

The Effectiveness of Law Enforcement Against Illegal Gold Mining Offenders in Jambi Province: A Fiqh Jinayah Perspective

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Abstract: This study examines law enforcement practices and their effectiveness in addressing illegal gold mining in Jambi Province, with additional analysis from the perspective of *Fiqh Jinayah* (Islamic criminal law). Employing an empirical juridical approach, the research was conducted in Sarolangun, Merangin, and Bungo Regencies. Informants included police officials from each region and individuals involved in illegal gold mining. Data were collected through observation, interviews, and document analysis, and analyzed via data reduction, display, and conclusion drawing. Findings reveal that law enforcement efforts begin with public education on environmental protection and the legal consequences of illegal mining. However, these efforts remain largely ineffective due to legal, structural, and socio-economic challenges. Contributing factors include the misalignment between laws and local realities, vague legal formulations, limited outreach, inadequate sanctions, and resource constraints faced by authorities. From the perspective of *Fiqh Jinayah*, illegal gold mining is categorized under *Jarimah Ta'zir*, allowing judge's discretion in sentencing. Punishments can include imprisonment, fines, corporal penalties, or warnings, guided by principles of justice for both society and offenders. The study suggests that integrating *Fiqh Jinayah* may offer a culturally relevant alternative to enhance the deterrent effect and improve the overall effectiveness of law enforcement in this context.

Keywords: Fiqh Jinayah Perspective, Illegal Gold Mining Offenders, Law Enforcement

A. Introduction

Illegal gold mining has experienced technological advancement with each passing decade, and mining activities are no longer confined to the main rivers. Instead, they have expanded into tributaries using heavy equipment. The areas affected by heavy equipment mining have grown significantly, extending beyond rivers to include rice fields, rubber plantations, farmland, and even protected forests (Radar, 2018). As a result of these mining activities, 1.1 million hectares out of the 5.2 million hectares of the Batanghari River Basin (DAS Batanghari) are in a highly alarming condition and can be classified as being in a critical phase. Many areas within the river basin have

been affected by pollution, erosion of riverbanks, and the destruction of aquatic ecosystems. In addition, approximately 2,071.5 hectares of agricultural land have been encroached upon and converted into illegal gold mining sites (KLHK, 2015).

Illegal gold mining has also caused significant damage to forest areas, including approximately 6,099 hectares of production forest, 2,972 hectares of protected forest, 154 hectares of limited production forest, and 572 hectares within national parks (KLHK, 2021). The large scale and unregulated exploitation of natural resources through illegal gold mining (*Penambangan Emas Tanpa Izin/PETI*) over the past three years has led to environmental degradation and decline. Environmental changes around mining areas, particularly due to the unwise conversion of agricultural land into mining zones, have also had negative impacts on farmers whose land is located near the mining sites (Febrianti, 2010). The large scale and unregulated exploitation of natural resources through PETI over the past three years has led to environmental degradation and decline. Environmental changes around mining areas, particularly due to the unwise conversion of agricultural land into mining zones, have also had negative impacts on farmers whose land is located near the mining sites (Investor.id, 2024).

Based on the above explanation, it is evident that illegal gold mining has caused numerous negative impacts, including: 1) Agricultural land degradation As of 2021, agricultural land damage had reached 32,565 hectares (Antara, 2021); 2) Forest destruction By the end of 2023, tens of thousands of hectares had been damaged, including at least 3,642 hectares of protected forests in Jambi Province due to PETI (Warsi, 2024); 3) River pollution Several rivers have been severely affected, including the Batang Bungo River in Bungo Regency, the Batang Merangin River in Merangin Regency, and the Batang Tembesi and Batang Limun Rivers in Sarolangun Regency all of which flow into the Batanghari River. PETI waste has led to significant water pollution. For the people of Jambi Province, rivers are vital sources of life, used for daily needs (bathing, washing, sanitation, drinking, and watering plants), sand mining, fishing activities, raw water supply for the local water utility (PDAM), and even as ecotourism destinations (Kompasiana.com, 2024); 4) Health issues Illegal mining activities have led to the emergence of various illnesses such as diarrhea, skin diseases, and, in the long term, developmental and growth disorders in children. Another serious disease linked to mining is *Minamata disease*, a neurological disorder caused by mercury poisoning. In severe cases, this can result in paralysis, brain damage, and even death (Sazeta, 2022); 5) Natural disasters Activities related to illegal mining have triggered flash floods. For instance, in 2015, flash floods resulted in the deaths of 14 people and damaged 414 homes. Roads in the affected areas were also blocked by mud, rocks, and fallen trees; 6) Fatalities from landslides In Merangin Regency in 2016, 11 people were buried by a landslide. Numerous other fatalities linked to PETI have gone unreported or have been deliberately concealed from public knowledge; 7) Frequent conflicts Conflicts often arise due to environmental degradation, land disputes, and social tensions. These are often

driven by financiers or “cukong” (middlemen/backers) with personal or group interests in maximizing profit from illegal mining; 8) Increased poverty Many individuals have lost their livelihoods due to the destruction of agricultural land, rivers, and forests, forcing some to become beggars as they have no source of income left; 9) Rising crime rates Areas surrounding PETI sites have seen an increase in criminal activity and threats to public order, including gambling, alcohol abuse, and prostitution; 10) Loss of state revenue The state suffers significant revenue losses from unregulated mining activities. At the same time, the government is burdened with the high cost of repairing environmental damage caused by PETI (Adnan, 2012).

In the Qur’an, it is explained that environmental destruction occurs as a result of human actions. Allah allows humankind to experience some of the consequences of this destruction such as polluted air, seas, rivers, and groundwater. Out of His love and mercy, Allah lets humans endure these effects so that they may realize their mistakes and return to the right path, living in harmony with nature. This is clearly stated in the interpretation of Surah Ar Rum, verse 41: “*Corruption has appeared on land and sea because of what the hands of people have earned, so He may let them taste part of [the consequence of] what they have done that perhaps they will return [to righteousness].*” (Kementerian Agama, 2015). The interpretation of this verse explains that *al fasād* (corruption or destruction) has occurred both on land and at sea. *Al fasād* refers to any form of violation against the systems or laws established by Allah, commonly translated as “destruction” or “corruption.” This destruction can manifest in the form of environmental pollution that renders nature uninhabitable, or even its total devastation to the point of being unusable. On land, for example, it may involve the destruction of flora and fauna; in the sea, it may include the damage to marine life and ecosystems.

From the perspective of Indonesian criminal law, community activities involving PETI are regulated under Law of the Republic of Indonesia No. 4 of 2009 on Mineral and Coal Mining. The relevant criminal provisions are stipulated in Chapter XXIII, Articles 158 to 165 of the Mineral and Coal Mining Law. Article 158 states: Any person who conducts mining activities without a Mining Business License (IUP), People’s Mining License (IPR), or Special Mining Business License (IUPK) as referred to in Article 37, Article 40(3), Article 48, Article 67(1), or Article 74(1) or (5) shall be subject to a maximum imprisonment of 10 (ten) years and a maximum fine of IDR 10,000,000,000 (ten billion rupiah). Article 160 provides: 1) Any person who conducts exploration without holding an IUP or IUPK as referred to in Article 37 or Article 74 (1) shall be subject to a maximum imprisonment of 1 (one) year or a maximum fine of IDR 200,000,000 (two hundred million rupiah); 2) Any person holding an Exploration IUP who engages in production operations shall be subject to a maximum imprisonment of 5 (five) years and a maximum fine of IDR 10,000,000,000 (ten billion rupiah) (Achmad et al., 2017).

In Islamic criminal law, there is no explicit provision regarding the legal sanctions for perpetrators of illegal gold mining (PETI), as such cases are relatively modern and not directly addressed in classical Islamic jurisprudence. Therefore, PETI falls under the category of *Jarimah Ta'zir* a type of offense for which the determination of punishment is left to the discretion of the judge, who may choose a sanction deemed appropriate based on the nature of the offense and the circumstances of the offender (Irfan & Masyrofah, 2013). Law enforcement efforts against illegal gold mining (PETI) in Jambi Province have included operations such as conducting raids at mining sites, confiscating equipment used for PETI activities, and even destroying some of the seized tools. However, these enforcement actions have proven to be ineffective, as illegal mining continues to increase among the local population. PETI is a relatively complex and multi dimensional issue. From an impact perspective, it poses significant risks to the lives of miners and causes long term environmental damage, potentially leading to various natural disasters. On the other hand, when examined from the perspective of its underlying causes, PETI also presents a certain *maslahah* (public benefit), as it has become an alternative source of income for many individuals who lack stable employment. Based on this, there is an urgent need for firm and effective law enforcement. At the same time, legal authorities should also consider the *maslahah* of the broader community in line with the concepts of *Jarimah* (criminal acts) and *'Uqubah* (punishments) in *Fiqh Jinayah* (Islamic criminal law).

B. Methods

This study is an empirical legal research, in which the researcher conducted fieldwork to collect empirical data directly from the field (Mukti Fajar & Achmad, 2010). The approach used is a juridical empirical approach, which focuses on examining the implementation of normative legal provisions in specific legal events occurring in society (Abdulkadir, 2004). The research was conducted in Sarolangun Regency, Merangin Regency, and Bungo Regency. The informants in this study include: 1) Head of the Criminal Investigation Unit (Kasat Reskrim) of Bungo Police Department; 2) Head of the Criminal Investigation Unit of Merangin Police Department; 3) Head of the Criminal Investigation Unit of Sarolangun Police Department, and 4) Individuals suspected or convicted of PETI. Data collection techniques included observation, interviews, and documentation (Bungin, 2015; Creswell & Poth, 2018; Kristiawan & Asvio, 2018; Moleong, 2019; Ratna, 2010). The data analysis process consisted of three concurrent activities: 1) Data Reduction; 2) Data Display; and 3) Conclusion Drawing (Miles, M., 2015; Miles & Huberman, 1994).

C. Results and Discussion

Law Enforcement Against Illegal Gold Mining Offenders in Jambi Province

In an effort to prevent illegal gold mining activities in Jambi Province, law enforcement authorities have undertaken a variety of measures. These efforts can be outlined as follows: 1) Conducting Legal Awareness Campaigns Authorities have organized public outreach and legal education to inform communities about the legal consequences of illegal gold mining and the importance of environmental preservation; 2) Conducting Patrols Police officers regularly patrol areas where illegal gold mining activities are suspected to occur; 3) Carrying Out Raids Law enforcement conducts raids to uncover and dismantle illegal mining operations; 4) Destroying Mining Equipment Confiscated tools and machinery used in illegal mining are destroyed to prevent their reuse; and 5) Making Arrests Individuals found to be engaged in illegal mining are arrested and processed according to the law. There are several factors that may hinder the effectiveness of criminal law in deterring offenders, including those involved in illegal gold mining in Jambi Province. These factors include:

Legal Factors

The lack of legal certainty causes offenders to feel unafraid of committing crimes, while frequent changes in government policy reduce the sense of threat, thereby encouraging criminal behavior. In addition, delays in legal proceedings allow perpetrators to avoid punishment through various means. This can occur due to the overwhelming number of cases, which prevents the judicial system from handling them promptly and efficiently.

Limited Facilities and Infrastructure

In most cases, illegal mining sites are located deep in forested areas, and investigations often require law enforcement officers to walk several kilometers on foot. These locations are remote and difficult to access, while the availability of necessary facilities and infrastructure remains limited. Based on interviews and field observations conducted by the researcher, illegal gold mining activities are generally found in hard-to-reach forest areas, highlighting the urgent need for adequate facilities and equipment to effectively tackle illegal mining operations.

Personnel Factors

Based on the findings, it is evident that personnel related factors play a crucial role in the effectiveness of law enforcement. For the law to be enforced effectively, a sufficient number of officers is essential. In practice, it has been observed that when law enforcement personnel visit illegal mining sites, the local community does not

feel threatened or intimidated largely because of the small number of officers deployed. Moreover, miners are often aware of law enforcement's arrival in advance, allowing them to flee before any legal action can be taken.

Community Factors

In enforcing the law against illegal gold mining activities, the police as law enforcement officers cannot act alone. It is essential that they involve all elements of the community. Public participation is crucial in providing information about PETI activities to the authorities. Without community reports or cooperation, the police face significant difficulties in developing leads and gathering information regarding such illegal operations.

Economic Factors

Based on interviews and field observations, it can be understood that economic conditions play an unavoidable role in the prevalence of illegal gold mining activities. High unemployment rates often drive people to engage in such activities. For many workers and residents, economic hardship and the lack of stable employment are primary reasons for becoming involved in illegal gold mining.

Cultural Factors

Based on the author's observations, a culture of luxury living has taken root in several villages where illegal gold mining is prevalent. People compete with one another to own large houses and multiple vehicles, assets that are typically associated with gold mining business owners. In the past, traditional gold panning was the common method used; however, today, heavy machinery such as excavators is widely employed, making mining operations significantly easier and more accessible for workers.

The Effectiveness of Law Enforcement Against Illegal Gold Mining Offenders in Jambi Province

The police in Jambi Province have made various efforts to enforce the law against offenders involved in illegal gold mining. However, these enforcement efforts can be considered ineffective. According to the theoretical framework discussed in the previous chapter, the effectiveness of a law can be measured by the level of public compliance with it. A law is deemed effective when it is obeyed by the majority of those it targets. In reality, despite the existence of legal provisions that prohibit illegal gold mining and despite law enforcement actions that have been carried out the number of offenders in Jambi Province continues to rise, along with the extent of environmental damage caused by their activities.

The ineffectiveness of law enforcement against illegal gold mining offenders in Jambi Province can be attributed to several key factors: 1) Legal Instruments For a law to be effective, its legal instruments must meet certain criteria, including: a) Legal rules that are not sufficiently aligned with the actual needs of the communities targeted by the law; b) Vague and unclear formulation of legal provisions, making them difficult for the intended targets to understand; c) Inadequate dissemination and socialization of the legal norms to the broader public; d) The lack of clear prohibitive elements in the law many provisions are prescriptive (mandating certain behavior) rather than prohibitive, while prohibitive laws are generally easier to enforce; e) The sanctions prescribed by the law are not proportionate or appropriately matched to the nature of the violations. 2) Law Enforcement Apparatus. There are several deficiencies related to the law enforcement institutions: a) Law enforcement personnel face limitations in processing violations, particularly when the offenses regulated are concrete actions that must be directly observed or evidenced, making them difficult to process through the full legal stages of investigation, prosecution, and sentencing; b) Law enforcement officers have not yet carried out their duties optimally and professionally.

In enforcing the law against illegal gold mining offenders, the police require support and assistance from various stakeholders, including the government, community leaders, and traditional leaders. However, law enforcement officers have expressed that they often do not receive the necessary support. Despite their efforts and the range of actions taken, the results have remained suboptimal.

The Effectiveness of Law Enforcement Against Illegal Gold Mining Offenders from the Perspective of *Fiqh Jinayah*

Based on the previous discussion, it is clear that illegal gold mining is an act prohibited from various legal perspectives. From the standpoint of environmental law, Islam has long taught its followers to preserve and protect the environment. Human beings are entrusted with the responsibility to safeguard the natural world, to utilize it wisely, and are strictly forbidden from engaging in acts that cause environmental destruction.

In the Qur'an, there are several verses that instruct humankind to protect the environment and refrain from causing destruction. As previously discussed in the earlier chapter, one such verse is found in Surah Al A'raf, verse 56, which states: "Do not cause corruption on the earth after it has been set in order..." (Kementerian Agama, 2015). This verse emphasizes the prohibition against causing any form of destruction, including harmful behaviors such as deforestation, river pollution, and other environmental damage. One of the ways Allah has brought reform to the world is by sending prophets to correct and improve the way people live. Therefore, causing corruption after such reform is far worse than causing damage before it, as

this verse strongly underlines the prohibition of such actions (Al Zamakhsyari & Ibn'Umar, 1977).

According to Shaykh Abdurrahman as Sa'di, the reason why sinful acts are forbidden on earth is that such actions lead to the corruption of what exists on it such as grains, fruits, trees, and plants which may be afflicted by diseases as a consequence of those sins" (Sa'diy & bin Nashir, 2002). There are also several hadiths of the Prophet Muhammad (peace be upon him) that emphasize the importance of protecting the environment. One such hadith addresses the prohibition of disposing of waste in water sources, on public roads, and in places where people seek shade. As narrated by Abu Hurairah, he said: *The Prophet (peace be upon him) said: "Beware of the two acts that bring about a curse." The companions asked, "O Messenger of Allah, what are these two cursed acts?" He replied, "Relieving oneself on the path where people walk or in the place where they seek shade."* (Narrated by Muslim) (Al Bassam et al., 2006)."

Based on this hadith, it is clear that even relieving oneself in a place where people pass by is prohibited let alone causing environmental harm by dumping mercury contaminated waste into rivers. Given that river water is essential for human and other living beings' survival, such actions are even more strongly condemned.

Islam presents a clear and comprehensive perspective on the protection and management of natural environmental resources. Human beings are essentially stewards (*khalifah*) of Allah on Earth, commanded not only to prevent wrongful actions (*nahi munkar*), but also to actively promote good conduct (*amr ma'ruf*) (Wati, 2017). The management of mineral and natural resources must uphold environmental balance and sustainability. Any destruction of these resources caused by human actions entails accountability both in this world and in the hereafter.

As previously explained in the earlier chapters, PETI falls under the category of *Jarimah Ta'zir* in the context of *Fiqh Jinayah* (Islamic criminal law). The implementation of *ta'zir* punishment whether the prohibition is explicitly stated in the texts (*nash*) or not, and whether the act concerns the rights of Allah or individual rights is entirely at the discretion of the ruling authority. *Ta'zir* punishments are not fixed in terms of their extent or severity; determining the minimum and maximum penalties is left to the judgment of the judge or ruler. The primary principle guiding the authority in this regard is the protection of public interest and the prevention of harm (*mafsadah*) to members of society. Furthermore, any punishment must be in accordance with the principles of Islamic law (*shar'i*) (Al Jaziri, 1989).

Ta'zir punishments come in various forms, ranging from capital punishment to fines. According to some *fuqaha'* (Islamic jurists), the death penalty may be permitted if it serves the public interest, particularly when a problem cannot be resolved except

through such a measure. This applies in cases such as espionage, incitement of discord (*fitnah*), or repeat offenders (*recidivists*) who pose a serious threat to society.

Regarding flogging (*jild*) as a form of punishment in *Jarimah Ta'zir*, Islamic jurists (*fuqaha'*) have expressed differing opinions about its minimum and maximum limits. According to the Maliki scholars, there is no fixed upper or lower limit, as the punishment is left to the discretion of the ruler, based on the public interest and the severity of the offense. Imam Abu Hanifah and Muhammad think that the maximum number of lashes in *ta'zir* should be 39, while Abu Yusuf allows up to 75 lashes. As for the Shafi'i school, there are three opinions: 1) The first aligns with the view of Abu Hanifah and Muhammad (39 lashes); 2) The second agrees with Abu Yusuf (75 lashes); and 3) The third allows more than 75 lashes but not exceeding 100, on the condition that the *ta'zir* offense closely resembles a *hudud* offense in nature (Husairi, 2018).

Regarding imprisonment (*sijn*) in *Fiqh Jinayah* (Islamic criminal law), there are two types of punishment based on the duration of the sentence: 1) Fixed term imprisonment The minimum duration of this type of sentence is one day. As for the maximum, scholars differ in opinion. According to the Shafi'i school, the maximum term is one year, based on analogy (*qiyas*) with exile in cases of *zina* (adultery). Other scholars, however, leave the determination of the maximum duration to the discretion of the ruler (*hakim*), based on public interest (*maslahah*); 2) Indefinite (life) imprisonment Scholars agree that this form of punishment does not have a predetermined duration and continues until the offender dies, repents, or shows a genuine change in character. This punishment is applied to individuals who pose a serious threat to society or are habitual offenders of dangerous crimes.

Crucifixion (*salb*) as a punishment for *Jarimah Ta'zir* is not accompanied or preceded by the death penalty. Instead, the convicted individual is crucified while still alive. During the crucifixion, the person is not deprived of food or drink, nor are they prohibited from performing ablution (*wudhu*). However, when performing prayer (*shalat*), it is done through gestures (*isyarah*). According to *fuqaha'*, the duration of this punishment should not exceed three days (Abidin, 2015).

In *Jarimah Ta'zir*, there are also forms of punishment such as warnings (*tahdīd*) and reprimands (*tanbīh*). A threat can serve as a form of *ta'zir* punishment, provided that it is effective and not an empty warning. For instance, threatening an offender with flogging, imprisonment, or another punishment if they repeat the offense can be considered a valid *ta'zir* sanction. As for reprimands, one example can be found in the actions of the Prophet Muhammad (peace be upon him) when he rebuked his companion Abu Dharr, who had insulted another person by degrading his mother. The Prophet said, "O Abu Dharr, you are insulting him by belittling his mother. You still possess traits of the pre Islamic era (Jāhiliyyah)" (Muslich, 2005).

In *Jarimah Ta'zir*, there is also the punishment of social isolation (*al ḥajr*). This is based on a historical account in which the Prophet Muhammad (peace be upon him) punished isolation on three individuals who failed to participate in the Battle of Tabuk: Ka'ab ibn Malik, Murārah ibn Rabī', and Hilāl ibn Umayyah. They were socially boycotted for fifty days, during which no one spoke to them. This continued until the revelation of Allah's words in Surah At Tawbah, verse 118: "And [He also forgave] the three who were left behind [and regretted their error] to the point that the earth closed in on them in spite of its vastness and their souls were constricted, and they were certain that there is no refuge from Allah except in Him. Then He turned to them so they could repent. Indeed, Allah is the Accepting of repentance, the Merciful" (Surah At Tawbah: 118) (Kementerian Agama, 2015).

Based on this verse, the Prophet Muhammad (peace be upon him) instructed the Muslim community not to speak to the three men and to socially isolate them. Such isolation is considered a valid form of *ta'zir* punishment when it produces a positive outcome or serves the public interest (*maslahah*), depending on the specific context and conditions of the society. In an open or highly individualistic society, this type of punishment may be difficult to implement, as people often tend to be indifferent toward one another. However, a form of isolation that involves excluding someone from participating in community activities may still be enforceable and potentially effective.

Regarding *ta'zir* punishments involving property, known as *ta'zir bil māl*, scholars have expressed differing opinions. Imam Malik held that *ta'zir* in the form of confiscating property is not permissible, as it could open the door for oppressive authorities to exploit and seize people's wealth for personal gain. In contrast, Hanafi scholars and Imam al Shafi'i permitted *ta'zir* through the taking of property (Al 'Utaibi, 2010). Their position is based on a precedent set by the Prophet Muhammad (peace be upon him), who once imposed a *ta'zir* punishment on someone who refused to pay zakat by taking a portion of their wealth.

The implementation of *ta'zir bil māl* (property based punishment) can be carried out through three methods: 1) *Al Iṭlaf* This refers to the destruction of the object involved in wrongdoing, such as property or materials. For example, equipment used in illegal gold mining may be destroyed or burned to eliminate its use entirely; 2) *At Taghyir* This is a form of *ta'zir* involving the transformation of the object of wrongdoing. For instance, converting illegal mining sites into agricultural or plantation land; and 3) *At Tamlik* This refers to the imposition of financial penalties by multiplying fines as a deterrent, thereby increasing the economic consequence for the offender (Muhammad, 1995). Such as by multiplying the financial penalties imposed on illegal gold mining offenders. In general, the *fuqaha'* agree on the permissibility of seizing or confiscating tools and property used by offenders in committing a crime (*jarimah*), as a means to deter future violations. However, such confiscated items may not be owned or appropriated by the judge or ruling

authority (*ulil amri*). Once seized, the property should either be destroyed or returned to the offender after they have sincerely repented.

As previously mentioned, the primary objective of *Jarimah Ta'zir* is to educate and reform. Accordingly, *ta'zir bil māl* serves as one method of educating offenders, helping them to realize their wrongdoing and refrain from repeating their actions. Thus, within the tradition of Islamic legal scholarship, financial penalties (*fines*) are recognized as part of *ta'zir* sanctions. These fines may sometimes serve as the principal punishment and, in other cases, function as a supplementary penalty. In the case of punishment for illegal gold mining offenders, fines should be imposed as compensation for the economic losses incurred. However, Islamic scholars have not established fixed minimum or maximum limits for *ta'zir* penalties of this kind. This leaves room for *ijtihad* on the part of the ruling authority (*ulil amri*) to determine the appropriate amount based on the circumstances.

When examining the application of legal sanctions across various legal systems in the world, it becomes apparent that the law generally encompasses three key aspects: 1) Preventive This refers to efforts aimed at deterring individuals from committing or repeating crimes, as well as discouraging those who have not yet committed offenses from doing so; 2) Repressive This involves the enforcement of the rule of law by imposing penalties on offenders in accordance with the severity and nature of their crimes; and 3) Rehabilitative This focuses on reforming offenders so they do not commit the same crimes again, and on guiding those who have not yet offended to avoid engaging in criminal behavior. These three aspects operate in an integrated manner within any legal system. Every preventive effort is accompanied by repressive measures when crimes occur, and is followed by rehabilitative efforts to ensure long term behavioral change.

Similarly, in *Fiqh Jinayah*, the objective of Islamic law is to preserve intellect, life, wealth, and lineage. Therefore, in addition to preventive and repressive efforts, Islamic law also emphasizes rehabilitative measures namely, efforts to nurture every Muslim to obey Islamic law based on faith (*iman*). This is evident in Islamic history, where for thirteen years in Mecca, the Prophet Muhammad (peace be upon him) focused on building the *aqidah* (creed) and faith of the early Muslim community, so that they would become obedient and faithful Muslims. In addition to faith development, Islam also teaches the concept of repentance (*tawbah*) for Muslims who have committed sins or crimes, providing them the opportunity to return to righteousness and reform.

The objectives of punishment in *Fiqh Jinayah* are sometimes stated explicitly in the Qur'an or Hadith for example, the purpose of *qishash* (retaliatory punishment). In other cases, the objectives are not mentioned directly, such as in Allah's command in Surah An Nur, verse 2, regarding the punishment for *zina* (adultery). In such cases, the absence of a clearly stated purpose invites human beings to reflect and explore

the underlying wisdom (*hikmah*) behind why a certain *jarimah* (crime) is assigned a particular punishment. According to Imam Abu Hanifah, the objectives of punishment are fourfold: *al radd* (deterrence), *al zajr* (warning), *al islāh* (reformation), and *al tahzīb* (moral education). The purpose of deterrence and warning is to prevent the offender from repeating the crime and to discourage others from committing similar offenses. Islamic law also aims to reform the offender by encouraging repentance, the cessation of wrongdoing, and the replacement of evil deeds with righteous acts (*amal shalih*), ultimately shaping an individual who is truly obedient to the teachings of Islam (Hanafi, 1985).

Fiqh Jinayah (Islamic Criminal Law) plays an important role within the broader framework of criminal law in Indonesia. It is implemented in regions that adhere to Islamic law, such as Aceh and several cities in Java. In these areas, *Fiqh Jinayah* is enforced through *Qanun* (regional regulations) and operates in parallel with the national criminal law system. The implementation of *Fiqh Jinayah* in Indonesia has undergone extensive debate, particularly regarding potential violations of human rights. Some legal scholars argue that the *Fiqh Jinayah* system may lead to individuals being punished without due process or a fair trial, and without legal representation by an advocate (Gaffar et al., 2023). The Indonesian government continues to strive for a balance between upholding religious values and protecting human rights. Efforts are also being made to improve the implementation of *Fiqh Jinayah* by strengthening the judicial system and providing education and training for judges and legal officers.

The deterrent effect of criminal punishment in the context of *Fiqh Jinayah* in Indonesia can be observed through the sanctions imposed on law violators. Punishments such as flogging, amputation, and stoning are intended to serve as strong deterrents, both for the offenders themselves and for society at large, in order to prevent similar crimes from occurring in the future (Kadir & Shuhufi, 2024). The implementation of Islamic criminal punishments in Indonesia has also sparked controversy, particularly regarding public perception of such punishments. While *Fiqh Jinayah* is regarded by many as an effective means of deterrence, some view its punishments as harsh and inhumane. In addition, debates continue over the relevance of *Fiqh Jinayah* in present day Indonesia, with some groups arguing that Islamic criminal law is no longer suited to the country's increasingly modern and pluralistic social and cultural context.

The implementation of *Fiqh Jinayah* prioritizes the principle of justice not only for the victims of crime, but also for the offenders. Therefore, its application is governed by strict conditions, such as the requirement for strong and sufficient evidence, clear and reliable testimony, and a fair judicial process. Criminal sanctions in *Fiqh Jinayah* are not imposed arbitrarily or in a discriminatory manner, as all individuals are considered equal before the law.

Punishment in *Fiqh Jinayah* serves to maintain social order and justice within society, grounded in high religious values such as honesty, loyalty, and devotion to Allah. Therefore, the discourse within *Fiqh Jinayah* is not solely focused on punishment, but also on promoting a righteous way of life and fostering mutual respect among individuals. Another essential element of *Fiqh Jinayah* is the rehabilitation of offenders. Criminal punishment is seen as an opportunity to correct behavior and prevent future criminal acts. Thus, punishment in *Fiqh Jinayah* also includes providing offenders with the chance to reform themselves through education and guidance, as well as opportunities to contribute positively to society.

Overall, the ongoing debate surrounding the implementation of criminal law in Indonesia highlights the numerous challenges that must be addressed in the pursuit of a fair, transparent, and effective criminal justice system. Therefore, a comprehensive and firm reform of the criminal justice system is urgently needed to ensure that justice is upheld properly in Indonesia and that law enforcement can operate effectively. In an effort to enhance the effectiveness of criminal sanctions for illegal gold mining, *Fiqh Jinayah* can serve as an alternative to deter offenders. Its implementation remains a hotly debated issue. On one hand, Indonesia, as the world's largest Muslim majority country, holds significant potential for its application. On the other hand, the implementation of *Fiqh Jinayah* requires careful and thoughtful consideration, as it could lead to controversies and division within society.

Several opportunities for the application of *Fiqh Jinayah* in Indonesia are as follows: 1) Recognition in the Constitution: Article 28I of the 1945 Constitution acknowledges the right to practice Islamic law for those who adhere to it. This opens up the possibility for the application of Islamic criminal law in Indonesia; 2) Regional Authority: Indonesia grants local governments the authority to regulate and manage local affairs. Therefore, the implementation of Islamic criminal law could be carried out in regions with a Muslim majority population; 3) Religious Courts: Religious courts in Indonesia have long existed and are authorized to handle civil and criminal matters related to Islamic law. Hence, the application of Islamic criminal law could be administered through the existing religious court system.

The implementation of Islamic criminal law in Indonesia must take into account several factors, including: 1) Protection of Human Rights: The application of Islamic criminal law in Indonesia must ensure the protection of human rights and should not infringe upon the rights of minority groups; 2) Constitutional Compatibility: The implementation of Islamic criminal law must align with the constitution and should not conflict with national laws; and 3) Alignment with National Values: The application of Islamic criminal law must be in accordance with Indonesia's national values, which emphasize respect for diversity and tolerance (Gaffar et al., 2023). If these considerations are taken into account, the enforcement of law against offenders can become more effective. According to Islamic law, the deterrent effect of a

punishment is aimed at creating public benefit (*maslahah*), upholding the supremacy of law, and ensuring justice for all individuals. It also seeks to protect people from *mafsadah* (harmful actions) that could negatively impact both themselves and others.

One way to measure the effectiveness of the law is by examining the number of violations. The fewer violations, or the absence of violations altogether, indicates that the law is effective. If this measurement tool is applied to assess the effectiveness of law enforcement against illegal gold mining offenders in Jambi Province, based on the data presented, it can be concluded that it is not yet effective, as the number of cases continues to rise each year. In comparison, crime rates in Saudi Arabia have tended to decrease, especially in crimes such as murder and property offenses, due to the implementation of *Fiqh Jinayah* in the determination of criminal sanctions. Unlike crime rates in other countries, the crime rates in Saudi Arabia are significantly lower in absolute terms (Harahap et al., 2024). Thus, it can be emphasized that the implementation of *Fiqh Jinayah* (Islamic Criminal Law) can be highlighted by the low crime rates in Saudi Arabia. When compared to crime rates in other Arab countries, which share many similarities with Saudi Arabia, the country has recorded itself in history as having the lowest crime rates. However, it is important to note that scientifically, it would be premature to conclude that the application of *Fiqh Jinayah* is the sole determinant factor in reducing crime rates, especially when compared to countries where crime rates continue to rise.

To determine the extent to which the implementation of *Fiqh Jinayah* (Islamic Criminal Law) can effectively reduce crime rates, a thorough and critical study is needed. Such research would help identify the possible presence of other contributing factors that may also influence the occurrence of crime. Nonetheless, one undeniable point is that the religious conviction in the existence and effectiveness of *Fiqh Jinayah* in curbing the acceleration of crime has at least received empirical support. This phenomenon deserves further scientific exploration and academic analysis.

Based on the discussion above, it can be understood that the effectiveness of a legal regulation can be measured by the extent to which it is obeyed by the public. If more than 50% of the population complies with a given law, it can be considered effective. Another way to assess the effectiveness of a legal regulation is by observing a decline in the number of legal violations or criminal cases over time. The primary objectives of punishment in Islamic law are deterrence (*al raddu wa al zajru*), instruction and moral education (*al islāh wa al ta'dīb*), the promotion of public welfare (*maslahah*), the prevention of harm and immoral behavior (*mafsadah* and *ma'siyah*), and the encouragement of obedience to divine commands. In *Fiqh Jinayah*, the imposition of punishment is solely intended for the benefit of humankind to reform individuals and to preserve social order within the community (Djafri et al., 2023).

The distinctiveness of Islamic *Fiqh Jinayah* is reflected in its principles, theories, and legal maxims, which carry universal truths aimed at improving societal order and preventing the emergence of criminal behavior. In order to establish social order and address those who commit crimes and violations, legal sanctions are imposed based on the principles of Islamic law. One of the forms of punishment in Islam is *ta'zir*, a discretionary punishment determined by the judge based on wisdom and religious moral considerations, without being strictly outlined in the Qur'an or Sunnah. Examples of *ta'zir* punishments include imprisonment, fines, or social sanctions.

Islamic jurists (*fuqaha'*) have outlined several fundamental principles of punishment in *Fiqh Jinayah*, including: 1) Punishment is universal in nature, meaning it aims to deter individuals from committing crimes, to raise awareness and provide lessons for offenders, and to serve as a warning for others not to engage in criminal acts; 2) The implementation of punishment must align with societal needs and public welfare. If public welfare demands stricter penalties, the punishment may be intensified. Conversely, if leniency is deemed more beneficial, the punishment may be reduced accordingly; 3) Any form of punishment that guarantees individual reform and ensures social peace is considered legitimate and mandated in Islamic law, and therefore must be enforced; 4) Punishment in *Fiqh Jinayah* is not based on vengeance, but is intended to rehabilitate and reform the offender. The type of punishment imposed corresponds to the nature of the crime committed (Djazuli, 2021).

Punishment in *Fiqh Jinayah* is intended to prevent acts of revenge or excessive violence. The sanctions imposed must be proportional to the offense committed and should always aim toward rehabilitation and the correction of behavior. In practice, criminal punishment in Islamic law is often viewed as controversial by some. However, such punishments should always be guided by these intended goals and must be implemented with careful attention to religious values and the human rights embedded within them.

In Islamic law, preventive efforts are evident in every provision related to criminal offenses. For example, the Qur'an emphasizes the sanctity of human life, stating that killing a single soul is akin to killing all of humanity. As Allah declares in Surah Al Mā'idah, verse 32: "...Whoever kills a person unless in retribution for murder or spreading corruption on earth it is as if he had slain all mankind. And whoever saves a life, it is as if he had saved all mankind..." This verse underscores the gravity of taking a human life and serves as a powerful deterrent against violent crimes (Kementerian Agama, 2015).

If a person still commits murder, the punishment prescribed is *qisās* the death penalty or a heavy financial compensation (*diyah*) if forgiveness is granted by the victim's family. Such a severe punishment is intended to make people think carefully before taking a life. Similarly, to prevent theft driven by economic

hardship, Islam commands the obligation of zakat, encourages charity (infaq and sadaqah), and fosters social responsibility and solidarity among people to promote collective well being. When economic justice is upheld, individuals are less likely to resort to theft. However, if someone still chooses to steal especially if theft becomes habitual or a profession then Islam prescribes the punishment of hand amputation as a legal consequence. In addition to preventive and repressive efforts, Islamic law also emphasizes rehabilitative measures namely, efforts to guide every Muslim to obey Islamic law based on sincere faith (*iman*). In Islamic history, the Prophet Muhammad (peace be upon him) dedicated 13 years during his time in Mecca to nurturing the faith (*aqidah*) and belief of the Muslim community, so that they would become devout and obedient followers of Islam.

Based on the discussion above, it can be concluded that illegal gold mining in Jambi Province remains ineffective in terms of legal enforcement. From the perspective of *Fiqh Jinayah*, such an act is classified as a criminal offense (*jarimah*), and the perpetrators may be subjected to *ta'zir* sanctions. This is because Islam has long taught its followers to preserve the environment, to make good use of natural resources, and strictly prohibits any actions that lead to environmental destruction. According to Yusuf al Qaradawi, environmental preservation is part of the five essential protections (*al darūriyyāt al khams*), which are: the protection of religion (*ḥifẓ al dīn*), life (*ḥifẓ al nafs*), lineage (*ḥifẓ al nasab*), intellect (*ḥifẓ al 'aql*), and wealth (*ḥifẓ al māl*). These five necessities serve as the fundamental pillars of human existence (Al Qardhawi, 2002).

In the study of *Fiqh Jinayah*, the implementation of *ta'zir* punishments whether the prohibition is explicitly stated in the texts (*nash*) or not, and whether the act involves the rights of Allah or individual rights is entirely entrusted to the authority of the ruler or judge. The punishment for *jarimah ta'zir* is not fixed in terms of its severity or scope, meaning that both the minimum and maximum limits are left to the discretion of the judiciary or ruling authority. The main guiding principle for such discretion is to safeguard public interest and protect individuals from harm (*mafsadah*). In addition, any punishment must comply with the principles of Islamic law (*shar'ī* values) (Idami, 2015).

The role of *Fiqh Jinayah* is highly significant in addressing various criminal issues, including the issue of illegal gold mining, as an alternative solution to the reality of law enforcement that remains ineffective to this day. From any legal or ethical perspective, illegal gold mining is a destructive act damaging the environment, disrupting community livelihoods, and representing a form of injustice (*zulm*) against Allah's creation. This is because such acts clearly violate established regulations and divine trust (*amanah*).

Although illegal gold mining does not fall under the category of *hirabah* (armed robbery or violent theft), from the perspective of state asset exploitation, Islamic law

imposes firm and proportionate sanctions according to the severity of the crime. This is because state assets such as gold should serve as sources of national income that can be utilized for public welfare, national budgets, and the economic development of the people. Moreover, illegal gold mining also destroys the environment, even though the earth and all it contains is a great blessing from Allah SWT to humanity. Humans are permitted to benefit from the earth's resources as long as they do so in a manner that is lawful (*shar'ī*), balanced, and non destructive. However, when these boundaries are exceeded, Allah's punishment may befall humankind as a consequence.

Fiqh Jinayah is a divine legal system (*sharī'ah*) from Allah that brings benefit (*maslahah*) to human life both in this world and the hereafter. One of its unique features is the differentiation of punishments based on the nature of the offense. Each type of punishment carries its own preventive and repressive functions, and a specific punishment can only be applied to a corresponding offense it cannot be applied arbitrarily to other cases. This is in contrast to positive law in Indonesia, where most punishments take the form of imprisonment. Although capital punishment does exist for particularly brutal murder cases, the main distinction lies only in the length of the prison sentence, rather than the variation in types of punishment based on the offense committed.

Islamic jurists (*fuqaha'*) have concluded that the imposition of punishment serves three main purposes: 1) Establishing justice The punishment must not exceed the severity of the offense, and the victim is entitled to have their rights restored; 2) Protecting society Punishment acts as a deterrent, preventing others from committing similar crimes, thereby creating social order; and 3) Facilitating repentance Punishment serves as a means for the offender to realize their wrongdoing, remove feelings of guilt, and return to the right path. It is also believed that punishment can expiate the sinner's misdeeds (Efendi & Cahyono, 2022). Punishment in *Fiqh Jinayah* is guided by two main objectives: 1) To prevent harm and bring about benefits for society ensuring social order and public welfare by deterring criminal behavior; and 2) To prevent and educate the offender so that the individual refrains from repeating the crime and serves as a warning to others not to engage in similar wrongdoing.

The objective of 'islāh' (reformation) in Islamic punishment is not only individual improvement, but also the development of a virtuous society built on mutual respect and compassion. Since the primary goals of punishment in Islam are prevention, education, and overall benefit, the punishment does not need to be excessively harsh nor should it be too lenient. It must be sufficient to prevent harm, proportionate to the offense, and support the well being (*maslahah*) of both the offender and the society.

The clearest expression of the rehabilitative goal in Islamic criminal law is found in *Jarimah Ta'zir*, which emphasizes educating and reforming the offender. Therefore, although life imprisonment is permissible, the offender should be released if there is sufficient evidence that they have genuinely reformed and are unlikely to repeat the offense. This can be observed through their daily behavior while in prison. However, this rehabilitative goal may prove less effective for hardened criminals or repeat offenders (recidivists) who have become accustomed to criminal behavior. Such individuals often resist moral values, making any form of rehabilitation unlikely to succeed.

Deviations and inconsistencies in Indonesia's legal enforcement have persisted for many years. This condition has become a public secret among Indonesian society the law as written is often different from the law as enforced. This gap between legal norms and actual practice has weakened public trust in the legal system and contributed to the ongoing prevalence of illegal gold mining.

The eradication of illegal gold mining falls under the domain of crime prevention and control, which is part of the broader field of criminal policy. This cannot be separated from the wider framework of social policy, which includes two main components: social welfare policy and social defense policy. Therefore, all sectors of society must take an active role in combating illegal gold mining starting from the government, religious scholars ('ulama), law enforcement officers, and the public at large. We must unite to fight this crime in order to create a more just, safe, and prosperous society.

D. Conclusions

Law enforcement authorities in Jambi Province have undertaken multiple strategies to combat the persistent issue of illegal gold mining. These efforts encompass legal education campaigns to increase public awareness about the environmental dangers and criminal implications of illegal mining, as well as active enforcement measures such as patrols, raids, destruction of mining equipment, and arrests. Despite these initiatives, the overall effectiveness of law enforcement remains limited due to a variety of interconnected challenges. These include inadequacies in legal frameworks, insufficient infrastructure and personnel, economic pressures, and entrenched cultural norms within local communities that may tolerate or even support illegal mining activities. The enforcement of laws against illegal gold mining is further complicated by the lack of specific legislation that clearly defines and prohibits such activities. Existing legal provisions are often vague, making them difficult for the general public to understand and adhere to. Outreach efforts to disseminate legal information have also been insufficient, and the sanctions imposed are often not proportionate to the severity of the offenses, reducing their deterrent effect. Furthermore, enforcement agencies are frequently hindered by logistical and resource constraints that prevent them from fully implementing the law.

From the perspective of *Fiqh Jinayah* Islamic criminal law the offense of illegal gold mining may fall under the category of *Jarimah Ta'zir*, in which punishments are determined by judicial or governmental discretion. Sanctions under this framework may include imprisonment, fines, corporal punishment, or other forms of retributive or restorative justice. *Fiqh Jinayah* emphasizes a balance between justice for the community and fairness for offenders, and it has already been applied in several Indonesian provinces, including Aceh. As such, integrating *Fiqh Jinayah* into the current legal system could offer a culturally resonant and potentially more effective alternative to enhance deterrence and legal compliance in addressing illegal gold mining in Jambi Province.

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