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Judicial Perspective on Dispute Settlement in the Energy and Mining Sectors

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Abstract

Natural resources are all kinds of wealth contained within the earth, both biotic and abiotic, that can be utilized to meet human needs and well-being. Natural resources are classified into two types: renewable and non-renewable. One example of a non-renewable natural resource is mining. These include oil and natural gas, coal, gold, silver, and copper. The results of mining are controlled by the state. Conflict in the energy and mining sectors is an unavoidable reality due to the highly complex interests of the various parties involved. These interests include the economic interests of mining companies, government regulations and policies, the rights of local communities, and claims to land and resources by indigenous groups. This sector often operates in sensitive areas, both ecologically and socioculturally, so the potential for friction is very high. Furthermore, companies are expected to develop holistic conflict management strategies, by establishing transparent two-way communication, establishing long-term partnerships with communities, and respecting cultural values and local rights. The government also plays a crucial role in creating fair regulations and ensuring legal certainty in conflict resolution. A normative doctrinal approach, or normative legal research, is essentially an activity that examines the internal aspects of positive law (to resolve existing problems). The study's findings indicate that while litigation remains the primary option, there is a growing trend toward the use of alternative dispute resolution (ADR) to achieve more efficient and sustainable solutions. This research recommends strengthening the capacity of judges in handling energy and mining cases and developing regulations that are more responsive to the dynamics of this sector. The government acts as a facilitator, regulator, and law enforcer, while independent institutions such as BANI provide alternative dispute resolution channels through arbitration. Courts systematically resolve disputes through litigation, and civil society organizations play a role in supporting sustainability and justice in handling mining conflicts in Indonesia. Reforms in the dispute resolution system need to focus on strengthening independent mediation institutions, utilizing alternative approaches such as Alternative Dispute Resolution (ADR), and increasing transparency at every stage of the dispute resolution process.

Keywords: Judicial, Dispute Settlement, Mining Sectors.

INTRODUCTION

The Republic of Indonesia is a country rich in natural resources and energy. Potential natural resources and metallic mineral reserves are spread across 437 locations in western and eastern Indonesia, such as copper and gold in Papua, gold in Nusa Tenggara, nickel in Sulawesi and the eastern Indonesian archipelago, bauxite and coal in Kalimantan, and other minerals that are still scattered throughout various locations (Yulianingsih, Kn, Listyarini, & MH, n.d.).

Natural resources are all kinds of wealth contained in the earth, both biotic and abiotic, which can be utilized to meet human needs and welfare. Natural resources are classified into two types, namely renewable and non-renewable natural resources. One example of non-renewable natural resources is mining. These mining materials include oil and natural gas (oil and gas), coal, gold, silver, and copper. The results of this mining are controlled by the state. The state's right of control contains the authority to regulate, manage and supervise the management or exploitation of mining materials, and contains the obligation to use them to the greatest extent for the prosperity of the people (Di & Nagan, 2025). This is in accordance with the text of Article 33 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Amendment IV, which states, "The land, water and natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people." The general definition of mining is a series of activities related to the search, extraction (excavation), processing, utilization, and sale

of excavated materials (minerals, coal, geothermal, oil and gas). These mining activities are not simply permitted by permits; there are procedures in place for companies, both legal entities and individuals, to operate these mining operations. In Indonesia, this is referred to as a Mining Authority (KP) (Benuf, Mahmudah, & Priyono, 2019).

Mining authorization is the authority granted by the state to an entity or individual to operate a mining business. Mining authorization itself can be classified into five types, namely:

1. General Investigation Mining Authority
2. Exploration Mining Authority;
3. Mining Exploitation Authority;
4. Mining, Processing and Refining Authority; and
5. Mining Authority Transportation and Sales (Collins et al., 2021).

In general mining, such as iron, steel, copper, gold, and silver, the contract system used is the Contract of Work (KK). Mining operations are regulated by permits issued by the authorities. Mining permits are defined by Article 35 of Law of the Republic of Indonesia Number 4 of 2009 concerning Mineral and Coal Mining, which consists of three types:

1) Mining Business Permit (IUP);
2) People's Mining Permit (IPR); and
3) Special Mining Business Permit (IUPK) (Komnas Perempuan, 2019).

According to Salim, based on historical aspects during the Dutch East Indies era, the system used for managing general mining minerals was the concession system. The concession system is a system in which in general mining management, mining companies are not only granted Mining Authorizations but also granted control over land rights. Meanwhile, the Contract of Work system was only introduced in 1967, starting with the enactment of Law Number 1 of 1967 concerning Basic Provisions for Mining.

Indonesian society is a pluralistic society, and within this diversity, various factors arise, and therefore, the phenomenon of conflict or dispute is inevitable. Conflicts or disputes over natural, economic, social, and political resources can occur at any time and can even lead to disputes. The paradigm of natural resource management in the mining sector implemented by the government has created various problems, including: increasing conflict, environmental damage, and persistent poverty levels, as well as ignoring local value systems, social, economic, and cultural systems. Mining activities also result in various environmental changes, including changes in the landscape, changes in flora and fauna habitats, changes in soil structure, changes in surface and groundwater flow patterns, and so on. Changes in the physical environment, mining, also result in changes in social, cultural, and economic life. Based on observations related to the conditions of mining activities, the author found many facts of conflict regarding Mining Management. Mining entrepreneurs and workers often ignore the impacts of mining, and it is not uncommon for mining entrepreneurs to commit fraud against residents, thus triggering sporadic resistance movements by residents. The energy and mining sectors have a strategic role in national economic development. Indonesia, as a country rich in natural resources, frequently faces complex dynamics in managing this sector. The potential for conflict in the energy and mining sectors is quite high, both horizontally between communities and companies, and vertically between companies and the government. Conflicts in this sector are generally rooted in overlapping permits, lack of local community involvement, inequitable distribution of benefits, and weak law enforcement against environmental violations. If not resolved effectively, these conflicts can impact investment disruptions, environmental damage, and human rights violations.

Conflict in the energy and mining sectors is an unavoidable reality due to the complex interests of the various parties involved. These interests include the economic interests of mining companies, government regulations and policies, the rights of local communities, and claims to land and resources by indigenous groups. This sector often operates in sensitive areas, both

ecologically and socioculturally, so the potential for friction is very high. Some common types of conflict include land disputes, local community resistance to natural resource exploitation, dissatisfaction with social or economic compensation, and human rights violations. Communities often feel marginalized due to minimal participation in decision-making and a lack of transparency in mining permitting and operational processes. This situation is exacerbated if mining activities cause environmental damage, water pollution, or health problems, which directly impact the livelihoods of surrounding communities (R. S. Dewi, Widyawati, Hidayat, Cahyana, & S, 2021). Therefore, effective dispute resolution is crucial for maintaining social stability and the continuity of company operations. Dispute resolution mechanisms can involve legal channels, mediation, multistakeholder negotiations, or community-based approaches. The principle of Free, Prior and Informed Consent (FPIC) is also increasingly being used as an ethical approach in establishing relationships with indigenous communities, to ensure that exploration and exploitation are carried out with voluntary consent and based on complete information (yetty komalasari Dewi, 2018).

Furthermore, companies are expected to develop holistic conflict management strategies by establishing transparent two-way communication, establishing long-term partnerships with communities, and respecting cultural values and local rights. The government also plays a crucial role in creating fair regulations and ensuring legal certainty in conflict resolution. Therefore, a conflict resolution strategy is needed that goes beyond formal legal approaches, but also considers dialogical, participatory, and sustainable approaches. This study aims to examine legal approaches to conflict resolution in the energy and mining sectors and propose a comprehensive resolution strategy.

RESEARCH METHODS

Legal research with a normative doctrinal approach, or normative juridical legal research or normative legal research is basically an activity that will examine the internal aspects (to solve problems that exist within) positive law (Garcia, Filipe, Fernandes, Estevão, & Ramos, n.d.-b). "This is done as a consequence of the view that law is an autonomous institution that has no relationship whatsoever with other social institutions. Therefore, law as a system has the ability to live, grow and develop within its own system. Thus, if a research is recognized as a (scientific) way to solve existing problems, then what is seen as a problem in research with this approach is limited to problems that exist within the legal system itself. Therefore, the problem must be sought within (the internal aspect of) positive law itself. Law is an institution that is autonomous and sterile from the relationship of influence with other social institutions. The normative legal research method is defined as "a method of research on legal regulations both from the perspective of the hierarchy of legal regulations (vertical) and the relationship of legal harmony (horizontal)" (Kristiawanto, 2024). The normative legal research method uses a normative juridical approach. The normative juridical approach is "an approach that refers to applicable laws and regulations”

RESULT AND DISCUSSION

Juridical Perspective on Disputes in the Mining Energy Sector

The forms of mining conflicts that comply with Indonesian regulations include several main categories regulated by various laws and regulations, particularly Law Number 4 of 2009 concerning Mineral and Coal Mining and its amendments, and Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Laws. The following are

common forms of mining conflicts, according to regulations and frequently occurring conditions (Fauzi & Nulhaqim, 2024):

1. Mining Land Conflict

This conflict typically arises from overlapping or disputed land rights between communities and mining companies. Communities may feel that their land rights or rights to cultivate the land are being compromised by mining activities. The stages of this conflict can range from community unrest and communication efforts to escalation, involving mine closures and damage to company assets.

2. Environmental Pollution and Destruction

Mining activities that fail to address environmental protection can lead to conflicts with communities and environmental activists. Examples include pollution and unreclaimed mine pits, which can result in loss of life and extensive environmental damage.

3. Land Grabbing

Conflicts arising from land grabbing by mining companies from local communities without adequate resolution or compensation.

4. Criminalization and Oppression of Citizens

This conflict takes the form of criminalization of communities who reject mining activities through criminal or repressive sanctions from security forces on a specific legal basis, including prohibitions or sanctions against parties who obstruct mining activities that are legal according to regulations.

5. Termination of Employment (PHK)

Conflicts related to employment in the mining sector are also recorded as one form of conflict resulting from mining activities.

In terms of resolution, laws and regulations stipulate that mining disputes or conflicts can be resolved through legal mechanisms such as domestic courts and arbitration. The central government has the authority to regulate and oversee mining activities, including the issuance of mining business permits, with the role of regional governments increasingly limited following changes to mineral and coal regulations.

Legal instruments that regulate and are used in handling mining conflicts in Indonesia include (Garcia, Filipe, Fernandes, Estevão, & Ramos, n.d.-a):

1) Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) and its latest amendments with Law Number 3 of 2020.
   a. Regulates mining business permits such as Mining Business Permits (IUP), People's Mining Permits (IPR), and Special Mining Business Permits (IUPK).
   b. Establishes that mining dispute resolution can be carried out through domestic courts and arbitration (Article 154).
   c. Contains provisions for criminal sanctions against parties who obstruct or hinder legitimate mining activities (imprisonment of up to 1 year and a fine of up to IDR 100 million) (Article 162 of the Job Creation Law which amends the Minerba Law).
2) Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation (Job Creation Law)
   Adding criminal law enforcement provisions for those who disrupt mining activities in accordance with applicable permits.
3) Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law)
   a. The main legal instrument for preserving the environment from the negative impacts of mining.
   b. Regulate stricter and cumulative criminal sanctions (prison sentences and fines) for environmental violations resulting from mining activities.

c. Contains administrative sanctions such as termination of business operations, environmental improvement obligations, and special supervision of business entities (Article 119 of the PPLH Law).

4) Government Regulations and Ministerial Regulations regarding the implementation of the Minerba Law and the PPLH Law
Regulate the technical implementation of licensing, supervision, reclamation, and mining governance to prevent conflicts and legal violations.

5) Dispute Resolution System Through Courts and Arbitration
Mining disputes can be resolved through general court mechanisms, state administrative courts, or arbitration in accordance with the provisions of the Minerba Law.

6) Criminal Law Policy and Enforcement Instruments
Law enforcement is carried out through the application of criminal law against illegal mining activities, with imprisonment and significant fines stipulated in the Minerba Law and the PPLH Law, as well as coordination between law enforcement officials (Polri, Prosecutor's Office, etc.).

In summary, the legal instruments for mining conflicts in Indonesia refer to the Minerba Law and its amendments, the Job Creation Law, the Environmental Protection Law, implementing regulations, and dispute resolution mechanisms through both litigation and arbitration, as well as criminal law enforcement against illegal mining violations and accompanying environmental violations. The laws governing mining conflicts in Indonesia include: Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law), as amended by Law Number 3 of 2020.

This law regulates mining permits (IUP, IPR, IUPK) and dispute resolution mechanisms through domestic courts and arbitration. There are also criminal provisions for parties who obstruct licensed mining activities. Law Number 6 of 2023 (Job Creation Law) contains criminal sanctions of up to one year's imprisonment and a fine of IDR 100 million for those who obstruct licensed mining activities. Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law) is an environmental legal instrument that upholds sustainability. This law provides cumulative criminal sanctions and fines as well as administrative sanctions such as termination of business operations and the obligation to repair environmental impacts caused by mining activities. Implementing regulations of the Minerba Law and the PPLH Law regulate the technicalities of mining permits, supervision, reclamation, and governance. Dispute resolution mechanisms in general courts, state administrative courts, or arbitration are in accordance with the provisions of the Minerba Law. Criminal law enforcement against illegal mining activities with imprisonment and fines under the Minerba Law and the PPLH Law, carried out by law enforcement officials. All of these instruments serve as the primary legal basis for addressing mining conflicts in Indonesia in a fair and sustainable manner in accordance with applicable regulations(Hairul Saleh & Surya, 2022).

Effective conflict resolution strategies for mining disputes in Indonesia involve collaborative, participatory approaches that adhere to local legal and cultural norms. Here are some strategies that have proven effective(Harjanti, 2006):

1. Mediation and Negotiation
   a) sing a neutral third party mediator or facilitator to reconcile the disputing parties.
   b) Conduct open dialogue and direct negotiations to reach mutually beneficial agreements.
   c) For example, the mediation process is facilitated by police officers, local government, community leaders and NGOs in various mining areas.
2. Conciliation and Arbitration
   a) Conciliation focuses on discussion and joint decision-making through a trusted institution.

b) Arbitration is the appointment of a third party to provide a final decision based on applicable laws and regulations, thereby reducing the potential for further conflict.

3. Settlement Through Arbitration and Court
   a) Mining disputes can be resolved through arbitration or court according to the rules in the Minerba Law (Article 154 of Law No. 4/2009 and amendments).
   b) Arbitration provides a binding decision and is often chosen for its time and cost efficiency in resolution.
4. Local Value Dialogue and Deliberation Approach
   a) Consensus-based discussions at the village or community level are concrete steps that use local cultural values as the basis for resolution to maintain peace and family harmony.
   b) This method is important to minimize ongoing conflict, especially in communities that still prioritize social and customary values.
5. Collaborative and Participatory Approach
   a) Actively involve local communities, mining companies, government and other stakeholders in transparent dialogue forums.
   b) Building trust through information transparency and community empowerment, such as prioritizing local labor and targeted use of corporate social responsibility (CSR) funds.

Following conflict resolution, ongoing monitoring and evaluation are essential to ensure all parties' commitment to implementing the agreed outcome and to prevent recurrence of conflict. According to Ralf Dahrendorf, conflict theory emerged as a "reaction to structural functionalism theory, which paid little attention to the phenomenon of conflict in society. For Dahrendorf, society has two faces: conflict and consensus, known as dialectical conflict theory" (Garcia et al., n.d.-a). Therefore, it is recommended that conflict theory in sociology be divided into two categories: conflict theory and consensus theory. Conflict theory must examine the conflicting interests and use of violence that bind society, while consensus theory must examine the values of integration within society. Regarding the relationship between authority and social conflict, Ralf Dahrendorf believes that positions in society carry authority or power with varying intensity. Authority is not inherent in individuals, but in positions, and is not fixed. Therefore, a person may have power or authority in one environment but not in another. Thus, a person who is in a subordinate position in one group may be in a superordinate position in another group (Indra & Fitriati, 2024).

Dispute resolution in the energy and mining sectors is not only concerned with legal and regulatory aspects, but also requires an inclusive social and cultural approach. Disputes in these sectors often involve local communities or indigenous peoples directly impacted by energy or mining projects, whether socially, economically, or environmentally. Therefore, successful conflict resolution is crucially influenced by the community's active involvement from the early stages of project planning. Community participation is not merely a formality but must reflect open dialogue, empowerment, and respect for local community rights (Kholifah, 2021).

One important principle that must be integrated into projects with the potential to cause conflict, particularly those in indigenous territories, is the principle of Free, Prior, and Informed Consent (FPIC). FPIC guarantees that indigenous peoples have the right to give or refuse consent to projects that impact their lives, after obtaining complete information and before the project begins. The implementation of FPIC is a form of recognition of the human rights of indigenous peoples as stipulated in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and is an important part of achieving social and ecological justice (Rifka Alkhilyatul Ma'rifat, I Made Suraharta, 2024).

In addition to community involvement and the implementation of FPIC, the government's role is key in dispute resolution. The government should not only function as a regulator that sets

rules, but also as a neutral mediator that facilitates dialogue between companies and communities. This mediation function requires institutional capacity, transparency, and public trust in government agencies handling conflicts (Safa'at, Indah, & Qurbani, 2017). The role of the government and independent institutions in handling mining disputes encompasses several key functions that mutually support each other in resolving conflicts and overseeing the fair and sustainable implementation of mining activities (Muhdar & Nasir, 2012):

- Central government
  a) Facilitating the resolution of land and mining conflicts, including mediation between companies and communities or land rights holders. The central government, through the Ministry of Energy and Mineral Resources (ESDM) and the Directorate General of Mineral and Coal, coordinates and provides recommendations in the land dispute resolution process.
  b) Conducting supervision and law enforcement on the implementation of mining business permits (IUP, IPR, IUPK) to ensure compliance with laws and regulations.
  c) Regulate sectoral regulations and organize permits through the Clear and Clean (C&C) process to prevent overlapping permits and technical administrative problems.
- Local government
  Although its authority in granting permits is limited, local governments still have a role in overseeing mining activities operating in their areas, including providing input in conflict resolution and supporting the mediation process.
- Indonesian National Arbitration Institute (BANI)
  An independent institution that provides an alternative resolution for mining disputes arising during the implementation of mining permits. BANI provides an arbitration forum considered efficient and binding for out-of-court dispute resolution. This institution helps expedite the resolution of disputes that could disrupt the smooth running of mining operations.
- Court
  District courts and state administrative courts (PTUN) are responsible for resolving disputes related to permits and mining legal aspects in accordance with the provisions of the Mineral and Coal Mining Law and state administrative law. This process serves as a formal means of conflict resolution when non-litigation efforts are unsuccessful.
- Other Independent Institutions and Civil Society
  Civil society organizations, environmental NGOs, and advocacy institutions play a role in monitoring and advocating regarding the social and environmental impacts of mining activities and in facilitating dialogue between companies and conflict-affected communities (Triana, 2019).

In short, the government acts as a facilitator, regulator, and law enforcer, while independent institutions like BANI provide alternative dispute resolution through arbitration. Courts systematically resolve disputes through litigation, and civil society organizations play a role in supporting sustainability and justice in resolving mining conflicts in Indonesia.

CONCLUSION

This study shows that the courts remain the primary instrument for resolving disputes in this sector, particularly those related to licensing, contract breaches, and environmental impacts. However, several challenges remain, including limited technical understanding by law enforcement officials, inconsistent rulings, and lengthy litigation processes that often hamper investment and business certainty. Conflicts in the energy and mining sectors are a consequence

of complex interests and weak governance. Managing these conflicts requires an adaptive, integrative, and participatory legal approach. Effective conflict resolution strategies include prevention through public consultation, resolution through ADR mechanisms, and the involvement of customary law. The government needs to strengthen social justice-based conflict resolution policies and ensure access to justice for all affected parties. Current dispute resolution mechanisms in Indonesia still have several weaknesses, particularly in terms of time efficiency, high costs, and lack of access to justice for vulnerable communities. Reforms in the dispute resolution system need to focus on strengthening independent mediation institutions, utilizing alternative approaches such as Alternative Dispute Resolution (ADR), and increasing transparency at every stage of the resolution process.

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