

**Conflict of Regulations in the Offering of Special Mining Business License Areas (WIUPK) Against Legal Certainty for Religious Organization-Owned Enterprises****Safriansyah Yanwar Rosyadi, Azis Budianto**

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*Abstract*

This study discusses policy reform in mining management in Indonesia, particularly regarding the offering of Special Mining Business License Areas (WIUPK) to Religious Organization-Owned Enterprises. Although existing regulations aim to improve governance in the mining sector, the enforcement of Article 83A in Government Regulation No. 25 of 2024 has instead resulted in ambiguity and legal uncertainty, as it is inconsistent with higher laws. This research recommends the need for regulatory revisions to create legal certainty, enhance the capacity of resource management by Religious Organizations, and adopt an inclusive approach in decision-making to ensure that mining management can be conducted responsibly and sustainably, providing optimal benefits for society and the environment.

**Keywords : Policy Reform, Mining Management, Religious Organization-Owned Enterprises, WIUPK**

**INTRODUCTION**

The mining sector plays a strategic role as one of the main pillars of the Indonesian economy. As a country rich in natural resources, Indonesia has abundant mineral reserves such as coal, nickel, gold, and copper. The utilization of these resources has become one of the main drivers of economic growth, not only through direct contributions to Gross Domestic Product (GDP) but also as one of the largest sources of state revenue through taxes, royalties, and non-tax state revenues (PNBP). According to data from the Ministry of Energy and Mineral Resources (ESDM), the mining sector significantly contributes to national revenue, particularly in maintaining fiscal stability and supporting infrastructure development through funds generated from mining activities. [1]

In addition to its contribution to state revenue, the mining sector is also an important contributor to job creation. Mining activities, both large-scale and small-scale, provide thousands of direct jobs in mining operational areas, particularly in remote regions with limited economic opportunities. [2] This industry also has a significant multiplier effect, where the presence of mining companies supports the growth of other sectors such as services, transportation, and local infrastructure. Additionally, mining projects often trigger the development of public facilities such as roads, electricity, and clean water in previously underserved areas. The utilization of natural resources through mining

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activities has become one of Indonesia's ways to maximize its economic potential. [3] The presence of abundant mineral reserves provides Indonesia with the opportunity to play a significant role in the global supply chain for mineral commodities. For example, nickel, which is one of Indonesia's key mining commodities, is essential in the battery industry for electric vehicles, making Indonesia a key player in a global market that is increasingly moving toward a green energy transition.

The potential wealth of natural resources in Indonesia is abundant and varied, one of which includes mineral and coal (*minerba*) commodities. This natural wealth is regulated by the state in accordance with the mandate in the Constitution of the Republic of Indonesia, particularly Article 33, paragraph (3) of the 1945 Constitution, which states that "Land, water, and the natural resources contained therein are controlled by the state and utilized for the greatest welfare of the people." The phrase "controlled by the state" in this context indicates that the state does not own these natural resources but holds the right to regulate, manage, and supervise mineral and coal mining activities so that they can benefit the wider community. [4]

In practice, the government, as the representation of the state, is given the authority to manage natural resources by establishing regulations, setting economic policies, and granting management licenses to certain parties that meet the criteria under applicable laws and regulations. Therefore, the state's control over natural resources does not mean that the state directly owns these natural resources. In summary, the state acts as a supervisor that issues mining permits as the legal basis for business entities to carry out mining activities. In other words, the government functions as a regulator and policy maker that plays a vital role in creating certainty for parties that hold mining management rights. [5]

Over time, the government has continued to update mining laws. One of the latest steps is the amendment of Government Regulation Number 96 of 2021 to Government Regulation Number 25 of 2024. In Article 83A of PP 25/2024, the government establishes that the Offering of Areas for Special Mining Business Licenses (WIUPK) and the provision of Special Mining Business Licenses (IUPK) will be prioritized for business entities owned by religious Community Organizations. This indicates an effort to involve religious Community Organizations in the mining sector, as evidenced by the majority ownership of shares by these organizations. [6]

However, this policy has sparked controversy as it is perceived to grant "privileges" to business entities owned by religious Community Organizations in the offering of WIUPK, similar to the treatment of State-Owned Enterprises (BUMN) and Regional Owned Enterprises (BUMD). BUMN and BUMD typically receive priority in acquiring IUPK because their ownership of mineral resources in Indonesia is still relatively limited. Ironically, instead of increasing the control of mineral resources by BUMN and BUMD, the government, through Article 83A of PP 25/2024, prioritizes the offering of WIUPK to business entities owned by religious Community Organizations, raising questions about the direction and aims of this policy. [7]

The granting of licenses to manage mining operations in Indonesia cannot be separated from the historical background and the spirit of achieving equality and justice. Religious community organizations, which played a significant role in Indonesia's struggle for independence, are recognized as having the right to contribute to the mining sector as a form of appreciation for the contributions of religious leaders in the past. [8] Through this affirmative policy, the government hopes to alleviate the financial burden of religious community organizations in the implementation of various social, educational, and health development programs, which are also regulated in Government Regulation Number 25 of 2024 (PP 25/2024). Article 83A paragraph (1) of this regulation emphasizes the government's commitment to improving community welfare as one of the main reasons behind the policy. [9]

Several religious community organizations that have obtained concessions for mining business licenses include Nahdlatul Ulama (NU), Muhammadiyah, the Indonesian Church Fellowship, the Indonesian Bishops' Conference (KWI), the Indonesian Buddhist Community Representatives, and the Hindu Dharma Parisada of Indonesia. The government is also preparing areas previously held by Mineral and Coal Mining Business License Contractors (PKP2B) to be granted to state-owned enterprises of religious community organizations. These areas encompass coal mining sites that were previously managed by large companies such as PT Kaltim Prima Coal (KPC), PT Arutmin Indonesia, PT Kendilo Coal Indonesia, PT Multi Harapan Utama, PT Adaro Energy Tbk, and PT Kideco Jaya Agung. As of now, out of the six religious community organizations planned to receive priority offers for Special Mining Business License Areas (WIUPK) from the government, only two have made firm decisions. Nahdlatul Ulama has accepted the offer, while the Indonesian Bishops' Conference has decided to decline it. The Nahdlatul Ulama Executive Board (PBNU) is expected to manage the former mining area owned by KPC, while the land declined by the other community organizations is likely to be auctioned. The priority offer of WIUPK to these religious community organizations is only valid for a period of five years from the enactment of PP 25/2024, indicating that the time available for decision-making is very limited.

The policy of offering Special Mining Business License Areas (WIUPK) to state-owned enterprises of religious community organizations has sparked various pro and con opinions from different circles, both formally and materially. The government views this policy as a step towards creating justice and equity in the management of natural resources so that they are not solely controlled by private entrepreneurs. Thus, the government hopes that religious community organizations can play a role in mining management and benefit from existing resources, while also expanding the participation base in the mining sector.

However, on the other hand, criticism has come from academics and experts who argue that mining management, particularly for minerals and coal, should be conducted by professionals with expertise and experience in the field. They contend that this complex sector, which has a significant impact on the environment and society, requires management that is professional and expertise-based, rather than being based solely on

religious organization identity. In other words, there are concerns that granting licenses to religious community organizations could overlook the principles of professionalism and sustainability in the management of natural resources.

In light of the existing dynamics, the author feels compelled to conduct further research on the status of the priority offer of WIUPK to state-owned enterprises of religious community organizations. This research aims to delve deeper into the implementation of this policy, its impacts on natural resource management, and how this policy is viewed by various stakeholders. It is hoped that this research can contribute to understanding the challenges and opportunities arising from this new policy, as well as provide constructive recommendations for improving legal regulations and practices in mining management in Indonesia.

## **RESEARCH METHOD**

The normative legal research method is an approach used to analyze and assess the legal norms found in statutes and other legal documents. In the context of this research, the author will focus on the regulations governing the offer of Special Mining Business License Areas (WIUPK) to state-owned enterprises of religious community organizations, with the aim of understanding how these norms are formed, interpreted, and applied in practice. This approach allows the author to explore the legal substance underlying the policy, as well as to evaluate the consistency and relevance of existing regulations with principles of justice, transparency, and accountability in natural resource management.

In addition to the statutory approach, this research also employs a conceptual approach to gain a deeper understanding of the concepts related to the WIUPK policy. This approach aims to analyze various perspectives, both from legal theory and field practices. By examining concepts such as social justice, community participation, and sustainable natural resource management, the author seeks to identify the potential benefits and risks associated with the policy. Through the combination of these two approaches, the research is expected to provide a comprehensive overview of the legal and social implications of the WIUPK offer to religious community organizations, as well as to offer recommendations based on in-depth and critical analysis.

## **RESULTS AND DISCUSSION**

### **Regulations Governing the Offer of Special Mining Business License Areas (WIUPK) to State-Owned Enterprises of Religious Community Organizations Can Ensure Legal Certainty**

The mining sector in Indonesia plays a crucial role in the national economy, not only as a source of state revenue but also as a potential for community empowerment through sustainable natural resource management. In this context, the offer of Special Mining Business License Areas (WIUPK) to state-owned enterprises of religious community organizations represents a strategic step taken by the government to ensure the active participation of community organizations in the management of natural resources. The regulations governing the offer of WIUPK aim to create legal certainty, justice, and transparency in the mining management process while providing opportunities for religious community organizations to contribute to social and economic development.

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Mining management is a complex process due to the numerous requirements that must be met both before and during the management activities. Every business entity intending to operate in the mining sector is required to possess a Mining Business License (IUP) or a Special Mining Business License (IUPK). The IUP serves as a reflection of administrative order in business management and the utilization of natural resources, issued to the business entity. The IUP is divided into two phases: IUP exploration and IUP Production Operations (IUP OP), each serving different roles in mining operations. According to Article 36 of Law No. 3 of 2020 concerning Mineral and Coal Mining, the holder of an IUP has the right to conduct some or all mining business activities. IUP exploration holders have the opportunity to continue mining activities after fulfilling all necessary requirements, including administrative, technical, environmental, and financial aspects.

Exploration activities encompass various stages, such as general surveys, exploration, and feasibility studies, while production operations are subsequent steps of exploration, involving construction, mining, processing, refining, as well as transportation and sales. The differences between IUP and IUPK are evident in several aspects. In terms of license holders, an IUP can be held by business entities, cooperatives, or individuals, whereas the IUPK is specifically granted to State-Owned Enterprises (BUMN), Regional-Owned Enterprises (BUMD), and private business entities. Regarding the duration of the license, IUP exploration for metallic minerals lasts for eight years, while for coal it is seven years and can be extended annually. Meanwhile, for IUP Production Operations, the license can be granted for a maximum of twenty years with two extensions, each lasting ten years. However, if the mining is integrated with processing facilities, the license can be extended to thirty years with a ten-year extension. In terms of area, IUP and IUPK have the same provisions, with holders of metallic mineral exploration IUPs allowed to cover up to one hundred thousand hectares.

In the licensing process, the central government has centralized authority over mineral and coal mining, thereby reducing the authority of regional governments. Recently, the government announced a policy to grant IUPK prioritization to religious community organizations through businesses owned by them. However, the focus of these mining activities is limited to coal commodities and does not cover other mineral sectors. Granting WIUPK to religious community organizations is seen as the government's effort to address the dominance of large business actors and assist community organizations in terms of funding, given that coal reserves in Indonesia remain abundant. This policy aims to provide opportunities for religious community organizations in managing mining businesses, which is expected to support social and economic development in the community.

Despite this, the emergence of regulatory changes in mining law aims to provide legal certainty for business actors and serve as an improvement over previous regulations. However, the offer of WIUPK with priority status to religious community organizations has sparked both support and opposition in society due to the potential overlap between Government Regulation No. 25 of 2024 (PP 25/2024) and Law No. 3 of 2020 (UU 3/2020) which is deemed incoherent. The offer of WIUPK should adhere to clear and structured legal provisions to avoid confusion in its implementation. According to Article 75 paragraph (3) of UU 3/2020, it is stated that "BUMN and regional-owned enterprises as referred to in paragraph (2) have priority in obtaining IUPK." Additionally, Article 75 paragraph (3) of PP 96/2021 also clarifies that "the Minister in granting WIUPK as referred to in paragraph (2) must first offer it to BUMN and BUMD in a priority manner."

However, the latest regulation, PP 25/2024, includes Article 83A, which offers priority for WIUPK to state-owned enterprises of religious community organizations. This creates a dilemma, as the status of these entities remains unclear regarding whether they are equivalent to BUMN or BUMD, which should receive priority without auction. If state-owned enterprises of religious community organizations are treated as private entities, they must undergo the auction mechanism to obtain IUPK. Based on Article 75 of UU 3/2020 and Article 75 of PP 96/2021, it is clear that priority is only given to BUMN and BUMD, implying that state-owned enterprises of religious community organizations should follow the same procedures as other private business entities to obtain licenses. However, with the inclusion of Article 83A in PP 25/2024, the government has modified this regulation and recognized state-owned enterprises of religious

community organizations as entities entitled to priority offers for WIUPK, thereby creating confusion in implementation.

The ratification of Article 83A in PP 25/2024 has generated controversy as it is perceived to contradict Article 75 of UU 3/2020, which explicitly states that priority offers for mining business licenses (WIUPK) are exclusively intended for State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD). With the introduction of Article 83A, a new category is created that encompasses state-owned enterprises of religious community organizations, expanding the definition of business entities from being limited to BUMN, BUMD, and private business entities. This has the potential to create inequity in the WIUPK offering mechanism, where the business entities of religious community organizations receive different treatment than other private entities, despite both structurally falling into the same category.

From a legal perspective, the inclusion of state-owned enterprises of religious community organizations in the list of priority WIUPK recipients can be viewed as a deviation from the primary purpose of these community organizations. As non-profit entities, religious community organizations should not be directed to operate in profit-oriented sectors such as mining. In this context, religious community organizations are designed to focus on social and humanitarian activities rather than commercial ventures. This becomes problematic when the government attempts to ensure justice in natural resource management but risks creating uncertainty regarding the capacity of religious community organizations to manage mining operations effectively.

Article 83A paragraph (7) of PP 25/2024 states that further regulations concerning the priority offer of WIUPK to state-owned enterprises of religious community organizations will be governed by presidential regulation (Perpres). However, to date, this Perpres has not yet been enacted, leading to ambiguity regarding the term "priority." This has caused confusion among stakeholders about whether the priority in question is equivalent to the offers for BUMN and BUMD, or has a different meaning. If this priority is equated, then a legal conflict clearly exists that could render Article 83A legally void due to its contradiction with Article 75 of UU 3/2020.

This legal uncertainty also raises questions about whether the conditions applicable to BUMN and BUMD in the WIUPK offering should also apply to state-owned enterprises of religious community organizations. If not, then these entities must follow the same procedures as other private business entities, including undergoing auctions to obtain WIUPK. This means that state-owned enterprises of religious community organizations would not gain priority in the WIUPK offering and would be compelled to compete with other private entities. However, if this priority status is accepted, all regulations applicable to BUMN and BUMD should be applied *mutatis mutandis* to state-owned enterprises of religious community organizations.

One important aspect that must be fulfilled by business entities applying for WIUPK offers is compliance with administrative, technical, environmental, and financial requirements. This demands that state-owned enterprises of religious community organizations have mining experience of at least three years or obtain support from experienced mining companies. Given these challenges, state-owned enterprises of religious community organizations may need to collaborate with others who have expertise and experience in the field. However, certain limitations have been established to prevent partnerships with previous holders of PKP2B (Coal Mining Work Agreement) or parties involved in the PKP2B.

#### **4.2 Organizational Aspects of Mining Management Policy in Indonesia Related to the Offer of Special Mining Business License Areas (WIUPK) to State-Owned Enterprises of Religious Community Organizations**

The background of mining policy in Indonesia has deep historical roots, beginning in the Dutch colonial era when the mining industry was developed for their economic benefit, continuing post-independence with the establishment of various regulations to manage natural resources more effectively. The mining sector plays a crucial role in the national economy, contributing significantly to state revenue through taxes and royalties, creating jobs, and supporting other industries such as construction and manufacturing. The fundamental regulations governing mining activities in Indonesia are reflected in Law No. 4 of 2009 concerning Mineral and Coal Mining, which sets the legal framework for the management

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of mineral resources, and Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009, which emphasizes sustainability and community empowerment. This policy aims to optimize the utilization of natural resources, ensure environmental protection, and promote equitable economic growth, although challenges in its implementation, such as corruption and social conflict, still need to be addressed to achieve the expected goals.

Many studies indicate that mismanagement in mining can lead to overlaps in various sectors. This indicates that strict regulations regarding mining are a crucial element in preventing mismanagement. In this context, the formation of laws and implementing regulations related to mining management should consider various aspects, particularly those related to the environment and society. Furthermore, it is essential to ensure that there are no conflicting regulations. In this process, community involvement as a check in every legislative creation is a critical factor.

Throughout the history of regulating mineral and coal resource management in Indonesia, the government has often faced both support and opposition in the drafting and implementation of these rules. Common issues include ambiguity in licensing and differing interpretations of existing regulations. This is also evident in the enactment of Government Regulation (PP) No. 25 of 2024, intended to refine PP No. 96 of 2021 as implementing regulations of Law No. 3 of 2020. However, PP 25/2024 has introduced new problems, particularly regarding the provisions of Article 83A, which grants priority in the offering of Special Mining Business License Areas (WIUPK) to businesses owned by community organizations (Religious Community Organizations). This provision is problematic because it lacks support from higher regulations, specifically UU 3/2020, which does not include provisions for priority offers to businesses owned by Religious Community Organizations.

The issues arising from Article 83A of PP 25/2024 reflect disharmony in regulations, due to the presence of provisions that are not aligned with higher legal principles. This can lead to serious legal implications, such as legal uncertainty for mining operators. According to Jimly Asshiddiqie, to prevent abuse of power, every regulation must be based on higher law. In this case, Article 83A of PP 25/2024 indicates the application of rules not regulated in UU 3/2020, creating a new norm that contradicts higher regulations.

Furthermore, businesses owned by Religious Community Organizations, while technically private entities, receive unequal treatment compared to State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD). In this context, the priority status granted to businesses owned by Religious Community Organizations creates ambiguity, given that legally they should follow the same auction procedures as other private businesses to obtain Special Mining Business Licenses (IUPK). Therefore, to provide better legal certainty, adjustments regarding the offering of WIUPK need to be made.

The affirmation in UU 3/2020, particularly Article 75 paragraph (4), clarifies that private businesses must go through an auction process to obtain IUPK. This is also emphasized in Article 75 paragraph (6), stating that the auction mechanism must be regulated by implementing regulations. In other words, businesses owned by Religious Community Organizations should be treated the same as other private businesses and follow the auction process to obtain IUPK. If the government maintains its intention to grant priority status, it should ideally apply this priority within the auction process to avoid legal uncertainties that could harm various parties.

The ambiguity in this regulation indicates legal uncertainty for operators in the coal mining sector. According to Gustav Radbruch, the law should encompass three fundamental values: justice, legal certainty, and utility. Legal certainty is essential to maintain legal order and provide clarity to the community. However, if the resultant legal products fail to create certainty, then the ideals of legal order will fail. A. Hamid S.A., as quoted by Agung Kristyanto Nababan, stated that Government Regulations cannot be formed without an underlying Law and cannot add to or subtract from the provisions in that Law. This emphasizes the importance of alignment between PP 25/2024 and UU 3/2020 to create legal certainty.

The validity of Article 83A of PP 25/2024 raises many questions, especially since regulatory changes are supposed to provide legal certainty but have, in reality, created uncertainty. The principle of *lex superior derogat legi inferior*, which means that lower regulations must not contradict higher ones,

becomes relevant in this context. As a consequence of the legal uncertainties caused by PP 25/2024, there is an urgent need to revoke this article to align it with UU 3/2020.

In this regard, the formulation of good regulation must consider the complexities and alignments between various existing legal products. If PP 25/2024 is not revoked promptly, mining activities conducted by businesses owned by Religious Community Organizations could be deemed unlawful, and adversely affected parties might seek material examination or judicial review from the judiciary. The Supreme Court has the authority to review regulations deemed contradictory to the Law, as stipulated in UU 13/2022. Therefore, despite the uncertainty, the government must still create regulations that are beneficial for mining operators and society.

To ensure the continued priority offering of WIUPK to businesses owned by Religious Community Organizations, a reconceptualization of this ambiguous regulation must be performed. Necessary changes include revising existing provisions, such as in Article 75 of UU 3/2020 and PP 96/2021, so that businesses owned by Religious Community Organizations can be recognized as entities that receive priority in obtaining IUPK, on par with BUMN and BUMD. Through these adjustment efforts, it is hoped that there will be no further hesitation in determining the status of businesses owned by Religious Community Organizations in mining ventures, thereby supporting better and more transparent governance.

Management of natural resources, particularly in the mining sector, in Indonesia requires serious attention and improvement. One crucial issue that has emerged is the lack of clarity in regulations governing businesses owned by Religious Community Organizations. To achieve better and sustainable management, it is crucial to revise and clarify the existing regulations. This can be accomplished by establishing clear norms regarding the legal position and rights of businesses owned by Religious Community Organizations in obtaining mining business licenses. Additionally, this step aims to align existing provisions with the parent laws, to prevent overlaps and conflicts that could disadvantage the parties involved.

Furthermore, improving the capacity for natural resource management by Religious Community Organizations becomes very important. In this context, the government can play an active role in providing training and guidance to the managers of Religious Community Organizations involved in mining ventures. With a better understanding of technical, managerial, and environmental aspects of mining management, it is hoped that businesses owned by Religious Community Organizations can operate more efficiently and sustainably. Additionally, support in the form of access to information and modern mining technology will greatly assist them in adapting to the challenges present in this sector.

An inclusive approach involving various stakeholders in the decision-making process is another policy recommendation that needs to be considered. Given that mining management impacts not only stakeholders within Religious Community Organizations but also the surrounding communities, local community involvement in every stage of decision-making is crucial. Through open dialogue and consultation, all parties can express their aspirations, concerns, and ideas, making the resulting policies more responsive and accommodating. Furthermore, collaboration among the government, entrepreneurs, and civil society will foster a sense of mutual trust that can enhance the legitimacy and success of natural resource management policy implementation.

## CONCLUSION

The mining management policy by businesses owned by Religious Community Organizations (Ormas) indicates that the existing regulations still have several shortcomings, particularly in terms of legal certainty and consistency with higher laws. The implementation of Article 83A in Government Regulation No. 25 of 2024, which provides priority offerings of Special Mining Business License Areas (WIUPK) to businesses owned by Religious Community Organizations, has created ambiguity and



disharmony with existing provisions. This lack of clarity may result in uncertainty for business operators and could potentially disrupt the fair and sustainable management of natural resources. Therefore, it is important to revise this policy to align more closely with applicable legal principles and provide clarity to all parties involved.

In an effort to enhance mining management, recommendations for clarifying regulations, improving management capacity by Religious Community Organizations, and adopting an inclusive approach are strategic steps that need to be taken. By involving various stakeholders in the decision-making process, it is expected that all voices will be heard, and the resulting policies will be more responsive to the community's needs. The implementation of these recommendations will not only improve governance in the mining sector in Indonesia but also ensure that activities are conducted responsibly, sustainably, and provide optimal benefits for all parties, including the affected local communities. Thus, the management of natural resources can contribute to equitable economic development and sustainable environmental practices.

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