

Regional Autonomy Legal Politics Towards Coal Mining Resources In The Framework Of Realizing People's Welfare

Andin Sofyanoor

Universitas Achmad Yani Banjarmasin, Indonesia

email: sofyanoorandin_1976@yahoo.com

Abstract

Indonesia is a country rich in natural resources. Due to Dutch and Japanese occupation, Indonesia suffers from poverty. For that came the ideals of establishing an independent and prosperous country. The founding fathers and the framers of constitution formulate the ideals of an independent and prosperous country stated in Chapter XIV on Social Welfare in Articles 33 and 34 that adopt the welfare state ideology. In this concept the government controls the natural resources of mining for social welfare. So, the legal politics of mining law should serve the people's welfare.

Keywords Legal Politics, Coal Mining, Social welfare

INTRODUCTION

The National Development which is currently being promoted by the government in various fields/sectors requires a lot of budgets/costs, one of which comes from the utilization and use of all available resources including the use of natural resources owned for the welfare of the community. The increasing use of natural resources will also be followed by increasing environmental damage. This is due to the lack of attention to maintaining a balance between the level of development and the preservation of natural resources. Various negative impacts on the environment arise as a result of management in the use of natural resources that are not correct, it will sacrifice the environment, and other natural resources, not even the welfare of the community, it will actually harm the surrounding community (Permana, 2010).

If it happens like that, then it is not in accordance with what is mandated in Article 33 paragraph (3) of the 1945 Constitution which stipulates that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Therefore, natural resource management must be oriented towards natural resource conservation (natural resource oriented) to ensure the preservation and sustainability of natural resource functions, using a comprehensive and integrated approach. In accordance with Article 33 paragraph (4) of the 1945 Constitution, namely the national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, and independence, and maintaining a balance of progress and national economic unity. In practice, what is idealized in Article 33 paragraph (3) and paragraph (4) of the 1945 Constitution turned out to be far from expectations, because there has been a lot of damage to our Natural Resources, which turns out to be the main problem of natural resources (and the environment) that has occurred so far has actually been triggered by problems Law and Policy on Natural Resources itself (Yunianto, 2009).



In this regard, in the activities of the Legal Analysis and Evaluation Team on Natural Resource Management, bearing in mind that the management of natural resources is very broad, the Team will focus on managing natural resources of coal mining minerals, because coal is a very important source of energy but In practice, many coal mining activities are not managed properly, causing forest damage as a result of which the forest becomes bare (Bridle et al., 2014).

Coal mining minerals are abundant in the country of Indonesia which has a strategic geographical location which is located in 3 collisions of the earth's crust, namely the Eurasian Continental plate, the Indian-Australian Continental plate, and the Pacific Ocean plate which gave birth to a geological structure that has a wealth of potential natural resources. in the form of mining minerals, one of which is coal mining. Coal mining is a non-renewable natural resource, coal is a deposit of organic carbon compounds that are formed naturally from plant residues (Utomo & Hayati, n.d.).

After the era of regional autonomy in implementing policies on the balance of authority between the Central Government and Regional Governments, which were initially centralized then turned into decentralization which began with the issuance of Law Number 22 of 1999 and Law Number 32 of 2004 which has given a larger portion of authority to local government in managing natural resources in their territory. However, the impact is that the orientation of forest use owned by the Regional Government does not prioritize elements of conservation and ecosystem sustainability (Suharto, n.d.).

Coal mining business activities also make the land hollow because of its natural resources being dredged, while the people there are still poor. The complexity in managing natural resources, minerals and coal energy sources is increasing, bearing in mind that until now there are still overlaps in the issuance of permits between the central government and regional governments. In several cases, the KPK has arrested a number of officials who committed corruption in connection with natural resource exploitation permits.

In relation to some of the shortcomings of the Minerba Law, it is deemed urgent to amend this Law so that there are clear and measurable directions, policies and strategies for the national mining sector. Utilization of coal resources is very important as a tool that supports the economy and sustainable development on a regional and national scale. However, in practice there are still many conflicts between investors and the people, making it the main problem that must be found a way out.

Based on this, the National Legal Development Agency of the Ministry of Law and Human Rights considers it necessary to carry out legal analysis and evaluation activities regarding the Management of Natural Resources (SUMBER DAYA NATURAL), but considering that the Management of Natural Resources is very broad, therefore in analyzing and evaluating the Management Natural Resources will be focused on the Management of Natural Resources for coal mine minerals.

This activity is carried out by identifying problems in the legal system, conducting legal analysis, and producing appropriate recommendations for these problems. With this activity it is hoped that it can contribute to national development, especially in the field of law, so as to provide direction for the development of a legal system that is in harmony and

harmony with the constitution and national legal politics. In particular, this legal analysis and evaluation activity aside from being material in the preparation of the National Law Development Plan, can also be used for the preparation of the Academic Draft of the Bill, and the Preparation of the National Legislation Program.

LITERATURE REVIEW

Regional Autonomy Legal Politics

The politics of regional autonomy law is the basic policy of state administrators in the area of regional governance that will, is being, and has been in effect, which originates from the values prevailing in society to achieve the aspired goals of the state, namely a just and prosperous country. Constitutionally, the legal politics of regional autonomy is based on Article 18 (old) of the 1945 Constitution. In that article it is stated: The division of Indonesia's regions into large and small regions, with the form of government structure established by law, by observing and remembering the basis of deliberations in system of state administration, and rights of origin in special areas (Achmad, n.d.).

After the 1998 reform period, Article 18 of the 1945 Constitution was amended and added to articles. The addition of articles on regional administration was carried out to reinforce and clarify the structure of regional government and what form of autonomy is used. In the amendment to Article 18 it is determined in a limitative manner the distribution of regions consisting of provincial areas and regency/municipal areas. In addition, it is also stipulated that to regulate and manage government affairs themselves, the principle of autonomy (as wide as possible) and co-administration are used.

Coal Mining Resources

Coal is one of the most important sources of energy in the world, which is used as fuel for electricity generation by nearly 40% worldwide (Anonymous, 2005). Coal has played a very important role for centuries, not only generating electricity, but also being the main fuel for the production of steel, cement, alumina processing plants, paper mills, chemical industries, and pharmaceuticals. In addition, there are also coal by-products, including soap, aspirin, solvents, dyes, plastics, and fibers (Levin et al., 1994). Are you surprised to know how useful this black material is? Now you must be interested in knowing more about coal.

Coal is an accumulation of plant remains that died and did not have time to completely decompose, which are then well preserved in oxygen-free (anaerobic) conditions, for example at the bottom of a lake or in very fine-grained sediments. This hoarding process occurs simultaneously with shifts in the earth's crust (known as tectonic shifts) that allow plant remains to accumulate to great depths. As a result of stockpiling, plant material is exposed to high temperatures and pressures which cause physical and chemical changes. During this stage, the percentage of hydrogen and oxygen will decrease, while the percentage of carbon will increase. The end result is a material that contains more than 50% carbon by weight and 70% by volume, which we call coal.

Coal has different characteristics and types. The factors that determine the character of coal include the types of constituent plants and impurities present in the coal, which will



affect the ash content of the coal. In addition, temperature and pressure as well as the length of time of formation are important factors in the formation of coal, which is referred to as organic maturity. The initial stage of coal formation begins with the conversion of plant material into peat, which then turns into lignite. As temperature and pressure increase, lignite changes gradually to become sub-bituminous coal, then bituminous, and as the highest rank becomes anthracite. Coal with a higher rank (anthracite) is generally harder, has a higher carbon content, lower moisture content, and produces more energy (Surya Wardhani, 2018).

Indonesia's energy demand is dominated by electricity consumption and is expected to increase driven by economic development and a fast-growing population. To be able to balance this energy demand, the Indonesian government has set a target for electricity generation of up to 135.5 GW by 2025, set forth in Presidential Regulation (PerPres) No.22/2017. The primary energy supply in Indonesia is primarily based on fossil fuels such as oil, gas, and coal. The national energy policy determines the proportion of energy sources in 2025, namely oil (20%), gas (30%), coal (33%), and renewable energy (17%). The power generation sector is the largest coal consumer in Indonesia. The increase in coal consumption is very significant in the power generation sector, from 56 million tons in 2006 and is estimated to be 123.2 million tons in 2025. Meanwhile, Indonesia itself has coal resources of 149.009 billion tons and reserves of 37.604 billion tons (Absori et al., 2022).

Considering that coal has non-renewable properties and is produced from geological processes for tens or even hundreds of millions of years, it is very unfortunate that its utilization does not have added value. In addition, burning coal for power generation also produces "hazardous and toxic solid waste". Development and research must be carried out related to the use of coal and the utilization of coal waste, including coal bed methane, liquefied coal, gasified coal, or utilization of coal "waste" to produce non-renewable resources. conventional technology that adds value and efficiency to the use of coal in Indonesia

People Welfare

The term welfare comes from the word prosperous which means safe, secure, and prosperous and can mean safe regardless of disturbances. While welfare is defined as things or conditions of prosperity, security, safety, and peace.

The term welfare is closely related to the goals of the State of Indonesia. The state was founded, maintained, and developed for the benefit of all the people, namely, to indulge and advance the general welfare. This is clearly stated in the opening of the 1945 Constitution which reads:

"Then, in order to form a government for the State of Indonesia which protects the entire Indonesian nation and all of Indonesia's bloodshed and to promote public welfare, educate the nation's life and participate in carrying out world order based on freedom, peace, perpetuity, and social justice, the independence of the Indonesian nation was drafted. in a constitution of the State of Indonesia".

By looking at the preamble of the 1945 Constitution above, it can be stated that the purpose of the Indonesian state is to protect the whole nation and shed Indonesian blood,

promote public welfare and educate the nation's life and participate in securing the world based on freedom, eternal peace and social justice. By forcing the State to be obliged to meet the needs of its citizens. As stated by Aristotle that the State was formed to organize a good life for all its citizens (Rumadan, 2021).

However, general welfare (social justice) as the goal of the state does not mean that it is the obligation of the state to create welfare for all the people so that the people do not seek to achieve prosperity for themselves, but the people have rights and obligations to achieve their welfare. The state is only tasked with creating an atmosphere or situation that allows people to enjoy their rights as citizens and achieve their welfare as much as possible. In order to achieve this prosperity, the main components that must be met are legal certainty and the availability of goods and services for the necessities of life for all citizens.

The law of certainty is important in the context of realizing general welfare in Indonesia considering that Indonesia is a country based on the law (*rechtsstaat*) not based on mere power (*machtsstaat*). The creation of a rule-of-law state also means the observance of legal regulations or rule of law in all activities of the state and its citizens. The elements of the rule of law include (Irawan, 2016);

1. The primacy of legal rules or the rule of law;
2. Equal standing before the law;
3. Guaranteed human rights.

Harmony and balance between legal certainty and social justice or general welfare is absolutely necessary in guaranteeing the rights of citizens. The harmony between the two can be realized if they meet the requirements.

- a. Legal principles and their application approach the image of society.
- b. Law enforcement executors can carry out tasks according to the goals and wishes of the law.
- c. Communities where the law applies obey and are aware of the importance of law for justice and prosperity.

RESEARCH METHOD

The approach used in the research problem is normative approach. In this type of research, the law is conceived as what is written in the law in the book. In the study of normative law, library material is the basic legal material in research classified as secondary legal Material. The study documents consist of legislation and various policies relating to the subject matter studied. The data used in this study can be classified into two types of primary data, and secondary data. To analyze the legal material, first inventory / collection of primary and secondary legal materials used in this study. Collecting or inventorying of legal materials is first by clarifying the legal material on the subject matter discussed, namely the legal material on mineral and coal mining, and the development of the state administration.

These steps are in accordance with the character of legal science as a prescriptive or applied science. As a prescriptive science, the science of law studies the objectives of law, the values of justice, the validity of the rule of law, the concepts of law and legal norms. In



conducting legal research, steps are taken: Identifying legal facts, Collection of relevant legal materials, reviewing legal issues, drawing conclusions, providing prescriptions.

RESULT AND DISCUSSION

Political Law of Regional Autonomy of Natural Resources for Coal Mining

Mining management today is inseparable from the history of mining management in the past, which began before independence. The history of mining exploitation dates back to the Dutch East Indies Colonial Government which laid the foundations for mining management in Indonesia. Mining management in Indonesia has experienced a long historical journey. from the era of the Dutch East Indies Government to the present. During the Dutch East Indies Government, it was known that there were "concessions" as a form of permits given to business actors who would carry out mining activities. The legal basis for mining management at that time was Indische Mijnwet 1899, which was a product of the Dutch East Indies Government, so it appears that the policies that were formed at that time sided with the Dutch East Indies Government and put the indigenous people of the Indonesian nation second. The provision of opportunities for mining management is prioritized for business actors who are Dutch, then foreign Easterners, and lastly then indigenous peoples. This has certainly had a detrimental impact on the Indonesian nation for many years (Marpi, 2021).

The concession system that was first adopted in the Indische Mijn Wet 1899 during the Dutch East Indies Government, underlies the form of mining management to date. Pros and cons continue to occur to this day regarding the forms of concessions that have existed and are in force in Indonesia. Then the existence of the 5A contract which provides an opportunity for investors to participate in carrying out mining activities in Indonesia is also the forerunner of the Contract of Work in the Mining sector. The history of the mining business gives color to mining management in Indonesia and is an integral part of the system used to date.

As an illustration, after independence, a new chapter of the mining management system began, which began with the regulations of the products of the Indonesian government itself. First of all, Law Number 37 of 1960 concerning Mining was enacted, which prevented foreign investors from entering Indonesia, thereby drastically reducing the number of mining activities in Indonesia. This is due to the fact that it is arguably not yet possible for domestic investors to carry out mining activities because it requires high costs, high technology, and high work risks. at that time (*INDONESIA: The New Regional Autonomy Laws, Two Years Later*, 2020).

Constitutionally, the 1945 Constitution of the Republic of Indonesia provides the basis for the "concept of control by the state" in the management of mining in Indonesia. Article 33 paragraph (3) of the 1945 Constitution confirms that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Bearing in mind that minerals and coal are natural resources contained in the earth which are non-renewable natural resources, therefore their management needs to be carried out as optimally as possible, efficiently, transparently, sustainably, and with an environmental

perspective, and in a fair manner in order to obtain the greatest possible benefit for the prosperity of the people as a whole. sustainable. In addition, mining development must adapt to changes in the strategic environment, both national and international. The main challenge faced by mineral and coal mining is the influence of globalization which encourages democratization, regional autonomy, human rights, the environment, developments in technology and information, intellectual property rights, and demands for an increased role of the private sector and society (Bakung, 2020).

As we know, minerals and coal which are contained in the mining jurisdiction of Indonesia as a gift from God Almighty, have an important role in meeting the needs of many people's lives. That is why the management of mineral and coal mining must be controlled by the state in order to provide real added value to the national economy in an effort to achieve prosperity and welfare of the people in a just manner (Haywood et al., 2021). Mineral and coal mining business activities have an important role in national economic growth and regional development in a sustainable manner. For this reason, mining management must be carried out wisely and prudently, so that there is a balance and sustainability (Hamidi, 2015).

This concept of control by the state characterizes the Republic of Indonesia as a form of a welfare state, in which the responsibility of the government is to create welfare for its people. nature contained therein. The meaning of "control by the state" has undergone an adjustment in meaning along with the changes and challenges in the current era of globalization. The concept of control by the state has led to various forms of "business" mining in Indonesia. What form is appropriate to use in mining exploitation must be in the corridor of understanding the concept of state control. The meaning of the concept of control by the state gave birth to the authority of the Government to act as "management" and "regulate".

In the long journey of management in the Republic of Indonesia, the authority to manage mines underwent significant changes, especially when the reform era began in 2000. Under the regime of Law Number 11 of 1967 concerning "Basic Mining Provisions", the authority to manage to mine has a centralized nuance, in which the Central Government (Minister) is given the authority to manage it. The progress of the reform era was marked by the enactment of Law Number 22 of 1999 concerning "Regional Government", reversing the mining management system, which gave very broad authority to Regional Governments, especially Regencies/Cities based on the principle of broadest autonomy. Then the decentralized paradigm of Law Number 22 of 1999 was only accommodated in Law Number 4 of 2009 concerning "Mineral and Coal Mining". This very drastic change brought various challenges in its implementation.

The negligence in mining management during the enactment of Law Number 11 of 1967 finally had an impact that was felt to be very detrimental to the Indonesian people. Uncontrolled environmental damage due to mining has had an impact on the occurrence of various natural disasters that have greatly afflicted the Indonesian people. Failure to carry out the mandate of Article 33 paragraph (3) of the Constitution of the Republic of Indonesia, which stipulates that mining management is aimed at providing benefits for the people's



prosperity. Until the peak occurred around 1997, Indonesia also experienced a crisis like other nations in the world. This caused the decline of the Indonesian nation (Thorburn, n.d.).

In further developments, the law with its centralized content is no longer in accordance with the development of the current situation and future challenges. In addition, mining development must adapt to changes in the strategic environment, both national and international (International Labour Office, 1986). The main challenge faced by mineral and coal mining is the influence of globalization which encourages democratization, regional autonomy, human rights, the environment, developments in technology and information, intellectual property rights, and demands for an increased role of the private sector and society. In order to face strategic environmental challenges and address a number of these problems, it is necessary to draw up new laws and regulations in the field of mineral and coal mining that can provide a legal basis for steps to reform and reorganize the management and exploitation of mineral and coal mining activities (Usman, 2002).

Legal Politics of Regional Autonomy Against Coal Mining to Realize People's Welfare

1. The 1945 Constitution

Wade in his Constitutional Law stated the constitution as a document which sets out the framework and principal functions of the government organ of the state and declares the principle governing the operation of the organs. Political law in the constitution regulated in the state economy in the 1945 Constitution is contained in Chapter XIV SOCIAL WELFARE consisting of Articles 33 and 34 as follows:

Article 33

- 1) The economy shall be organized as a common endeavor based upon the principle of brotherhood system.
- 2) Production branches which are important for the state and which affect the livelihood of the people at large shall be controlled by the state.
- 3) The land and water and the natural resources contained therein shall be controlled by the state and shall be used for the greatest prosperity of the people.

Article 34

The poor and neglected children are kept by the state.

The chapter clearly states the Indonesian legal politics. In article 33 there is a foundation of economic democracy, where production is done by all, for all under the leadership or possession of members of society. The prosperity of society is preferred, not the prosperity of the individual. The economy is structured as a joint effort based on the principle of kinship. Therefore, the important production branches for the state and those who control the lives of the people must be controlled by the state. The production bowl should not be overpowered by one so as to oppress the people. Companies that do not control the livelihood of the public may be in the hands of individuals. The natural resources must be controlled by the state and used for the greatest prosperity of the people.

Development on a large scale is mastered by the state while small and medium scale are organized gradually by cooperatives. Between the two can still be pursued by

private/private initiatives on condition of adjusting to the government plans. If analyzed carefully, Indonesia's economic system in Articles 33 and 34 of the 1945 Constitution is unique, distinctively designed in accordance with the spirit of the nation. This system does not fully embrace the system of capitalism nor embrace the socialist system but combination of the two systems (mixed economy).

2. Law No. 4 of 2009 on Mineral and Coal Mining

The substance of Law No. 4 of 2009 on Mineral and Coal Mining adopting the system of neo liberalism, capitalism, and individualism by basing economic relations on the basis of free market competition which resulted in the mining sector of mineral and coal remain in the control of foreign investors. This can be seen in :

1) Article 38 stating that the Mining Business License is granted to:

- a. business entity;
- b. cooperative; and
- c. individual.

Article 38 c on individual may lead to debate in its interpretation, as it may also be granted to all persons including foreign private. If given to individuals, of course, contrary to the spirit of Article 33 of the 1945 Constitution because it leads to the interests of individuals (individuals) who are the soul of capitalism.

2) Article 90 which states:

"Holders of Mining Business License (IUP) and Special Mining Permit (IUPK) may perform part or all of the mining business stages, both exploration activities and production operations".

This Article provides the flexibility of concentration of power to the holder of a contract permit with a large investment to monopolize the entire mining process from upstream to downstream. This chapter is dangerous because it can remove the interference of the government and the people.

3) Article 105 paragraph (1) and (3) as follows:

- a. A non-moving business entity in a mining business intending to sell the excavated minerals and / or coal shall first have a Production Operation IUP for sale.
- b. Mineral or coal excavated and to be sold as referred to in paragraph (1) shall be subject to production dues.

The provisions of this article state that mineral mining and Coal are commodities. Thus this chapter clearly carries the notion of individualism and abandons the interests of the masses. This article sells natural resources by anyone who can.

4) Article 169 states: At the time this Act comes into force:

- a. Contract of work and agreement of coal mining concession works that existed before the coming into effect of this Law shall remain in force until the expiry of the contract / agreement.\



This provision is pro mining entrepreneurs because they do not need to revise the contract of work that had been held. Consequently, mining production is still controlled by foreign investors and ignores the interests of the nation.

3. Decision of the Constitutional Court

The meaning of "controlled by the state" is also debated by many people, whether expressed in literature or seminars or discussions. The debate revolves around the keyword "state -controlled" vis a vis the free-market economy that dominates the world economy. The Constitutional Court's decision in the judicial review of the law number 22 of 2001 of Oil and Gas against the 1945 Constitution is also in line with Mohammed Hatta's concept and opinions.⁷ The Constitutional Court as the interpreter of the constitution, interpreted the notion of "controlled by the state" as stipulated in the Decision of the Constitutional Court of Case No. 01-21-22 / PUU-I / 2003 regarding the judicial review of Law no. 20 of 2002 and decision of the Constitutional Court. 002 / PUU -I / 2003 regarding the judicial review of Law no. 22 of 2001 on Oil and Natural Gas on December 1st, 2004 as published in the State Gazette of the Republic of Indonesia Number 01 Year 2005 on pages 125 - 126 as follows:

That based on the description, the definition of "controlled by the state" must be interpreted to include the meaning of control by the state in the area derived and derived from the conception of the sovereignty of the people of Indonesia over all sources of wealth "earth, water and natural resources contained in it", the notion of public ownership by the collectivity of the people over such sources of wealth. The people collectively are constructed by the 1945 Constitution mandating the state to make policies (beleid) and the act of management (bestuursdaad), regelendaad (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad) for the greatest prosperity of the people. The state's bestuursdaad functions are exercised by the Government with the authority to issue and revoke the licuting facilities, licenses, and concessions. The regulatory function of the state (regelendaad) is carried out through the legislative authority by the People's Legislative Assembly with the Government, and the regulation by the Government. The management function (beheersdaad) is done through a share-holding mechanism and / or through direct involvement in the management of a State-owned Enterprise or a State-owned Legal Entity as an institutional instrument, through which the State, cq. Government utilizes its control over the resources to be used for the greatest prosperity of the people. Similarly, the state's oversight function (toezichthoudensdaad) is carried out by the State, c.q. Government, in order to supervise and control for the implementation of the control by the state on the sources of wealth intended to be done for the greatest prosperity of all people.

That within the framework of such understanding, the control in the sense of private ownership derived from the conception of public ownership concerning the production branches which are important for the state and which affect the livelihood of the people which according to Article 33 paragraph (2) is controlled by the state , depending on the dynamics of the development of the wealth conditions of each branch of production.

What the state must control is if: (i) the branches of production are important to the state and affect the livelihood of the people; or (ii) important to the State, but does not affect the livelihood of the public; or (iii) is not important to the State, but it affects the livelihood of the public. All three must be controlled by the State and used for the greatest prosperity of the people. With the Constitutional Court's decision, then the meaning of "controlled by the state" does not necessarily mean that the state itself directly manages the natural resources. the meaning of "controlled by the state" in the sense of the state's sovereignty over its natural resources lies in the actions of the state in making policies, arrangements, arrangements, management, and supervision of business activities in the natural resource field.

4. Legal Politics on Mineral and Coal Mining in the future.

According to Satjipto Raharjo, legal politics is the activity of choosing and the means (methods) that will be used in seeking a certain social and legal objective in society (state). 10 The legal politics referred to here is the philosophical dimension in the study of the law of seeing the other side of the law as a set of abstract ideas and a further elaboration of philosophical thought, namely the so-called philosophy of law. In this analysis Legal politics emphasizes the interrelationship between political configuration and the character of legal products.

Richard Auty first introduced the term "natural resources curse" to illustrate confusing phenomenon. The natural resource curse is a paradoxical relationship between the abundance of natural resources and the worsening economic growth, due to the weakness of the state, the political institutions, resulted in a level of continuous conflict remains one of the most puzzling issues in international development although the literature has put forward many institutional solutions. The main cause is the failure of planning and implementation of development in developing countries due to weak state institutions in taking action and awareness of the guidelines as a bulwark against the policy of globalization. Some studies conducted by Auty (1993, 2001), Sachs and Warner (1995, 2001), (Sabara, 2022) prove that a country rich in natural resources into a poor country (developing), otherwise countries with minimal natural resources dashed become a developed country. Jeffrey A. Frankel, a researcher from Harvard University in his article entitled *The Natural Resource Curse: A Survey of Diagnoses and Some Prescriptions* stated :

"Oil, minerals, and agricultural resources can bring great riches to those who possess them. Yet countries that are abundantly endowed with such natural resources often encounter pitfalls that interfere with the expected superior economic performance. Possibly undesirable side effects include reallocation of production away from the manufacturing sector. Another interpretation is that it can be permanent: countries endowed with natural resources more often develop social structures in which autocratic or corrupt political elites finance themselves through physical control of the natural resources. Meanwhile those governments that lack these endowments have no choice but to develop decentralized, democratic and diversified economies with market incentives that are more conducive to the development of manufacturing. Examples of



the Natural Resource Curse are plain to see. Japan, Korea, Taiwan, Singapore and Hong Kong are rocky islands (or peninsulas) that were endowed with very little in the way of exportable natural resources. Nevertheless, they achieved western-level standards of living. Many countries in Africa, the Middle East and Latin America are endowed with oil, minerals, or other natural resources, and yet have experienced much less satisfactory economic performance.

Indonesia as a country with abundant natural resources must escape the curse of natural resources. Law No. 4 of 2009 on Mineral and Coal Mining that adopts neo liberal by providing convenience and freedom to foreigners to invest. The impact is domination of mining by foreign investors. This legal politics deviates from and contradicts the state's goals in the constitution. Ironically, the massive exploitation of mining has caused negative impacts such as disputes with indigenous peoples for seizing indigenous lands and customary forests, leaving behind environmental damage and pollution, human rights abuses.

CONCLUSION

Based on Article 33 of the 1945 Constitution, the policy direction for managing natural resources is to aim for the greatest prosperity of the people with the right to control by the state. This is then manifested in the direction of statutory policies. Since the Reform Era, the direction of regulation in the management of mineral and coal mining, which was originally centralized, has been changed to a decentralized nature, in which management authority has been handed over mainly to Regency and City Governments with the widest possible autonomy, without any deconcentration which is an extension of the Central Government. Thus the control of the Central Government becomes weak, which creates many negative impacts. Because of that, in 2014 the government evaluated and revised the direction of the mining management policy. Since October 2, 2014, with the issuance of Law Number 23 of 2014 concerning Regional Government, mining management authority is no longer in the hands of the District and City governments but is divided between the central and provincial governments only. In the context of implementing Law Number 23 of 2014, especially Article 14 jo. Article 15 and the implementation of the Minister of Energy and Mineral Resources Circular Number 04.E/30/DJB/2015 jo. attachment to Law Number 23 of 2014, the authority of the mineral and coal sub-sector is divided between the Central Government and Provincial Governments, with which the authority to issue Mining Business Permits in the framework of Foreign Investment is the authority of the Central Government.

REFERENCES

- Absori, A., Yulianingrum, A. V., Hasmianti, R. A., & Budiono, A. (2022). Government Policies for the Natural Resource Management of Minerals and Coal Based on Social Welfare. *Pena Justisia: Media Komunikasi Dan Kajian Hukum*, 20(1). <https://doi.org/10.31941/pj.v20i1.1715>
- Abdullah, M., Hanafi, H., Khalid, A. ., Wardiansyah, G. ., & Riinawati, R. (2022). Women Victims of Domestic Violence as a Gender-Based Crime. *International Journal of*

- Social Science, Education, Communication and Economics (SINOMICS JOURNAL), 1(1), 9–14. <https://doi.org/10.54443/sj.v1i1.2>
- Achmad, H. M. (n.d.). *Dilemma of Decentralization and Local Autonomy in Indonesia*. 8.
- Bakung, D. A. (2020). Unraveling Authority of Coal Mining Management by the Regional Government and Its Implications for Regional Autonomy. *Indonesian Journal of Advocacy and Legal Services*, 1(2), 223–242. <https://doi.org/10.15294/ijals.v1i2.36069>
- Bridle, R., Kitson, L., Duan, H., & Sanchez, L. (2014). At the Crossroads: Balancing the financial and social costs of coal transition in China. *At the Crossroads*, 47.
- Hamidi, J. (2015). *Management of Mining In Indonesia: Decentralization and Corruption Eradication*. 22.
- Haywood, L., Janser, M., & Koch, N. (2021). The Welfare Costs of Job Loss and Decarbonization— Evidence from Germany’s Coal Phase Out. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3870195>
- INDONESIA: *The New Regional Autonomy Laws, Two Years Later*. (2020). 16.
- International Labour Office (Ed.). (1986). *Safety and health in coal mines*. International Labour Office.
- Irawan, I. (2016). Legal Analysis of Coal Mining in Efforts to Maintain The Environmental Sustainability. *Humaniora*, 7(3), 381. <https://doi.org/10.21512/humaniora.v7i3.3592>
- Levin, L. S., McMahon, L., & Ziglio, E. (Eds.). (1994). *Economic change, social welfare, and health in Europe*. World Health Organization, Regional Office for Europe.
- Marpi, Y. (2021). Legal Consequences of Downstreaming in The Mineral and Coal Mining Business. *International Journal of Qualitative Research*, 1(1), 28–33. <https://doi.org/10.47540/ijqr.v1i1.291>
- Permana, D. (2010). *ANALYSIS OF REGIONAL REGULATION ON GENERAL MINING SECTOR (MINERAL AND COAL)*. 13(1), 7.
- Rumadan, I. (2021). *HARMONIZATION OF LEGISLATION RELATED TO MINERAL AND COAL MINING FOR LEGAL CERTAINTY OF INVESTMENT IN INDONESIA*. 24(3), 10.
- Sabara, A. R. (2022). REGIONAL AUTONOMY IN THE POLITICAL SYSTEM AND AUTHORITY IN INDONESIA. *Diponegoro Law Review*, 7(2), 296–311. <https://doi.org/10.14710/dilrev.7.2.2022.296-311>
- Suharto, E. (n.d.). *Development of Social Welfare in Indonesia*: 8.
- Surya Wardhani, I. (2018). “Extractive Industry, Policy Innovations, and Civil Society Movement in Southeast Asia: An Introduction.” *PCD Journal*, 6(1), 173. <https://doi.org/10.22146/pcd.33909>
- Thorburn, C. (n.d.). *Regional Autonomy and Character*. 14.
- Usman, S. (2002). *Regional Autonomy in Indonesia: Field Experiences and Emerging Challenges*. 28.
- Utomo, S. R., & Hayati, T. (n.d.). *Change From Law Number 4 Year 2009 to Law Number 3 Year 2020 in Environmental Obligations and Good Mining*. 13.



Yunianto, B. (2009). *ANALYSIS OF SMALL-SCALE MINING IN MINERAL AND COAL MINING LAW NUMBER 4/2009 (INPUTS FOR FORMULATION OF IMPLEMENTING REGULATION)*. 12(3), 8.