



## The Dilemma of Licensing Mining Business Activities by Community Organizations in Indonesia Between State, Society, and Human Rights

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### Abstract

The presence of Government Regulation of the Republic of Indonesia Number 25 of 2024 Article 83A paragraph (1) confirms that religious community organizations WIUPK is offered on a priority basis to businesses owned by religious community organizations. Mining activities often cause harm and even make the surrounding community a victim of mining. The incompatibility between the management of mining activities and the principle of "Ormas" which should be a non-profit organization, is also a big question in the midst of society because religious mass organizations that should be oriented toward the benefit of the community are now collapsing their values. This leads to dilemmas and problems in applying regulations that provide different opportunities for community organizations. This research applies normative juridical research methods with statutory, conceptual, and historical approaches. Community organizations, which in this case are business entities in mining, should be able to take advantage of their position to stay focused on providing services and security for the community. Instead of just making a profit. The provisions of PP No. 25 of 2024 Article 83A paragraph (1) need to be followed by clear provisions so that community organizations in the mining world do not exacerbate the situation but can instead be used to improve the safety of the community.

**Keywords** *WIUPK, Religious Organizations, Mining, Priority*

### INTRODUCTION

Government Regulation No. 25 of 2024 conflicts with Law No. 4 of 2009. Article 83A(1) prioritizes WIUPK for religious organizations with the aim of improving community welfare. However, Law No. 3 of 2020 (Mending Law No. 4 of 2009 gives priority to state and regional enterprises in the IUPK. Laws should align with legal precedents, and Article 33(3) of the 1945 Constitution mandates that the state control of natural resources be for public benefit, not religious organizations.

The involvement of religious organizations in mining permit zones has sparked debate over their ability to uphold national ethics. Concerns include their potential use by corporations to advanced mining interests, potentially overlooking social duties. Law No. 17 of 2013 defines mass organizations as nonprofit organizations. Groups like NU and Muhammadiyah have secured mining concessions through the Coal Contract of Work (CCOW) scheme. Civil society organizations (CSOs) should ensure that past managers fulfill their environmental and social responsibilities. This policy risk benefiting only a few, as Fahmy Radhi from UGM points out that religious groups lack the resources to implement effective mining. Changes in PP 96/2021 and PP 25/2024 may disrupt mining governance and affect communities. This research explores conflicts related to mining licenses granted to religious organizations and assesses justice for affected communities, providing theoretical insights and practical advice for government decision-making. Therefore, we are interested in analyzing:

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1. How is the protection of communities affected by mining with the existence of PP No.25 of 2024 and mass organizations can carry out their objectives after PP No.25 of 2024?
2. How is the government's conflict of interest related to granting mining licenses to mass organizations?

### LITERATURE REVIEW

The principle of *Lex Superiori Derogat Legi Inferiori* in which lower regulations must not conflict with higher regulations. In this study, we know that there is a contradiction between Law No. 4/2009 (Article 75 paragraph (3) and Government Regulation No. 25/2004 (Article 83 A paragraph (1)). This contradiction certainly causes legal disharmony, leading to legal uncertainty.

Surveys and interviews with Indonesian Civil Society Organization leaders reveal two new permanent threats since Jokowi's 2014 rise. First, public criticism of National Strategic Projects, resource industries, and extractive economies is increasingly being repressed. Second, draconian policies restrict CSO operations, including funding transparency and alignment with state agendas, and non-compliance risks legal dissolution (Robet et al., 2023).

The Indonesian government's decision to prioritize religious community organizations in granting mining licenses, as stipulated in Government Regulation (PP) No. 25 of 2024, has ignited significant debate and controversy. This regulation appears to contradict Law No. 4 of 2009, which prioritizes State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD) in mining permit allocation.

**Legal Discord and Uncertainty:** The contradiction between PP No. 25/2024 and Law No. 4/2009 creates legal disharmony and uncertainty, potentially undermining the rule of law (Sapri et al., 2024). The literature on legal certainty emphasizes the importance of clear and consistent laws for effective governance and public trust. (Darongke et al., 2020).

The policy raises concerns about potential conflicts of interest between the government and mining companies, and potential negative impacts on communities living near mining sites. Granting mining licenses to religious organizations may worsen existing conflicts, cause environmental damage, and lead to social unrest. Literature on mining's social and environmental impacts stresses the need for strong regulations to protect communities and ecosystems. Current policies in Indonesia question the effectiveness of existing safeguards. A case study of the nickel mining industry in Indonesia underscores the harmful effects of mining on the environment and society.

Doubts exist about religious organizations' ability to manage mining operations, potentially making them mere intermediaries for corporations and harming the environment and local communities (Prastika et al., 2024). The literature on CSR highlights the importance of capacity building and stakeholder engagement in ensuring responsible mining practices (Kemp & Owen, 2013). The Indonesia case underscores the challenges of balancing economic development with social and environmental considerations.

This policy may misuse religious organizations' corporate exploitation of resources and neglect social and environmental duties (Putera, 2024). These findings raise concerns about corruption and diminish public trust in religious institutions. Literature on civil society's role underscores the need for their independence and accountability, with Indonesia's case showing the risks of mixing religious and economic activities.

**Transparency and Accountability Issues:** The lack of transparency in the policymaking process and the potential for conflicts of interest raise concerns about accountability and good governance in the mining sector (WALHI, 2023). The literature on transparency and accountability in natural resource governance emphasizes the importance of open data, public participation, and independent oversight (Lopes & Galvão, 2022). The Indonesian case highlights the challenges of achieving transparency and accountability in the opaque, interest-driven mining sector. Additionally, examining

the authority of the Investment Coordinating Board (BKPM) in revoking mining licenses contributes to understanding regulatory oversight in the sector (Hasti et al., 2023).

The literature emphasizes the need for a comprehensive review of policies to ensure that they align with the principles of justice, legal certainty, and utility. It also calls for further research into the social, economic, and environmental impacts of granting mining licenses to religious organizations. The current policy landscape underscores the complex interplay between the state, society, and human rights in the context of natural resource management in Indonesia.

## RESEARCH METHOD

This research employs a normative legal methodology with a literature review approach, incorporating statutory, conceptual, and doctrinal perspectives. The statutory approach uses existing legislation, whereas the conceptual approach draws on legal principles from scholars and doctrines. Legal materials include primary sources such as legislation and secondary sources such as textbooks and legal journals (Marzuki, 2006). The legal research approach identifies normative options. The method for collecting legal materials involves library research that utilizes both primary and secondary legal sources. The statute approach focuses on gathering and analyzing legislation and regulations, which are the primary legal materials in this study (Wiratraman & Putro, 2019).

## FINDINGS AND DISCUSSION

### Protection of mining-affected communities

Article 33(1) of the 1945 Constitution grants the state control over key production sectors to ensure that natural resources promote national harmony and prosperity. The preamble highlights the state's duty to enhance general welfare, and development must align with Pancasila's principles of justice and humanity. While vital to progress, development must not harm people or the environment. The government must consider all aspects of national life when planning to prevent conflicts and losses.

PP No. 25 of 2024 on Mineral and Coal Mining has created problems due to conflicts between Article 83A (1) of the regulation and Article 75(3) of Law No. 4 of 2009. Article 83A (1) prioritizes WIUPK for business entities owned by religious organizations, potentially favoring specific groups and conflicting with constitutional principles. This could lead to discriminatory practices in mining management and negatively impact local communities due to inadequate oversight by nonexperts.

Merah Johansyah, coordinator of the Mining Network (JATAM), stated that mining leads to significant suffering for residents and environmental damage. The presence of mines disrupts the environment and silences communities, prioritizing commodities that are crucial for the country's revenue. JATAM reported 45 mining conflicts in 2020, which criminalized 69 individuals and damaged over 700,000 hectares of land (Lumbanrau, 2021). Many believe experts manage mining conflicts well, but prioritizing inexperienced religious organizations under PP No. 25 of 2024 may worsen the problem.

Community protection in mining areas remains a significant issue, as locals often resist new mining projects. Because natural resources are state-owned, any exploitation requires state approval through permits. Article 33(3) of the 1945 Constitution and Law No. 32 of 2009 on Environmental Protection mandates that resources must benefit the public and be managed responsibly to avoid environmental harm and social burdens. Principles for mineral and coal mining management include the following:

1. Equitable use and sustainability
2. Compliance with national interests and regulations
3. Environmental awareness and responsible management
4. Transparency and accountability

Environmental management in Indonesia must follow principles of state responsibility,

sustainability, justice, and local wisdom to ensure broad benefits. Yet, mining in Kalimantan has caused severe community displacement, and current laws like the Agrarian Law and Forestry Law No. 41 of 1999 inadequately address these impacts. Government action is necessary to review mining practices, ensure community protection, fair resource distribution, and ensure clear legal safeguards, especially under Government Regulation No. 25 of 2024.

### **Community Organizations in carrying out the objectives of Government Regulation No. 25 Year 2024**

PP No. 25 of 2024 shows the government's application of mining principles to national duntreading. PP No. 25 of 2024 even states that adjustments are necessary to the provisions governing the extension period and the requirements for granting extensions before the enactment of Law No. 3 of 2020. Whereas in the provisions of PP No. 25 of 2024 and Law No. 3 of 2024, there are contradictions. In the Law, only BUMN and BUMD receive priority, but in the Government Regulation (PP), mass organizations also receive priority.

Licensing is a regulatory tool that the government uses to control community activities. Mining licenses granted to religious organizations must be carefully evaluated. These organizations must meet CSO legislation requirements and prepare adequate infrastructure and management mechanisms. The feasibility assessment ensures that the organization has a clear management structure, sustainable funding, relevant experience, and commitment to minimize environmental impact. Sectoral egos may cause religious organizations to prioritize their own interests, risking transparency and accountability. UGM Economic Observer Dr. Fahmy Radhi, M.B.A., argues that religious organizations lack the capability and financial resources to operate mining operations, potentially becoming mere brokers (Prastika et al., 2024). Bahlil Lahadalia notes that mining licenses are influenced by historical factors and a sense of justice, acknowledging religious organizations' roles in Indonesia's independence. These licenses support their social, educational, and health initiatives. The state supervises these activities through mining permit zones. Organizations like NU and Muhammadiyah have been granted Special Mining Business License Areas (WIUPK), valid for 5 years starting May 30, 2024, under PP 25/2024. However, this conflicts with their non-profit status, as defined in Article 4 of Law No. 17 of 2013 on Community Organizations. Legal principles should align with justice, certainty, and expediency, according to Gustav Radbruc's theory (Sapii et al., 2024).

Mining areas often experience conflicts, environmental degradation, and community displacement. This sector is seen as way to boost state revenues quickly through resource exploitation, often at environmental costs. Komnas reported that from 2011 to 2016, mining-related hazards in East Kalimantan caused 25 deaths, including 22 children who drowned in abandoned coal pits and 1 child who died from coal burns. Corporate human rights responsibilities include the state's duty to protect, companies' obligation to respect and prevent harm, and effective remedies for victims. Civil society organizations should prioritize community protection and address mining's adverse impacts, focusing on social issues rather than profit (Putera, 2024).

### **Government Conflict of Interest by granting mining permits to Community Organizations**

In Indonesia, civil society organizations play an important role in monitoring and supporting the evolving reform and democratization processes (Nasir, 2018). In Indonesia, civil society organizations play an important role in monitoring and supporting the evolving reform and democratization processes (Darongke et al., 2020). The government's recent adjustments under the Job Creation Law, intended to simplify regulations and enhance investment, have sparked controversy and protests. The inclusion of religious organizations in mining, as per the new regulation, has drawn criticism from various societal groups.

The issuance of PP No. 25 of 2024, Article 83A, which allows priority mining licenses for religious organizations, has raised public skepticism. Rizal Kasli, leader of the Indonesian Mining Experts Association, is among those criticizing the government's plan to grant mining licenses to such organizations (Kasli, 2022). Kasli (2022) warned that such a move might violate Law No. 3 of 2020 on Minerals and Coal. In a May 9, 2024, PWYP Indonesia news article titled "Wary of Mining Permits for Ormas," he argued that mining management should prioritize State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD), with licenses only going to private sectors through auctions if these entities show no interest.

The author outlines the various interests addressed by the government's policy changes. Licensing is a method by which the government regulates and oversees community activities. Permit authority is held by bodies such as the Ministry of Energy and Mineral Resources (ESDM) and regional governments. According to Article 1(14), IUPK is issued after a Contract of Work or Coal Mining Concession ends, ensuring continued operations and state revenues (Sutedi, 2010).

Assigning Special Mining Business License Areas (WIUPK) to religious groups from former PKP2B land raises concerns about their mining expertise. This policy seems unclear, implying that the government is only providing business opportunities. This could intensify conflicts of interest between the government and mining companies, and contractors may pursue agendas that harm communities and the environment (Penanganan Konflik, 2022).

All organizational permits require ministerial approval, but mining permits are now issued by the BKPM, in accordance with the updated regulation. The head of the BKPM now oversees licenses for mining sectors, assisting in the licensing process and providing support to numerous investors (Arini, 2021). The author notes that Article 83A's risks come from delegating IUP authority to the BKPM, which may cause instability and disputes.

Article 83A (7) calls for Presidential Regulation to provide additional details, but its absence creates legal uncertainty. Hart argued that such gaps undermine public trust. Article 75(4) and (5) require private businesses to compete in a WIUPK auction for an IUPK by evaluating factors like area size, administrative and technical skills, environmental management, and financial strength.

Fanny Tri Jambore of WALHI criticized the government's mining business license policy, alleging that it violated the Mineral and Coal Law. She argued that IUPs should be awarded through auctions, not government priorities. Government Regulation No. 25 of 2024 (Article 79(1)) sets auction requirements, including administrative, technical, environmental, and financial criteria for WIUPK auctions and priority offers.

## CONCLUSIONS

The conclusion of this analysis is that Government Regulation No. 25 of 2024 creates legal discord because it contradicts Law No. 4 of 2009 on Mineral and Coal Mining. This regulation prioritizes religious organizations in obtaining Special Mining Business Licenses (IUPK), which should be allocated to State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD). This contradiction not only violates the principle of *Lex Superior Derogat Legi Inferiori* but also has the potential to create conflicts of interest and harm communities affected by mining, especially if mining operations are managed by entities lacking adequate capacity and experience.

The policy also raises concerns about the potential misuse of religious organizations as tools by corporations to exploit natural resources without considering social and environmental responsibilities. Granting mining licenses to religious organizations could only benefit a few groups, while local communities continue to suffer from environmental damage and social conflicts. Therefore, a review of this policy is necessary to ensure that it aligns with the principles of justice, legal certainty, and utility that should underpin regulatory frameworks.

### LIMITATION & FURTHER RESEARCH

For further research, exploring the social and economic impacts of granting IUPK to religious organizations is recommended, with a focus on local community welfare and environmental sustainability. Additionally, a comparative study with other countries that have similar policies is crucial to identify best practices that can be applied in Indonesia, thereby strengthening more equitable and sustainable mining policies. The output of this research is normative in the form of rules, in accordance with the method used.

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