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Legal Implications of Land Conversion for Mining Activities on Community Land Rights

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Abstract: Land conversion for mining activities is a phenomenon that significantly impacts community land rights, especially for groups that depend on land for their livelihoods and cultural identity. In Indonesia, land conversion for mining purposes often gives rise to legal conflicts between land rights holders and mining companies that obtain permits from the government. Various regulations governing mining and land, such as the Basic Agrarian Law and the Law on Minerals and Coal (Minerba), serve as the legal basis for the land conversion process. However, in their implementation, there are overlapping regulations and legal gaps that have the potential to harm communities, particularly in protecting their land rights. This study aims to analyze legal regulations related to land conversion for mining and identify their legal implications for community land rights. Furthermore, this study also seeks to explore the forms of legal protection that can be provided to affected communities. The normative juridical technique, which looks at laws and regulations, legal theory, and legal principles related to land conversion and land rights, is the methodology employed in this study. Primary legal documents, such as international and national laws, as well as secondary legal materials, such as scholarly publications, legal literature, and the views of legal experts, make up the study's data sources. Applying a normative legal approach, this study focuses on conceptual and normative analysis of applicable legal provisions. Furthermore, this study also examines legal principles that can serve as a basis for formulating fairer and more sustainable policies in land management for mining. It is anticipated that the study's findings would help shape laws that better uphold communal land rights and reduce the likelihood of protracted agrarian strife.

Keyword: Land Conversion, Mining, Land Rights, Legal Implications.

INTRODUCTION

Land conversion for mining activities is a crucial issue in natural resource management in Indonesia (Anastasia et al., 2024). The need for mining materials to support the industrial and economic sectors often clashes with the interests of communities dependent on land for their livelihoods. Large-scale land conversion can alter the social and economic

structure of local communities, lead to the loss of livelihoods, and trigger conflicts over land ownership rights (Sanjesti & Silviana, 2025). Furthermore, environmental aspects are also a concern, given that mining exploitation can cause long-term ecosystem damage (Ardalepa, 2024). The complexity of these issues demonstrates the need for comprehensive legal studies to understand the fundamentals of land conversion and the rights of affected communities.

From a legal perspective, land conversion is closely related to the theory of land ownership, which highlights the rights of individuals or groups to use and utilize land (Rafiqi et al., 2021). In Indonesia, the agrarian legal system affirms that the state has full authority to regulate, manage, and utilize land for the public interest, as stipulated in the Basic Agrarian Law (UUPA No. 5 of 1960, Articles 2 and 6) (Krismantoro, 2022). In practice, various forms of land rights exist, including ownership rights, cultivation rights, building rights, use rights, and customary land held communally by indigenous communities (Wessy et al., 2023). This imbalance in recognition of various types of ownership often creates legal uncertainty, particularly when land claimed by communities is converted for mining activities without adequate legal procedures.

The theory of justice in the distribution of natural resources is also relevant in examining land conversion for mining. This theory emphasizes that access and benefits to natural resources must be distributed fairly to avoid social inequality (Aguw et al., 2021). In the mining context, an imbalance often exists between the interests of the state, mining permit holders, and affected communities (Josses, 2024). The granting of mining permits without considering the rights of local communities can create structural injustice, whereby corporations and the state overwhelmingly benefit, while communities lose their rights to the land and resources that sustain their livelihoods (Togatorop et al., 2024).

Furthermore, sustainability theory in environmental law plays a crucial role in analyzing land conversion policies. This theory focuses on the balance between natural resource exploitation and environmental sustainability and social welfare (Siswadi & Supriadi, 2024). In the mining context, exploitation activities often lead to irreversible environmental degradation, such as water pollution, loss of biodiversity, and deforestation that disrupts local ecosystems (Radjak & Daud, 2024). Regulations governing land conversion should consider sustainability aspects to ensure that resource exploitation does not harm future generations.

Under national law, land rights are regulated through various regulations, with the main foundation being the Basic Agrarian Law (UUPA). A variety of land rights, including ownership, cultivation, building, and use rights, are governed by the UUPA (Sappe et al., 2021). Customary land, which is customary land held communally, is also recognized under agrarian law. However, this recognition remains limited, as not all customary land has official certificates recognized by the national land law system. As a result, land traditionally held by communities can easily be converted for investment purposes without adequate consent from the original owners (Shebubakar & Raniah, 2023).

The legal status of land is also crucial in determining community rights to the land they occupy. Customary land, which is part of the rights of indigenous communities, often encounters legal challenges because it has not been optimally integrated into the national legal system (Mawaddah et al., 2022). State land, a state asset, can be transferred for various purposes, including mining, through specific licensing mechanisms (Darongke et al., 2022). Meanwhile, land owned by communities with official certificates enjoys stronger legal protection than customary land not registered in the land administration system (Sulaiman, 2022).

Regarding legal regulations governing land conversion for mining, the Mineral and Coal Mining Law is one of the primary legal instruments governing the licensing and management mechanisms for mining land. This law authorizes the government to allocate

land deemed to have mining potential to support national economic interests. However, in practice, there have been numerous cases where the granting of mining business permits has not considered the rights of local communities, resulting in prolonged agrarian conflicts (Liyus et al., 2019).

In addition to the Mineral and Coal Mining Law, other regulations that play a role in land conversion are regulations related to spatial planning and mining business permits. Spatial planning policies determine areas that can be used for mining activities, while licensing mechanisms govern procedures for companies wishing to operate in this sector (Nugroho, 2020). Alignment between spatial planning regulations and mining permits is a key factor in preventing overlapping interests that could harm communities.

One relevant international principle in protecting community rights regarding land conversion is free, prior, and informed consent (FPIC). This principle emphasizes that communities affected by mining projects must be provided with transparent information, have the right to express their consent or rejection before the project begins, and participate freely in decision-making without external pressure. Although the principle of FPIC has been recognized in various international legal instruments, its implementation in Indonesia still encounters many obstacles, particularly in the context of mining permit issuance, which is often carried out without the active involvement of local communities (Kusniati, 2024).

METHOD

This research employs a normative juridical method, an approach focused on examining laws and regulations and legal principles related to land conversion for mining activities and community land rights. This method is carried out by examining primary legal materials, such as the Basic Agrarian Law, the Mineral and Coal Mining Law, and other laws and regulations governing land management and mining in Indonesia. Furthermore, this research also examines secondary legal materials, including legal literature, academic journals, and relevant expert opinions, to strengthen the analysis of applicable regulations. In the analysis process, this research uses conceptual and normative approaches. The conceptual approach aims to understand the basic concept of land rights and the legal principles underlying community protection against land conversion.

Meanwhile, the normative approach is used to examine the conformity between applicable regulations and the principles of just and sustainable law. This research also compares national legal instruments with international legal instruments, such as the principle of free, prior, and informed consent (FPIC), which protects affected communities in the mining licensing process. Because this research is normative in nature, no case studies or interviews with relevant parties were conducted. The analysis was conducted through library research, examining legal texts and documents related to the issues under study. Therefore, this research aims to provide an in-depth understanding of the legal aspects of mining land conversion and policy recommendations that can strengthen the protection of community land rights.

RESULTS AND DISCUSSION

Legal Process of Land Conversion for Mining and its Implications for Community Rights

The process of land conversion for mining in Indonesia involves a series of licensing stages regulated by law. A business permit issued by the national or regional government in compliance with their respective authority is required for mining operations, as per Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) (Rahayu & Faisal, 2021). The licensing process begins with initial surveys and exploration, and continues through production and post-mining

reclamation. Furthermore, mining permits must comply with Law Number 26 of 2007 concerning Spatial Planning, which regulates zoning and land use, ensuring that mining area allocations align with national and regional spatial plans. In the licensing process, the principle of Free, Prior, and Informed Consent (FPIC) emphasizes that affected communities have the right to be actively involved, receive transparent information, and have the opportunity to approve or reject a mining project before a permit is issued. The mechanism for transferring land rights in mining land conversion is a complex legal issue. Based on Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), land in Indonesia can be owned under various rights, including Ownership Rights (Hak Milik), Cultivation Rights (Hak Guna Usaha/HGU), Building Rights (Hak Guna Bangunan/HGB), and Use Rights (Hak Pakai). However, when land is designated as a mining area under Law Number 4 of 2009 on Mineral and Coal Mining (Minerba), the land's status can be transferred through the release or revocation of land rights. Article 18 of the UUPA states that the state can revoke land rights by providing adequate compensation for the public interest. In the mining context, national economic interests are often used as the basis for revocation of rights, potentially leading to conflict with landowners. To minimize injustice, the Minerba Law also requires mining companies to implement corporate social responsibility (CSR), including providing compensation, relocation, or community development programs for affected communities, ensuring that community rights remain legally protected.

Regulatory conflicts in mining land conversion often arise between land law, mining law, and environmental law. UUPA No. Law No. 5 of 1960 affirms that every land right must have legal certainty and protection for its holder, while Law No. 4 of 2009 on Minerals and Coal provides broad authority for the state to allocate land for the exploitation of mineral resources. Furthermore, provisions in Law No. 32 of 2009 on the Environment require mining companies to conduct Environmental Impact Assessments (AMDAL) and post-mining reclamation, while Article 67 of Law No. 41 of 1999 on Forestry regulates the use of customary land and forest areas. In practice, these overlapping regulations often create uncertainty regarding land ownership, especially for indigenous communities and farmers who depend on the land they control for their livelihoods. This lack of synchronization in regulations is sometimes exploited by mining companies to acquire land through mechanisms that are not entirely transparent or even through pressure on local communities, leading to prolonged legal and social conflicts.

Furthermore, the disharmony between national law and local wisdom regarding customary land is a factor that complicates land conversion for mining. Article 3 of Law No. 41 of 1999, Law No. 5 of 1960 recognizes the customary rights of indigenous communities, but its implementation remains limited because many customary lands lack official certificates recognized by the national legal system. Meanwhile, Law No. 4 of 2009 on Mineral and Coal Mining focuses more on the utilization of mineral resources, without explicitly accommodating customary law mechanisms applicable in various regions. As a result, customary lands managed for generations by communities are often considered state land that can be allocated for mining purposes, often without the consent or involvement of the indigenous communities concerned, thus giving rise to legal injustice and potential agrarian conflict.

One of the main legal impacts of land conversion for mining is the loss of community ownership rights to the land. When an area is designated as a Mining Business Permit Area (WIUP), communities that have long controlled and utilized the land often lose their rights without due process. According to Article 33, paragraph (3) of the 1945 Constitution, the state controls land, water, and the natural resources found within in order to maximize the welfare of the populace. However, in practice, state control over mining land often benefits

companies more than affected communities, giving rise to structural injustice and potential land rights violations.

In addition to the loss of ownership rights, communities also experience restrictions on access to the natural resources they previously utilized. Land converted for mining often includes areas rich in water resources, forests, and fertile soil that are essential to the daily lives of local communities. Provisions in the Mineral and Coal Mining Law, which grant exclusive rights to mining business permit holders, mean that communities no longer have access to areas previously used for farming, gardening, or water collection. In some cases, these restrictions also impact the availability of food and clean water for communities around mining areas.

Another legal implication of land conversion for mining is the potential for human rights violations. Land rights are part of the economic, social, and cultural rights (ESCR) recognized in various national and international legal instruments. Article 28H paragraph (4) of the 1945 Constitution affirms that everyone has the right to private property, and this right cannot be arbitrarily taken by another party. In the practice of land conversion for mining, there are many cases where communities are forced to abandon their land without due legal process and adequate compensation. This situation has the potential to violate the principles of land rights stipulated in the International Covenant on Economic, Social, and Cultural Rights (ICESCR), which Indonesia has ratified through Law No. 11 of 2005, as well as the principles of protecting property rights and community welfare that underlie the national constitution.

In many cases, land conversion processes carried out without clear legal mechanisms can lead to prolonged conflicts between communities, mining companies, and the government. Regulatory inadequacies in ensuring community rights often exacerbate the situation, with affected communities losing land rights and access to natural resources without adequate legal protection. Consequently, there is an imbalance in natural resource management that favors investors over communities that have long lived and depended on land converted for mining.

Legal Protection of Community Land Rights in Mining Land Conversion

Legal protection of community land rights in the context of land conversion for mining is regulated by various national legal instruments. Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) serves as the primary foundation for protecting land rights in Indonesia. Article 6 of the UUPA affirms that all land rights have a social function, meaning that land ownership cannot be used solely for the benefit of a particular individual or group, but must consider the interests of the wider community. Furthermore, Article 10 of the UUPA stipulates that land rights holders are obliged to properly cultivate and maintain their land to avoid harming the public interest. Communities benefit from legal certainty about property ownership and governance thanks to later rules like Government Regulation Number 24 of 1997 respecting property Registration.

Community rights in the mining permit process are also guaranteed in several regulations relating to natural resource governance. Minister of Environment and Forestry Regulation Number 4 of 2021 concerning the List of Businesses and/or Activities Requiring an Environmental Impact Analysis (AMDAL) requires community involvement in assessing the environmental impacts of mining activities. Furthermore, the principle of Free, Prior, and Informed Consent (FPIC), which demands community approval before a project can be implemented, has begun to be adopted in various environmental and forestry policies in Indonesia. However, in its implementation, community rights are often ignored due to weak oversight mechanisms and limited access to information related to mining business permits.

In addition to national legal instruments, the protection of community land rights is also supported by various international legal provisions. The 2007 The right of indigenous peoples to control how land and natural resources are used is affirmed by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in their territories and must be involved in any decisions that impact their rights. Article 26 of the UNDRIP states that indigenous peoples have the right to legal recognition of the lands and territories they traditionally own, occupy, or use. This principle aligns with Article 8 of the International Convention on Civil and Political Rights (ICCPR), which prohibits the deprivation of property without a valid legal basis and just compensation.

International environmental law also provides a framework that can be used to protect land rights from the impacts of natural resource exploitation. The 1992 Rio Declaration's Principle 10 highlights the significance of public engagement in environmental decision-making and access to environmental information. Additionally, the right of communities to access justice in environmental matters is emphasized by the Aarhus Convention, which was ratified by European nations. Although Indonesia has not ratified the Aarhus Convention, its principles can serve as a reference in strengthening legal protection for communities affected by mining land conversion.

Efforts to strengthen legal protection for community land rights can be achieved through mining and agrarian policy reforms. Harmonization between land policies and mining regulations is necessary to eliminate overlapping authorities and provide legal certainty for communities with land rights. Revisions to regulations that prioritize investment without considering community rights need to be considered to create a balance between economic interests and the protection of community rights. Furthermore, oversight mechanisms for the issuance of mining business permits need to be tightened to prevent harm to landowners.

Increasing community participation in decision-making is also a crucial aspect of protecting land rights. Community involvement in spatial planning and the issuance of mining business permits must be strengthened so that their voices are heard before land is converted for mining purposes. Providing access to transparent information regarding investment plans and the environmental impacts of a project can also raise public awareness of their rights. Furthermore, the role of civil society organizations and legal advocacy institutions needs to be strengthened in providing legal assistance to communities affected by mining land conversion.

Optimizing the role of judicial and non-judicial institutions in resolving land disputes resulting from mining can be a solution to provide justice for affected communities. Dispute resolution through the courts can be achieved through civil lawsuits or judicial reviews of policies deemed detrimental to community rights. Meanwhile, out-of-court dispute resolution mechanisms, such as mediation and arbitration, can be a faster alternative to resolving conflicts between communities, mining companies, and the government. Strengthening the role of the National Commission on Human Rights (Komnas HAM), the Ombudsman, and environmental dispute resolution institutions can also contribute to ensuring the protection of community land rights in the context of mining land conversion.

One concrete step that can be taken is reforming and harmonizing land and mining regulations. The government needs to review the provisions contained in the Basic Agrarian Law (BAL), the Mineral and Coal Law, the Spatial Planning Law, and the Environmental Law to eliminate overlapping authorities that could potentially harm communities. This reform could include reorganizing mining licensing procedures, formal recognition of uncertified customary land, and more transparent compensation and relocation mechanisms. Furthermore, existing regulations can be revised to make the FPIC principle a binding legal obligation, not merely a guideline, requiring every mining project to obtain the consent of

affected communities before issuing permits. Legal harmonization must also ensure that environmental protection mechanisms and post-mining reclamation directly contribute to the interests of local communities, ensuring that their land rights, livelihoods, and the environment are protected. In practice, this harmonization can be achieved through the issuance of government regulations or ministerial regulations that bridge the Mineral and Coal Mining Law with provisions on land, spatial planning, and customary law, thereby achieving legal certainty for communities without compromising investment interests.

In addition to regulatory reform, strengthening oversight and law enforcement mechanisms is a crucial step to ensure that community land rights are effectively protected. This can be achieved by enhancing the role of internal government oversight institutions, such as the Ministry of Agrarian Affairs and Spatial Planning/BPN, the Ministry of Energy and Mineral Resources, and regional Environmental Services, in monitoring mining companies' compliance with legal provisions, including AMDAL (Environmental Impact Assessment), CSR (Corporate Social Responsibility), and reclamation obligations. On the other hand, communities must be given broader access to dispute resolution mechanisms, both through the courts and non-judicial alternatives such as mediation, arbitration, and complaint mechanisms at the National Commission on Human Rights (Komnas HAM) or the Ombudsman. These efforts can also be strengthened by legal assistance from civil society organizations and advocacy institutions, so that affected communities can fight for their rights legally. Furthermore, the government can initiate revisions to laws or regulations that prioritize investment without considering community rights, so that every mining and land conversion policy will prioritize a balance between economic interests and the protection of community rights. With a combination of regulatory reform and strengthened oversight mechanisms, Indonesia can build a just, transparent, and sustainable mining legal framework while ensuring the protection of affected communities' land rights.

CONCLUSION

Legal regulations related to land conversion for mining activities still face various challenges, including legal gaps that create uncertainty in protecting community land rights. The Basic Agrarian Law (UUPA), the legal basis for land, has not been fully integrated with mining regulations, such as the Mineral and Coal Law (UU Minerba), resulting in frequent overlapping authority and conflicts of interest between investment interests and the protection of community rights. The legal implications of this land conversion include the loss of community ownership of land they have occupied for generations, restricted access to natural resources that provide livelihoods, and the potential for prolonged legal conflicts between communities, the government, and mining companies. Although legal instruments governing mining licensing and management mechanisms exist, their implementation still faces various obstacles, including weak oversight, minimal community involvement in the decision-making process, and a lack of transparency in the granting of mining permits. Therefore, legal protection of community land rights still needs to be strengthened through regulatory harmonization and an increased role for communities in determining land use that directly impacts their lives. As a corrective measure, the creation of more inclusive regulations that take into account community interests, particularly regarding the recognition of customary rights and fair compensation mechanisms for communities affected by land conversion, is necessary. Strengthening oversight mechanisms in mining permits is also crucial to ensure that every land conversion process is carried out in accordance with the principles of justice, transparency, and environmental sustainability. The government needs to improve coordination between various stakeholders, including indigenous peoples, local communities, and the industrial sector, to create policies that balance development interests and the protection of community rights. Furthermore, increased public access to information, as well

as the active role of judicial and non-judicial institutions in dispute resolution, needs to be strengthened to ensure communities have effective legal protection in facing the impacts of land conversion for mining.

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