



Economic and Legal Perspectives on Mining Permits in Protected Forest Areas for Realizing Ecological Justice

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Abstract— The first foundation for rendering public assistance. This study aims to examine how population administration connected to public services is implemented using the single identity number policy. The research question is how the political orientation of the single identity number law function would enhance public service administration. The research employed a normative legal methodology to examine the legal politics of Law No. 23 of 2006, as amended to Law No. 24 of 2013. The study's findings demonstrate how the politics of the single identity number law are implemented in population administration by assigning each resident a unique population identification number (NIK), which is valid for their entire life, included in all population documents, and serves as a single identity number for all public service issues. The politics surrounding the "single identity number" law focus on safeguarding residents' legal status, creating a national population database, and leveraging the "single identity number" to enhance public services by allowing public service institutions to integrate and use population data. After partnering with the government, any public service organization can acquire the authorization to access demographic data.

Keywords— Ecological Justice, Economic Analysis of Law, Environmental Law.

I. INTRODUCTION

This article examines government regulations that continue to severely permit mining activities in protected forest regions. Despite several concerns, the Forestry Law's article, including this clause, still needs to be amended. This article critically analyzes mining permit policies in protected forest areas as an environmental concern. The study's foundation is doctrinal research techniques, which combine conceptual and statutory procedures. The foundation for the discussion of the advantages of Indonesian laws and regulations, which are directly tied to the issuance of mining permits in protected forest areas, is Posner's economic analysis of law (EAL) theory. The study explicitly uses the ecological justice perspective as a guide to assess the importance, practicality, and effectiveness of these regulations.[1]

For communities to survive, government policies must be balanced with the value of protected forests. According to their purpose, protected forests are ecosystems that maintain soil fertility, manage water resources, avert flooding, regulate erosion, and stop saltwater intrusion. The idea of ecological justice, which holds that protection is extended to species other than humans, is strongly tied to these ideals. Humans need to protect the natural environment they live in to survive. The ecological justice perspective contests human dominance over any form of non-human objects, including nature. This viewpoint then presents the reasoning behind the

movement to defend the rights of non-human entities to justice. The idea of ecological justice in this study holds that people shouldn't use natural resources for personal gain.[2]

Comprehending the notion of ecological justice will serve as the foundation for evaluating the advantages of permitting mining enterprises in protected forest areas. The government has included a clause that states that the only activities forbidden in protected forest areas are open-pit mining activities, citing Article 38 of the Forestry Law in conjunction with the Job Creation Law. Of course, one could interpret these regulations to mean that mining operations are still permitted in addition to open-pit mining operations. Using protected forest areas for mining is a loan-to-use method under the Central Government's policy. Even though Article 38 demands that they undertake the mining activity without compromising the forest's fundamental function and addressing environmental sustainability, does this policy embody ecological justice?

This question is a concern because of the many objections emerging from the licensing process given to mining corporations to carry out their activities in protected forest regions. However, in 2020, Indonesia was the country with the second-largest protected forest area in the world. Based on the data gathering results undertaken by the Global Forest Resources Assessment and the Food and Agriculture Organization (FAO), Indonesia has a total protected forest area of up to 51.7 million hectares. This quantity is 7% of the world's protected forest area. This statistic reveals that Indonesia has a significant role in sustaining the sustainability of the world's ecosystem.

As a kind of accountability for commercial activities that have harmed the environment, the government then mandates environmental conservation efforts for forest regions held by Indonesia. In this instance, nevertheless, mining operations are still considered to be detrimental to the sustainability of the ecosystem.[3] The benefits and drawbacks of the mining permit regime are still being debated based on this theory. However, significant conservation expenditures and a considerable amount of time will be needed to guarantee that environmental conservation activities can return environmental harm to its previous state. However, it is undeniable that Indonesia possesses natural wealth in the form of precious and high-quality mining minerals.

Based on Posner's EAL theory, this study addressed concerns of ecological justice concerning the mining permit issuance. The purpose of these economic concepts is to evaluate the worth, usefulness, and efficiency of government actions. These three components can boost happiness and prosperity for the entire community. Then, one could argue that the government's policies are worthy of opposition and adhere to reasonable norms. Following this line of reasoning, the EAL indicators will be used to determine if the ecological justice requirements of the mining permit policy in protected forest areas have increased welfare and happiness.

The examination will be broken down into multiple smaller areas. First, "Posner's perspective on the economic analysis of law" will be explained at the outset of the presentation. The conceptual framework, which serves as the study's analytical instrument, is presented in this part. Second, because the standards of ecological justice have been met, the analysis will keep looking at how well government policies increase people's pleasure. The subheading "Aspects of ecological benefits under mining permits in protected forest areas" will contain the study's findings.

II. RESEARCH METHOD

Doctrinal research methodologies were used in this study. The context-based and regulatory-legislative methods offer a summary of the ideal circumstances that need to be fulfilled within the confines of the legal system. This study combines ecological ecology theory, environmental and forest sustainability notions and current and anticipated regulations. The laws and rules that apply to the borrowing and use of forest areas for mining activities are the subject of the investigation. The legal economic analysis theory facilitates applying economic principles to enhance citizen welfare and establish legal certainty. The deduction was the method used for analysis. Both descriptive and prescriptive formats will be used to present the research findings.

III. FINDINGS AND DISCUSSION

A sensible person's actions will undoubtedly yield results that will make him happy. Posner consequently sees legislation as an economic instrument that may optimize happiness. In this instance, Posner highlighted the existence of legal science norms that need to be upheld when applying a financial framework of thought.[4] This idea concerns how the law should work, ensuring society is treated fairly. Development in this situation can be accomplished by deciding on fairness norms that will serve as a guide for judging an individual's level of satisfaction. EAL can be used as an analytical tool to examine the content of legislation once the principles of justice have been established. Value, utility, and efficiency are the key components that must be reviewed before implementing EAL. These three components serve as measuring sticks for human rationality, allowing us to determine whether or not the level of happiness or usefulness has increased.

Whether enacting a law will be effective depends on whether the benefits outweigh the costs. A sensible decision-maker will operate to maximize the advantages of his choices. According to rational choice logic, rivalry will always exist to manage limited resources.[5] This idea is included in the classical economic theory, which assumes that people constantly desire more than what is readily available. Therefore, there may be competition for an object or condition that is deemed unusual based on these features. Humans are rational maximizers. Thus,

they will search for other options, enabling them to emerge from the circumstance as the one with the most significant profit. However, this state also suggests that satisfying human desires is difficult. Thus, to protect the public interest, a corridor must be constructed. Nonetheless, utilitarian reasoning contends that the happiness attained has to have the most significant potential influence.[6]

Based on this idea, a reasonable decision made by an individual gives them the choice of whether to carry out or end an action. In the meantime, the aspects of EAL must be considered when determining the basis for benefits that will dictate the measures to be adopted. The examination of the values found in the statutory regulations must come first. Value makes room for something deemed essential. This value may manifest as a desire or a need for something with monetary or non-monetary value. This thought process will result in actions that are thought to advance individual interests. One's level of pleasure with oneself will, of course, be impacted by upholding principles that are deemed essential. Finding the features of the object under study might help determine its value. The potential gains or losses will be computed once the object's value and suitability for the goals being pursued are known. Whether or not there is a rise in prosperity and economic benefits is the subject of this conclusion.

Applying general economic concepts, figuring out earnings also entails totaling necessary expenses. In this instance, the computed costs must consider the action's externalities. The profits must be deducted after all necessary payments have been made to get analysis results about all the advantages received. Second, the intended program's efficiency must be the basis for computations. Legal science standards come in various forms, and efficiency calculations are one of them. The Coase Theorem of Efficiency will be considered while assessing efficiency in this study.[7]

According to Coase, a rule satisfies efficiency requirements if the government has a transparent system for holding itself accountable.[8] This requirement is evident in how the resource allocation procedure is conducted. A law is considered highly efficient when it can benefit the most significant number of people in the greatest possible way when it is put into practice. Accordingly, by the first principle, the effectiveness of regulation will rise when the legislation may reduce the expenses necessary to raise its helpful value. It must be highlighted again in this instance that prices consider not just the financial calculations made for the firm but also externality elements and intrinsic value perceived by parties other than those directly involved.

Regarding this study, assessing the efficacy of putting regulations in place for awarding mining permits in protected forest regions largely depends on using the EAL theory. The fundamental importance of justice, which will measure happiness and legal certainty, must be acknowledged as a limitation of this study. Since justice can take many forms as legal studies progress, it is essential first to understand the ideal justice model. Numerous justice models, including distributive, procedural, compensatory, gender, intergenerational and interspecies, individual, national, and international justice, are now known. The concepts of ecological justice will serve as the foundation for the justice principles in this study.[9]

One way that environmental justice is developing is through ecological justice. Arne Naess highlights the significance of a comprehensive fight in the logic of ecological justice. His opinions and quest for ecological justice came to be seen as a critique of environmental justice movements.[10] According to Naess, environmental justice is only a movement that advocates for petty causes. This viewpoint is founded on the fight for ecological justice, which primarily addresses issues with air pollution and natural resource management. In many instances, Naess recognized the environmental justice movement's capacity to reduce harmful environmental effects. Nevertheless, if this battle is won, certain socioeconomic classes may have to sacrifice and see increased living expenses.[11]

Unlike the notion of environmental justice, Naess's deep ecological movement aims to achieve an all-encompassing ideal state.[12] The fundamental argument Naess put up to address environmental issues is the realization that ecosystems provide necessary circumstances for human survival. Since nature is the source of human life, Naess stressed the value of respecting nonhuman entities crucial to ensuring human survival. Because of this, human dependence on nature can give rise to intrinsic worth predicated on nature's instrumental value to human life. The biospherical understanding, which holds that both humans and nature have the right to exist, is greatly influenced by this egalitarianism.

Ecological justice is brought to bear when the rights of nonhuman things are acknowledged, challenging the notion that humans have a superior position over nature, which is exploited to fulfill human interests alone. Aldo Leopold reinforced this idea by arguing that the potential of an activity to produce integrity, beauty, and stability in the biotic community determines whether it is right or wrong.[13] An activity can be deemed incorrect if it fails to provide the desired results. In addition, Baxter stressed the value of showing respect for nonhuman beings.[14] Baxter even advocated for these entities to have the same legal standing as people in this case.

This presentation demonstrates the analytical process used to determine whether mining permit rules in protected forest areas are beneficial in light of their alignment with the three EAL criteria. Value, utility, and efficiency are these three components. This study will be conducted utilizing ecological justice concepts as a foundation for the criterion of happiness that will be considered in this process. An examination will determine whether the policy has included ecological justice values. The analysis's findings will be applied to determine whether or not the article carrying mining permits in protected forest regions can continue to be in effect.

The government's authority to manage natural resources in Indonesia makes it an institution with the authority to establish forest functions and areas. This arrangement then opens up opportunities for parties to apply for permits for business activities other than activities related to forest management. One form of this is having a mining business permit, which can be carried out in protected forest areas. Even though the Forestry Law has been revised in 2004 and 2023, these provisions are still in effect. Referring to Article 26 of the Forestry Law, the government can utilize protected forests by carrying out activities such as area utilization, utilization of environmental services, and collection of non-timber forest products. To maintain ecosystem balance, forest use permits should be limited under the provisions of Article 31.[15][16]

A change to Article 38 of the Forestry Law gave rise to the controversy. Because it allowed the government to authorize mining in protected forest regions, this article first caught the interest of a number of people, including environmental watchers. The primary function of a forest cannot be altered by human activity, as stated in Article 38 of the Forestry Law. To conduct mining operations in this region, the party in question must apply for approval from the ministry through a loan-to-use process, considering the permissible area and time constraints to protect the ecosystem. An open mine management approach is not what the mine management should be using. To put it plainly, open-pit mining will destroy forest regions, which could interfere with the forest's primary purpose. Closed mining does not, however, absolve it of adverse environmental effects. According to paragraph five, the Minister may, upon approval from the House of Representatives (DPR), award borrowing and usage licenses with significant results, broad applicability, and strategic significance to uphold the execution of these laws. In this instance, the government is trying to maintain the system of checks and balances between the executive and legislative branches.[17]

The threat of long-term environmental damage from mining permits granted in protected forest areas still has the potential to disrupt the ecosystem and jeopardize the community's survival, even with a security mechanism in place for permits that have strategic value for the interests of the larger community through approval from the DPR. Nevertheless, there are still a lot of rejections. The government released the Job Creation Law, which included specific changes to certain sections during its preparation. The mining permit remained in effect following the revisions made to the document. This time, however, the permission was solely in the control of the national government. The DPR's former ability to act as a check and balance has likewise been eliminated. It is acknowledged, therefore, that the government must continue to consider environmental sustainability when determining the duration and scope of permissions. By enabling local governments to issue mining permits in protected forest and conservation forest regions, these provisions fortify the Mineral and Coal Law.[17]

An analysis will determine the efficacy of these rules in the struggle for ecological justice based on the laws governing mining permits in protected forest regions and the stipulations of Article 33, paragraph (3) of the Constitution. As was previously noted, utilitarian calculations—which are informed by factors related to a regulation's usefulness—are utilized to determine the effectiveness of a rule. Article 33, paragraph (3), which grants the government the power to control nature to maximize prosperity for the populace, further demonstrates this idea. These factors suggest that attempts to improve well-being motivate the government's ability to regulate animals. This welfare will subsequently gauge people's happiness. Nevertheless, it should be remembered that welfare has more worth than just money. The total benefits will be calculated using material and non-material factors after the EAL components.[18]

An additional common term about the notion of ecological justice will be employed in this investigation. As previously mentioned, there are several markers of ecological justice, including 1) The identification of non-human creatures, such as plants, animals, and the natural world; 2) Because humans and nature are inextricably linked, humanity must respect nature; 3) Non-human things are subjects of law and have the right to protection as well; and 4) It is not acceptable to use nature in a way that compromises its integrity, stability, or biotic communities.

Several factors can be observed while evaluating the efficacy of laws that authorize mining in protected forest regions based on indications from the ecological justice concept and components in EAL. The analysis examines the importance of protected forests and the mining process. According to the broad provisions of the Forestry Law, maintaining ecological justice greatly benefits from protected forests. Protected woods preserve life support systems that manage water, prevent flooding, regulate erosion, prevent seawater intrusion, and maintain soil fertility. These traits are evident in their function. Ascertaining that people would live in a healthy environment is the primary purpose of protected forests, according to the identification procedure.[2]

However, values associated with mining operations in protected forest regions need to be taken into account. The expenses incurred to profit from the economic activity will determine the worth of these mining activities. According to numerous literary works that have studied closed mining operations, the investigation and extraction of minerals from the earth will continue to harm the environment. These activities nonetheless have negative externalities that make inhabitants uncomfortable, even though they might not be apparent at first. The government must consider the long-term effects of abandoned mine excavations, in addition to the fact that the granted licenses' validity period has passed. Protected woods, after all, keep natural ecosystems in balance so as not to endanger human existence.

Based on an economic standpoint, however, only mining employees and business owners may directly gain. Based on these factors, it may be concluded that the primary purpose of protected forests has a high enough ecological justice value to benefit the larger community. However, there are substantial financial consequences associated with mining operations in protected forest regions. Only the parties directly participating in these economic activities benefit from them. When ex-mining alters the soil's structure and lessens the capacity of protected forests to perform their duties, local populations may suffer long-term consequences.

Second, the effectiveness of the rules governing mining permits in protected forest regions must be considered. In this instance, Coase contends that when duties are well-defined, and resources are distributed, a rule can be deemed to satisfy efficiency requirements. When a law can help many individuals during its execution, it is considered highly efficient. Concerning these indicators, resource sharing is evident in the classification of forest kinds according to their area management and function. The government has imposed prison penalties and fines as an accountability mechanism. Without a doubt, this clause does not promote ecological justice. However, monetary compensation is not the only way to compensate for environmental harm. Environmental harm has not only taken a long time to return to normal, but it has also jeopardized the lives of several non-human organisms that the ecological justice model advocates for.

Third, advantages must be considered to determine if mining permit rules in protected forest areas are adequate. The government's issuance of mining permits will surely boost the profits from the extraction of mining resources. When these materials are exported, the nation also accepts other benefits. According to the ecological justice paradigm, on the other hand, resource development and exploitation in protected forest regions only sometimes result in positive benefits. Furthermore, the ecological justice perspective holds that this chance need not be taken advantage of immediately because humans can still discover and utilize natural resources. At the very least, people are inherently unsatisfied and will always look for ways to make money whenever they can. All mining goods in Indonesia could run out at any time if permission to open mines in protected forest areas is granted based only on humans' desire to pursue material advantages. Over the previous 20 years, there has also been a significant amount of mining product exploitation. It has also been demonstrated that this procedure cannot appreciably raise communal well-being. Because of this, the government's pursuit of social justice must be more selective.[19]

Ecological justice will be achieved through maintaining the positive aspects of protected forests by the forest's fundamental function. Community well-being may be raised in the long run by upholding ecological justice. On the other hand, this justice model will give individuals chances to appreciate nature. When protected forests are preserved, and the products of natural resources are still held in their original locations, ecological benefits outweigh the short-term economic gains that must be made in exchange for environmental harm. Benefits from justice between generations and between species can also come from ecological justice. This justification suggests that the mining permit policy in protected forest regions is neither beneficial nor efficient. Using it frequently results in significant expenses. Because of this, the government must take further action to revoke this policy promptly.

IV. CONCLUSION

In light of this, protected forests are far more valuable, practical, and effective than the mining licenses issued nearby. Because it violates the principles of ecological justice, using protected forest areas as closed mining sites still carries the risk of substantial long-term losses. Thus, the government must assess this strategy to maximize the prosperity of the protected forest management process for the entire Indonesian population. To reap the most significant benefits from eliminating mining permits in protected forest regions, the government may try to amend the Forestry Law's Article 38 and reinstate the concept of ecological justice in the management of protected forests.

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