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A Legal Analysis of the Implications of Granting Mining Permits to Religious Organizations

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Keywords:

Community Organizations; Mining Management Permits; Regulatory Conflict; Religious Organizations.

Abstract: Indonesia holds the world's largest nickel reserves and accounts for approximately 40% of total global production. The management of mineral and coal mining is regulated under Law Number 4 of 2009 concerning Mineral and Coal Mining, which has subsequently been amended. Amid public opposition to the Job Creation Law, which has been criticized as unconstitutional and anti-democratic, the government sparked further controversy by issuing Government Regulation (GR) Number 25 of 2024, in connection with the revision of Law Number 3 of 2020 concerning Mineral and Coal Mining, which was subsequently enacted as Law Number 2 of 2025 through a plenary session of the House of Representatives of the Republic of Indonesia. GR Number 25 of 2024 amends GR Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities. This study aims to examine the consistency and harmonization of regulations governing mining permits and to analyze the implications of granting mining permits to community and religious organizations. This study employs normative legal research, focusing on the examination of statutory regulations and other legal sources. The analysis draws on formal legal sources, including laws, decisions, and regulations, which are grounded in prevailing societal norms and values. The primary legal source examined in this study is GR Number 25 of 2024 concerning the Implementation of Mineral and Coal Mining Business Activities. The study concludes that the issuance of mining permits, including those managed by community and religious organizations, must comply with the applicable regulatory framework. However, regulatory disharmony exists between Law Number 2 of 2025 and GR Number 25 of 2024, resulting in an inconsistency between the Government Regulation and the hierarchy of laws and regulations. Furthermore, granting mining permits to community and religious organizations may potentially result in financial losses to the state, given that such organizations lack the capacity and corporate experience required to manage mining operations.

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1. Introduction

Indonesia's abundant natural resources constitute an important means of achieving societal prosperity. Accordingly, the state, as the authority constitutionally mandated to exercise control over these resources, is responsible for ensuring that their exploitation is managed effectively, efficiently, and sustainably, in line with development policies that promote environmental responsibility, social considerations, and good governance, while ensuring adequate funding and environmental protection. Tax and royalty revenues generated from mining activities contribute significantly to development financing and are utilized to improve the standard of living and promote the development of a capable and dignified society. Mining regulation serves as an instrument for controlling mining activities in an environmentally responsible manner, including community mining. Illegal mining generates numerous adverse impacts that, in the long term, may undermine the social life of communities. Relevant studies concerning mining permits are discussed below.

The exploitation of fossil-based natural resources without sustainable management and with disregard for Environmental, Social, and Governance (ESG) principles may have devastating consequences for the existence of the unitary state. Therefore, national economic development must proceed in conjunction with environmental protection. As an implementation of the constitutional mandate, mining regulations are expected to ensure that the exploitation of these resources complies with the applicable regulatory framework, which should continuously reflect the living law within society. One such regulatory measure is the enactment of Law Number 3 of 2020 as the most recent regulation governing mineral and coal mining (Darongke et al., 2022).

Sunandar states that community mining permits may be applied for by individuals or cooperatives within their respective local jurisdictions. However, no specific regulation currently governs mining activities proposed by Village-Owned Enterprises (Badan Usaha Milik Desa, BUMDes). Consequently, there remains a lack of legal clarity regarding the authority of BUMDes to manage mining activities within their respective areas (Sunandar, 2024).

Licensing constitutes a mandatory requirement for mining activities, even when the mineral resources are located on privately owned land. The relevant authorities must obtain a designation from the regency/municipal government establishing the area as part of a mining zone. The regulatory framework governing mining activities on privately owned land is stipulated under Law Number 3 of 2020 and its implementing regulations. Individuals who engage in illegal mining activities, even on their own land, may be subject to criminal sanctions. To prevent such violations, the government is required to disseminate information and raise public awareness regarding the regulations governing community mining areas (Alamri et al., 2025).

Criminal sanctions for illegal community mining have been stipulated under mining regulations. Community mining operators are required to obtain the necessary permits and report the implementation of their mining activities to ensure compliance with applicable laws and regulations as well as with the principles of environmental sustainability (Citranu, 2020). Despite the existence of such regulatory provisions, unlicensed community mining remains prevalent. This situation is influenced by various factors, including the socioeconomic conditions of local communities and their level of legal awareness. In Rokan Hulu, for example, twelve cases involving unlicensed community mining were identified between 2020 and 2022, particularly in relation to sand and stone (*pasir dan batu*, commonly referred to as sirtu) mining (Adevis et al., 2022).

Community mining activities in the Progo River Basin continue to raise concerns, particularly regarding environmental degradation caused by the use of environmentally harmful mining machinery. Although these mining activities have been duly licensed, regulatory oversight remains inadequate due to limited human resources and restricted supervisory authority, which is confined primarily to assessing administrative compliance. Consequently, mining activities located relatively close to residential areas, approximately 150–200 meters from local residents' homes, have contributed to the depletion of water sources used by surrounding communities (Harleando & Hermawan, 2020).

Community mining should be managed by local governments as part of the state's responsibility to promote social equality and ensure equitable policies concerning the granting of mining permits within their respective jurisdictions. Nevertheless, such policies must be accompanied by effective oversight to ensure environmentally responsible and sustainable development (Wamafma & Sasea, 2025).

As a state governed by the rule of law, every policy implemented by the state must be based on law and adhere to the principle of the supremacy of law. Since law is formulated through political processes, it cannot be denied that legal products are influenced by the prevailing legal policy. Consequently, the existence and development of law reflect political realities, in which law may function either as an instrument of power or as a means of promoting public welfare (Sanjaya, 2023). From the perspective of mining regulation, authority over the mining sector rests primarily with the central government. Law Number 3 of 2020 places greater emphasis on the authority of the central government and eliminates the role of regional governments—including provincial, regency, and municipal governments—in the determination and issuance of mining permits (Rahayu & Faisal, 2021).

In contrast to the aforementioned studies, this article specifically examines regulatory disharmony concerning the granting of mining permits to community and religious organizations. Accordingly, this study aims to examine the consistency and harmonization of regulations governing mining permits and to analyze the implications of granting such permits to community and religious organizations.

2. Methods

This study employs normative legal research, focusing on the examination of laws and regulations and other relevant legal sources. The research is based on formal legal sources, including statutes, decisions, and regulations, all of which are grounded in the norms and values prevailing in society. The primary legal materials examined in this study are Government Regulation Number 25 of 2024 concerning the Implementation of Mineral and Coal Mining Business Activities and Law Number 2 of 2025 concerning Mineral and Coal Mining.

Legal materials were collected through a literature review by inventorying, identifying, classifying, and examining all materials relevant to the research subject. The collected legal materials were then systematically organized according to the hierarchy of laws and regulations and their substantive provisions to facilitate an analysis of the consistency, harmonization, and interrelationship of legal norms.

The legal materials were analyzed qualitatively using a prescriptive legal analysis. The prescriptive analysis aims not only to describe the content of laws and regulations but also to develop legal arguments concerning the conformity, consistency, and harmonization of legal norms and to formulate recommendations regarding the regulatory framework for granting mining business permits to community and religious organizations. A normative legal approach was selected because the issues examined in this study concern the consistency and harmonization of the legal framework governing the granting of mining business permits to community and religious organizations. Accordingly, the primary object of analysis is legal norms (law in books) rather than societal behavior (law in action).

3. Results

Law Number 6 of 2023 concerning Job Creation and its implementing regulations, including Government Regulation Number 25 of 2024 concerning the mining, mineral, and coal sectors, constitute ius constitutum, namely the law currently in force (Serlika Aprita, 2020; Hamdani et al., 2022). However, there is a normative conflict between the implementing regulation and the applicable statutory framework, particularly with regard to the allocation of mining business permit areas to religious community organizations. Such allocation should prioritize state-and region-owned entities, as reflected in the amendment and insertion of Article 83A into the Government Regulation, which is alleged to be inconsistent with Article 75 paragraphs (2) and (3) of the Mineral and Coal Mining Law (Risano, 2020). Although the state's objective of providing economic access through mining activities to religious community organizations and educational institutions may be considered well-intentioned, such a policy is inappropriate insofar as it conflicts with the applicable legal framework. As stated by Aryanto Nugroho, "Not a single provision of the Mineral and Coal Mining Law mandates the Government to prioritize the granting of IUPK to religious community organizations. This is an unequivocal violation of the Mineral and Coal Mining Law" (Rizki, 2024).

In seeking to accelerate the optimization of natural resource management, the Government, through Government Regulation Number 25 of 2024, considers it necessary to involve the various potentials and capacities of society as a whole. Accordingly, the regulation provides for the granting of mining business permits to religious community organizations. Haedar Nashir, Chairman of the Central Executive Board of Muhammadiyah (*Pimpinan Pusat Muhammadiyah*), stated during a press conference following the Muhammadiyah consolidation meeting on Sunday, July 28, 2024, that (CNN Indonesia, 2024):

> "*Regarding mining specifically, consistent with Muhammadiyah's character, when we received an official offer from the Government, which certainly had good political will, we did not immediately accept it, nor did we immediately reject it. After considering various inputs, conducting an assessment, examining criticism concerning mining management, and comparing views from academics, mining management experts, environmental experts, and the councils and institutions within the Central Executive Board of Muhammadiyah, as well as the views of Muhammadiyah members, the plenary meeting of the Central Executive Board of Muhammadiyah held on July 13, 2024, at its Jakarta office decided that Muhammadiyah was prepared to manage mining activities in accordance with Government Regulation Number 25 of 2024*."

The granting of Mining Business Permits (IUPs) to community and religious organizations has the potential to create governance and environmental protection challenges, as these organizations may lack the necessary capacity to manage mining operations. Although the Government's objective is to promote equitable access to mining management, this policy has also raised concerns regarding the potential use of permits for the personal or group interests of particular parties, environmental degradation, and the emergence of social conflicts. The Government's mining permit policy also appears to give insufficient consideration to the constitutional rights of affected communities, including rights potentially affected by environmental degradation, social displacement, and inequities in the distribution of mining benefits. Nevertheless, under constitutional principles, the state is obligated to protect the fundamental rights of its citizens, including the right to live in a good and healthy environment (Hasbi et al., 2025). As Rosari et al. point out, such concerns are not without justification, given that mining activities must fundamentally be conducted in a responsible and sustainable manner (Rosari et al., 2024).

The granting of permits to community organizations confers authority to manage mining activities through the attribution of authority, whereby an authorized institution is empowered to act on behalf of the granting authority in accordance with statutory provisions (Prasetyo et al., 2024; Lestari & Djanggih, 2019; Wandayati & Siregar, 2020).

The Government's granting of mining permits to religious community organizations is inconsistent with the intended purpose for which such organizations are established. Religious community organizations established as foundation-based legal entities may lack the necessary capacity and capabilities in the mining sector. If such arrangements are nevertheless implemented, they may contribute to environmental degradation and potentially transform these organizations into project intermediaries that transfer or commercially exploit mining permits for the benefit of other investors (Putri et al., 2024; Novitasari et al., 2024).

4. Discussion

4.1 Consistency and Harmonization of Mining Permits for Religious Community Organizations

In providing investment certainty, the Government continues to streamline regulations and improve the efficiency of processes in the mineral and coal mining sector. One approach to reducing bureaucratic procedures is to adjust the regulatory framework governing the scope and definition of the Work Plan and Budget (*Rencana Kerja dan Anggaran Biaya*, RKAB), with the expectation that such adjustments will accelerate the evaluation process. Under the theory of legislation, such regulatory changes should be based on the principle of lex superior derogat legi inferiori. Accordingly, a Government Regulation, as an implementing regulation, may not regulate matters that conflict with the statute serving as its legal basis (Warjiyati et al., 2024).

Furthermore, the principle of openness in the formulation of laws and regulations emphasizes the importance of public participation and transparency throughout the regulatory drafting process. However, the formulation of Government Regulation Number 25 of 2024 has been criticized for involving insufficient public participation and lacking transparency. Therefore, although

Government Regulation Number 25 of 2024 is intended to enhance investment certainty and support downstream processing, its implementation must remain consistent with the principles of legislative theory, particularly those concerning the hierarchy of laws and regulations and public participation. The authority to issue such permits rests with the licensing units of the competent government agencies or institutions (Darongke et al., 2022).

Based on Article 83A, government institutions are entities responsible for carrying out governmental functions at both the central and regional levels, ranging from the highest governmental institutions to the lowest-level authorities, which are vested with the power to issue permits. In addition, the permit-granting process involves procedures and requirements that must be fulfilled by applicants. These procedures are established by the Government as the competent authority responsible for issuing permits.

The Government also ensures that permits can be extended and that the operations of Contracts of Work (*Kontrak Karya*, KK) or Coal Mining Business Work Agreements (*Perjanjian Karya Pengusahaan Pertambangan Batubara*, PKP2B) under IUPK arrangements can continue in order to increase state revenues. Within the Indonesian legal system, the principle of hierarchy governs the relative legal force of various types of laws and regulations. Pursuant to Article 7 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations, Government Regulations must comply with and may not contradict higher-ranking statutes. The Mineral and Coal Mining Law (*UU Minerba*) has a higher legal status than Government Regulation Number 25 of 2024. Therefore, all provisions contained in a Government Regulation must be consistent with the substance and objectives established by the Mineral and Coal Mining Law. Where a Government Regulation conflicts with a higher-ranking statute, the principle of *lex superior derogat legi inferiori*—under which a higher-ranking regulation prevails over a lower-ranking regulation—may be applied. Accordingly, Government Regulation Number 25 of 2024 functions as an implementing regulation subordinate to the relevant statute. The principle of legal certainty requires every law and regulation to be clear, consistent, and free from contradictions.

The contradiction between the technical regulations and the Mineral and Coal Mining Law (*UU Minerba*) creates legal uncertainty in their implementation, particularly regarding which entities are entitled to priority in obtaining Special Mining Business Permits (IUPKs). The Mineral and Coal Mining Law prioritizes State-Owned Enterprises (BUMN) and Regionally Owned Enterprises (BUMD), whereas Article 83A of Government Regulation Number 25 of 2024 grants priority offers to business entities owned by certain community and religious organizations (ORMAS). This arrangement may give rise to concerns regarding unequal treatment among Indonesian citizens. Government Regulation Number 25 of 2024 provides a form of priority that is arguably inconsistent with the principle of equality guaranteed under the Mineral and Coal Mining Law. Such a policy may be considered contrary to the principle of justice, particularly in relation to the allocation of mining permits to entities whose qualifications may be unclear, including certain community and religious organizations, thereby potentially creating social and economic inequality.

The principal contradiction lies in the interpretation and implementation of the phrase “granting priority.” Article 75 of Law Number 2 of 2025 provides that the granting of priority may take into consideration the strengthening of the economic functions of community and religious organizations (ORMAS). Government Regulation Number 25 of 2024 subsequently implements this provision by allowing mining permits to be granted directly to business entities owned by religious community organizations without a tender process. Such an arrangement may be considered inconsistent with the principles of fair and transparent natural resource management, which should generally be implemented through a tender mechanism in accordance with the applicable Mineral and Coal Mining Law. The direct granting of mining concessions to religious community organizations may therefore be viewed as inconsistent with the provisions of the Mineral and Coal Mining Law, which require a tender process or a regulated priority-offering mechanism. Direct allocation may consequently be regarded as exceeding the mandate of the higher-ranking statute. Since a statute occupies a higher position in the hierarchy of laws and regulations than a Government Regulation, a Government Regulation that interprets or implements a statute in a manner considered to exceed the statutory framework may be deemed hierarchically inconsistent with that statute. This issue has also been the subject of a petition for judicial review before the Constitutional Court of the Republic of Indonesia, although the petition was rejected by the Court.

4.2 Implications of Applying for WIUPK by Religious Community Organizations

The role of religious community organizations (ORMAS) in obtaining permits to manage mining activities is regulated under Law Number 3 of 2020. Article 65 paragraph (1) of Law Number 3 of 2020 stipulates that “business entities, cooperatives, or individual enterprises, as referred to in Article 51, Article 54, Article 57, and Article 60, that engage in mining activities must fulfill administrative, technical, environmental, and financial requirements.” Nevertheless, these provisions do not fully address the specific requirements applicable to religious community organizations, while the technical regulations provide more detailed provisions under Government Regulation Number 25 of 2024, as follows:

1) “In the interest of improving public welfare, a Special Mining Business

Permit Area (WIUPK) may be offered on a priority basis to business entities owned by religious community organizations.

2) The WIUPK referred to in paragraph (1) constitutes an area formerly covered by a Coal Mining Business Work Agreement (PKP2B).
3) An IUPK and/or the ownership interest of a religious community organization in a business entity as referred to in paragraph (1) may not be transferred and/or assigned without the approval of the Minister.
4) The ownership interest of a religious community organization in a business entity must constitute a majority ownership interest and confer controlling authority.
5) The business entity referred to in paragraph (4) is prohibited from cooperating with the former PKP2B holder and/or its affiliates.
6) The WIUPK offer referred to in paragraph (1) shall remain valid for five (5) years from the date this Government Regulation enters into force.
7) Further provisions concerning the priority offering of WIUPKs to business entities owned by religious community organizations as referred to in paragraph (1) shall be regulated by Presidential Regulation."

The Government's rationale for granting mining permits to religious community organizations is to promote equitable access to natural resources. However, this policy does not sufficiently take into consideration that justice does not necessarily mean equal treatment; rather, it should be adjusted to the capacities and capabilities of the respective legal entities. Religious community organizations may contribute to the state in other sectors and areas of public life (Munawaroh, 2024). Similarly, Fanny Tri Jambore argues that the provision contained in Article 83A paragraph (7) is inconsistent with the Mineral and Coal Mining Law. Private corporations obtain permits through a tender process conducted by the Minister and the relevant technical authorities, taking into consideration the size of the WIUPK area, managerial capacity, understanding of environmental protection, and financial capacity to conduct mining operations. Therefore, the granting of WIUPKs to religious community organizations without a tender process may constitute a violation of the applicable legal framework.

Licensing issues in Indonesia concerning the management of natural resources, particularly the granting of permits to community organizations, are highly sensitive (Wijoyo et al., 2023; Hasbi et al., 2025). According to Yusril Ihza Mahendra, the state should protect the constitutional rights of its citizens to enjoy a good and sustainable environment (Masduki, 2021; Gunardi, 2021).

The state must ensure that mining permits are granted without violating the rights of indigenous communities and other affected citizens and that the licensing process is conducted through clear and fair procedures, as mandated by Articles 28H and 33 of the 1945 Constitution of the Republic of Indonesia. The granting of mining permits should also take into account the relevant capacities and capabilities, including human resources, technical expertise, and financial resources. This is necessary to prevent the granting of mining permits to religious community organizations from facilitating mining brokerage practices, whereby such permits could subsequently be transferred or commercially exploited for the benefit of third parties (Putri et al., 2024).

5. Conclusion

The issuance of Government Regulation Number 25 of 2024 as a technical regulation governing mining activities is inconsistent with the Mineral and Coal Mining Law, resulting in regulatory inconsistencies and disharmony, particularly concerning the granting of mining permits to community and religious organizations. Managerial capacity, technical expertise, and financial capacity constitute essential requirements for obtaining mining management permits. These requirements are fundamental to ensuring that mining operations conducted by business entities or legal entities are managed effectively and efficiently while supporting environmental protection and sustainability. The policy of directly granting mining concessions to religious community organizations is inconsistent with the provisions of the Mineral and Coal Mining Law, which require a tender process or a strictly regulated priority-offering mechanism. Direct allocation may therefore be regarded as exceeding the mandate established by the higher-ranking statute.

The implementation of Government Regulation Number 25 of 2024 also raises concerns regarding its potential impact. The granting of mining management permits may potentially result in substantial losses to the state because the two religious community organizations that received such permits allegedly have no prior experience in the mining sector. Therefore, the issuance of Government Regulation Number 25 of 2024, which is considered inconsistent with Law Number 3 of 2020 in conjunction with Law Number 2 of 2025 concerning Mineral and Coal Mining, should be subject to further review and comprehensive assessment, taking into consideration the applicable legal principles.

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