

## Green Constitution In Government Supervision of Mining Activities

Darmawan Arung Pryantomo Mangawe<sup>1\*</sup>, Marthinus Johaness Saptanno<sup>2</sup>, Jemmy Jefry Pietersz<sup>3</sup>

<sup>1,2,3</sup>, Faculty of Law, Universitas Pattimura, Ambon, Indonesia.

@ : apmangawe@gmail.com

Corresponding Author\*



### Abstract

**Introduction:** This article analyzes the concept of Green Constitution, which is essentially the idea of sustainable environmental development. The eco-friendly concept itself is more of a method rather than a status, more of a verb rather than an adjective.

**Purposes of the Research:** The purpose of this article is to understand and analyze the concept of Green Constitution in the management of mining resources, as well as the government's supervisory responsibility over mining activities based on the Green Constitution concept.

**Methods of the Research:** In conducting this research, the author employs a normative juridical legal research method. Juridical research refers to examining legal aspects based on legislation, while normative research is legal research aimed at finding legal rules and doctrines to address existing legal issues.

**Results Main Findings of the Research:** Based on the findings of existing research, the Green Constitution functions as a critique of interests that only prioritize economic benefits over the environment. As a result of regulations that do not fully uphold the Green Constitution, there is an impact on the weak supervision from the government over mining activities.

**Keywords:** Green Constitution; Government Supervision; Mining.

Submitted: 2024-11-04

Revised: 2025-03-24

Accepted: 2025-03-28

Published: 2025-03-31

How To Cite: Darmawan Arung Pryantomo Mangawe, Marthinus Johaness Saptanno and, Jemmy Jefry Pietersz. "Green Constitution In Government Supervision of Mining Activities." PAMALI: Pattimura Magister Law Review 5 no. 1 (2025): 170-182. <https://doi.org/10.47268/pamali.v5i1.2428>

Copyright © 2025 Author(s)



Creative Commons Attribution-NonCommercial 4.0 International License

## INTRODUCTION

Natural resources are a gift from God Almighty that helps the welfare of the Indonesian people in all fields. This is in line with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which gives the State the authority to manage, preserve, and make the best use of the nation's resources in order to realize a successful and just Indonesian society. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that the state controls natural resources and is obliged to use them as much as possible for the greatest prosperity of the people. The natural resources found in the land and waters of Indonesia belong to the Indonesian people and are the wealth of the state.

A number of articles in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining have the potential to have a negative impact on society and the environment in accordance with the Sustainable Development Goals, making it a controversial document with its advantages and disadvantages, because many articles in Law Number 4 of 2009 are considered to support social justice and environmental

sustainability but it is not found again, so Law Number 3 of 2020 is actually considered a form of setback of legal goods.<sup>1</sup> Given the complexity of environmental management and mining operational problems that are increasingly handled by mining industry players, this contributes to the depletion of natural resources and causes more adverse impacts than benefits to local communities.

The real manifestation in the constitutionalization of environmental norms is the *Green Constitution*. The *Green Constitution* or green constitution implements environmental sovereignty or *ecocracy*, where the environment is no longer an object that can be arbitrarily tampered with by humans but the environment is a subject that has its own rights to be preserved and also protected from damage.<sup>2</sup> The country's responsibility for environmental protection and management is increasingly being paid attention to by countries in the world, both developed and developing countries, after world development which causes a decline in environmental quality globally.

One of the global environmental problems that has received attention and must be faced by the world community today is *global warming* which causes climate change. Global warming is a modern and complex problem. Poverty, economic development and population growth are the causes. It is not an easy thing to overcome and if you do not pay attention to it it will make the situation worse.

The *green constitution* applies environmental sovereignty or *ecocracy*, where the environment is no longer an object that can be arbitrarily manipulated by human brains but the environment is a subject that has its own rights to be preserved and also protected from damage. Incorporating the *Green Constitution* into the Indonesian legal framework can be the foundation for sustainable environmental management and contribute to the preservation of a clean and healthy environment that is able to support people's lives and be inherited to future generations, in the constitution of a country, the idea of *Green Constitution* is basically the idea of sustainable environmental development.

The abundance of mining operations and resource management damages ecosystems and the environment. Standards - standards of environmental damage should be established to measure the adverse impact on the environment. Aware of the standard standards for environmental damage that have been set. Damage to the environment and ecosystems is a common consequence of resource management and mining operations. Environmental damage standards must be established to measure adverse impacts on the environment. Recognize established standard criteria regarding environmental damage.<sup>3</sup>

The *green constitution* applies environmental sovereignty or *ecocracy*, where the environment is no longer an object that can be arbitrarily manipulated by human brains but the environment is a subject that has its own rights to be preserved and also protected from damage. Incorporating the *Green Constitution* into the Indonesian legal framework can be the foundation of sustainable environmental management and contribute to the preservation of a clean and healthy environment that is able to support people's lives and

---

<sup>1</sup> Bashtotan Milka Gumilang, Sherly Oktariani and Tari Suswinda, "Analisis Undang-Undang Nomor 3 Tahun 2020 Yang Berpotensi Merugikan Masyarakat Dan Lingkungan Berdasarkan Prinsip Sustainable Development Goals," *Jurnal Hukum Lex Generalis* 3, no. 11 (2022): 87-91, <https://doi.org/10.56370/jhlg.v3i11.336>.

<sup>2</sup> Jimly Assidhiqie, *Green Constitution Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, (Jakarta: Rajawali Press, 2009), p.iii

<sup>3</sup> Takdir Rahmadi, *Hukum Lingkungan di Indonesia*, (Jakarta: Raja Grafindo Persada, 2012), p.90

be inherited to future generations, in the constitution of a country, the idea of *Green Constitution* is basically the idea of sustainable environmental development.

The idea of eco-friendliness itself is more of a method, not a status, more of a verb, not an adjective. In addition, many laws and regulations and government actions are contrary to the 1945 Constitution of the Republic of Indonesia because they are not in accordance with the mandate of the law. The author's focus is to examine in detail the Conception of *the Green Constitution* as the Basis for Government Supervision of Mining Activities for the Fulfillment of People's Constitutional Rights, in order to preserve the environment and uphold the constitutional rights of citizens, this research is expected to be able to answer constitutional problems.

## LITERATURE REVIEW

### A. Green Constitution Concept

The Constitution is the fundamental principle that underlies the political and legal structure of a country, usually made in the form of a written document. The Constitution arises from the process of forming a government and includes rules and principles for political and legal structures. The rules explicitly describe the basic principles of political and legal organization, which include the establishment, protocols, jurisdiction, and duties of state governments<sup>4</sup>. The Constitution can be understood in a limited and broad sense. In particular, the constitution deals with legal regulations that limit the authority of the government. At its core, the constitution encompasses all the important rules and principles of law, regardless of whether they are written, unwritten, or a combination of both, that govern a country. The Constitution includes not only legal legislation but also non-legal norms<sup>5</sup>.

The concept of Green Constitution thinking is not new, because it has been regulated in many countries. This concept, particularly in relation to environmental conservation, includes the protection of human rights towards the environment in the country's constitution. This shows a clear commitment to environmental protection and good governance. This document that has been developed is generally referred to as *the Green Constitution*.<sup>6</sup> The term "Green Constitution" has been commonly used since the 1970s to indicate the relationship of something to the idea of environmental protection. Today, there are a number of terminologies related to the concept of "green", including green economy, green book, green jobs, green-collar jobs, green markets, green buildings, and others. Within the domain of justice, the concepts of "green courts" and "green benches" also emerged. The use of the word "green" before a verb or adjective aims to highlight a conscious effort and correlation between environmental conservation issues and actions taken.<sup>7</sup>

The Green Constitution incorporates the idea of democratic governance based on law and also recognizes the primacy of the environment or ecosystem in which the government establishes its governance, consistently adhering to the principles of ecologically sustainable

---

<sup>4</sup> Irfan Jamallullail, "Politics Of Law In The Establishment Of A National Regulatory Body: A New Direction For Legal Reform," *Journal of Law and Legal Reform* 1, no. 4 (2020): 681-90.

<sup>5</sup> Nanang Subekti et al., "International Journal of Advanced and Applied Sciences Convergence of Green and Sustainable Principles from the Perspective of Economic Democracy in Indonesia" 11, no. 5 (2024): 36-43.

<sup>6</sup> Riris Ardhanariswari and Muhammad Fauzan, "The Efforts to Make a Green Constitution Through Judicial Review Conducted by the Constitutional Court" 358, (2019): 273-76, <https://doi.org/10.2991/icglow-19.2019.68>.

<sup>7</sup> Muhammad Naufal Ariyanto, "Menuju Mea Dengan Green Constitution Indonesia (Diskursus Paradigmatik Evironmental Sustainable Development)," *Prosiding Seminar Nasional*, (2016), 82-97.

development. Ecocracy is a form of democracy that transcends national boundaries and has a broader meaning due to its close relationship with the Earth and nature comprehensively. Ecocracy is a variant of democracy that ensures the preservation of nature and the earth, thereby reducing risks to our country or the surrounding region. The concept of eco-economy should guide the development of state policies, both political and legal, related to environmental conservation and management. The idea of co-operation must be clearly defined and incorporated into the Green Constitution so that it can be integrated into the national framework.<sup>8</sup>

## B. Green Constitution in Indonesia

The 1945 Constitution of the Republic of Indonesia includes environmental management as an integral part of human rights, by recognizing the environment as a fundamental right for every citizen. However, it is recognized that Indonesia needs to adopt a more explicit and progressive approach by integrating constitutional protection for environmental rights directly into the 1945 Constitution of the Republic of Indonesia. This step is important to fulfill the country's responsibility to environmental issues and ensure sustainability for future generations.<sup>9</sup> The 1945 Constitution of the Republic of Indonesia is a basic legal document that indirectly includes provisions for environmental protection and several human rights guarantees. The concept of the Green Constitution focuses only on the principles of power, human rights, and economic considerations. The concept of human rights for a healthy environment, as stated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, reflects the idea that sovereignty is in the hands of the people.

The Green Constitution integrates the concept of democracy in relation to the principles of sustainable development and environmental awareness, as explicitly explained in Article 33 Paragraph (4) of the 1945 Constitution of the Republic of Indonesia. According to paragraph (4) of Article 33, the national economy is regulated based on the principles of economic democracy, unity, justice, environmental sustainability, self-sufficiency, and maintaining a balance between progress and national economic unity.<sup>10</sup>

In Indonesia, the concept of *Green Constitution* or Green Constitution was first introduced by Jimly Asshiddiqie in his work entitled "Green Constitution: Green Nuances of the 1945 Constitution of the Republic of Indonesia" In the work, the author emphasizes that the term *green constitution* refers to a constitution in which the environment has complete sovereignty. When a country adopts the concept of a *green constitution*, it means that green principles are established as the legal basis for environmental management. Jimly Asshiddiqie stated that history shows the development of environmental policy through two different phases. At first, people began to realize the importance of environmental conservation. As a result, efforts are being made to improve environmental law regulations by implementing various legislative rules. However, as time goes on and conditions develop, it becomes clear that current regulations are not enough to prevent environmental damage.

---

<sup>8</sup> Lusi Puspita Sari, "Konstitusionalisasi Dan Implementasi Konsep Hijau Dalam Uud 1945," *Seri Seminar Nasional*, (2022), 815-24.

<sup>9</sup> Hermanto dan Yusa, "Implementasi Green Constitution Di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan."

<sup>10</sup> Sekar Anggun Gading Pinilih, "The Green Constitution Concept in the 1945 Constitution of the Republic of Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 1 (2018): 200, <https://doi.org/10.22146/jmh.28684>.



The ideas of the Green Constitution should not only be implemented in the 1945 Constitution of the Republic of Indonesia and national legislation, but also in all local legal products, including Regional Regulations and other regional regulations. Integrating the idea of the Green Constitution into local regulations can definitely improve the preservation and sustainability of the environment in various regions. Sustainable development, as defined in Article 1 paragraph 3 of Law Number 32 of 2009 concerning Environmental Protection and Management, refers to deliberate and organized efforts that integrate environmental, social, and economic factors into development strategies. The goal is to ensure environmental preservation, security, capacity, well-being and quality of life for current and future generations, by applying these principles, sustainable growth can be achieved without causing environmental damage. This demonstrates the implementation of the principles of the Green Constitution in local legislation, enabling the achievement of national development goals while maintaining environmental sustainability and community welfare in certain areas.

### C. Green Constitution in Mining Management in Indonesia

The law serves as a tool to validate policy instruments in environmental management, including Environmental Quality Standards, Environmental Impact Evaluation, and Environmental Permits. Support for the Green Constitution concept for mineral and coal mining regulations has actually been quite accommodated in the form of laws, Government Regulations and Regulations of the Minister of Energy and Mineral Resources, in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, in Article 8A paragraph (2) the mineral and coal management plan is prepared by considering: 1) the carrying capacity of natural resources and the environment according to basic and thematic geospatial data and information; 2) environmental conservation; 3) regional spatial planning and/or zoning; 4) the development of science and technology; 5) economic growth rate; 6) priority of providing mining commodities; 7) the number and area of taxpayers; 8) the availability of mining land; 9) the amount of mineral or coal resources and/or reserves; and 10) the availability of facilities and infrastructure.

Article 39 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, every Mining Business License holder is also required to pay attention to the environment with the obligation: a) the obligation to carry out Reclamation and Post-Mining; b) the obligation to prepare environmental documents; and c) the obligation to carry out community development and empowerment around the Mining Business License Area.

From some of the regulations mentioned above, according to the author, the spirit of the lawmakers, both executive and legislative, has been drawn that actually for mining management in Indonesia, each permit holder must be responsible not only for the management of his mines but also further to the aspect of environmental management. So it is hoped that after the mining area has been completed, the environmental ecosystem in the area can recover to its original state and the land can be used again for the surrounding community such as farming or other activities that have an economic impact on the community. However, there are inconsistencies in the law. According to Nadapdap & Hutabarat<sup>11</sup>, One of the main problems is the lack of consistency between the various

---

<sup>11</sup> Binoto Nadapdap and Sylvana MD Hutabarat, "Tanggung Jawab Sosial Perusahaan: Antara Kewajiban Dan Kesukarelaan," *Jurnal Yuridis* 2, no. 1 (2015): 111–34.

elements in the law. In particular, no administrative sanctions are imposed on companies that fail to meet reclamation obligations or commence post-mining activities as promised when applying for permits, in situations like these, it is very important for the government to have the authority to revoke permits directly when reclamation guarantees are not met. In addition, the absence of legal sanctions for non-compliance with the document requirements required to obtain a mining permit significantly increases the likelihood and severity of environmental damage due to mining activities. This situation also opens up opportunities for misuse of funds allocated for reclamation plans and post-mining activities, as well as increases the risk of corruption involving government agencies and mining companies, which can ultimately lead to financial losses for the state<sup>12</sup>. One baby the seven.

## METHODS OF THE RESEARCH

Type of Research: in the preparation of this research, the author uses a type of normative juridical legal research, which means juridical research is by looking at legal aspects based on laws and regulations, while normative research is a study in the field of law to find legal rules, as well as legal doctrines to answer existing legal issues. The author chooses normative juridical research because the author seeks to conduct research related to the Conception of *the Green Constitution* as the basis for government supervision of mining activities for the fulfillment of the people's constitutional rights. The researcher will examine the formulation of the problem with the applicable legal norms and rules, explain it in detail and then provide legal solutions to the research conducted. This research is carried out based on and based on the legal norms contained in existing laws and regulations, as well as examining legal provisions that are norms and materials derived from literature.<sup>13</sup> Problem Approach: the author uses normative legal research to analyze the issue being discussed. Normative legal research, often known as library-based legal research, is a strategy used in legal research that involves the analysis of existing literature. The initial stage of normative legal research focuses on obtaining objective legal standards by investigating legal issues. The purpose of the second stage of normative law research is to obtain subjective law, which involves rights and obligations.<sup>14</sup> The author's studies are mostly centered on legislative methods and case approaches. The legislative method involves a comprehensive analysis of all laws and regulations relating to the legal issue under discussion. The case approach involves the analysis of court decisions related to the specific situation being discussed, in this study the author focuses on the Legislative Approach. According to Peter Mahmud Marzuki, the legal approach is carried out by examining all relevant regulatory laws related to the problems being handled. The Legislative Approach is an approach using legislation and regulation. A normative research must certainly use a legislative approach because what will be studied are various legal rules that are the focus as well as the central theme of a research. This legal writing is intended to comprehensively understand and analyze the hierarchy of laws and regulations and the principles in laws and regulations. The legislative approach is carried out by examining all laws and regulations related to the legal issues being handled.<sup>15</sup> Legal Material Sources: this study uses secondary data, which includes legal articles and legal

<sup>12</sup> Ida Kurniasih, "Telaah Terhadap Aktivitas Pertambangan Yang Berdampak Pada Lingkungan Hidup Di Indonesia Dilihat Dari Sudut Pandang Analisis Economic of Law," *The Juris* 7, no. 1 (2023): 7-16, <https://doi.org/10.56301/juris.v7i1.801>.

<sup>13</sup> Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, PT Kharisma Putra Utama, vol. 11 (Jakarta: PT Kharisma Putra Utama, 2019).

<sup>14</sup> Hasan Haridi, "Analisis Penegakan Hukum Tindak Pidana Korupsi Terhadap Penyaluran Raskin Desa Sukadamai Natar Lampung (Studi Kasus Perkara Nomor: 18/Pid.Tpk/2013/PNTK)" (Universitas Lampung, 2014).

<sup>15</sup> Marzuki, *Pengantar Ilmu Hukum*.

actions relevant to the issue. Secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials. Primary: The sources from which primary legal materials are obtained include: 1) The Constitution of the Republic of Indonesia of 1995; 2) Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining; 3) Article 23 of Law Number 41 of 1999 concerning Forestry; 4) Law Number 23 of 2014 concerning Regional Government; 5) Government Regulation Number 75 of 2014 concerning Business Licensing for the Mineral and Coal Mining Sector. Secondary: Secondary legal materials are obtained from library sources and consist of legal materials that are directly relevant to the issue being researched, such as the text of the Indonesian Criminal Code Bill. Tertiary: Tertiary legal materials include various scientific publications, seminar materials, research findings by researchers, legal textbooks, website searches, and other print media related to the subject being discussed. Legal Materials Collection Techniques: the author will use two types of legal material search approaches in gathering the resources needed for this research, namely: a) Literature Studies: Library research involves the collection of primary, secondary, and tertiary literature related to the legal issues being investigated. These documents will then be examined taking into account relevant theories that can provide guidance. In addition, the authors of this study also examine and reference legal materials from sources such as legislation and literature relevant to this study. Legal resources will be obtained from the author's personal collection, the collection of the central library of Pattimura University, and the Documentation Center of the Faculty of Law of Pattimura University; b) Internet: The compilation of legal materials is done by visiting websites and online journals We must do who I would like to believe. And I. related to the legal issue under investigation. The legal documents are examined, analyzed, and compiled into a structured and interrelated system related to the research problem and problem formulation in this study.<sup>16</sup> The purpose of conducting library research is to gather relevant information related to the concern or legal topic being investigated. The library research process and internet exploration analyzed legislation and materials related to green constitutions and their impact on government oversight of mining activities.

## RESULTS AND DISCUSSION

### A. Regulation of Government Supervisory Authority in the Regulation and Management of Mining Activities in Indonesia

Constitution of the Republic of Indonesia Oh my god for 40 years, a happy birthday and in the news. The year 1945 does not clearly refer to the state's authority over natural resources in Article 33 paragraph 3. However, this understanding is slightly summarized and vaguely described in Law Number 5 of 1960 concerning Agrarian Principles. Law Number 5 of 1960 concerning Agrarian Principles defines the earth to include mineral resources. According to Article 1 paragraph 4 of Law Number 5 of 1960 concerning Agrarian Principles, the term earth includes not only the surface of the earth, but also the layers of the earth in it and everything that is under the body of water. These rules provide a clear understanding of the meaning of the term earth, in Law Number 5 of 1960 concerning Agrarian Principles defines the earth as covering the earth's surface, the subsoil, and its contents in water bodies. Based on the analysis of this legal material, mineral resources can

<sup>16</sup> Bahder Johan Nasution, *Metode Penelitian Hukum* (Bandung: Mandar Jaya, 2008).

be considered as part of the earth<sup>17</sup>. According to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal in Article 6 provides authority for the central government in its supervisory function: a) issuing business licenses; b) conducting guidance and supervision of the implementation of Mineral and Coal Mining business activities carried out by business license holders; c) Conduct guidance and supervision of reclamation and post-mining; d) managing mine inspectors; and e) managing the Mining Supervisory Officer.

Then in Article 140 of Law Number 3 of 2020 it changes the supervisory authority contained in Law Number 4 of 2009, which previously the supervisory function was carried out jointly between the Minister, the Governor and also the Mayor/Regent was changed to the supervisory function carried out by the Minister. The supervision carried out by the Government is in accordance with Article 141 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Minerals and Coal, confirming that the supervision supervised by the government consists of: a) Mining engineering; b) Production and Marketing; c) Finance; d) Mineral and coal data processing; e) Conservation of mineral resources and coal; f) Mining safety; g) Environmental, reclamation, and post-mining management; h) Utilization of goods, services, technology, and domestic engineering and design capabilities; i) Development of mining technical workforce; j) Development and empowerment of local communities; k) Mastery, development, and application of mining technology.

The supervision carried out by the Government is very important considering that the impact caused by mining activities is very large, especially towards the environment around the mine, with the supervision carried out by the Government can evaluate mining activities whether they are in accordance with the Standard Operating Procedure or not so that they can take action if in the field the company does not carry out in accordance with the Standard Operating Procedure such as revoking permits. The company is trying to stop the company. There are several elements of surveillance actions as follows:<sup>18</sup> a) There is a clear authority that is possessed; b) The existence of a solid plan as a testing tool for the implementation of a task to be supervised; c) Supervision actions can be carried out on an ongoing activity process or on the results achieved from the activity; d) Supervision does not end with the preparation of a final evaluation of the activities carried out and the final matching of the activities carried out and as a benchmark of the results achieved with the plan as a benchmark; e) Furthermore, supervision actions will be continued with follow-up both administratively and juridically.

According to Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities Article 6 (1), a Mining Business License is granted by the Minister. Article 6 (2) Business licensing is granted through the issuance of: Business Identification Number, standard certificate and/or permit. A Mining Business License is a requirement to be involved in mineral and coal mining operations in Indonesia. Mining operations are carried out in accordance with business licenses granted by the central government. This business license is obtained by obtaining a business identity number, standard certification, and other permits. These mining business licenses are granted to companies, cooperatives, and individual companies for the purpose of managing

---

<sup>17</sup> Muhammad Iqbal Asnawi, "Implikasi Yuridis Pengelolaan Pertambangan Dalam Aspek Kehidupan Sosial Ekonomi Masyarakat," *Jurnal Hukum Samudra Keadilan* 14, no. 1 (2019): 45–60, <https://doi.org/10.33059/jhsk.v14i1.909>.

<sup>18</sup> Roza Maiza Sova, *No Title* (Universita Islam Negeri Ar-Raniry, 2022).



and running their operational activities. According to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining article 36, Mining Business License consists of two different stages: a) Exploration Mining Business License: Includes general investigation, exploration and feasibility study activities; (b) A Safe Mining Permit. Production Operations: includes activities such as construction, mining, processing, refining, transportation, and sales.

## **B. The Government's Responsibility for Monitoring Mining Activities Based on the Green Constitution Concept**

The state's control over the Earth, water, air and everything contained in it is in accordance with constitutional principles, illustrates the existence of a very great responsibility. The power of the State must also be followed by the regulation of environmental protection and management in the interests of the people, the preservation of nature and the environment, the prevention of pollution, the protection of all threats that are destructive and potentially detrimental to nature and the environment, and responsibility for things that harm the community from natural and environmental damage, including natural disasters.<sup>19</sup> The government must exercise its power by understanding the function of a state. As Friedmann explained, the four functions of the state, namely<sup>20</sup>: 1) the provider, which is the state responsible for ensuring a minimum standard of living as a whole and providing other social security; 2) regulators, namely the state, establish rules of state life; 3) entrepreneurs, namely the state runs the economic sector through state/regional owned enterprises and creates a conducive atmosphere for the development of business fields; 4) Umpire, i.e. the state sets fair standards for parties engaged in the economic sector, especially between the state sector and the private sector or between certain business fields.

Law Number 32 of 2009 concerning Environmental Protection and Management provides two (2) of them the main concept of Indonesia's development, as contained in Article 1 of the general provisions, namely: 1) environmental protection and management, namely systematic and integrated efforts made to preserve environmental functions and prevent pollution and/or environmental damage which includes planning, utilization, control, maintenance, supervision and law enforcement; 2) Sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into a development strategy to ensure the integrity of the environment as well as the safety, ability, welfare and quality of life of current and future generations. This is of course in line with the concept of Green Constitution which has the characteristics of sustainable development and is environmentally friendly. However, these legal protections often view nature as an entity that may not offer adequate protection.

The state's authority over land, water, and natural resources is utilized to the maximum for the interests and welfare of the people, in accordance with the constitutional framework. The state has the greatest obligation because it has the highest authority. The state carries out this obligation through its machinery of government, which is governed by legislation.<sup>21</sup> The principle of state responsibility in environmental management, known as the Environmental Protection and Management Law, stipulates that the state guarantees the

<sup>19</sup> Mas Achmad Santosa, *Good Governance & Hukum Lingkungan, Indonesian Centre For Environmental Law*, (Jakarta, 2001), p. 87.

<sup>20</sup> Lukmanul Hakim, *Kedudukan Hukum Komisi Negara di Indonesia; Eksistensi Komisi-komisi Negara (State Auxiliary Agency) Sebagai Organ Negara yang Mandiri Dalam Sistem Ketatanegaraan*, (Malang: Program Pasca Sarjana Universitas Brawijaya Malang, Puskasi Universitas Widyagama Malang dan Setara Press, 2010), p. 49-50.

<sup>21</sup> Dona Pratama Jonaidi and Andri G Wibisana, "Landasan Doktriner Hak Gugat Pemerintah Terhadap Kerugian Lingkungan Hidup Di Indonesia," *Jurnal Bina Mulia Hukum* 5, no. 1 (2020): 156-75, <https://doi.org/10.23920/jbmh.v5i1.9>.

optimal use of natural resources to maximize the welfare and quality of life of its citizens, both now and in the future. Citizens have the right to a clean and healthy environment, guaranteed by the state. In addition, this principle aims to prevent pollution and/or environmental degradation due to activities that use natural resources<sup>22</sup>.

Government supervision of mining activities within the framework of the *Green Constitution* is based on several fundamental aspects, namely: a) State Constitution: Constitution of the Republic of Indonesia of 1945: Article 23A regulates the people's right to a good and healthy environment. Article 28H paragraph (1) regulates the right of everyone to live a healthy and prosperous life as well as the right to a good and healthy environment. Article 33 paragraphs (3) and (4) regulate the sustainable management of natural resources. Amendment to the 1945 Constitution of the Republic of Indonesia: Second Amendment (2000) adds Article 33 paragraph (2) which affirms that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people; b) Law: 1) Constitution of the Republic of Indonesia in 1945; 2) Law Number 32 of 2009 concerning Environmental Protection and Management; 3) Law Number 38 of 2004 concerning Roads; 4) Law Number 26 of 2007 concerning Spatial Planning; 5) Law Number 41 of 1999 concerning Forestry.

Other Laws: Laws related to business licensing, Environmental Impact Analysis, Environmental Management Efforts and Environmental Monitoring Efforts, environmental law enforcement, and so on; c) Government Regulations: 1) Government Regulation Number 75 of 2014 concerning Business Licensing for the Mineral and Coal Mining Sector; 2) Government regulations related to reclamation and revegetation of mining areas, control of environmental pollution from mining activities, and so on; d) Ministerial Regulation: 1) Regulation of the Minister of Environment and Forestry Number 5 of 2018 concerning the Utilization of Production Forests for Mineral and Coal Mining: Regulates the requirements for the use of production forests for mining activities; 2) Ministerial regulations related to environmental quality standards for mining activities, pollution and environmental damage from mining activities, and so on; e) *Green Constitution* Principles: 1) Intergenerational Justice: Government oversight must ensure that mining activities are carried out in a sustainable manner and do not harm future generations; 2) Prudence: Government oversight should be carried out carefully and consider all environmental aspects that may be affected by mining activities; 3) Community Participation: The community must be involved in the process of government supervision of mining activities; 4) Accountability: The government should be responsible for the oversight carried out on mining activities.

We need to learn in that while there had been the and. The concept of *green constitution* in the regulation of reclamation and post-mining in Indonesia is reflected through several aspects. First, there is an obligation for mining permit holders to carry out reclamation and post-mining as a form of responsibility for the environmental impact caused, in accordance with the principles of sustainable development. Second, the regulation of the principles of good mining principles, such as environmental protection, occupational safety, and resource conservation, reflects efforts to integrate environmental aspects in the management of mining activities. Third, the obligation to provide reclamation and post-mining guarantees as a form of accountability and the application of the polluter pays principle. However, its implementation still faces obstacles, because there are still several loopholes

---

<sup>22</sup> Zulkifli, Aspan, "Konstitusionalisasi Tanggung Jawab Negara Terhadap Pelestarian Fungsi Lingkungan Hidup." *Amanna Gappa* 30, no.2 (2022):149-55

that can be used by mining companies to prioritize economic orientation rather than having to revegetation that focuses on restoring environmental functions. Therefore, in the future, stricter regulations, supervision and strict law enforcement are needed so that the spirit of *the green constitution* can be realized optimally.<sup>23</sup>

## CONCLUSION

The idea of governance in the mining industry encompasses complexity and polyemia in a balanced manner. The sector considers governance important both for the environment and its own operations. Interventions in this environment are recognized as complex, challenging, and risky. As a result, the industry tends to adopt approaches that understand and integrate the specific characteristics of the environment (including natural, social, and political aspects) in the management of mining activities, both internally and externally. The adverse external impacts of this industry have prompted a reconsideration of corporate governance, which previously focused only on economic efficiency and internal business management must also focus on efforts to encourage environmental recovery. The sector has recognized the complexity of both governance systems and regulatory systems and the importance of considering these factors not only in terms of efficiency, but also in relation to conflict, legitimacy, and social justice. In addition, the concept of *the Green Constitution* should fundamentally change the hierarchical relationship between humans and the environment. Law Number 32 of 2009 concerning Environmental Protection and Management should be a basic milestone for all natural resource utilization activities, especially for regulations regarding minerals and coal because it uses the environment as the main medium, so that all regulations regarding mineral and coal mining must prioritize environmental restoration efforts so that Article 28 H paragraph (1) and Article 33 paragraph (4) of the Constitution of the Republic Indonesia in 1945, which became the breath of the *Green Constitution* concept, could be realized. The consequences of regulations that do not fully uphold *the Green Constitution* also have an impact on the weak supervision from the government over activities both before, during or after the mining production process ends and also on law enforcement in environmental crimes. So the author hopes that in the future the Government must be more aware of the environment both in terms of regulations and supervision, because good development is not only development that has a direct impact on the community but must also be environmentally friendly and sustainable. So that all natural resources contained in the territory of Indonesia can continue to be transferred to future generations to be used as much as possible for the prosperity of the people.

## REFERENCES

- Ardhanariswari, Riris, Muhammad Fauzan, "The Efforts to Make a Green Constitution Through Judicial Review Conducted by the Constitutional Court" 358, (2019): 273–76, <https://doi.org/10.2991/icglow-19.2019.68>.
- Ariyanto, Muhammad Naufal "Menuju Mea Dengan Green Constitution Indonesia (Diskursus Paradigmatik Evironmental Sustainable Development)," *Prosiding Seminar Nasional* 2016, 2016, 82–97.

---

<sup>23</sup> Gita Ranjani et al, "Konstitusi Hijau: Tinjauan Kemanfaatan Dan Pemulihan Lingkungan Hidup Melalui Reklamasi Dan Pascatambang"9, no.3 (2024): 108-33

- Asnawi, Muhammad Iqbal. "Implikasi Yuridis Pengelolaan Pertambangan Dalam Aspek Kehidupan Sosial Ekonomi Masyarakat," *Jurnal Hukum Samudra Keadilan* 14, no. 1 (2019): 45-60, <https://doi.org/10.33059/jhsk.v14i1.909>.
- Assidhique, Jimly. *Green Constitution Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta: Rajawali Press, 2009.
- Gumilang, Bashtotan Milka, Sherly Oktariani and Tari Suswinda, "Analisis Undang-Undang Nomor 3 Tahun 2020 Yang Berpotensi Merugikan Masyarakat Dan Lingkungan Berdasarkan Prinsip Sustainable Development Goals," *Jurnal Hukum Lex Generalis* 3, no. 11 (2022): 87-91, <https://doi.org/10.56370/jhlg.v3i11.336>.
- Hakim, Lukmanul, *Kedudukan Hukum Komisi Negara di Indonesia; Eksistensi Komisi-komisi Negara (State Auxiliary Agency) Sebagai Organ Negara yang Mandiri Dalam Sistem Ketatanegaraan*, Program Pasca Sarjana Universitas Brawijaya Malang, Puskasi Universitas Widyagama Malang dan Setara Press, Malang, 2010.
- Haridi, Hasan "Analisis Penegakan Hukum Tindak Pidana Korupsi Terhadap Penyaluran Raskin Desa Sukadamai Natar Lampung (Studi Kasus Perkara No.18/Pid.Tpk/2013/PNTK)" (Universitas Lampung, 2014).
- Hermanto, Yusa, "Implementasi Green Constitution Di Indonesia: Jaminan Hak Konstitusional Pembangunan Lingkungan Hidup Berkelanjutan."
- Jamallullail, Irfan. "Politics Of Law In The Establishment Of A National Regulatory Body: A New Direction For Legal Reform," *Journal of Law and Legal Reform* 1, no. 4 (2020): 681-90.
- Jonaidi, Dona Pratama, Andri G Wibisana, "Landasan Doktriner Hak Gugat Pemerintah Terhadap Kerugian Lingkungan Hidup Di Indonesia," *Jurnal Bina Mulia Hukum* 5, no. 1 (2020): 156-75, <https://doi.org/10.23920/jbmh.v5i1.9>.
- Kurniasih, Ida "Telaah Terhadap Aktivitas Pertambangan Yang Berdampak Pada Lingkungan Hidup Di Indonesia Dilihat Dari Sudut Pandang Analysis Economic of Law," *The Juris* 7, no. 1 (2023): 7-16, <https://doi.org/10.56301/juris.v7i1.801>.
- Marzuki, Peter Mahmud, *Pengantar Ilmu Hukum*, PT Kharisma Putra Utama, Jakarta: Kharisma Putra Utama, 2019.
- Nadapdap, Binoto, Sylvana M D Hutabarat, "Tanggung Jawab Sosial Perusahaan: Antara Kewajiban Dan Kesukarelaan," *Jurnal Yuridis* 2, no. 1 (2015): 111-34.
- Nasution, Bahder Johan, *Metode Penelitian Hukum*. Bandung: Mandar Jaya, 2008.
- Pinilih, Sekar Anggun Gading "The Green Constitution Concept in the 1945 Constitution of the Republic of Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 1 (2018): 200, <https://doi.org/10.22146/jmh.28684>.
- Rahmadi, Takdir. *Hukum Lingkungan di Indonesia*, Jakarta: Raja Grafindo Persada, 2012.
- Ranjani, Gita, et al, "Konstitusi Hijau: Tinjauan Kemanfaatan Dan Pemulihan Lingkungan Hidup Melalui Reklamasi Dan Pascatambang" 9, no.3 (2024): 108-33
- Santosa, Mas Achmad, *Good Governance & Hukum Lingkungan*, Indonesian Centre For Environmental Law, Jakarta, 2001.



- Sari, Lusi Puspita. "Konstitusionalisasi Dan Implementasi Konsep Hijau Dalam Uud 1945," *Seri Seminar Nasional*, 2022, 815-24.
- Sova, Roza Maiza. *No Title*, Universita Islam Negeri Ar-Raniry, 2022.
- Subekti, Nanang et al., "International Journal of Advanced and Applied Sciences Convergence of Green and Sustainable Principles from the Perspective of Economic Democracy in Indonesia" 11, no. 5 (2024): 36-43.
- Zulkifli, Aspan, "Konstitusionalisasi Tanggung Jawab Negara Terhadap Pelestarian Fungsi Lingkungan Hidup." *Amanna Gappa* 30, no.2 (2022):149-55

Conflict of Interest Statement: The author(s) declares that research was conducted in the absence of any commercial or financial relationship that could be construed as a potential conflict of interest.

Copyright: © AUTHOR. This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License. (CC-BY NC), which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

PAMALI: Pattimura Magister Law Review is an open access and peer-reviewed journal published by Postgraduate Program Magister of Law, Universitas Pattimura, Ambon, Indonesia.

