

Dualism Between Environmental Law and Legal Politics in Coal Mining Business

Bastoni Purnama¹, Suparno²
{bastonipurnama@gmail.com¹, suparno@borobudur.ac.id²}

Universitas Borobudur^{1,2}

Abstract. This article discusses the dualism between environmental law and legal politics in the context of coal mining businesses in Indonesia. Coal mining is often a source of conflict between economic interests and environmental protection, creating complex challenges in sustainable policy implementation and law enforcement. Implementation of environmental legal policies is hampered by a lack of effective law enforcement and limited resources, causing serious environmental damage. Community participation in deciding regarding coal mining is also a main concern in this dualism. Legal politics that tend to favor business interests can ignore the aspirations and rights of local communities that are directly affected by mining activities. Corruption and legal uncertainty also strengthen the dualism between environmental law and legal politics in the coal mining business. Corrupt practices and legal uncertainty can hamper law enforcement efforts against environmental violations by mining companies. To overcome the dualism, adequate coordination between government, legal institutions, industry, society, and other stakeholders is needed. To attain sustainable and equitable development for all stakeholders in the coal mining industry in Indonesia, it is imperative to uphold a balance between economic, social, and environmental interests.

Keywords: Dualism; Politics of law; Environmental law; Coal.

1 Introduction

Numerous experts in various literature have provided different understandings and definitions of legal politics. Despite the variety of sources, the core substance remains consistent. Legal politics can be defined as the "legal policy or official policy lines regarding law that will be enforced either by new legal acts or by replacing old laws, to achieve a State."³ Thus, legal politics encompasses choices regarding which laws to enforce and which to repeal or not implement, all aimed at achieving the goals outlined in the Preamble to the 1945 Constitution. This dynamic nature of legal politics reflects the evolving needs and values of the society it governs. It also highlights the importance of legal adaptability in ensuring the relevance and effectiveness of the law in achieving state objectives.[1]

Lili Rasyidi and Ira Rasyidi, in their work "Legal and Political Relations in the Indonesian Legal System," describe law as the will of the ruler, reflecting the commands of those with the highest authority or sovereignty. The relationship between law and politics has deep historical roots in legal science. According to legal positivists like John Austin, law is merely a product of politics or power. Conversely, the historical school of law views law not merely from the perspective of legal dogmatics and statutes, but from the social reality within society, asserting

that law depends on general societal acceptance and that every group creates its living laws. This perspective emphasizes the role of cultural and social factors in shaping legal norms. It also suggests that legal systems must be responsive to the changing dynamics within societies to maintain their legitimacy and efficacy.[2] Hikmahanto Juwana in the Legal Politics of Economic Laws in Indonesia, divides legal politics into two dimensions. First, legal politics is the basic reason for enacting a legislative regulation. Second, legal politics is the objective or reason that arises behind the enactment of a statutory regulation.[3]

To fully understand the framework for natural resource management in Indonesia, it is essential to examine the normative guidelines laid out in the country's Constitution. These guidelines reflect the nation's commitment to equitable and sustainable development. The legal politics of natural resource management in Indonesia are outlined normatively in Article 33 Paragraph (2) and Paragraph (3) of the 1945 Constitution of the Republic of Indonesia. According to Kwik Kian Gie, as quoted by Qurbani, amendments to Article 33 of the 1945 NRI Constitution were related to liberalization in the natural resource management sector.

Natural resource management must embody seven constitutional characteristics: First, the economy aims to achieve shared prosperity for all people, as explicitly explained in the Elucidation to Article 33 of the 1945 Constitution of the Republic of Indonesia. Second, people's participation in ownership, the production process, and the enjoyment of results are essential, following the formulation in Article 33 Paragraph (1) and Paragraph (4) of the 1945 NRI Constitution. Third, in line with Article 33 Paragraph (4) of the 1945 NRI Constitution, the economy needs to operate on a fair market mechanism based on healthy competition, with the State intervening if market failure occurs. Fourth, the State's role must be guaranteed, as stated in Article 33 Paragraph (1) and Paragraph (3) of the 1945 NRI Constitution, particularly in national economic planning and enforcing laws. This includes implementing community service and empowerment programs, tax exemptions, subsidies, and more. Fifth, State-Owned Enterprises (BUMN) are significant economic pillars that control vital production branches and impact many people's lives, as clearly stated in Article 33 Paragraph (2) of the 1945 NRI Constitution. Sixth, cooperatives, as economic pillars, must collaborate with BUMN and the private sector, reflecting a spirit of togetherness. Seventh, the national economy should embody an equal partnership between cooperatives, BUMN, and the private sector [4]. This comprehensive approach ensures that natural resource management is inclusive and supports sustainable economic growth. By adhering to these principles, Indonesia aims to balance economic development with social equity and environmental stewardship.

Currently, the global economic slowdown is profoundly affecting Indonesia's economy. Contributing factors include the deceleration of the Chinese economy, instability in the American economy, and geopolitical risks from the Russian-Ukrainian war. [5] These factors significantly affect the Indonesian economy, including a slowdown in economic growth, a widening budget deficit, a decline in the industrial/manufacturing growth rate, and a persistent infrastructure gap.[6] In response to these challenges, the Indonesian government must take immediate action to mitigate the impact of the global economic slowdown. The government's prompt response is crucial, given the severe consequences such as rising poverty, unemployment, and economic inequality. To address these issues, the government has implemented several policies, including mining legal policies.

Mining involves extracting and processing mineral materials and separating valuable minerals from waste using smelters. Smelters are facilities that refine metals like tin, nickel, copper, gold, and silver to meet standards for use as raw materials in final products. This process

not only cleanses the metal minerals of impurities but also enhances their quality and value [7]. Strengthening the mining sector through improved legal policies is a vital strategy to bolster economic resilience. Effective management of the mining industry can help drive economic recovery and contribute to long-term sustainable development in Indonesia.

Developing Indonesia's mineral and coal policies is crucial for economic stability and growth. Recognizing the importance of these sectors, the government has built its policy framework on four key foundations: philosophical, political, legal, and strategic. These principles are outlined in Decree No. 77. K/MB.01/ME3[^].B/2022 issued by the Minister of Energy and Mineral Resources regarding the National Mineral and Coal Policy. This foundation is essential for sustainable and responsible mining management which is critical for the country's economic health. Sustainable and responsible mining management plays a pivotal role in adding value to production, thereby enhancing the prosperity and welfare of Indonesian citizens. It is one of the key responsibilities of the government and the People's Representative Council (DPR) (Pujianti, 2020). Typically, legislation or policies are crafted by bureaucrats, who should remain independent while accommodating the people's aspirations. However, in practice, various factors can influence bureaucrats, impacting the formulation of laws and regulations.

The most recent regulations regarding mineral and coal mining aim to increase the added value of products and strengthen Indonesia's competitiveness on the global stage. The objective is to ensure Indonesia can become a leading producer of raw materials, addressing past issues where unreported transactions by giant mining companies led to significant losses. These regulatory revisions are designed to act as a deterrent, imposing stringent sanctions on offenders. Revising these laws is seen as essential for the nation's benefit, particularly in extensive mining areas. Effective regulation is expected to boost the downstream processing of mining products, serving as a stepping stone for the country's reindustrialization. Ensuring that these policies are implemented effectively will be crucial in securing Indonesia's economic future and enhancing its position in the global market.

Legal politics and coal mining law have a close relationship in the context of regulation and policy implementation in the coal mining sector. Legal politics includes the process of making policies, selecting legal decisions, as well as implementing and enforcing laws related to the coal mining sector. Legal politics plays an important role in making coal mining policies. Constructed policies must be attentive to political, economic, social, and environmental aspects. It involves a legislative process involving related parties, including government, industry, society, and legal institutions. Legal politics can also influence the formation of regulations governing the coal mining sector, including licensing, environmental management, work safety, and profit sharing. These regulations reflect the political and legal interests that exist in the coal mining industry. Apart from that, legal politics also plays a role in law enforcement in the coal mining sector. This involves enforcing regulations related to taxes, the environment, and work safety, as well as taking action against legal violations that occur in this industry.

The connection between legal politics and coal mining law is often associated with the government, mining companies, local communities, and environmental conservation disputes. Legal politics plays a role in balancing these diverse interests through fair and sustainable regulations. Thus, legal politics plays a crucial role in forming, regulating, and enforcing laws in the coal mining sector. The right relationship between legal politics and coal mining law can create a balanced and sustainable framework for all parties involved in this industry.

The focus of this paper is exploring the contrast between environmental law and legal politics within the coal mining sector.

2 Method

2.1 Method

This applied paper employs a descriptive-analytical methodology, utilizing field-specific data to elucidate underlying issues. Subsequently, an analysis is undertaken to derive conclusions aimed at addressing these issues. Data collection for this study involves observation and a review of pertinent literature to facilitate problem-solving in the research process.

Aligned with the research objectives, this study is situated within the domain of qualitative research, employing a qualitative approach method. As articulated by Soerjowinoto et al., qualitative methods prioritize the researcher's interpretative process in framing and comprehensively addressing complex legal phenomena.[10]

2.2 Approach

The sociological-legal approach merges a juridical methodology to analyze issues from a legal and systematic perspective, providing a framework for analyzing legal phenomena. Meanwhile, the sociological approach concentrates on learning societal or community issues to gather factual data, identify problems, and strive for solutions within the social context. This study details the subject being examined, with particular attention to the concept of dualism between environmental law and political law in coal mining businesses in practice[11]. The approach methods used are the statutory approach and the case approach. Primary legal materials are obtained through statutory regulations and secondary legal materials are obtained through books, scientific journals, and websites. Non-legal research materials were obtained from websites and social media. The research material that has been obtained is then analyzed descriptively.

3 Result and Discussion

3.1 Government Policy Concerning Mining Legal Regulations on the Development of Legal Politics in Indonesia.

While law enforcement operates within the framework of the law, its susceptibility to manipulation does not always result in injustice. Law enforcement is derived from society and works towards establishing peace and harmony within society[12]. Law enforcement aims to turn legal ideas and concepts into a reality that people can rely on. It is a multifaceted process.[13] The recent economic development dynamics in Indonesia have led to various issues, weakening the country's economy. In response, the government has implemented Policy Law Number 4 of 2009 concerning Minerals and Coal, especially focusing on the processing and refining of mining materials.

Law Number 11 of 1967, which governs Basic Mining Provisions, mandates that the processing and refining of mining products must be carried out domestically, as explained in Article 15. However, the existence of the domestic processing and refining clause has not yet been implemented. Specifically regulated. Likewise, in government regulations that regulate the technical implementation, including Government Regulation Number 32 of 1967, the first of which has been amended by Government Regulation Number 79 of 1992 and the second amendment by Government Regulation Number 75 of 2001, there is nothing that discusses the mechanism of processing and refining activities. domestically by mining entrepreneurs. However, Law Number 4 of 2009 concerning Minerals and Coal further regulates processing and refining. In Law 4/2009, it is stated that every Production Operation IUP and IUPK holder is obliged to process and refine mining products domestically.

By enacting this law, it is anticipated that Indonesia's development progress will be positively influenced by addressing economic challenges. The tax amnesty is designed to alleviate the budget deficit, improve the budget balance, and lower the growth rate of the industrial/manufacturing sector. On the other hand, the substantial infrastructure gap is projected to increase state income.

A policy change that is also principal is related to the obligation to increase the added value of mineral minerals that will be exported abroad. This has the consequence that mineral minerals must be processed and purified domestically before being sold abroad[14]. The policy of increasing the added value of minerals, as explained previously, is also contained in Law 11/1967 and KK holders are also obliged to build mining processing and refining. However, the regulations of Law 11/1967 are not as comprehensive as the regulations of Law 4/2009. News everywhere is abuzz discussing companies that are ready or not ready to immediately build processing and refining. Because if not, the mining companies will not be able to export their mining products before they are processed domestically. This is the difference in the legal regulations between Law 11/1967 and Law 4/2009, namely, Law 11/1967 requires mining companies to build processing and refining plants domestically, but the government still allows these companies to export raw or refined mines. not yet processed. Meanwhile, Law 4/2009 requires companies to build processing and refining domestically and does not allow mining companies to export mining products that have not been refined. The process of approving the revision of the Minerba Law by the House of Representatives is considered to undermine justice because it is considered to ignore the aspirations of the Indonesian people who are currently in an emergency due to the Covid-19 pandemic, so the revision of the Law is considered to benefit several parties.[15].

Environmental legal policy and legal politics in Indonesia face several complex problems and require serious attention. Following are some of the main issues related to the relationship between policies. One of the main problems is the implementation of environmental legal policies that are not yet optimal. Even though Indonesia has a fairly complete environmental legal framework, there is often a gap between existing regulations and their implementation in the field. It is caused by various factors, including a lack of coordination between relevant institutions, a lack of resources, and weak law enforcement.

Conflicts of interest also need to be highlighted, namely between economic development and environmental protection, which is a problem that often arises in environmental legal policies in Indonesia. Legal politics are often influenced by powerful economic and political interests, which can sometimes sacrifice environmental protection for economic interests. In addition, community participation in making environmental legal policies is still limited. Legal

politics tends to be dominated by the interests of the government and business sector, without actively involving the views and aspirations of the people directly affected by these policies. This can result in policies that are not responsive to the needs and interests of society.

The main obstacles to harmonizing environmental legal policies and legal politics, namely corruption and weak law enforcement, are serious problems in the implementation of environmental legal policies in Indonesia. Legal politics that are vulnerable to political intervention and corrupt practices can hamper the effectiveness of law enforcement against environmental violations. By addressing these problems through improving environmental legal policies that are responsive, participatory, and sustainable, as well as through transparent and accountable legal politics, Indonesia can strengthen environmental protection and ensure the sustainability of natural resources for future generations.

3.2 Dualism Between Environmental Law and Legal Politics in Coal Mining Business

Legal politics is a national policy implemented by the Indonesian government, encompassing the development and updating of legal materials to meet the nation's needs, as well as the enforcement of existing legal provisions through the affirmation of institutional functions and guidance of law enforcers. It involves the process of creating and implementing laws, demonstrating the nature and direction in which the law will be developed and enforced. Legal politics implicates the selection of a social goal and the necessary decision-making to determine the methods for achieving that goal.[16] Another interpretation pertains to essential policies that define the goals, shape, and substance of constructing laws. One of the pivotal factors is the fundamental policies of state administration.[17]

The direction and purpose of legal policy, as outlined in Law Number 4 of 2009 regarding Minerals and Coal by the government, represent a framework influenced by regulations that are adopted and enforced across society. These regulations establish obligatory terms and conditions for individuals, requiring adherence to specified obligations.[1]

The guiding principle asserts that politics and law must collaborate and reinforce one another with the notion that "Law without power is auspicious thought, power without law is despotism, it is mere utopia." This is because, in practice, the law often serves as a tool for the will of political power holders. Although in its application, politics always plays a role in the formation of statutory regulations, politics, and law should mutually coexist in the formation of statutory regulations. Many people mistakenly equate law with authority.[2]

The regulations governing the coal business are closely connected to legal politics, which involves determining strategies, methods, goals, and directions for forming laws. In this context, tax amnesty regulations are an effort by the government to foster development and prosperity in Indonesian society through legal means.[5]

Coal mining in Indonesia is often an arena where the dualism between environmental law and legal politics can be seen. The following are some examples of the dualism in question:

1. **Conflict Between Environmental Protection and Economic Development.**
There is a dualism between environmental protection efforts and the need for economic development through the coal mining industry. Legal politics influenced by economic interests can create tension between efforts to protect the environment and obtain economic benefits from mining.

2. **Misalignment between Policy and Implementation.**
Dualism also occurs in the incongruity between environmental legal policies that are supposed to protect the environment from the impacts of coal mining and their implementation in the field. Inadequate legal politics in ensuring law enforcement and fulfillment of mining companies' obligations can result in serious environmental damage.
3. **Community Participation vs. Community Participation Business Interests.**
Dualism is reflected in community participation in decision-making regarding coal mining. Legal politics that favor business interests can ignore the aspirations and rights of local communities directly affected by mining activities.
4. **Corruption and Law Enforcement.**
Dualism is also seen in law enforcement efforts against environmental violations which are often related to corrupt practices. Legal politics that are vulnerable to political intervention and corruption can hamper the effectiveness of law enforcement in cracking down on environmental violations by mining companies.
5. **Legal Uncertainty.**
Dualism arises due to legal uncertainty in coal mining regulations, where ambiguous or conflicting policies and regulations can create a gap between environmental expectations and the existing legal and political reality.

Overcoming the dualism between environmental law and legal politics in the coal mining business requires good coordination between government, legal institutions, industry, society, and other stakeholders. There needs to be an appropriate balance between economic, social, and environmental interests to achieve sustainable and equitable development for all parties involved.

4 Conclusion

The dualism that occurs between environmental law and legal politics in the coal mining business in Indonesia. Coal mining is often a context where economic interests and environmental protection conflict, creating complex challenges in sustainable policy implementation and law enforcement. The dualism between environmental law and legal politics can be seen in various aspects that affect the coal mining sector. The conflict between environmental protection and economic development is one of the main focal points, where economic interests often dominate legal political decisions that can compromise environmental sustainability.

Misalignment between policy and implementation is also a serious problem in this dualism. Although Indonesia has a fairly-complete environmental legal framework, policy implementation is often hampered by a lack of effective law enforcement and limited resources. Community participation in decision-making regarding coal mining is also a main concern in this dualism. Legal politics that tend to favor business interests can ignore the aspirations and rights of local communities that are directly affected by mining activities. Apart from that, corruption and legal uncertainty are also factors that strengthen the dualism between environmental law and legal politics in the coal mining business. Corrupt practices and legal uncertainty can hamper law enforcement efforts against environmental violations by mining companies. To overcome this dualism, good coordination is needed between government, legal

institutions, industry, society, and other stakeholders. There needs to be an appropriate balance between economic, social, and environmental interests to achieve sustainable and equitable development for all parties involved in the coal mining industry in Indonesia.

References

- [1] Moh. Mahfud MD, *Politik Hukum Di Indonesia*. Jakarta: Rajawali Press, 2009.
- [2] L. Bariroh., "Politik Hukum Nasional dan Hegemoni Globalisasi Ekonomi," *Jurnal Review Politik*, vol. 2, no. 2, 2012.
- [3] H. Juwana, *Hukum Ekonomi dan Hukum Internasional*. Jakarta: Lentera Hati.
- [4] Abrar and A. Nugraha, "Politik Hukum Pertambangan Dalam Pelaksanaan Kewajiban Pengolahan Dan Pemurnian Mineral Dan Batubara Di Indonesia," *Jurnal Fakultas Hukum Universitas Indonesia*, vol. 2, no. December, pp. 1–28, 2022.
- [5] E. Arief, M. Barthos, and H. Bakir, "The Impact of Legal Political Development After the Issuance of the Tax Amnesty Policy," in *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2023, 6 May 2023, Salatiga, Central Java, Indonesia*, EAI, 2023. doi: 10.4108/eai.6-5-2023.2333432.
- [6] H. Utama and P. Astuty, "The Effect of The Russia-Ukraine War And Economic Determinants on Indonesian Oil Imports," in *Proceedings of the 3rd International Conference on Law, Social Science, Economics, and Education, ICLSSEE 2023, 6 May 2023, Salatiga, Central Java, Indonesia*, EAI, 2023. doi: 10.4108/eai.6-5-2023.2333566.
- [7] M. N. Imanullah. Chyntia Damayanti, Kartika Sari Dian Pratama, "Urgensi Pembangunan Smelter oleh Perusahaan Tambang di Indonesia Sesuai Amanat Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara," *Privat Law*, vol. 2, no. 6, 2014.
- [8] Y. Marpi, R. S. Dewi, M. Maisa, and S. Naim, "Legal Consequences of Takeover of Authority in Mineral and Coal Mining by the Ministry of Energy and Mineral Resources of the Republic of Indonesia," in *Proceedings of the International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, Bali: Atlantis Press, 2023, pp. 1535–1545. doi: 10.2991/978-2-38476-180-7_158.
- [9] N. F. Al Idrus, "Dampak Politik Hukum dan Respon Masyarakat atas Pembaharuan Undang-Undang Minerba," *Jurnal Penegakan Hukum dan Keadilan*, vol. 3, no. 2, pp. 114–127, 2022, doi: 10.18196/jphk.v3i2.14898.
- [10] Dkk. Petrus Soerjowinoto, *Buku Panduan Metode Penulisan Karya Hukum (MPKH) dan Skripsi*. Semarang: Fakultas Hukum, UNIKA Soegijapranata, 2006.
- [11] R. H. Soemitro, *Metodologi Penelitian Hukum dan Jurimetri*. Jakarta : Ghalia Indonesia, 1988.
- [12] Robert B. Seidman & William J. Chambliss, *Law, Order and Power*. Massachusetts: Addison Wesley Publishing Compan, 1971.
- [13] S. Dellyana, *Konsep Penegakan Hukum*. Yogyakarta: Liberty, 1988.
- [14] T. Hayati., *Era Baru Hukum Pertambangan: Di Bawah Rezim UU No. 4 Tahun 2009*. Jakarta: Yayasan Pustaka Obor Indonesia, 2015.
- [15] M. A. Masnun, M. Wardhana, D. Perwitasari, and ..., "Politik Hukum Penguasaan Teknologi di Indonesia," *Pandecta Law Journal*, vol. 16, no. 2, pp. 266–277, 2021.

- [16] Satjipto Rahardjo, *Ilmu Hukum*. Bandung: Citra Aditya Bakti, 1982.
- [17] Padmo Wahyono et.al, *Kerangka Landasan Pembangunan Hukum*. Jakarta: Pustaka Sinar Harapan, 1989.