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Balancing Act: Aligning Mineral and Coal Mining Regulations With Constitutional Mandates for Local Welfare Enhancement in Indonesia

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ARTICLE INFO	ABSTRACT
Received: 18 Dec 2024 Revised: 10 Feb 2025 Accepted: 28 Feb 2025	The governance of mineral and coal mining has constantly presented complex difficulties for the well-being of local communities, covering economic, social, and environmental aspects. In light of this situation, this study examines the congruence between the regulatory frameworks that control the administration of mineral and coal mining and the constitutional requirements specified in the 1945 Constitution of the Republic of Indonesia. This study utilizes a normative legal research approach to examine this debate's relevant legal and philosophical components. Analyzing specific legislation and theoretical frameworks clarifies the inconsistencies between current rules and constitutional requirements. Specifically, it highlights the differences between the existing legal structure and the constitutional guidelines outlined in Articles 18A (2), 33 (3), and 33 (4) of the 1945 Constitution. After the Constitutional Court's ruling in Case Number 91/PUU-XVIII/2020, the regulation of mineral and coal mining has been dealt with by implementing Law Number 3 of 2020. Nevertheless, the report highlights the urgent need for a complete restructuring of power allocation between the central and regional governments. This change should be based on the constitutional requirements and aimed at promoting long-lasting improvements in the welfare of local communities. **Keywords:** Regulation, Authority, Mineral and Coal Mining, Welfare, Constitution.

INTRODUCTION

According to Article 33, paragraph three of the Constitution of the State of the Republic of Indonesia, which was approved in 1945, the state has the authority to govern and utilize the soil, water, and natural resources for the maximum benefit of the people (Suparto, 2020). Given that minerals and coal are finite resources found within the earth, it is crucial to manage them in the most efficient, transparent, sustainable, and environmentally responsible way while also ensuring fairness in order to maximize the long-term benefits for the well-being of the population (Rahayu et al., 2023; Sensu et al., 2021).

By the regulations governing the jurisdiction over mineral and coal mining, both at the national and local levels, a range of issues have arisen about the well-being of the local population, particularly the local community, in terms of their economic, social, and environmental conditions in a sustainable manner. This can be observed, for instance, in Aceh Province (Akhmaddhian et al., 2023; Fernando et al., 2023). The following information is derived from many phenomena. It can be described in detail as follows: Due to the constant changes in regulations governing mineral and coal mining, especially in legislation, the intended goal of these restrictions needs to be clarified (Valentina, 2020; Yanto & Hikmah, 2023). The dynamic nature of regulating mineral and coal mining has resulted in the convergence of laws at the federal and regional levels and within key regulations. This phenomenon has been observed in overarching legislation and regulations particular to certain regions (Absori et al., 2022; Bakung, 2020).

According to the legislation in Aceh Province, the responsibility for managing mineral and coal mining is assigned to individual districts or cities. However, as stipulated by the legislation on local governance, the responsibility for overseeing mineral and coal mining is assigned to the province (Fendri & Azheri, 2023; Sastro et al., 2024). Moreover, as per the legislation concerning minerals and the latest regulations on coal, the responsibility for overseeing mineral

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and coal mining activities is entrusted to the federal government. The efficiency of implementing multiple regulations in coal and mineral mining management is surely affected by overlapping legislation (Hayati, 2014).

According to this description, it is hypothesized that there has been a conflict or disharmony in regulations, which should be thoroughly investigated due to their significant implications. This study aims to determine whether there is legal disharmony between positive laws after a change in government policy regarding the regulation of mineral and coal mining management. Government-supported extraction of minerals and coal. The author posits that legal disagreement can be viewed from two distinct perspectives. These perspectives can be described as vertical legal discord and horizontal legal disharmony.

Harmonization is the act of synchronizing or reconciling elements to ensure that they do not clash or contradict one another. According to Laurensius Arliman S (2015), harmonization aims to achieve a balance between justice and legal certainty. This is done by aligning values, legal principles, and the purpose of the law itself. These objectives guide the legal harmonization process and serve as the foundation for every step taken.

This legislation is called harmonious when it does not contradict or clash with other legislation (Hand, 2013). Law enforcement can derive advantages from the legal certainty arising from the harmonious development of laws and regulations, thereby preventing unnecessary duplication. According to the author's perspective, a conflict between two laws simultaneously can already be regarded as disharmonious (Idami, 2018).

Zainal Arifin Hoesein (2009) states that the legal principle of lex superior derogat legi inferiori applies in conflict between laws and regulations. Consequently, the higher law supersedes and takes priority over the lesser law. According to Abdul Ghofur Anshori (2018), the principles for creating a statutory rule are as follows: There are three fundamental principles in the hierarchy of laws and regulations: lex superior derogate legi inferior, which means that a higher law supersedes a lower law; lex specialis derogate legi generali, which means that a specific law overrides a general law; and lex posterior derogate legi priori, which means that a later law takes precedence over an earlier one. These are the principles that certain specialists mention.

Abdul Ghofur Anshori (2018) outlines three legal doctrines: Lex superior derogat legi inferiori refers to the principle that higher rules take precedence over lower rules. Lex specialis derogate legi generali means that specific rules override general rules. Lex posteriori derogat legi priori states that a more recent rule supersedes an older rule on equal terms. Thus, the newly implemented regulations are only considered valid after this notion. The new regulations have replaced the old rules.

Bagir Manan (2004) states that lower statutory provisions might be requested to be invalidated, rendered null and void by the hierarchy of legal norms. In addition, a process for judicial review of any legislation, policies, or governmental actions allows for the examination and potential challenge of laws and regulations at higher levels, including the Constitution.

The objectives of this study, as indicated by the information provided above, are as follows: To begin, let us examine and evaluate the compatibility between the regulations governing the authority of mineral and coal mining management to enhance the well-being of the people in specific regions, by the Constitution of the Republic of Indonesia from 1945. The second step involves elucidating and scrutinizing the regulatory framework for mineral and coal mining management authority. This is done to improve the well-being of the local population residing in the mining region. In order to enhance the welfare of the residents in the region, it is imperative to elucidate and evaluate the suitable concept of the authority to oversee mineral and coal mining.

METHODS

This study employs a normative legal research technique, which considers law as a manifestation of societal dynamics, as explained by Sunaryati Hartono (1994). From this viewpoint, the law represents society's accepted standards and behaviors, including common patterns and distinct or typical expressions. On the other hand, Jhony Ibrahim (2006) argues that law is a topic of study in various scientific fields, indicating a collaborative scientific effort. Therefore, law is commonly regarded as a collective discipline. This study utilizes a dual strategy. Firstly, a methodical methodology is employed to gather and analyze law provisions concerning minerals and coal.

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Furthermore, a conceptual method thoroughly examines concepts pertinent to the research field. This research combines various techniques to gain a thorough understanding of the legal framework governing minerals and coal. The goal is to contribute to well-informed policy-making and promote sustainable practices in the mining industry.

ALIGNING LEGISLATION WITH CONSTITUTIONAL PRINCIPLES: ENHANCING NATURAL RESOURCE MANAGEMENT IN INDONESIA

The Constitution of 1945, specifically Article 33, is the constitutional framework that governs the management of natural resources. According to Nababan et al. (2024), this provision is "translated" into several other pieces of Law and regulations. The 'translation' of Article 33 of the 1945 Constitution into numerous legislation is influenced by the drafters' various ideas and interests, which may conflict with the intentions intended to be conveyed by Article 33 of the 1945 Constitution itself (Hendrianto, 2022). Therefore, this is done to guarantee that the laws are by the Constitution. Because of this, the Constitution ought to be utilized as a "guide star" in crafting legislation concerning the administration of agricultural concerns and the management of natural resources.

Natural replenishment is required for non-renewable resources that are inherent to the planet, such as minerals and coal. These resources are recognized as finite assets that require natural replenishment. As stated in Article 33, section (3) of the Constitution of the Republic of Indonesia from 1945, these resources are considered to be under the control of the state and are designed to maximize the general population's welfare (Sibarani, 2018; Syafril, 2020). It is the obligation of the government, and more specifically, the Central Government, to be responsible for utilizing minerals and coal within the legal boundaries of the Indonesian Unitary State to encourage the growth of the national industrial sector. By implementing optimal approaches in terms of management and utilization of coal and minerals, this endeavor intends to support the expansion of the nation's industrial sector.

During its development, the existing legal framework, which is embodied in Law Number 4 of 2009 concerning Mineral and Coal Mining and its accompanying regulations, is insufficient in addressing the challenges and real-world situations that are encountered in the execution of Mineral and Coal Mining operations (Muhdar et al., 2023). The legal framework must address new challenges that arise during mining operations. These issues include inter-sectoral conflicts between the mining industry and sectors unrelated to mining. This deficiency is the result of this necessity. Consequently, there is an urgent requirement to amend Law Number 4 of 2009, which governs Mineral and Coal Mining, in order to provide legal certainty for stakeholders operating within the Mineral and Coal sector, thereby facilitating the efficient management and exploitation of resources related to Mineral and Coal Mining (Listiyani et al., 2023).

Several amendments have been introduced to enhance Law Number 4 of 2009 concerning Mineral and Coal Mining. These amendments include provisions about Mining Legal Areas, authority over Mineral and Coal management, formulation of Mineral and Coal management plans, delegation of research and investigations to state research institutes, state-owned enterprises (BUMN), locally owned enterprises, or private entities to prepare mining permits (WIUP), and formulation of Mineral and Coal management plans. Additionally, the amendments strengthen the function of BUMN, restructure permits for mineral and coal exploitation, introduce new permissions about rock exploitation for certain types or purposes, and permit small-scale mining operations. All of these changes are a result of the revisions. Additionally, there is a heightened emphasis on environmental management regulations within mining businesses (Sari & Paulus, 2022).

Additionally, this Law reorganizes policies regarding, among other things, increasing the added value of minerals and coal, as well as policies to ensure that operations can continue for those who hold Contracts of Work (KK) or Coal Mining Work Agreements (PKP2B). These policies ensure that operations can continue for those who possess these types of agreements.

EVOLVING LEGAL FRAMEWORKS IN INDONESIAN MINERAL AND COAL MINING: IMPLICATIONS OF LAW NUMBER 3 OF 2020 AND THE JOB CREATION BILL

Significant progress has occurred since the enactment of Law Number 3 of 2020, which amended Law Number 4 of 2009 on Mineral and Coal Mining. Due to these alterations, the total number of chapters has been raised to 28, while

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the number of articles has been increased to 217. Furthermore, two new chapters have been included, nine articles have been eliminated, fifty-one articles have been added, and eighty-three articles have been modified.

The Job Creation Bill and the provisions of this law have been harmonized. The statute has been amended to include the following new provisions: Arrangements about the concept of Mining Legal Areas; Changes to the governing body in charge of overseeing the administration of coal and minerals; the requirement to develop a strategy for the administration of coal and minerals The task for conducting investigations and research in the preparation of Mining Business Permit Areas (WIUP) is assigned to state research institutions, state-owned enterprises (BUMN), regional-owned enterprises (BUMD), or private business organizations. The authors (Qurbani & Zuhdi, 2020) are considering reorganizing permits in the mining industry, specifically concerning environmental management, reclamation, and post-mining activities. They are also exploring the concept of new permits for exploiting minerals and coal, focusing on assisting specific types or purposes. Additionally, permits for smallholder mining are being taken into consideration.

Regional Governments can be granted some licensing authority, including assistance permits and people's mining permits. Law Number 3 of 2020, which modifies Law Number 4 of 2009 on Mineral and Coal Mining, has been harmonized with the Job Creation Bill, affirming that the Central Government has jurisdiction over overseeing mineral mining activities. However, specific categories of licensing authority might be assigned to Regional Governments. However, it is crucial to consider the form of the supervisory system, the issue of economic fairness, and the relationship between the central government's and regional governments' governance, among other considerations. According to the Job Creation Bill, the responsibility for granting licenses, especially in the mining industry, lies with the Central Government (Candra, 2022).

Under Law Number 11 of 2020, which primarily addresses Job Creation and specifically targets the Energy and Mineral Resources sector, modifications, removals, and additions have been implemented to the requirements for obtaining Business Permits to simplify the procedure for the general public, particularly Business Actors. The legislation cites several Indonesian statutes, namely Law Number 4 of 2009 on Mineral and Coal Mining, modified by Law Number 3 of 2020; Law Number 22 of 2001 on Oil and Gas; Law Number 21 of 2014 on Geothermal; and Law Number 30 of 2009 on Electricity. The statutes are formally recorded in the State Gazette of the Republic of Indonesia, with precise publication details in brackets, including the relevant years and numbers.

According to Article 39 of Law Number 11 of 2020 on Job Creation, changes have been made to certain articles of Law Number 4 of 2009 on Mineral and Coal Mining. The adjustments were implemented under Law Number 3 of 2020, which revised Law Number 4 of 2009. Significantly, Article 128A is positioned between Articles 128 and 129. This article states that commercial firms that enhance the worth of coal, as mentioned in Article 102 paragraph (2), may have certain exemptions regarding their responsibilities towards state income, as outlined in Article 128. This exemption can be demonstrated by implementing a royalty rate of 0%.

The details of this exemption are further specified in a Government Regulation. Furthermore, Article 162 has been amended to clarify that individuals who impede or disturb mining activities carried out by entities or individuals holding IUP, IUPK, IPR, or SIPB licenses, as long as they have met the conditions specified in Article 86F letter b and Article 136 paragraph (2), will face a maximum punishment of one-year imprisonment or a fine of up to Rp—100,000,000.00 (one hundred million rupiahs) (Gunawan, 2023; Lelisari et al., 2022). Examining the execution of the 0% royalty and the consequences for persons obstructing mining activities would be very intriguing.

THE APPROPRIATE CONCEPT OF MINERAL AND COAL MINING MANAGEMENT AUTHORITIES IN THE CONTEXT OF IMPROVING COMMUNITY WELFARE IN THE REGIONS

From Ali Hardi Kiaidemak's perspective, the state's presence in Indonesia enhances the populace's well-being and cultivates the nation's livelihood through education. Historically, government power has been created and executed with an undue focus on the interests of those in power rather than prioritizing the well-being and unity of the people. This is a finding that has been made on its voyage—however, development conflicts with the notion of being controlled by the government. By the end of the day, the prevailing interests of authority during that period resulted in the understanding that being under state control meant physical subjugation and constant surveillance.

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Consequently, the mining industry and major enterprises, which had previously been under the authority of giant corporations, were handed over to private entrepreneurs who now had individual control over them.

For instance, the dominant role in mining is not solely held by state-owned businesses such as Aneka Tambang but mostly by large private entrepreneurs. Cooperatives and small firms are only allocated to small-scale mining operations. This is because prominent private businesspeople primarily control the mining industry. It is necessary to analyze the experiences of the reformation era in revisions to the Indonesian Constitution to prevent their recurrence. The author suggests that people in Indonesia, especially those living in mining areas, should continue investigating and evaluating this matter.

When comparing the fields of sociology and anthropology, it is evident that the potential of natural and human resources stands out as unique. The curriculum in Ujung Pandang should incorporate maritime themes, particularly fundamental subjects such as character education and promoting multiculturalism. Conversely, Irian Jaya or Papua may prioritize mining-related matters and similar concerns. Nevertheless, it is crucial to maintain centralization regarding maritime issues of importance.

Given the information provided, it is crucial to examine the definitions of "controlled by the state" and "used for the greatest prosperity of the people," as stated in Article 33, paragraph (3) of the Constitution of the Republic of Indonesia, which was approved in 1945 (Jazuli et al., 2021; Muhtadi et al., 2022).

Developing nations like Indonesia face an issue: finding a sustainable equilibrium between their economy and natural resources. Historically, strategies in the realm of natural resource management have primarily focused on promoting economic growth. This has been achieved, among other factors, through the intensive utilization of natural resources without considering any aspects of nature preservation. From an alternative perspective, decisions regarding managing natural resources must consider the broader community's interests. Consequently, they have yet to successfully promote the involvement of indigenous populations and communities that follow traditional customs. The laws and regulations concerning natural resources have not adequately addressed the rights of indigenous peoples, lacking the same level of attention and respect. There is a lack of balance between the federal and regional administrations regarding the "administration" of natural resources. This is the ultimate conclusion or main point.

Emmy Hafild was informed that Article 33 of the 1945 Constitution should be more flexible, allowing the government to interpret it as discretionary. He believes the article is highly versatile, allowing for translation in any desired manner. In this scenario, the government asserts ownership over these natural resources. It claims the authority to dispossess the individuals who have resided there for many years and inherited them for future generations. Subsequently, he distributed it among his associates and allies, proclaiming it as a measure of progress and national advancement, ultimately leading to a decline in the economic status of the local population. Considerably less affluent than previously. This can occur in diverse settings such as the forest, the sea, the mining sector, the earth, or any other specific site. Emmy Hafild believes that possession can be viewed in various ways. However, currently, it is generally interpreted as the entitlement to ownership. Hence, it is possessed by the government.

Hanif asserts that it is imperative for the community to actively engage in the identification and resolution of issues about natural resources. Sandra Moniaga asserts that a similar rule is currently implemented in the Philippines, serving as a basis for comparison. Moreover, in the mining sector of Papua New Guinea, legislation requires the government and potential investors to obtain consent from the local community before conducting any exploration activities to assess the feasibility of exploration in that area. Hence, Hatta Mustafa asserts that the equitable management of natural resources and their resulting outcomes necessitates a fair distribution of responsibilities between the central government and the regions. The author considers it crucial to prevent the repetition of the mistakes made by previous authorities prior to implementing reforms.

CONCLUSION

The following discussion reveals the discoveries and conclusions derived from this investigation: There is a discrepancy between the regulations governing the authority in charge of managing mineral and coal mining and the goal of promoting the well-being of local inhabitants, as required by legislation and the 1945 Constitution of the Republic of Indonesia. This difference arises from regulations that diverge from the constitutional mission. According to Article 33 of the 1945 Constitution of the Republic of Indonesia, the state has complete control over the Earth, water, and the natural resources found in them, and these resources should be used in a way that benefits the people as much as possible.

As to Article 4, paragraph (2) of Law Number 3 of 2020, which modifies Law Number 4 of 2009 on Mineral and Coal Mining, the Central Government has exclusive control over minerals and coal that belong to the state. In contrast, Article 18A, paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that financial relations, public services, utilization of natural resources, and other assets between the central government and regional administrations must be governed and implemented fairly and consistently by law.

The second rule delegates jurisdiction for the supervision of mineral and coal mining to improve the well-being of local communities, per the decision of the Constitutional Court in case number 91/PUU-XVIII/2020. This regulation is prescribed in Law Number 3 of 2020, which modifies Law Number 4 of 2009 about Mineral and Coal Mining. The existing legal obstacles regarding implementing mechanisms for government supervision of mineral and coal mining to enhance the well-being of local communities can be attributed to several factors. These factors include the primary responsibility for overseeing coal and mineral extraction, the mining industry sector, granting mining permits to individuals, providing supervision and guidance through monitoring and mentoring, administrative penalties, and provisions related to criminal activities.

Establishing a harmonious relationship between the central government and regional administrations in the management of natural resources is the most appropriate strategy for the governing body responsible for supervising mineral and coal mining to improve the welfare of people in their respective regions. Establishing a balanced and fair system for managing mineral and coal mining authorities is crucial to enhancing the well-being of individuals living in regions governed by the law. This aligns with the requirements stated in Article 18A paragraph (2), Article 33 paragraph (3), and Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

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