CONCEPTUALIZATION OF SOCIAL RESPONSIBILITY IN SMALL-SCALE MINING IN INDONESIA: A NORMATIVE-CONCEPTUAL STUDY OF NORMATIVE GAPS

Febriadi

University Brawijaya

drfebriadishmkn@student.ub.ac.id

ABSTRACT

Artisanal and small-scale mining (ASM) in Indonesia is a socio-economic phenomenon involving millions of people, yet it still faces a lack of systematic regulatory frameworks, particularly regarding *corporate social* responsibility (CSR) in the context of small-scale mining operations. This study aims to conceptualize the form of social responsibility in artisanal and small-scale mining and to identify regulatory gaps within the framework of Indonesian positive law. The research method employed is a normative-conceptual legal study using *a statutory approach*, *a conceptual approach*, and *a theoretical approach*. The research findings indicate that: first, the concept of CSR in Indonesia's positive law, as regulated in Law No. 40 of 2007 on Limited Liability Companies and Law No. 4 of 2009 as amended by Law No. 3 of 2020 on Mineral and Coal Mining, has not adequately accommodated the unique characteristics of community-based mining; second, there is a significant legal vacuum (rechtsvacuum) in three dimensions: absolute, relative, and contradictory; third, the conceptual reconstruction of CSR in small-scale mining must integrate stakeholder theory, sustainability theory, and the principle of distributive justice. This study recommends the establishment of a specific regulatory framework governing social responsibility in small-scale mining, taking into account the principle of proportionality and the capacity of small-scale business operators.

Keywords: *social responsibility; artisanal mining; regulatory vacuum; CSR; Indonesian mining law.*

INTRODUCTION

Artisanal mining is a form of economic activity that has long existed in Indonesia and serves as a livelihood for millions of people in various mineral-producing regions. In the international literature, this phenomenon is known as *Artisanal and Small-Scale Mining* (ASM), which encompasses mining activities conducted traditionally with limited capital, simple technology, and labor drawn from local communities.[1] In Indonesia, the existence of artisanal mining is legally recognized through the mechanism of the Artisanal Mining Permit (IPR) as regulated in Law No. 4 of 2009 on Mineral and Coal Mining (Minerba Law), which was subsequently amended by Law No. 3 of 2020.

[1]Gavin Hilson, "Small-scale Mining and Its Socio-economic Impact in Developing Countries," Natural Resources Forum 26, no. 1 (2002): 3–4, https://doi.org/10.1111/1477-8947.00002. Hilson defines ASM as traditional mining activities with limited capital, simple technology, and a workforce drawn from local communities.

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Globally, the ASM sector is estimated to involve approximately 40 million direct miners and support the livelihoods of more than 150 million people in various developing countries.[2] In Indonesia itself, estimates of the number of artisanal miners vary widely, but various studies indicate figures reaching millions of people, particularly in the regions of Kalimantan, Sulawesi, Maluku, and Papua.[3] The sheer scale of this community involvement makes artisanal mining an issue that cannot be ignored in national legal development, particularly in the context of balancing economic activities with social and environmental protection.

A fundamental issue that arises is the normative ambiguity regarding how social responsibility is assigned and implemented in the context of artisanal mining. The concept *of Corporate Social Responsibility* (CSR), which has developed rapidly in international and national business law, is fundamentally constructed based on the paradigm of large corporations with adequate financial and institutional capacity. When this concept is mechanically applied to small-scale mining entities which possess vastly different characteristics in terms of scale, capital capacity, institutional structure, and human resources it results in what legal experts refer to as *a "rechtsvacuum"* or a normative vacuum.[4]

This legal vacuum is not merely a technical legislative issue but has broad substantive implications. From a community protection perspective, the absence of clear CSR standards for small-scale mining leaves communities living near mining areas without adequate safeguards against the negative impacts of mining activities. From an environmental sustainability perspective, the absence of proportional environmental rehabilitation obligations leads to ecological damage that is often irreversible. From an economic justice perspective, the lack of standardized benefit-sharing mechanisms results in disparities among miners, communities, and local governments.

Several previous studies have examined various aspects of artisanal mining in Indonesia. Rahayu (2021) examined the dynamics of regulatory changes regarding the authority of local

[2]World Bank, "Artisanal and Small-Scale Mining," World Bank Group, 2013, https://www.worldbank.org/en/topic/extractiveindustries/brief/artisanal-and-small-scale-mining. This figure includes both direct miners and family members dependent on the ASM sector.

[3]Arief Rahman and Diman Ade Mulada, "A Legal Study on the Existence of Community Mining," JATISWARA 33, no. 3 (2018): 278, https://doi.org/10.29303/jtsw.v33i3.177. This estimate includes both formal artisanal miners (IPR holders) and informal miners operating without a permit.

[4]Sudikno Mertokusumo, Understanding the Law: An Introduction (Yogyakarta: Liberty, 2007), p. 97. Mertokusumo defines a legal vacuum as a condition where a situation that should be regulated by law exists, yet there are no legal provisions governing it.

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and central governments.[5] Rahman (2018) discussed a legal analysis of artisanal mining from the perspectives of permitting and socio-environmental impacts.[6] However, studies that specifically focus on the conceptualization of social responsibility in artisanal mining from a normative-conceptual perspective remain very limited. This academic gap serves as the primary justification for this research.

Three research questions are formulated as follows: *first*, how is the concept of social responsibility constructed within the framework of Indonesian positive law regarding artisanal mining? *second*, where are the normative gaps in the regulation of CSR for artisanal mining in Indonesia? and *third*, what is the ideal normative conceptual reconstruction of social responsibility in artisanal mining?

This *study* is a normative legal study (*legal research*) or doctrinal research, namely research that examines law as a norm or rule.[7] Normative legal research encompasses studies of legal principles, legal systematics, legal harmonization, comparative law, and legal history.[8] In the context of this study, the primary focus is directed toward analyzing the legal principles and normative systematics governing social responsibility in small-scale mining.

The approaches used include three main approaches. *First*, *the statutory approach*, which involves examining all laws and regulations related to the research subject, including Law No. 40 of 2007, Law No. 3 of 2020, Government Regulation No. 47 of 2012, and various subordinate regulations. *Second*, *the conceptual approach*, which involves studying the perspectives and doctrines developed within legal science to identify relevant legal concepts and principles. *Third*, *the theoretical approach*, which is used to analyze legal issues through stakeholder theory, distributive justice theory, and sustainable development theory.

RESULT AND DISCUSSION

1. Theoretical Framework of Corporate Social Responsibility

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[5] Derita Prapti Rahayu and Faisal Faisal, "The Existence of Artisanal Mining Following the Implementation of Amendments to the Law on Mineral and Coal Mining," Indonesian Journal of Legal Development 3, no. 3 (2021): 337–353, https://doi.org/10.14710/jphi.v3i3.337-353.

[6] Rahman and Mulada, Op. cit., pp. 277–292.

[7] Peter Mahmud Marzuki, Legal Research (Jakarta: Kencana Prenada Media, 2005), pp. 35–36. Marzuki distinguishes normative legal research from social research on law: the former views law as a norm, while the latter views law as a social fact.

[8] Soerjono Soekanto and Sri Mamudji, Normative Legal Research: A Brief Review (Jakarta: RajaGrafindo Persada, 2010), pp. 13–14.

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Understanding the concept of corporate social responsibility in the context of small-scale mining requires a strong theoretical foundation. Historically, the idea of CSR evolved from debates regarding the relationship between business and society since the mid-20th century. Bowen (1953), in his seminal work, *Social Responsibilities of the Businessman*, first formulated social responsibility as the entrepreneur's obligation to align policies and make decisions that align with societal goals and values.[9]

The conceptual development of CSR took a significant leap with the emergence of *stakeholder theory*, developed by Freeman (1984) in his work **Strategic Management: A Stakeholder Approach**. This theory argues that corporations have obligations not only to shareholders but also to all stakeholders who can be affected by or influence the achievement of the organization's objectives.[10] In the context of small-scale mining, these stakeholders include miners, communities surrounding the mine, local governments, indigenous peoples, and the environment as entities that require protection.

Carroll (1991) developed a CSR pyramid model that divides corporate social responsibility into four levels: economic responsibility, legal responsibility, ethical responsibility, and philanthropic responsibility.[11] This model provides a useful hierarchical framework for understanding the gradation of social obligations that can be imposed on small-scale mining enterprises, taking into account that not all levels of responsibility can be equally demanded from small-scale business entities with varying capacities.

From a legal perspective, Zerk (2006) explains that the transformation of CSR from the *voluntary* realm to *a legal obligation* is a response to the failure of market mechanisms and traditional regulations to address the negative impacts of corporate activities.[12] In Indonesia, the legalization of CSR obligations through Article 74 of Law No. 40 of 2007 on Limited Liability

[9] Howard R. Bowen, Social Responsibilities of the Businessman (New York: Harper & Row, 1953), p. 6. Bowen's formulation is considered the starting point of the "modern era" of CSR in business and legal literature.

[10] R. Edward Freeman, Strategic Management: A Stakeholder Approach (Boston: Pitman Publishing, 1984), p. 46. Freeman defines a stakeholder as "any group or individual who can affect or is affected by the achievement of the organization's objectives."

[11] Archie B. Carroll, "The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders," Business Horizons 34, no. 4 (1991): 42, https://doi.org/10.1016/0007-6813(91)90005-G. Carroll's pyramid model illustrates four levels of CSR, ranging from the most fundamental (economic) to the most aspirational (philanthropic).

[12] Jennifer A. Zerk, Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law (Cambridge: Cambridge University Press, 2006), pp. 30–32.

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Companies marks a significant milestone, establishing social responsibility as a legal obligation for companies related to natural resources.[13]

The theory of distributive justice developed by Rawls (1971) in **A Theory of Justice** provides an important philosophical foundation. Rawls's *difference principle* requires that social and economic inequalities are only justifiable if they benefit the least advantaged members of society.[14] In the context of artisanal mining, this principle implies that the distribution of benefits from mining activities must be designed in such a way as to benefit mining communities and surrounding communities, who are often in the most vulnerable positions.

The theory *of sustainable development*, popularized by the Brundtland Report (1987), adds a temporal dimension to the understanding of CSR namely, the obligation to ensure that current economic activities do not compromise the ability of future generations to meet their needs.[15] In the context of artisanal mining, this principle of sustainability is highly relevant given the extractive nature of mining activities and their potential to cause permanent ecological damage.[16]

From the perspective of Indonesian law, Sidharta (2000) developed a concept of legal responsibility that distinguishes between moral responsibility, social responsibility, and legal responsibility.[17] This framework is relevant for understanding the position of CSR in small-scale mining, which lies at the intersection of the community's moral obligations, customary social norms, and formal legal provisions. Manan (2004) adds a perspective on the social function of law, which requires every legal regulation to consider the interests of the broader public, not just the interests of business actors.[18]

2. The Positive Legal Framework for CSR in Artisanal Mining in Indonesia

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[13]Law No. 40 of 2007 on Limited Liability Companies (Official Gazette of the Republic of Indonesia Year 2007 No. 106, Supplement to the Official Gazette No. 4756), Article 74(1).

[14]John Rawls, A Theory of Justice (Cambridge: Harvard University Press, 1971), pp. 302–303. Rawls's difference principle requires that socioeconomic inequalities are justifiable only if they benefit the least advantaged members of society.

[15]Brundtland Commission, Our Common Future: Report of the World Commission on Environment and Development (Oxford: Oxford University Press, 1987), p. 43. The classic definition: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

[16]Ralph Hamann and Paul Kapelus, "Corporate Social Responsibility in Mining in Southern Africa: Fair Accountability or Just Greenwash?" Development 47, no. 3 (2004): 86, https://doi.org/10.1057/palgrave.development.1100056.

[17]B. Arief Sidharta, Reflections on the Structure of Legal Science (Bandung: Mandar Maju, 2000), pp. 52–54. Sidharta distinguishes between moral responsibility (accountability to one's conscience), social responsibility (accountability to community norms), and legal responsibility (accountability to positive legal norms).

[18]Bagir Manan, Indonesian Positive Law: A Theoretical Study (Yogyakarta: FH UII Press, 2004), p. 78.

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An analysis of Indonesia's positive legal framework governing CSR in small-scale mining must be conducted systematically by examining various layers of regulation, from the constitution down to local regulations. Constitutionally, the foundation for regulating CSR in small-scale mining can be found in Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the earth, water, and natural resources contained therein are controlled by the state and utilized for the greatest possible prosperity of the people.[19] This constitutional provision serves as a normative mandate requiring that any utilization of natural resources, including small-scale mining, contribute to the broader prosperity of society.

At the statutory level, Article 74 of the UUPT requires corporations conducting business activities in the field of and/or related to natural resources to fulfill social and environmental responsibilities, which are subsequently operationalized through Government Regulation No. 47 of 2012. However, as analyzed by Untung (2008), this normative framework is constructed on the assumption that the legal subjects are limited liability companies with legal personality, and thus definitively excludes artisanal mining entities that often operate as individual businesses or cooperatives.[20]

In the context of mining law, Articles 66 through 73 of the Minerals and Coal Law (UU Minerba) regulate IPR provisions; however, there are almost no provisions that explicitly address the corporate social responsibility (CSR) obligations for IPR holders.[21] Unlike the provisions for holders of Mining Business Permits (IUP), which are regulated more comprehensively, regulations regarding social obligations for artisanal mining are very minimal. Government Regulation No. 23 of 2010 also does not provide adequate regulations because the obligations for community development and empowerment (PPM) it stipulates are primarily aimed at medium- to large-scale mining companies.[22]

[19]The 1945 Constitution of the Republic of Indonesia, Article 33, Paragraph (3). The Constitutional Court, in various rulings, has interpreted the phrase "controlled by the state" to encompass the functions of regulating, managing, administering, and supervising the management of natural resources.

[20]Hendrik Budi Untung, Corporate Social Responsibility (Jakarta: Sinar Grafika, 2008), pp. 45–47. Untung criticizes that the UUPT designs CSR obligations with the implicit assumption that the legal subjects are limited liability companies with legal personality, not other business entities.

[21]Law No. 3 of 2020 Amending Law No. 4 of 2009 on Mineral and Coal Mining (Official Gazette of the Republic of Indonesia Year 2020 No. 147, Supplement to the Official Gazette No. 6525), Articles 67–74.

[22]H. S. Salim, Law on Mineral and Coal Mining (Jakarta: Sinar Grafika, 2012), pp. 114–116. Salim notes that Government Regulation No. 23 of 2010 and its implementing regulations establish the obligations of small-scale miners (PPM) based on the assumption that the permit holders are large-scale corporations.

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The environmental dimension of social responsibility in artisanal mining is partially addressed in Law No. 32 of 2009 on the Protection and Management of the Environment (UUPLH). However, as criticized by Andrisman (2011), the implementation of these environmental provisions in the context of small-scale mining is very weak, both in terms of the capacity of local governments as regulators and the ability of small-scale miners to meet requirements that are technically and financially burdensome.[23]

At the local level, the quality and scope of small-scale mining regulations vary significantly. Most local regulations focus primarily on licensing and technical aspects of mining and have not substantively addressed the dimensions of CSR and social responsibility.[24] This situation reflects the inconsistency of vertical regulations, which is one of the sources of regulatory gaps in the regulation of CSR for small-scale mining.

Table 1. Normative Map of CSR within the Legal Framework of Small-Scale Mining in Indonesia

Legal Instruments	Regulatory Substance	Scope Regarding Small-Scale Mining	Normative Gaps
Article 74 of the UUPT (Law No. 40/2007)	CSR obligations for companies related to natural resources	Does not cover non-corporate entities (individuals, cooperatives)	Absolute gap for non-PT IPR holders
Articles 66–73 of the Mining Law (Law No. 3/2020)	Regulation of IPR	No explicit CSR obligations for IPR holders	The Absolute Absence of Social Obligations Under IPR
Government Regulation No. 47 of 2012	Operationalization of CSR under the Limited Liability Companies Act	Limited to limited liability companies	Same as the UUPT
Government Regulation No. 23 of 2010	Mining business operations + PPM	PPM is more aimed at large-scale IUP/IUPK	Relative gaps — disproportionate standards
UUPLH (Law No. 32/2009)	Environmental obligations (EIA, UKL-UPL)	In force but implementation is very weak	Functional gaps — insufficient capacity
Local regulations	Variations between regions	Most only regulate licensing and technical matters	Horizontal gaps — fragmentation and inconsistency

Source: Researcher's Analysis of Applicable Laws and Regulations (2024).

3. Identification and Analysis of Regulatory Gaps in Community-Based Mining CSR Regulations

[23] Trisno Andrisman, "Environmental Law Enforcement Against Small-Scale Mining Activities Causing Environmental Damage," Journal of Law and Development 41, no. 2 (2011): 236–237.

[24] T. Prasetyo, "Corporate Social Responsibility from the Perspective of Indonesian Business Law," Prioris Law Journal 5, no. 1 (2016): 8–10. Prasetyo notes that the majority of local regulations on small-scale mining focus on licensing and do not address the substance of CSR.

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The concept of a legal vacuum (*rechtsvacuum*) in legal science refers to a situation where there is a matter that ought to be regulated by law, yet there are no legal provisions in place to address it. Legal vacuums can manifest in three forms: absolute legal vacuums, relative legal vacuums, and contradictory legal vacuums.[25] In the context of community-based mining CSR in Indonesia, these three forms of legal vacuum can be identified simultaneously.

An absolute legal vacuum exists regarding the specific regulation of CSR obligations for IPR holders. There is not a single provision of positive law that explicitly and unequivocally requires artisanal miners holding IPRs to implement CSR programs for the communities surrounding the mine. Unlike IUP holders, who are required to develop and implement PPM programs under Ministry of Energy and Mineral Resources Regulation No. 41 of 2016, no similar provisions exist for artisanal mining. This gap results in the absence of structured social accountability from artisanal miners toward their communities.[26]

Relative regulatory gaps can be identified in several aspects. Regarding occupational safety and health (OSH), while Law No. 1 of 1970 on Occupational Safety and the Minister of Energy and Mineral Resources Regulation on Mining OSH do exist, these provisions were not designed with the capacity and characteristics of artisanal mining in mind—which differ significantly from conventional mining. The mismatch between established standards and on-the-ground realities creates a gap in effectiveness, which in essence constitutes a functional regulatory gap.[27]

The aspect of post-mining environmental rehabilitation is another area experiencing a relative normative gap. Although ESDM Ministerial Regulation No. 7 of 2014 on Reclamation and Post-Mining Activities stipulates reclamation obligations, the technical and financial requirements set forth including the obligation to provide reclamation guarantee funds are highly disproportionate to the scale and capabilities of small-scale miners. As analyzed by Saleng

[25] Mertokusumo, Op.Cit., pp. 97–99.

[26] Philipus M. Hadjon, Legal Protection for the Indonesian People (Surabaya: Bina Ilmu, 2010), pp. 25–27. Hadjon analyzes social accountability as a prerequisite for the realization of effective legal protection for citizens.

[27] Ronald Dworkin, Taking Rights Seriously (Cambridge: Harvard University Press, 1978), pp. 81–84. Dworkin distinguishes between “rules” that apply on an all-or-nothing basis and “principles” that apply gradually according to their weight.

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(2004), this disproportion creates a gap that, in practice, results in many former small-scale mining sites never being reclaimed.[28]

Contradictory regulatory gaps can be found in the tension between the recognition of communities' economic rights to small-scale mining on one hand, and obligations regarding environmental and community protection on the other. Article 33 of the 1945 Constitution and various community empowerment provisions recognize the right of communities to utilize natural resources. However, on the other hand, environmental and occupational safety regulations impose high standards that are difficult for small-scale miners to meet. This normative contradiction creates what Rasjidi and Wyasa Putra (2003) refer to as *a legal antinomy* that must be resolved through a comprehensive conceptual reconstruction.[29]

The normative gap regarding the distribution of economic benefits is the most significant issue from a social justice perspective. The royalty and IPR fee system regulated under Government Regulation No. 9 of 2012 lacks clear mechanisms regarding how a portion of these revenues should be returned to the communities where mining takes place. The absence of standardized *community benefit-sharing* mechanisms constitutes a normative gap that directly contributes to the distributive injustice experienced by communities surrounding artisanal mines.[30]

A regulatory gap can also be identified in the aspects of community engagement and consent. The principle of *Free, Prior, and Informed Consent* (FPIC) which has become an international standard in the management of natural resources in indigenous territories, as reflected in the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) has not been adequately accommodated in Indonesia's small-scale mining regulations. The FPIC mechanism has not been consistently operationalized in the procedures for granting mining rights.[31]

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[28] Abrar Saleng, Mining Law (Yogyakarta: UII Press, 2004), pp. 87–89. Saleng criticizes the reclamation guarantee requirements established for small-scale mining as "disregarding the reality of small-scale miners' financial capacity."

[29] Lili Rasjidi and I. B. Wyasa Putra, Law as a System (Bandung: Mandar Maju, 2003), pp. 76–78. Rasjidi and Wyasa Putra define legal antinomy as a normative conflict that cannot be resolved merely by applying the standard principles of lex superior, lex specialis, or lex posterior, and requires conceptual reconstruction.

[30] A. Roe, A. Dodd, and M. Henstridge, "Mining, Minerals, and Sustainable Development in Southern and Eastern Africa," International Journal of Environment and Sustainable Development 9, no. 1–3 (2010): 5. The absence of standardized community benefit-sharing mechanisms is identified as one of the primary causes of distributive injustice in artisanal mining.

[31] R. Yando Zakaria and Mohamad Shohibuddin, "Principles of Community-Based Natural Resource Management: A Critical Review of the Paradigms and Policy Instruments of Indonesian Mining and Forestry," Journal of Social Analysis 16, no. 1 (2011): 12–15.

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4. Conceptual Reconstruction of Social Responsibility in Artisanal Mining

In light of the identified regulatory gaps, this study proposes a conceptual reconstruction aimed at providing a more coherent and comprehensive framework. This conceptual reconstruction is built upon three main pillars: first, the principle of proportionality; second, *a community-based approach*; and third, the integration of formal legal norms with local social norms.

The principle of proportionality implies that the social obligations imposed on artisanal miners must be balanced with their economic and institutional capacities. As noted by Cragg (2012), the application of uniform CSR standards without considering differences in the scale and capacity of business actors can actually lead to counterproductive effects.[32] In this context, the proposed conceptual reconstruction distinguishes between *minimum obligations* that must be fulfilled by all artisanal miners, and *enhanced obligations* that can be progressively demanded as business capacity and scale increase.

The proposed minimum obligations include: (1) the duty not to extract more than permitted (*duty of restraint*); (2) the duty to provide information to the community regarding the impacts of mining activities (*duty of disclosure*); (3) the duty not to damage community water sources and agricultural land (*duty of non-interference*); and (4) the duty to perform minimal restoration of former mining sites (*duty of minimal restoration*). These obligations are negative in nature and have thresholds that can be adjusted according to the capacity of artisanal miners.

Proposed additional obligations include: (1) contributions to local community funds; (2) prioritizing job opportunities for community members; (3) implementing health and safety programs for workers and the community; and (4) participating in ecosystem rehabilitation programs in the mining area. Their implementation must be supported by government incentives, such as royalty reductions, access to capital, and technical assistance.

A community-based approach recognizes the central role of communities not only as beneficiaries but also as active actors in the management and oversight of artisanal and small-scale mining. Hilson and Banchirigah (2009) demonstrate that, in the context of ASM in Sub-Saharan Africa, active community involvement in the governance of artisanal and small-scale

[32] Wesley Cragg, "Ethics, Enlightened Self-Interest, and the Corporate Responsibility to Respect Human Rights: A Critical Look at the Justificatory Foundations of the UN Framework," Business Ethics Quarterly 22, no. 1 (2012): 15, https://doi.org/10.5840/beq20122213.

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mining is a prerequisite for the effectiveness and sustainability of such activities.[33] This experience is relevant to the Indonesian context, where local communities and indigenous peoples possess traditional natural resource management systems that can be integrated with formal regulatory frameworks.

The integration of formal legal norms with local social norms constitutes the third aspect of the proposed conceptual reconstruction. Various mining communities across the archipelago have developed customary norms governing the sustainable use of natural resources, such as the *sasi* system in Maluku. Integrating these norms into the formal regulatory framework for community-based mining CSR can enhance the effectiveness and social legitimacy of such arrangements.[34]

From an institutional perspective, the proposed conceptual reconstruction also encompasses the need for proportional oversight and enforcement mechanisms. As analyzed by Ayres and Braithwaite (1992) in their theory *of responsive regulation*, effective enforcement of CSR rules requires an approach that is responsive to the context and capacity of the regulated subjects.[35] In the case of small-scale mining, a " " enforcement approach that prioritizes dialogue, accompaniment, and empowerment will be more effective than an approach that is purely *punitive*.

Table 2. Conceptual Reconstruction Matrix for Small-Scale Mining CSR

Pillars of Reconstruction	Weaknesses Addressed	Conceptual Instruments	Regulatory Agenda
Principle of Proportionality	Uniform standards that do not match the capacity of small-scale miners	Distinction between minimum and additional obligations; a phased approach	Revision of the Mining Law — special chapter on CSR and IPR
Community-Based Approach	Communities are merely objects, not active actors	Community consultation forums; operationalized FPIC	Regulation on CSR for Small-Scale Mining

[33] Gavin Hilson and Sadia M. Banchirigah, "Are Alternative Livelihood Projects Alleviating Poverty in Mining Communities? Experiences from Sub-Saharan Africa," Journal of Development Studies 45, no. 2 (2009): 175–178, https://doi.org/10.1080/00220380802553057.

[34] Zakaria and Shohibuddin, Op. cit., pp. 20–22. The sasi system in Maluku is an example of a customary mechanism for regulating the use of natural resources that has proven effective in maintaining ecological sustainability and distributive justice among community members.

[35] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford: Oxford University Press, 1992), pp. 4–5. Ayres and Braithwaite's theory of responsive regulation argues that the effectiveness of regulation depends on its ability to respond flexibly to the context and capacity of the regulated subjects, prioritizing a persuasive approach before resorting to a coercive one.

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Integration of Local Norms	Fragmentation between formal law and customary norms	Recognition of customary law (sasi, etc.) in formal regulations	Local regulations that adapt national standards to the local context
Responsive Regulation	Ineffective punitive enforcement	Dialogue, accompaniment, and empowerment as the primary approach	Coordination mechanisms between the Ministry of Energy and Mineral Resources, the Ministry of Environment and Forestry, and local governments

Source: Researcher's Analysis (2024).

5. Legal Implications and Policy Recommendations

Based on the analysis conducted, several legal implications and policy recommendations need to be highlighted. *First*, from a legal reform perspective, revisions to the Mining Law must include provisions explicitly regulating the social responsibilities of IPR holders while considering the principle of proportionality, so as not to burden small-scale miners while still providing adequate protection for communities and the environment.

Second, from an institutional perspective, a more effective coordination mechanism needs to be established between the Ministry of Energy and Mineral Resources, the Ministry of Environment and Forestry, the Ministry of Villages and Regional Development, and local governments regarding the supervision and guidance of small-scale mining CSR. The current institutional fragmentation results in overlapping authority on one hand and a lack of oversight on the other.

Third, from a community empowerment perspective, mechanisms for community participation in the planning and oversight of small-scale mining activities need to be developed. Structured and legally recognized community consultation forums will provide a legitimate channel for communities to voice their interests.[36]

Fourth, from the perspective of policy incentives, the government needs to develop incentive packages that encourage small-scale miners to voluntarily exceed minimum social responsibility standards, such as royalty relief for miners who meet or exceed specific CSR standards, easier access to business capital, or priority for IPR extensions for miners with a good CSR track record.

[36]Freeman, Op.Cit., pp. 53–55. Freeman advocates for structured stakeholder consultation mechanisms as a prerequisite for the legitimacy of corporate decisions that impact community interests.

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Fifth, from a research and policy development perspective, more comprehensive empirical research is needed to capture the reality of social responsibility practices in artisanal mining across various regions in Indonesia. Solid empirical data will enable the formulation of policies that are more targeted and responsive to the diverse contexts of artisanal mining throughout the archipelago.

CONCLUSION

Based on the normative-conceptual study conducted, this research yields three main conclusions.

First, the concept of CSR in Indonesian positive law, as regulated in the UUPT and the Minerba Law, has not adequately accommodated the unique characteristics of small-scale mining. The existing normative framework is constructed on the assumption that legal subjects are large corporations with legal personality; consequently, it definitively and functionally excludes small-scale mining entities operating as individual businesses or cooperatives. This inversion of the assumption regarding legal subjects is the root cause of the entire system of identified legal gaps.

Second, there is a significant legal vacuum (*rechtsvacuum*) in three dimensions: (a) an absolute legal vacuum there is no explicit CSR obligation for IPR holders; (b) a relative legal vacuum where existing environmental and occupational safety and health (OSH) standards are disproportionate to the capacity of small-scale miners; and (c) a contradictory legal vacuum stemming from the tension between the recognition of economic rights and environmental protection obligations. These three types of legal vacuums reinforce one another and create an ineffective regulatory environment for protecting the interests of communities and the environment surrounding small-scale mining operations.

Third, the proposed conceptual reconstruction of small-scale mining CSR is based on three pillars: the principle of proportionality, which distinguishes between minimum obligations and additional obligations; a community-based approach that positions the community as an active actor— —rather than merely a beneficiary; and the integration of formal legal norms with local social and customary norms. This conceptual reconstruction needs to be operationalized through three integrated regulatory instruments: amendments to the Mining Law to include a specific chapter on the social responsibility of small-scale mining; the issuance of a Government

Regulation on Small-Scale Mining CSR that operationalizes minimum and additional obligations; and the empowerment of local governments to issue local regulations that adapt national standards to local conditions and norms.

REFERENCES

Ayres, Ian, and John Braithwaite. Responsive Regulation: Transcending the Deregulation Debate. Oxford: Oxford University Press, 1992.

Bowen, Howard R. *Social Responsibilities of the Businessman*. New York: Harper & Row, 1953.

Carroll, Archie B., and Ann K. Buchholtz. *Business and Society: Ethics, Sustainability, and Stakeholder Management*. 9th ed. Mason: Cengage Learning, 2014.

Dworkin, Ronald. *Taking Rights Seriously*. Cambridge: Harvard University Press, 1978.

Freeman, R. Edward. Strategic Management: A Stakeholder Approach. Boston: Pitman Publishing, 1984.

Hadjon, Philipus M. Legal Protection for the Indonesian People. Surabaya: Bina Ilmu, 2010.

Manan, Bagir. Indonesian Positive Law: A Theoretical Study. Yogyakarta: FH UII Press, 2004.

Marzuki, Peter Mahmud. Legal Research. Jakarta: Kencana Prenada Media, 2005.

Mertokusumo, Sudikno. Understanding Law: An Introduction. Yogyakarta: Liberty, 2007.

Rasjidi, Lili, and I. B. Wyasa Putra. Law as a System. Bandung: Mandar Maju, 2003.

Rawls, John. A Theory of Justice. Cambridge: Harvard University Press, 1971.

Saleng, Abrar. Mining Law. Yogyakarta: UII Press, 2004.

Salim, H. S. Mineral and Coal Mining Law. Jakarta: Sinar Grafika, 2012.

Sidharta, B. Arief. Reflections on the Structure of Legal Science. Bandung: Mandar Maju, 2000.

Soekanto, Soerjono, and Sri Mamudji. Normative Legal Research: A Brief Review. Jakarta: RajaGrafindo Persada, 2010.

Untung, Hendrik Budi. Corporate Social Responsibility. Jakarta: Sinar Grafika, 2008.

Zerk, Jennifer A. Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law. Cambridge: Cambridge University Press, 2006.

Andrisman, Trisno. “Enforcement of Environmental Law Against Small-Scale Mining Activities Causing Environmental Damage.” Journal of Law and Development 41, no. 2 (2011): 231–258.

Carroll, Archie B. "The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders." Business Horizons 34, no. 4 (1991): 39–48. https://doi.org/10.1016/0007-6813(91)90005-G

Cragg, Wesley. "Ethics, Enlightened Self-Interest, and the Corporate Responsibility to Respect Human Rights: A Critical Look at the Justificatory Foundations of the UN Framework." Business Ethics Quarterly 22, no. 1 (2012): 9–36. https://doi.org/10.5840/beq20122213

Hamann, Ralph, and Paul Kapelus. "Corporate Social Responsibility in Mining in Southern Africa: Fair Accountability or Just Greenwash?" Development 47, no. 3 (2004): 85–92. https://doi.org/10.1057/palgrave.development.1100056

Hilson, Gavin. "Small-scale Mining and Its Socio-economic Impact in Developing Countries." Natural Resources Forum 26, no. 1 (2002): 3–13. https://doi.org/10.1111/1477-8947.00002

Hilson, Gavin, and Sadia M. Banchirigah. "Are Alternative Livelihood Projects Alleviating Poverty in Mining Communities? Experiences from Sub-Saharan Africa." Journal of Development Studies 45, no. 2 (2009): 172–196. https://doi.org/10.1080/00220380802553057

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https://journal.uinmataram.ac.id/index.php/malarev/

Nugraha, I. S. "Legal Protection for Artisanal Miners under Law No. 4 of 2009 on Mineral and Coal Mining." Jurnal Hukum Ius Quia Iustum 26, no. 1 (2019): 78–102. https://doi.org/10.20885/iustum.vol26.iss1.art4

Prasetyo, T. “Corporate Social Responsibility from the Perspective of Indonesian Business Law.” Prioris Law Journal 5, no. 1 (2016): 1–19.

Rahayu, Derita Prapti, and Faisal Faisal. “The Existence of Small-Scale Mining Following the Enactment of Amendments to the Law on Mineral and Coal Mining.” Indonesian Law Development Journal 3, no. 3 (2021): 337–353. https://doi.org/10.14710/jphi.v3i3.337-353

Rahman, Arief, and Diman Ade Mulada. “A Legal Study on the Existence of Small-Scale Mining.” JATISWARA 33, no. 3 (2018): 277–292. https://doi.org/10.29303/jtsw.v33i3.177

Roe, A., A. Dodd, and M. Henstridge. "Mining, Minerals, and Sustainable Development in Southern and Eastern Africa." International Journal of Environment and Sustainable Development 9, no. 1–3 (2010): 1–18.

Zakaria, R. Yando, and Mohamad Shohibuddin. “Principles of Community-Based Natural Resource Management: A Critical Review of the Paradigms and Policy Instruments of Indonesian Mining and Forestry.” Jurnal Analisis Sosial 16, no. 1 (2011): 1–30.

1945 Constitution of the Republic of Indonesia.

Law No. 1 of 1970 on Occupational Safety.

Law No. 40 of 2007 on Limited Liability Companies (Official Gazette of the Republic of Indonesia Year 2007 No. 106, Supplement to the Official Gazette No. 4756).

Law No. 4 of 2009 on Mineral and Coal Mining (Official Gazette of the Republic of Indonesia Year 2009 No. 4, Supplement to the Official Gazette No. 4959).

Law No. 32 of 2009 on Environmental Protection and Management (Official Gazette of the Republic of Indonesia Year 2009 No. 140, Supplement to the Official Gazette No. 5059).

Law No. 3 of 2020 Amending Law No. 4 of 2009 on Mineral and Coal Mining (Official Gazette of the Republic of Indonesia Year 2020 No. 147, Supplement to the Official Gazette No. 6525).

Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities.

Government Regulation No. 47 of 2012 on the Social and Environmental Responsibility of Limited Liability Companies.

Government Regulation No. 9 of 2012 on the Types and Rates of Non-Tax State Revenues Applicable to the Ministry of Energy and Mineral Resources.

Ministry of Energy and Mineral Resources Regulation No. 7 of 2014 concerning Reclamation and Post-Mining in Mineral and Coal Mining.

Regulation of the Minister of Energy and Mineral Resources No. 41 of 2016 concerning Community Development and Empowerment in Mineral and Coal Mining Business Activities.

Brundtland Commission. Our Common Future: Report of the World Commission on Environment and Development. Oxford: Oxford University Press, 1987.

United Nations. United Nations Declaration on the Rights of Indigenous Peoples. UN General Assembly Resolution 61/295, 2007.

World Bank. "Artisanal and Small-Scale Mining." World Bank Group, 2013. https://www.worldbank.org/en/topic/extractiveindustries/brief/artisanal-and-small-scale-mining