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The Constitutionality of Priority Allocation of Mining Business License Areas in Indonesia: A Perspective on State Control and Equal Opportunity under PP No. 25 of 2024

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Original Article

Abstract

Changes in mining policy under Law Number 3 of 2020 introduced a priority mechanism for granting Mining Business License Areas (WIUP) alongside the auction system. This policy raises constitutional issues concerning limitations on equal opportunity principles and potential deviations from the state's right of control. This normative legal research analyzes the legal construction of priority WIUP allocation and evaluates its constitutionality based on the State's Right of Control standards articulated in Constitutional Court Decision Number 36/PUU-X/2012. The findings indicate that granting priority without measurable merit criteria risks reducing the constitutional essence of state control intended for the greatest prosperity of the people. This study formulates constitutional criteria for priority WIUP allocation, comprising legitimate affirmative purposes, technical and financial capacity, transparency, and continuous oversight, ensuring that such preference remains aligned with the principles of fair legal certainty.

Keywords: *constitutionality; WIUP; priority allocation; state's right of control; mining.*

Abstrak

Perubahan kebijakan pertambangan melalui Undang-Undang Nomor 3 Tahun 2020 memperkenalkan mekanisme pemberian Wilayah Izin Usaha Pertambangan (WIUP) secara prioritas di samping jalur lelang. Kebijakan tersebut menimbulkan persoalan konstitusional terkait pembatasan prinsip kesetaraan kesempatan (equal opportunity) dan potensi penyimpangan hak menguasai negara. Penelitian hukum normatif ini menganalisis konstruksi hukum pemberian WIUP prioritas serta menilai konstitusionalitasnya berdasarkan standar Hak Menguasai Negara dalam Putusan Mahkamah Konstitusi Nomor 36/PUU-X/2012. Hasil penelitian menunjukkan bahwa pemberian prioritas tanpa kriteria merit yang terukur berpotensi mereduksi makna penguasaan negara demi sebesar-besarnya kemakmuran rakyat. Penelitian ini merumuskan kriteria konstitusional pemberian WIUP prioritas, meliputi tujuan afirmatif yang sah, kapasitas teknis-finansial, transparansi, serta pengawasan berkelanjutan, sehingga preferensi tersebut tetap selaras dengan prinsip kepastian hukum yang adil.

Kata kunci: *konstitusionalitas; WIUP; pemberian prioritas; hak menguasai negara; pertambangan.*

1. INTRODUCTION

Mineral and coal management occupies a strategic position in the national economy because it concerns the control and utilization of nonrenewable natural resources.[1] Constitutionally, the management of these resources is grounded in Article 33(3) of the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution), which provides that the land, waters, and natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people.[2] This constitutional provision does not vest the state with private ownership of natural resources. Rather, it confers authority on the state, as the institutional embodiment of public power, to ensure that the control, commercial exploitation, and utilization of natural resources serve the public interest. In the jurisprudence of the Constitutional Court, the state's right of control encompasses several functions: policy formulation *(beleid),* regulation *(regelendaad)*, administration *(bestuursdaad)*, management *(beheersdaad)*, and supervision *(toezichthoudensdaad).*[3]

Mining licensing constitutes one manifestation of the state's administrative function within the framework of its right of control. Determining which parties are granted access to manage mining areas cannot therefore be regarded merely as an administrative act of issuing a business license. Such decisions fundamentally concern the mechanism through which the state allocates access to scarce public resources of substantial economic value. The allocation of mining areas must be directed toward achieving the greatest prosperity of the people while taking into account the principles of economic democracy, justice, sustainability, legal certainty, environmental protection, and fair business opportunities. The nonrenewable nature of mineral and coal resources further underscores the need for the state to exercise its regulatory and licensing authority carefully and rigorously. Errors in selecting the parties entrusted with managing these resources may have economic consequences and may also lead to environmental degradation, social conflict, and a reduction in the natural-resource benefits that should remain available to future generations.[4] Studies on mining governance have likewise demonstrated that licensing is closely associated with legal certainty in conducting business activities, the fulfillment of the economic and social rights of communities in mining areas, the protection of land rights, and the sustainability of environmental functions.[5]

This regulatory framework underwent a significant transformation following the enactment of Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 concerning the Fourth Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining. The Law expressly directs mineral and coal management toward increasing added value, achieving equitable public prosperity and welfare, strengthening downstream processing, and expanding the participation of various actors in the national economy. A fundamental change lies in the introduction of priority allocation of Mining Business License Areas *(Wilayah Izin Usaha Pertambangan, WIUP)* as an alternative to the auction mechanism that had previously served as the principal method for allocating WIUPs for metallic minerals and coal.

Article 51(1) of Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 provides that WIUPs for metallic minerals may be allocated to business entities, cooperatives, sole

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1 Marthen B.Salinding, "Konsep Penguasaan Negara Terhadap Sumber Daya Mineral Dan Batubara Yang Berkeadilan," *Borneo Law Review* 6, no. 2 (2023): 219–35, https://doi.org/10.35334/bolrev.v6i2.3244.

2 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Pasal 33 ayat (3).

3 Victor Imanuel Williamson Nalle, "Hak Menguasai Negara Atas Mineral Dan Batubara Pasca Berlakunya Undang-Undang Minerba," *Jurnal Konstitusi* 9, no. 3 (2016): 473, https://doi.org/10.31078/jk933.

4 Putusan Mahkamah Konstitusi No. 36/PUU-X/2012 Perihal Pengujian Undang-Undanga Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

5 Habib Shulton Asnawi, "Politik Hukum Putusan MK Nomor 36/PUU-X/2012 Dalam Upaya Mengembalikan Kedaulatan Negara Dan Perlindungan HAM," *Jurnal Konstitusi* 13, no. 2 (2016): 299, https://doi.org/10.31078/jk1324.

proprietorships, small and medium-sized enterprises, and business entities owned by religious community organizations through either auction or priority allocation. Allocation through auction takes into account several considerations, including the size of the WIUP, administrative or managerial capacity, technical and environmental-management capacity, and financial capability. By contrast, under its initial statutory formulation, priority allocation pursuant to Article 51(3) takes into account the size of the WIUP, the empowerment of cooperatives and small and medium-sized enterprises, the strengthening of the economic role of religious community organizations, and the enhancement of regional economies. A comparable framework applies to the allocation of coal WIUPs under Article 60.

The scope of priority WIUP allocation was subsequently extended to encompass the interests of higher education institutions and downstream processing. Under Article 51A, WIUPs for metallic minerals may be allocated on a priority basis for the benefit of higher education institutions to state-owned enterprises, regionally owned enterprises, or private business entities, taking into account the size of the WIUP, the accreditation status of the higher education institution, and the expansion of public access to and provision of educational services. A business entity receiving such a WIUP is required to allocate a portion of its profits to the relevant higher education institution pursuant to a cooperation agreement. Article 51B also provides for the priority allocation of metallic-mineral WIUPs to state-owned enterprises and private business entities for downstream processing, with consideration given to the size of the area, domestic employment absorption, investment value, increases in added value, and supply-chain requirements. Corresponding provisions apply to coal commodities under Articles 60A and 60B.

These amendments indicate a paradigm shift in the distribution of mining areas. Whereas access to WIUPs had previously been determined primarily through a competitive mechanism, that mechanism is now supplemented by an affirmative approach under which the state may designate particular groups or interests as priority recipients. Differential treatment of this kind cannot, in itself, be regarded as inconsistent with the principle of equality. Affirmative policies may acquire constitutional legitimacy when they are directed toward addressing factual inequalities, broadening economic opportunities, and enabling groups that previously faced limited access to obtain a more proportionate share of the benefits. On this basis, priority allocation to cooperatives and small and medium-sized enterprises may be regarded as a means of broadening economic access, while the participation of business entities owned by religious community organizations, the interests of higher education institutions, and downstream processing have been positioned by the legislature as part of an effort to broaden the social and economic benefits derived from mineral and coal management. In submissions made during judicial review proceedings concerning the Mineral and Coal Mining Law, the House of Representatives characterized the priority mechanism as an affirmative instrument for promoting economic equity and expanding access for small-scale economic actors.

The affirmative character of a policy, however, does not automatically establish its constitutionality. Constitutional concerns may arise where the term "priority" is not accompanied by clear parameters identifying the parties entitled to priority, the method for selecting a recipient where multiple applicants fall within the same category, and the extent to which administrative, technical, financial, and environmental-management capacities must be considered. These considerations are important because the auction mechanism expressly requires an assessment of administrative, technical, environmental, and financial capacity, whereas the initial formulation of priority allocation placed greater emphasis on the status or policy-related purpose of the priority recipient. At the statutory level, the priority criteria largely describe policy objectives rather than comparative parameters for identifying the most qualified recipient among multiple applicants within the same priority category.

The constitutionality of priority WIUP allocation becomes more complex when considered in relation to the limits governing the exercise of state authority. Article 33(3) of the 1945 Constitution grants the state broad authority to determine the forms through which natural resources are commercially exploited, but that authority is not unlimited. The state's right of control must operate within the framework of the constitutional objective of achieving the greatest prosperity of the people. Although the state has discretion to adopt differentiated and affirmative policies, such policies must rest on rational and accountable grounds, must not create opportunities for arbitrary treatment, and must ensure that natural resources are managed by parties capable of generating benefits for the public interest. At the same time, Article 28D (1) of the 1945 Constitution guarantees fair legal certainty and equal treatment before the law. Accordingly, the constitutional assessment of the priority WIUP allocation scheme cannot end with the question of whether the state possesses authority to determine which parties may obtain a WIUP. It must also examine how that authority is exercised and the parameters that constrain governmental discretion.

This constitutional issue underwent an important development through Constitutional Court Decision Number 36/PUU-X/2012. The Court did not invalidate the priority allocation mechanism itself. Instead, it declared several phrases concerning "priority allocation" in Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 conditionally unconstitutional insofar as they were not construed to require priority allocation to be conducted on the basis of clear parameters through an objective, transparent, and accountable assessment process, thereby precluding any interpretation that would permit an automatic direct award. According to the Court, unclear parameters may create room for subjective governmental assessments. At the same time, the limited availability of mining areas necessitates a selection process to ensure fair treatment for every party applying for a WIUP.

The decision also reaffirmed the status of mining-licensing rules as an instrument of state control rather than merely a means of conferring economic rights without corrective mechanisms. In its reasoning, the Court emphasized the need for selective licensing based on measurable parameters, rational time limitations, clear rules governing extraction, and intensive, periodic supervision. The regulatory framework must also allow for license revocation and impose obligations to remediate damage when license holders fail to comply with their obligations. Affirmative policies may continue to be implemented, but their implementation must remain within the framework of Article 33(3) of the 1945 Constitution and must be evaluated to ensure that the objectives of community empowerment and regional economic development are achieved. Within this framework, the meaning of "priority" shifts away from the possibility of preferential allocation or direct award and toward a form of preference that remains subject to merit-based selection and public accountability.

This constitutional framework was further reinforced by Constitutional Court Decision Number 77/PUU-XXII/2024, decided on the same date. In the case concerning the priority allocation of WIUPs for downstream processing under Articles 51B and 60B, the Court again emphasized the need for clear parameters and an objective, transparent, and accountable assessment process. The Court further affirmed that increasing added value and satisfying domestic supply-chain requirements must take precedence over meeting global supply-chain demands. Taken together, the two decisions demonstrate that the constitutional issues surrounding priority allocation are no longer confined to the state's authority to accord differential treatment. They also encompass the constitutional limits, procedures, parameters, and benefit orientation that must govern the implementation of such policies.

Existing scholarship has not fully addressed these developments. Several studies continue to focus primarily on the granting of mining licenses to religious community organizations, analyzing the issue from the perspectives of justice, utility, conflicts of interest, managerial capacity, and environmental sustainability. Aziza and Masyrofah, for example, examine the policy of granting mining licenses to religious community organizations and Constitutional Court Decision Number 77/PUU-

XXII/2024 through the lenses of utilitarianism and distributive justice.[6] Other scholarship has examined the participation of religious community organizations from a philosophical perspective on justice and constitutionality, particularly in relation to conflicts of interest, managerial capacity, transparency, and environmental sustainability. Studies addressing amendments to the Mineral and Coal Mining Law more broadly have generally focused on the centralization of licensing authority, the position of regional governments, environmental sustainability, and the relationship between mining policy and the concept of the welfare state.[7]

In contrast to previous studies, this article specifically treats the priority WIUP allocation mechanism as an object of constitutional analysis without restricting the inquiry to any single category of priority recipient. The novelty of this study lies in its examination of the constitutional dimensions of priority allocation in the management of mining business license areas within Indonesia's mineral and coal mining regulatory framework. Rather than focusing on a particular legislative amendment, this study analyzes priority allocation as an instrument of state control over natural resources and evaluates its compatibility with the principle of equal opportunity. It further examines whether preferential access to mining business license areas may be justified as an affirmative policy, provided that it is based on objective criteria, pursues legitimate public interests, and is implemented through transparent and accountable procedures. This inquiry is important for delineating the boundary between constitutionally permissible affirmative policies and preferential treatment that may evolve into administrative action that is discriminatory, subjective, or inconsistent with the objectives underlying the state's right of control over natural resources.

Against this background, the study addresses two principal issues. First, it assesses the constitutionality of the priority WIUP allocation mechanism in light of the state's right of control, the principle of fair legal certainty, equality of opportunity, and the constitutional orientation toward the greatest prosperity of the people under the 1945 Constitution. These two lines of inquiry provide the basis for formulating constitutional parameters for priority WIUP allocation so that affirmative policy in mining governance does not rest merely on formal legitimacy but is implemented through an objective, transparent, accountable, and capacity-based selection process, while ensuring that the utilization of mineral and coal resources remains directed toward the equitable prosperity of the people.

2. RESEARCH METHODOLOGY

This study employs normative legal research using statutory, conceptual, and case approaches to examine the constitutionality of the priority allocation of Mining Business License Areas (Wilayah Izin Usaha Pertambangan, WIUP). The statutory approach is used to examine the constitutional framework governing the state's right of control over natural resources under the 1945 Constitution of the Republic of Indonesia (the 1945 Constitution), as well as the provisions governing the allocation of WIUPs through auction and priority mechanisms under Law Number 3 of 2020 jo Government Regulation Number 25 of 2024, particularly Articles 51, 51A, 51B, 60, 60A, and 60B, together with their implementing regulations. The conceptual approach is employed to analyze the state's right of control, constitutionality, affirmative policies, equality and fair treatment, legal certainty, and the constitutional objective of achieving the greatest prosperity of the people. The case approach focuses on Constitutional Court Decision Number 36/PUU-X/2012 and Constitutional Court Decision

[6] S. H. Adrian Sutedi, *Hukum Pertambangan* (Sinar Grafika, 2022).

[7] Geby Bernike et al., "Tinjauan Yuridis Pemberian Izin Kepada Ormas Keagamaan Dalam Usaha Pertambangan Mineral Dan Batubara Berdasarkan Peraturan Pemerintah Nomor 25 Tahun 2024," *Padjadjaran Law Review* 12, no. 2 (2024): 157–70, https://doi.org/10.56895/plr.v12i2.1813.

Number 77/PUU-XXII/2024. Primary and secondary legal materials are collected through library research and analyzed qualitatively and prescriptively using systematic and constitutional interpretation to assess the compatibility of the priority mechanism with the 1945 Constitution and to formulate constitutional parameters encompassing objective criteria, transparency, accountability, recipient capacity, equality of opportunity, and the orientation of natural-resource utilization toward the greatest prosperity of the people.

3. RESULT AND DISCUSION

3.1. Legal Framework Governing the Priority Allocation of Mining Business License Areas Following Law Number 3 of 2020 jo Government Regulation Number 25 of 2024

3.1.1. The Shift in WIUP Allocation from a Competitive to a Priority-Based Mechanism

Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 fundamentally altered the legal framework governing the allocation of Mining Business License Areas *(Wilayah Izin Usaha Pertambangan, WIUP)* within Indonesia's mineral and coal mining regime. The amendment not only expanded the categories of entities eligible to obtain WIUPs but also established priority allocation as an alternative mechanism operating alongside auctions. As a result, access to mining areas is no longer distributed exclusively through competitive mechanisms, as the state is now afforded regulatory space to accord preference to particular entities or for specified purposes in accordance with policy objectives established by the legislature.

This framework is expressly set out in Article 51(1) of Law Number 3 of 2020 jo Government Regulation Number 25 of 2024, which provides that WIUPs for metallic minerals may be allocated to business entities, cooperatives, sole proprietorships, small and medium-sized enterprises, or business entities owned by religious community organizations through either auction or priority allocation. The two mechanisms apply different parameters. Article 51(2) provides that auctions take into account the size of the WIUP, administrative or managerial capacity, technical and environmental-management capacity, and financial capability. By contrast, Article 51(3), in its original formulation, identified the size of the WIUP, the empowerment of cooperatives and small and medium-sized enterprises, the strengthening of the economic role of religious community organizations, and the enhancement of regional economies as considerations for priority allocation.

A similar framework applies to coal WIUPs under Article 60. Article 60(1) permits coal WIUPs to be allocated through either auction or priority allocation to the same categories of eligible entities, while paragraph (2) requires administrative, technical, environmental, and financial capacity to be assessed under the auction mechanism. Under the priority mechanism, the relevant considerations concern the empowerment of cooperatives and small and medium-sized enterprises, the strengthening of the economic role of religious community organizations, and the enhancement of regional economies. The regulatory schemes in Articles 51 and 60 therefore reveal different orientations: auctions place greater emphasis on the capacity of prospective operators, whereas priority allocation was initially oriented more toward empowerment and the distribution of economic benefits.

These differing parameters indicate that the priority mechanism was designed from the outset as an affirmative policy instrument. Granting access to cooperatives, small and medium-sized enterprises, and business entities owned by religious community organizations may be understood as an effort to broaden the composition of participants in the mining sector, which had previously been dominated by business entities with substantial capital resources. Priority allocation in this context is not intended to eliminate competition but to address the limited access of certain groups to strategically important economic resources. This policy direction is consistent with the considerations underlying Law Number 3 of 2020 jo Government Regulation Number 25 of 2024, which characterize mineral and coal resources as nonrenewable natural resources whose management must be directed toward increasing added value and achieving equitable public prosperity and welfare. The same Law also emphasizes the importance of broadening the participation of various actors that have contributed to the development of the national economy.

Priority allocation under Law Number 3 of 2020 jo Government Regulation Number 25 of 2024, however, is not limited to cooperatives, small and medium-sized enterprises, and religious community organizations. The legislature also established priority arrangements for specific purposes, particularly those relating to higher education institutions and downstream processing. Article 51A(1) provides that, to enhance the independence and excellence of higher education institutions, the Central Government may allocate metallic-mineral WIUPs on a priority basis for the benefit of higher education institutions to state-owned enterprises (Badan Usaha Milik Negara, BUMN), regionally owned enterprises (Badan Usaha Milik Daerah, BUMD), or private business entities. Such allocation takes into account the size of the area, the accreditation status of the higher education institution, and the expansion of public access to and provision of educational services. A BUMN, BUMD, or private business entity receiving a WIUP is required to allocate a portion of its profits to the higher education institution pursuant to a cooperation agreement, while financial accountability is subject to periodic audits by the Audit Board of the Republic of Indonesia *(Badan Pemeriksa Keuangan, BPK).*

Article 51A must also be read carefully because higher education institutions are not designated as direct recipients of WIUPs. The WIUP remains allocated to a BUMN, BUMD, or private business entity, while the higher education institution derives benefits from the mining activity through a cooperative arrangement. This distinction is important to avoid construing the provision as positioning higher education institutions as direct operators of mining activities. The Constitutional Court has also emphasized that the involvement of higher education institutions must not compromise their independence or displace their primary functions of education, research, and community service.

Unlike these two schemes, Article 51B provides for the priority allocation of metallic-mineral WIUPs to BUMNs and private business entities for downstream processing. Such priority allocation takes into account the size of the WIUP, domestic employment, the amount of investment, increases in added value, and the fulfillment of domestic and/or global supply-chain requirements. The rationale underlying Article 51B therefore differs from that of Articles 51 and 51A. Article 51 places greater emphasis on empowerment and equitable access to economic opportunities, while Article 51A is directed toward strengthening higher education institutions. Article 51B, by contrast, positions priority allocation as an industrial-policy instrument designed to support downstream processing, encourage investment, increase employment absorption, and strengthen supply chains.

A comparable framework applies to coal WIUPs under Articles 60, 60A, and 60B. Priority arrangements are also extended to Special Mining Business License Areas *(Wilayah Izin Usaha Pertambangan Khusus, WIUPK)* under Article 75. BUMNs, BUMDs, cooperatives, small and medium-sized enterprises, and business entities owned by religious community organizations are accorded priority in obtaining Special Mining Business Licenses *(Izin Usaha Pertambangan Khusus, IUPK),* whereas private business entities are, in principle, required to obtain IUPKs through WIUPK auctions. Nevertheless, Article 75(6) continues to require administrative or managerial, technical and environmental-management, and financial capacity in the allocation of WIUPKs. Article 75A subsequently reintroduces a priority WIUPK mechanism for the benefit of higher education institutions, under which WIUPKs may be allocated to BUMNs, BUMDs, or private business entities through a benefit-sharing and accountability structure similar to that established under Article 51A.

Read systematically, these provisions demonstrate that priority WIUP allocation under Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 serves at least three normative purposes. First, priority allocation functions as an instrument of affirmative policy and equitable economic access, particularly for cooperatives, small and medium-sized enterprises, and business entities owned by religious community organizations. Second, it is intended to advance social and institutional interests, particularly by supporting the independence and excellence of higher education institutions. Third, priority allocation operates as an instrument of industrial and downstream-processing policy associated with increased investment, employment absorption, added value, and supply-chain fulfillment. The term "priority" under Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 is therefore not founded on a single rationale but functions as a resource-allocation technique employed to pursue multiple policy objectives.

The difficulty, however, is that the Law's original framework did not sufficiently clarify the relationship between the grounds for according priority to a particular party and that party's suitability to undertake mining operations. Criteria such as empowerment, strengthening economic functions, enhancing regional economies, or advancing the interests of higher education institutions may describe policy objectives, but they do not explain how the most suitable recipient should be selected where more than one applicant qualifies within the same priority category. Mining activities require technical and financial capacity, adequate environmental management, and compliance with safety standards and post-mining obligations. Previous scholarship has also indicated that granting access to mining activities without a substantive selection process may weaken the principles of merit, oversight, and professionalism.[8]

The principal weakness of the original framework established by Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 therefore lies not merely in the existence of the priority mechanism itself, but in the lack of clarity concerning the relationship among priority status, the selection process, and the recipient's capacity. This issue subsequently became an important basis for the Constitutional Court's intervention in refining the normative meaning of priority allocation.

3.1.2. Reconstruction of the Meaning of "Priority" Following Constitutional Court Decisions Number 36/PUU-X/2012 and Number 77/PUU-XXII/2024

The legal framework governing priority WIUP allocation changed significantly after the Constitutional Court issued Decision Number 36/PUU-X/2012. The decision did not eliminate the priority mechanism as a policy choice available to the legislature, but altered how that mechanism must be interpreted and implemented. The phrase "through priority allocation" in Article 51(1) and Article 60(1), together with related provisions, was declared conditionally unconstitutional insofar as it was not construed to mean that priority allocation may be undertaken only on the basis of clear parameters and through an objective, transparent, and accountable assessment process, and therefore cannot be understood as permitting an automatic direct award.

The Court's reasoning fundamentally changed the legal character of the priority mechanism. Before the decision, Articles 51 and 60 could potentially be understood as allowing the Central Government relatively broad discretion to select parties that had already qualified as priority recipients. The difficulty was that the Law did not expressly regulate how recipients should be selected when the number of parties satisfying the priority criteria exceeded the number of available WIUPs. Given the limited availability of mining areas, not every applicant can obtain a WIUP. Qualification within a

8 Derita Prapti Rahayu and Faisal Faisal, "Eksistensi Pertambangan Rakyat Pasca Pemberlakuan Perubahan Undang-Undang Tentang Pertambangan Mineral Dan Batubara," *Jurnal Pembangunan Hukum Indonesia* 3, no. 3 (2021): 337–53, https://doi.org/10.14710/jphi.v3i3.337-353.

priority category therefore cannot, by itself, constitute a sufficient basis for allocating a WIUP without further assessment.

The Court considered that the absence of clear parameters could broaden the scope of governmental assessment and create a risk of subjectivity. If left unaddressed, the priority mechanism could shift from an affirmative policy into a form of administrative discretion lacking clear standards. The Court therefore required a selection process even within the priority track, recognizing that applicants do not necessarily possess equivalent capacities to conduct mining operations. Selection is necessary to ensure fairness and equal treatment among parties falling within the same priority category.

The decision ultimately shifted the concept from priority as entitlement to priority as preferential opportunity subject to selection. Priority can no longer be understood as a right to obtain a WIUP through direct award. Priority-recipient status merely confers a preferential position in the WIUP allocation process, while the ultimate selection of the recipient must remain based on parameters capable of objective assessment. Under this framework, the Court did not eliminate the distinction between auction and priority mechanisms, but incorporated an element of merit-based selection into the priority mechanism.

Decision Number 36/PUU-X/2012 addressed not only the allocation of licenses but also their relationship to the state's supervisory function. The Court emphasized that licensing rules must ensure selective licensing based on rigorous and measurable parameters, rational time limits, clear rules governing extraction, and intensive and periodic supervision. Where a license holder violates applicable requirements or causes environmental damage, the license may be reviewed or revoked, and the business operator may be required to undertake remediation. Assessment of a license holder's suitability therefore does not end when the WIUP is allocated but continues throughout the operation of the mining business.

Following Decision Number 36/PUU-X/2012, the priority mechanism is built on at least four elements. First, there must be a legitimate affirmative status or objective, reflecting the existence of a particular group or interest that may lawfully receive preferential treatment. Second, there must be clear and measurable eligibility parameters so that priority status does not displace the substantive requirements applicable to mining operations. Third, the assessment process must be objective, transparent, and accountable, enabling governmental decisions to be scrutinized and justified. Fourth, continuing supervision and evaluation are required to ensure that priority allocation actually produces empowerment, regional economic growth, and resource management that remains attentive to environmental sustainability. Taken together, these elements position priority as a conditional affirmative mechanism rather than an automatically acquired privilege.

This framework was subsequently reinforced by Constitutional Court Decision Number 77/PUU-XXII/2024, which specifically reviewed the priority allocation of WIUPs for downstream processing under Articles 51B and 60B. The Court held that the phrase "through priority" in those provisions must be interpreted consistently with Decision Number 36/PUU-X/2012: it may be applied only on the basis of clear parameters and through an objective, transparent, and accountable assessment process, rather than as a form of direct award. This clarification was also intended to preserve consistency and coherence in the regulation of priority WIUP allocation under the Mineral and Coal Mining Law.

Decision Number 77/PUU-XXII/2024 also corrected the policy orientation of downstream processing. Previously, Article 51B(2)(d) and Article 60B(2)(d) used the phrase "fulfillment of domestic and/or global supply chains." According to the Court, the use of "and/or" could place domestic and global supply chains on an equal footing and could even permit global demand to be satisfied without first ensuring that domestic needs had been met. The Court considered this framework inconsistent with the principle of state control over natural resources for the greatest prosperity of the people. It therefore construed the provisions to require that increasing added value and satisfying domestic supply-chain requirements take precedence, while global supply-chain demands may be met only after domestic needs have been satisfied.

The reconstruction of the priority mechanism operates along two dimensions. The first is procedural: priority allocation must be based on clear parameters and conducted through an objective, transparent, and accountable assessment. The second is substantive: the objectives of priority allocation must remain directed toward the national interest and the prosperity of the people. A transparent process alone is therefore insufficient if the outcome pursued is inconsistent with the constitutional purpose underlying state control over natural resources.

These developments demonstrate that the legal framework governing priority WIUP allocation following Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 cannot be understood solely by reading the statutory provisions in isolation. Articles 51, 51A, 51B, 60, 60A, 60B, 75, and 75A must be read together with the constitutional interpretation provided by the Constitutional Court. Under the post-decision framework, the priority mechanism remains a legitimate instrument of affirmative and development policy, but priority does not constitute a direct award, an exclusive entitlement, or an exemption from capacity requirements applicable to mining operations.

Based on the analysis of the first research question, Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 can be understood as having shifted the WIUP allocation regime from a predominantly competition-based system to a dual model consisting of auctions and priority allocation. Constitutional Court Decisions Number 36/PUU-X/2012 and Number 77/PUU-XXII/2024 subsequently corrected that framework by establishing a selective priority model. Under this model, the state may continue to accord preference to particular entities or interests, but that preference determines only their initial position in obtaining access and does not eliminate the obligation to demonstrate eligibility through measurable parameters, objective assessment, transparency, accountability, supervision, and an orientation toward benefits for the national interest and the greatest prosperity of the people. This framework provides the basis for further assessing whether priority WIUP allocation satisfies the principles of the state's right of control, fair legal certainty, equality of opportunity, and the constitutional mandate governing natural-resource management.

3.2. Constitutionality of Priority Allocation of Mining Business License Areas under the 1945 Constitution

3.2.1. Priority WIUP Allocation from the Perspective of the State's Right of Control, Legal Certainty, and Equality of Opportunity

The constitutionality of priority allocation of Mining Business License Areas (WIUPs) cannot be assessed solely by asking whether the state possesses authority to determine which parties may exploit mineral and coal resources. The central issue instead concerns how that authority is exercised, which parties obtain access, the basis upon which recipients are selected, and the direction of the benefits generated by natural-resource management. Assessment of the mechanism must therefore be situated within two constitutional dimensions: the state's right of control under Article 33 of the 1945 Constitution and the guarantee of fair legal certainty under Article 28D(1) of the 1945 Constitution.

Article 33(3) of the 1945 Constitution mandates the state to control the land, waters, and natural resources contained therein and to utilize them for the greatest prosperity of the people. In the development of constitutional jurisprudence, the phrase "controlled by the state" has not been interpreted as conferring private ownership of natural resources upon the state. The state's right of control constitutes a public mandate exercised through the functions of policy formulation *(beleid),* regulation *(regelendaad)*, administration *(bestuursdaad),* management *(beheersdaad),* and supervision *(toezichthoudensdaad).* The legitimacy of such control does not derive from the state's position as the owner of natural resources, but from the mandate conferred by the people, as holders of sovereignty, to ensure that the utilization of natural wealth generates public welfare.[9]

The allocation of WIUPs forms part of the exercise of these functions, particularly policy formulation, regulation, and administration. The state has constitutional authority to determine the design of mining-area allocation, including whether to use auctions or establish a priority mechanism. The existence of a priority mechanism is therefore not, in itself, inconsistent with Article 33 of the 1945 Constitution. Where it is directed toward broadening access to economic resources, empowering cooperatives and small and medium-sized enterprises, strengthening regional economies, supporting education, or accelerating downstream processing, differential treatment may serve as an instrument for expanding the economic benefits derived from natural-resource management. The elucidation of Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 likewise indicates that the priority mechanism is intended, among other purposes, to increase the participation of cooperatives, small and medium-sized enterprises, business entities owned by religious community organizations, higher education interests, and downstream-processing activities in mining governance.

Nevertheless, the state's right of control cannot serve as a basis for unlimited discretion. Because mineral and coal resources constitute public wealth under state control, decisions concerning which parties obtain access to such resources must satisfy rigorous constitutional standards. It is not sufficient for the state merely to establish that a WIUP recipient falls within a priority category recognized by statute. The selection mechanism must also be capable of ensuring that the objectives underlying priority allocation are achieved and of preventing public-resource allocation from being determined by personal proximity, subjective preferences, or other considerations that cannot be objectively scrutinized.[10]

The guarantee under Article 28D(1) of the 1945 Constitution is particularly significant in assessing this issue. Fair legal certainty and equal treatment before the law require any differentiation within public policy to have a rational basis and to be implemented according to parameters ascertainable in advance. Constitutional equality does not require all business actors to receive identical treatment in every circumstance. The state may adopt differential treatment where objective grounds justify an affirmative policy. Such differentiation, however, must bear a rational relationship to the policy objective, be applied consistently to parties situated in equivalent circumstances, and not develop into an unjustifiable individualized privilege.

Measured against these standards, the difficulty in the original framework of Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 did not lie in according priority to cooperatives, small and medium-sized enterprises, business entities owned by religious community organizations, or interests associated with higher education institutions. The principal problem instead concerned the absence of clear standards for determining which party should be selected where several applicants simultaneously satisfied the same priority category. Empowering cooperatives, strengthening the economic role of religious community organizations, and enhancing regional economies constitute potentially legitimate policy objectives, but they do not themselves operate as functional selection criteria. Where several cooperatives or business entities satisfy the relevant category, the Law's original

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9 Ahmad Redi, "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam," *Jurnal Konstitusi* 12, no. 2 (2016): 401, https://doi.org/10.31078/jk12210.

10 Fajar Hidayansyah Ilham and Marchellina Anggraeni, "Tinjauan Yuridis Pemberian Wilayah Izin Usaha Pertambangan Khusus Kepada Badan Usaha Milik Organisasi Kemasyaraktan Keagamaan Tanpa Mekanisme Lelang," *Jurnal Hukum & Pembangunan* 54, no. 3 (2024), https://doi.org/10.21143/jhp.vol54.no3.1644.

formulation did not provide adequate standards for determining which applicant was most suitable to obtain a WIUP.

The absence of comparative parameters creates a risk that affirmative policy may shift into subjective preference. This problem was reflected in the constitutional review of Law Number 3 of 2020 jo Government Regulation Number 25 of 2024. In Decision Number 36/PUU-X/2012, the Court held that priority allocation must be based on clear parameters. Without such parameters, decision-making may become dominated by subjectivity, which may ultimately affect the quality of mining and environmental management. On that basis, the Court declared various phrases concerning priority allocation in Articles 51, 60, 75, 51A, 60A, and 75A conditionally unconstitutional insofar as they were not construed to require priority allocation based on clear parameters through an objective, transparent, and accountable assessment and were instead understood as permitting direct award.

The decision simultaneously established constitutional limits on the legislature's authority to design affirmative policies. The Court did not eliminate the legislature's authority to establish a priority mechanism, but rejected the proposition that status as a priority recipient automatically generates an entitlement to a mining area. Constitutionality attaches to the affirmative nature of the policy, while the potential for unconstitutionality arises when such affirmation is implemented through direct award without a measurable assessment process.

This framework is important in limiting the view that priority allocation is an absolute consequence of the state's right of control. The state's right of control does authorize the government to determine access to the utilization of natural resources, but that authority is functional and teleological. Its legitimacy therefore depends on its exercise in pursuit of constitutionally prescribed objectives. Scholarship on the state's right of control likewise treats the issuance of mining licenses as part of the state's obligation to regulate and supervise mining activities carefully because such activities implicate legal certainty for business operations, the economic and social rights of communities, land rights, and environmental sustainability.

Within this framework, Article 33(3) must be read together with Article 33(4) of the 1945 Constitution, which provides that the national economy shall be organized on the basis of economic democracy according to the principles of togetherness, equitable efficiency, sustainability, environmental awareness, independence, and a balance between national economic progress and unity. The standard of the "greatest prosperity of the people" therefore cannot be reduced merely to increases in state revenue or economic gains accruing to license recipients. Public prosperity has broader dimensions, including the equitable distribution of benefits, resource sustainability, environmental protection, public access to economic benefits, and the preservation of the state's capacity to control strategic sectors.

This issue becomes even more apparent in Constitutional Court Decision Number 77/PUU-XXII/2024. In reviewing the priority mechanism for downstream-processing purposes, the Court assessed not only the procedural aspects of WIUP allocation but also the direction of the benefits to be achieved. With respect to the phrase "domestic and/or global supply chains" in Article 51B(2)(d) and Article 60B(2)(d), the Court considered that placing domestic and global interests on an equivalent footing created legal uncertainty and was inconsistent with the principle of state control for the greatest prosperity of the people. The Court consequently construed the provisions to require priority for increasing added value and satisfying domestic supply-chain requirements, while global supply-chain demands may be met only after domestic needs have been fulfilled.

The Court's reasoning demonstrates that the constitutionality of priority allocation has two layers. The first is procedural constitutionality, encompassing normative clarity, measurable parameters, fair opportunity, objective assessment, transparency, and accountability in WIUP allocation. The second is substantive constitutionality, concerning whether the policy produces resource management genuinely directed toward the national interest and the greatest prosperity of the people. A mechanism may satisfy administrative requirements yet remain constitutionally problematic if the resulting resource management instead prioritizes interests inconsistent with the mandate of Article 33 of the 1945 Constitution.

On this basis, priority WIUP allocation following Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 should be understood as a policy whose constitutionality is conditional. The priority track may be justified as an instrument of affirmative and development policy, but its constitutional validity depends on compliance with the parameters and procedures established by the Constitutional Court. If the mechanism is again implemented as a direct award without competition or assessment among parties satisfying the priority category, its implementation would no longer conform to the constitutional interpretation established by the Court.

3.2.2. Constitutional Parameters for Priority WIUP Allocation

The operative ruling and legal reasoning of Constitutional Court Decision Number 36/PUU-X/2012 yield four fundamental prerequisites: clarity of parameters, objectivity, transparency, and accountability. Reading these requirements together with Article 28D(1), Article 33(3) and (4) of the 1945 Constitution, Constitutional Court Decisions Number 3/PUU-VIII/2010 and Number 30/PUU-VIII/2010, and the implementing regulations of the Mineral and Coal Mining Law, this study develops six constitutional parameters. When the four requirements identified by the Court are situated within the framework of Article 28D(1) and Article 33(3) and (4), more operational standards are required to prevent the priority mechanism from again becoming dependent on excessively broad administrative discretion. Based on an examination of the normative framework, Constitutional Court decisions, and the principle of the state's right of control, this study formulates six cumulative constitutional parameters.

First, priority must pursue a legitimate affirmative objective directly connected to the greatest prosperity of the people. Conceptually, differential treatment within affirmative policy may be justified when directed toward correcting inequality and creating more substantive opportunities and benefits. In natural-resource governance, such objectives must remain situated within the framework of economic democracy and Article 33 of the 1945 Constitution, with its orientation toward public prosperity.[11] The empowerment of cooperatives and small and medium-sized enterprises, the strengthening of community economies, enhancement of regional economies, expansion of access to education, and downstream processing may therefore constitute legitimate policy objectives insofar as they bear a rational relationship to the public benefits sought. The status or label of an entity, however, cannot constitute the sole measure of its suitability to obtain a WIUP. Hastrini and Juwarna, study of priority mining licensing demonstrates the importance of linking priority policies to the technical capacity and professional expertise of operators.[12] Accordingly, status as a cooperative, a business entity owned by a religious community organization, or a business entity cooperating with a higher education institution is more appropriately treated as a categorical requirement for entering the priority track rather than as conclusive evidence of suitability to conduct mining operations.

Second, the priority mechanism must continue to satisfy the principles of suitability and merit in mining governance. Research examining the suitability of business entities owned by religious

[11] A. P. Edi Atmaja and Anna Erliyana, "Affirming the Democratic Economic System After the Amendment of Article 33 of the Indonesian Constitution: A Critical Legal Studies Perspective," *Jurnal Bina Mulia Hukum* 8, no. 2 (2024): 158–76, https://doi.org/10.23920/jbmh.v8i2.1084.

[12] Hastrini Nawir and Muh Yusup, *Studi Penerapan Kebijakan Izin Usaha Pertambangan Mineral Dan Batu Bara*, 1, no. 1 (2024): 10–18.

community organizations to conduct mining operations indicates that access to mining must remain contingent upon an assessment of administrative, financial, technical, and environmental-management capacities. More recent scholarship on the constitutionality of priority mining licenses has likewise proposed models of technical capacity-based prioritization and hybrid eligibility requiring professional mining expertise.[13] Affirmative policy should not be used to lower standards of administrative, managerial, technical, financial, safety, or environmental-management capacity.

Third, parties falling within the same priority category must be afforded equal opportunity. The principle of fair equality of opportunity requires differential treatment to remain situated within a framework of fair opportunity for parties occupying relevantly comparable positions.[14] Where a single WIUP is sought by several cooperatives or business entities that all satisfy the priority qualifications, priority status alone is therefore insufficient to determine the recipient. The government must undertake a comparative selection process based on predetermined indicators. In this study, such selection need not be equated with a price-based auction; it may instead be designed as a quality-based competition to identify the applicant best able both to advance the relevant policy objective and to conduct mining activities responsibly. This framework is reinforced by Constitutional Court Decision Number 36/PUU-X/2012, which rejected the interpretation of priority as direct award.

Fourth, the priority allocation process must satisfy transparency, accountability, and the traceability of decision-making. Studies of WIUPK allocation indicate that transparency constitutes an important instrument for preventing abuse in resource allocation and ensuring that natural resources are managed efficiently and equitably.[15] Scholarship on extractive-industry governance further demonstrates that transparency must be connected to accountability if information disclosure is to produce effective oversight. It is therefore insufficient for the government merely to announce the party receiving a WIUP. The assessment criteria, evaluation results, and reasons underlying the decision must be traceable so that the administrative decision remains open to oversight and review.[16]

Fifth, priority allocation must be linked to measurable public benefits. Scholarship on mining community benefits indicates that the mere existence of benefit commitments is insufficient to ensure that mining activities actually generate benefits for communities; measurable and transparent indicators, together with continuous monitoring and evaluation systems, are required.[17] Studies of benefit-sharing in mining likewise emphasize the importance of assessing the impact of mining activities on regional development and the inclusive distribution of benefits. The benefits associated with priority allocation therefore cannot merely be asserted at the time a license is issued but must be demonstrable throughout the period of operation.[18]

Sixth, priority allocation must be accompanied by continuing supervision and mechanisms for correction and enforcement in cases of noncompliance. Mining-law scholarship indicates that

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13 Afifudin Nur Rosyid Astinda et al., "Konflik Regulasi Dan Masalah Kelayakan Pada Kebijakan Izin Usaha Pertambangan Bagi Ormas Keagamaan," *Jurnal USM Law Review* 7, no. 3 (2024): 1851–64, https://doi.org/10.26623/julr.v7i3.10900.

14 Dian Agung Wicaksono, "Peran Mahkamah Konstitusi Dalam Mewujudkan Fair Equality of Opportunity Di Indonesia (Analisis Putusan Nomor 117/PUU-VII/2009)," *Jurnal Konstitusi* 9, no. 1 (2016): 83, https://doi.org/10.31078/jk914.

15 Janyl Moldalieva, "Localizing Transparency and Accountability in Extractives," *The Extractive Industries and Society* 8, no. 4 (2021): 100991, https://doi.org/10.1016/j.exis.2021.100991.

16 Joanna Bell, "Reason-Giving in Administrative Law: Where Are We and Why Have the Courts Not Embraced the 'General Common Law Duty to Give Reasons'?," *The Modern Law Review* 82, no. 6 (2019): 983–1008, https://doi.org/10.1111/1468-2230.12457.

17 Andy Hira and James Busumtwi-Sam, "Improving Mining Community Benefits through Better Monitoring and Evaluation," *Resources Policy* 73 (October 2021): 102138, https://doi.org/10.1016/j.resourpol.2021.102138.

18 Patrik Söderholm and Nanna Svahn, "Mining, Regional Development and Benefit-Sharing in Developed Countries," *Resources Policy* 45 (September 2015): 78–91, https://doi.org/10.1016/j.resourpol.2015.03.003.

supervision does not end with the issuance of a license but must extend to compliance with environmental obligations and post-mining reclamation requirements, while noncompliance requires appropriate enforcement mechanisms and sanctions. Evaluations of mining reclamation performance also demonstrate that compliance with environmental obligations can be determined only through assessment of actual performance during and after mining operations. Within the framework of the state's right of control, this supervisory requirement has a constitutional basis in the function of *toezichthoudensdaad*.

On the basis of this framework, the study proposes what may be termed a constitutional priority test. Priority WIUP allocation may be regarded as constitutional where it cumulatively satisfies the following requirements: it pursues a legitimate affirmative objective; the recipient possesses the minimum capacity necessary to conduct mining operations; candidates situated in equivalent circumstances are afforded fair opportunity; the selection process is objective, transparent, and accountable; the resulting benefits are measurable in relation to the prosperity of the people; and implementation remains subject to continuous state supervision and evaluation. Where any of these elements is absent particularly where no selection parameters exist or priority is transformed into direct award the policy loses its constitutional justification.

Based on the foregoing analysis, the answer to the second research question demonstrates that priority WIUP allocation is not, in principle, inconsistent with the 1945 Constitution, provided that it is interpreted and implemented in accordance with the Constitutional Court's constitutional construction. The state's right of control authorizes the state to establish affirmative policies governing the distribution of access to mining resources, but that authority is constrained by fair legal certainty, equality of opportunity, the principles of economic democracy and sustainability, and the constitutional objective of achieving the greatest prosperity of the people. Constitutional Court Decisions Number 36/PUU-X/2012 and Number 77/PUU-XXII/2024 have shifted the priority mechanism from a potential direct-award arrangement toward a conditional, merit-based form of constitutional preference. The constitutionality of the mechanism ultimately depends not merely on the identity of the recipient, but on the rationality of its objectives, the quality of the selection process, the operator's capacity, the measurability of public benefits, and the effectiveness of state supervision.

4. CONCLUSION

Based on the findings of this study, first, Law Number 3 of 2020 jo Government Regulation Number 25 of 2024 transformed the legal framework governing the allocation of Mining Business License Areas (*Wilayah Izin Usaha Pertambangan, WIUP),* which had previously relied predominantly on auctions, into a dual regulatory model consisting of auctions and priority allocation. The priority mechanism is directed toward several objectives, including the empowerment of cooperatives and small and medium-sized enterprises, the strengthening of the economic role of business entities owned by religious community organizations, the enhancement of regional economies, the strengthening of the independence and excellence of higher education institutions, and the acceleration of downstream processing. This framework positions priority allocation both as an affirmative instrument and as a development-policy mechanism for distributing access to mining resources. The Law's original formulation, however, did not draw a sufficiently clear distinction between status as a priority recipient and substantive eligibility to obtain a WIUP. Constitutional Court Decision Number 36/PUU-X/2012 subsequently corrected this construction by affirming that priority allocation must be based on clear parameters and conducted through an objective, transparent, and accountable assessment process, and cannot be construed as permitting direct award. The post-decision framework therefore establishes a selective priority model, under which preference may be accorded to particular entities or interests while recipients remain required to satisfy applicable eligibility standards.

Second, priority WIUP allocation is not, in principle, inconsistent with the 1945 Constitution of the Republic of Indonesia, but its constitutionality is conditional. The state's right of control under Article 33 of the 1945 Constitution authorizes the state to formulate policy, regulate, administer, manage, and supervise the utilization of natural resources. That authority must nevertheless remain directed toward achieving the greatest prosperity of the people. On this basis, priority allocation acquires constitutional legitimacy only where six cumulative parameters are satisfied: the existence of a legitimate affirmative objective; compliance with administrative, technical, financial, and environmental-management capacity standards; fair opportunity for candidates within the same category; an objective, transparent, accountable, and traceable process; measurable public benefits; and continuous supervision and evaluation accompanied by the possibility of license revocation. Constitutional Court Decision Number 77/PUU-XXII/2024 reinforces this substantive dimension by requiring domestic supply-chain needs to be prioritized over global supply-chain interests. The constitutionality of priority WIUP allocation is therefore determined not merely by the identity of the priority recipient, but by the rationality of the policy objective, the quality of the selection process, the recipient's capacity, the measurability of public benefits, and the effectiveness of state supervision in ensuring that mineral and coal management remains oriented toward justice, legal certainty, economic democracy, and the greatest prosperity of the people.

5. REFERENCES

Journals

Asnawi, Habib Shulton. "Politik Hukum Putusan MK Nomor 36/PUU-X/2012 dalam Upaya Mengembalikan Kedaulatan Negara dan Perlindungan HAM." *Jurnal Konstitusi* 13, no. 2 (2016): 299. https://doi.org/10.31078/jk1324.

Astinda, Afifudin Nur Rosyid, Wahyu Pujo Pratama, dan Muhammad Bagas Haidar. "Konflik Regulasi dan Masalah Kelayakan pada Kebijakan Izin Usaha Pertambangan bagi Ormas Keagamaan." *Jurnal USM Law Review* 7, no. 3 (2024): 1851–64. https://doi.org/10.26623/julr.v7i3.10900.

Atmaja, A. P. Edi, dan Anna Erliyana. "Affirming the Democratic Economic System After the Amendment of Article 33 of the Indonesian Constitution: A Critical Legal Studies Perspective." *Jurnal Bina Mulia Hukum* 8, no. 2 (2024): 158–76. https://doi.org/10.23920/jbmh.v8i2.1084.

Bell, Joanna. "Reason-Giving in Administrative Law: Where Are We and Why Have the Courts Not Embraced the 'General Common Law Duty to Give Reasons'?" *The Modern Law Review* 82, no. 6 (2019): 983–1008. https://doi.org/10.1111/1468-2230.12457.

Bernike, Geby, Devi Ervina Nusyamsiah, dan Shannia Angelia Rahardjo. "Tinjauan Yuridis Pemberian Izin kepada Ormas Keagamaan dalam Usaha Pertambangan Mineral dan Batubara berdasarkan Peraturan Pemerintah Nomor 25 Tahun 2024." *Padjadjaran Law Review* 12, no. 2 (2024): 157–70. https://doi.org/10.56895/plr.v12i2.1813.

B.Salinding, Marthen. "Konsep Penguasaan Negara Terhadap Sumber Daya Mineral Dan Batubara Yang Berkeadilan." *Borneo Law Review* 6, no. 2 (2023): 219–35. https://doi.org/10.35334/bolrev.v6i2.3244.

Hira, Andy, dan James Busumtwi-Sam. "Improving Mining Community Benefits through Better Monitoring and Evaluation." Resources Policy 73 (Oktober 2021): 102138. https://doi.org/10.1016/j.resourpol.2021.102138.

Ilham, Fajar Hidayansyah, dan Marchellina Anggraeni. "Tinjauan Yuridis Pemberian Wilayah Izin Usaha Pertambangan Khusus Kepada Badan Usaha Milik Organisasi Kemasyaraktan Keagamaan Tanpa Mekanisme Lelang." Jurnal Hukum & Pembangunan 54, no. 3 (2024). https://doi.org/10.21143/jhp.vol54.no3.1644.

Moldalieva, Janyl. "Localizing Transparency and Accountability in Extractives." The Extractive Industries and Society 8, no. 4 (2021): 100991. https://doi.org/10.1016/j.exis.2021.100991.

Nalle, Victor Imanuel Williamson. "Hak Menguasai Negara Atas Mineral dan Batubara Pasca Berlakunya Undang-Undang Minerba." *Jurnal Konstitusi* 9, no. 3 (2016): 473. https://doi.org/10.31078/jk933Adrian Sutedi, S. H. *Hukum Pertambangan*. Sinar Grafika, 2022.

Asnawi, Habib Shulton. "Politik Hukum Putusan MK Nomor 36/PUU-X/2012 Dalam Upaya Mengembalikan Kedaulatan Negara Dan Perlindungan HAM." *Jurnal Konstitusi* 13, no. 2 (2016): 299. https://doi.org/10.31078/jk1324.

Astinda, Afifudin Nur Rosyid, Wahyu Pujo Pratama, and Muhammad Bagas Haidar. "Konflik Regulasi Dan Masalah Kelayakan Pada Kebijakan Izin Usaha Pertambangan Bagi Ormas Keagamaan." *Jurnal USM Law Review* 7, no. 3 (2024): 1851–64. https://doi.org/10.26623/julr.v7i3.10900.

Atmaja, A. P. Edi, and Anna Erliyana. "Affirming the Democratic Economic System After the Amendment of Article 33 of the Indonesian Constitution: A Critical Legal Studies Perspective." *Jurnal Bina Mulia Hukum* 8, no. 2 (2024): 158–76. https://doi.org/10.23920/jbmh.v8i2.1084.

Bell, Joanna. "Reason-Giving in Administrative Law: Where Are We and Why Have the Courts Not Embraced the 'General Common Law Duty to Give Reasons'?" *The Modern Law Review* 82, no. 6 (2019): 983–1008. https://doi.org/10.1111/1468-2230.12457.

Bernike, Geby, Devi Ervina Nusyamsiah, and Shannia Angelia Rahardjo. "Tinjauan Yuridis Pemberian Izin Kepada Ormas Keagamaan Dalam Usaha Pertambangan Mineral Dan Batubara Berdasarkan Peraturan Pemerintah Nomor 25 Tahun 2024." *Padjadjaran Law Review* 12, no. 2 (2024): 157–70. https://doi.org/10.56895/plr.v12i2.1813.

B.Salinding, Marthen. "Konsep Penguasaan Negara Terhadap Sumber Daya Mineral Dan Batubara Yang Berkeadilan." *Borneo Law Review* 6, no. 2 (2023): 219–35. https://doi.org/10.35334/bolrev.v6i2.3244.

Hira, Andy, and James Busumtwi-Sam. "Improving Mining Community Benefits through Better Monitoring and Evaluation." *Resources Policy* 73 (October 2021): 102138. https://doi.org/10.1016/j.resourpol.2021.102138.

Ilham, Fajar Hidayansyah, and Marchellina Anggraeni. "Tinjauan Yuridis Pemberian Wilayah Izin Usaha Pertambangan Khusus Kepada Badan Usaha Milik Organisasi Kemasyaraktan Keagamaan Tanpa Mekanisme Lelang." *Jurnal Hukum & Pembangunan* 54, no. 3 (2024). https://doi.org/10.21143/jhp.vol54.no3.1644.

Moldalieva, Janyl. "Localizing Transparency and Accountability in Extractives." *The Extractive Industries and Society* 8, no. 4 (2021): 100991. https://doi.org/10.1016/j.exis.2021.100991.

Nalle, Victor Imanuel Williamson. "Hak Menguasai Negara Atas Mineral Dan Batubara Pasca Berlakunya Undang-Undang Minerba." *Jurnal Konstitusi* 9, no. 3 (2016): 473. https://doi.org/10.31078/jk933.

Nawir, Hastrini, and Muh Yusup. *Studi Penerapan Kebijakan Izin Usaha Pertambangan Mineral Dan Batu Bara*. 1, no. 1 (2024): 10–18.

Putusan Mahkamah Konstitusi No. 36/PUU-X/2012 Perihal Pengujian Undang-Undanga Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi Terhadap Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Rahayu, Derita Prapti, and Faisal Faisal. "Eksistensi Pertambangan Rakyat Pasca Pemberlakuan Perubahan Undang-Undang Tentang Pertambangan Mineral Dan Batubara." *Jurnal*

Pembangunan Hukum Indonesia 3, no. 3 (2021): 337–53. https://doi.org/10.14710/jphi.v3i3.337-353.

Redi, Ahmad. "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam." *Jurnal Konstitusi* 12, no. 2 (2016): 401. https://doi.org/10.31078/jk12210.

Söderholm, Patrik, and Nanna Svahn. "Mining, Regional Development and Benefit-Sharing in Developed Countries." *Resources Policy* 45 (September 2015): 78–91. https://doi.org/10.1016/j.resourpol.2015.03.003.

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Wicaksono, Dian Agung. "Peran Mahkamah Konstitusi Dalam Mewujudkan Fair Equality of Opportunity Di Indonesia (Analisis Putusan Nomor 117/PUU-VII/2009)." *Jurnal Konstitusi* 9, no. 1 (2016): 83. https://doi.org/10.31078/jk914.

Rahayu, Derita Prapti, dan Faisal Faisal. "Eksistensi Pertambangan Rakyat Pasca Pemberlakuan Perubahan Undang-Undang tentang Pertambangan Mineral dan Batubara." Jurnal Pembangunan Hukum Indonesia 3, no. 3 (2021): 337–53. https://doi.org/10.14710/jphi.v3i3.337-353.

Redi, Ahmad. "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam." Jurnal Konstitusi 12, no. 2 (2016): 401. https://doi.org/10.31078/jk12210.

Söderholm, Patrik, dan Nanna Svahn. "Mining, Regional Development and Benefit-Sharing in Developed Countries." Resources Policy 45 (September 2015): 78–91. https://doi.org/10.1016/j.resourpol.2015.03.003.

Wicaksono, Dian Agung. "Peran Mahkamah Konstitusi Dalam Mewujudkan Fair Equality of Opportunity Di Indonesia (analisis Putusan Nomor 117/PUU-VII/2009)." Jurnal Konstitusi 9, no. 1 (2016): 83. https://doi.org/10.31078/jk914.

Statutes

Indonesia. Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Indonesia. Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara. Lembaran Negara Republik Indonesia Tahun 2009 Nomor 4, Tambahan Lembaran Negara Republik Indonesia Nomor 4959.

Indonesia. Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara. Lembaran Negara Republik Indonesia Tahun 2020 Nomor 147, Tambahan Lembaran Negara Republik Indonesia Nomor 6525.

Indonesia. Peraturan Pemerintah Nomor 96 Tahun 2021 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral dan Batubara.

Indonesia. Peraturan Pemerintah Nomor 25 Tahun 2024 tentang Perubahan atas Peraturan Pemerintah Nomor 96 Tahun 2021 tentang Pelaksanaan Kegiatan Usaha Pertambangan Mineral dan Batubara.

Court Decision

Indonesia. Mahkamah Konstitusi. *Putusan Nomor 3/PUU-VIII/2010.*

Indonesia. Mahkamah Konstitusi. *Putusan Nomor 30/PUU-VIII/2010.*

Indonesia. Mahkamah Konstitusi. *Putusan Nomor 36/PUU-X/2012.*