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The Model Of Mineral And Coal (Minerba) Authority Arrangement In Realizing Ecological Justice

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Abstract

This study aims to explore whether the regulation of mineral and coal authority has been able to realize ecological justice and how the regulation of mineral and coal authority can realize ecological justice. This research method includes normative juridical legal research with a statutory approach and a conceptual approach. Based on the research results on the conflict in this issue governing the Minerba Act No. 4 of 2009 and the legislation, Article 33 paragraph (3) of the 1945 Constitution. The results of the analysis in realizing ecological justice explained the Minerba Act's problem is the superiority mining industry. This law does not provide an opportunity for the public to get justice. There is no general complaint and resolution mechanism. In the Minerba Law, article 145 of this protection is limited only to the community directly affected by the harmful mining activities in this case, only limited to the surrounding community or mining concession area. Then regarding how the arrangement of mineral and coal authority that can realize ecological justice based on Law Number 4 of 2009 has handed over mining management authority to the regional government. Article 33 paragraph (3) of the 1945 Constitution, described that the State has the right to control over land, earth, water, and natural resources which contained therein including the use of space, state authority in the form of regulation and administration is intended for the greatest prosperity of the people.

Keywords

Coal Mineral Authority, Ecology, Justice

Introduction

Draft Law in lieu of Law No. 11 of 1967 (referred to as the Mineral and Coal Law) was soon established. The new law made lots of changes, and it was done because there was a desire from the Minerba Bill to hand over most of its authority (licensing) to the regions, which under Law No.11 of 1967, the authority was at the Centre. The real proof of this desire at least appears in the pattern of cooperation. In Law No.11 of 1967, the cooperation pattern is based on a contract. Whereas, in the Minerba Act Draft, the cooperation pattern is carried out in the form of a permit.¹

Polemic and rejection from several elements of the community influenced the Minerba Bill which changed Law Number 4 of 2009 and was passed by the Parliament on May 12, 2020. The Row of Troubled Articles and the Minerba Bill and Reasons for the House of Representatives (DPR) to Continue to Discuss. First, the concentration of authority over mining. The concentration is reflected in the amendment to Article 4 paragraph 2, which no longer includes regional governments in the control of mineral and coal. Then Article 7 and Article 8, which regulates the authority to issue mining business licenses (IUP) by provincial and district/city governments are removed. Other regulations on regional government authority that were cut, namely Article 15 relating to the delegation of the determination of mining business areas (WUP) and Article 21 about the rights of regents/mayors to determine people's mining areas (WPR).

Second, a strong spirit of downstream. In Article 1 paragraph (20), it is stipulated that the quality improvement is required not to change the chemical and physical properties. The categorization of processing and refining is no longer unified as in the old regulation, as stated in Article 102. While in Article 103 paragraph (2), the government guarantees the continuity of the use of processing and refining results.²

Third, guarantee extension of permits, this has been seen from the previous two articles related to incentives that include the word "guaranteed". The previous regulation did not regulate this guarantee. Similar rules are contained in Article 169 A, which deals explicitly with the extension of the contract of work (CoW) and coal contract of work (CCoW). The second holding company is guaranteed an extension to a special mining permit (IUPK) as a continuation of the contract/agreement operation after fulfilling the requirements. The number should be no longer than ten years, taking into account efforts to increase state revenue.

Fourth, the area of mining land. Article 83 letter (c) states that the Special Mining Business Licence Area (WIUPK) for the stage of Metal Mining or Mineral Mining Production Operation activities is given based on the results of the minister's

¹ Ahmad Redi, 'Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam', *Jurnal Konstitusi*, 12.2 (2016), 401 <<https://doi.org/10.31078/jk12210>>.

² Absori Absori and others, 'Government Policies for the Natural Resource Management of Minerals and Coal Based on Social Welfare', *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 20.1 (2022), 23-37 <<https://doi.org/10.31941/pj.v20i1.1715>>.

evaluation of the development plan for the entire area proposed by the IUPK holder.

Fifth, the matter of divestment contained in Article 112. Holders of Mining Business Licence (IUP) and IUPK at the stage of production operations whose shares are owned by foreigners must divest shares by 51% and in stages to the central government, regional governments, State-owned Enterprises (BUMN), City-owned Companies (BUMD), and national private business entities.

The regulation and supremacy of the State over the management of natural resources have gained a constitutionality place in Article 33 paragraph (3) of the 1945 Constitution emphasizing that the earth, water and natural resources contained therein are controlled by the State and used for the most significant people prosperity (ÖZYEŞİL, 2021).³

Based on article 33 paragraph (3) and paragraph (4) of the 1945 Constitution, the State is given authority by the 1945 Constitution to control natural resources in the framework of the maximum prosperity of the people. The State's right to control contains the authority to regulate, administer and supervise mining management or exploitation and contains the obligation to use it to the greatest prosperity of the people (Oyebamiji, 2021).

In the study of this paper, the author focuses on the consistency of local governments in the legal politics of managing mineral and coal mining resources. Mining resources as natural resources in the earth are non-renewable natural resources, so their management needs to be carried out optimally as indicated in Article 33 Paragraph (4) of the 1945 Constitution by observing efficiency, transparency, sustainability and environmental insight, as well as being fair in order to obtain the maximum benefit for the prosperity of the people in a sustainable manner.

Research Method

The research method used in this paper is a normative juridical type of research which is a conceptual approach or study carried out on statutory regulations, the conceptual approach is usually used to discuss conflict norms. Thus, the conflict in this matter regulates the Minerba Law No. 4 of 2009 and the laws and regulations of Article 33 paragraph (3) of the related 1945 Constitution. Research data were collected through library research. Besides the data obtained through various scientific writings, documents related to Minerba through the discussion process, analysis, evaluation, conclusions and suggestions/recommendations can be formulated.

Result and Discussion

Ecological Justice in the Arrangement of Minerba Authority

Various parties contest both in premodern and modern societies space, but

³ Lisa Herzog and Robert Lepenies, 'Citizen Science in Deliberative Systems: Participation, Epistemic Injustice, and Civic Empowerment', *Minerva*, 0123456789, 2022 <<https://doi.org/10.1007/s11024-022-09467-8>>.

in modern society, the struggle for space is dominated by the need for money and conservation. From here, the concept of ecological justice becomes relevant to be applied in interpreting the struggle for space for various needs in an area in modern society. This article will discuss the contestation of space and ecological justice in Indonesian society using the perspective of ecological justice. The main argument of this article is that space is the habitat of an Indonesian customary law community, both living in rural and urban areas. For them, space is not only crucial for shelter and sources of livelihood, but also for carrying out social and cultural needs. The use of space in the habitat of indigenous and tribal peoples by flicking their existence is an ecological injustice, and therefore the resistance and resistance of indigenous and tribal peoples is the resistance and resistance to ecological injustice.⁴

Indicators in ecological injustice here refer to Law Number 4 of 2009 and Article 33 paragraph (2) and paragraph (3) wherein this Law, and there is indeed an effort to improve the paradigm by encouraging the increased material added value of mining products. The Minerba Law requires all mining companies to have processing plants. However, this obligation does not take into account the duration of production from mining operations with deposits that do not last long. As a non-renewable and limited natural resource, natural resources should be managed wisely and justly. Not merely seeing the growth of investment and foreign exchange of the country. Clear and precise regulation of transparency, participation and accountability in management, which are three essential pillars in realizing good governance and democratization in mining management.⁵

In the course of ecological justice in regulating the authority of the mineral and coal sector, it is ignored. Initially, when the government plans to change Law No. 11/1967, hopes for a change in the paradigm of mining governance have emerged. However, the Mineral and Coal Mining Bill continues to stir controversy since it became a draft. For more than four years discussed, finally at the end of 2008, the bill was passed into Law No. 4 of 2009 which was marked by a walkout (WO) of 3 fractions namely the National Mandate Party Fraction (PAN), In article 162, the Minerba Act blatantly ignored the rights of citizens. In this article, citizens are not allowed to reject or veto. When residents try to defend their rights, then it is deemed to impede or hinder mining activities which can be subject to a maximum of 1 year and a maximum fine of Rp.100 million.

Law No. 4 of 2009 concerning Minerals and Coal continues to legalize the integration of coal mines. This law is read in the framework of legal science must not stand because it is still included in the realm of environmental law which means it is very closely related to the forestry laws or the environment or umbrella provision for other laws and regulations. Only the problem for entrepreneurs and local governments may be that the implementation is separate.

⁴John D. Leshy, *The Mining Law*, *The Mining Law*, 2015 <<https://doi.org/10.4324/9781315667935>>.

⁵Derita Prapti Rahayu and Faisal Faisal, 'Politik Hukum Kewenangan Perizinan Pertambangan Pasca Perubahan Undang-Undang Minerba', *Pandecta*, 16.1 (2021), 164-72 <<https://doi.org/http://dx.doi.org/10.15294/pandecta.v16i1.28013>>.

In fact, with the issuance of Law No. 4 of 2009, coal dredging was felt not to meet the environmental interests of forest destruction and failed reclamation until now. Forestry Minister Siti Nurbaya reminded mining companies to pay attention to the environment.

The same thing can happen for anyone who tries to stop the activities of companies that have polluted or damaged the environment. The government, companies and law enforcers openly use this article not only to silence but also criminalize citizens. All this time, law enforcement against perpetrators of environmental crimes committed by corporations has not worked. Most cases end with the issuance of investigation termination warrants (SP3) or agreements on the table and evaporate without a clear continuation of the case. Instead, the government is trying to save the company in the name of development or investment.

There have been many cases, where it is clear the company has committed administrative violations to the environment, but all are circumvented. For example, the gold mining company PT. Meares Sopotan Mining (MSM) in North Minahasa, South Sulawesi. PT. MSM did not have a legal entity when its CoW was signed in 1984. Then, the environmental impact assessment (AMDAL) expired, but the company continued to operate, and the government allowed the company to do construction³⁴. Refusal of residents who reject PT. MSM operates precisely criminalized. The company sued four people in the Manado court on charges of destroying company facilities. An irony in law enforcement in Indonesia. The mining sector is the only one that has never been touched by law in Indonesia.⁶

Administrative violations, company responsibilities, pollution and mining accidents never punish the company or individuals. Most cases evaporate, otherwise, SP3 is allowed to drag on until the public forgets. Alternatively, the government only provides a warning to pay attention to, not directly sanctions until the termination of the contract. For example, the Lapindo case, Seribu Island Pollution, KPC seizure (SP3), Buyat Bay Case, PT. KEM, PT. MSM (the court defeated the plaintiff) and PT. Inco Indonesia (Case of land grabbing is unclear to what extent, only stops at the Police).⁷

In the Minerba Law, article 145 indeed mentions efforts to protect the public. However, regarding ecological justice in the regulation of mineral and coal authority, there is absolutely no complete justice, this protection is limited only to the community who are directly affected by harmful mining activities, in this case only limited to the surrounding community or mining concession areas. The impact of mining knows no concession boundaries, even district, provincial and State administrative boundaries.

Another issue of the Minerba Law is the superiority of the mining industry. This law does not provide an opportunity for the public to get justice. There is no

6 Rahayu and Faisal, 'Politik Hukum Kewenangan Perizinan Pertambangan Pasca Perubahan Undang-Undang Minerba', *Pandecta*, 16.1 (2021), 164-72 <<https://doi.org/http://dx.doi.org/10.15294/pandecta.v16i1.28013>>.

7 Diana Yusyanti, 'Aspek Perizinan Di Bidang Hukum Pertambangan Mineral Dan Batubara Pada Era Otonomi Daerah', *Jurnal Penelitian Hukum*, 16.3 (2016), 309-21 <<https://doi.org/10.30641/dejure.2016.V16.309-321>>.

general complaint and resolution mechanism. There is no room for the community to take class action if losses are arising from mining activities. Sounds Article 91; "Holders of IUP and IUPK can utilize public infrastructure and facilities for mining purposes after fulfilling the provisions of the laws and regulations". Even though public facilities such as roads in Indonesia, for example, are not in good condition. If then the highway is allowed, consequently accelerates the damage.⁸

The Arrangement of Minerba Authority as an Instrument of Ecological Justice

Ecological justice is closely related to social justice. Before it gets to ecological justice, social justice will first be weighed, also by displaying some thoughts. With this step, it is hoped that important elements, philosophical foundations and problematic ecological justice can be concluded. Starting from this general summary, following the status of the questionis (essential questions) that underlies this research, the final part of the paper proposes to propose the meaning of ecological justice.⁹

In this case, it is assumed that the essence of justice does not have a single and permanent meaning. The inconsistency of the meaning of justice is precisely what makes philosophers devote all their energy and efforts to find out what is the meaning of justice so that a constellation of meanings of justice can be found among philosophers or precisely the meaning of mutual dialogue. Therefore, as a kind of summary, a mapping will be made of the main elements of the various thoughts. The summary will highlight several points, namely the main problem, the content or 'what', the scope and type, the way or 'how' and finally the philosophical problems that exist. In the end, there is a special note about ecological justice.¹⁰

The indicators in ecological injustice here refer to Law Number 4 of 2009 and Article 33 paragraph (2) and paragraph (3) where Indonesia is the State of Law, in the sense that all State actions in this matter are carried out by the Government, and its apparatus are based on law. The conception of the constitutional State can be constitutionally referred to in the formulation of the State's objectives, namely protecting all the people of Indonesia and all spilt Indonesian blood, promoting public welfare, educating the life of the Nation and embodying social justice, regarding the regulation of mineral and mining authority that can realize ecological justice.¹¹

8 Ira Fadilla Rohmadanti, Febriansyah Ramadhan, and Ilham Dwi Rafiqi, 'Disharmony of Domestic Refining Provisions for Mineral and Coal in Indonesian Laws and Regulations', *Pandecta: Jurnal Penelitian Hukum*, 17.1 (2022), 1-17 <<https://doi.org/http://dx.doi.org/10.15294/pandecta.v17i1.31236>>.

9 Sulistyani Eka Lestari and Hardianto Djanggih, 'Urgensi Hukum Perizinan Dan Penegakannya Sebagai Sarana Pencegahan Pencemaran Lingkungan Hidup', *Masalah-Masalah Hukum*, 48.2 (2019), 147 <<https://doi.org/10.14710/mmh.48.2.2019.147-163>>.

10 Wahyu Nugroho, 'Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba', *Jurnal Hukum Ius Quia Iustum*, 27.3 (2020), 568-91 <<https://doi.org/10.20885/iustum.vol27.iss3.art7>>.

11 Ilham Dwi Rafiqi, 'PEMBARUAN POLITIK HUKUM PEMBENTUKAN PERUNDANG-UNDANGAN DI BIDANG PENGELOLAAN SUMBER DAYA ALAM PERSPEKTIF HUKUM PROGRESIF', *Bina Hukum Lingkungan* 5, 2 (2021), 320-21 <<https://doi.org/http://dx.doi.org/10.24970/bhl.v5i2.163>>.

Article 33 as the basis for the State's right to control governing the basics of the economic system and the desired economic activities in the Republic of Indonesia. Based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia it is stated that the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. The 1945 Constitution of the Republic of Indonesia explicitly states that minerals as wealth contained in the bowels of the earth said to be controlled by the State and not by the Government. If stated with the word "controlled by the Government", it can also mean that the Regional Government. Understanding the Government means as the Ruler chosen by the people periodically so that it always changes periodically.

In contrast, the word "controlled by the State" indicates that there is a "character state" that has sovereignty so that it can act in and out. Thus that refers to the Central Government only. So, in this case, the use of the word "controlled by the State" means referring to the control and implementation by the Central Government. Article 33 of the 1945 Constitution refers to the Right of Authority for mineral materials in the hands of the State, not the Government. In contrast, the right of ownership (Mineral Right) to minerals is in the hands of the Indonesian Nation (all people).

The granting of a mining permit is closely related to the ownership rights of mining minerals in Indonesia. All business activities involving natural resources, which are the actions of the State, the government and the implementing apparatus, must be based on applicable law. As the highest legal source of exploitation of natural resources is Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

The right holder of natural resources (mineral right) in the form of a variety of minerals contained in the earth and water in the Indonesian mining jurisdiction is the Indonesian Nation, which subsequently gives the State the power to regulate and administer and make the best use of these natural resources for the prosperity of the people. This means that the State is given an "authority right" on the natural wealth of the Indonesian people. Thus, it can be used for the greatest prosperity of the people. The State cannot conduct it on its own, so the Government exercises the right of control as the organizer of the State government daily, which can be done through the cooperation of mining concessions with other parties (investors) as executors of mining operations (mining rights).

However, mining management, based on Law Number 4 of 2009, has handed over mining management authority to the regional government. So that the mandate of Article 33 of the 1945 Constitution seems to have been ignored. Based on Article 33 paragraph (3) of the 1945 Constitution.

Indonesian people recognize the existence of a magical-religious relationship between the population, the people, the land and the environment in where they live. Indonesian people and Nation recognize and realize the importance of land, water and natural resources contained therein provided by God for all

Indonesian people and Nation. The land, water and natural resources contained therein are provided by God for all nations to be utilized for the greatest prosperity of the entire people. The State has the right to control the land, earth, water and natural resources contained therein, including the use of space, state authority in the form of regulation and administration is intended for the maximum prosperity of the people.

In managing natural resources, there is no discrimination and differentiation among all Indonesian people. The effects of mining activities are not only economic losses but also causing the disturbance of social upheaval. Namely in the form of increasing friction escalation between mining companies and the community, changing the community's agrarian patterns into mining communities and the last which is always the subject of discussion is the destruction and pollution of the area around the mine.¹²

This eventually led to various problems related to the delivery of management to local governments, because each region had different perceptions, so that overlapping and legal disputes arose after the reform era. This certainly has an impact on the obstruction of state finances from the mining sector.

In connection with the forms of licensing above, there are basic things that need to be studied about the meaning of IUP. The juridical question here is whether the various forms of licensing referred to permit in the sense of "general permission" (*gewone vergunning*) or classified as dispensation (*dispensastie*) and or in the meaning of concessions (*concessie*) as the licensing concept put forward by the CPR & co-management theory. This can be studied from various existing theories that can be used as a reference and the basis of its formation.¹³

Conclusion

Natural Resource Management in Indonesia refers to the ideology of mastery and utilization of natural resources as reflected in Article 33 paragraph (3) of the 1945 Constitution, that the Earth and water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people.

Based on the problems that exist in Law Number 4 of 2009 and Article 33 paragraph (2) and paragraph (3) wherein this Law, there is indeed an effort to improve the paradigm by encouraging an increase in the material value added of mining products. The Minerba Law requires all mining companies to have processing plants. However, this obligation does not take into account the duration of production from mining operations with deposits that do not last long. In the course of ecological justice in regulating the authority of the mineral and coal

12 Muhammad Tanzil Aziz Rahimallah, 'PENGELOLAAN MINERBA DALAM PERSEPEKTIF GOOD GOVERNANCE (TINJAUAN TEORITIK DAN NORMATIF)', *Pandecta: Jurnal Penelitian Hukum*, 9 (2017), 157-58 <<https://doi.org/10.31219/osf.io/f2jr6>>.

13 Gadis Raynita Ainiyyah, 'Badan Usaha Milik Daerah (BUMD) Yang Belum Berubah Status Menjadi Perumda Atau Perserod', *Notary Law Journal*, 1.2 (2022), 176-203 <<https://doi.org/https://doi.org/10.32801/nolaj.v1i2.22>>.

sector, it is ignored. Initially, when the government plans to change Law No. 11/1967, hopes for a change in the paradigm of mining governance have emerged. However, the Mineral and Coal Mining Bill continues to stir controversy since it became a draft. For more than four years discussed, finally at the end of 2008, the bill was passed into Law No. 4 of 2009. Then this law is read in terms of legal science must not stand because it is still included in the realm of environmental law which means it is very carefully related to the forestry and environmental laws or umbrella provisions for other laws and regulations. Responding to that in the Minerba Law, article 145 indeed mentions efforts to protect the community. However, regarding ecological justice in the regulation of mineral and coal authority, there is absolutely no complete justice.

Whereas mining management, based on Law Number 4 of 2009 has handed over mining management authority to the regional government. So that the mandate of Article 33 of the 1945 Constitution seems to have been ignored. Based on Article 33 paragraph (3) of the 1945 Constitution, the legal politics of managing Indonesia's natural resources outlines the following principles are the State controls minerals and coal as non-renewable resources, and their development and utilization are carried out by the Government and Regional Governments together with business actors, the government then provides the opportunity for Indonesian legal entities, cooperatives, individuals, and local communities to conduct mineral and coal mining based on permits, which are in line with regional autonomy, granted by the Government and/or Regional Government following their respective authorities, in the context of the implementation of decentralization and regional autonomy, the management of mineral and coal mining is carried out based on the principles of externality, accountability and efficiency involving the Government and Regional Governments.

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