

NICKEL MINING CONCESSIONS FOR THE ELECTRIC VEHICLE INDUSTRY IN INDONESIA FROM AN ENVIRONMENTAL LAW PERSPECTIVE

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Abstract

Indonesia as a developing country is actively pursuing strategic policies to bring about change to become a more advanced country. One of its main initiatives is to utilize abundant natural resources, especially through nickel concessions, with the aim of positioning Indonesia as a center for the electric vehicle industry. However, the implementation of these policies often shows deviations in compliance with regulations, technical practices in the field, and aspects of humanitarian rights enshrined in the constitution. Although the goal is to minimize environmental damage, deviations in regulations and technical implementation often occur. Achieving balance is critical, emphasizing environmental preservation and citizens' inherent right to life. Effective execution requires the government to consistently comply with applicable laws and regulations in Indonesia. In addition, strict supervision of private entities involved in nickel mining concessions on important lands is essential. This monitoring ensures environmental sustainability and encourages the realization of sustainable development goals. The government's commitment to environmental protection must be in line with humanitarian principles, and not ignore the welfare of communities affected by nickel mining activities. Achieving a harmonious balance between economic development and ecological conservation is paramount. Therefore, the government must strengthen its regulatory framework, strengthening the legal basis that guides this strategic initiative. Indonesia's journey towards becoming a developed country depends on its ability to face the challenges posed by the nickel industry. Prioritizing environmental conservation and respecting citizens' rights are non-negotiable elements in this progress. By enforcing and strengthening the regulatory framework, the government can not only ensure sustainable development but also encourage a responsible and ethical approach to utilizing the country's natural resources.

Keywords: Initiative, Utilize, Concessions, Industry, Prioritize.

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INTRODUCTION

Indonesia is one of the countries with abundant natural resources. Therefore, there are many Indonesian citizens who utilize the natural resources of Indonesia. This is certainly not wrong to do, considering the mandate of the Indonesian State Constitution which is stated in Article 33 paragraph (3): "The land, water and natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people." In this case, every Indonesian citizen has legal status in order to use the natural resources owned by the State of Indonesia as an effort to prosper his life. Every Indonesian citizen will certainly never be separated in terms of utilizing Natural Resources, because this potential is the basic need of the community to be able to continue their lives. However, in the utilization of Natural Resources must still pay attention to the applicable rules, considering that Indonesia is a State of Law, if there is a violation in terms of utilization of Natural Resources, then the person who violates must be sanctioned in accordance with applicable law in Indonesia, even though the Government is the one who commits the violation, because in *Law* known as the principle of *Equality Before The Law*. This context needs to be limited that the State is only entitled to control (authority right), not in the interpretation of owning natural resources.¹ In this case, to maintain that the dimension of the government also has its own limits so that there is no action that exceeds the limits of authority.

In terms of anticipating violations of the utilization of Natural Resources, Environmental Law is present as a Legal Umbrella to protect the Environment from various types of violations against the environment. This is very necessary considering that Indonesia is a State of Law, as an indicator of the achievement of legal objectives, namely legal certainty and expediency, it is necessary to have laws that regulate aspects that are considered important to regulate. Regulation of the environment is very important to regulate, as there is legal certainty against violators in the utilization of the environment, so that there is no legal vacuum. By regulating this, not only is the law useful for protecting the environment, but the environment will also have benefits for life in future generations.

The law governing the environment in Indonesia is generally regulated in the Basic Agrarian Law UUPA 5/1960, but this law regulates in general about the environment, not specifically regulating how to manage or control the environment. After independence until now, Indonesia already has three laws that regulate environmental management, namely: Law Number 4 of 1982 concerning Basic Provisions for Environmental Management, Law Number 23 of 1997 concerning Environmental Management, Law Number 32 of 2009 concerning Environmental Protection and Management.² This legal structuring instrument (compliance) is an effort for community involvement in implementing the law voluntarily, to achieve environmental protection.³ The law is the basis for regulation so that there is legal certainty

¹ Hayati, Tri. 2019. "The Right of State Control over Natural Resources and Its Implications for the Form of Mining Business." *Journal of Law & Development* 49 (3): 768. <https://doi.org/10.21143/jhp.vol49.no3.2199>.

² Nafi Mubarak, "*History of Environmental Law in Indonesia*", *Journal of Islamic Legal Thought and Reform*, Vol. 22, No.2, December 2019, p. 2.

³ Yusmiati, Yusmiati, Imamulhadi Imamulhadi, and Supraba Sekarwati. 2023. "Guidance for Environmental Law Violators in the Environmental Law Enforcement System Based on Law No. 32 of 2009." *LITRA: Journal of Environmental, Spatial, and Agrarian Law* 2 (2): 189–214. <https://doi.org/10.23920/litra.v2i2.1266>.

for environmental protection in Indonesia.

The potential of Indonesia does not always have a positive impact. The Indonesian government's ambition to make Indonesia a more developed country, often with efforts through the potential of its natural resources. Sometimes the steps taken by the Indonesian government cause various controversies throughout all elements of society. As one complex example, the Indonesian government wants to advance Indonesia through the electric motor and car industry. This was conveyed directly by the President of Indonesia in his State Speech "*We have started to open up space for the development of electric cars but we want more than that, we want to build our own electric car industry*,"⁴ This has led to various debates, because it is considered that there are other efforts that should be prioritized besides building an electric vehicle industry. Of course, the strategy taken by Jokowi to build the electric car industry is very maximum, this is shown by Jokowi's promise to give nickel concessions to companies from the United States (US), namely the Tesla Company if they want to invest in Indonesia. In this case Jokowi was directly in intense contact with Elon Musk at the SpaceX Texas facility. Jokowi said that "if Mr. Elon Musk invests in Indonesia, I will give nickel concessions," this refers to the offer of Indonesian mining concessions as quoted from *Reuters*.⁵

As we know in accordance with the Indonesian State Constitution, Indonesia is a State of law, even though the government that carries out the utilization of Natural Resources, when committing violations in the administration of its government, must still be processed in accordance with applicable rules and procedures.

With the government's ambition to make Indonesia a more advanced country through the development of an electric-based vehicle industry. The legal products issued by the government also seem to be in line with their ambitions, this is evidenced by Presidential Regulation Number 55 of 2019 concerning the Acceleration of the Battery-Based Electric Motor Vehicle Program, then Presidential Instruction Number 7 of 2022 concerning the Use of Battery-Based Electric Motor Vehicles as Operational Service Vehicles for Central and Regional Governments. However, the problem is that the ambition of the current government does not seem to pay attention to the conditions of its citizens. Many problems arise from this nickel mining concession. Starting from the health problems of the surrounding community, the economic problems of the surrounding community, to environmental problems, which basically when you want to make a policy or development effort, the State must pay attention to these three aspects. This must be considered considering that the purpose of the State in the 4th paragraph of the preamble of the 1945 Constitution of the Republic of Indonesia is to protect the entire Indonesian nation and the entire Indonesian blood sphere, advancing general welfare, so when making policies and accelerating development, do not only protect certain groups and advance certain groups but all Indonesian citizens.

⁴ Asmara Chandra Gian. "*Jokowi: We Want to Build Electric Car Industry*". <https://www.cnbcindonesia.com/news/20190816110654-4-92462/jokowi-kita-ingin-bangun-industri-mobil-listrik>. Accessed on Friday, November 10, 2023 at 15:45.

⁵ CNN Team. "*Jokowi Promises Nickel Concessions to Tesla-Elon Musk Invests in RI*". <https://www.cnnindonesia.com/ekonomi/20230202153807-532-908183/jokowi-janjikan-konsesi-nikel-ke-tesla-elon-musk-agar-investasi-di-ri>. Accessed on Friday, November 10, 2023 at 16.12.

The reverse thinking of the problem is that to make Indonesia an electric-based vehicle industry, the government certainly needs various breakthroughs to make it happen. Adding nickel mines at the expense of essential land that results in deprivation of citizens' rights to life seems to be a bad breakthrough from the government, as one example of a nickel mine located in Central Halmahera, North Maluku. Environmental Researcher of People's Emancipation Ecology Action (AEER), Arfah Durahman, explained that the decline in water quality was indicated by the detection of hexavalent chromium metal ions in a number of surface and sea water points. The downstream of the Wosea River that crosses the nickel industrial area contains hexavalent chromium at a concentration of 0.017 mg/L.⁶ The trigger for conflict in this area is the economic impact felt by residents when they lose their living space and also compensation that does not match the economic value of land for affected residents.

Looking at this phenomenon, it seems that there is no clear procedure on how nickel concessions should be run according to the laws and regulations,⁷

There is no protection of the right to life of residents affected by nickel concessions, as well as the implications of ineffective environmental law in the phenomenon of nickel mining concessions in Indonesia.

Based on the background of the problems above, there are several legal issues that can be used as problem formulations in this study. The problem formulations that will be studied are: *First*, Is a nickel mining concession that does not pay attention to the right to life of citizens an unlawful act? *Second*, What are the implications of environmental law on nickel concessions?

RESEARCH METHODS

The research methods used in this article should be mentioned clearly and explicitly. This method is written in the descriptive form and should provide a statement regarding the research methodology. As much as possible, this method gives an overview to the reader. The research method used is a normative legal research method. The approaches taken are *statute approach*, *conceptual approach*, and *case approach*. Based on primary, secondary, and tertiary legal materials obtained and analyzed using systematic and theological interpretation analysis.

In general, this study focuses on literature research, but as stated by F. Sugeng Istanto, in legal research, legal material from literature research alone is not enough so it must be refined with field research. Therefore, in addition to literature review, digital field studies were also conducted in this research to find legal materials to be discussed through news in the mass media, especially electronic media. The examination of the material that has been obtained is carried out in three stages. First, relevant material or facts began to be collected and organized, i.e. coordinated and adapted to the article under study. Secondly, the material that has been compiled is explained or described and interpreted in accordance with the article centered in the hypothetical framework. Third, the described information is evaluated using

⁶ Al Hamasy Atiek Islahiyah. "Nickel Mine in Central Halmahera Deprives Residents of Their Lives". <https://www.kompas.id/baca/humaniora/2023/07/31/nikel>. Accessed on Friday, November 10, 2023 at 18.05 WIB

⁷ Hartana, H. 2019. "THE HISTORY OF MINING LAW IN INDONESIA." *Journal of Legal Communication (JKH)* 5 (1): 145-54. <https://doi.org/10.23887/jkh.v5i1.16781>.

the applicable legal provisions to determine which parts comply and which do not (contradict) the applicable law. Appropriate arrangements will be made, while inappropriate arrangements will be abandoned, to strengthen the argumentative basis.⁸ The enactment of a law will strengthen both its planning and enforcement aspects.⁹ This is the background that every matter that has a major national impact must have a legal basis.

RESULT AND DISCUSSION

Nickel Mining Concession that Doesn't Pay Attention to Residents' Right to Life

Concession is a Decree of an authorized Government Official as a form of approval of an agreement between an Agency and/or Government Official and other than an Agency and/or Government Official in managing public facilities in the form of natural resources and others in accordance with the provisions of laws and regulations.¹⁰ This has been regulated in the provisions of article 1 paragraph (20) of Law Number 30 of 2014 concerning Government Administration which reads "*Concession is a Decree of an authorized Government Official as a form of approval of an agreement between the Agency and / or Government Officials with other Agencies and / or Government Officials in the management of public facilities and / or natural resources and other management in accordance with statutory provisions.*", this Law is a legal umbrella in order to organize *good governance*, as well as an effort to prevent violations of the law committed by the government against its citizens. The rights of citizens, especially those owned by customary law, should not be overridden in the context of mining concessions, because the traditional rights of indigenous peoples themselves have been regulated in the provisions of the *International Labor Organization* (ILO) convention in 1986.¹¹

Basically, concessions are actions that are not prohibited as long as they do not conflict with applicable laws and regulations, including concessions for nickel mining are not prohibited if they comply with the provisions of positive law in Indonesia. *The system of concession is the management of mining companies towards public mining, not only given mining power but also the right to control the land rights.*¹² With the utilization of nickel for mining, the government must also remain guided by the direction of the national development of the State of Indonesia, namely *sustainable development*.

Likewise, the calculation of reserves for nickel availability is very influential in determining the quantity, quality, and effectiveness in commercial exploration of a deposit.

⁸ Peter Mahmud Marzuki, "*Legal Research*", Jakarta: Kencana 2011

⁹ Nisa, Anika Ni'matun, and Suharno Suharno. 2020. "Law Enforcement Against Environmental Problems to Realize Sustainable Development." *Journal of Bina Mulia Hukum* 4 (2): 294. <https://doi.org/10.23920/jbmh.v4i2.337>.

¹⁰ <https://paralegal.id/pengertian/konsesi/>. Accessed on Friday, November 10, 2023 at 18.18 WIB

¹¹ Sumampouw, Rifi macelino. 2020. "LEGAL PROTECTION OF INDIGENOUS PEOPLES' RIGHTS IN AREAS OF MINING ACTIVITIES." *Lex Privatum* 8 (3). <https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/34716>.

¹² Setiabudhi, Donna O, Jemmy Sondakh, and Muhammad Hasbi. 2021. "Juridical Analysis of the Difference Between the Contract of Work System and the Mining Business License System in View of the Position and Authority of the State in the Mining Sector." *Lex Privatum IX* (7): 5.

Because the results of a good and precise reserve calculation in accordance with the reality on the ground can determine the business to be carried out by the funder as a capital interest in the mining industry, determine the work of creation, the mining techniques to be carried out, even in the field of mining, assessing the time required for the organization to conduct mining business must be seriously considered so as not to interfere with and deprive the right to life of every citizen.¹³ Although there are already rules, what needs to be considered again is how to synchronize regulations with law enforcement.¹⁴ This kind of thing can be an attention in the context of the rule of law in Indonesia. Environmental law enforcement is an integral component in order to protect the environment in Indonesia.¹⁵ This perspective is also part of the State's responsibility towards the potential of existing natural resources.

The inconsistency in managing mining from the beginning was influenced by the paradigm of the relationship between the local government and the central government.¹⁶ This paradigm is then present as one of the backgrounds for the existence of regulations in managing mining from the beginning, namely through its license, in the provisions of Laws and Regulations in Indonesia Law No. 4 of 2009 concerning Mineral and Coal Mining, the content of which was refined again through Law No. 3 of 2020. This law states clearly how. Providing proper permits so that there are no sanctions for violations to metal mineral mining businesses to provide guarantees of recovery and subsequently submit a Reclamation Plan (RR) report to public authorities as a condition for obtaining a Mining Business License (IUP). The most basic normative content contained in this Law is related to the authority of local governments to grant licenses being removed, then centrally delegated by the central government.¹⁷ Licensing from the perspective of State Administrative Law is a strategy or effort from the central and regional governments in terms of controlling and controlling a legal object for activities that have legal consequences.¹⁸ This should be able to suppress illegal mining activities, if illegal mining is able to provide positive profits to the State, then the government should prepare a special mechanism to make it legal. Government Regulation No. 78/2010 on Mining Business Activities outlines the implementing regulations of the Mineral and Coal Law

¹³ Hadibroto, Hantoro and Sastroprawiro, Suroso and Riswandi, Herry. "Calculation of Nickel Reserves using the Area of Influence Method in the Concession Area of PT Mukindo Mining Mandiri". *PANGEA Scientific Journal of Geology*, Vol.1, No.1, June 2014, p.3.

¹⁴ Asram AT Jadda. 2019. "Review of Environmental Law on the Protection and Management of Biodiversity." *Madani Legal Review* 3 (1): 39–62. <https://doi.org/10.31850/malrev.v3i1.344>.

¹⁵ Kurniawan, Andre, Marsel Agustian Sembiring, Mikhael Joshua Nababan, and Muhammad Jordan Edison. 2023. "MOTOKAR: Multidisciplinary Journal of Technology and Architecture of Environmental Law Enforcement in Indonesia" 1 (2): 398-403.

¹⁶ Rahayu, Derita Prapti, and Faisal Faisal. 2021b. "Legal Politics of Mining Licensing Authority after the Amendment of the Minerba Law." *Pandecta* 16 (1): 164-72. <http://journal.unnes.ac.id/nju/index.php/pandecta%0APolitik>.

¹⁷ Rahayu, Derita Prapti, and Faisal Faisal. 2021a. "The Existence of People's Mining After the Enactment of Amendments to the Law on Mineral and Coal Mining." *Journal of Indonesian Legal Development* 3 (3): 337–53. <https://doi.org/10.14710/jphi.v3i3.337-353>.

¹⁸ Samad, Rezki Purnama, A. M. Yunus Wahid, and Hamzah Halim. 2021. "The Urgency of Community Participation in Sand Mining Business License." *Al-Ishlah: Scientific Journal of Law* 24 (1): 143–62. <https://doi.org/10.56087/aijih.v24i1.87>.

for reclamation and post-mining for Coal Mineral activities and businesses.¹⁹

Reclamation in the form of post-mining restoration is completed to recognize the rebuilding, particularly the emergence of the environment that existed before mining activities began; furthermore, restoration includes the establishment of another climate of life. During these interactions, long-term inspections and training of executives are expected to evaluate the adequacy of restoration, identify important remedial activities, and filter out cycles that develop, such as executive wastage of water or gas. Mining sites are routinely restored to their land-use capability while mining has not taken place, but they can also be used as diversion areas, mechanized or logistics offices, or for cultivation such as fish farming, as well as revegetation improvements, replanting activities for trees that once existed where activities caused trees to be felled or destroyed as a result of mining operations.²⁰

Related to the government's supervision of mining is considered very important, because when mining has been carried out, there is often neglect of post-mining recovery, one of which is due to the factor that the government and regional authorities when mining have a paradigm that subordinates policies made by the Central Government only as procedural guidelines. This paradigm then has an impact on the lack of wisdom in carrying out development towards the environment, which favors both environmental conditions and local residents. The impact on the environment is to increase the problem of environmental damage, and the impact on residents is limited access to meet the needs of a healthy life due to environmental damage due to mining activities.

Law enforcement is not only protecting the content, but also paying attention to the balance with the environment.²¹ In carrying out environmental law enforcement, one of the most effective ways is preventive.²² Supervision by the Government is not merely carrying out government functions, but also has the responsibility to select and appoint officials who have functional positions of mining inspectors,²³ tiered supervision by involving the community can also be applied considering that environmental law is located between the crossing points of various classic laws, as well as the implementation of Article 4.²⁴ , as well as the implementation of Article 4 of Law No. 3 of 2020:

¹⁹ Dewa Muhammad Jufri, Muhammad Sabaruddin Sinapoy, Oheo Kaimuddin Haris, Gusman Tatawu, La Sensu, Arifin. "Legal Policy of Mining Management Based on Community Welfare". *Journal of Legal Research*. Vol. 5, No. 1, April 2023, p.163. Samad, Rezki Purnama, A. M. Yunus Wahid, and Hamzah Halim. 2021. "The Urgency of Community Participation in Sand Mining Business License." *Al-Ishlah: Scientific Journal of Law* 24 (1): 143–62. <https://doi.org/10.56087/aijih.v24i1.87>.

²⁰ *Ibid.* p.164.

²¹ Yulia, Rena, Aliyth Prakarsa, and Mohammad Reevany Bustami. 2023. "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia." *Journal of Indonesian Legal Studies* 8 (2): 803–54. <https://doi.org/10.15294/jils.v8i2.72283>.

²² Andesgur, Ivaini. 2019. "Policy Analysis of Environmental Law in Pesticide Management." *Bestuur* 7 (2): 93-105. <https://doi.org/10.20961/bestu.ur.v7i2.40438>.

²³ Benedikta Bianca Darongke, J Ronald Mawuntu, and Donna O Setiabudhi. 2021. "Dilemma of Law Enforcement of Unlicensed Mineral and Coal Mining Activities." *Amanna Gappa* 29 (1): 2021. <http://kanalkomunikasi.pskl.menlhk.go.id/deklarasi-pengendalian->

²⁴ Environmental law enforcement problems, tramaulina

- (1) Minerals and Coal as non-renewable natural resources are national wealth controlled by the state for the greatest welfare of the people.
- (2) Control of Mineral and Coal by the state as referred to in paragraph (1) shall be administered by the Central Government in accordance with the provisions of this Law.
- (3) The control as referred to in paragraph (2) shall be implemented through the functions of policy, regulation, management, management, and supervision.

In the wording of the above Article which is often interpreted wrongly by most mining authorities, Ridwan said that "This is what the Government feels is misinterpreted by the Plaintiffs a quo who justify the enactment of Article 4 paragraph (2) and paragraph (3) of the Minerba Law and necessarily override the rights of the community, especially the rights of the affected to participate in expressing their aspirations because the fact is that the withdrawal of mineral and coal control does not at all eliminate the right of the community to express their aspirations".²⁵ So it remains in principle that all mining processes must still prioritize the right to life of citizens, apart from this being a form of justice in terms of humanity, on the other hand this is a constitutional mandate from the State of Indonesia.

The Nickel Mining Concession, although one of the strategies to fulfill the Government's ambitions, must still be carried out by fulfilling procedures in accordance with statutory regulations. In the provisions of Article 6 of Law Number 3 of 2020, it is also stated as follows:

That in paragraph (1) the central government in the management of Mineral and Coal Mining, is authorized:

- a. provide provisions for the national Mineral & Coal management plan
- b. provide discretionary provisions to the Minerals & Coal National to enact laws and regulations;
- c. pass laws against this sectoral
- d. has national standardization in the form of technical guidelines and classification
- e. the entire Mining Law Area can be researched as well as investigated
- f. Prov. Regional Regulation is authorized and consulted together with DPR RI to be able to determine the Mining Area (WP)
- g. determine a Mining Business License Area (WIUP) Mineral-Metal as well as Coal WIUP
- h. determine related to non-metal Mineral WIUP as well as rock WIUP

²⁵ Ridwan's description. "Government: Amendment to Minerba Law to Improve Mining Sector". <https://www.mkri.id/index.php?page=web.Berita&id=17910>. Accessed on Sunday, November 12, 2023 at 8.40 WIB.

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- i. determine (WIUPK) Special Mining Business License Area
 - j. offer WIUPK by taking into account the priority scale
 - k. issuance of Business Licenses
 - l. business license holders conduct supervision and guidance on every activity related to the mineral and coal mining business.
 - m. create production and marketing rules for conservation and utilization of natural resources
 - n. working with partners and involving the community in terms of HR empowerment
 - o. proceeds from mineral and coal mining business are managed and stipulated in the category of non-tax state revenue.
 - p. All information related to the mineral and coal mining business, the potential of Mineral and Coal resources, as well as geological information can be managed.
 - q. supervision as well as guidance on Reclamation and Post-Mining.
 - r. compile a balance sheet of Mineral and Coal Resources at the national level.
 - s. improvement and development of added value to mining business activities must be carried out
 - t. organizing management in the mining business as a step to improve government bureaucracy at the central level and at the regional level
 - u. coal, metallic minerals, certain types of non-metallic minerals, and radioactive minerals must be standardized nationally.
 - v. management by mine inspectors
 - w. management of supervisory officials in the mining area.

Whereas in the provisions of the next paragraph it is stipulated that the authority possessed by the Central Government which is mentioned in the provisions of paragraph (1) is carried out in accordance with the provisions of the relevant laws and regulations that are already in force. Furthermore, paragraph (3) stipulates that the Central Government sets a limit on the investment value or the percentage of share ownership of foreign investment business entities engaged in the mining sector.

Based on the provisions of the Article above, which must then become an important guideline for the Government in carrying out the Implementation to make Indonesia an electric vehicle industry country. Because we all know that the use of non-renewable natural resources must be done in the wisest way in terms of realizing sustainable development. In addition, consideration of the right to life of citizens / communities must be the main consideration in addition to considerations of environmental damage. Because according to Article 1 of the

1993 *Montevideo* Convention, the population is one of the elements of the state.²⁶

If Indonesia is only ambitious to make the country an electric vehicle industry without prioritizing the right to life of its citizens, the element to become a more advanced country will be reduced. So from the description above, it can be interpreted that the Nickel Mining Concession carried out by not giving importance to the Right to Life of Citizens is essentially an unlawful act. This is also in accordance with the provisions of Article 1365 BW, namely: "*Every unlawful act, which causes damage to another person, obliges the person who through his fault causes the damage, to compensate for the damage.*"²⁷ In this case it is clear that why nickel mining concessions that do not pay attention to the right to life of citizens are unlawful acts, in laws that discuss environmental problems that are getting worse and threatening nature,²⁸ In addition to being detrimental by having a negative impact on environmental sustainability, it also provides losses to health and limited access to residents' livelihoods in fulfilling economic needs. And in practice what causes harm is the value of compensation given, on average not proportional to the value of the loss.

The *Green Constitution* Concept for Nickel Concessions in Indonesia

In the development of state administration in Indonesia both at the academic and practical levels, it is inevitable that a new phenomenon will emerge, namely the term "green constitution" or "*Green Constitution*". Basically, the *Green Constitution* incorporates environmental standards into the constitution by raising environmental protection standards to the constitutional level.

The importance of environmental aspects and the principle of sustainable development with environmental protection have a permanent place in legislation. On this basis, the *Green Constitution* introduces a term and concept called ecocracy, the concept of ecocracy is globally present for the first time in the Brundtland Report which emphasizes the importance of environmental sovereignty.²⁹ When protection content has gained a place at the constitutional level, then based on the legal principle of "*lex superior derogat legi inferiori*", when there are implementing rules that legalize environmental exploration, but that interfere with the constitutional rights of citizens or conflict with the rules above it. Then that rule will be overruled by itself.

Basically, the *Green Constitution* concept is intended to continue to stabilize the quality and availability of Natural Resources for future interests. Because Natural Resources as one of the main aspects to make the State of Indonesia a more developed country. The concept of the *Green Constitution* which elevates ecocracy in a country's constitution in which environmental sovereignty is reflected by placing the *Green Constitution* in the constitution of a country, makes an essential and fundamental foothold to uphold the development of human rights development that is developing today. The Indonesian Constitution Article 28H paragraph (1)

²⁶ Suryo Sakti Hadiwijoyo, 2011. "*State Borders in the Dimension of International Law*". Yogyakarta: Graha Ilmu, p. 3.

²⁷ Subekti, 2014. "*Kitab Undang-Undang Hukum Perdata*". Jakarta: PT Balai Pustaka, p. 346.

²⁸ Situmeang, Sahat Maruli Tua. 2020. "Environmental Law The Effectiveness of Criminal Sanctions in Environmental Law Enforcement." *Res Nullius Law Journal* 1 (2): 139–48. <https://doi.org/10.34010/rlj.v1i2.2648>.

²⁹ <https://www.jimlyschool.com/diklat/green-constitution/> accessed on Sunday, November 26, 2023 at 07.51 WIB

and Article 33 paragraph (4) of the 1945 *Constitution* of the Republic of Indonesia strengthen the existence of the *Green Constitution* concept in the practice of state administration in Indonesia.³⁰ Such a system is one of the strategic steps to be able to bring about the liberation of human life from the shackles of social and natural life in an organized manner. If this is not done, then nature and the environment are damaged everywhere, causing the function and carrying capacity for life together to decline. Nature and the environment are being damaged everywhere, causing the function and carrying capacity for the common life to decline.

Many nickel concession activities in Indonesia are organized in a way that is not true, but is considered right. Because it is the activity that will bring great changes to the nation. However, it should be noted that the constitutional rights of every citizen are rights that must be prioritized. Even though the activity has a great impact on the progress of the country, as long as it violates the rights of its citizens, then normatively it is an unlawful activity. The hierarchy of laws and regulations in Indonesia clearly states that the 1945 Constitution is the highest source of law, and the constitutional rights of Indonesian citizens are regulated in the provisions of this highest source of law. So there are no rules and no activities that are justified as long as they are contrary to what is regulated in the State constitution. Although there are already clear rules related to post-mining reclamation, the awareness of the perpetrators of these activities of the rules is still very low, so the number of violations is even higher. The high number of violations of post-mining reclamation has even claimed hundreds of lives in Indonesia, even though the rules that oblige business actors to reclaim and order periodic supervision to the government authorities are clear and clear, they have not been able to force related parties to comply. The idea of *ecocracy* is the answer to the high number of violations of environmental law, especially post-mining reclamation in the field by placing the environment as a system in all constitutional practices such as the concepts of democracy, nomocracy, and even theocracy.³¹ So as long as the practice of organizing nickel concessions in Indonesia adheres to the concept of the *Green Constitution* which has been regulated in the Indonesian constitution, these activities will not cause controversial and justified matters.

Legal Dimensions of Accountability for Citizens' Constitutional Rights

State responsibility is the responsibility of the State in managing the environment to realize sustainable development.³² Law enforcement carried out by the government is an idea to realize the principles of justice, legal certainty from the existence of a government policy is an effort that can be made to realize social benefits.³³ The government in establishing a policy, especially in certain sectors, must also pay attention to the impact that will be caused

³⁰ I Gede Yusa, Bagus Hermanto. "Implementation of Green Constitution in Indonesia: Constitutional Rights Guarantee for Sustainable Environmental Development". *Journal of the Constitution*. Vol. 15, No. 2, June 2018. <https://doi.org/10.31078/jk1524>

³¹ N. Zakiyyatul Mufidah, Miftachur R. Habibi. "The Concept of Ecocracy as Environmental Legal Protection against Post-mining Reclamation Violations". *Indonesian Law Symposium*, Vol.1, No.1, November 2019. <https://eco-entrepreneur.trunojoyo.ac.id/shi/article/view/6381>

³² Anwar, Muhammad Syaiful, and Rafiqah Sari. 2021. "Environmental Law Enforcement Based on the Principle of State Responsibility in Indonesia." *PROGRESSIVE: Journal of Law* 16 (1): 112–29. <https://doi.org/10.33019/progresif.v16i1.2336>.

³³ Maulana, M. Rafli, and Arif Firmansyah. 2023. "Law Enforcement Against Business Actors Who Mine in Forest Areas Without Permits." *Journal of Legal Science Research*, no. 2: 11-16. <https://doi.org/10.29313/jrih.v3i1.1839>.

nationally. All the driving factors for setting the policy must still be carefully related to analyzing what will happen after the policy is set. Therefore, it is necessary to adjust sectoral policies in the implementation of Nickel concessions in Indonesia so as not to deprive citizens of their constitutional rights. Substantive developments in the content of the constitution are evidence of the development of legal politics.³⁴ The politics of law in environmental management functions as a guide as well as a medium to criticize every existing policy, whether what has been determined is in accordance with the objectives of the State.³⁵ But it must also be given a limit between political views and juridical views.

The source of law that makes the basis of development, especially in the field of environmental management in Indonesia to preserve natural resources is contained in the Preamble of the 1945 law in the 4th paragraph which reads "then than that to form an Indonesian state government that protects the entire Indonesian nation and the entire Indonesian blood spill and to advance the general welfare of the intellectual life of the nation and participate in carrying out world order based on the independence of the Indonesian nation formed in an arrangement of the Republic of Indonesia, which is based on people's sovereignty: God Almighty, fair and civilized humanity, unity of Indonesia, and democracy led by wisdom in representative deliberation and realizing a social justice for all Indonesian people".

The above provisions emphasize the state's obligation and the government's duty to protect all Indonesian citizens and in order to preserve the entire environment in Indonesia in order to realize sustainable development for the Indonesian people in the future. This basic idea is formulated more concretely in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia "The land and water and the natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people." The 1945 Constitution of the Republic of Indonesia as a constitutional foundation requires that natural resources be used for the greatest prosperity of the people. The prosperity of the people must be enjoyed by the present and the future in a sustainable manner.

Reclamation or recovery is an action taken through the stages of a mining business to coordinate, rebuild and improve the nature of the climate and biological system so that it can function again according to the expected reasons. Meanwhile, post-mining activities are organized, appropriate and sustainable activities after the completion of some or all mining business activities to rebuild normal ecological and social capabilities in accordance with community conditions throughout the mining area. This concept is known as the theory of ecocentrism or deep ecology, which is a new ethic that does not only demand and center on humans but on all existing living things.³⁶ Therefore, every Exploration, Exploitation, Production Operation, and IUPK IUPK holder is obliged to carry out reclamation and post-mining of land disturbed by mining activities in accordance with the provisions of Government Regulation Number 78 of 2010 concerning Reclamation and Post-mining. This has a link between the cooperation agreement and Indonesian mining law. Where the owner of a mining

³⁴ State responsibility-based environmental law enforcement

³⁵ Wulandari, Rika Putri, and Muhammad Helmi Fahrozi. 2021. "Legal Politics of the Transfer of Mining Licenses to the Central Government against the Authority of the Regional Government." *SALAM: Journal of Syar-I Social and Culture* 8 (1): 191–206. <https://doi.org/10.15408/sjsbs.v8i1.19445>.

³⁶ Said, M. Yasir, and Yati Nurhayati. 2020. "The Paradigm of Environmental Ethics Philosophy in Determining the Direction of Environmental Law Politics." *Al-Adl: Journal of Law* 12 (1): 39. <https://doi.org/10.31602/al-adl.v12i1.2598>.

business must have a Mining Business License, but the facts in the field are that many concession owners have not had an IUP, this is then included in the provision of unlawful cause, in the context of civil law in article 1320 BW there is a valid condition for an agreement, namely a lawful causa. When the concession owner does not have an IUP, all activities or agreements that exist in each series of mining activities are declared null and void.³⁷ In the methodical preparation of this guideline on the implementation of recovery and post-mining carried out by institutions that carry out the task of making IUPs, there are types of obligations that must be completed as follows:

- a. Planning for post-mining reclamation and operations;
- b. Approval of the assessment;
- c. Liability for reclamation as well as post-mining
- d. Implementation of Reclamation, Post-mining and Post-operation responsibilities
- e. Accountability and disbursement of Reclamation and Post-Mining guarantees
- f. Submission of reclaimed land; and
- g. Post-mining land handover as well as post-operation

Post-mining achievement measures, including achievement standards at former mine sites, handling and additional refining offices, supporting and inspection offices and post-mining cost plans. Creation Activity IUP holders in planning for recovery and post-mining must have an ecological report in addition to an Environmental Impact Assessment (AMDAL) or Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL). In preparing Post-Mining plans, they can discuss with partners. The relevant partners in this case are the Energy and Mineral Assets Agency as well as specific government agencies responsible for mineral and coal mining, other relevant organizations, and local communities that will be directly affected by the implementation of mining activities.

The evaluation and approval of the creation activity stage recovery plan shall be conducted by the Chairman for the benefit of the Imam or deputy chairman within a period of approximately 30 days from the issuance of the Creation Activity IUP or Creation Activity IUPK, excluding the number of days expected to complete the Creation Activity stage recovery plan. If the application has not been completed, it will be obtained again to be idealized, and within 30 days of the schedule since the IUP of Creation Activities or IUPK of Goods Activities is granted or since the fulfillment of the recovery plan of Creation Activities. stage is obtained, the Chairman of the Imam or Deputy Chairman according to his position will not provide support or ideas for improvement, at which time the proposed Creation Task stage Recovery Plan is deemed supported. Approval of the production operation stage reclamation plan, which includes determining the amount of the production operation stage reclamation guarantee over a period of five years with annual details. If the approved Production Operation stage Reclamation plan undergoes changes as follows, the Production Operation IUP and Production Operation IUPK holders shall make changes to the Production Operation stage

³⁷ Resa, Teresia Dweyana, Achmad Jaka Santos Adiwijaya, and Ujang Bahar. 2020. "The Principle of Good Faith in the Cooperation Contract for Mining Activities in Indonesia." *Living Law Scientific Journal* 12 (2): 145. <https://doi.org/10.30997/jill.v12i2.2625>.

Reclamation Plan:

- a) Mining techniques and systems;
- b) Capacity of production;
- c) Age at mine;
- d) Land use; and/or
- e) Environmental Documents that have been approved by the competent authority in accordance with the provisions of the laws and regulations in the field of environmental protection and management in Indonesia.³⁸

The achievement of a success rate that should reach 100 percent is the implementation of mining activities in accordance with the idea of Good Mining Practice (GMP), namely mining activities that are in accordance with the principles, highly organized, applying innovations that are compatible with survival and productivity, comprehensive mineral preservation. In addition, the Public Authorities in general control and maintain ecological capabilities, guarantee job security, fulfill regional desires and interests, generate additional rewards, expand government capacity and assistance in covering networks and make practical changes. In addition, the Public Authority generally carries out various supervisory efforts carried out by the Public Authority, in this case the Mining Auditor, in overseeing the implementation of Recovery and Post-Mining, which relies on Good Mining Practice (GMP) standards in nickel concession activities in Indonesia is by conducting regular inspection/supervision activities (at least once a year), by evaluating reclamation implementation documents as well as direct reclamation assessments in the field to see the quality of reclamation activities that have been carried out by a mandated company. This is a form of accountability from the State as well as social responsibility for the rights of citizens who are disturbed by the implementation of nickel mining concession activities in Indonesia.

Government Responsiveness to Nickel Concessions that Violate the Right to Life in Indonesia

The Government's ambition to make Indonesia an electric vehicle producer with Nickel as the basic material is very good. However, the steps and policies set by the Government are not always justified, even though the Government in its strategy considers it to be correct, but in fact on the ground, there are still many violations of the law from the nickel concession activities. Although the nickel concession has a significant positive impact on social and economic life, it does not have the right to life that has been mandated in the constitution. The Indonesian government has a great responsibility to manage natural resources, including nickel concessions, from the perspective of sustainability and community welfare. The government's response to these violations must be responsive and effective. First, the government must conduct a thorough investigation of questionable nickel interests that have the potential to harm the community, through the Environmental Agency's PPNS or Civil Servant Investigator.³⁹

³⁸ Kemalasari, Putri, Nila Trisna, and Dara Quthni Effida. 2023. "Responsibility for Reclamation and Post-Mining Implementation of Coal Production Operation IUP Holders Based on Good Mining Practice Principles." *Law Journal* 18 (01). <https://doi.org/10.33059/jhsk.v18i1.7382>

³⁹ Feri Ardiansyah. 2020. "Challenges of Environmental Supervision and Law Enforcement in the Implementation of the Job Creation Law." *Green Development and Licensing: Diplomacy, Tool Readiness and Standardization Patterns*, 15-21. <https://mil.pasca.undip.ac.id/wp-content/uploads/2021/11/3.-Feri-Ardiansyah-580>

There are several factors that make a mining activity experience obstacles both in administrative and technical matters, which include: competency factors rather than licensing bureaucracy, regulatory factors, and factors of guidance and supervision by the government that are not in accordance with positive norms.⁴⁰

Transparency in the audit process is key to ensuring accountability and public trust. In addition, we must take firm action against companies involved in violating people's rights. Appropriate and effective sanctions must be applied to provide a deterrent effect and ensure business actors comply with regulations and respect human rights. The government also needs to ensure the active participation of local communities in decision-making regarding nickel concessions. Community participation increases oversight of company activities and ensures that decisions reflect the interests of local communities. In addition, recovery and compensation programs should be designed to support communities directly affected by violations of the right to life. The government should ensure that victims receive the medical care, education and other support they need to get their lives back to normal. In the long term, regulatory reforms related to nickel concessions need to be implemented to prevent recurrence of right to life violations. The government needs to improve monitoring systems and set stricter standards to ensure economic sustainability is in line with social and environmental well-being. By promptly and effectively addressing nickel concessions that violate people's right to life, the government must ensure that the use of natural resources is fair and sustainable and brings positive benefits to all Indonesians. In this case, although the government has responded by establishing various sectoral policies, strict supervision by the Government is still not fully implemented. It is this supervision that should be the Government's main responsiveness in addressing nickel concession activities that violate people's right to life.

Environmental Law Implications for Nickel Mining Concessions in Indonesia

It cannot be denied that the 1972 *Stockholm* Declaration is one of the pillars of the development of modern international environmental law, in the sense that since then environmental law has undergone a fundamental change from *use-oriented* to environment-oriented law.⁴¹ Environmental law that has an *environmental-oriented* nature is a legal product that not only gives humans to use the environment, but in it there is also an obligation for humans to be able to maintain, protect, and preserve the environment and natural resources. One example is the 1982 Convention on the Law of the Sea, which not only grants the right to explore and exploit marine resources, but there is also an obligation for each State to be able to protect the marine environment from danger, destruction, and pollution in carrying out these activities. The obligation to protect the environment has also been specifically regulated in *Part XII of the 1982 Convention on the Law of the Sea*. While environmental law that has a *use-oriented* nature is a legal product that can always give rights to every international community in this case the State to be able to exploit the environment and also natural resources without giving the burden of the obligation to maintain, protect and preserve the

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⁴⁰ Long, tjoe kang. 2023. "CONFLICT IN THE APPLICATION OF THE LAW OF NATURAL RESOURCE MANAGEMENT OF MINERAL AND COAL MINING WITHOUT A LICENSE ON A SMALL SCALE." *Journal, Politics, Social, Law and Humanoria* 1 (4). <https://ejurnalqarnain.stisnq.ac.id/index.php/ALADALAH/article/view/603>.

⁴¹ Hardjasoemnatri, Koesnadi. 1994. *Environmental Law*. Yogyakarta: Gadjah Mada University Press.

environment. In other words, legal products that have been passed before the Stockholm Declaration only justify every human right to use the environment such as the exploitation of natural resources.⁴² With this, Environmental Law is present in order to maintain and provide protection for the existence of natural resource utilization activities for the National interest, the existence of this guarantee is one form of legal supremacy in Indonesia, including the rule of law for the phenomenon of nickel mining concessions that disturb the rights of citizens. This is also related to the correlation between natural resource management based on local wisdom and written law.⁴³ This phenomenon certainly requires the rule of law, especially Environmental Law, so that there are special actions after nickel mining is carried out. This is certainly done to preserve and balance natural resources for the sustainability of life in the future.

In the context of applying legal protection to the environment, the libertarianism school of thought, which rejects the economic approach theory, assumes that the existence of environmental pollution and environmental damage is merely a problem of inefficiency and injustice in the distribution of natural resources. However, libertarianism explicitly considers the act of polluting and damaging the environment as a form of violation of personal rights and property rights.⁴⁴ Therefore, in this case, the law must provide strict protection as one example by providing an obligation for mining actors to provide compensation, if the nickel mining activities carried out adversely affect environmental conditions and interfere with the rights of citizens. Regulations on how the sanctioning mechanism for perpetrators of environmental destruction are clearly regulated in Law Number 32 of 2009 concerning Environmental Protection and Management. In addition to regulating how the compensation mechanism is carried out, this Law also regulates how the community's right to sue if they feel their rights have been deprived by the nickel mining concession.

In the provisions of Article 91 of Law Number 32 Year 2009, regarding how the public's right to sue can be done in the following ways:

- 1) Communities generally have the option of filing a lawsuit for their own benefit or potentially for the benefit of the local area in the event of a disaster due to pollution or natural damage.
- 2) A claim can be recorded and filed if there is a similarity in facts or events, a legitimate rationale, and some sort of assurance between the assembled delegates and the assembled persons.
- 3) Arrangements in relation to the local community's right to sue are carried out in accordance with existing positive legal guidelines.

In the provisions of this article, it can be interpreted that normatively there are already environmental law implications for the protection of the rights of people whose rights are disturbed by the nickel mining concession. In this case, it is allowed to file a lawsuit on the

⁴² Mukhlis. 2019. *Environmental Law*. Surabaya: Scopindo Media Pustaka.

⁴³ Yulianingrum, Aullia Vivi, Mursidah Nurfadillah, Sayid Muhammad Riziq, and Adinda Novitadiningrum. 2023. "Policy Implications of Coal Mining Management for the Existence of Indigenous Peoples in Samarinda." *AL-MANHAJ: Journal of Islamic Law and Social Institutions* 5 (1): 915–24. <https://doi.org/10.37680/almanhaj.v5i1.2826>.

⁴⁴ Rahmadi, Destiny. 2019. *Environmental Law in Indonesia*. Depok: PT Raja Grafindo Persada.

basis of individual or group interests, which are submitted if there are similarities in facts, legal basis, and types of claims, which of course must be in accordance with the statutory provisions already in force in Indonesia. *Class actions* are often used in various lawsuits concerning *public* interests and policies, not only in environmental issues, but also in issues concerning political policies, price fixing, dismissal of workers, advertising, consumers, power outages, and others.⁴⁵ Supreme Court Regulation Number 1 Year 2022 Representative class action is a method of filing a lawsuit in which one or more persons representing a group file a lawsuit for themselves and at the same time represent a large group of people who have similar facts or legal basis. Between the class representative and the members of the group concerned. The article in this Regulation also defines class action as a procedure for filing a lawsuit. Perma No. 1 of 2002 on the Procedure for Class Actions also mentions the existence of group representation, namely one or more people who have lost something and file a lawsuit to represent a larger group. A group of individuals is a large group that has suffered a misfortune whose interests are handled by a delegate group in court. A sub-group is a collection of individuals who come together in smaller groups within the same area due to differences in the level of suffering or potential type of loss.⁴⁶ This provision is one of the manifestations of the implications of Environmental Law in the scope of legal issues regarding the existence of a nickel mining concession that disturbs the right to life of citizens. In the context of disturbing the right to life of citizens, they can also be held criminally responsible, explicitly criminal responsibility is an objective reproach of the subject / perpetrator of a criminal offense.⁴⁷ Which is further interpreted that the subject cannot be sentenced if he does not commit a criminal act.⁴⁸ The limitation of environmental crimes is formulated as actions that can exceed the standard criteria for environmental damage.⁴⁹ "*Nullum Delictum Null Poena Sine Praevia Lege Poenali*"

Basically, the protection and management of the environment is a very important foundation for the types of human rights, such as the right to life, the right to a decent standard of living and the right to health and a clean environment. The right to a good and healthy environment is closely related to the achievement of the quality of human life, so the right to a good and healthy environment cannot be reduced in depth under any circumstances. In addition, all forms of discrimination are not allowed while respecting environmental rights.⁵⁰ In terms of guaranteeing the absence of discrimination. One of the concepts of *public transparency* has: "*access to documents*", "*knowledge about who makes decisions*", "*comprehensibility and accessibility*" contained in the framework, structure, and working procedures of "*decision making*", also as a consultation on "*policy-making processes*" related

⁴⁵ Siahaan, N H T. 2006. *Environmental Law*. Jakarta: Pancuran Alam.

⁴⁶ Listiyani, Nurul. 2017. "The Impact of Mining on the Environment in South Kalimantan and Its Implications for Citizens' Rights." *Law Journal* 09 (01). <https://dx.doi.org/10.31602/ppdu.v0i1.8099>

⁴⁷ Ranggalawe, Gocha Narcky, Ino Susanti, and Kamal Fahmi. 2023. "Dilemma of Law Enforcement of Unlicensed Mining Settlement." *Marwah Hukum* 1 (1): 29. <https://doi.org/10.32502/mh.v1i1.5600>.

⁴⁸ Siahaan, Putri Nurmala Sari. 2021. "Determination of Legal Subjects in the Application of Criminal Liability in Environmental Law Enforcement (Analysis of Supreme Court Decision Number 1363 K/Pid.Sus/2012)." *Binamulia Hukum* 10 (1): 45–60. <https://doi.org/10.37893/jbh.v10i1.293>.

⁴⁹ Hakim, Eric Rahmanul. 2020. "Indonesian Environmental Law Enforcement in Criminal Aspects." *Media Justice: Journal of Legal Science* 11 (1): 43. <https://doi.org/10.31764/jmk.v11i1.1615>.

⁵⁰ Mukhlis. Loc. Cit, Page 111

to granting permits for an integrated environment. The argumentative rationale for each decision (licensing) taken (duty to give reason) is provided by administrative transparency that positions the obligation on government organs (which have authority in the field of integrated environmental licensing).⁵¹ To protect the rights of people who are harmed both materially and spiritually. Therefore, Article 87 of Law Number 32 of 2009 relating to compensation and environmental restoration is regulated, the content of the article is as follows:

- 1) Every person responsible for a business and/or activity that commits an unlawful act in the form of pollution and/or destruction of the environment that causes harm to other people or the environment is obliged to pay compensation and/or take certain actions.
- 2) Any person who transfers, changes the nature and form of business, and/or activities of an unlawful business entity does not release the legal responsibility and/or liability of the business entity.
- 3) The court may order the payment of forced money for each day of delay in the execution of a court decision.
- 4) The amount of forced money is decided based on laws and regulations.

With the presence of this article in the field of Environmental Law in Indonesia, it can provide more legal supremacy for the rights of citizens affected by the nickel mining concession. Also as an acceleration of discretion from the government to supervise and determine sanctions, both administrative and criminal sanctions, in order to preserve the environment in Indonesia from various threats. At least these sanctions can provide a deterrent effect.⁵² against any activity that deviates from the rules.

By looking at the phenomena in Indonesia related to nickel mining concessions that threaten environmental sustainability.⁵³ The implications of existing Environmental Law in practice do not seem to have provided effective results. In addition to the paradigm, the central and local government bureaucracy whose formation is still not optimal in synergy, also the factor of lack of community participation in the context of environmental control. The lack of community participation has resulted in the implementation of government functions carried out through government instruments to realize national welfare has not yet been realized. Because there are still many irregularities in the rules by the government followed by violations of the law by certain individuals in carrying out nickel mining concessions. The impact of the implications of Environmental Law in the construction of national law should be able to better guarantee the rights of citizens in obtaining a better environment. Seeing this, there should be a reform of environmental law that prioritizes the rights of citizens to the environment. So that normative deviations from environmental law can be resolved which will indirectly be

⁵¹ Wijoyo, Suparto. 1999. *Settlement of Environmental Disputes*. Surabaya: Airlangga University Press.

⁵² Gunawan Wibisana, Andri. 2019. "On the No Longer Toxic Tail: A Conceptual Critique of Administrative Sanctions in Environmental Law in Indonesia." *Indonesian Journal of Environmental Law* 6 (1): 41-71. <https://docplayer.info/71504638-three-years-directorate-general->

⁵³ Pratama, Aji. 2020. "Law Enforcement Against Industrial Waste Environmental Pollution in Karawang Waters, West Java." *Logic: Journal of Multidisciplinary Studies* 11 (1): 24-31.

followed by more protection of the environment and the fulfillment of the constitutional rights of every citizen.

Environmental Dispute Resolution Mechanism in Nickel Concession Areas

The government and the community have rights and obligations in terms of protecting or maintaining the environment from any form of threat.⁵⁴ The community must have an active initiative and be able to actively participate in environmental conservation, while the Government seeks to provide protection for the country's environment and the constitutional rights of people living in the country's environment through various laws and regulations. The Environmental Protection and Management Act is one of the government's legal products whose purpose is to preserve the environment as well as provide legal protection for the community, so that they can always continue to live in a healthy environment for the foreseeable future.

In the perspective contained in the UUPH, environmental pollution has been juridically qualified as part of the causation of environmental disputes. This is as stipulated in the provisions of Article 1 paragraph 19 of the UUPH which states as follows: "Environmental Dispute is a dispute between two or more parties caused by environmental pollution and/or destruction".

Thus, the UUPH has formatted environmental disputes as part of the consequences of environmental pollution and destruction. Without environmental pollution, there is no environmental dispute. Environmental pollution is a condition sine qua non for the emergence of environmental disputes. In the spectrum of article 1 number 19 letter of the UUPH as referred to above is an environmental dispute that is not only the result of factual environmental pollution and damage, but also potential ones as basic as the meaning of the words "..... the existence or suspected existence of pollution....."

Law 5/1986 jo. Law 9/2004 on (State Administrative Court) presents a juridical basis related to the existence of legal protection instruments for persons or civil legal entities in terms of filing an administrative lawsuit (TUN lawsuit) over the issuance of environmental permits (*Hinder Ordonantie* / HO permits, Industrial Business Permits / IUI, Community Literacy Development Permits / IPLM, and location permits) which are considered *onrechtmatig* and can cause threats in the form of environmental pollution and destruction.

The provisions of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia and also in Article 28 of the Charter of Human Rights (HAM) contained in MPR Decree No. XVII / MPR / 1998 concerning Human Rights and Article 5 paragraph (1) UUPH which is the legal base for environmental lawsuits that refer to its substantive for the fulfillment of both functions of individual rights through the court forum (General Court) whose legal procedures are manifested in Article 34 of the Environmental Management Law. On the other hand, the existence of administrative courts in Indonesia is underutilized as a legal channel for resolving environmental disputes. Since the enactment of the Administrative Justice Law, three "monumental" environmental disputes have been resolved through administrative justice mechanisms, namely: (i) Reforestation Fund case from 1994 to 2000, (ii) PT Freeport Indonesia Company case from 1995 to 2000, and (iii) AMDAL Pantura-Jakarta case from 2003

⁵⁴ Prianto, Yuwono, Benny Djaja, Rasji SH, and Narumi Bungas Gazali. 2019. "Law Enforcement of Unlicensed Mining and its Impact on the Conservation of Environmental Functions." *Bina Hukum Lingkungan* 4 (1): 1. <https://doi.org/10.24970/bhl.v4i1.80>.

to 2004. With all the shortcomings and weaknesses, the legal process of these cases through the Administrative Court agency is one of the appreciative steps towards the existence and function of the Administrative Court.⁵⁵ What should be regulated and emphasized in the construction of Indonesian national law, especially in the environmental sector, is how the dispute resolution mechanism. If this is not regulated, then the concept of Indonesia as a state of law is no longer appropriate. The existence of the Judiciary power in the role of preserving the environment and strictly guarding the constitutional rights of citizens is very appropriate, because the Judiciary power, especially the Judiciary, is an independent agency and should not be intervened by any party, even the government.⁵⁶ This will be one of the biggest roles in realizing the concept of "Sustainable Development" based on the existing paradigm and the concept of "Green Constitution". Basically, sustainability is a form and spirit of law.⁵⁷ Therefore, the law is always dynamic in solving all existing problems.

In the context of law-based dispute resolution related to the environment, there are two views related to *alternative* dispute resolution. First, any form of dispute resolution process other than litigation. Second, any form of dispute resolution using a consensus approach.⁵⁸ Regulations regarding environmental dispute resolution are contained in the provisions of articles 30 to 39 of the UUPLH. If examined comprehensively, there are several alternatives to resolving environmental cases. Looking at what is regulated in the article, it can then be concluded that there are things that are directly related to ADR / APS including the following:

- a) (*in court resolution*) Dispute resolution through the court.
- b) (*out court resolution*) Out of court dispute resolution
- c) In the context of environmental crimes, dispute resolution can only be done through the Court.
- d) Parties to a dispute who choose to settle out of court may have their dispute referred to the court if one of the parties considers that the out-of-court settlement has failed.

The out-of-court or non-adversarial component of resolving ecological disputes in Indonesia is essentially due to the fact that a court or prosecution-driven system would generally entail enormous costs and confusing court administration. There are several underlying reasons why these frameworks have become so popular among debate participants, including *Alternative Dispute Resolution* or ADR which is seen as more adaptable and

⁵⁵ Wijoyo, Suparto. 1999. *Settlement of Environmental Disputes*. Surabaya: Airlangga University Press.

⁵⁶ Tjukup, i ketut, and i gusti ayu agung ari Krisnawati. 2018. "Dispute Resolution Through Litigation Efforts in the Field of Civil Environmental Law Enforcement." *JHAPER* 4 (2). <https://jhaper.org/index.php/JHAPER/article/view/84/85>.

⁵⁷ Putro, Widodo Dwi, and Adriaan W. Bedner. 2023. "Ecological Sustainability from a Legal Philosophy Perspective." *Journal of Indonesian Legal Studies* 8 (2): 595–632. <https://doi.org/10.15294/jils.v8i2.71127>.

⁵⁸ Ihyamuis, Megawati, Farida Patittingi, and Kahar Lahae. 2022. "Alternative Mining Dispute Resolution: Study of Land Dispute between Karunsi'e Dongi Community and PT Vale Indonesia Tbk." *Amanna Gappa* 30 (1): 2022.

receptive to the needs of meeting in dispute. Communities tend to be more engaged in their role in resolving disputes through existing ADR systems. Through this ADR framework, the opportunity to achieve justice becomes more important so that each case or dispute will have its own characteristics.⁵⁹ There are several perspectives on ADR dispute resolution. First, Alternative Dispute Resolution (ADR) is a way of resolving environmental conflicts outside the court, which can be in the form of arbitration, negotiation, mediation, or conciliation; Second, ADR is a meeting to resolve natural disputes through non-prosecution and discretion (through outsiders); Third, alternative dispute resolution (ADR) is an effort to avoid justice and is not limited to arbitration, negotiation, or other means.⁶⁰ The settlement of environmental dispute issues outside the court as referred to in UUPPLH is basically deliberate. This is stated in "Settlement of environmental disputes can be done through the court or out of court" in Article 84 paragraph 1 of UUPPLH. This means that everyone is given the opportunity to choose which component to use in resolving natural disputes and furthermore to maintain the social freedom of the parties involved in the problem. However, the freedom given is not complete. This shows that there are still limitations, such as: First, out-of-court settlement mechanisms may not be available for all environmental crimes; Second, if the parties choose the out-of-court dispute resolution system, then they are naturally not allowed to use other settlement components such as through legal entities. Thus, the out-of-court settlement system essentially has both monetary and non-monetary objectives.⁶¹ Non-monetary objectives focus more on specific actions, such as installing or repairing a Waste Management Unit (UPL) so that it produces waste according to the standard Environmental Quality Standards (EQS), while financial objectives emphasize the monetary aspect in the form of settlement or compensation. Different measures can be finalized to be agreed upon. The collection of questions is assisted through discussion techniques or by involving outside parties or what is called intervention. Meetings in resolving these disputes are given the opportunity to decide what system will be used to determine ecological problems, as stipulated in the arrangement of Article 85 paragraph (3) of the UUPPLH.

CONCLUSION

In making Indonesia an electric vehicle industry, the government through the nickel mining concession policy must pay attention to aspects of environmental law and the right to life of the community. Nickel mining concessions that do not pay attention to the right to life of citizens can be considered as unlawful acts (PMH), which are mandated in the provisions of article 1365 BW which states that every PMH that causes harm to the injured person is obliged to compensate for the loss. The implications of environmental law for nickel mining concessions in Indonesia are reflected in Law 32/2009, which provides a legal basis for the community to file a class action lawsuit if there are losses due to environmental pollution and/or damage. In addition, pre-prosecution legal efforts can also be taken by people who have

⁵⁹ Oktaryo, Jackson. 2013. "Legal Review of Out-of-Court Settlement of Environmental Disputes." *Advocacy Scientific Journal* 15 (02). <https://doi.org/10.36987/jiad.v1i2.454>

⁶⁰ Aritonang, Agnes grace. 2021. "The Role of Alternative Dispute Resolution Outside the Court in Environmental Protection and Management." *Journal on the Foundations of Legal Thought* 03 (01). <https://doi.org/10.14710/crepido.3.1.1-12>

⁶¹ Thahira, Atika. 2020. "Environmental Administration Law Enforcement in View of the Concept of the State of Law." *JCH (Journal of Legal Scholarship)* 5 (2): 260. <https://doi.org/10.33760/jch.v5i2.229>.

an interest in environmental protection. However, there are still challenges in the application and enforcement of environmental law in Indonesia, such as weak government supervision, low sanctions, and lack of community participation. Therefore, further efforts need to be made, such as the involvement of the judiciary in adjudicating disputes to strengthen the government's role in monitoring and enforcing environmental laws in order to maintain the sustainability of natural resources and protect people's right to life. In addition, mining-related policies should not be delegated entirely to the Provincial Government. Local governments must also be given more authority so that the effectiveness of mining sector protection in Indonesia is more stable. This is necessary on the basis of the increasing number of mines whose legality cannot be legally proven. Of course, if the role of local governments is given more authority, the percentage increase in illegal mining will decrease.

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