

## Legal Review of the Granting of Mining Business Licenses to Religious Organizations



Novia Sigalna Putri<sup>1</sup>, Joko Setiyono<sup>2</sup>

<sup>1,2</sup>Universitas Diponegoro Semarang

**ABSTRACT:** The government, through Government Regulation of the Republic of Indonesia Number 25 of 2014 concerning amendments to Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, provides special rights for Religious Organizations to obtain mineral and coal IUPs without having to go through an auction process. This research aims to examine and analyze legal reviews regarding the granting of mining business permits to religious community organizations. The problem formulation in this research consists of: 1). What are the dynamics and problems of granting mining business permits to religious organizations? 2). How is the use of mining business permits in accordance with the principles of justice and equality? The research method used in this research is doctrinal legal research. The results of this research conclude that: 1). The dynamics and problems of granting mining business permits to Religious Organizations are: First, the potential for silencing public supervision. Second, the low level of experience and competence of Religious Organizations in managing mineral and coal mining. Third, the auction process is set aside by eliminating the auction obligation for Religious Mass Organizations in receiving IUPs. 2). Utilization of mining business permits in accordance with the principles of justice and equality consists of: First, the concept of implementing affirmative action for specific IUPs must be given to vulnerable communities. Second, the use of CSR should be an alternative for the Government to provide financial assistance to Religious Organizations rather than providing IUPs which have no rational reason to be handed over to Religious Organizations.

**KEYWORDS:** Business; Licenses; Mining; Religious; Organizations.

### I. INTRODUCTION

Natural wealth is an important human need. Like Indonesia, which relies most of its income on the natural resources sector, working on natural resources is a way to maintain a decent existence. This is done for the sake of the sustainability of Indonesian people who are economically more mature and established.<sup>1</sup> The affirmation of advancing the economy through managing natural resources will encourage income to accelerate national development.

The government is fully aware that controlling natural resources will provide enormous benefits. So that the management of mineral and coal mining becomes an icon in obtaining financial income that can enrich the country, through structuring business actors in obtaining Mining Business Permits (IUP).

The mineral and coal sectors are natural resources whose utilization uses IUP. The reason is that selective steps are needed, because the impact of mineral and coal mining will have an effect on natural damage. So in carrying out business activities regarding mineral and coal mining, of course an administrative mechanism is needed to ensure that natural resources are managed by the right and competent business entities.<sup>2</sup>

Realizing the importance of administrative mechanisms for the utilization of Mineral and Coal Mining, the state regulates the utilization mechanisms. This can be seen with the establishment of Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as Law No. 3 of 2020). This was further refined through Law Number 11 of 2020 concerning Job Creation.

The formation of the Law was followed up with strategic policies regarding the utilization of mineral and coal mining IUPs. One of them is by granting exclusive rights in the form of granting IUPs to Religious Organizations (Religious Organizations).

<sup>1</sup> Zen Lutfulloh dan Wahyu Donri, "Akibat Hukum Penerbitan Surat Izin Usaha Pertambangan (IUP) Pada Kekayaan Alam Kepulauan Sangehe," *Jurnal Ilmu Pemerintahan Widya Praja*, Vol. 47, no. 2, (November 2021), hlm. 176.

<sup>2</sup> Thelisia Kristin, "Pelaksanaan Pemberian Izin Usaha Pertambangan Mineral dan Batu Bara (MINERBA) di Kabupaten Pandeglang Setelah Berlakunya Undang-undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *Jurnal Hukum Adigama*, Vol. 2, no. 1, (Juli 2019), hlm.4.

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This is done because Religious Organizations are believed to be able to make a positive contribution to the development of the Ummah, if they are equipped with long-term and consistent efforts.

The granting of IUPs to religious organizations confirms that the state is collaborating in advancing the economy for all elements of the nation. This shows that in the era of President Jokowi's leadership, Religious Organizations were encouraged not only to deal with issues of the ummah in aspects of monotheism and morals, but also to help the Government to develop the ummah's economy. Positive responses were given by various parties, the granting of IUPs to Religious Organizations will provide a new pattern in mining management, the religious principles believed by Religious Organizations are the belief for the parties that the management of mineral and coal mining will bring a bright future for the world mineral and coal mining in Indonesia.<sup>3</sup>

Regarding the truth of the views regarding Religious Organizations that will provide a bright future for the world of mineral and coal mining in Indonesia, this must be studied and researched. Because managing mining is not easy, because competence is the main challenge, apart from that, social conflicts in mining areas make it very possible for religious organizations to violate the principles of beliefs that they understand.

Based on research conducted by Mutiara Fajriatul Izza Putri, Viorelia Nabila Tasya & Amanda Destiana Prastika<sup>4</sup> revealed that the management of mineral and coal mining is a natural resource business sector that cannot have a consistent positive impact, because the potential for legal violations will continue to occur. Even if it is carried out by professionals, mineral and coal mining management will always come into contact with illegal logging, destruction of soil texture and various other legal violations which are very difficult to avoid, so the rationality of Religious Organizations will not violate the law in carrying out mineral and coal mining activities. strong rationality. Even though the government has legalized the legal standing of Religious Organizations to obtain IUPs without going through an auction process through the establishment of Government Regulation Number 25 of 2024 concerning the Implementation of Mineral and Coal Mining Businesses.

Based on Article 83 A paragraph (1) of Government Regulation Number 25 of 2024 concerning the Implementation of Mineral and Coal Mining Businesses, the mention of Religious Organizations is mentioned explicitly, meaning that Religious Organizations are of a kind that receive something "special" in the utilization of mineral and coal IUPs. Surprisingly, without going through a thorough review process of the Government's offer, Religious Organizations actually accepted the Government's offer. This seems to show that there is a political relationship between power and civil society.

The problems that then arise are several things: First, what experience do mass organizations have so that the Government grants IUPs to mass organizations. Second, what is the basic concept that underlies the government's desire to create Mining IUPs for Mass Organizations. Fourth, why doesn't the government also provide similar IUPs to vulnerable community groups in Sulawesi, Kalimantan and Papua who actually need IUPs more to live independently?.

The granting of IUPs to Religious Mass Organizations lacks fundamental rationality. Communities in mining areas should be the ones who receive special privileges to obtain IUP rights. Based on research conducted by Nabila Adha, Syarwani Canon & Fitri Hadi Yulia Akib stated the results of their research that<sup>5</sup> In measuring the welfare of the community from the activities of the agricultural, mining and processing industry sectors in Central Sulawesi Province, it can be seen that mineral and coal mining is not able to bring positive developments to the welfare of the surrounding community.

Economic disparities actually occur in regions that are areas of the mineral and coal mining sector, apart from Central Sulawesi which the author has described above, the province of Papua is also included in the mineral and coal mining province which can be an example of how mining activities do not bring prosperity to the surrounding community. Based on research conducted by Hasan Basri Umar, Risky Novan Ngutra & La Maga<sup>6</sup> by taking samples from mining areas in Papua Province, Keerom Regency and Sarmin Regency, it can be seen that the socio-economic conditions of local communities tend not to experience significant economic improvement.

Providing IUPs to Religious Organizations but ignoring the communities around the mining area are two very contradictory things, with the assumption that how can the Government grant IUPs to Religious Organizations which do not have essential value, then ignore the surrounding communities who are affected by mineral and stone mining activities? coals.

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<sup>3</sup> Sri Nurnaningsih Rachman dan Melki T. Tunggati, "Kontradiksi Pengaturan Penawaran Prioritas Wilayah Izin Usaha Pertambangan Khusus Terhadap Badan Usaha Milik Organisasi Kemasyarakatan Keagamaan," *Jurnal Ilmu Hukum The Juris*, Vol. 8, no. 1, (Juni 2024), hlm. 352.

<sup>4</sup> Mutiara Fajriatul Izza Putri, Viorelia Nabila Tasya, dan Amanda Destiana Prastika, "Urgensi Pemberian Izin Pengelolaan Tambang bagi Organisasi Kemasyarakatan 'Keagamaan' di Indonesia: Analisis Regulasi dalam PP Nomor 25 Tahun 2024," *Tarunalaw: Journal Of Law And Syariah*, Vol. 2, no. 2, (Juli 2024), hlm. 222-223.

<sup>5</sup> Nabila Adha, Syarwani Canon, dan Fitri Hadi Yulia Akib, "Peran Sektor Pertanian, Pertambangan Dan Industri Pengolahan Terhadap Kesejahteraan Masyarakat Provinsi Sulawesi Tengah," *JSEP: Jurnal Studi Ekonomi dan Pembangunan*, Vol. 2, no. 1, (Juli 2024), hlm. 202.

<sup>6</sup> Hasan Basri Umar, Risky Novan Ngutra, dan La Maga, "Analisis Dampak Kebijakan Pemerintah Terhadap Perkembangan Perekonomian Pada Wilayah Adat Mamta Provinsi Papua," *Jurnal Kajian Ekonomi dan Studi Pembangunan*, Vol. 8, no. 2, (Agustus 2021).

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Granting an IUP to a Religious Mass Organization is not appropriate because there are no essential things. Appropriate IUPs should be given to affected communities, the reason is that local communities need them more, don't Religious Organizations such as NU & Muhammadiyah already have sufficient income and adequate assistance from various sources, not to mention contributions from congregations and members of the management of each organization.

The basic issue of granting mining business permits to religious community organizations concerns the following matters: First, the potential for silencing of public supervision because religious organizations have continued to voice amar ma'aruf nahi munkar (inviting goodness and preventing evil) and have strong membership and sympathizers. very much causes the authorities to tend to silence the voices of Religious Organizations. The aim is not to criticize policies regarding mineral and coal mining. Second, the low experience and competence of Religious Organizations which do not have a background of experience in managing mining will greatly affect the professionalism of their performance. Third, the auction process is set aside. The Government Regulation of the Republic of Indonesia Number 25 of 2014 concerning Amendments to Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, does not regulate the obligation of Religious Organizations to take part in the auction stages first.

Based on the dynamics and issues above, steps are needed to organize IUPs for Religious Community Organizations so that they are used competently and professionally, so this research is important to examine: First, what are the dynamics and problems of granting mining business permits to religious community organizations? Second, how is the distribution of mining business permits in accordance with the principles of justice and equality?.

## II. MATERIALS AND METHODS

The issues raised in this research are discussed and analyzed using doctrinal legal research methodology. The doctrinal legal research methodology explains legal problems based on previous legal doctrines or opinions that are relevant to the legal issues being discussed.<sup>7</sup>

## III. RESULTS AND DISCUSSIONS

### A. Dynamics and Issues of Granting Mining Business Permits to Religious Organizations

#### *Potential Silencing of Public Oversight*

Sri Soemantri has placed the position of the rule of law and supervision as two things that are interrelated and cannot possibly be separated. The law will have no value in its implementation if supervision cannot operate. Remembering that the essence of the rule of law is the creation of harmony and the elimination of arbitrary actions. This can only be done by creating good supervision, because through supervision it will be easy to control every action of state elements, from the community to the government.<sup>8</sup>

Speaking in the context of mineral and coal mining, supervision of all parties is very necessary, not only the state but also the community is encouraged to supervise all mineral and coal mining activities. The potential for environmental damage to which society is very vulnerable requires a critical attitude from public supervision. There is a need for good consolidation between civil society and the government in supervising the operation of mineral and coal mining.

Granting an IUP to a Religious Mass Organization certainly raises its own question mark, there is no strong rational reason to grant an IUP to a Religious Mass Organization. Unless there has been experience or comparative studies in other countries that taking control of Religious Organizations, mineral and coal IUPs can be carried out professionally.

Supervision of Religious Mass Organizations is part of important supervision in the public sphere, with consideration of the idealism and history of Religious Mass Organizations as capital in strengthening supervision. That is why in consideration of letter b of Law no. 3 of 2020 the community is placed as part of supervision by getting easy access to information. Through the role of the mining and post-mining community or public, they can obtain monitoring in order to maintain good environmental quality.<sup>9</sup>

Religious organizations have the potential to be silenced from criticizing government policies, because they have been granted mineral and coal IUPs. This is very dangerous for the position of public supervision, because Religious Organizations hold a strategic position with many members who consistently participate in the circle of power interests. For example, Nahdahtul Ulama and Muhammadiyah, two large religious organizations that have been respected by the government because of their strong members and finances, are actually recipients of IUPs from the government.

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<sup>7</sup> Ery Agus Priyono, Bahan Kuliah Metodologi Penelitian, Program Studi Magister Kenotariatan Universitas Diponegoro, Semarang, 2003/2004.

<sup>8</sup> Choludin Nasir, "Pengawasan terhadap Kebijakan Pemerintah Melalui Mekanisme Citizen Lawsuit," *Jurnal Konstitusi*, Vol. 14, no. 4, (Desember 2017), hlm. 909.

<sup>9</sup> Hasan Al-Banna, F. C. Susila Adiyanta, dan Muhamad Azhar, "Implementasi Pengawasan Usaha Pertambangan Komoditas Batuan Oleh Dinas Energi Dan Sumberdaya Mineral Di Wilayah Provinsi Jawa Tengah," *Diponegoro Law Journal*, Vol. 12, no. 4, (Oktober 2023), hlm. 5.

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Religious organizations seem to forget that mineral and coal mining activities have been very damaging to the environment. It should be Religious Organizations that stand at the forefront in fighting the mining mafia, with the Government's interests entering and being accepted by Religious Organizations, there will be collusion between the Government and civil society which will certainly damage the future of supervision.<sup>10</sup>

Moreover, currently administrative supervision as well as criminal and civil law enforcement by the Government tends to not be optimal due to selective logging and even neglect of mining practices that damage the environment. The Government continues to carry out them without paying attention to the quality of the environment in the future.<sup>11</sup>

Public supervision is the final bull in monitoring the running of mineral and coal mining. The social damage caused by mining is very dangerous, as reported by JATAM East Kalimantan, former mining pits claim 36 lives per year. What's worse is that the reclamation that should have been carried out by the company receiving the IUP did not carry out any reclamation at all after the IUP they held had expired.<sup>12</sup> This situation shows that when supervision of Religious Organizations becomes weak, what will happen is that environmental damage will get worse.

The existence of religious organizations to maintain idealism and consistency in mining supervision is absolutely necessary. Remembering the values and experience in the past shows that Religious Organizations have never collaborated with power. For example, Muhammadiyah has long participated in education and health, building the nation in its own way through financial or financial independence. This means that Muhammadiyah no longer needs to obtain additional finance from the Government, because this will only reduce Muhammadiyah's bargaining position in monitoring power.<sup>13</sup> Muhammadiyah should form a council (the term for the sector in the Muhammadiyah Organization) which is in charge of environmental monitoring.

NU is the same, as a Religious Organization with the largest number of members, NU, which has the best cadres who often enter the arena of power, should encourage mineral and coal IUPs not to be carried out haphazardly, destroying nature and causing social damage to the surrounding community. For example, as stated by Gus Dur, a big NU figure, that power cannot compromise with NU as long as it does not involve national politics.<sup>14</sup> Making NU strong so that it cannot be intervened by power, this should be an understanding that must be implemented by NU that mineral and coal IUPs must not be the cause of silencing NU's critical voices against power.

The critical attitude of Religious Organizations regarding environmental monitoring of mining will damage idealism, because social damage with mining will certainly occur. This was stated by Risal, Paranoan & Djaja in their research by explaining that<sup>15</sup> The existence of coal mining activities has triggered the emergence of a community mentality that tends to be more individualistic, materialistic, and the social order in society is damaged, and the kinship relations of community members are starting to become strained. Even within their own families, disputes often occur because they defend their interests with the company.

### **Low Experience and Competence**

The facts show that Religious Organizations are not legal entities that have experience in managing mineral and coal mining. This is very dangerous because the crisis of understanding and experience will certainly affect the way mining is carried out. It's like a field that is not mastered by an expert, it will damage the condition of that field.

The reason for carrying out exploration and exploitation activities in the mining sector is that the Indonesian government invites foreign investors to invest in the mining sector. The factor that causes the government to appoint contractors, especially foreign contractors, to carry out activities in the mining sector is because the government or government agencies themselves have not been able to carry out these activities. The activities carried out require sophisticated technology and large costs.<sup>16</sup> So what about Religious Organizations that have no experience at all compared to contractors, of course they have no rational reason to manage mineral and coal mining with experience.

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<sup>10</sup> Nuralam, Abdul Kadir Adys, dan Adnan Ma'ruf, "Pengawasan Pemerintah Pada Usaha Penambangan Bahan Galian Golongan C Di Kabupaten Gowa," *Kolaborasi: Jurnal Administrasi Publik*, Vol. 3, no. 3, (Desember 2017), hlm 334.

<sup>11</sup> Franky Butar Butar, "Penegakan Hukum Lingkungan di Bidang Pertambangan," *Jurnal Yuridika*, Vol. 25, no. 2, (Agustus 2010), hlm. 168.

<sup>12</sup> Sunardi Syahhuri dan Budiman, "Efektivitas Pengawasan Perizinan Tambang Batu Bara Oleh Dinas Energi Dan Sumber Daya Mineral (ESDM) Provinsi Kaltim Di Kota Samarinda," *JIP: Jurnal Ilmu Pemerintahan*, Vol. 9, no. 1, (2021), hlm. 34.

<sup>13</sup> Ery Charmelita Raska dkk., "Analisis Peran Muhammadiyah Dalam Dinamika Perkembangan Islam Moderat," *Jurnal Kajian dan Pengembangan Umat*, Vol. 6, no. 2, (Desember 2023), hlm. 167.

<sup>14</sup> Muhammad Suryadi, "Nahdatul Ulama dan Isu Lingkungan (Komitmen NU Mewujudkan Keadilan Ekologi dan Sumber Daya Alam)," *Jurnal Mimikri*, Vol. 9, no. 1, (Juni 2023), hlm. 123.

<sup>15</sup> Samuel Risal, DB. Paranoan, dan Suarta Djaja, "Analisis Dampak Kebijakan Pertambangan Terhadap Kehidupan Sosial Ekonomi Masyarakat di Kelurahan Makroman," *Jurnal Administrative Reform*, Vol. 1, no. 3, (Juni 2013), hlm. 522.

<sup>16</sup> Salim HS., "Model Pengelolaan Pertambangan di Indonesia," *Jurnal Risalah Kenotariatan*, Vol. 3, no. 1, (Juni 2022), hlm. 40.



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Looking at Government Regulation Number 25 of 2024 concerning the Implementation of Mineral and Coal Mining Businesses in Article 83A paragraph (1), it is explained that although it is stated that mass organizations do not directly manage mining, the granting of Mining Business Permits (IUP) can have a number of negative effects if not managed well. The potential irregularities in granting Mining Business Permits (IUP) to community organizations are as follows:<sup>17</sup>

- 1) Lack of experience and competence. Many CSOs may not have the experience or technical expertise necessary to manage mining activities efficiently and safely. This can lead to poor mining practices, potentially damaging the environment and threatening worker safety.
- 2) Potential for internal conflict, granting IUP to mass organizations can trigger internal conflict within the organization, especially if there are differences of opinion regarding resource management or profit sharing. This conflict can weaken the organizational structure and hinder the implementation of mining activities.
- 3) Weak supervision and regulation. CSOs may potentially not be subject to the same stringent standards of supervision and regulation as large mining companies. This can lead to unsustainable and potentially unlawful mining practices.
- 4) Local economic instability. If revenues from mining activities are not managed well, economic instability can occur at the local level. Local communities may not receive the expected economic benefits, or the funds generated may be misused.
- 5) Corruption and abuse of power. There is a risk that individuals within mass organizations could misuse IUPs for personal gain, which could lead to corruption and misuse of natural resources.

The fundamental problem that arises in public criticism of mining management given to mass organizations is related to the capability of religious organizations in managing mines, considering the limited resources and experience in the mining industry. Religious organizations will face difficulties in meeting the technical and operational requirements necessary to manage mines effectively. In addition, there are concerns that the involvement of religious organizations in mining could lead to conflicts of interest and negative impacts on the environment.<sup>18</sup>

Experience and competence really determine the quality of mining, because mining greatly affects the quality of nature. Abrar Saleng stated that various negative impacts of mining activities are as follows:<sup>19</sup>

- 1) Mining business in a relatively short time can change the shape of the land topography and the condition of the land surface (land impact) so that it can change the balance of the ecological system for the surrounding area.
- 2) Mining businesses can cause various kinds of disturbances, including pollution due to dust and smoke that pollute the air and water, water waste, tailings, and mine waste containing toxic substances.
- 3) Mining carried out without regard to work safety and field geological conditions can cause landslides, mine explosions, mine collapses and earthquakes.

### ***The Auction Process is Overruled***

An auction is the process of buying and selling goods or services by offering them to bidders, offering a higher price bid, and then selling the goods to the highest bidder. In economic theory, auction refers to several trading mechanisms or regulations of the capital market. If we look at it from a legal perspective, auctions are legal institutions that always exist in the legal system in Indonesia to meet the needs of the community, one of which is fulfilling the sale of an object through auction as regulated in statutory regulations. An auction is known as an agreement that includes buying and selling in both civil law and common law.<sup>20</sup>

Before obtaining an IUP, prospective mining actors must submit an application first. When the IUP application is received, the prospective mining actor must make a reclamation and post-mining plan which contains land use, land clearing plans, reclamation programs, reclamation success criteria and reclamation cost plans. This planning must meet the standards set out in the Reclamation Implementation Guidelines, Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number: 1827 K/30/MEM/2018.<sup>21</sup>

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<sup>17</sup> Adinda Agis Fitria Cahyani, "Potensi Penyimpangan Izin Usaha Pertambangan Ormas Dalam Peraturan Pemerintah Nomor 25 Tahun 2024," *Rewang Rancang: Jurnal Hukum Lex Generalis*, Vol. 4, no. 11, (September 2023), hlm. 14.

<sup>18</sup> T. Ade Surya dan Audry Amaradyaputri Suryawan, "Pelibatan Ormas Keagamaan dalam Pengelolaan Tambang," *Buletin Info Singkat*, Vol. XVI, No. 15/Pusaka, (Agustus 2024), hlm. 13.

<sup>19</sup> Nurul Listiyani, "Dampak Pertambangan Terhadap Lingkungan Hidup Di Kalimantan Selatan Dan Implikasinya Bagi Hak-Hak Warga Negara," *Jurnal Al'Adl*, Vol. 9, no. 1, (April 2017), hlm.71.

<sup>20</sup> Ria Juliana Siregar, "Pelaksanaan Lelang Terhadap Penerapan Prinsip Keadilan di Indonesia, Jurnal Visi Sosial dan Humaniora," *Jurnal Visi Sosial dan Humaniora*, Vol. 3, no. 2, (Desember 2022), hlm. 190.

<sup>21</sup> Andi Arief Rachman, Muh. Jamal Amin, dan Mohammad Taufik, "Pengawasan Pertambangan Batubara Terhadap Kegiatan Reklamasi di Kota Samarinda Coal Mining Supervision of Reclamation Activities in Samarinda City," *JIP: Jurnal Ilmu Pemerintahan*, Vol. 9, no. 4, (Desember 2021), hlm. 161.

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Based on the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 7 of 2020 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities, the IUP auction is as follows:

- 1) Article 1 point 7: Metal Mineral Mining Business License Area Including Associated Minerals, hereinafter referred to as Metal Mineral WIUP, is part of the Metal Mineral WUP which is given to Business Entities, cooperatives and individuals through auction.
- 2) Article 1 point 8: Coal Mining Business License Area, hereinafter referred to as WIUP Batubara, is part of the WUP Batubara which is given to Business Entities, cooperatives and individuals through auctions.
- 3) Article 1 point 11: Auction is a method of offering WIUP or WIUPK in the context of granting Exploration IUP, Production Operation IUP, Exploration IUPK, and/or Production Operation IUPK for metal minerals and coal.
- 4) Article 5 paragraph (1): The Director General prepares Metal Mineral WIUP or Coal WIUP in the designated WUP as intended in Article 3 paragraph (1) to be offered by auction to Business Entities, cooperatives and individuals.
- 5) Article 11 paragraph (7): If the holder of an IUP or IUPK is not interested in mining commodities that are not an association or a different group as intended in paragraph (1) and paragraph (2), the business opportunity can be given to another party and held by auction.
- 6) Article 18: Metal mineral WIUP and coal WIUP that have been determined as intended in Article 10 paragraph (1) are granted by the Minister or governor in accordance with their authority by means of an auction to business entities, cooperatives and individuals.

This is different from the Regulation of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 7 of 2020 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities. Looking at the Government Regulation of the Republic of Indonesia Number 25 of 2014 concerning Amendments to Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities, it does not regulate the obligation of Religious Organizations to take part in the auction stages first.

The absence of an auction process in the ownership of Religious Organization IUPs violates the principle of transparency in the auction process, namely requiring all levels of society to be aware of the auction plan and to have the same pleasure in participating in the auction as long as it is not prohibited by law. Therefore, every auction must be preceded by an auction announcement.<sup>22</sup>

### **B. Utilization of mining business permits in accordance with the principles of justice and equality** **Affirmative Action Application Of The Concept Of Affirmative Action**

The nickel mining industry currently has a huge impact on economic growth and society. But economic growth without paying attention to good environmental impacts will result in inequality and can even become an obstacle to economic growth itself. Environmental damage can be caused by various things, including government policies. The government in its position as a regulator should be able to provide a policy that takes into account all potential and threats to the environment to always maintain the balance and preservation of nature in the sense that policy orientation must consider environmental ethical values.<sup>23</sup>

Mining activities carried out without involving the surrounding community can cause social, environmental and economic problems for the community. Apart from that, ecological problems that arise from mining activities have a huge impact on society, such as floods, abrasion, forest fires, landslides and tornadoes.<sup>24</sup>

We have briefly explained how the government's ambition to become the largest nickel producer in the world, by taking advantage of the issue of the energy transition to new, renewable, environmentally friendly energy, the Indonesian government is encouraging massive expansion of the nickel mining industry starting with the enactment of Law No. 4 of 2009 concerning Minerals and Coal. On the island of Sulawesi, 293 mining business permits have been issued for nickel commodities, divided into 3 provinces (South, Central and Southeast Sulawesi). The entire mining concession with nickel commodities controls 639,403.26 hectares of land or equal to 66.9% of the total forest cover area as classified by the Ministry of Environment and Forestry (KLHK).<sup>25</sup>

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<sup>22</sup> Vina Putri Salim dan Bambang Sugeng Ariadi Subagyono, "Keabsahan Lelang Non Eksekusi Sukarela Secara Online Tanpa Pejabat Lelang," *Jurnal Notaire*, Vol. 5, no. 1, (Februari 2022), hlm. 160.

<sup>23</sup> Muhammad Sibgatullah Agussalim, Ariana, dan Ramlan Saleh, "Kerusakan Lingkungan Akibat Pertambangan Nikel Di Kabupaten Kolaka Melalui Pendekatan Politik Lingkungan," *Polita: Journal Of Social Religion Research*, Vol. 8, no. 1, (April 2023), hlm. 45

<sup>24</sup> Rezki Purnama Samad, A.M. Yunus Wahid, dan Hamzah Halim, "Urgensi Partisipasi Masyarakat terhadap Izin Usaha Pertambangan Pasir," *Al-Ishlah: Jurnal Ilmiah Hukum* 24, no. 1 (Mei 2021).

<sup>25</sup> Tim Penyusun, Catatan Akhir Tahun 2021 Red Alert Ekspansi Nikel di Sulawesi, *Laporan Penelitian*, WALHI REGION SULAWESI, hlm. 11.

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One of the vulnerable communities affected by nickel mining is as stated in research conducted by La Maga<sup>26</sup>, by pointing out the damage to agricultural activities due to nickel mining. The mining issue also concerns the lives of indigenous communities, due to the weak position of indigenous communities in demanding their rights related to mining investment due to the submissive nature and subservience of traditional leaders to regional and central governments/ It is feared that this could erode the sense of nationalism, to demand their rights which have been passed down from generation to generation. as one thing that must be maintained when dealing with foreign investors. The support of the Government and Regional Governments towards indigenous communities when negotiations with foreign investors take place is highly expected to strengthen the existence of indigenous communities.<sup>27</sup>

Applying affirmative action to communities around mining areas is more appropriate in managing mineral and coal IUPs, by involving third parties or professionals who manage them. Community groups will become IUP holders, forming a legal entity in the name of the community group, this will encourage good financial income and open employment opportunities for the surrounding community.

Looking at the description above regarding the social and economic impacts of mining activities, an affirmative action concept is needed to provide specialization for vulnerable communities affected by mineral and coal mining. This shows that the parameters of Religious Organizations which can only receive IUP privileges cannot be justified, because rationally only vulnerable communities can receive the IUP.

Through affirmative action, the hope is that equitable justice will be created, as stated by Elizabeth S Anderson, affirmative action aims to seek to remove obstacles to policies that are considered detrimental to certain communities, by providing specificity for vulnerable communities.<sup>28</sup>

### **Utilization of Corporate Social Responsibility**

Reporting from tvonenews.com, the government, represented by the Minister of Investment, Bahlil Lahadalia, stated that the granting of permission to manage the mining business was motivated by historical factors and the spirit of equality or justice. Religious organizations are considered to have made a contribution in the era of Indonesia's struggle for independence, so that because of the struggle of these religious figures, religious organizations have the right to contribute to the mining business in Indonesia. This affirmative policy was provided in order to reduce the burden of financing Religious Organizations in carrying out development in the social, educational and health sectors which are accommodated in PP 25/2024. This is also in line with the provisions of Article 83A paragraph (1) PP 25/2024 which opens with the phrase "in the context of improving community welfare" which indicates that equal distribution of welfare is one of the main motives for the birth of this policy.<sup>29</sup>

An alternative that the Government can use without having to grant IUPs to Religious Organizations in Indonesia is to provide Corporate Social Responsibility (CSR). Corporate social responsibility is one of the essences that a company must provide to the social environment in which a company is located. Conceptually, the definition of Corporate Social Responsibility can be concluded as the company's social responsibility to create a balance in the social, economic and environmental conditions in which the company is located. Corporate social responsibility in general is a moral responsibility that must be paid by the company to stakeholders in the company, community or society as well as the ecology/environment. Thus, a company must be able to provide social impact and responsibility for stakeholders, society and the environment where the company operates.<sup>30</sup>

CSR is an important and inseparable part of the company's growth and survival in the future. This can cause CSR to become an investment in the company's future to create sustainable development. The sustainability of a mining activity will run if its implementation is carried out well and correctly.<sup>31</sup>

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<sup>26</sup> La Maga, "Analisis Dampak Aktivitas Pertambangan Nikel PT. X Terhadap Pendapatan Petani Padi Sawah Di Kecamatan Tinanggea Kabupaten Konawe Selatan," *Jurnal Kajian Ekonomi dan Studi Pembangunan*, Vol. 9, no. 1, (April 2022), hlm. 8.

<sup>27</sup> Rifi Marcelino Sumampouw, "Perlindungan Hukum Terhadap Hak Masyarakat Adat Di Wilayah Kegiatan Pertambangan," *Jurnal Lex Privatum*, Vol. 8, no. 3, (September 2020), hlm. 27.

<sup>28</sup> Moh. Bagus, Ahmad Khubby Ali Rohmat, dan Helga Nurmila Sari, "Darivasi Konsep Hak Asasi Manusia Terhadap Penyetaraan Posisi Anak Melalui Pendekatan Affirmative Action," *Al-Qanun: Jurnal Pemikiran dan Pembaharuan Hukum Islam*, Vol. 4, no. 1, (Juni 2021), hlm. 75.

<sup>29</sup> Rahmat Bijak Setiawan Sapii, Fikri Rafi Musyaffa Abidin, dan Syalaisha Amani Puspitasari, "Ambiguitas Pengaturan Penawaran WIUPK Secara Prioritas Terhadap Badan Usaha Milik Ormas Keagamaan," *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, Vol. 11, no. 1, (Juli 2024), hlm. 90-91.

<sup>30</sup> Rahmadani, Santoso Tri Raharjo, dan Risna Resnawaty, "Fungsi Corporate social responsibility (CSR) Dalam Pengembangan dan Pemberdayaan Masyarakat," *Share: Social Work Jurnal*, Vol. 8, no. 2, (2018), hlm. 204.

<sup>31</sup> Suhardiman Gumanti dan Bayu Dharmaraga Alkahfi, "Corporate Social Responsibility (Csr): Membangun Sinergi Antara Masyarakat Dan Perusahaan Melalui Pemberdayaan Masyarakat Dan Lingkungan Di Wilayah Tambang," *Jurnal Manajemen & Akuntansi Prabumulih*, Vol. 5, no. 2, (Desember 2021), hlm 29.

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The option to make CSR an alternative in providing forgiveness to religious organizations should be taken first before granting exclusive rights to IUPs to religious organizations. The reason is that CSR so far has not been able to run well but has not been able to be realized properly to bring prosperity.

Implementation of CSR policies in Indonesia still requires a lot of attention from all parties, including the government, the wider community and companies. Among the thousands of existing companies, it is indicated that not all companies actually implement the CSR concept in their company activities. CSR is still another part of company management, so its existence is considered not to make a positive contribution.<sup>32</sup>

### CONCLUSIONS

Based on the discussion above, it can be concluded that the dynamics and problems of granting mining business permits to Religious Organizations are: First, the potential for silencing public supervision. Second, the low level of experience and competence of Religious Organizations in managing mineral and coal mining. Third, the auction process is set aside by eliminating the auction obligation for Religious Mass Organizations in receiving IUPs. Utilization of mining business permits in accordance with the principles of justice and equality consists of: First, the concept of implementing affirmative action for specific IUPs must be given to vulnerable communities. Second, the use of CSR should be an alternative for the Government to provide financial assistance to Religious Organizations rather than providing IUPs which have no rational reason to be handed over to Religious Organizations.

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