



The State's Right of Control Over Mineral and Coal Mining: Between Regulation and Welfare

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Abstract. This study aims to analyze the regulation of the State's Right of Control over mineral and coal mining within the Indonesian legal system, examine the state's authority in its implementation, and formulate an ideal legal policy in line with constitutional mandates. The concept of the State's Right of Control, as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, affirms that the land, water, and natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. However, in practice, the implementation of regulations in the mining sector still presents various challenges, including weak state oversight, the dominance of foreign companies, and the suboptimal realization of downstream processing. This research employs a normative juridical method with statutory and conceptual approaches, supported by qualitative analysis of secondary data. The findings indicate that although the legal framework governing the State's Right of Control is relatively comprehensive, its implementation has not fully guaranteed the welfare of communities in mining regions. Therefore, the ideal legal policy should position the state not only as a regulator but also as the primary manager through state-owned and region-owned enterprises, restrict the dominance of foreign corporations, and ensure that all mining benefits are returned to the people through sustainable development and the improvement of local socio-economic welfare.

Keywords: State's Right of Control, Mineral and Coal Mining, Legal Policy, Public Welfare.

1 Introduction

1.1 Background

Republic of Indonesia stipulates that the land, water, and natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. The concept of the State's Right of Control represents the embodiment of the principle of people's sovereignty over natural resources, whereby the state is mandated to regulate, manage, and supervise their utilization for public welfare [1]. This principle is further reinforced by the elucidation of Law Number 5 of 1960 concerning the Basic Agrarian Law, which elaborates and specifies its meaning [2]. According to the elucidation of the Basic Agrarian Law, the State's Right of Control encompasses land, water, and outer space, both with respect to resources already subject to individual rights and those not yet possessed by any party. The state's authority over land that has been granted to individuals is limited by the scope of the rights conferred. In other words, the extent of state authority corresponds to the boundaries set by the rights granted to the holder, and beyond that limit, state power ceases to apply [3].

The issue of state control over natural resources remains an unresolved matter to this day. Since Indonesia's independence, the abundant natural wealth, which is essential to the livelihood of the people, has not yet yielded fair welfare nor fully achieved the goal of prosperity. It is understood that one of the nation's vital resources, namely the control and exploitation of mineral and coal mining, has been regulated philosophically, sociologically, and juridically in the 1945 Constitution of the Republic of Indonesia. Article 33 paragraph (3) of the 1945 Constitution serves as the primary guideline for the governance of natural resources, particularly mineral and coal resources [4].

First, the philosophical foundation is reflected in the phrase "controlled by the state," which signifies that mineral and coal mining must be under the authority of the state and not of any other party. Second, the sociological foundation is embodied in the phrase "for the greatest prosperity of the people," which underscores that the Indonesian people, as the rightful owners of natural resources, must obtain tangible welfare benefits from the management of mineral and coal mining. Third, the juridical foundation lies in Article 33 paragraph (3) of the 1945 Constitution, which provides the normative basis for the implementation of state control and management of mineral and coal resources, functioning as a general principle to ensure that these resources remain under state authority and are utilized to achieve the greatest prosperity of the people [5].

In the context of mineral and coal mining, the concept of the State's Right of Control is elaborated through Law Number 4 of 2009 concerning Mineral and Coal Mining, which was later amended by Law Number 3 of 2020. This regulation emphasizes that minerals and coal, as non-renewable natural resources, constitute national wealth that must remain under state control and be utilized for the greatest prosperity of the people [6].

Nevertheless, the practical implementation of the State's Right of Control continues to demonstrate significant imbalances. Many coal-producing regions, despite their abundant natural wealth, still experience relatively high poverty rates. For instance, South Sumatra, which holds the second-largest coal reserves in Indonesia at 9.3 billion tons, recorded production of 104.68 million tons in 2024, generating state revenue of IDR 9.898 trillion. Yet, the province still has 1.11 million poor residents, or 12.98 percent of its population [7]. Similarly, East Kalimantan, with coal resources amounting to 59.69 billion tons and proven reserves of 10.95 billion tons, still reports 245.99 thousand poor people, or 6.64 percent of the population. In South Kalimantan, with 13.22 billion tons of coal resources and 3.02 billion tons of reserves, there remain 206.92 thousand poor residents, equal to 4.83 percent of its population. The same problem can also be observed in Jambi, which possesses 2.87 billion tons of coal resources and reserves of up to 913 million tons, yet the province still has 288.10 thousand poor people, or 7.97 percent of its population [8].

In addition, the revenue-sharing system through the Revenue Sharing Fund between the central and regional governments is often perceived as inequitable. The disproportionate distribution results in producing regions receiving only limited benefits compared to the substantial ecological, social, and economic costs they bear. Consequently, the welfare of communities in mining areas has not significantly improved, despite the massive exploitation of natural resources.

From a regulatory perspective, mining governance is frequently entangled in political-economic interests and the dominance of large corporations, both domestic and foreign. Although the state holds the authority to grant mining licenses, in practice, control and supervision over environmental and social impacts are often weak. As a result, the principle of the State's Right of Control, which should be oriented toward the people's prosperity, tends to shift into a mere instrument for legitimizing exploitation.

Furthermore, the issue of downstreaming in the mining sector presents another challenge. Mining activities remain heavily dominated by raw material exports, leading to suboptimal economic added value. Downstreaming, which ideally should serve as a driver of regional development, has yet to be effectively realized due to weak regulations and limited commitment in its implementation.

In light of these challenges, it is important to re-examine how the implementation of the State's Right of Control in mineral and coal mining regulations is carried out, and whether existing policies are genuinely capable of delivering welfare to the wider community. Such an inquiry is also crucial to assess the extent to which the state remains consistent with the constitutional mandate, which positions state control over natural resources not as an end in itself, but as an instrument to achieve social justice and the welfare of the people.

Thus, this study arises from both academic concerns and social apprehension regarding the persistent gap between mining regulations and community welfare. The examination of The State's Right of Control over Mineral and Coal Mining: Between Regulation and Welfare becomes crucial in order to provide both conceptual and practical contributions toward improving the direction of legal policy in the mining sector.

1.2 Problem Formulation

- a. How is the regulation of the State's Right of Control over mineral and coal mining within the Indonesian legal system?
- b. How is the state's authority exercised in controlling mineral and coal mining in Indonesia?
- c. What constitutes the ideal legal policy regarding the State's Right of Control over mineral and coal mining?

1.3 Research Question

- a. How is the regulation of the State's Right of Control over mineral and coal mining within the Indonesian legal system?
- b. In what form is the state's authority implemented in exercising control over mineral and coal mining in Indonesia?
- c. What model of legal policy is ideal in regulating the State's Right of Control over mineral and coal mining in order to achieve justice and public welfare?

1.4 Research Objectives

- a. To analyze the regulation of the State's Right of Control over mineral and coal mining within the Indonesian legal system.
- b. To examine the state's authority in exercising control over mineral and coal mining.
- c. To formulate an ideal legal policy concerning the State's Right of Control over mineral and coal mining so as to maximize its benefits for the prosperity of the people.

2 Research Methodology

Research methodology is essentially the discipline that examines the procedures for conducting legal research in a systematic manner. Its primary function is to provide guidance for researchers in studying, analyzing, and understanding the legal issues under investigation [9]. In other words, research methodology can be understood as the approach or steps employed to identify and examine a particular

research topic or subject [10]. This study adopts a normative juridical method, which is based on literature review and focuses on the examination of both primary and secondary legal materials [11]. The research further conceptualizes law as a normative system [12], which encompasses the study of legal doctrines and fundamental principles within the discipline of law [13]. The approaches applied in this study are the statute approach and the conceptual approach. The data utilized consist entirely of secondary sources, which are subsequently analyzed through a qualitative method in order to generate comprehensive and in-depth arguments.

3 Findings

3.1 Regulation of the State's Right of Control over Mineral and Coal Mining within the Indonesian Legal System

The concept of the State's Right of Control was first introduced in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which stipulates that land, water, and the natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. Its elucidation further emphasizes that land, water, and natural resources are the foundations of public welfare; therefore, they must be controlled by the state and directed toward the greatest prosperity of the people.

The formulation of the principle of the State's Right of Control was essentially intended to abolish and replace the *Domein Verklaring* principle that was applied in the Dutch East Indies during the colonial period, as set forth in Article 1 of the *Agrarisch Besluit*, enacted in *Staatsblad* 1870 No. 118. Through the *Domein Verklaring*, the Dutch colonial government asserted that all land for which ownership could not be proven would be declared as state property [14]. This principle reinforced the notion of absolute control by the state over land (*staat ter beschikking van de landsoverheid*) [15]. Such a concept of *domein* was closely associated with the idea of state ownership (*eigendom*) or the state as the owner (*eigenaar*) in a *privaatrechtelijk* (private law) sense.

In addition to the Constitution, the concept of the State's Right of Control is elaborated in the elucidation of Law Number 5 of 1960 concerning the Basic Agrarian Law. According to this elucidation, the State's Right of Control extends over land, water, and outer space, including both those already subject to individual rights and those not yet possessed by any person. The authority of the state over land already held under individual rights is limited by the scope of those rights. In other words, the extent of the state's authority corresponds to the boundaries of the rights conferred upon the holder, and beyond that, state authority does not apply.

Moreover, the concept of the State's Right of Control over mineral and coal mining is more specifically regulated under Law Number 3 of 2020, which amends Law Number 4 of 2009 on Mineral and Coal Mining. Article 4 of this law stipulates that mineral and coal mining, as non-renewable natural resources, constitute national wealth to be controlled by the state and utilized for the greatest prosperity of the

people. Accordingly, state control over mineral and coal mining is carried out by the central government. Such control is exercised through the functions of policy-making, regulation, administration, management, and supervision. Furthermore, Article 4 paragraph (2) specifies that "State control over minerals and coal as referred to in paragraph (1) shall be exercised by the Central Government in accordance with the provisions of this Law."

According to the Constitutional Court Decision No. 002/PUU-I/2003, the phrase "controlled by the state" must be understood as "... encompassing the notion of control by the state in a broad sense, derived from and rooted in the conception of the sovereignty of the Indonesian people over all natural resources of the land and water and the wealth contained therein, including the notion of public ownership by the collective people over such resources. The collective ownership of the people, as constructed by the 1945 Constitution, mandates the state to perform its functions in formulating policy (*beleid*), administrative actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*)."

3.2 State Authority over Mineral and Coal Mining in Indonesia

Authority, in essence, can be understood as the right, power, or legal competence possessed by a legal subject to undertake certain actions based on statutory provisions. In the context of governance, authority constitutes the juridical foundation that enables state organs or governmental institutions to lawfully perform their functions, duties, and responsibilities. According to Ridwan HR, in practice, power (*kekuasaan*) and authority (*kewenangan*) in governance are difficult to separate, as both reflect the capacity of government in carrying out its functions. Power refers to the ability to influence others, while authority emphasizes the legal legitimacy granted by statutory norms [16]. Therefore, every governmental action must be grounded in lawful authority to be valid and accountable.

In the field of mineral and coal mining, the conceptual basis of state authority is rooted in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which stipulates that land, water, and the natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. This provision contains both philosophical and juridical significance, affirming that the state, as a sovereign political entity, derives a constitutional mandate to control natural resources for the welfare of society. Article 33 paragraph (3) thus serves not only as positive law but also embodies a *rechtsidee* (legal ideal), namely that the management of natural resources is an integral part of the objectives of the state [17].

The 1945 Constitution, as the supreme law of the land, positions the State's Right of Control as one of the central pillars of the national legal system. Tri Hayati emphasizes that the Constitution cannot be regarded as ordinary legislation but rather as the fundamental norm of the state (*staatsfundamentaalnorm*). Accordingly, state control over mineral and coal mining is not merely an administrative policy but a constitutional mandate that must be consistently implemented [18].

The term “state” in Article 33 paragraph (3) must be interpreted carefully. The “state” refers to the sovereign authority that exercises power both internally and externally. Consequently, the primary implementation of the State’s Right of Control lies with the central government, as only the central government possesses full capacity to represent the state in public legal relations, both domestically and internationally. Nevertheless, in technical aspects of managing region-specific natural resources, regional governments may still be involved within the framework of regional autonomy, thereby ensuring that the benefits of mineral and coal mining are directly felt by local communities.

This mandate is further reinforced in Law No. 3 of 2020 amending Law No. 4 of 2009 on Mineral and Coal Mining. Article 4 explicitly affirms that mineral and coal mining, as non-renewable natural resources, constitutes national wealth to be controlled by the state and utilized for the greatest prosperity of the people. Accordingly, such control is exercised by the central government. State authority is not limited to ownership but is manifested in the functions of policy-making (*beleid*), regulation (*regelendaad*), administration (*bestuursdaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) [19].

Bagir Manan explains the relationship between the State’s Right of Control and the objective of achieving the greatest prosperity of the people. According to him, the state has three fundamental obligations: first, the utilization of land, water, and natural resources must tangibly improve public welfare; second, the state must protect and guarantee the people’s rights inherent in natural resources, whether enjoyed directly or indirectly; and third, the state must prevent actions by individuals or corporations that deprive people of their rights to benefit from natural resources. This underscores that the State’s Right of Control is of a public nature and must not be reduced to mere private ownership by the state [18].

A different perspective is provided by Mohammad Hatta, who argued that the phrase “controlled by the state” in Article 33 paragraph (3) does not necessarily mean that the state must directly manage all economic activities, including mining. According to Hatta, the state may delegate management to private entities, provided it remains under strict governmental supervision. He envisioned Article 33 as dividing economic enterprises into three sectors: cooperatives, state-owned enterprises, and private enterprises. This division was intended to avoid capitalist domination driven solely by private profit, to the detriment of public interests. Thus, private sector participation in mining remains permissible, but the state is obliged to ensure that public interest, not private capitalist gain, remains the priority.

In essence, the concept of the State’s Right of Control is not meant to position the state as an absolute owner, but rather as a regulator, planner, executor, and supervisor in the utilization of mineral and coal resources. Its public law character distinguishes it from the notion of ownership in private law. Accordingly, every policy, regulation, and governmental action in the field of mineral and coal mining must be directed toward the public interest and the welfare of the people.

These principles are further accommodated in the Mining Law, which stipulates that mining activities must provide maximum economic and social benefits for the welfare of the Indonesian people. The law also emphasizes the importance of regional development, empowerment of small and medium enterprises, and the development of mining-supporting industries. Moreover, mining activities must be conducted in accordance with the principles of sustainable development, including environmental protection, transparency, and community participation.

More specifically, Article 3 of Law No. 4 of 2009 outlines the objectives of mineral and coal mining activities: (a) ensuring the effectiveness of mining operations and their control to be efficient, productive, and competitive; (b) ensuring sustainable utilization of mineral and coal mining while considering environmental preservation; (c) guaranteeing the availability of minerals and coal as raw materials and energy sources for domestic needs; (d) supporting and fostering national capabilities to compete regionally and globally; (e) increasing local, regional, and national income, as well as creating jobs to achieve public welfare; and (f) ensuring legal certainty in the implementation of mining activities [19].

From the foregoing, it is clear that constitutionally and juridically, the concept of the State's Right of Control over mineral and coal mining is intended to realize the greatest prosperity of the people. This implies that the management of mineral and coal mining must involve the community, both through active participation and through access to the benefits of infrastructure and facilities arising from mining activities. Moreover, mining enterprises must contribute tangibly to improving the quality of life of communities through education, employment creation, and local economic growth, while simultaneously strengthening the national economy as a whole.

Thus, state authority over mineral and coal mining can only be justified if government policies and management deliver tangible and direct benefits to the people. If state control were exercised solely to increase state revenue without considering public welfare, it would contravene the constitutional mandate. Therefore, the implementation of the State's Right of Control must always be tied to the pursuit of social justice and the welfare of the people, as enshrined in the 1945 Constitution of the Republic of Indonesia.

3.3 The Ideal Legal Policy on the State's Right of Control over Mineral and Coal Mining

The concept of the State's Right of Control, as stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, must be understood in a broad sense. The phrase "controlled by the state" does not merely refer to formal control by the government but also encompasses public ownership by the people, administered through a mandate entrusted to the state. This mandate is realized through the state's authority to establish policies (*beleid*), carry out administrative actions (*bestuursdaad*), issue regulations (*regelendaad*), undertake management (*beheersdaad*), and conduct supervision (*toezichthoudensdaad*). All these functions

are directed toward a single ultimate goal, namely the realization of the greatest prosperity of the people [20].

A significant shift in the interpretation of Article 33 paragraph (3) occurred following the constitutional amendments. Prior to the amendments, the elucidation of Article 33 expressly prohibited the involvement of private or individual actors in the management of natural resources, thereby granting the state full authority as both manager and executor. However, after the amendments, the elucidation of Article 33 was removed, opening the door for third-party participation. This shift created a conceptual dilemma by transforming the role of the state from that of both manager and executor to a predominantly regulatory function. Consequently, many post-reform regulations provided wide opportunities for private entities to engage in the management of natural resources, including mineral and coal mining [18].

The ideal legal policy regarding the State's Right of Control over mineral and coal mining should restore the constitutional meaning of Article 33 paragraph (3) as envisioned by the nation's founders. The state should not merely act as a regulator but must assume the role of principal manager. While regulatory functions remain important, the state must strengthen its role through the direct involvement of State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD) in the management of mining activities. Thus, the state would not only regulate and supervise but also serve as the primary actor controlling the production chain, from exploration and exploitation to processing and distribution of mining products.

The participation of third parties may still be possible but should ideally be limited to national companies partnering with BUMN or BUMD under a framework of equitable cooperation. The involvement of foreign corporations should be minimized, as it risks fostering economic dependence, revenue leakage, and the erosion of state sovereignty over strategic resources. In this ideal framework, the state must decisively restrict foreign dominance in mineral and coal mining while optimizing national capacity through the strengthening of technology, human resources, and processing as well as refining infrastructure.

Furthermore, legal instruments such as licenses, contracts, or concessions should function solely as administrative mechanisms to support the state's role, not as tools granting excessive discretion to private or foreign entities in controlling strategic sectors. These instruments should be designed to ensure that all profits from mining activities flow back to the state and its people through taxation, royalties, mandatory downstreaming, and sustainable development programs in mining regions.

From the perspective of administrative law, Ten Berge and Van der Pot classify licensing regimes into permits (*vergunning*), dispensations (*dispensatie*), and concessions (*concessie*). In the context of mineral and coal mining management, concessions are the most relevant instrument since they concern activities of public interest that should ideally be directly managed by the state but may, in practice, be carried out by private parties under strict conditions. Through concessions, the government retains full control by means of contracts and formal agreements, which impose obligations on concession holders such as downstreaming, reclamation,

environmental protection, and tangible contributions to the welfare of mining communities.

In line with this, Anthony I. Ogus distinguishes public interest goods into two categories: public goods and public ownership. Mineral and coal resources fall within the category of public ownership, namely resources collectively owned by the people whose utilization must generate equitable social and economic benefits [21]. Hence, the government cannot relinquish responsibility solely to market mechanisms but must act as the primary regulator and supervisor. Legal instruments such as concessions and permits must therefore be framed within the doctrine of state control, not merely as commercial contracts benefiting investors.

Accordingly, the ideal legal policy regarding the State's Right of Control over mineral and coal mining should:

Guarantee legal certainty through regulations consistent with the constitutional mandate.

Position the state as both regulator and active manager through BUMN and BUMD.

Strictly regulate private involvement through licensing or concessions aligned with public interests.

Ensure that all mining activities contribute tangibly to public welfare, environmental sustainability, and national development.

4 Conclusion

The regulation of the State's Right of Control over mineral and coal mining within the Indonesian legal system is grounded in Article 33 paragraph (3) of the 1945 Constitution, which affirms that such control encompasses the functions of policy-making, regulation, administration, management, and supervision. This constitutional mandate is reinforced through various laws, including Law No. 4 of 2009 as amended by Law No. 3 of 2020, along with their implementing regulations.

The state's authority over mineral and coal mining is primarily exercised by the central government as the representative of the state, while involving regional governments within the framework of autonomy. Such authority must be implemented to ensure the greatest prosperity of the people, protect community rights, and prevent the domination of private or foreign entities that could undermine national interests.

The ideal legal policy on the State's Right of Control over mineral and coal mining should not only establish the state as a regulator but also as the primary manager through BUMN and BUMD. The state must be resolute in limiting foreign participation, optimizing downstreaming processes, and ensuring that all mining activities provide tangible contributions to public welfare, environmental sustainability, and national economic sovereignty.

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