Recht Studiosum Law Review
Journal homepage: https://talenta.usu.ac.id/rslr

The Legal-Political Urgency of Coal Industry Downstreaming for Democratic and Just National Development

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ARTICLE INFO

Article history:
Received 13 July 2023
Revised 29 August 2023
Accepted 29 October 2023
Available online
https://talenta.usu.ac.id/rslr

E-ISSN: 2961-7812
P-ISSN: 2985-9867

How to cite:
Zaifa, G. A., dkk. (2023). The Legal-Political Urgency of Coal Industry Downstreaming for Democratic and Just National Development. Recht Studiosum Law Review, 2(2), 54-62.

10.32734/rslr.v2i2.13014

ABSTRACT

In please fifth Pancasila and the 1945 Constitution emphasize that the principle of social justice mandates the responsibility of the government in developing welfare. After the issuance of Law NO. 3 of 2020, the mineral and coal (minerba) sector plays an important role in national economic growth. However, in practice, it is felt that the government lacks a supervisory function, resulting in a recentralization of authority, both from the aspect of licensing and supervision. Coal industry supervision mechanisms must be further regulated to ensure that the downstream coal industry is not controlled by a handful of people. The formulation of the problem in this journal is what is the mechanism for downstreaming the coal industry as a development of national law? And what is the juridical basis for the delegation of authority for the downstream coal industry in achieving national legal prosperity? This research uses normative juridical method through literature study. Normatively, the legal politics of natural resource management in Indonesia has been determined in the 1945 Constitution, specifically in Article 33 paragraph (2) and paragraph (3). In terms of planning, as well as coordination of intensity implementation supervision has not been carried out optimally, so that it has not supported the realization of sustainable and environmentally sound mining through law enforcement efforts. The recommendation from this study is that policies still need to be synchronized with the provisions of related laws and regulations so that they can become an effective, efficient and comprehensive legal basis in mining operations so as to create legal certainty and provide protection for the community.
Keyword: Legal Politics, Coal Industry, National Development

ABSTRAK

Dalam sila kelima Pancasila serta Undang-Undang Dasar 1945 menekankan bahwa prinsip keadilan sosial mengamanatkan tanggung jawab pemerintah dalam pembangunan kesejahteraan. Setelah terbitnya UU NO. 3 Tahun 2020, sektor mineral dan batubara (minerba) memegang peranan penting dalam pertumbuhan ekonomi nasional. Namun dalam pelaksanaannya dirasakan kurangnya fungsi pengawasan yang dilakukan pemerintah sehingga menghadirkan resentralisasi kewenangan baik dari aspek perizinan maupun pengawasan. Mekanisme pengawasan industri batubara harus diatur lebih lanjut untuk memastikan hilirisasi industri batubara tidak dikuasai oleh segelintir orang. Adapun rumusan masalah dalam jurnal ini adalah bagaimana mekanisme hilirisasi industri batubara sebagai pembangunan hukum nasional? Serta bagaimana landasan yuridis pelimpahan kewenangan hilirisasi industri batubara dalam mencapai kesejahteraan hukum nasional? Penelitian ini menggunakan metode yuridis normatif melalui studi pustaka. Secara normatif politik hukum pengelolaan sumber daya alam di Indonesia sudah ditentukan di dalam UUD 1945, tepatnya pada Pasal 33 ayat (2)

dan ayat (3). Dilihat dari segi perencanaan, maupun koordinasi intensitas pelaksanaan pengawasan belum dilaksanakan secara optimal, sehingga belum mendukung terwujudnya pertambangan berkelanjutan dan berwawasan lingkungan melalui upaya penegakan hukum. Adapun rekomendasi dari penelitian ini adalah masih perlu disinkronkan kebijakan dengan ketentuan peraturan perundang-undangan terkait agar dapat menjadi dasar hukum yang efektif, efisien dan komprehensif dalam penyelenggaraan pertambangan sehingga dapat menciptakan kepastian hukum dan memberikan perlindungan terhadap masyarakat.
Keyword: *Politik Hukum, Industri Batubara, Pembangunan Nasional*

1. Introduction

Indonesia is a country rich in natural resources. Mineral and coal resources (minerba) play a crucial role in driving the progress of the country's economy as one of the largest sources of foreign exchange in Indonesia. The government, in its efforts to promote national development, has pushed for and created regulations to optimize the natural resources in accordance with the mandate of Article 33 (3) of the 1945 Constitution, which states that "the land, the waters and the natural resources within shall be controlled by the state and used for the greatest benefit of the people." Therefore, the government has made efforts to manage mining properly so that Indonesia's natural wealth can benefit the society and the nation, to be enjoyed by future generations. One of the efforts carried out by the government is the establishment and enactment of the Omnibus Law, specifically regulating the management of minerba, namely Law Number 3 of 2020 regarding Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. This regulation is a revision of the previous law with a focus on renewal and restructuring activities related to the evaluation of mining management and operations. The proper management of minerba is a significant priority for the progress of national economic development, as mineral and coal commodities serve as a source of state revenue through Taxes (PP) and Non-Tax State Revenue (PNBP) from the Mineral and Coal Sub-Sector. According to data from the Ministry of Energy and Mineral Resources, the realization of PNBP from the mineral and coal mining sector until the end of 2020 amounted to Rp34.627 trillion, surpassing the target set the previous year of Rp31.41 trillion. In 2021, the target for PNBP is expected to be even higher than in 2020, estimated at Rp39.1 trillion.[1] It can be seen that the mining and energy sector plays a significant role in generating revenue for the country. The total revenue obtained from the energy and mineral resources sector in the State Budget (APBN), especially in the field of minerals and coal, continues to increase from year to year. Often, when government spending increases, the minerals and coal sector acts as a counterbalance by increasing production and exports, thereby boosting the state's revenue from minerals and coal.

However, it is important to note that if the use of natural resources continues to increase, environmental damage will worsen. This occurs due to the disregard for maintaining a balance between development and the preservation of natural resources. If this happens, it would be inconsistent with Article 33 paragraph (3) of the 1945 Constitution, which asserts that the state has control over its land, water, and natural resources, and must use them for the prosperity of the people. Therefore, the management of natural resources should be based on the conservation of natural resources, with a comprehensive and integrated approach, to ensure the preservation and sustainability of their functions. This is also in line with Article 33 paragraph (4) of the 1945 Constitution, which stipulates that the national economy must be conducted based on the principles of economic democracy, including sustainability, justice, and environmental sustainability, while maintaining a balance between progress and national economic unity.

The parties involved in this issue are the central and regional governments, who are responsible for granting permits for mining activities. However, these permits are highly susceptible to intervention by investors with economic power. These business owners solely focus on the economic profits they can gain from the coal industry, without considering the environmental and societal impacts. The main reason behind this situation is the ease of obtaining permits for coal mining activities, which has led to a race among large investors to profit from coal extraction.

The possible cause of this is the existence of various types of mining permits such as mining licenses, work contracts, PKP2B, SIPD, and IPR, which have been regulated in Law Number 11 of 1967 concerning the Basic

[1] Kementerian ESDM. Kinerja Tahun 2020 Dan Program 2021 Sektor ESDM. Available from https://www.esdm.go.id/id/media-center/arsip-berita/kinerja-tahun-2020-dan-program-2021-sektor-esdm. (Diakses 5 Juli 2023)

Provisions of Mining. This creates many loopholes for corrupt practices, collusion, and nepotism. However, after the enactment of Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law), which replaced Law Number 11 of 1967, there were also deviations in the issuance of Mining Business Permits (IUP). In this regard, effective regulations are needed that integrate concepts of sustainable economics, ecology, and social aspects in the use of natural resources. Additionally, improvements are also necessary in the existing legal system towards a responsive legal system based on principles of democracy and justice. This aims to achieve effective national development in line with the policy of natural resource management stated in Article 33 of the 1945 Constitution..

In an effort to maintain authenticity and bring new developments to this research, the author has conducted prior research on a similar topic. ***Firstly***, a study conducted by Ahmad Nugraha Abrar, *titled "Politik Hukum Pertambangan Dalam Pelaksanaan Kewajiban Pengolahan Dan Pemurnian Mineral Dan Batubara Di Indonesia"*. In that research, it was found that there are still various issues related to the development of mineral processing by mining companies. This is caused by the lack of realization of processing development based on mining laws and regulations, both current and previous ones.[2] ***Secondly***, a study conducted by Aullia Vivi Yulianingrum, titled *"Kebijakan Pengelolaan Pertambangan Batu Bara Berbasis Kesejahteraan Profetik"*. The results of this research indicate that the management policy of coal mining by local authorities is more formal and procedural in nature, while there is no clear regulation regarding the implementation of coal mining management policy. This is due to the dominance of management power held by the central government.[3] ***Thirdly***, a study conducted by Rizky Setiawan, titled *"Implikasi Perubahan Undang-Undang Pemerintahan Daerah Terhadap Kewenangan Tata Kelola Pemanfaatan Energi dan Sumber Daya Mineral Oleh Pemerintahan Daerah di Indonesia"*. This research shows that changes in Regional Government Laws have an impact on the authority of local governments in regulating the use of energy and mineral resources. One of the implications is the reduction of authority for second-level regional governments to grant permits and oversee the utilization of energy and natural resources within the districts/cities in Indonesia.[4]

This research brings novelty in examining the legal politics of downstreaming the coal and mineral industry. The study will address two main issues based on the explanations above. Firstly, how is downstreaming of the coal industry carried out in the context of national legal development? Secondly, what legal basis is used to empower downstreaming of the coal industry to achieve national legal welfare? This research aims to determine whether downstreaming mechanisms are implemented in the coal industry and the legal basis used in such downstreaming for national development and legal welfare.

2. Methods

This research utilizes a normative method that examines literature or literature study as the foundational data. The study will employ a legislative approach, principles, rules, and legal doctrines related to the issues under investigation in order to develop a coherent argument. The data collection technique involves gathering legal literature from relevant sources that pertain to the discussed issues. Subsequently, qualitative analysis will be conducted. In this case, the analysis aims to provide an overview of the achievement of a concept resulting from answering the research questions. This involves enhancing the legal framework and regulatory formation scheme following the dissolution of ineffective non-structural state institutions.

3. Result and Discussion

1.1 The Mechanism of Downstreaming the Coal Industry as National Legal Development

As the foundation of Indonesia's national legal policy, which aims to provide welfare and benefits, the legal products of downstreaming the coal industry should bring prosperity to the affected communities and provide benefits, such as creating job opportunities for the affected communities. According to Jeremy Bentham, the

[2] Ahmad Nugraha Abrar. (2022). Politik Hukum Pertambangan Dalam Pelaksanaan Kewajiban Pengolahan Dan Pemurnian Mineral Dan Batubara Di Indonesia. Jurnal Program Magister Hukum FHUI, 2(1), 13–28.
[3] Aullia Vivi Yulianingru dkk. (2021). Kebijakan Pengelolaan Pertambangan Batu Bara Berbasis Kesejahteraan Profetik. Universitas Muhammadiyah Surakarta.
[4] Rizky Setiawan. (2018). Implikasi Perubahan Undang-Undang Pemerintahan Daerah Terhadap Kewenangan Tata Kelola Pemanfaatan Energi Dan Sumberdaya Mineral Oleh Pemerintagan Daerah Di Indonesia. Jurnal Kajian Pemerintah: Journal Of Government, Social Adn Politics, 4(1), 71–86.

purpose of law is to provide the greatest benefit to as many people as possible. This aligns with the thoughts of John Stuart Mill regarding Utilitarianism. John Stuart Mill stated that actions are right in proportion as they tend to promote man's happiness and wrong as they tend to promote the opposite of happiness.[5] He argues that benefiting society is the aim of an individual's moral activities. Where a policymaker should have the goal of moral activities, which is to create policies that are utilitarian in nature.

Normatively, the legal-political management of natural resources in Indonesia has been determined within the 1945 Constitution, specifically in Article 33, paragraphs (2) and (3). Article 33, paragraph (2) states, *"Cabang-cabang produksi yang penting bagi negara yang menguasai hajat hidup orang banyak dikuasai negara."* Article 33, paragraph (3) states, *"Bumi dan air dan kekayaan alam yang terkandung didalamnya dikuasai oleh negara dan digunakan untuk sebesar-besar kemakmuran rakyat."* Studies related to Article 33 of the 1945 Constitution serve as the basis for mining management aimed at creating justice. However, the justice mentioned in Article 33 of the 1945 Constitution is more motivated by economic justice rather than ecological justice.[6] So based on Article 28H of the 1945 Constitution which states that *"Setiap orang berhak hidup sejahtera lahir dan batin, bertempat tinggal, dan menempatkan lingkungan hidup yang baik dan sehat serta berhak memperoleh pelayanan kesehatan"* it is understood that the right to a good and healthy environment is part of human rights alongside other human rights. Mining, as a natural resource within the earth, is considered as a non-renewable natural resource, therefore its utilization must be carried out to the best of its ability, efficiently, honestly, and sustainably, while also considering environmental impacts and justice.[7]

To comply with the regulations stipulated in Article 33 paragraphs (2) and (3) of the 1945 Constitution of the Republic of Indonesia, the government has enacted Law Number 11 of 1967 concerning the basic principles of mining, which was later revised by Law Number 4 of 2009 concerning mineral and coal mining (Mining Law). Article 1 number 1 of the Mining Law defines that: "Mining is all or part of the activities carried out in the framework of research, management, and exploitation of minerals or coal, including general survey, exploration, feasibility study, construction, mining, processing and purification, transportation and sales, as well as post-mining activities." This definition is broad in scope as it covers various mining activities that can take place before, during, and after the mining process.[8]

According to the Mining Law, it is explained that there are changes in the form of contracts and agreements in mining operations. Article 33 of the Mining Law regulates that mining operations were previously carried out through contracts and agreements, but now there are three new forms used, namely Mining Business License (Izin Usaha Pertambangan or IUP), People's Mining License (Izin Pertambangan Rakyat or IPR), and Mining Business Agreement (Perjanjian Usaha Pertambangan or PUP). The difference is that when using contracts and agreements, the government and mining companies have equal positions.[9] There are fundamental changes that occur in both methods. In the licensing method, the government holds a greater authority as it acts as the granting authority for mining companies to carry out mining activities. The government also has the power to revoke such licenses if deemed necessary, following established procedures.

Currently, the granting of mining permits has been regulated into three categories. For mining companies that wish to conduct large-scale mining activities, they will be granted a Mining Business License (IUP). For communities or cooperatives involved in small-scale mining activities, the granted permit is called a People's Mining License (IPR). Meanwhile, a Mining Business Agreement (PUP) is established between the mining company and the implementing agency formed by the government, similar to the Upstream Oil and Gas Executive Body (BP Migas) in the oil and gas sector. Through the PUP, it is expected to create better legal certainty compared to the IUP, considering that Indonesia currently lacks a comprehensive prevailing law system.[10]

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[5] Zainal B. Septiansyah & Muhammad Ghalib. (2018). Konsepsi Utilitarianisme Dalam Filsafat Hukum Dan Implementasinya Di Indonesia, Ijtihad: Jurnal Hukum Islam Dan Pranata Sosial, 34(1).
[6] Fine Ennandrianita, dkk. (2014). Politik Hukum Pertambangan Mineral Dan Batubara Saat Berlaku Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintah Daerah, Jurnal Hukum Dan Pembangunan Ekonomi, 6(2)
[7] Suparji & Rafqi Mizi. (2019) Penataan Regulasi Mineral Dan Batubara Untuk Kesejahteraan Rakyat, Jurnal Magister Ilmu Hukum, 4(2).
[8] Fine Ennandrianita, dkk. Loc. cit.
[9] Suparji & Rafqi Mizi. Loc. cit.
[10] Ibid.,

The aspects that need to be given attention and considered in this context are the Mining Business License (IUP), as the IUP is related to large-scale mining companies. As a result of issuing the IUP, the next step is to carry out supervision. Supervision is one of the elements in management. Supervision is essentially conducted as a preventive measure to ensure whether the activities are carried out in accordance with the applicable regulations or not.[11] The main objective of supervision in mining business management, especially for holders of Mining Business Licenses (IUP), is to ensure that they can conduct mining activities in a directed manner, in accordance with the provisions established in the license. Strict supervision is necessary to prevent violations of the orders and prohibitions stipulated in the license. In line with this perspective, planning becomes increasingly important in the management function, as it affects the effectiveness of supervision tasks and serves as the implementation of law enforcement in accordance with the applicable regulations. The success of the sequence of supervision tasks is highly determined by the initial planning of the supervision activities itself.[12]

Although not specifically regulated in Government Regulation No. 55 of 2010 on the Implementation of Supervision and Control of Mineral and Coal Mining Businesses (P4UPMB) and Minister of Mining and Energy Decree No. 2555.K of 1993 on the Implementation of Mine Inspection (PIT) in General Mining Businesses, in reality, the planning stage should be carried out to ensure the effectiveness of supervision tasks. Planning is crucial as an initial step in implementing supervision to achieve compliance with the laws that govern the orders and prohibitions in the mining industry.

In addition to the planning conducted by mining entrepreneurs, the task of supervising mining activities previously carried out by Mine Inspection (PIT) is implemented through a planning stage. Before the implementation of supervision, several steps have been taken in accordance with the planning. Firstly, providing guidelines and standards for managing mining businesses. Secondly, providing guidance, supervision, and consultation. Thirdly, organizing education and training. After that, supervision is carried out through evaluation of work plans and the implementation of mining activities, as well as direct inspections at mining sites. Evaluation of work plans and the implementation of mining activities is conducted through reports prepared every 3 months, and direct inspections at the sites are carried out regularly.[13] The technical implementation of mining activities cannot be separated from the involvement of other government institutions/agencies across sectors. This means that the overall implementation of mining operations should always involve cross-sectoral government institutions/agencies to ensure the continuity of these activities, especially in terms of environmental management supervision. The expectation of involving these institutions/agencies is to implement the issuance of Mining Business Licenses (IUP), both for Exploration and Production Operation IUP, which serve as legal enforcement instruments in the mining area. Therefore, environmentally-oriented mining management is expected to be achieved through synergistic cooperation among institutions/agencies in the form of coordination.

If analyzed, there are several factors that contribute to the lack of coordination implementation. Firstly, each technical institution has its own programs, leading them to feel that coordination is unnecessary. Secondly, there is the emergence of sectoral egoistic attitudes as these institutions perceive themselves to have higher authority. Thirdly, there are technical barriers that hinder coordination implementation, such as lack of supporting facilities, time constraints, and costs, making coordination difficult to carry out. In addition to the aforementioned factors, conflicting policies among government agencies are also considered as factors that affect law enforcement.[14] The impact is hindered decision-making and slow problem resolution. The implementation of coordination principles in supervision aims to prevent and anticipate potential environmental pollution or damage in mining operations.

The development of downstreaming the coal industry as part of national development still has several weaknesses in its policies. For instance, the lack of readiness in the oversight element within the coal industry has resulted in numerous negative environmental impacts of coal downstreaming. These weaknesses

[11] Fenty Puluhulawa. (2010). Substansi Hukum Tentang Pengawasan Izin Pada Usaha Pertambangan. Jurnal Pelangi Ilmu, 3(4), Hal. 148.
[12] Fenty U. Puluhulawa. (2011). Pengawasan Sebagai Instrumen Penegakan Hukum Pada Pengelolaan Usaha Pertambangan Mineral Dan Batubara, Jurnal Dinamika Hukum, 11(2).
[13] Ibid.,
[14] Maharani Siti Sophia. (2008). Catatan Ketidakadilan Hukum Atas Lingkungan, Jurnal Hukum Jentera, 18, hal. 33.

demonstrate that the policies regarding coal industry downstreaming have yet to fully implement utilitarianism. Such regulatory weaknesses can easily be exploited by business owners to maximize their profits without fear of state supervision over private entities and without concern for environmental damage.

1.2 The Basis of Delegation of Power in Coal Downstreaming Industry to Achieve National Legal Prosperity

The enactment of Law Number 3 of 2020 regarding Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, known as the Minerba Law, has sparked controversy with both pro and contra opinions. In terms of the process, the deliberation and enactment of Law Number 3 of 2020 are considered to be lacking in transparency and only involve certain relevant parties, particularly those from the mining business sector. Although the Academic Draft of the Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining shows an effort to improve and address the perceived shortcomings and issues in the Minerba Law, the actual changes found in Law Number 3 of 2020 can be said to be far from expectations. Instead, Law Number 3 of 2020 actually weakens and provides extraordinary privileges to mining industry players who have been violating and disregarding the obligations stipulated in Law Number 4 of 2009. It is not an exaggeration to say that Law Number 3 of 2020 represents a setback and an effort to whitewash these violations. The existence of mining jurisdiction as a reference in determining mining areas eligible for mining permits allows every part of the land and waters throughout the Indonesian territory to be mined.

The provisions found in Law Number 5 of 1974 concerning the Basic Principles of Regional Governance have significant consequences that need to be carefully considered, particularly in efforts to enhance coordination and prevent overlapping in supervision, especially regarding overall regional governance. The law also regulates the methods of supervision, which include preventive supervision, repressive supervision, and general supervision.[15]

1) Preventive supervision, in general, refers to supervision conducted before the implementation of an activity. This means conducting supervision on all aspects that are still in the planning stage. In Law Number 5 of 1974, preventive supervision also has a technical understanding that is essentially not far different from the general understanding mentioned above.[16]
2) Repressive supervision generally refers to supervision conducted after the work or activity has been carried out, which is the opposite of preventive supervision. In Law Number 5 of 1974, it is mentioned that repressive supervision is one form or method of implementing supervision over the implementation of Autonomous Regional Governance.[17]
3) Generally, general supervision can be interpreted as one method or approach to conducting supervision over the implementation of Regional Governance, as explained in Law Number 5 of 1974 concerning the Basic Principles of Regional Governance.[18]

On the other hand, supervision of companies is also considered insufficient due to budget limitations, resulting in suboptimal supervision. The limited budget is felt every year, and the limited number of mining inspectors exacerbates the issue, as it prevents inspectors from visiting all mining companies. Furthermore, the lack of human resources contributes to minimal supervision, causing inspectors to only conduct supervision during production activities. The limitations mentioned above have an impact on supervision. Ideally, one inspector should oversee five mining business licenses, but due to these limitations, one inspector ends up overseeing fifteen mining business licenses. Additionally, the active or inactive status of companies poses difficulties for mining inspectors in determining the status of companies engaged in mining activities, as some companies fail to report their status to supervisory authorities. Moreover, many mining companies hold mining business licenses but do not engage in actual mining activities. Lastly, the inability to interact directly and the factor of distance play a role. Supervision typically involves direct observation in the field to identify any issues, but the varying distances between mining locations make it challenging for inspectors to conduct inspections, resulting in minimal supervision due to the lack of inspectors available for inspections.

Government Regulation Number 1 of 2017 concerning Mineral and Coal Mining Management should provide

[15] Sujamto. (1986). Beberapa Pengertian Di Bidang Pengawasan (Edisi Revisi). Jakarta: Ghalia Indonesia.
[16] Ibid.,
[17] Ibid.,
[18] Ibid.,

significant added value to state revenue, which will be used to enhance the welfare of the society. This regulation is necessary to enforce Law Number 4 of 2009 and provide clear regulations on mineral and coal mining management that yield greater benefits and advantages for the country, such as increased state revenue, job creation for Indonesian citizens, significant benefits for regional and national economic growth, the establishment of a conducive investment climate, and the mandatory divestment requirement of up to 51%. Government Regulation Number 1 of 2017 contains several important provisions in mineral and coal mining management, such as changes to the application extension period for Mining Business Licenses (IUP/IUPK) to be submitted no later than 5 years before the expiration of the business license, gradual changes to the provisions regarding share divestment until reaching 51%, and regulations on setting benchmark prices for mineral and coal sales.

Until now, the implementing regulations for Law Number 3 of 2020 amending Law Number 4 of 2009 concerning Mineral and Coal Mining have not been enacted. Although earlier, the government, through Ridwan Djamaluddin, the Director-General of Minerals and Coal at the Ministry of Energy and Mineral Resources, promised to draft three new Government Regulations (GR), namely GR on the implementation of mineral and coal mining activities, GR on mining areas, and GR on post-mining supervision, control, and reclamation in mining operations, which were expected to be completed by the end of last year. However, to date, their implementation has not been realized. The absence of these implementing regulations for the Mining Law has resulted in fluctuations in mining activities in the regions, causing a slowdown in the mining sector's economy in those areas. According to Suyanto, the government has reduced the authority of regional governments previously regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining, where the issuance of mining permits could be carried out by provincial and district/city governments based on the location of the mine. This can be seen when Law Number 3 of 2020 amending Law Number 4 of 2009 concerning Mineral and Coal Mining eliminated Article 7 and Article 8 in Law Number 4 of 2009, which regulated the authority of regional governments in mining regulations.[19]

In Article 35 of Law Number 3 of 2020, it is explicitly stated that mining activities must be carried out based on permits issued by the central government. The impact of this regulation is the reduction of regional authority in issuing mining permits. Regional governments no longer have the authority to grant permits for mining activities. However, in reality, Law Number 3 of 2020 still grants authority to the regions regarding mining permit matters at the regional level. Article 35, paragraph (4) of Law Number 3 of 2020 mentions that this provision serves as the basis for derivative regulations governing the implementation of mineral and coal mining activities. However, to date, these derivative regulations are still not available. If this situation continues, it may lead to legal uncertainty in mineral and coal mining operations.

The implementation of Law Number 23 of 2014 concerning Regional Government has had an impact on the governance system at the regional level. Following the enactment of the law, Regional Governments at the District/City level no longer have the authority to administer governance matters related to Energy and Mineral Resources (ESDM) in a competitive manner. Consequently, the District/City Governments have lost their authority to enact Regional Regulations, issue permits for mineral and coal mining (except for geothermal), as well as carry out development and supervision in the field of ESDM. This has resulted in legal consequences in the field of Energy and Mineral Resources, particularly in the sub-sector of mineral and coal mining, after the enactment of Law Number 23 of 2014 concerning Regional Government. These consequences include institutional changes in the field of ESDM, personnel transfers, funding, infrastructure, and documents (P3D), as well as changes in related legislation concerning the management of mineral and coal mining.[20]

4. Conclusion

Based on the explanation above, it can be concluded that the management of natural resources in Indonesia has been determined through normative legal politics in the 1945 Constitution, particularly in Article 33, paragraphs (2) and (3). Article 33, paragraph (2) emphasizes that branches of production that are vital for the state and serve the needs of many people must be controlled by the state. Meanwhile, Article 33, paragraph (3) states that the land, water, and natural resources contained therein are owned by the state and used for the

[19] Pusat Studi Hukum Energi dan Pertambangan. Aturan Pelaksana UU Minerba Tidak Kunjung Terbit, Kegiatan Pertambangan Jalan Di Tempat. https://pushep.or.id/aturan-pelaksana-uu-minerba-tidak-kunjung-terbit-kegiatan-pertambangan-jalan-di-tempat/. (Diakses 5 Juli 2023).
[20] Fine Ennandrianita, dkk. Loc., cit.

prosperity of the people. Studies related to Article 33 of the 1945 Constitution serve as a basis for mining management aimed at achieving justice. In order to fulfill these provisions, the state has enacted Law Number 11 of 1967 concerning the Basic Provisions of Mining, which was later revised with Law Number 4 of 2009 concerning Mineral and Coal Mining (Mining Law). However, in terms of planning and coordination in the implementation of supervision, it has not been optimally executed, thus not supporting the realization of sustainable and environmentally conscious mining through law enforcement efforts. This can be observed from the planning strategies related to environmental management supervision that have been conducted but have not been implemented in an integrated and coordinated manner. Furthermore, weak inter-sectoral coordination mechanisms also contribute to suboptimal supervision.

Law Number 5 of 1974 concerning the Basic Provisions of Regional Government has regulated provisions that have important consequences to be considered, particularly in efforts to enhance coordination and avoid overlapping in the implementation of supervision, especially the supervision of regional governance as a whole. The law also outlines the methods of supervision, namely preventive supervision, repressive supervision, and general supervision. However, the supervision of companies is still considered ineffective due to budget limitations. The limited budget restricts the effectiveness of supervision due to resource constraints. This occurs annually due to limited budgets and a limited number of mining inspectors. These limitations prevent inspectors from visiting all mining companies.

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