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Legal Implications Of Mining Business Licensing Policies For Community Organisations In The Religious Sector

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Abstract

Through this study, the author explores the challenges and potentials that arise from granting mining licences to religious organisations, including potential conflicts between economic objectives and moral values held by religious organisations. On the one hand, mining activities can provide economic opportunities for religious organizations and neighbouring communities, but on the other hand, these activities risk damaging the environment and contradicting religious teachings that prioritise nature conservation. The article also identifies the importance of clear policies and strict supervision to ensure that mining activities by religious organisations are not only financially beneficial but also socially and environmentally responsible. Thus, this research uses a normative method to seek truth coherence, with a statutory approach, conceptual approach and case approach. In conclusion, this article recommends the need for stricter regulations, transparency in the licensing process, as well as strengthening dialogue between the government, religious organisations and the community to ensure the sustainability of these activities in line with existing religious and social values.

INTRODUCTION

The state is an organisation of power that aims to improve the welfare of the organisation. However, in the current era, the meaning of welfare, which is also glorified as a pillar of a modern state, the so-called “welfare state”, has become a problem, one of which is the management of the state economy that must be questioned. The role of the state for welfare must be reorganised by offering new policies.¹ The process of implementing welfare for citizens is expected to have a positive impact when policies are seen as a tool to improve

¹ Suparto Wijoyo, Prawitra Thalib, & Mohamad Nur Kholiq, “Reconstruction Of Good Corporate Governance In The Order To Realize Indonesia Incorporated As A Welfare Country (Regulatory-Deregulation-Reregulation Perspective Of The Jatimnomic Model),” *Airlangga Development Journal*, 2022, 45.

living standards for the welfare of citizens, on the other hand, sometimes government policies have a negative impact that results in human rights violations.²

After the proclamation of independence, the Republic of Indonesia began to introduce measures for mining management in order to harmonise it with the mandate of Article 33 paragraph (3) of the 1945 Constitution. In 1960, Law Number 37 of 1960 was passed, which established a policy to close the mining management sector to foreign investors. The law completely prevented foreign investors from investing in Indonesia, leading to an unfavourable impact on the country's finances which were significantly depleted. The government finally introduced a new measure in 1967 by enacting Law Number 1 of 1967 on Foreign Investment. The new policy introduced reopened the opportunity for foreign investors to invest in Indonesia. In anticipation of this policy, policy in the mining sector was reformed by enacting Law Number 11 of 1967 on Basic Mining Provisions, which reopened opportunities for investors to engage in mining activities. Law Number 11 Year 1967 was successful in attracting foreign investors.

One of the sources of state wealth is the management of mining business which is a source of state finance. Mining business activities are based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that, "The land, water and natural resources contained therein shall be controlled by the state and utilised for the greatest prosperity of the people". The state authority stated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is not yet a norm in the real sense, the state authority stated is also a vague norm or open norm.³ Conceptually, the authority possessed by the state as a public legal entity is different from the authority possessed by the state as a person, supporting the same rights and obligations as natural human beings.⁴

The issuance of mining business licences sourced from the rules of Law Number 3 of 2020 concerning Mineral and Coal Mining as amended by Law Number 6 of 2023 concerning Job Creation which is guided by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that, its management is handed over to the Government and Regional Governments which means that the authority to issue licences lies with the Government and

² Tri Lisiani Prihatinah, "Sustainability and Its Responsibility," *2nd International Conference on Law, Governance and Social Justice (ICOLGAS 2020)*, 2020, 736, DOI%0A10.2991/assehr.k.201209.358.

³ Sri Hajati, et-al, *Buku Ajar Politik Hukum Pertanahan* (Surabaya: Airlangga University Press, 2017).

⁴ Sri Hajati, "Pengaturan Hak Atas Tanah Dalam Kaitannya Dengan Investasi" (Disertasi, Fakultas Hukum, Universitas Airlangga, Surabaya, 2003).

Regional Governments respectively.⁵ Policy on mineral and coal mining licensing is one of the applications of the principle of decentralisation.⁶ Mining which is a revenue sharing fund (DBH) is related to the financial relationship between the centre and the regions sourced from natural resources as referred to in Article 289 paragraph (4) of Law Number 23 Year 2014 concerning Regional Government. Thus, licensing is the basis for acting to do something, therefore licensing is the duty of the government to provide control of activities carried out by legal entities or individuals.⁷

After the promulgation of Government Regulation Number 25 Year 2024 on the Implementation of Mineral and Coal Mining Business Activities, the concept of licensing has been debated. The reason is that the regulation provides permission for religious community organisations to carry out mining business activities granted on the basis of a Special Mining Business License Area (WIUPK). WIUPK according to Article 1 point 36 of Government Regulation Number 25 Year 2024 that, "Special Mining Business Area, hereinafter referred to as WUPK, is an area that has the availability of geological data, potential, and/or information that can be cultivated for national strategic interests". Article 83A of Government Regulation Number 25 Year 2024 states that, "In the context of improving community welfare, WIUPK may be offered on a priority basis to business entities owned by religious community organisations". The granting of licences to religious organizations raises big questions about the application of the objectives of the principle of mineral and coal mining management stipulated in Law No. 3 of 2020, which are:

1. Benefit, justice, and balance;
2. Alignment with the interests of the nation;
3. Participation, transparency, and accountability; and
4. Sustainable and environmentally sound.

Then, the problem that occurs in the granting of permits for religious organizations, whether it provides benefits for the lives of many people, or only a handful of people who are included in the organisation holding the mining business permit.

⁵ Tri Hayati, *Era Baru Hukum Pertambangan: Di Bawah Rezim UU No. 4 Tahun 2009* (Jakarta: Yayasan Pustaka Obor Indonesia, 2009).

⁶ Bagir Manan, "Hubungan Antara Pusat Dan Daerah Menurut Asas Desentralisasi Berdasarkan UUD 1945" (Disertasi, Fakultas Hukum Universitas Padjajaran, Bandung, 1990).

⁷ Tri Hayati, "Discretion For Mineral And Co Tion For Mineral And Coal Management In The T In The Era Of Region Era Of Regional Autonomy And I Y And Its Implica S Implication In View Tion In View Of Article 33 Paragraph (3) Of The 1945 Constitution," *Indonesia Law Review* 4, no. 2 (2014): 257.

Based on Article 6 of Law Number 17 Year 2013 on concerning Community Organisations, which defines the function of Community Organisations as a means of:

- a. Channeling activities in accordance with the interests of members and/or organisational goals;
- b. Guidance and development of members to realise organisational goals;
- c. Channelling the aspirations of the community;
- d. Community empowerment;
- e. Fulfilment of social services;
- f. Community participation to maintain, preserve, and strengthen national unity; and/or
- g. Maintaining and preserving norms, values, and ethics in the life of society, nation, and state.

The function of Ormas is more focused on social community, but Government Regulation Number 25 Year 2024 provides space for Ormas to conduct business activities that are in fact profit seekers.

The legal principle of good mining practice is a mining activity that complies with regulations, is well organised, conserves mineral resources and ensures workplace safety. Good mining practice includes several aspects, including: *first*, the licensing and legality dimension of the mining company; *second*, the effective and organised process of exploration, feasibility analysis, utilisation and processing; *third*, the occupational safety and health dimension; *fourth*, the environmental dimension; *fifth*, the human rights or local community dimension; *sixth*, the mine closure or post-mining sustainability dimension.⁸

DISCUSSION

The Legal Concept Of Religious Organisations In Indonesia

Law exists not only in its own right and in its own name, but everyone has law not in the name of law itself, but can say with logic in the name of a just scheme of social and human relations.⁹ Law can be and is many things at once sublime and ordinary, terrible and merciful, concerned with morality, but often indifferent to moral arguments. Law is therefore

⁸ Nicodemus Wisnu Pratama & Ismunarno, "Pertanggungjawaban Pidana Bagi Pelaku Penambangan Tanpa Izin Pertambangan Rakyat (IPR) Berdasarkan Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara (Studi Kasus Penambangan Ilegal Bahan Batu Akik Di Kabupaten Kebumen)," *Recidive Jurnal Hukum Pidana Dan Penanggulangan Kejahatan* 8, no. 1 (2019): 14.

⁹ Muklis Al'anam, "Moralitas Hukum Dalam Pemikiran Lon Fuller, H.L.A. Hart, Dan Hans Kelsen," *Law Jurnal* 5, no. 1 (2025): 146.

central and important in social life. What law is and can be, and the nature of law's existence in society, however, is more than a matter of moral principle, philosophical aspiration, or dexterity in manipulating legal texts. The power and mystery of law is reflected in, and made possible by, its institutional arrangements and social organisation.¹⁰

Based on Article 28E paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it guarantees the right to freedom of association, assembly, and expression, this is in line with the concept of an administrative law approach to legal protection, which is *right to be heard, right to be considered, right to be explained*.¹¹ Therefore, people are free to form associations as part of the guarantee of human rights. This is as mentioned by John Locke who argued that:

“All men are endowed by nature with an inherent right to life, liberty, and property, which belong to them personally and cannot be taken away or transferred by government”.¹²

Recognition of freedom of association is guaranteed internationally as stated in Article 20 number 1 of the Universal Declaration of Human Rights which states that, “everyone has the right to freedom of peaceful assembly and association”.

Community organisations, which are a guarantee of human rights, must have legalisation based on certain procedures. In Indonesia, the procedure for registering a community organisation is based on Article 9 of the Minister of Home Affairs Regulation Number 57 Year 2017 on Registration and Information System Management of Community Organisations which states that, the registration of community organisations is done through the following stages:

1. Submission of an application;
2. Checking the completeness and validity of registration documents; and
3. Issuance of SKT (Registered Certificate) or rejection of registration application.

The purpose of community organisations referred to in Article 5 of Law No. 17 of 2013 states that the purpose of community organisations is to:

- a. increase community participation and empowerment
- b. provide services to the community

¹⁰ Austin Sarat, “The Social Organization of Law,” *Law, Jurisprudence & Social Thought 1 (Political Science 18)*, 2006, 1.

¹¹ Muklis Al'anam & Radian Salman, “The Relevance of Jurgen Habermas’s Theory of Communicative Action as the Philosophical Foundation of Rights Enforcement in Indonesia,” *Mimbar Hukum* 36, no. 1 (2024): 40.

¹² John Locke, *Two Treatises of Government* (London: Everyman, 1993).

- c. maintain religious values and belief in God Almighty;
- d. preserving and maintaining norms, values, morals, ethics, and culture that live in the community;
- e. preserving natural resources and the environment;
- f. developing social solidarity, mutual aid, and tolerance in community life;
- g. safeguarding, maintaining, and strengthening national unity; and
- h. realising the goals of the state.

The principles of community organisations must not contradict Pancasila and the 1945 Constitution, so that community organisations are voluntary, social, independent, non-profit, and democratic. One example of a case in a religious community organisation is Hizbut Tahrir Indonesia which was dissolved by the Government because it contradicts Pancasila and the 1945 Constitution based on Government Regulation in Lieu of Law Number 2 Year 2017.¹³ Community organisations are prohibited from committing acts of hostility against certain ethnic groups, religions, races, or categories, engaging in abuse, insult, or blasphemy against religions recognised in Indonesia, committing violence, disturbing public peace and order, or damaging public infrastructure and social facilities, and carrying out activities that should be the duties and powers of law enforcement in accordance with applicable regulations. Community organisations are also prohibited from carrying out separatist activities that threaten the integrity of the Unitary State of the Republic of Indonesia and/or adopting, developing, and promoting ideologies or beliefs that are contrary to Pancasila. Regarding the dissolution procedure of community organisations, Government Regulation in Lieu of Law Number 2 Year 2017 includes two types of sanctions: administrative sanctions and criminal sanctions. The administrative sanctions, according to this regulation, include: *first*, written warning; *second*, cessation of all activities; and/or *third*, revocation of registered certificate or cancellation of legal entity status.¹⁴

Community organisations are non-profit by nature, meaning that they are not for profit, i.e. organisations or institutions that are established and operated not for financial gain, but to achieve social goals, charitable activities, or humanitarian interests. There are many religious organisations in Indonesia, but the ones with the most members are Nahdatul Ulama

¹³ Kusuma Putra, "Rekonstruksi Pelaksanaan Sistem Pengawasan Organisasi Kemasyarakatan Yang Berbasis Nilai Keadilan" (Disertasi, Fakultas Hukum Universitas Islam Sultan Agung, Semarang, 2021).

¹⁴ M. Beni Kurniawan, "Konstitusionalitas Perppu Nomor 2 Tahun 2017 Tentang Ormas Ditinjau Dari UUD 1945," *Jurnal Konstitusi* 15, no. 3 (2018): 467.

(NU) which was founded on 31 January 1926 in Surabaya and Muhammadiyah which was founded on 18 November 1912 in Yogyakarta.¹⁵ The position of NU and Muhammadiyah as a social entity makes it a partner of the Indonesian nation in managing a good and transparent government system and monitoring various policies formulated and implemented by State institutions.¹⁶

Based on the purpose of the establishment of these two religious community organisations, the purpose of NU is to maintain, preserve, foster, and apply the teachings of Islam that follow Ahlussunnah wal Jama'ah by following one of the four madhhabs (Hanafi, Maliki, Shafi'i, and Hambali). In addition, NU aims to unite the steps of the ulama and their followers and carry out various activities aimed at creating goodness for the community, the progress of the nation, and improving human dignity.¹⁷ While the purpose of the establishment of Muhammadiyah is engaged in religion, education and social society.¹⁸

Community organisations are also entitled to carry out activities that have been regulated in Article 20 of Law Number 17 Year 2013, namely:

- 1) regulate and manage the organisation's household independently and openly;
- 2) obtain intellectual property rights for the name and symbol of the community organisation in accordance with the provisions of laws and regulations;
- 3) fight for the ideals and goals of the organisation;
- 4) carry out activities to achieve organisational goals;
- 5) obtain legal protection for the existence and activities of the organisation; and
- 6) cooperate with the Government, local governments, the private sector, other community organisations, and other parties in order to develop and sustain the organisation.

The obligations of community organisations are also regulated in Article 21 of Law Number 17 Year 2013, which states that:

- b) carry out activities in accordance with the objectives of the organisation;

¹⁵ Muhammad Kasim, "Organisasi Islam Dan Pengaruhnya Pada Hukum Islam Di Indonesia," *Jurnal Ilmiah Al-Syir'ah* 7, no. 1 (2009): 2–3.

¹⁶ Oma Irama, et-al "Peran Dan Strategi Nahdlatul Ulama Sebagai Organisasi Masyarakat Di Indonesia," *Halu Oleo Legal Research* 3, no. 3 (2021): 211.

¹⁷ PWNU Jawa Timur, *Aswaja An-Nahdah* (Surabaya: Khalista, 2007).

¹⁸ Gustia Tahir, "Muhammadiyah (Gerakan Sosial Keagamaan Dan Pendidikan)," *Jurnal Adabiyah* 10, no. 2 (2010): 163–65.

- c) maintain national unity and integrity as well as the integrity of the Unitary State of the Republic of Indonesia;
- d) maintain religious values, culture, morals, ethics, and decency norms and provide benefits to the community;
- e) maintaining public order and the creation of peace in society;
- f) conduct financial management in a transparent and accountable manner; and
- g) participating in the achievement of state goals.

The existence of religious community organisations is expected to contribute and play a role in influencing and changing social behaviour to be more positive. This is because the teachings contained in these community organisations educate about the good and bad of things. However, on the other hand, similar to what has been mentioned earlier, people still feel less impact and presence of religious community organisations. This is evident from various research results and observations, as well as the increase in related social issues, including the economic aspects of society. In fact, one of the tasks of religious institutions is to provide guidance on religious values to the community.

Mining Licensing System In Indonesia

Indonesia's legal licensing system aims to regulate and grant permits to people or entities so that they can carry out certain activities that are deemed to require supervision or control from the government, to protect public interests, safety, health, and the environment. This licensing system is crucial to creating honest, efficient, and accountable management. As such, the need for Licensing does not arise automatically overnight, but should be underpinned by the authority granted to public officials (government as regulatory executor/chief executive), which provides legal certainty.¹⁹ In the end, the process of granting permits by the government to individuals or legal entities is carried out through decrees or provisions which then become part of the field of administrative law. In the context of licensing law in Indonesia, it is divided into 3 (three) parts, namely:²⁰

1. Dispensation; A governmental decision that authorises an action and a regulatory power that denies the action.

¹⁹ Muklis Al'anam, "Perbandingan Sistem Peradilan Administrasi Indonesia Dan Jerman," *Proceedings of Airlangga Faculty of Law Colloquium 1* (2024): 401.

²⁰ Vera Rimbawani Sushanty, *Buku Ajar Hukum Perijinan* (Surabaya: UBHARA Press, 2020).

2. Concession; a licence relating to a major project where the public interest is so involved that the work is actually the responsibility of the government. However, the government grants the right of execution to the licence holder (concessionaire).
3. Licence; a permit that grants the authority to operate a business. A licence is used to denote a permit that allows a person to run an enterprise with a specific or special permission.

Licensing of mining business activities in the nature of mastery or control by the state regulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia cannot be interpreted specifically in its explanation. Therefore, the term “mastery” if interpreted etymologically means a process, method, or action in mastering or managing. Given that the word mastery has a broader scope than the word control, in relation to the context of state control rights, this implies that the state has control and manages natural resources and the various potentials contained therein.²¹ The elements in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, contains 3 (three) elements, which are: ²² (1) The elements of the earth and natural resources, both surface and underground natural resources as objects; (2) The element of the state as the subject; (3) The element of the people as the object as well as the subject or target of the utilisation of earth products and natural resources.

The Constitution of of Indonesia 1945 explicitly states that minerals as natural resources contained in the land are controlled by the State and not by the Government, so it can be implied that what is meant by the Government is the Regional Government. Thus, it is clear that the ‘right to mastering’ of excavation material is in the hands of the State, not the Government. Meanwhile, “proprietary rights” are rights owned by the State, not the Government.²³ Constitutional Court Decision Number 002/PUU-I/2003 states that:

‘The understanding of “ontrolled by the state” should be understood to include the notion that control by the State has a broad meaning, derived and derived from the basic idea of the sovereignty of the Indonesian people over all sources of wealth “the earth,

²¹ Athari Farhani & Ibnu Sina Chandranegara, “Penguasaan Negara Terhadap Pemanfaatan Sumber Daya Alam Ruang Angkasa Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945,” *Jurnal Konstitusi* 16, no. 2 (2019): 242.

²² Nanang Sudrajat, *Teori Dan Praktik Pertambangan Indonesia* (Yogyakarta: Pustaka Yustisia, 2013).

²³ Tri Hayati, “Discretion For Mineral And Co Tion For Mineral And Coal Management In The T In The Era Of Region Era Of Regional Autonomy And I Y And Its Implica S Implication In View Tion In View Of Article 33 Paragraph (3) Of The 1945 Constitution.”

water, and natural resources contained therein”. It also includes an understanding of public ownership by the people's collectivity of these sources of wealth. This collectivity of the people is established by the 1945 Constitution of the Republic of Indonesia, which assigns duties to the state to carry out its role in formulating policies (*beleid*) and acts of management (*bestuursdaad*), regulation (*regelendaad*), control (*beheersdaad*), and supervision (*toezichthoudensdaad*) by the State.”

The implementation of mining activities, in order to realise sustainable development, mining business activities must be carried out by taking into account the principles of ecology, openness, and community involvement. With regard to the environment, ecosystem management is an important part of the mining process,²⁴ such as *legislation, regulation, issuing permit, implementation, and enforcement*. The issuance of a mining business permit which is a State Administrative Decision issued by an authorised official as referred to in Article 1 point 19 of Law Number 30 of 2014 concerning Government Administration. Mining business licences must have a permit that has been regulated by the government, in this case the Ministry of Energy and Mineral Resources (Ministry of ESDM), with stages starting from general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-mining activities.²⁵

Based on the types of mining activity licences, there are several points, including:²⁶

- 1) Mining Business Permit (IUP) is an instrument that must be fulfilled before it can carry out mining business or activities, in the implementation of mining business, there are changes regarding the granting of IUP in Law Number 3 of 2020 with Law Number 4 of 2009;
- 2) Special Mining Business Permit (IUPK) is a continuation of contract/agreement operations as a business permit granted as an extension after the completion of the implementation of a work contract or coal mining concession work agreement, meaning that IUPK is issued to extend the implementation of mining business in the IUPK area after the completion of the deadline for the implementation of the work contract;

²⁴ Adi Tiaraputri & Ledy Diana, “Peran Serta Masyarakat Dalam Pengawasan Sumber Daya Kelautan Di Kabupaten Bengkalis Dalam Perspektif Hukum Laut Nasional,” *2nd CELSciTech: Urgensi Riset Dan Pengembangan Teknologi Informasi Dalam Mengatasi Masalah Bangsa 2* (September 2017): 27.

²⁵ Franky Butar Butar, et-al, *Pengantar Hukum Pertambangan Mineral Dan Batu Bara* (Surabaya: Airlangga University Press, 2022).

²⁶ *Ibid.*

- 3) Mining Service Business Permit (IUJP) is a legality that must be owned by a local company or a company established in the form of a limited liability company in the context of capital investment (PT PMA) to start and run coal mineral mining support business activities. Every mining business actor who wants to support mineral and coal mining business activities must have a Risk-Based Business Licence, namely IUJP;
- 4) People's Mining Permit (IPR) is an instrument for the implementation of mining by interested people in people's mining areas with limited area and investment;
- 5) Rock Mining Permit (SIPB) is Article 13a of Law Number 3 of 2020 concerning Mineral and Coal Mining in its definition states, 'a permit granted to carry out certain types of rock mining or for certain purposes. In Law Number 4 Year 2009, there are 3 (three) types of mining business licences, namely IUP, IUPK, IPR, but after the enactment of Law Number 3 Year 2020, the form of permit was expanded with the existence of SIPB.

The process of implementing the determination of mining business areas which are part of the national spatial plan, both special mining and community mining, is carried out with a transparent, accountable mechanism, involving all elements, namely the central and local governments, the House of Representatives (DPR) and the Provincial Legislatives Council (DPRD), and the community.²⁷ Since the enactment of Law Number 23 Year 2014, there have been several discrepancies between the two, especially with regard to the authority of local governments in managing mining activities. Previously, through Law Number 32 Year 2004 on Regional Government and Law Number 3 Year 2020, the authority to control the mineral and coal mining sector was held by the Central Government, provincial governments, and district and city governments. However, with the 2014 Local Government Law, the authority to control mineral and coal is categorised only to the central government and provincial governments, resulting in the takeover of authority at the district / city government level in terms of mineral and coal mining.²⁸

²⁷ Nanang Sudrajat, *Op. Cit.*

²⁸ Nabilla Desyalika Putri & Dian Agung Wicaksono, "Implikasi Legislasi Pengambilalihan Kewenangan Di Bidang Pertambangan Mineral Dan Batubara Oleh Pemerintah Pusat," *Jurnal Legislasi Indonesia* 13, no. 1 (2016): 20.

The Constitutionality Of Religious Organisations As Mining Business Licence Holders

Mining is one of the sources of natural resources, so that the state in this case 'controlled by the state' based on Article 33 paragraph (3) of the 1945 Constitution NRI mandates the state to: form a policy (*beleid*), management action (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*). The five functions in state control also apply generally to state control over important natural resources that have a significant impact on the welfare of the community, nation and state, such as mineral and coal resources. Therefore, state control over these natural resources must be taken seriously and fully intended for the welfare and prosperity of the Indonesian people as mandated by the 1945 Constitution. Thus, all forms of profit obtained from the management and use of mineral and coal resources, both directly and indirectly, must be prioritised to support the improvement of people's quality of life, reduce social inequality, and strengthen people's welfare in a sustainable manner.

Policies regarding mining regulations have been set out in Law Number 11 Year 1967, where the government's legal position was not comparable to that of investors. However, with the implementation of Law Number 4 Year 2009, the Indonesian government now has the ability to manage natural resources across the archipelago. Therefore, the government's legal position has now risen higher than that of local and foreign investors, as well as state-owned enterprises.²⁹ Permits to conduct mining activities under the Minerba Law are granted to state officials such as Regents, Governors, or Ministers who have the authority to issue mining-related permits in accordance with the location of WIUP/WIUPK for which they are responsible. In order to maintain administrative order, local governments are given the right to issue mining permits in accordance with the areas under their authority.³⁰

Constitutional Court Decision Number 77/PUU-XXII/2024 testing Law Number 3 of 2020 related to the priority offer of WIUPK to religious organisations, which in the main legal consideration said that:

- a. the provisions of Article 6 paragraph (1) letter j of Law Number 3 of 2020 were born as a result of amendments to Law Number 4 of 2009. In this case, according to the Court, the legislators when formulating the provisions of Article 6 paragraph (1)

²⁹ Oheo K. Haris, "Good Governance (Tata Kelola Pemerintahan Yang Baik) Dalam Pemberian Izin Oleh Pemerintah Daerah Di Bidang Pertambangan," *Yuridika* 30, no. 1 (2015): 64.

³⁰ *Ibid.*

letter j of Law Number 3 of 2020 actually wanted to emphasize that in terms of the WIUPK offering which is the authority of the Central Government, it cannot be done in a non-selective or careless manner but is bound by the provisions stipulated in Article 75 paragraph (3) of Law Number 4 of 2009 which states, "State-owned enterprises and regional-owned enterprises as referred to in paragraph (2) are given priority in obtaining IUPK", this is because even though grammatically the provisions of Article 75 paragraph (3) of Law Number 4 of 2009 have changed, they still have the same meaning, namely that BUMN and BUMD are prioritized in obtaining IUPK. Therefore, the phrase "with priority" in the provisions of Article 6 paragraph (1) letter j of Law Number 3 of 2020 is a phrase that functions as an affirmation of the existence of conditions based on priority in terms of offering WIUPK, which are then stated more clearly in Article 75 of Law Number 3 of 2020 which regulates the granting of IUPK.

- b. Based on the description of legal considerations above, according to the Court, the phrase "in priority" in Article 6 paragraph (1) letter j of Law Number 3 of 2020 should be understood as an affirmative instrument designed to achieve national strategic goals in the management of mineral and coal resources. This priority does not only reflect partiality towards state/regionally owned business entities, but is also given to private parties or business entities that meet the requirements as part of efforts to mitigate problems such as illegal/illegal mining. Thus, the phrase 'in priority' in Article 6 paragraph (1) letter j of the Minerba Law is not contrary to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, so that the argument of the Applicant a quo is unreasonable according to law.
- c. Considering that with regard to the Petitioner's argument regarding the priority offer of WIUPK to organisations that do not have technical experience is considered potentially damaging to the environment. Regarding the Petitioner's argument, the Court needs to emphasise that the Government in providing 'priority WIUPK offers' as stipulated in Article 6 paragraph (1) letter j of Law Number 3 of 2020, cannot be interpreted to mean that the party receiving the offer will immediately obtain the WIUPK priority offer. In this case, the government must still ensure that the party receiving the WIUPK offer must meet administrative requirements, technical and

environmental management requirements, and financial capability, as well as a commitment to sustainable management of mineral and coal resources.

The Constitutional Court argued that, in the case of religious community without technical experience and considered to be a threat to the environment, the Court considered that basically the Minerba Law has established a mechanism to obtain IUPK in conducting business for the private sector through the WIUPK auction. To achieve this, various requirements must be considered, while technical requirements and environmental management have been determined, where business entities are required to have a minimum of three years of experience in the mineral and coal mining sector. Meanwhile, for new companies that do not have experience, support from other companies operating in the mining industry is a requirement that must be fulfilled so that technical standards can be maintained, with the absolute provision that it is prohibited to transfer rights or licences to third parties. The purpose of this is to ensure that all parties involved have a good record and ability to carry out mining activities. In addition, the technical and environmental management requirements require companies to have staff with a minimum of three years experience in the mining or geological sector, emphasising the importance of technical expertise as a key requirement in the management of mining areas. Thus, the Constitutional Court Decision Number 77/PUU-XXII/2024 states that, “Based on the existing legal analysis, related to the argument about WIUPK bidding being prioritised in Article 6 paragraph (1) letter j of Law Number 3 Year 2020, the impact on the environment is a claim that cannot be justified”.

The constitutionality of Article 6 paragraph (1) letter j of Law Number 3 of 2020 is related to the legality of the implementing regulations of Law Number 3 of 2020, namely Government Regulation Number 25 of 2024. On the other hand, in the Constitutional Court Decision No. 64/PUU-XVIII/2020 testing of Article 169A of Law Number 3 of 2020 in its legal considerations stated that:

According to the Court, the construction of Article 75 paragraph (3) of Law Number 3 Year 2020, which has relevance to the norm provisions of Article 169A of Law Number 3 Year 2020, has actually provided affirmation with regard to giving priority to State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD) to obtain IUPK. This has been the legal politics chosen by the legislators since the beginning as stipulated in Law Number 4 Year 2009 concerning Mineral and Coal Mining. The philosophy contained in giving priority to BUMN and BUMD is none other than

because the state wants to manifest the state's participation in actualising the principle of "state control over natural resources". This is because it is through the organs of BUMN and BUMD that state control over natural resources can actually be realised as also mandated by Article 33 paragraph (3) of the 1945 Constitution.

Therefore, it is important to recognise the difference between state and regionally-owned enterprises and private enterprises. Furthermore, this distinction is intended to provide support so that the management of natural resources in Indonesia is not easily handed over to private parties, both local and international, unless prioritisation is given to State-Owned Enterprises and Regional-Owned Enterprises. Thus, the selection process for the granting of Special Mining Business Licences must be carried out strictly and follow the provisions in Article 75 of Law Number 3 Year 2020.

The inexperience of religious organisations in the environmental field will be a concern for environmental damage, although there is currently no evidence for this issue. According to data from the Ministry of Home Affairs (Kemendagri), the total number of legal organisations in 2017 was 344,039.³¹ Every community organisation is formed with good goals and ideals. However, many deviations from the noble principles in these goals and ideals are also common in many community organisations. Worse still, the violent acts that arise are often triggered by certain interests, such as the struggle for parking spaces, land taking, debt collection, protection of certain figures or individuals, raids, and attacks on other people or groups with a specific purpose.³² And it is possible that mining licences will be fought over for the interests of their respective organisations, so as not to achieve the state's objectives in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, namely "To protect the entire Indonesian nation, to promote public welfare, to educate the nation's life, to help implement world order and lasting peace".

CONCLUSION

The mining business permit policy granted to religious community organisations has complex impacts and requires in-depth study to ensure harmony between economic interests and social values. In general, this policy can create economic opportunities for religious

³¹ Kementerian Dalam Negeri Republik Indonesia, "Kemendagri: Jumlah Ormas Di Indonesia Ada 344.039," 2017, <https://setkab.go.id/kemendagri-jumlah-ormas-di-indonesia-ada-344-039/>.

³² Adinda Agis Fitria Cahyani, "Potensi Penyimpangan Izin Usaha Pertambangan Ormas Dalam Peraturan Pemerintah Nomor 25 Tahun 2024," *Rewang Rencang: Jurnal Hukum Lex Generalis* 4, no. 11 (2023): 11.

community organisations, but it also creates potential conflicts with religious, social, and environmental principles that must be considered. The successful implementation of this policy is highly dependent on transparency, strict supervision, and the commitment of religious community organisations to maintain a balance between financial gain and social and environmental responsibility. Therefore, there is a need for clear regulations, as well as an in-depth understanding of the challenges that may arise from the involvement of religious community organisations in the mining sector.

Issues related to mining licences for religious organisations involve a number of challenges that need to be taken seriously. Some of the key issues that could arise are:

1. Potential conflict of interest: Religious organisations often have social and religious missions that aim for the welfare of the people. If they engage in mining activities, there is a potential clash between their economic interests (to make a profit) and their religious or moral values, which emphasise sustainability and care for the environment.
2. Environmental impacts: Mining activities often have adverse impacts on the environment, such as natural destruction, water pollution and deforestation. This can conflict with religious teachings that emphasise the need to protect nature as God's creation and the responsibility of people to care for it.
3. Compliance with regulations: Mining licences for religious organisations must comply with applicable regulations. However, there are often shortcomings in the supervision and control of these activities, potentially leading to violations of the law and harming neighbouring communities.
4. Misuse of purpose: It is possible that mining licences are granted with an economic purpose that prioritises financial gain, whereas religious organisations should focus more on social and humanitarian activities. This could lead to misuse of the licence at the expense of the original purpose of the organisation.
5. Social and ethical challenges: The involvement of religious organisations in the mining sector may cause controversy among the faithful and the general public. Some may see this as a form of commercialisation of religion or abuse of religious positions for material gain.

To address these issues, clear policies, strict supervision and regular evaluations are needed so that mining activities by religious organisations can operate transparently and in accordance with ethical, social and environmental principles.

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