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Management and Exploitation Of Mineral and Coal Mining In Indonesia: An Analysis Of the Perspective Of Article 33 Paragraph (3) of The 1945 Constitution Republic Of Indonesia

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ABSTRACT
This study analyses the implementation of mineral and coal mining management policies in Indonesia in the context of Article 33 paragraph (3) of the 1945 Constitution, which emphasises that natural resources must be used to the greatest extent for the prosperity of the people. The change from the Contract of Work regime to the Mining Business Permit (IUP) aims to strengthen state control, but still faces challenges in the form of overlapping licences, weak supervision, and social conflicts with indigenous peoples. Using the approaches of welfare state theory, middle ground theory, and development law theory, this study shows that an active role for the government is needed to ensure equitable benefit distribution and sustainable resource management. The middle ground approach highlights the need for strict oversight of foreign investment, while development law emphasises the importance of law as an instrument to support social welfare and environmental protection. This research recommends strengthening oversight, renegotiating contracts and involving local communities in mining policy to realise more equitable, sustainable and inclusive natural resource management.
***Keywords**: Article 33 of the 1945 Constitution, Contract of Work, Mining Business Licence, welfare state, development law*

Introduction

Indonesia is a country that has enormous natural resource potential, especially in the mineral and coal mining sector.(Friederich & van Leeuwen, 2017; Garnaut, 2015) According to the Ministry of Energy and Mineral Resources, Indonesia's coal exports reached 394.08 million tons in 2023, an increase of 7.11% compared to the previous year's total of 367.94 million tons,(Manurung et al., 2024) most of which was exported to countries such as China and India. The sector accounts for around 17% of Indonesia's total exports and plays an important role in contributing to national income. However, data from the Ministry of Environment and Forestry shows that the mining sector has also resulted in significant environmental degradation, including water quality degradation, damage to forest ecosystems, and social conflicts with indigenous communities. These conflicts are particularly evident in areas such as Manggarai, East Nusa Tenggara, where local communities are engaged in disputes with mining companies over the management of their customary lands. Given the high level of problems associated with the mining sector, the need for equitable and sustainable management policies has never been more pressing.

Amid rapid economic growth, Indonesia's dependence on mineral and coal exports continues to increase, especially to fulfil global energy demand. Data shows that in 2021, the sector recorded significant export value, especially to Asian countries such as China and India. Indonesia's mineral and coal resources play a crucial role in supporting economic sustainability, but they also pose challenges for sustainable and equitable management. Some question whether existing policies are in line with the mandate of Article 33 paragraph (3) of the 1945 Constitution, which states that natural resources should be used for the greatest prosperity of the people. This challenge is made more complex by the increasing social conflicts and environmental damage that often occur in mining areas, signalling an urgent need to reform mining policy in Indonesia.

In addition, the policy governing the mining sector in Indonesia has changed from a Contract of Work regime to a Mining Business Licence (IUP),(Darman & Riyanti, 2024; Ode Wahiyuddin et al., 2023) with the hope of strengthening the role of the government and improving community welfare. However, in practice, this shift did not fully address existing problems, such as weak supervision of mining companies, limited environmentally friendly regulations, and inequity in the distribution of economic benefits to local communities.(Spiegel, 2012) Inequalities in contract negotiations between the government and foreign companies mean that Indonesia's position is often not strong enough to jeopardise national interests. This raises questions about the effectiveness of the existing system in managing natural resources in accordance with the principles of social justice and sustainability mandated by the constitution.

The urgency of this research arises due to Indonesia's growing dependence on the mining sector for national income, which has the potential to cause long-term problems if not properly regulated. In addition, the government's efforts to change the management system from the Contract of Work regime to the Mining Business Licence (IUP) through Law No. 4/2009, have not fully resolved various problems related to natural resource management. Several cases of overlapping licences and corruption in licence issuance show that this policy still needs improvement. This is also exacerbated by the government's limited role in contract negotiations with foreign companies, which often results in a weak bargaining position.

This research seeks to fill the gap in the literature regarding the comparison of the Contract of Work and Mining Business Licence regimes in the perspective of Article 33 paragraph (3) of the 1945 Constitution. Although there are several studies that discuss legal aspects of mining, few explore in depth how these two regimes can be applied more effectively in accordance with the constitutional mandate for the greatest prosperity of the people. In addition, many previous studies have focussed more on legality or economic impact, while there has been limited study on the balance between economic, social and environmental interests within the existing legal framework.The purpose of this research is to analyse the implementation of mining exploitation and management in Indonesia and find a legal system that is in line with Article 33 paragraph (3) of the 1945 Constitution. With the theoretical approaches of welfare state, middle ground theory, and development law theory, this research is expected to make a significant contribution in formulating more equitable and sustainable policy recommendations for the mining sector. The research also aims to provide insights for policymakers and stakeholders regarding the importance of balancing economic benefits with environmental protection and indigenous peoples' rights in natural resource management.

Methods Reseacrh

This research uses a normative juridical approach that focuses on analysing legislation and legal doctrine related to mining management policies in Indonesia.(Harun et al., 2023; Pertiwi et al., 2023) This approach was chosen because the research aims to explore how the regulation of Contract of Work and Mining Business License (IUP) can be studied within the framework of Article 33 paragraph (3) of the 1945 Constitution, which emphasises that natural resources must be used to the greatest extent for the prosperity of the people. This normative juridical method allows researchers to explore legal principles and evaluate their implementation in the management of mineral and coal resources.

The data in this research is sourced from secondary data, which includes primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations such as Law No. 4/2009 on Mineral and Coal Mining, the 1945 Constitution, and other implementing regulations. Secondary sources include legal literature, scientific articles, and in-depth studies on management and disputes in the mining sector. In addition, tertiary materials such as legal dictionaries and encyclopaedias were used to support and clarify the legal concepts used in this research.

Data collection was conducted through library research by collecting, analysing, and reviewing various literatures relevant to the research topic. The data obtained was then analysed normatively-qualitatively, namely by describing and interpreting legal materials and theories related to mining management. This analysis is carried out to compare the legal principles in Article 33 paragraph (3) of the 1945 Constitution with its implementation in mining policy in Indonesia, in order to provide policy recommendations that are more equitable and sustainable in accordance with the principle of people's welfare mandated by the constitution.

Result and Discussion

Implementation of Article 33 Paragraph (3) of the 1945 Constitution in the Contract of Work and Mining Business Licence Regime

Article 33 paragraph (3) of the 1945 Constitution underlines that the natural resources contained in the earth of Indonesia must be used for the greatest prosperity of the people.(Waluyo et al., 2019; Yunus et al., 2022) This reflects the concept that the state has the main obligation in regulating, managing and utilising natural resources so that the benefits are felt by the entire community. In the context of mining, the government has sought a shift from the Contract of Work regime to the Mining Business Licence (IUP) through Law No. 4/2009.(Hamidi, 2015) This change is expected to improve state control over mining activities by reducing foreign dominance in mine management in Indonesia. The Contract of Work is often considered to be less supportive of national interests, as it puts foreign companies in a stronger negotiating position than the government.

Although the IUP regime was designed to strengthen government control, its implementation on the ground still faces various challenges. Overlapping licences, weak supervision, and non-compliance with regulations are often problems that hamper the effectiveness of this policy. For example, some regions show cases where mining business licences were granted without regard to environmental sustainability and the welfare of surrounding communities. This indicates that although IUP has the potential to support the objectives of Article 33 paragraph (3) of the 1945 Constitution, its effectiveness still requires stricter supervision and regular evaluation to ensure that the main objectives of this policy can be achieved.

Furthermore, the change from Contract of Work to IUP has given rise to an important role for local governments in the management of mining licences. However, this decentralisation of licensing has triggered several new problems, such as cases of corruption in permit issuance and weak inter-agency coordination. In some cases, mining management has exacerbated conflicts with indigenous communities, who feel their rights are being overlooked as economic interests take precedence. These conflicts reflect a mismatch between national policies and local practices. Therefore, synergy between the central and local governments is needed in implementing the IUP policy to ensure that mining management is truly in accordance with the mandate of Article 33 paragraph (3) of the 1945 Constitution, which emphasises the prosperity of the people as the main goal.

Welfare State Approach, Middle Way Theory, and Development Law in Natural Resources Management

In order to achieve natural resource management in line with Article 33 paragraph (3) of the 1945 Constitution, the welfare state approach places the government as the main actor responsible for ensuring the welfare of the people. The welfare state theory underpins the principle that the state should be proactive in regulating and managing natural resources for the benefit of the wider community.(Pakpahan, 2010) In the context of the mining sector, this means that the state must ensure that the proceeds from mining exploitation can be enjoyed by all Indonesians. This requires the government to not only focus on economic returns but also consider the social and environmental impacts of mining activities.

The middle ground theory offers an appropriate strategy to balance the need for foreign investment with national interests. In the capital- and technology-intensive mining industry, foreign investment is often considered essential to support the operation and development of the industry. However, the middle ground approach emphasises the importance of government control over the activities of foreign companies, aiming to ensure that foreign investment does not undermine national resource sovereignty. Some countries, such as Bolivia, have implemented contract renegotiation strategies to strengthen state control over their natural resources. Indonesia could consider a similar approach to ensure that foreign investment in the mining sector continues to benefit the state and not harm local communities.

Meanwhile, development law theory offers a framework that law should be a tool to promote inclusive and sustainable development.(Gupta & Vegelin, 2016; Lee, 2018) By applying this theory, mining policies can be directed to focus not only on economic achievement but also on sustainable social development. This means that the government must prioritise regulations that are able to maintain a balance between economic benefits and environmental sustainability, and pay attention to the rights of local communities, especially indigenous peoples who are often marginalised in mining projects. This approach is in accordance with the principles in Article 33 paragraph (3) of the 1945 Constitution, where the state has the responsibility to utilise natural resources to the greatest extent for the prosperity of the people while maintaining the sustainability of these resources for future generations.

Conclusion

The management of mineral and coal mining in Indonesia through the Contract of Work and Mining Business Licence (IUP) regimes still faces challenges to fulfil the mandate of Article 33 paragraph (3) of the 1945 Constitution. While the transition to IUP aims to strengthen government control, implementation is often plagued by overlapping licences, weak oversight, and conflicts with local communities. The welfare state approach emphasises the importance of the government's active role in ensuring that natural resources are equitably enjoyed by the people. In addition, the middle ground theory points to the need for strict regulation of foreign investment to keep natural resources under national control. By applying the principles of development law, mining management can be more inclusive and sustainable, prioritising a balance between economic, social and environmental interests.

Suggestion And Recommendation

To realise mining management in line with Article 33 paragraph (3) of the 1945 Constitution, the government needs to take several strategic steps. First, the government is advised to strengthen supervision and law enforcement mechanisms in the application of Mining Business Licences. Stricter supervision can help prevent permit abuse, overlapping licences, and ensure that mining activities do not harm local communities or the environment.

Second, the government needs to consider renegotiating contracts with foreign companies operating in the mining sector to ensure that national interests are maintained. A middle-ground approach can be a favourable solution by opening the door to foreign investment while remaining within control limits that protect the country's interests. This will provide long-term benefits for Indonesia, both economically and socially.

Finally, in implementing mining policies, the government must apply sustainable development principles that prioritise a balance between economic benefits and environmental sustainability and the protection of indigenous peoples' rights. The government must also increase community involvement in the decision-making process, especially those that have a direct impact on their lives. In this way, mining management will not only support economic prosperity, but also create sustainable social and environmental justice for all Indonesians.

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