



PROSPECT OF MINERAL AND COAL MINING POLICY

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Abstract: Mineral and coal mining policy is a subject that continues to receive attention in the legal and regulatory environment. This journal analyzes prospective mineral and coal mining policies through a normative juridical approach focusing on relevant regulatory aspects and legal implications. This study uses a normative juridical analysis method to evaluate policies that apply in the context of mineral and coal mining. This research gains an in-depth understanding of the existing regulatory structure by reviewing applicable laws and regulations, court decisions, and decisions of regulatory agencies. The results of this study indicate that mineral and coal mining policies have a solid legal basis and regulate various aspects, such as licensing, environment, labor protection, and corporate social obligations. However, there are challenges related to law enforcement, harmonization of regulations, and consistent implementation of policies. In response to these challenges, this study proposes several recommendations to increase the effectiveness of mineral and coal mining policies legally. These recommendations include expanding cooperation between relevant government agencies, improving regulations and procedures, increasing legal capacity, and strengthening oversight and stricter law enforcement. This research is expected to contribute to policymakers, legal practitioners, and related parties in developing more responsive, comprehensive, and effective regulations in maintaining the sustainability of the mineral and coal mining sector by taking into account related legal aspects.

Keywords: Coal; Legal Implications; Mining Policy; Mineral

1. Introduction

Arrangements regarding Natural Resources have been regulated in the 1945 Constitution, to be precise in Article 33 paragraph 3, which confirms that land, water, and natural resources contained therein shall be controlled by the state and used for the maximum benefit of the people. In reviewing this journal, the author focuses on government consistency in the legal politics of resource management, mineral, and coal mining, considering mining resources as natural wealth contained in the earth, a resource of non-renewable nature. Its leadership needs to be done optimally, as the signs stated in paragraph (4), paying attention to efficiency, transparency, sustainability, environmental awareness, and justice to obtain maximum benefits for prosperity people sustainably. ¹Appropriate policies are expected to protect the potential for mining resources in Indonesia, which are very large but non-renewable. This must be considered to continue resources and the balance of nature in Indonesia.

¹ Wahyu Nugroho, Bambang Daru, and Ida Nurlinda, "Kebijakan Pengelolaan Tambang Dan Masyarakat Hukum Adat Yang Berkeadilan Ekologis Ecological Justice ' s Indigenous Indigenous Law and Community Management Policy," *Jurnal Konstitusi* 15, no. 4 (2018): 821.



Indonesia is one of the largest coal producers and exporters in the world. Based on the information provided by the Indonesian Ministry of Energy and Mineral Resources, Indonesia's coal reserves are estimated to be depleted in approximately the next 83 years if the current production rate continues. About 60 percent of Indonesia's total coal reserves consist of cheaper, lower-quality coal containing less than 6,100 cal/gram. Therefore, this type of coal is sold at competitive prices in the international market.² The magnitude of this potential should have made the government careful in making policies. Because even though it is abundant, this resource will still run out. Utilization and management must also be carried out clearly and carefully because small mistakes made continuously and not realized will be risky for the continuity of coal in Indonesia.

Mineral and coal mining policies are an essential part of efforts to manage natural resources sustainably and maintain a balance between industrial development and environmental protection. The story of mineral and coal mining policies has evolved since long ago, continuously adjusting to dynamics and national legal and political needs. In this context, the normative juridical approach is very relevant in analyzing and evaluating the policies that apply to the mineral and coal mining sector.

There are at least three reasons why it is necessary to discuss the dynamics of mineral and coal mining policies. First, Indonesia is a country rich in geological resources in the form of radioactive, metal, non-metallic, and rock and coal minerals. Iron, primary gold, copper, nickel, bauxite, and silver are mineral geological resources that are the mainstay of Indonesia. In fact, among countries in the world, Indonesia ranks sixth in terms of wealth of geological resources. Second, Indonesia's economic growth is driven by the mining sector, a commodity with high economic value. Third, a change in regulation will change the direction of the policy regarding matters regulated in the law; this also applies to the mineral and coal sectors.

Mineral and coal mining has complex legal implications involving regulation, licensing, environmental protection, and corporate social obligations. Therefore, this study aims to conduct a prospective analysis of mineral and coal mining policies through a normative juridical approach. Through this approach, research will involve reviewing applicable laws and regulations, court decisions, and decisions of regulatory agencies related to mineral and coal mining. Analyzing the existing legal basis will provide an understanding of the sector's regulatory framework and how current policies can be improved to achieve better goals.

Understanding the legal framework will also assist in identifying challenges and weaknesses that may arise in implementing mineral and coal mining policies. Legal consistency, harmonization of regulations, and effectiveness of law enforcement are some of the problems that may be faced to ensure these policies' success. In addition, the normative juridical approach will also consider aspects of corporate social responsibility in the mineral and coal mining sector. The role of companies in fulfilling social and environmental obligations,

² Anugrah Pratama Afin and Berkah Fajar Tamtomo Kiono, "Potensi Energi Batubara Serta Pemanfaatan Dan Teknologinya Di Indonesia Tahun 2020 – 2050 : Gasifikasi Batubara," *Jurnal Energi Baru Dan Terbarukan* 2, no. 2 (2021): 144–122, <https://doi.org/10.14710/jebt.2021.11429>.

including participation in sustainable development and protecting the rights of local communities, will be an essential part of this research.

Research on mineral and coal mining policies has often been carried out, especially regarding the various regulations governing implementing these policies. However, the research the researcher is studying this time is different because the researcher needs to discuss more than regulations and procedures. The researcher discusses future views regarding mineral and coal mining regulations. Researchers also write down the impact of policies that could be more optimal and effective on the continuity of mineral and coal resources and the impact on local communities around mining areas.

It is hoped that the results of this research will contribute to policymakers, legal practitioners, and other related parties in developing better regulations and implementing more effective and sustainable mineral and coal mining policies. To achieve this goal, it is necessary to have cooperation between relevant government agencies, improve regulations and procedures, and increase legal capacity.

2. Research Method

The type of research used by the author is normative juridical. This type of research uses a process to find legal rules and doctrines to answer the legal issues. This study uses a normative juridical method because researchers will analyze regulations and laws and regulations to answer the problems faced.

3. Discussion

3.1. Development of Mineral and Coal Mining Legal Policies in Indonesia

Minerba mining policy development is needed for at least three reasons. First, Indonesia is a country rich in geological resources in the form of radioactive, metal, non-metallic, and rock and rock minerals. Iron, primary gold, copper, nickel, bauxite, and silver are the geological wealth of metal minerals that are the main components of Indonesia. Indonesia is ranked sixth in the world in terms of geological resource wealth. Second, mining is a commodity with high economic value and has proven to have a significant impact on Indonesia's economic growth. In 1975-1985, which is often referred to as the golden age, this sector contributed more than 20 percent of the national economy

a. Before independence

Mineral and coal mining activities in the archipelago can be traced back to colonial or pre-colonial times.³ During the colonial period, mining was inseparable from the goals of colonialism itself, including the reclamation of natural resources in colonial territories. First, they dredge or dig natural resources that are abundant, easy, and simple to obtain namely spices. In 1850, the Dutch East Indies government established the Dienst van het Mijnwezen Mining Service based in Batavia to optimize geological and mining research in a more focused manner.

³ Martin Sitompul, "Mendulang Sejarah Tambang Nusantara," *PT. Media Digital Historia.*, 2017.

The ordinance of the first mining was the Mijn Reglement in 1850. This ordinance became the legal basis for the Dutch East Indies government to grant mining concessions in the Dutch East Indies to the private sector. It also became the legal basis for controlling all mineral resources in the Dutch East Indies, including taking over mining operations that existed before the establishment of the Dutch East Indies government.

During the colonial period, mining activities could not be separated from the goals of colonialization, including extracting natural wealth in the colonial territories. In the beginning, the natural wealth dredged or taken was that which was abundantly available and obtained quickly and simply spices. However, in its development, it is also targeting the natural wealth contained in the earth, which is no longer accessible and simple to extract, namely mining goods, including minerals and coal. During the reign of the Dutch government, mining activities in the Dutch East Indies were part of a business that was to be monopolized through a specific authority, *Oostindische Compagnie*(VOC), or the Dutch East Indies Trade Union, which was formed on March 20, 1602. This trade association was formed to carry out a trade monopoly in the Asian region during the European colonial era and prevent losses due to trade competition with the Portuguese in the Archipelago.⁴

b. After Independence

A new chapter in the development of law in Indonesia was marked by the proclamation of independence on August 17, 1945. The Declaration of Independence replaced the colonial legal system, which became the national legal system. With the Proclamation of Independence, the colonial legal system was replaced, and a new legal system was formed, namely the national legal system that was on the needs and character of the nation.

Post-colonial, the 1945 Constitution of the Republic of Indonesia, as the highest law, establishes a constitutional basis for managing natural resources in Indonesia, including mineral and coal mining. The constitutional basis is Article 33 paragraph (2), "Production branches which are important for the state and which affect the livelihood of the many people are controlled by the state," and paragraph (3), "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This means mining business activities, which are exploration and exploitation of natural resources, must be "controlled by the state" and "used for the greatest prosperity of the people." The phrase "controlled by the state" is sacred in managing natural resources. However, it is often interpreted and implemented differently by government regimes. The difference is mainly in the matter of whether it means that the state must be directly involved or not. In the mineral and coal mining field, post-colonial policy differences, whether this sector is open or closed to foreign investment, can be traced from the meaning of "controlled by the state." Later, as economic liberalization strengthened, these differences in meaning did not appear to be overly debated. Whether this sector is open or closed to foreign investment, differences in post-colonial policies can be traced from the meaning of "controlled by the state." Later, as economic liberalization strengthened, this meaning difference seemed less debated. Whether this sector is open or closed to foreign investment, differences in post-colonial policies can be traced from the meaning of

⁴ Yuda Prinada, "Apa Itu Pengertian VOC, Sejarah Kapan Didirikan, Dan Tujuannya?," tirtoid, 2021.

"controlled by the state." Later, as economic liberalization strengthened, this meaning difference seemed less debated.⁵

1. Law 10/1959, which annulled these mining rights, became the initial basis before issuing a new Mining Law, which was expected to regulate the granting of new mining rights. However, long before that, in July 1951, as a form of awareness of the importance of mining control, member of the Provisional People's Representative Council (DPRS) Teuku Mr. Moh Hassan and other DPRS members drafted a motion urging the government to immediately take steps to improve regulation and supervision of mining businesses in Indonesia. The movement, known as the "Mr. Teunku Hassan et al.," contains an urging to the Government to form a State Commission on mining affairs within one month with the following tasks:
 - a. Investigate the management of oil, tin, coal, gold/silver mines, and other mineral materials in Indonesia.
 - b. Prepare plans for Indonesian mining laws that are by the current situation.
 - c. Looking for basic ideas for the government to finalize/regulate oil management in Sumatra and oil sources in other places.
 - d. Seeking main ideas for the government regarding mining status in Indonesia.
 - e. Seeking main ideas for the government regarding mining status in Indonesia.
 - f. Make other suggestions regarding mining as a source of state revenue.
2. Postponing all grants of permits, concessions, exploration, or extending permits that have expired while waiting for the results of the work of the State Mining Affairs Committee.

Several years after the move, the mysticism to form a mining law began to stir again, especially in 1958-1959. The formation of the law was based on efforts to make all mines in Indonesia the property of the Indonesian people and the desire to produce several statutes and regulations concerning the nationalization of mining businesses. The statutory rules governing the takeover of companies in the mining sector, namely Government Regulation Number 50 of 1959, concerning the Determination of Dutch-Owned Industrial/Mining Companies Subject to Nationalization (PP 50/1959).⁶

The 1967 Mining Law is different from previous regulations. These differences include the basic principles regarding providing opportunities to private companies engaged in the mining sector, the new rule regarding reducing direct mining exploitation by the state, and the state functions only as a supervisor and provider of fields and directions.⁷

⁵ Sri Soemantri M, "Hak Uji Material Di Indonesia," *Bandung:Alumni*, 1997.

⁶ Direktorat Jenderal Pertambangan Umum Departemen dan Energi, "Kilas Balik 50 Tahun Pertambangan Umum Dan Wawasan 25 Tahun Mendatang," *Jakarta: Direktorat Jenderal Pertambangan Umum Departemen Dan Energi*, 1995.

⁷ Sajuti Thalib, "Hukum Pertambangan Indonesia," *Bandung: Penerbitan Akademi Geologi Dan Pertambangan*, 1974.

In addition, Law no. UU no. 11 of 1967 regulates Mining Permits, namely permits issued by the Minister to carry out mining activities. Mining allows held in Article 2 of Government Decree No. 32 (PP 32/1969) of 1969 (PP 32/1969) implementation of Law no. 11 of 1967 consists of the Mining Ordinance, Mining Permit Ordinance, and mining authorization permit decisions. According to Section 7, a mining permit can be a general exploration mining permit, Research Authority Mining, Exploitation Mining Authority, Mining Authority for Processing and Refining, Transport Mining Authority, and Sales Mining Authority.

c. After the 1998 Reformation

In regional government regulations, Law Number 5 of 1974 concerning Regional Government (1974 Regional Government Law) was replaced with Law Number 22 1999 concerning Regional Government (1999 Regional Government Law). This change brought changes to broad autonomy in regencies and cities, which received authority in several ways open *open-ended arrangement*, namely the delegation of authority to carry out government affairs with a general formulation so that the autonomous region has the power to carry out various government affairs that are not prohibited by laws and regulations or are not included in other government jurisdictions.⁸This has also led to a change in mining authority, with the power to issue permits previously vested in the state and then transferred to regional governments, especially districts and cities, which are granted maximum autonomy.

Overlapping licenses in the mining sector occur in mining business permits (IUP), between IUP and customary land, and between IUP and other land use areas. The overlapping of IUPs in the mining sector and across sectors causes a lot of losses for the state, such as confocal ic, not maximal state revenue both from tax and non-tax revenue, as well as hampered economic activity in these sectors (mining, forest, plantation). This was triggered by the formation of policies at the local government level that were not in line with existing policies at the central government level. For example, the construction of regional regulations is no longer based on the 1967 Mining Law. This has led to the increasingly chaotic implementation of mining activities in various regions.⁹

The description of the development of post-1998 mineral and coal mining policies shows that mining issues are part of the issues of decentralization and regional autonomy. This can be seen from the tug-of-war of mining management as a matter of who gets what and who gets it. In the beginning, with the spirit of reform in the form of government decentralization, mining was included as part of the affairs that fell under the authority of regional governments, both provincial, district, and city, which were adjusted to the existence and size of mining areas. Later, this authority was taken back by the central government. After the 1998 reform, mineral and coal mining policies were also

⁸ Bhenyain Hoessin, "Perubahan Model, Pola, Dan Bentuk Pemerintah Daerah: Dari Era Orde Baru Ke Era Reformasi," *Jakarta: Departemen Ilmu Administrasi FISIP UI*, 2009.

⁹ Hayati, *Era Baru Hukum Pertambangan* (yayasan pustaka obor indonesia, 2016).

characterized by introducing and enforcing permit regimes as mining instruments, which replaced contracts.¹⁰

3.2. Potential and Utilization of Mineral and Coal Resources in Indonesia

Energy is one of the most critical sectors in a country; even energy can be said to be the strength of a nation. Energy is produced from sources such as oil, coal, and natural gas, which will then be processed and converted into electricity and fuel the public will use. Energy is also a commodity in life; everyone needs it to carry out their daily activities.¹¹ According to Law No. 30 of 2007 concerning Energy, energy is the ability to do work, which can be in the form of heat, light, mechanics, chemistry, and electromagnetics. With limited reserves of non-renewable energy resources in the form of fossil energy, such as petroleum, natural gas, and coal, it is necessary to carry out energy diversification activities to guarantee the energy supply. To ensure energy supply, energy management is needed, which is related to good governance and policy-making mechanisms within it.¹²

Exploration that has been carried out so far has yet to be carried out optimally, so existing resources have not been utilized effectively and efficiently. Metal and non-metal mineral resources have great potential, even from the general mining sector, which is an industrial sector that contributes significantly to Indonesia's economic growth and development. One of them is in Madiun Regency, which is dominated by rocks. Madiun Regency has the potential for mining materials, especially stones, namely traces, andesite, clay, and piled-up soil.¹³ However, in this case, it turns out that the resource potential has yet to be discovered due to less optimal utilization in terms of supporting infrastructure to dig deeper into the potential of this rock resource.

Another area in Indonesia that has the potential for mineral and rock resources is West Sumatra. West Sumatra's physiographical conditions in the form of folded hills, volcanic mountains, and lowlands, causing the West Sumatra region to have much potential for mining goods, such as gold, zinc, manganese, coal, lead, iron stone, bag Helena, and many other types. Other.¹⁴ This fact causes the Province of West Sumatra to have rich mining potential and a large area. In addition, many areas in West Sumatra can make the mining sector a regional revenue sector for development and economic growth.

However, it turns out that its utilization has not been optimal as there are still many illegal mining activities, the exploitation of which is carried out on a massive basis; the lack of

¹⁰ Marulak Pardede, "Implikasi Hukum Kontrak Karya Pertambangan Terhadap Kedaulatan Negara," *Jurnal Penelitian Hukum De Jure* 18, no. 1 (2018): 18.

¹¹ et al., "Implementasi Kebijakan Satu Peta Energi Sumber Daya Mineral (Esdm One Map) Di Kementerian Energi Sumber Daya Mineral Republik Indonesia," *Matra Pembaruan* 3, no. 2 (2019): 109–18, <https://doi.org/10.21787/mp.3.2.2019.109-118>.

¹² et al.

¹³ Donny Rusdian Pratama, Fajar Rizki Widiatmoko, and Yazid Fanani, "Sebaran Potensi Bahan Galian Industri Kabupaten Madiun Berdasarkan Kajian Geologi Regional," *Seminar Teknologi Dan Kelautan (SEMATAN III)*, 2021.

¹⁴ Wilma Septia et al., "Potensi Sumber Daya Mineral Logam Dan Non Logam Di Provinsi Sumatera Bara," *Jurnal Georaflesia: Artikel Ilmiah Pendidikan Geografi* 5, no. 1 (2020): 87, <https://doi.org/10.32663/georaf.v5i1.1282>.

management regulations from the mining sector has been fortunate since the issuance of Law Number 4 of 2009 concerning Mineral and Coal Mining, the increasingly stringent mining permits and also the lack of qualified human resources. Adequate in the management of the mine. The many challenges that constrain the utilization of mining goods are the reason for the importance of effective policies and regulations that are appropriate and follow the flow of changes in mining needs and also nature to maintain the natural balance accompanied by the prosperity of the local community in mining excavation areas.

3.3. Mine Management Policy in Indigenous Peoples

Article 18B paragraph (2) of the 1945 Constitution has emphasized the existence of indigenous peoples: "The state recognizes and respects customary law community units and their traditional rights *long as still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia*, which is regulated by law." Recognition of this existence needs to be complemented by recognizing and protecting the rights accompanying Indigenous Peoples' facts. There is no existence without the fulfillment of fundamental rights and freedoms.

Although there is acknowledgment in several laws and regulations, it is necessary to emphasize that the nature of the recognition so far is conditional recognition, which can be seen from the phrase "as long as it exists, by the development of society, in line with the principles of the Unitary State of the Republic of Indonesia, and regulated by law." act.

Based on the above references, the notion of legal recognition of mineral and coal resources leads to the idea of recognition from the state/government both politically and legally, through regulating the rights and obligations of the government in providing respect, opportunity, and protection for the development of indigenous and tribal peoples, along with customary rights to the land owned, including the natural resources contained within the framework of the Unitary State of the Republic of Indonesia. This acknowledgment shows that the state/government has acknowledged, stated that it is legal/correct, or noted that customary law communities have rights over the natural resources they own and oblige the government to protect these rights from threats/harassment from other parties.

Minerals and coal are natural resources as gifts from God, which coincidentally exist in the territory of indigenous peoples for generations as assets that cannot be separated from their existence. Minerals and stones are natural resources that are the traditional rights of customary law communities, as referred to in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia—state recognition of everyday law communities' existence and recognition of their traditional rights. Therefore, policies on managing mineral and coal resources in the customary land areas of familiar law communities must contribute to their welfare as the primary rights holders besides the state.¹⁵

The politically weak position of indigenous peoples compared to investors and the government has resulted in the government's easy takeover of natural resources without going through a

¹⁵ Samuel Risal, DB Paranoan, and Suarta Djaja, "Analisis Dampak Kebijakan Pertambangan Terhadap Kehidupan Sosial Ekonomi Masyarakat Di Kelurahan Makroman," *Jurnal Administrative Reform (JAR)* 1, no. 3 (2017): 516–30, <https://doi.org/10.30872/JAR.V1I3.482>.

fair legal process or even without compensation. The violations they experienced were violations of the right to property, the right to adequate food and nutrition, the right to a good standard of living, the right to take part in cultural life, the right to self-determination, the right to enjoy the highest attainable standard of physical health and mental rights, as well as many other rights. According to Daes, common problems faced by indigenous and tribal peoples about their rights to natural resources are the failure or reluctance of the state/government to recognize their rights to land, territories, and natural resources. , discriminatory laws and policies that affect indigenous peoples about their lands and natural resources, failure or reluctance of the state/government to demarcate customary lands, and failure or unwillingness of the state/government to implement or apply laws protecting indigenous peoples' lands.¹⁶

Since Indonesian independence, the unitary state has been framed by a decentralized system pattern of relations between the central government and regional governments. Regional governments have regional autonomy to manage their potential in their regions to achieve general welfare. As stipulated in Law No. 23 of 2003 concerning local government as amended in Law Number 9 of 2015. This also includes the management, exploration, and exploitation of mineral resources through mining.¹⁷

Until 2020, Law Number 3 of 2020 was passed concerning amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. The public criticized this law because the central government controlled the control of minerals and coal. The central government implements it through the functions of policy, regulation, management, management, and supervision without the involvement of the regions. When Law Number 4 of 2009 came into effect, local communities were allowed to manage mining businesses according to the permits that had been regulated.

Guidelines for managing mining resources based on the Mining and Coal Mining Act currently in effect must be by the decisions of the Constitutional Court and Law Number 23 of 2014 concerning Provincial Governments related to the issuance of these permits. The provincial and regional government has now taken over the authority of the district/city government to issue mining permits based on Law Number 23 of 2014, which is still semi-centralized and regionally in the context of mining is still in the district, while the provincial government is the representative of the central government.

From the perspective of indigenous peoples, an ecologically just mining resource management policy lies in understanding the wisdom of indigenous peoples in managing natural resources, in this case, mines, whose management is the state's responsibility. There is a reciprocal relationship between humans and nature, in which customary law communities always build a

¹⁶ Rafael Edy Bosko, "Hak-Hak Masyarakat Adat Dalam Konteks Pengelolaan Sumber Daya Alam," *Jakarta, Elsam*, 2006.

¹⁷ Erwin Syahrudin and EMILDA YOFITA, "Politik Hukum Penguasaan Pertambangan Mineral Dan Batubara Di Indonesia," *Palar | Pakuan Law Review* 6, no. 1 (2022): 211–22, <https://doi.org/10.33751/palar.v6i1.5641>.

balance of nature conservation (participatory cosmic) so that all elements of nature can feel ecological justice except humans.¹⁸

3.4. Impact of Coal Mining Policy on the Environment

The study results concluded that environmental damage and weakening of state sovereignty always occur in mining areas. Therefore, there are often excellent and wrong sides, the analysis of which differs from one subject to another. Groups that prioritize mining are environmental aspects and prioritize the economic side. The Mining Working Group prioritizes ecological balance and does not take sides in the socio-economic characteristics of the local community. Undeniably, the mining sector is the prima donna that makes the government ignore sectors such as agriculture, plantations, fisheries, and forestry. Mining is considered easy to generate money without burdening the state with infrastructure purchases.

The impact of mining on the environment is not only caused by the elimination of waste but also by changes in environmental components or distance functions for the environment. The bigger the mine, the more significant the impact it makes. Environmental changes caused by mining can be permanent or irreversible. Changes in topography Land features, including rivers, lakes, or hills, are difficult to restore to their original state during the mining phase. Based on the information provided, the quality of the environment, such as air, noise, hydrology, erosion, sedimentation, soil fertility, and coastal areas, does not show signs of pollution from physicochemical parameters that do not exceed quality standards. Realize the island's mining potential Obi's promise, which threatens environmental damage. This indicator can be seen from the lack of seriousness of the South Halmahera Board of Directors, who still need to prepare and implement the KLHS, AMDAL, and UKL/UPL standards properly and correctly, even though in PermenLH No. 27/2009

The regional government was given full authority and authority to implement the provisions of the AMDAL. Based on these results, the company did not interfere in preparing the AMDAL document but still received negative responses from the community and NGOs. Even though the AMDAL document is an essential tool for obtaining environmental permits from the district head, it means that the municipal government has a strategic responsibility to support policies related to environmental management. For Companies that want, I have to commit. When it comes to protecting the environment, it is in the hands of the government Whether sustainability and a sustainable environment are maintained or not.¹⁹

Human awareness of the importance of nature for himself is no longer ignored. Taking natural resources through mining by destroying all environmental facilities is fine as long as the earth's bowels have been taken to enrich and meet the needs of everyday life. Humans have too

¹⁸ Nugroho, Daru, and Nurlinda, "Kebijakan Pengelolaan Tambang Dan Masyarakat Hukum Adat Yang Berkeadilan Ekologis Ecological Justice ' s Indigenous Indigenous Law and Community Management Policy."

¹⁹ Zulkifli Zam Zam and I Made Putrawan, "Evaluasi Kebijakan Pengelolaan Lingkungan Pertambangan Di Pulau Obi Provinsi Maluku Utara," *Jurnal Ilmiah Pendidikan Lingkungan Dan Pembangunan* 21, no. 02 (2020): 58–68, <https://doi.org/10.21009/plpb.212.05>.

It is Eliminating the balance of nature and breaking a link in the chain of natural life from its activities of exploiting nature to extract wealth from the bottom of the earth.²⁰

In large-scale mining, the morphology or landscape of the mound as a result of excavation turns into a plateau. In addition to damaging the soil (physical changes in mining soil), the sodium or layers of earth formed over millions of years are lost and damaged (soil elements must remain), soil biota and ground cover 100% of annual plants are lost, including clay plants, heavy plants, precipitate. Changes in biodiversity, various erosion, and mining also cause forest loss. Not all mining areas have vegetation as a whole, as well as the destruction or reduction of mining ecological/ecological habitats and loss of upper vegetation. Also, loss or environmental impact on society and cause the effects of environmental pollution and environmental damage.²¹

The act of destroying and polluting the environment can be categorized as a criminal act (*jinayah*) if the act fulfills the elements of a crime. Several articles of the Criminal Code regulate matters related to the environment. But with the times, if you only rely on the Criminal Code as an instrument for enforcing criminal law for the environment, it will certainly not be sufficient and adequate.²² Criminal sanctions for perpetrators of criminal acts of environmental destruction it is explained in CHAPTER XV UUPPLH 2009. ²³There are two offenses in UUPPLH, namely material offenses (general offenses) and formal offenses (particular offenses). Material crime (general crime) is an unlawful act that causes environmental damage or pollution. Such criminal acts may not be related to violations of state administrative law, so this material crime is called a non-administrative offense (from now on, abbreviated as AIC).

3.5. Political Law in Mineral and Coal Mining in Indonesia

Minerals and coal in the territory of the Unitary State of the Republic of Indonesia are non-renewable natural resources and wealth as a gift from God Almighty, which plays a vital role in fulfilling the needs of the people and the state controls them to support the prosperity of the people in a just manner. Mineral and coal resources are included in the category of state property resources where the management is under state control.²⁴

Mastery and utilization of natural resources in Indonesia is based on a philosophy that refers to Article 33, paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia. Article 2 states, "Production branches which are important for the state and which affect the livelihood of the public are controlled by the state. ." Meanwhile, Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, states that "the state must control the land, water and natural resources contained therein for the greatest prosperity of the people." This

²⁰ Niniek Suparna, "Pelestarian, Pengelolaan Dan Penegakan Hukum Lingkungan," *Jakarta: Sinar Grafika*, 1994.

²¹ Sabaruddin Sainapoy, "Analisis Fiqh Lingkungan Terkait Penyalahgunaan Pengelolaan Pertambangan Terhadap Kerusakan Lingkungan Hidup," *Halu Oleo Law Review* 3, no. 1 (2019): 85, <https://doi.org/10.33561/holrev.v3i1.6012>.

²² N.H.T. Siahaan, "Hukum Lingkungan," *Cet. Ke-2, Jakarta: Pancuran Alam*, 2009.

²³ Sukanda Husin, "Penegakan Hukum Lingkungan Indonesia," *Cet. Ke-2, Jakarta: Sinar Grafika*, 2009.

²⁴ Syahrudin and YOFITA, "Politik Hukum Penguasaan Pertambangan Mineral Dan Batubara Di Indonesia."

management principle looks at it from a constitutional and moral perspective, in which the state must think about and fight for its people's prosperity through proper management of resources and effective regulations.

The phrase "controlled" does not mean "owned" by the state, but the word "controlled" here means that the state appropriately manages it for the benefit and prosperity of the people. Therefore, regulations that are created and all policies that are made should not be centralized like Law Number 3 of 2020. It is said to be centralized because there is a concentration of authority by this law. The central government carries out mastery, management, regulation, administration, and supervision. This certainly limits local governments in managing and managing their potential mineral and coal mining resources because they depend on what the central government does.

The 1945 Constitution of the Republic of Indonesia places Pancasila as the state ideology and the source of all sources of law. Therefore, all regulations that are formed must not conflict with the values of Pancasila, including Law Number 3 of 2020, as well as placing the 1945 Constitution of the Republic of Indonesia as the highest written statutory regulation so that every material law made cannot contradict the 1945 Constitution of the Republic of Indonesia. If there are conflicts, it is necessary to submit a judicial review to the Constitutional Court by applicants with legal standing or parties whose constitutional rights have been violated by the law. As long as a judicial review has not been carried out and the Constitutional Court has not decided that the law is contradictory, the law will still apply as a positive law in Indonesia.

Based on the things described above, awareness of the formation of effective regulations should not only appear in the central government. As the area manager and the surrounding community are close to the potential areas for mineral and coal mining, which will be the most affected part of these resources, the local government should have realized how important good and optimal management is in utilizing these resources. This is because local communities or indigenous peoples will be most affected if the direction of mining potential in their areas needs to be carried out effectively and appropriately to maintain the continuity of resources and environmental balance in their regions.

4. Conclusion

Indonesia has natural wealth and extraordinary natural resource potential because of the gift of God Almighty. However, management that has not been optimal due to the many obstacles ranging from licensing and complicated regulations has resulted in less effective utilization of mineral and coal resources. Appropriate rules and regulations are needed to maintain the balance of nature and the sustainability of mineral and coal resources. In addition, improper processing and utilization will also harm the community, especially local communities whose areas have potential mineral and coal resources. The author hopes there will be wisdom in every policy issued by the central and regional governments to maintain the balance and continuity of mineral and coal resources in Indonesia. The conclusion contains a description that should answer the objectives of the research.

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