production operations will be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of IDR. 100,000,000.00 (one hundred million rupiah).

Furthermore, Article 163 paragraph (1) of Law Number 4 of 2009 regulates that if a criminal act, as referred to in this chapter, is committed by a legal entity, apart from imprisonment and a fine against its administrators, the punishment that can be imposed

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<sup>27</sup>Law Number 4 of 2009 concerning Mineral and Coal Mining

on the legal entity is in the form of a criminal offense. an aggravated fine plus 1/3 (one-third) times the maximum fine imposed. Besides fines, legal entities can be subject to additional penalties in the form of revocation of business permits and/or revocation of legal entity status (Article 163 paragraph (2)).

Furthermore, Article 164 regulates that apart from the provisions as intended in Article 158, Article 159, Article 160, Article 161, and Article 162, perpetrators of criminal acts may be subject to additional penalties in the form of:

1. Confiscation of goods used in committing a criminal act;
2. Confiscation of profits obtained from criminal acts and/or
3. Obligation to pay costs arising from criminal acts.

Then, the criminal regulations regarding every person who issues an IUP, IPR, or IUPK contrary to this Law and abuses their authority is subject to a maximum criminal sanction of 2 (two) years in prison and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

This criminal law dispute is interpreted as a criminal act regulated in Law Number 4 of 2009. If this criminal act occurs, the resolution is carried out through an integrated criminal justice system. Starting from the police, prosecutor's office, and courts, including correctional institutions, if the case has permanent legal force.

#### **D. Community Reasons for Illegal Gold Mining in East Labuhanhaji District**

Gold mining in East Labuhanhaji District is classified as new mining, which has started to be carried out by local people or immigrants from surrounding districts such as Meukek District, Tengan Labuhanhaji, and other areas. Gold mining activities in the East Labuhanhaji sub-district have only been actively carried out by the community since 2019 until now. Previously, gold was used in Mount Peulumat, East Labuhanhaji District, by a foreign company, PT. BAM, because the community did not agree with it, a demonstration was held against the mine, which caused the company to stop.<sup>28</sup>

The information above shows that before the community conducted gold mining activities in East Labuhanhaji District, the company PT had already exploited it. BAM, but due to opposition to the mining, PT. BAM stopped its business at the mining site. Residents refused to take gold in East Labuhanhaji District by demonstrating at the East Labuhanhaji sub-district office.

Ironically, after PT. BAM stopped its business; the local community carried out further mining activities, starting with the discovery of gold content in the rocks of Mount Peulumat by a resident familiarly called "Hamba La'eh." After this resident discovered it, other residents began carrying out activities around discovering the first gold deposits, which eventually spread to almost the entire Alue Peulumat mountain area.<sup>29</sup>

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<sup>28</sup> Interview with Usman, Youth Leader in East Labuhanhaji District, October 24, 2023

<sup>29</sup> Interview with Usman, Youth Leader in East Labuhanhaji District, October 24, 2023

The gold mining location in East Labuhanhaji District is not far from residential areas, about 2 km. Carrying out gold mining activities almost involves various elements of society; some village officials even participate in mining activities, either directly going to the mining location or providing work facilities for the miners. Illegal gold mining activities carried out by the community in East Labuhanhaji District, South Aceh Regency, of course, cannot be separated from various factors, including the following:

a. Economic

The main factor that influences people to carry out illegal mining in East Labuhanhaji District, South Aceh Regency is that the economic life of the community is increasingly deteriorating due to the nutmeg plantation business which almost no longer exists, due to pest attacks. This was acknowledged by the miners who previously owned nutmeg plantations to support their families, as said by Muhammad, one of the gold miners. Kamaruddin, one of the miners, also expressed the same thing, that since the discovery of a gold mining location on Mount Peulumat, namely in 2011 - 2021, he has been actively carrying out manual mining due to the decline in family income, especially after East Labuhanhaji District no longer has nutmeg plantations due to pest attacks.<sup>30</sup>

b. Educational

Apart from economic factors, the low level of education among miners is also why people carry out gold mining. Many of them do not know that illegal mining is a violation of the law. According to Jamal, one of the village heads, most miners are between 30 and 60 years old and have an elementary school (SD) or junior high school (SMP) education, so they do not know the laws and regulations governing illegal mining. This statement was also conveyed by a religious figure in East Labuhan Haji District that the mining community had minimal religious knowledge. This has resulted in some of them being negligent in their work in mining, and some of them have even abandoned their obligations in the field of religion, especially prayer.<sup>31</sup> Based on the two expressions above, it is clear that the low education of the children of gold miners in East Labuhanhaji District, South Aceh Regency, is also why people carry out illegal gold mining.

c. Minimal government outreach to miners

Another factor that causes gold mining activities to continue in East Labuhanhaji District, South Aceh Regency, is the government's lack of effort in conducting outreach regarding the prohibition of illegal mining. This was admitted by one of the village heads himself. According to him, since the community opened illegal gold mining in East Labuhanhaji District, no party from the government has conducted outreach or put up

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<sup>30</sup> Interview with Kamaruddin, Mining Community in East Labuhanhaji District, October 22, 2023

<sup>31</sup> Interview with M. Saleh, Mining Community in East Labuhanhaji District, October 23 2021

pamphlets warning of criminal threats to miners. That's why people freely carry out gold-digging activities on Mount Peulumat Labuhanhaji Timur without fear of the law.<sup>32</sup>

The gold miners' confession also supports the information from the village officials that while carrying out gold mining on Mount Peuluman, Kemukima Peuluman, East Labuhanhaji District, they have never received a warning from the South Aceh Regency Energy and Mineral Resources Service. That's why, until now, mining is still carried out as a source of livelihood for families.<sup>33</sup>

Based on the two statements above, it can be concluded that an important factor that causes the community to continue carrying out gold mining activities in East Labuhanhaji District is that there is still minimal or even no socialization at all by the government or related agencies which have responsibilities and duties in preventing gold mining. illegal in East Labuhaji District.

In contrast to the information obtained from the public, from the results of interviews conducted by researchers with the South Aceh Regency Energy and Mineral Resources Service, up to now, the government has made various efforts to deal with illegal mining, often involving the police and even putting up pamphlets. around mining, but the community still does it. For example, in the East Labuhahaji area, the community carries out gold mining, which is relatively new, so the government has not implemented a policy.<sup>34</sup>

The statement from the South Aceh Regency Energy and Mineral Resources Service shows that the government has made efforts, but specifically in East Labuhanhaji District, no firm action has been taken because the mining has only just been discovered.

#### d. lack of public awareness of religious values regarding the environment

Another factor that causes gold mining activities to continue in East Labuhanhaji District is that public awareness of the values of the Islamic religion, which prohibits destroying the environment, is still minimal. This is an admission from several miners that they know that destroying the environment, which results in harm to other people, is prohibited in Islam, but are forced to do it because of the poverty of economic life, especially livelihoods which are almost non-existent around them. According to Marwan, one of the other miners, they often hear religious lectures or government prohibitions from carrying out illegal mining. Still, they are tempted to see the huge profits.<sup>35</sup>

### **E. The Impact of Illegal Gold Mining on the Community Environment**

Gold mining carried out by the people of East Labuhanhaji District, Aceh, is carried out continuously by the local community in a traditional way, namely by utilizing

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<sup>32</sup> Interview with Karni, Village Head in East Labuhanhaji District, October 20 2021

<sup>33</sup> Interview with Marwan, Mining Community in East Labuhanhaji District, October 22 2021

<sup>34</sup> Interview with Employees of the South Aceh Regency Energy and Mineral Resources Service, October 28 2021

<sup>35</sup> Interview with Marwan, Mining Community in East Labuhanhaji District, October 22 2021

technological facilities for excavation equipment such as drilling machines and other excavation tools. The mining carried out by the local community is located in a mountainous area not far from residential areas. Mining activities in East Labuhanhaji District, South Aceh Regency, have illegal status, meaning there is no permit from the government at either the district or provincial level. The management of mining products cannot be separated from the presence of mercury as a tool to separate gold ore from chunks of rock taken by people in mountainous areas. This is as stated by Zainal, one of the miners, that he has been carrying out mining activities in the East Labuhanhaji District since 2016. According to him, the management of gold mines in his area is different from several other areas, which take mining products using heavy equipment such as Beko and so on. Here, the mining products are taken by digging gold pits in mountainous areas, after which the raw stone is separated for its gold content using mercury.<sup>36</sup>

The information above shows that gold mining activities carried out by residents of East Labuhanhaji District cannot be separated from the circulation of mercury; if this is not fulfilled, then gold mining activities cannot be carried out. Mercury is a part that miners must have to obtain and know the gold content of the rock they dig. Miners and owners of gold mills/rolls use mercury to obtain gold content. This mercury is usually obtained from agents or tokes who have spindles by paying Rp. 1,500,000 to Rp. 2,000,000, which was purchased secretly.<sup>37</sup>

Thus, the existence and distribution of mercury users among gold miners in East Labuhanhaji District is very easy. On the other hand, people are not aware of the impact of using mercury on the community's environment. This can be seen from Kaidir's statement. According to him, the use of mercury among the people of East Labuhanhaji District in managing mining products is no longer considered damage to the community's environment. Even gold mining communities use their private land to dispose of gold waste mixed with mercury, and they don't know where else to throw the waste.<sup>38</sup>

Environmental pollution from the use of mercury from gold mining businesses by the people of East Labuhanhaji District is also seen in the quality and condition of the groundwater around residents' homes so that people cannot use the groundwater for consumption, both for bathing, cooking, etc. Therefore, the local government has built clean water channels that are distributed to all residents.

Apart from having an environmental impact, which can cause landslides and on the other hand, the community's economy is getting better, gold mining activities carried out by the community have resulted in religious activities by some miners no longer being properly maintained, as stated by one of the religious leaders in Labuhanhaji District Timur's name was Dahniar. According to Dahniar, during mining

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<sup>36</sup> Interview with Zainal, Mining Community in East Labuhanhaji District, October 20 2021

<sup>37</sup> Interview with Yudi, Mining Community in East Labuhanhaji District, October 21 2021.

<sup>38</sup> Interview with Kaidir, Mining Community in East Labuhanhaji District, October 20 2021.



activities, there was a visible decline in religious values among the perpetrators, such as miners often wearing shorts that showed their nakedness. Likewise, miners often miss prayers when carrying out community worship because they work in the excavation pit for up to 24 hours. Likewise, with fasting during Ramadan, some do not fast when digging for gold.<sup>39</sup> From the information above, it is clear that the existence of gold mining among the people of East Labuhanhaji hurts the environment and the religious life of mining actors.

#### **F. Environmental Fiqh Analysis of Illegal Gold Mining in East Labuhanhaji District**

The science of jurisprudence is the science that regulates human relationships with God, with themselves, with their family and community, and with the natural surroundings, by the five well-known laws of Sharia. Therefore, fiqh experts say that Islamic law applies to all *mukallaf*, and no single word escapes from its discussion environment. The relationship between fiqh and the environment is not only limited to laws alone but is also closely related to its capacity as a basis for universal law formation.

The environment is a gift from Allah SWT and is an inseparable part of human life; environmental conditions can influence the living conditions of humankind, and the quality of the environment also greatly influences the quality of humanity. Therefore, protecting and preserving the environment is integrated with human responsibility as God's creatures tasked with prospering the earth.

According to the Qur'an and Sunnah teachings, the relationship between humans and their natural surroundings is framed by *aqidah*, the concept of human beings who are equally obedient and submissive to *al-Khaliq*. In this concept of creation, humans obtain a conception from the Supreme Creator to treat the universe with two kinds of goals. First, *al-intifa'* (management) is used both in the sense of direct consumption and in the sense of producing. Second: *al-i'tibar* (taking lessons) from phenomena that occur from the relationship between humans and the natural surroundings, as well as the relationship between nature itself (ecosystem), both with constructive (*ishlah*) and destructive (*isfad*) consequences. *Intifa'* regarding the available natural resources, many verses of the Koran are conveyed, such as surah al-Nahl: 10-11, surah Qaf: 9-11, surah 'Abasa: 24-32.

Many hadiths recommend efforts to preserve the environment and view efforts to preserve the environment as worship that will receive rewards in the afterlife. As God's creation contains good purposes and intentions, the existence of the environment must be seen as a part of God's trust, which must be maintained and utilized for good purposes in the best way possible. So, on this basis, Islam believes that the relationship between human life and environmental conditions contains legal implications and has legal consequences.

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<sup>39</sup> Interview with Dahniar, Religious Figure in East Labuhanhaji District, October 26 2021

Humans are required to maintain and preserve the environment, and conversely, it is forbidden to damage, neglect, and utilize the environment for purposes that are not by Allah's law. The environment, according to the Islamic view, is not only a problem that has a *muamalah* dimension but is also a problem that has a theological dimension because of its nature and connection with the tasks of creatures on earth.

Likewise, legal provisions governing environmental issues. Islam is of the view that environmental pollution can be categorized as *mafasid* (damage), which, according to the principles of Islamic teachings, must be avoided and remedied. Therefore, all efforts to build human welfare must be carried out by considering environmental factors. Thus, acts of environmental destruction and the perpetrators of environmental destruction must be categorized as violating Allah's sharia and contrary to the law.

Meaning: "Should We consider those who believe and do righteous deeds to be the same as those who do mischief on the face of the earth? Should we (also) consider those pious to be the same as those who commit sins?" (QS. Shad: 28).

According to the Ulema Council, the problem of environmental pollution and destruction has not yet been determined by previous ulama because this problem is a new problem that has arisen in the modern century. In dealing with this problem, the Ulema Council refers to the verses of the Koran, namely the word of Allah in Surah Al-Qashash: 77. Meaning: "And seek what Allah has bestowed upon you (happiness) in the land of the afterlife and do not forget your share of worldly (pleasures) and do good (to others) as Allah has done good to you, and do not cause damage to (your face) earth. Indeed, Allah does not like those who do damage. Meaning: "And do not cause harm on the face of the world, after it (was created) well and pray to Him with fear (that it will not be accepted) and hope (that it will be granted). Indeed, Allah's mercy is very close to those who do good (Al-A'raf: 56). Meaning: "Damage has appeared on land and at sea caused by the actions of human hands so that Allah will make them feel part of (the consequences of) their actions so that they will return (to the right path). (Surah Ar-Rum: 41)

In the verses above, it is clear that Allah forbids His servants from doing damage to the face of the earth, such as destroying and polluting the environment. In addition, this aim contradicts the aim of enforcing the Shari'a, as explained in the previous discussion, which is to protect religion, soul, lineage, mind, and property. It can be concluded that in Islam, acts of destroying the environment are the actions of humans themselves in life. In contrast, the prohibition on destroying the environment is expressly contained in the al-Qur'an, as explained in environmental fiqh (fiqh Al-Biah), namely that every act that damages the environment is prohibited. Imam al-Mawardi said that criminal acts are all sharia prohibitions that are threatened with had or *ta'zir* punishment.

It can be concluded that acts of pollution and destruction of the environment are categorized as criminal acts *jarimah ta'zir*. According to environmental jurisprudence, criminal acts of environmental pollution in East Labuhanhaji District can harm the surrounding community and are contrary to the laws in the al-Qur'an and state law. Therefore, criminal acts of environmental pollution must be addressed further so they do not become ongoing pollution.

Based on the verse above, perpetrators of environmental pollution and destruction in Islam are included as the perpetrators of *jarimah* (criminal acts). Al-Mawardi defines *jarimah* as "all the prohibitions of the *share* (doing things that are prohibited and/or abandoning things that are obligatory), which is threatened with the punishment of had or *ta'zir*.<sup>40</sup>

In the context of environmental preservation, even emphasized the application of sanctions in the form of imprisonment (*al-ta'zir*) for perpetrators of environmental damage determined by the government (Waliyyul amr), in line with the law contained in the hadith of the Prophet Muhammad:

مَثَلُ الْقَائِمِ عَلَى حُدُودِ اللَّهِ وَالْوَاقِعِ فِيهَا كَمَثَلِ قَوْمٍ اسْتَهَمُوا عَلَى سَفِينَةٍ فَأَصَابَ بَعْضُهُمْ أَعْلَاهَا وَبَعْضُهُمْ أَسْفَلَهَا فَكَانَ الَّذِينَ فِي أَسْفَلِهَا إِذَا اسْتَقَوْا مِنَ الْمَاءِ مَرُّوا عَلَى مَنْ فَوْقَهُمْ فَقَالُوا لَوْ أَنَّا حَرَقْنَا فِي نَصِينَا حَرْقًا وَلَمْ نُؤْذِ مَنْ فَوْقَنَا فَإِنْ يَتْرَكُوهُمْ وَمَا أَرَادُوا هَلَكُوا جَمِيعًا وَإِنْ أَخَذُوا عَلَى أَيْدِيهِمْ نَجَوْا وَنَجَوْا جَمِيعًا

Meaning: "The parable of those who obey God's law and those who commit violations is like a people boarding a ship. Some of them occupy places at the top and others at the bottom. So, if the people below want to fetch water, they must pass by the people above them. So they took the initiative to make a hole in their section so that it wouldn't disturb the people above. If their wishes were left unchecked, all the ship's passengers would surely perish, and if they were prevented, then they would be safe, and all the other people would be safe too."

In this case, the value of Islamic teachings (prospering the earth) is used to determine public benefit. The requirements for this benefit are described in detail in the *ushal fiqh* field of study, with examples of violations of environmental maintenance. Thus, the perpetrators of environmental pollution and destruction have committed immorality. The punishment is *ta'zir*, where the implementation is handed over to Ulul Amri (the government), whose provisions are by the light and severity of causing environmental damage. The criteria for *ta'zir* punishment in Islam are:

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<sup>40</sup>Al Mawardi Abu Hasan, Kitab *Al-Ahkam Al-Sulthaniyyah*, (Mesir: Musthofa al-Bab al-halabi, 1979), hlm. 219

1. The law of *ta'zir*, concerns the body; the most important punishment, in this case, is the death penalty and *jild* (flogging).
2. *Ta'zir* punishment, which is related to a person's freedom; the most important punishment in this case is imprisonment.
3. *Ta'zir* punishment relating to property; the punishment in this case is confiscation of goods/fines.
4. *Ta'zir* punishment was determined by *Ulul Amri* (government), and in this case, it looks at the public benefit.<sup>41</sup>

Based on the criteria above, the punishment for perpetrators of environmental pollution and destruction, according to Islamic views, is *ta'zir*; the purpose of *ta'zir* punishment is preventive, repressive as well as curative, and educative. On this basis, *ta'zir* must not bring destruction. What is meant by the preventive function is that the *ta'zir* sanction must have a positive impact on other people (people who are not subject to the *ta'zir* penalty) so that other people do not commit the same actions as those punished. What is meant by repressive function is that the *ta'zir* sanction must positively impact the convict so that he no longer commits the act that caused him to be sentenced to *ta'zir*.

Therefore, *ta'zir* sanctions, both in their function as preventive and repressive measures, must be by needs, no more and no less, by applying the principles of justice. What is meant by curative function (*islah*) is that *ta'zir* must be able to improve the attitudes and behavior of the condemned in the future. What the educative function means is that the *ta'zir* sanction must foster the convict's desire to change his lifestyle so that he will stay away from immoral acts, not because he is afraid of punishment but simply because he doesn't like crime. Of course, religious education is very important in this case as a means of strengthening one's faith and piety so that one avoids immorality in seeking Allah's pleasure.

Therefore, it is unsurprising that the ulama, in the case of *ta'zir* sanctions in the form of imprisonment, does not set a time limit for the length of imprisonment. Still, they put the limit until the condemned person repents as a cleanser from sins. To maintain legal certainty, a time limit for prison sentences is needed. It's just that guidance in correctional institutions must be effective so that when the convict comes out, he has repented. The *ta'zir* punishment determined by *Ulul Amri* (the government) is intended to provide flexibility that allows different punishments to respond to advances in human culture so that Islamic law can respond to social change.

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<sup>41</sup>Muhammad Mawardi Djalaluddin et al., "The Implementation of Ta'zīr Punishment as an Educational Reinforcement in Islamic Law," *Samarah* 7, no. 1 (2023); Ja'afar Agaji Abdullahi and Isah Abubakar Idris, "Ta'zir Punishment in Islam and Its Implication in Our Society," *Middle East Journal of Islamic Studies and Culture* 3, no. 04 (2023); Misran, "Criteria of Offenses as Part of Ta'zir Penalty (Kriteria Tindak Pidana Yang Diancam Hukuman Ta'Zir)," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 2 (2021).

Here, cooperation between various parties is needed, both from the government, community leaders, and society in general, to be able to take a role in this illegal gold mining problem so that people have an understanding of the importance of protecting the environment as part of the values and problems of religious teachings and part of human duties as *khalifatullah* in advance. Earth, because punishment is only the final part of a way to maintain the balance of life, not an end goal.

## F. Conclusion

Illegal gold mining in Labuhan Haji Timur District, South Aceh Regency, is caused by several factors, namely the low economic life of the community after nutmeg plantations no longer promise community income, the miners' low level of education in the field of law, the lack of socialization by the South Aceh Regency government regarding the ban on miners and lack of public awareness of religious values regarding environmental damage which can be detrimental to the general public. This illegal gold mining hurts the surrounding environment, causing deforestation due to excavation activities at mining sites, which makes it prone to flooding and damage to plantation land due to its use as mining land. The emergence of slum locations around local residential areas is due to the waste from gold milling activities. Judging from environmental fiqh, the criminal act of illegal gold mining in Labuhan Haji Timur District, South Aceh Regency, is an act of *jarimah* which is contrary to Islamic law. Therefore, in Islamic law, illegal gold mining can be subject to sanctions in the form of Jarirnah Ta'zir. Illegal gold mining is contrary to the constructive thinking framework of Muslims in understanding the natural environment. The law of environmental conservation is *fardhu kifayah*, so building community understanding to protect the entire forest ecosystem is part of what religion recommends. Make all these efforts a moral obligation towards fellow creatures of Allah that are worth worshipping. This paradigm of constructive thinking using religious teachings as its basis is what the "environmental jurisprudence paradigm" means in a broad and open sense.

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**Interview:**

- Interview with Usman, Youth Leader in East Labuhanhaji District, October 24 2021.
- Interview with Muhammad, Mining Community in East Labuhanhaji District, October 22 2021.
- Interview with Kamaruddin, Mining Community in East Labuhanhaji District, October 22 2021.
- Interview with Jamal, Mining Community in East Labuhanhaji District, October 21 2021.
- Interview with M. Saleh, Mining Community in East Labuhanhaji District, October 23 2021.
- Interview with Karni, Village Head in East Labuhanhaji District, October 20 2021.
- Interview with Marwan, Mining Community in East Labuhanhaji District, October 22 2021.
- Interview with Employees of the South Aceh Regency Energy and Mineral Resources Service, October 28 2021.
- Interview with Zainal, Mining Community in East Labuhanhaji District, October 20 2021.
- Interview with Syahrul, East Labuhanhaji District Youth Chair, October 21 2021.
- Interview with Yudi, Mining Community in East Labuhanhaji District, October 21 2021.
- Interview with Kaidir, Mining Community in East Labuhanhaji District, October 20 2021.
- Interview with Dahniar, Religious Figure in East Labuhanhaji District, October 26 2021.