

The Permits as an Integration Mechanism: Legal Protection Efforts for Land Rights Holders Relating to Mining Permits

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Abstract

This research aims to analyze the position of permits as well as formulate the position of permits as an integration mechanism related to preventive means to minimize disputes and disputes between mining permit holders. This research is normative legal research with a statutory and conceptual approach. The research results confirm that the position of permits as a preventive legal protection effort in society has an orientation to prevent and minimize disputes or disputes between land rights and mining permits. Permits as an integration mechanism for land rights holders relating to mining permits can be carried out by carrying out reformulation in which mining permits are granted by first fulfilling the conditions for resolving various problems between mining permit holders and land right holders. Resolving various problems between mining permit holders and land rights holders is carried out using a comprehensive and holistic approach that not only prioritizes legal approaches, but accommodates political, economic and cultural approaches.

I. Introduction

The state as mandated by Article 33 paragraph (3) of the 1945 NRI Constitution actually has the authority to regulate related to land rights along with other rights related to the earth, water, and natural resources that exist. The arrangements formulated by the state to regulate related to land rights along with other rights related to earth, water, and natural resources are important aspects so that the state can proportionally protect the rights of land rights holders while ensuring optimal land utilization in realizing the welfare of the people (Abdillah Dalimunte, Mohammad Gufron AZ2, 2023). However, in practice there are often problems related to land rights which involve legal problems with mining permits.

Land rights actually have substantial differences with mining permits because land rights only focus on land rights, whereas mining permits are more about the use or use of an area or region to make mining activities a success. (Listiyani et al., 2023). Article 135 Law no. 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) actually emphasizes that mining permits can only be implemented if there is approval from the land rights holder. Article 137 A paragraph (1) Law no. 3 of 2020 concerning Amendments to Law no. 4 of 2009 concerning Mineral and Coal Mining (Amendments to the Minerba Law) also emphasizes that the resolution of disputes between mining permit holders and land rights holders is carried out by the central government which is further regulated by Government Regulations. The Government Regulation which discusses the resolution of disputes between mining permit holders and land rights holders, namely PP No. 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities (PP on the Implementation of Minerba Business Activities). Regulations in the PP on the Implementation of Minerba Business Activities focus more on formal procedures when there is a dispute between mining permit holders and land rights holders..

Problems that occur between mining permit holders and land rights holders should be anticipated by having a permit granting process that is not only procedural but also substantive in relation to mining permits. A permit

that is substantive in nature means that the permit has a comprehensive nature so that it can preventively prevent disputes or disputes between mining permit holders and land rights holders.(Werner et al., 2024). Efforts to optimize aspects of permits in an effort to prevent disputes or disputes between mining permit holders are relevant for placing permits as an integration mechanism (Muhdar et al., 2023).

Permits as an integration mechanism are actually based on the idea of law as an integrative mechanism as put forward by Harry C. Bredemeier. Substantially, Harry C. Bredemeier stated that law is a means of integrating various interests if there are various potential disputes or disputes(Rahardjo, 2012). Harry C. Bredemeier's idea is actually relevant to placing the permit instrument as an integration mechanism so that the permit instrument can be used as a preventive tool to minimize disputes and disputes between mining permit holders as an effort to provide legal protection, especially for land rights holders. This research specifically aims to analyze the position of permits as part of legal protection efforts for the community in the field of state administrative law and formulate the position of permits as an integration mechanism related to preventive means to minimize disputes and disputes between mining permit holders.

Research that discusses aspects of licensing in relation to mining has actually been carried out by three previous researchers, namely: first, research by Jailani and Fatimah (2023) which discusses mining licensing authority in terms of the concept of decentralization.(Jailani & Siti Fatimah, 2023). The novelty of Jailani and Fatimah's (2023) research is that the practice of withdrawing mining permits from the central government actually weakens the concept of decentralization in Indonesia. Second, research conducted by Fahmi, et al. (2023) which discusses enforcement of mining without permits(Ranggalawe et al., 2023). The novelty in Fahmi, et al.'s research. (2023), namely that enforcement of mining without permits is more effective in a non-penal manner because it can immediately resolve the root of the problem so that there is an orientation towards the absence of illegal mining in the future. The third research was conducted by Azwar et al. (2024) with a focus on discussing mining permits after the Job Creation Law,

viewed from the welfare state concept (Joice Soraya, Fathul Hamdani, Eduard Awang Maha Putra, 2024). The novelty of Azwar et al.'s research (2024), namely that the simplification of mining licensing after the Job Creation Law is actually relevant to the welfare state concept because it seeks to provide effective and efficient licensing and has direct implications in developing the community's economy.

Of the three previous studies above, in fact there has been no research that specifically discusses the concept of permits as an integration mechanism which refers to the concept of law as an integrative mechanism as proposed by Harry C. Bredemeier. This emphasizes that this research is original research because the focus of analysis in this research has not been specifically discussed in the three previous studies above. Research Method

This research, which specifically discusses the position of permits as an integration mechanism relating to preventive means to minimize disputes and disputes between mining permit holders, is normative legal research by exploring aspects of concepts, theories and legal principles relating to these legal issues. (Suteki & Taufani, 2020). The primary legal material in this research is the 1945 Constitution of the Republic of Indonesia, Law no. 5 of 1960 concerning Basic Agrarian Principles (UUPA), the Minerba Law, Amendments to the Minerba Law, and PP on the Implementation of Minerba Business Activities. Secondary legal materials include various research results that discuss permits and rights to land and mining businesses in the form of journal articles, books and other scientific works. Non-legal materials are language dictionaries. The approach used is a conceptual and statutory approach.

2. Results and Discussion

Permits as Part of Legal Protection Efforts for the Community

Permits are generally understood as approval from the government based on law relating to certain aspects that are permitted to be managed or carried out certain efforts in accordance with statutory regulations. (Haryadi et al., 2023). In state administrative law, permits have an important position because they relate to whether or not an activity will be carried out by a legal subject (Pertiwi et al., 2023). Permits are actually understood in two aspects, namely broadly and narrowly (Fadil et al., 2024). Broadly speaking, permission is interpreted as an approval given by the government on behalf of the state to certain legal subjects relating to the permissibility of certain actions which are generally prohibited (Aminuddin Kasim, Sutarman Yodo, Surahman, Abdul Muttalib Rimi, Imran, 2023). Narrowly, permission is interpreted as an allowance for a general prohibition that is intended for a concrete activity that has certain risks and requires precision and precision (Darman & Riyanti, 2023).

From the various views regarding permits as emphasized above, a substantive and comprehensive view regarding permits is indeed something that is difficult to do, especially for experts or legal experts. This is as stated by van der Pot that formulating the true nature of permits is a difficult thing to do even though in general permits can be easily understood (Ridwan Ridwan HR, 2018). The view regarding permits, which is specifically related to all aspects related to permits, which are called licensing, was expressed by Philipus M. Hadjon that permits are essentially *beschikking* or administrative decisions that determine a certain legal action (Prawiranegara, 2021). Philipus M. Hadjon's view was strengthened by J.B.J.M Ten Berge who emphasized that licensing is a permit or permissibility of a deviation from the prohibitory provisions as stated in statutory regulations which constitute approval from the government as a representative of the state (Susanto, 2021).

Another view regarding permits was also expressed by E. Utrecht that a permit or in other terms called *vergunning* is a government decision that allows a legal subject to carry out certain activities based on statutory regulations (Ibad, 2021). Even though they are formulated differently, the views regarding permits and licensing according to Philipus M. Hadjon, J.B.J.M Ten Berge, and E. Utrecht have substantial

similarities, namely permission as a government or authority's decision to give approval to a legal subject to carry out an activity. Referring to the provisions of Article 1 Number 19 of Law no. 30 of 2014 concerning Government Administration, it is emphasized that a permit is a manifestation of the decision of an authorized official based on a request from the public. Provisions of Article 1 Number 19 of Law no. 30 of 2014 concerning Government Administration is essentially no different from the nature of permits as stated by experts, but the important thing in 1 Number 19 of Law no. 30 of 2014 concerning Government Administration that permission is not identified with the permissibility of a prohibition as is the view of J.B.J.M Ten Berge and several other state administrative law experts (Arniti et al., 2019).

From the various views related to permits above, in general permits have several objectives, namely (L. A. Putri et al., 2023)(Nasir et al., 2023): (i) efforts to control society regarding certain actions, in particular which have risks, (ii) efforts to prevent various aspects that pose a danger to the environment, (iii) efforts to protect certain objects from activities that will be carried out, and (iv) efforts to direct and select various community activities and the parties involved in these activities. From the four objectives of the permit above, it can be interpreted that the permit has the aim of bringing order to society as well as protecting certain things that have the potential to be damaged or disturbed by certain activities that tend to have risks.

In relation to mining, permits are the most important aspect because permits can enable the state to control every mining activity. The state has a role to control, supervise and formulate policies relating to mining activities because mining, apart from being a risky activity, is also an activity that takes natural resources from Indonesia (Cakranegara et al., 2023). As mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, control and management of natural resources must be carried out by the state which is oriented so that the maximum benefits can be enjoyed by all the Indonesian people.

In connection with the extraction and management of natural resources, the state has the position of authority over natural resources in Indonesia (Andre Birawa, 2020). The state's position to control natural resources must be understood in the context of public power, which means that state control over natural resources cannot be interpreted as the state owning natural resources, but rather the state managing, regulating and administering various mechanisms related to natural resources (Arizona , 2014)(Akhmaddhian et al., 2023). Mining as an activity to extract, process and manage natural resources needs to be regulated by the state so

that mining activities can be carried out in a way that ensures environmental sustainability, does not have a negative impact on the surrounding community, and does not conflict with the law (Prasetya, 2023).

One aspect of state regulation relating to mining activities is through permits. Permits related to mining activities are a control effort from the state to ensure that the mining process is carried out optimally and does not pose a negative risk to the community. Permits in the mining context are a preventive measure, namely aimed at preventing various negative impacts that occur related to mining activities (Riawanti et al., 2023). Apart from being related to permits, mining is also related to the term concession. Concessions are actually "special permits" relating to activities that are under the authority of the government, but the government hands over the implementation of these activities to other parties called concessionaires (Sensu et al., 2021). This further emphasizes that permits have an important position in mining activities.

Mining permits as an important aspect of mining activities in practice often conflict with land rights owned by the community (Harun et al., 2023). This can be understood because land rights are actually related to private control over the land, while mining is an activity to search for, obtain, process and manage natural resources which are specifically in the land or in the bowels of the earth (Harun et al., 2023). The existence of disputes and disputes that occur between holders of land rights and mining permits is actually a problem that occurs in society.

In relation to the position of land rights as based on Article 6 of the UUPA, it is emphasized that land rights are not absolutely individual but have a social dimension. The social dimension as a characteristic of land rights as mandated in Article 6 of the UUPA is actually the "identity" of Indonesian agrarian law which views that land rights have both private and public dimensions (Dharsana et al., 2022). The private dimension is related to land rights, namely the state recognizes, guarantees and facilitates each individual's land rights, especially as the state also issues certificates as a sign and proof of a person's ownership regarding land rights (Lestari et al., 2022). The public dimension is related to land rights, namely land rights actually have a communal orientation where land can be oriented or prioritized for its use in the public interest (S. S. Putri, 2022). The public dimension related to land rights emphasizes that individual property rights related to land rights are not absolute

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This characteristic of land rights having public and private dimensions was emphasized by Boedi Harsono as a form of Indonesian perspective regarding land rights which have the dimension of Pancasila legal ideals (Harsono, 2003). Pancasila as a philosophical basis in national agrarian law actually has the view that Pancasila balances individual ownership with the communal interests of society (Prasetio, 2023). Especially with regard to various aspects of national agrarian law, every individual ownership must be understood to be in line with the communal interests of society. This also applies that a community's communal interests must be understood in harmony with guaranteeing rights related to individual ownership. This characteristic emphasizes that land rights as part of national agrarian law are not absolute, but proportionally accommodate aspects of individual ownership in harmony with the community's communal interests (Suwardi & Atmoko, 2019).

In connection with the existence of disputes or disputes between land rights and mining permits, this actually places permits as an instrument of control and a means of legal protection for the community. Referring to Philipus M. Hadjon's view, legal protection for society, especially in the aspect of state administrative law, is where the state positions itself as the party that provides protection to citizens (Safitri & Sa'adah, 2021). More specifically, Philipus M. Hadjon emphasized that legal protection is divided into two, namely preventive and repressive (Philipus M. Hadjon, 2007). Preventive legal protection is legal protection when an action or legal action has not been implemented. This is actually to ensure that certain legal actions or acts do not harm society. Repressive legal protection is legal protection when an action or legal act has occurred (Philipus M. Hadjon, 2007). Repressive legal protection is generally implemented through various efforts to resolve disputes, both litigation and non-litigation. One form of preventive legal protection is permits. This is because the permit aims to anticipate risks that occur due to an action or legal action.

In connection with disputes or disputes between land rights and mining permits, permits as one of the legal protection measures in society occupy an important position to prevent disputes or disputes between land rights and mining permits. Permits as a preventive legal protection effort in society have an orientation to prevent and minimize disputes or disputes between land rights and mining permits. Permit instruments in relation to disputes or disputes between land rights and mining permits will be optimal as a means of preventive legal protection in the community if the mining permit process is carried out in an integrated manner taking into account data on land rights in the area where the mining permit is

issued..

Permits as an Integration Mechanism for Land Rights Holders Regarding Mining Permits

Permits in the mining context have an important position, especially as a means for the state to ensure that the mining process is carried out in accordance with procedural provisions in statutory regulations while not having a negative impact on the community (Citranu, 2020). Permits are actually a manifestation of the state in the context of natural resource management, namely in terms of regulating various administration and management of natural resources, determining legal relationships in natural resource management, and determining the parties involved in natural resource management (Suparto, 2020). Permits in the context of natural resources are important because mining is generally understood as an effort to extract, process and manage natural resources in the earth. Through permits, the state can at least anticipate various mining activities so that the mining activities that will be carried out preventively can be carried out in accordance with and in line with statutory regulations (Redi, 2022).

Permits for mining activities are important because mining actually carries out exploration and exploitation of non-renewable natural resources so that implementation must also refer to standards and principles of environmental sustainability (Monteiro et al., 2021). With regard to permits for mining activities, they are generally based on Mining Areas which are part of the national spatial planning. Mining Areas are then further specified as Mining Business Areas which have various data relating to potential and geological information. This mining business is then divided into Mining Business Permits (IUP), People's Mining Permits (IPR), and Special Mining Business Permits (IUPK). IUP is a permit to carry out business activities in the mining sector, IPR is a permit to carry out community mining business activities within certain limits, and IUPK is a permit to carry out mining business activities in a specially designated area (Riche, 2021). With regard to land rights, it can be understood that neither IUP, IPR, nor IUPK constitute ownership of land rights.

The confirmation that an IUP, IPR, or IUPK does not constitute ownership of land rights contained in Article 135 of the Minerba Law actually confirms that a mining permit can only be implemented if there is approval from the holder of the land rights. The provisions of Article 135 of the Minerba Law actually emphasize

that holders of IUP, IPR, or IUPK do not automatically hold land rights. In practice, this makes it possible for a mining area to have land rights holders as well as IUP, IPR or IUPK holders. The existence of land rights holders and mining permit holders actually has the potential to cause disputes or disputes (Anna Triningsih, 2019). In relation to potential disputes or disputes, Article 137 A paragraph (1) of the Amendment to the Minerba Law emphasizes that the resolution of disputes between mining permit holders and land rights holders is carried out by the central government which is further regulated by Government Regulations.

Government regulations which discuss the resolution of disputes between mining permit holders and land rights holders are regulated in the PP on the Implementation of Minerba Business Activities. The PP on the Implementation of Mineral and Coal Business Activities stipulates that disputes between mining permit holders and land rights holders can be carried out according to needs in a gradual manner. Even mining permit holders before carrying out mining business are also obliged to provide fair compensation for land rights holders (Pradiatmika et al., 2020). However, in practice it is not easy to carry out a fair compensation process for land rights holders. Apart from the difficulty of obtaining a compromise and agreement from the parties, the negotiation process, including efforts to provide compensation, sometimes encounters obstacles, making the mining business process uncertain as to when it can be carried out.

From these problems, it is necessary to pursue an idea that places mining permits as a means of community integration. The idea that emphasizes mining permits as a means of community integration is actually based on the views of Harry C. Bredemeier who emphasizes that law is an integrative mechanism. The essence of the idea of law as an integrative mechanism is that law becomes a means of integrating various interests if there are various potential disputes or disagreements (Rahardjo, 2012). Harry C. Bredemeier's idea of law as an integrative mechanism places law as part of the social subsystem of society where law cannot work and carry out its activities independently and autonomously (Supriyadi & Ahamed, 2021). As part of the social subsystem of society, law must work together with the political and cultural subsystems, including the economy (Saefudin, 2021). In Harry C. Bredemeier's view, a deadlock in a legal process can be found through pattern variables of adaptation, namely non-legal aspects that have an impact both directly and indirectly on legal aspects (Ahadi, 2022).

Optimizing non-legal aspects which have an impact both directly and indirectly

on legal aspects, according to Harry C. Bredemeier, is necessary because law as a goal capable or tool for achieving various goals in society often encounters obstacles so that optimizing the implementation of the law will be more effective if involves non-legal aspects such as political subsystems, culture, including economics (Dicky Eko Prasetyo Adam Ilyas Felix Ferdin Bakker, 2021). In connection with permits as an integration mechanism, in the context of mining permits, permits can be a legal instrument to facilitate various political, cultural, including economic subsystem meetings in a legal practice (Flora, 2023). In relation to mining permits and their relevance to land rights, non-legal aspects such as political, cultural, including economic subsystems are very clearly visible in the process of disputes or disputes between land rights holders and mining permit holders. The political aspect relates to parties who have rights to land with mining permit holders, the cultural aspect relates to the relationship between mining permits and local community culture such as customary land and so on, as well as the economic aspect relates to the compensation provided.

Efforts to position mining permits as a means of community integration can actually be carried out if mining permits are granted by first fulfilling the conditions for resolving various problems between mining permit holders and land rights holders. This condition, in the form of resolving various problems between mining permit holders and land rights holders before the granting of mining permits, is relevant to be implemented as well as resolving various problems between mining permit holders and land rights holders using a comprehensive and holistic approach that not only prioritizes legal approach, but accommodates political, economic and cultural approaches.

4. Conclusion

The position of permits is part of legal protection efforts for the community relating to disputes or disputes between land rights and mining permits, namely to prevent disputes or disputes between land rights and mining permits. Permits as a preventive legal protection effort in society have an orientation to prevent and minimize disputes or disputes between land rights and mining permits. Mining permits will be optimal as a means of preventive legal protection in society if the mining permit process is carried out in an integrated manner by taking into account data on land rights in the area where the mining permit is issued.

Permits as an integration mechanism for land rights holders related to mining

permits can be carried out by carrying out reformulation in which mining permits are granted by first fulfilling the conditions for resolving various problems between mining permit holders and land right holders. This condition, in the form of resolving various problems between mining permit holders and land rights holders before the granting of mining permits, is relevant to be implemented as well as resolving various problems between mining permit holders and land rights holders using a comprehensive and holistic approach that not only prioritizes legal approach, but accommodates political, economic and cultural approaches.

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