



# MANAGEMENT OF EXTRACTIVE RESOURCES BY RELIGIOUS ORGANIZATIONS: A COMPARATIVE LEGAL ANALYSIS OF ECOLOGICAL JUSTICE AND CONSTITUTIONAL OBLIGATIONS IN INDONESIA

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## Abstract

This study examines the legal and political shifts in Indonesia's mining licensing regime following the enactment of Government Regulation No. 25 of 2024, which grants Special Mining Business License Areas (WIUPK) to religious organizations. Rooted in the constitutional mandate of Article 33 of the 1945 Constitution positioning the State as a Fiduciary Trustee, this research evaluates whether such affirmative action aligns with the principles of Ecological Justice. Employing a normative-juridical approach alongside a comparative analysis of mining frameworks in Canada, Australia, New Zealand, the Philippines, and Chile, the study explores the tension between economic redistribution and environmental stewardship. The findings reveal that while intended to bolster the financial autonomy of religious groups, the policy risks institutionalizing political patron-clientelism, triggering conflicts of interest, and exacerbating the marginalization of indigenous land rights. To address these challenges, this research proposes a novel "Ecological Permit" framework. This model shifts the paradigm of mining licenses from mere administrative-extractive tools to instruments of moral stewardship, integrating ecocentrism ethics, Good Mining Practices, and the Precautionary Principle. The study concludes that "Meaningful Participation" and rigorous environmental compliance must serve as non-negotiable prerequisites for concessions. Ultimately, for religious organizations to maintain their role as moral authorities, their engagement in the extractive industry must prioritize intergenerational equity and ecological integrity over short-term economic gains.

**Keywords:** *Mining Licensing, Ecological Justice, Religious Organizations, Fiduciary Trustee, Ecological Permit, Indonesia.*

## INTRODUCTION

Indonesia possesses a vast wealth of natural resources, ranging from diverse metallic and non-metallic minerals to coal, all of which constitute strategic national assets. Pursuant to the constitutional mandate of Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the State exercises control over the land, waters, and the natural riches contained therein, ensuring their utilization for the maximum prosperity of the people. This principle is further reinforced by the People's Consultative Assembly Decree (TAP MPR RI) Number IX of 2001 on Agrarian Reform and Natural Resource Management. Article 3 of this Decree stipulates that the management of natural resources encompassing land, sea, and airspace must be executed in an optimal, equitable, sustainable, and environmentally sound manner.

In the Indonesian context, the relationship between indigenous peoples and natural resources is rooted in the belief that land and nature are shared legacies, managed for the benefit of the community as a whole. Historically, this connection has been marked by conflict, especially when government policies conflict with the principles of ecological justice that indigenous groups advocate. This issue has gained considerable attention following the government's decision to allocate natural resource management rights, particularly mining concessions, to certain organizations, including religious social groups. Such actions raise significant ethical and legal questions regarding the rights of indigenous communities and their traditional land claims, as well as the delicate balance between economic interests, political influence, and environmental conservation. This viewpoint is supported

by the research conducted by Mella Ismelina Farma Rahayu and colleagues.<sup>1</sup>

The granting of mining licenses to religious social organizations should be carefully regulated, following the precautionary principle, ensuring transparency, and encouraging strong public participation. It is essential for the government to verify that these organizations have the necessary capacity and a genuine commitment to sustainable environmental practices. Additionally, a political-legal framework rooted in ecological justice must ensure that local communities are meaningfully involved and that their fundamental environmental rights are protected. As moral entities, religious organizations should ideally act as champions for nature conservation and the advancement of ecological ethics, rather than being integrated into an extractive economic system that carries substantial risks of environmental harm.

The policy promotes the acquisition of Mining Business Licenses (IUP) or Special Mining Business License Areas (WIUPK) by Religious Social Organizations. This initiative is driven by a commitment to enhancing the economic self-sufficiency of these organizations, thereby decreasing their financial dependence on the state while increasing their role in national development. By providing mining concessions, the government aims for these organizations to develop sustainable revenue sources that will support their social, educational, and religious missions. In this regard, research conducted by Mella Ismelina Farma Rahayu and colleagues highlights that local wisdom embodies significant spiritual meaning and ethical values, which are rooted in the philosophies, norms, and behavioral codes inherent in community traditions.

This wisdom acts as a crucial foundation for environmental law education, serving as an ethical guide that helps humanity maintain a harmonious and balanced relationship with the natural environment.<sup>2</sup> Analyzing the mining licensing policy through Ade Adhari's scholarship highlights the pressing need to achieve a balance between state economic goals and environmental protection. Adhari argues that environmental criminal law should serve as a fundamental mechanism for protecting ecological values, rather than simply acting as a supplementary tool for state governance. In this context, it is crucial that the participation of social organizations in the extractive industry is regulated by legal standards that are as stringent as those imposed on commercial entities. This approach is vital to ensure that the principles of ecological justice take precedence over limited sectoral interests<sup>3</sup>

From the standpoint of ecological justice, mining governance must go beyond mere economic considerations and legal frameworks, prioritizing the balance between humanity and the natural environment as its core principle. Ecological justice challenges the anthropocentric perspective that places humans above nature, instead promoting an ecocentric approach that recognizes nature's inherent rights to protection and preservation. Therefore, conducting a comparative analysis of Indonesia, Canada, Australia, New Zealand, the Philippines, and Chile is essential for understanding how the legal systems and policies of these countries embody the principles of ecological justice. This concept is rooted in the belief that all individuals, including those yet to be born, have an equal right to a healthy and sustainable environment. It includes the protection of biodiversity, fair access to natural resources, and active public involvement in environmental decision-making processes.

#### RESEARCH GAP

While current legal discourse on Indonesia's mining sector extensively covers technical regulations, corporate professionalism, and state revenue, it overlooks a critical and controversial new development: the entry of religious organizations into the extractive industry. Most existing studies

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<sup>1</sup> Mella Ismelina Farma Rahayu, dkk, Hak Masyarakat Adat Dalam Pengelolaan Sumber Daya Alam (Suatu Studi Pengelolaan Sumber Daya Alam Oleh Masyarakat Adat Desa Ciomas), *Journal of Indonesian Adat Law (JIAL)*, Volume 2, Nomor 3, Tahun 2018.

<sup>2</sup> Mella Ismelina Farma Rahayu dkk, Kearifan Lokal Dalam Pendidikan Hukum Lingkungan Di Indonesia, *Jurnal Litigasi*, Volume 23, Nomor 2, Tahun 2022, DOI:<http://dx.doi.org/10.23969/litigasi.v23i2.6321>

<sup>3</sup> Ade Adhari, Pertanggungjawaban Korporasi dalam Tindak Pidana Lingkungan Hidup sebagai Upaya Mewujudkan Keadilan Ekologis, *Jurnal Hukum & Pembangunan Ekonomi*, Volume 9, Nomor 2, Tahun 2021

fail to reconcile "spiritual-ethical values" with rigid "hard law" mining protocols, frequently dismissing local wisdom as mere sociology rather than a binding legal foundation. Furthermore, the legal climate in Indonesia remains heavily human-centered (anthropocentric), often ignoring the intrinsic rights of the environment itself. There is a glaring deficiency in research that employs an "Ecological Justice" lens—one that prioritizes nature—to evaluate the granting of mining rights to social entities. This is particularly true in the lack of comparative studies that look toward countries like Australia, Canada, and New Zealand, which possess more advanced frameworks for indigenous and environmental protection.

### NOVELTY OF THE STUDY

This research breaks new ground by introducing the "Ecological Permit" (*Izin Ekologis*) model, a framework that redefines the standards of traditional administrative licensing. Moving beyond the standard Mining Business License (IUP), this model weaves together legal compliance, spiritual guardianship, and a moral duty to future generations. The study offers a paradigm shift: it reimagines religious organizations not as profit-seekers chasing financial autonomy, but as "Ecological Stewards" bound by ethical requirements far stricter than those of commercial firms. A key innovation of this work is the synthesis of environmental criminal law and traditional local wisdom to create a new ethical foundation for the law. By integrating a multi-country comparative analysis, this study provides a fresh set of global benchmarks specifically adapted to Indonesia's constitutional landscape, ensuring that resource management by social groups serves the goal of a just and sustainable future.

#### Problem Statement

Based on the background described above, the research problems are formulated to address the political dynamics of granting mining permits to religious social organizations through the lens of ecological justice, as follows:

1. What constitutes the legal political framework governing the issuance of mining business licenses in Indonesia?
2. What is the urgency of granting mining business licenses to social organizations within the framework of environmental justice?
3. What is the ideal model for granting mining business licenses to religious social organizations from the perspective of ecological justice?

This research fills a significant gap in legal scholarship by transitioning from a narrow focus on administrative and technical discussions surrounding mining to a broader Ecological Justice framework. While earlier studies have largely concentrated on issues of regulatory inconsistency and corporate professionalism, this study highlights a notable shift in Indonesia: the rise of Religious Social Organizations as influential non-state actors within the extractive industry. The key contribution of this research is its innovative proposal of the Ecological Permit model. This normative framework goes beyond conventional licensing by merging administrative legality with spiritual values, social equity, and a sense of moral responsibility toward future generations. Through a thorough comparative analysis involving Indonesia, Australia, Canada, Chile, New Zealand, and the Philippines, the study identifies global best practices in public participation and indigenous rights that can inform domestic policy reform. Ultimately, this research contends that the management of mining activities by religious organizations should not be viewed merely as a political or economic arrangement. Rather, it should be reimagined as a form of moral and ecological stewardship, establishing a new legal paradigm that ensures the governance of natural resources is consistent with constitutional principles and the quest for a sustainable, just, and ethically sound future.

### THEORETICAL FRAMEWORK

The mining licensing policy for religious organizations can be examined both theologically and

theoretically through the frameworks of Mahfud MD's political law and Satjipto Rahardjo's progressive law. Mahfud MD argues that law is fundamentally a product of political dynamics, where the nature of legal instruments, whether they are responsive or orthodox is shaped by the current political landscape. This analysis critiques the mining policy to ensure it functions as a responsive legal framework that prioritizes public interest over elitist political compromises. In parallel, Satjipto Rahardjo's theory of progressive law emphasizes that law should serve humanity, rather than the other way around, encouraging legal practitioners to move beyond mere formalism in the quest for substantive justice. By synthesizing these perspectives, the proposed Ecological Permit model emerges as a responsive and progressive legal innovation, framing law as a moral tool for ecological and social preservation.

Ecological justice goes beyond conventional notions of environmental justice by moving the emphasis from simply distributing pollution burdens among humans to acknowledging the rights of nature itself. David Schlosberg highlights that ecological justice should be viewed as a complex concept that includes distributive justice (the equitable sharing of benefits and burdens), recognition (honoring the dignity of local communities and ecosystems), and procedural justice, which guarantees meaningful involvement in policy-making processes. In the context of the mining industry, this framework suggests that licensing policies should not be based solely on political and economic considerations; instead, they must prioritize ecological integrity as a fundamental requirement.

Furthermore, Brian Baxter argues that ecological justice requires humanity to acknowledge that non-human species and ecosystems possess a moral claim to protection from destructive exploitation<sup>4</sup> This perspective aligns with Klaus Bosselmann's 'Principle of Sustainability,' which posits that the law must establish ecological limits as a fundamental norm that cannot be circumvented by administrative mining permits.<sup>5</sup> In the Indonesian context, A. Sonny Keraf bolsters this argument by critiquing the anthropocentric paradigm that views nature merely as an object for human gratification. He proposes biocentric and ecocentric ethics, asserting that natural resource management policies, including the issuance of mining permits to social organizations must be rooted in a profound respect for nature and intergenerational moral responsibility<sup>6</sup>. Synthetically, ecological justice in the mining sector demands a transformation of business permits: moving from mere extractive instruments toward mechanisms of stewardship. This ensures that economic activities do not compromise the environment's carrying capacity or the fundamental rights of indigenous communities.<sup>7</sup>

Ecological justice transcends traditional concepts of environmental justice by shifting the focus from the mere distribution of pollution burdens among humans toward the recognition of the rights of nature itself. David Schlosberg emphasizes that ecological justice must be understood as a multidimensional construct, encompassing distributive justice (the fair sharing of benefits and burdens), recognition (respecting the dignity of local communities and ecosystems), and procedural justice, which ensures meaningful participation in policy-making processes<sup>8</sup> Within the mining industry, this framework dictates that licensing policies must not be predicated solely on political-economic calculations; rather, they must prioritize ecological integrity as a foundational requirement. Furthermore, Brian Baxter argues that ecological justice requires humanity to acknowledge that non-human species and ecosystems possess a moral claim to protection from destructive exploitation.<sup>9</sup> This perspective aligns with Klaus Bosselmann's Principle of Sustainability,

<sup>4</sup> Brian Baxter, *A Theory of Ecological Justice*, (London: Routledge, 2005),

<sup>5</sup> Klaus Bosselmann, *The Principle of Sustainability: Transforming Law and Governance*, (Surrey: Ashgate, 2008),

<sup>6</sup> A. Sonny Keraf, *Etika Lingkungan Hidup*, (Jakarta: Kompas, 2010)

<sup>7</sup> Mella Ismelina Farma Rahayu, dkk., *Kearifan Lokal dan Pendidikan Hukum Lingkungan*, dalam *Pengembangan Hukum Lingkungan di Indonesia*, (Jakarta: Rajawali Pers, 2023)

<sup>8</sup> David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature*, (Oxford University Press, 2007).

<sup>9</sup> Brian Baxter, *A Theory of Ecological Justice*, (Routledge, 2005).

which posits that the law must establish ecological limits as a fundamental norm that cannot be circumvented by administrative mining permits.<sup>10</sup> In the Indonesian context, A. Sonny Keraf bolsters this argument by critiquing the

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Ade Adhari contends that the centralization of mining governance represents more than a mere administrative restructuring; it fundamentally undermines on-site supervision mechanisms that are essential for safeguarding the ecological rights of local populations.<sup>13</sup>

## RESEARCH METHODS

This study employs a normative-juridical methodology, utilizing a systematic intellectual procedure to analyze legal phenomena within the framework of *ius constitutum*.<sup>14</sup> The research focuses on the legal politics of granting mining business licenses (IUP) to religious social organizations analyzing the a quo policy's alignment with constitutional mandates, mining law regimes, and the General Principles of Good Governance.<sup>15</sup> The analytical lens evaluates the legal standing and legal capacity of religious entities as extractive subjects, specifically scrutinizing potential conflicts of interest and the deviation from the foundational moral compass of these organizations.<sup>16</sup> By synthesizing primary and secondary legal sources, the study aims to construct a robust legal argument and a novel normative model for Ecological Permits. This model ensures that natural resource management transcends administrative formality to embody substantive ecological justice, legal certainty, and intergenerational equity.<sup>17</sup>

## RESULT AND DISCUSSION

### A. Regulations on Mineral and Coal Mining Licensing Based on Environmental Justice

#### 1) Regulation of Mineral and Coal Mining Business Licenses

The granting of coal mining licenses must fundamentally observe three primary dimensions of justice: (1) Distributive Justice, ensuring the equitable allocation of environmental and social benefits and burdens; (2) Procedural Justice, guaranteeing meaningful, transparent, and inclusive participation for all stakeholders particularly indigenous peoples, in the decision-making process; and (3) Recognition Justice, which acknowledges and respects the existence, rights, culture, and traditional knowledge of affected local communities. The idealism of future mining regulations must integrate an environmental justice paradigm through Meaningful Participation and the strengthening of supervisory functions. Rigorous enforcement, including the Revocation of Licenses for non compliance, is a *sine qua non* to ensure the supremacy of law, fulfilling the constitutional right to a

<sup>10</sup> Klaus Bosselmann, *The Principle of Sustainability*, (Ashgate, 2008).

<sup>11</sup> A. Sonny Keraf, *Environmental Ethics (Etika Lingkungan Hidup)*, (Kompas, 2010).

<sup>12</sup> Mella Ismelina Farma Rahayu, et al., *Local Wisdom and Environmental Law Education*, (Rajawali Pers, 2023).

<sup>13</sup> Ade Adhari, Politik Hukum Perubahan Undang-Undang Pertambangan Mineral dan Batubara: Melanggengkan Resentralisasi dan Melemahkan Hak Konstitusional Daerah, *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Volume 9, Nomor 3, Tahun 2020

<sup>14</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, (Jakarta: Kencana Prenada Media)

<sup>15</sup> Terry Hutchinson, "Doctrinal Research: Researching the Law," in *Research Methods in Law*, edited by Dawn Watkins and Mandy Burton, (London: Routledge, 2017)

<sup>16</sup> Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gadjah Mada University Press, 2011)

<sup>17</sup> Hans Kelsen, *Pure Theory of Law*, translated by Max Knight, (Berkeley: University of California Press, 1967)

healthy environment and ensuring Intergenerational Equity.

Drawing upon the environmental justice framework established by David Schlosberg<sup>18</sup> and its application in the Indonesian mining context by scholars such as Ahmad Redi<sup>19</sup> and Ade Adhari<sup>20</sup>, the granting of coal mining licenses must fundamentally observe three primary dimensions of justice already mention above. The idealism of future mining regulations must integrate an environmental justice paradigm through Meaningful Participation and the strengthening of supervisory functions. Rigorous enforcement, including the Revocation of Licenses for non compliance, is a *sine qua non* to ensure the supremacy of law, fulfilling the constitutional right to a healthy environment and ensuring Intergenerational Equity.

The governance of coal mining in Indonesia must transcend mere economic utility by

embedding the three-dimensional framework of environmental justice—distributive, procedural, and recognition into the licensing process. Drawing from David Schlosberg's seminal theory, justice in the extractive sector requires more than the equitable distribution of environmental risks; it necessitates the formal recognition of indigenous identities and the institutionalization of meaningful participation for affected communities.<sup>21</sup> In the Indonesian context, scholars such as Ahmad Redi and Ade Adhari argue that the legal politics of mining must shift from a state-centric approach toward an "environmental justice paradigm." They posit that the recentralization of authority under Law No. 3 of 2020 often creates a procedural vacuum that can only be filled by Meaningful Participation, ensuring that the constitutional right to a healthy environment is not sidelined by industrial expansion. To uphold Intergenerational Equity, the State must exercise its fiduciary duty through rigorous administrative supervision and the "ultimum remedium" of license revocation for non-compliant entities, thereby ensuring that the supremacy of law serves both the current population and future generations.<sup>22</sup>

## 2) Mining Licensing for Religious Mass Organizations

Indonesia's legal policy on natural resource management is anchored in Article 33 of the 1945 Constitution, positioning the State as a Fiduciary Trustee through the State's Right to Control (*Hak Menguasai Negara*). The policy transformation via Government Regulation (PP) No. 25 of 2024 introduces a priority offer scheme for Special Mining Business License Areas (WIUPK) to entities owned by Religious Mass Organizations (Article 83A) as an affirmative instrument for national economic redistribution. Nevertheless, this priority status does not waive the mandatory fulfilment of cumulative requirements administrative, technical, financial, and environmental—and strict adherence to the General Principles of Good Administration (*AAUPB*). Operationally, these entities must be professional, independent legal bodies implementing Good Mining Practices, preventive

<sup>18</sup> David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (Oxford: Oxford University Press, 2007)

<sup>19</sup> Ahmad Redi, *Hukum Pertambangan: Sejarah, Teori, dan Praktik* (Jakarta: Sinar Grafika, 2016), Lihat juga: Ahmad Redi, *Politik Hukum Sektor Pertambangan di Indonesia*, *Jurnal Konstitusi*, Volume 13, Nomor 2, Tahun 2016

<sup>20</sup> Ade Adhari, *Politik Hukum Perubahan Undang-Undang Pertambangan Mineral dan Batubara: Melanggengkan Resentralisasi dan Melemahkan Hak Konstitusional Daerah*, *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, Volume 9, Nomor 3, Tahun 2020.

<sup>21</sup> Schlosberg, David. *Defining Environmental Justice: Theories, Movements, and Nature*. Oxford University Press, 2007. (This foundational work establishes the three-dimensional framework of justice—distribution, recognition, and participation—which serves as the theoretical basis for evaluating the fairness and legitimacy of resource governance and environmental policy-making globally).

<sup>22</sup> Redi, Ahmad, and Ade Adhari. "The Dynamics of Mining Law in Indonesia: Between Economic Interests and Environmental Justice." *Jurnal Hukum Lingkungan Indonesia (Indonesian Environmental Law Journal)*, vol. 8, no. 1 (2021). (This research applies the environmental justice paradigm to the Indonesian mining sector, specifically critiquing the shift in Law No. 3 of 2020 and advocating for strengthened supervisory functions and license revocation as essential tools for maintaining the constitutional balance between development and ecological sustainability).

Environmental Impact Assessments (AMDAL), and the protection of indigenous rights to mitigate Abuse of Power.

The recent policy shift under Government Regulation (PP) No. 25 of 2024, specifically Article 83A, introduces an affirmative action scheme by granting priority mining license offers (WIUPK) to religious mass organizations as a tool for economic redistribution. However, legal scholarship asserts that this "priority" does not grant an exemption from the cumulative requirements administrative, technical, financial, and environmental necessary for mining operations.<sup>23</sup> To avoid the Abuse of Power, the State must ensure that these organizations operate through professional and independent legal entities that strictly adhere to the General Principles of Good Administration (AAUPB) and Good Mining Practices. Furthermore, the integration of preventive instruments like AMDAL and the protection of indigenous rights remain non-negotiable standards to ensure that this redistributive policy aligns with the constitutional mandate of sustainability and legal certainty.

### 3) Environmental Justice Mandate in Global and National Legal Standards

The Environmental Justice Mandate is a fundamental norm integrating human rights into ecosystem governance through distributive, procedural, and restorative pillars. As a Fiduciary Trustee, the State is legally obligated to ensure inclusive environmental protection and non-discriminatory public participation to prevent disproportionate environmental degradation in vulnerable communities. Strengthening legal instruments such as AMDAL and broadening the Locus Standi (legal standing) are absolute prerequisites for preventing systemic failures in environmental law enforcement and ensuring the sustainability of environmental functions.

### 4) Comparative Study of Mining Licensing Based on Environmental Justice

Comparative legal analysis confirms a significant disparity between jurisdictions with rigorous oversight systems (Canada, Australia, New Zealand) and those facing enforcement challenges (Philippines, Chile, Indonesia). The reorientation of Indonesian mining law requires regulatory reform that prioritizes transparency, strict supervision to mitigate the risk of corruption, and the guarantee of Meaningful Participation. Inclusive licensing must adopt distributive and procedural justice dimensions to balance economic interests with the protection of indigenous rights, fostering an accountable and sustainable industrial governance model.

Comparative legal analysis reveals a significant governance gap between developed mining jurisdictions—such as Canada, Australia, and New Zealand—which utilize sophisticated regulatory frameworks to integrate indigenous land rights and environmental oversight, and emerging economies like Indonesia and the Philippines, where enforcement remains hindered by institutional weaknesses and corruption risks.<sup>24</sup> Research indicates that for Indonesia to achieve a sustainable industrial model, it must reorient its mining law toward the global standards of Procedural and Distributive Justice. This entails a transition from a purely extractive-focused policy to one that guarantees Meaningful Participation for local communities and strengthens supervisory functions to prevent the politicization of mining licenses. By adopting the transparency and accountability mechanisms prevalent in rigorous oversight jurisdictions, Indonesia can better balance its economic development goals with the constitutional necessity of protecting indigenous rights and ensuring ecological

<sup>23</sup> Arinanto, Satya. "The Implementation of General Principles of Good Administration in Natural Resource Licensing." *Indonesian Journal of Administrative Law*, vol. 5, no. 2 (2024). (Discusses how discretionary policies like PP 25/2024 must remain subservient to AAUPB and cumulative technical standards to prevent maladministration).

<sup>24</sup> Tiainen, Heidi, et al. "Governance of Mining: A Comparative Analysis of Legislative Frameworks and Public Participation in Finland, Australia, and Indonesia." *Resources Policy*, vol. 74 (2021). (This study provides a comprehensive comparison of how different legal systems manage the tensions between mining interests, environmental protection, and public participation, highlighting the necessity for Indonesia to strengthen its inclusive licensing and oversight mechanisms to meet international sustainability standards).

integrity.

### 5) Mechanisms for Rehabilitation, Reclamation, and Coal Mine Closure

The legal obligation of mining companies regarding reclamation and post-mining activities is governed by PP No. 78 of 2010 and Decree of the Minister of Energy and Mineral Resources No. 1827 K/30/MEM/2018. This encompasses a mandatory sequence: (a) Planning, requiring the submission of reclamation and post-mining plans; (b) Evaluation and Approval by competent authorities; (c) Reclamation Guarantees, involving the placement of financial bonds; (d) Implementation; (e) Reporting for the release of guarantees; and (f) Land Surrender upon completion. Challenges such as land preparation delays, suboptimal erosion control, and the need for local vegetation integration necessitate more intensive monitoring and collaborative engagement with local communities to ensure ecological recovery.

The regulatory trajectory for mining reclamation and post-mining activities in Indonesia, as codified in Government Regulation (PP) No. 78 of 2010 and Decree of the Minister of Energy and Mineral Resources No. 1827 K/30/MEM/2018, establishes a rigorous legal sequence designed to ensure the restoration of degraded landscapes. Research indicates that while the formal mechanisms ranging from the placement of financial reclamation guarantees to the final surrender of land are structurally sound, their substantive success is frequently hampered by administrative inertia and technical complexities in erosion control.<sup>25</sup> Scholars argue that the current challenges, such as suboptimal land preparation and the failure to integrate local vegetation, stem from a lack of intensive, multi-stakeholder monitoring. To address these deficiencies, the state must move beyond mere bureaucratic oversight and foster collaborative engagement with local communities, transforming reclamation from a technical obligation into a participatory ecological recovery process that secures the long-term well-being of affected ecosystems and fulfils the mandate of intergenerational equity.

### 6) Licensing Practices for Mass Organizations

The granting of mining licenses is a manifestation of the State's Right to Control, where a Mining Business License (IUP) serves as an instrument of administrative validity subject to Conditions Precedent, including technical, financial, and environmental compliance. Within the framework of Checks and Balances, Mass Organizations hold a strategic position to ensure Meaningful Participation and may challenge policy legality through litigation to mitigate procedural defects. However, the discretion provided under PP No. 25 of 2024 introduces potential Conflicts of Interest, necessitating transparent governance and objective oversight to protect constitutional rights and ensure legal certainty.

The issuance of a Mining Business License (IUP) represents a formal exercise of the State's Right to Control, functioning as a conditional administrative authorization that requires the fulfillment of stringent Conditions Precedent, including technical, financial, and environmental standards.<sup>26</sup> Within the constitutional framework of Checks and Balances, mass organizations and civil society play a pivotal role in upholding the doctrine of Meaningful Participation, often utilizing administrative litigation to challenge licenses that suffer from procedural defects or ultra vires decision-making. However, the discretionary shift introduced by Government Regulation (PP) No. 25 of 2024, which facilitates the granting of mining areas to religious organizations, has raised significant concerns regarding potential Conflicts of Interest and the erosion of professional standards. Legal experts argue that such affirmative policies must be balanced with transparent governance and objective oversight

<sup>25</sup> Isrianto, S., et al. "Legal Responsibility of Mining Companies for Reclamation and Post-Mining in Indonesia." *International Journal of Seisat*, vol. 3, no. 1 (2021). (This article analyzes the legal framework of PP 78/2010 and the practical impediments in enforcing reclamation guarantees and technical compliance).

<sup>26</sup> Arinanto, Satya. "The Dynamics of Administrative Law in Indonesia: Between Discretion and Accountability." *Indonesian Journal of Legal Theory*, vol. 6, no. 1 (2023). (Explains how administrative instruments like the IUP are bound by specific conditions and the General Principles of Good Administration/AAUPB to ensure state accountability).

to ensure that the redistribution of resources does not bypass the General Principles of Good Administration. (AAUPB), thereby protecting constitutional rights and maintaining legal certainty in the extractive sector<sup>27</sup>

## **B. Legal Politics of Granting Mining Licenses to Religious Mass Organizations from an Ecological Justice Perspective**

### **1) The Legal Politics of IUP in Indonesia: From Decentralization to Recentralization**

The legal framework surrounding the issuance of IUPs (Mining Business Licenses) highlights the ongoing conflict between the goals of economic development and the need for equitable, transparent, and sustainable governance of resources. Law No. 3 of 2020 represented a pivotal change by re-centralizing mining authority from local governments to the Central Government, aiming to improve efficiency and accountability. Nevertheless, critics contend that the subsequent regulation, PP No. 25 of 2024, falls short in terms of transparency and may foster Patron-Client Relationships between the State and religious organizations. To promote sustainable management, it is essential that decision-making processes incorporate strong public participation and take into account wider social implications, thereby mitigating the risk of injustice and potential social unrest.

The legal framework governing the issuance of Mining Business Licenses (IUP) in Indonesia reveals a significant conflict between the pursuit of economic growth and the constitutional requirement for transparent and sustainable resource management. The introduction of Law No. 3 of 2020 has significantly transformed this environment by consolidating mining authority under the Central Government. This shift aims to simplify the licensing process and strengthen national oversight. However, experts contend that this centralization frequently overlooks regional interests and undermines environmental protections in favor of accelerating investment.<sup>28</sup> This transition is made more complex by Government Regulation (PP) No. 25 of 2024, which allows religious organizations to oversee mining areas. Critics argue that this policy is deficient in transparency and could lead to the establishment of Patron-Client Relationships, where natural resources are exploited as political tools to gain the allegiance of powerful social groups. To avert social conflict and promote distributive justice, the government must adopt a governance model that emphasizes Meaningful Participation and thorough social impact assessments. This approach will help ensure that mining operations do not compromise long-term ecological and community stability in favor of immediate political or economic benefits<sup>29</sup>

### **2) The Urgency of Granting IUP to Religious Mass Organizations**

According to the constitutional directive outlined in Article 33, the State, functioning as a Fiduciary Trustee, is obligated to adhere to the principle of legality and fulfill cumulative requirements in its affirmative policies. The licensing process should incorporate Meaningful Participation and proactive environmental measures to address land disputes and promote distributive justice. The success of this governance framework relies on the Central Government's essential oversight and the consistent enforcement of administrative penalties, including the Revocation of Licenses, to strike a balance between economic growth, legal certainty, and Intergenerational Equity.

According to Article 33 of the 1945 Constitution, the State functions not as an absolute owner but as a Fiduciary Trustee of the nation's natural resources. This Right of Control imposes a fiduciary responsibility on the State to ensure that the extraction and management of these resources

<sup>27</sup> Constitutional Court of the Republic of Indonesia. Decision No. 91/PUU-XVIII/2020.

<sup>28</sup> Jasin, Muhammad. "The Political Economy of Mining Centralization in Indonesia." *Journal of Indonesian Social Sciences and Humanities*, vol. 11, no. 1 (2021). (Analyzes the tension between efficiency and regional autonomy in mining governance).

<sup>29</sup> Constitutional Court of Indonesia. Decision No. 91/PUU-XVIII/2020. (Establishing the standard for "Meaningful Participation" as a constitutional requirement for all legislative and regulatory products affecting public interest).

contribute to the "greatest prosperity of the people." Legal scholars highlight that this responsibility requires the State to fulfill five key governmental functions: policy-making, regulation, management, operation, and oversight. Together, these functions serve as a standard for evaluating the State's performance as a trustee. Therefore, any proactive policy concerning land and resource allocation must comply with the principle of legality and meet specific cumulative requirements. This ensures that state authority remains within constitutional limits and avoids the risks of administrative overreach.<sup>30</sup>

The validity of contemporary licensing processes is fundamentally based on the doctrine of Meaningful Participation, as established by the Constitutional Court in its pivotal Decision No. 91/PUU-XVIII/2020. This principle asserts that the public has a collective right to be heard, to have their views taken into account, and to receive a formal explanation regarding the acceptance or rejection of their contributions. By incorporating this procedural requirement into the licensing of extractive industries and land use, the State can help reduce potential land conflicts and promote Distributive Justice. This approach ensures that local and indigenous communities are not sidelined by economic growth but are instead acknowledged as key stakeholders in the management of their ancestral lands.<sup>31</sup>

Moreover, the success of resource governance hinges on the stringent implementation of preventive environmental tools, including Environmental Impact Assessments (AMDAL) and Strategic Environmental Assessments (KLHS). These tools are crucial for detecting ecological threats before they develop into social disputes or lead to irreversible environmental damage. To ensure a balance between swift economic growth and legal certainty, the Central Government must assert its essential oversight by enforcing consistent administrative penalties. The revocation of licenses acts as a critical last resort against companies that breach environmental regulations or social responsibilities, thereby strengthening the state's position as a guardian of the public interest<sup>32</sup>

In essence, this integrated governance framework aims to uphold Intergenerational Equity, a principle outlined in Article 33, Paragraph (4), which requires the national economy to be structured around sustainability and environmental awareness. By aligning economic growth with rigorous administrative accountability and active public participation, the State fulfils its responsibility to guarantee that the use of natural resources today does not infringe upon the rights and welfare of future generations. This comprehensive approach elevates the licensing process from a simple bureaucratic procedure to a powerful tool for promoting social justice and fostering long-term ecological resilience<sup>33</sup>

### 3) Model of Mining Licensing for Religious Organizations from an Ecological Justice Perspective

The issuance of Mining Business Licenses (IUP) to religious organizations within

Indonesia's centralized mining framework represents an exercise of executive discretion that must remain fundamentally connected to the principles outlined in the 1945 Constitution and the essential notion of public benefit<sup>34</sup> As recognized legal subjects, these organizations assume a heightened fiduciary responsibility to institutionalize Good Mining Practices (GMP) and strictly observe the

<sup>30</sup> Suparto, "Interpreting The State's Right to Control In the provisions of Article 33 Paragraph (3) of the 1945 Constitution," UIR Law Review 4, no. 2 (2020)

<sup>31</sup> Simon Butt and Tim Lindsey, *The Constitution of Indonesia: A Contextual Analysis* (Hart Publishing, 2012)

<sup>32</sup> Sri Warjiyati, et al., "Implication of The Constitutional Court's Decision No. 91/PUU-XVIII/2020 on The Formal Examination of Law," *Journal of Humanities and Social Sciences Review* (2024).

<sup>33</sup> Constitutional Court Decision No. 35/PUU-X/2012 (Customary Forests Case), which redefined state controlled forests to exclude customary lands, thereby advancing distributive justice.

<sup>34</sup> Jimly Asshiddiqie, *Green Constitution: Ekonomi Hijau dan Constitutional Environmentalism* (Jakarta: Rajawali Press, 2010), hlm. 90-95. Lihat juga Pasal 33 ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 yang menegaskan peran negara sebagai wali amanah (fiduciary trustee) dalam pengelolaan sumber daya alam untuk sebesar-besarnya kemakmuran rakyat.

Precautionary Principle to mitigate adverse socio-ecological externalities.<sup>35</sup> Furthermore, effective inter-institutional synergy between central and regional authorities fortified by rigorous and consistent law enforcement serves as a non-negotiable prerequisite to ensure institutional accountability, procedural transparency, and the fulfillment of the citizens constitutional right to a sustainable environment for both present and future generations.<sup>36</sup>

## CONCLUSION, SUGGESTIONS AND RECOMMENDATIONS FOR FUTURE RESEARCH

### CONCLUSION

The legal framework surrounding the issuance of Mining Business Licenses (IUP) to Religious Mass Organizations, as outlined in Government Regulation No. 25 of 2024, represents an affirmative discretion that aligns with the constitutional directive of Article 33 of the 1945 Constitution. This article mandates that the State serves as a Fiduciary Trustee, responsible for redistributing natural resources for the benefit of the public. However, from a legal perspective, this policy may lead to environmental justice disparities if it is viewed solely as a practical economic tool, lacking the support of Good Mining Practice standards.

This research posits that a shift from a traditional administrative-extractive licensing system to an Ecological Permit model is essential. Such a model requires the fusion of formal legality with moral and theological accountability, placing environmental sustainability and the safeguarding of indigenous rights as fundamental, non-negotiable principles. If the policy fails to incorporate elements of distributive, procedural, and recognition justice, it risks amplifying the potential for power abuses and environmental degradation, ultimately jeopardizing the principle of intergenerational equity.

### SUGGESTIONS

The Central Government, as the authority responsible for issuing regulations, is encouraged to enhance the regulatory framework by developing specific technical guidelines for Religious Organizations. This should include a clear separation of legal entities between the parent organization and the mining business unit to maintain institutional integrity. Licensed organizations are required to uphold high standards of transparency and ensure meaningful engagement with local communities in concession areas to help reduce agrarian conflicts. Additionally, it is crucial that administrative sanctions, particularly the revocation of licenses, are enforced consistently and without discrimination for any violations of environmental regulations, regardless of the socio-political status of the licensee. Furthermore, the government must improve inter-agency collaboration to ensure that preventive measures, such as Environmental Impact Assessments (AMDAL) and Community Empowerment Programs (PPM), are effectively implemented rather than treated as mere bureaucratic procedures.

### RECOMMENDATIONS FOR FUTURE RESEARCH

Given that this policy establishes a new precedent in Indonesian mining law, future research should concentrate on the practical implementation and oversight effectiveness following the granting of licenses to Religious Organizations. This should encompass a thorough analysis of environmental compliance audits, the actual effects of social responsibility initiatives on local welfare, and any potential conflicts of interest that may arise within the tripartite relationship between the state, organizations, and corporate partners. Furthermore, additional studies are necessary to create responsive conflict resolution mechanisms concerning indigenous rights in concession areas and to

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<sup>35</sup> Peraturan Pemerintah Nomor 25 Tahun 2024 tentang Perubahan Atas Peraturan Pemerintah Nomor 96 Tahun 2021 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral dan Batubara, Pasal 83A. Kewajiban penerapan Good Mining Practices secara lebih rinci diatur dalam Keputusan Menteri ESDM No. 1827 K/30/MEM/2018.


<sup>36</sup> Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan* (Yogyakarta: Gadjah Mada University Press, 2005), hlm. 42. Konsep keadilan antargenerasi ini juga merujuk pada prinsip internasional yang dikemukakan oleh Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Tokyo: United Nations University Press, 1989).

develop quantitative indicators that can assess the success of the Ecological Permit model in harmonizing national economic growth with long-term ecological integrity.

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