

## Legal responsibility of mining companies for agricultural land damage due to mining activities in Wasile district, East Halmahera Regency

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**Abstract:** The problematic activities of mining companies towards agricultural land damage should no longer be a collegial problem, but have logical consequences for society and the environment. Furthermore, it has become a shared responsibility of humanity. Natural resources are a trigger for excessive use of environmental services. Therefore, the reason some people exploit environmental capital is not only intended to survive, but instead is based on the basis of interests alone. The purpose of this study is to analyze the form of legal responsibility of mining companies for agricultural land damage due to mining activities in Wasile District, East Halmahera Regency. The research method used in this study is the empirical legal research method, through literature studies and field studies, namely conducting interviews. Environmental protection and management requires the development of an integrated system in the form of a national policy for environmental protection and management that must be implemented in a principled and consistent manner from the center to the regions. Legal responsibilities of mining companies include: The company must ensure that environmental costs are included in the management fund including environmental preservation after mining activities are carried out.

**Keywords:** *Agricultural land, Company, Legal liability, Mining.*

### 1. Introduction

The presence of the mining sector in various regions in Indonesia is expected to contribute to economic and social development in countries rich in natural resources, including by creating important income for development, adding value through the mining supply chain, and eliminating poverty through employment. In developing countries including Indonesia, the mining sector has helped open up and develop remote areas, build basic infrastructure and create new development centers (Mumbunan, 2015).

The benefits of mining are greatly felt because one of the largest aspects of state income comes from the mining sector. However, on the other hand, this sector often reaps fundamental problems related to the exploitation of environmental capital by a handful of policy makers based solely on interests. For example, various disasters, pollution and environmental damage that have occurred have become clear evidence that today there is a shift in values between humans and the environment.

The impact of mining operations can be described clearly as a decrease in the physical and chemical properties of the soil, changes in land topography, loss of natural vegetation, and reduced wildlife habitat. Through the Proceedings of the National Seminar on "Law and Sustainable Development", it was also stated that mining activities cause major ecosystem damage such as heavy metal disturbances in the land which can fundamentally change society, plants, physical, chemical, and biological properties

of the soil. The remains of former mining excavations become very infertile land, even suspected of containing metal elements (such as mercury), soil acids, which are harmful to plant growth and also harmful to the sustainability of the environment (Yulianingrum, 2021).

Environmental issues are currently a hot topic and are often discussed along with the increasing number of Mining Business Permits issued by the Government. A study of the 1945 Constitution in Article (33) paragraph (3) states "The earth and water and the natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the People".

This provision always buzzes and is used as a basis for mining management in Indonesia. In fact, this has become an outdated issue and is more motivated by economic justice than ecological justice, as we can see together that environmental aspects are often sidelined, both in aspects related to licensing or based on land use or natural resources that can cause losses to communities around mining areas.

The principle of utilizing natural resources should be in harmony, in harmony, and in balance with environmental functions by paying attention to ecological relationships to reduce losses for the sustainability of development and ecosystems (Iswandi & Dewata, 2020). On that basis, environmental damage will always be accompanied by environmental pollution. Environmental damage itself is a form of action carried out by humans that causes physical changes, loss of characteristics, both directly and indirectly, to the properties they have, so that the standard criteria for environmental damage are exceeded (Subagyo, 2022).

One of the natural resource (SDA) sectors that should be able to support the welfare of the Indonesian people is mining as a sector that functions to obtain the largest state foreign exchange. The contribution of state revenue during 2023 as stated by the Ministry of Energy and Mineral Resources (ESDM) recorded that the realization of non-tax state revenue (PNBP) in the ESDM sector in 2023 reached IDR 300.3 trillion or 116% of the target set at IDR 259.2 trillion.

The relevance of this data suggests that as one of Indonesia's sources of foreign exchange in the last few decades, the mining industry in all its forms and types has a large dimension in the lives of the Indonesian people. It is an interesting issue because when we talk about mining, the focus is on economic issues where the state and large companies (national and foreign) benefit from the process and results of mining. In this case, the state receives revenue in the form of both taxes and non-taxes. Meanwhile, mining companies get results from the sale of exploited mining materials.

As a result, the existence of mining actually adds to the series of problems related to the management of natural resources, especially mineral and coal mining, including: 1) The mining area community still lives in poverty. 2) The increase in areas without mining business permits or the rampant practice of illegal mining, in Wasilei District, East Halmahera Regency.

PETI is an activity of producing minerals or coal carried out by the community or company without a permit, not using good mining principles, and having a negative impact on the environment, economy, and society. According to the Director of Engineering and Environment for Minerals and Coal, Ministry of Energy and Mineral Resources (ESDM) Mr. Sunindyo Suryo Herdadi explicitly stated that PETI is an activity without a permit, and triggers environmental damage.

The phenomenon of mining company activities results in damage, including damage to agricultural land. Natural resources are a trigger for excessive use of environmental services (Sutedi, 2011). Therefore, the reason some people exploit environmental capital is not only intended to survive, but instead is based on the basis of interests alone (Yulianingrum, 2021). Just mention the various disasters, pollution and environmental damage that have occurred in almost all epicenters in the world, including in Indonesia, especially in Wasile District, East Halmahera Regency, has become real evidence that today there is a shift in values between humans and the environment (Fatah, 2020).

Efforts to manage mining businesses that have been practiced have not been able to meet the basic principles of welfare (Absori, 2004, pp. 188 – 200). From the side of liberalism that captures these empirical facts, welfare is oriented towards individualism, egoism, and ignores altruism (concern for others) (Azalia & Anganthi, 2017). For this, it is necessary to construct natural management that is oriented towards environmental ethical values and shared benefits.

The role of law in development is how sustainable development values can become a source of norms for the management of mining natural resources so that the concept of sustainable law can become a specific legal model that regulates the management of natural resources, so that the value of sustainable natural resources can be facilitated by legal regulations that guarantee environmental, social and economic sustainability (Sumarjono & Purnomo, 2016, pp. 2–3).

The impact of mining operations can be described as a decrease in the physical and chemical properties of the soil, changes in land topography, loss of natural vegetation, and can damage agricultural land. Mining activities cause major ecosystem damage. Disturbances of heavy metals in the land can fundamentally change society, plants, physical, chemical, and biological properties of the soil. The remains of former mining excavations become very infertile land, even suspected of containing metal elements (such as mercury), soil acids, which are harmful to plant growth and also harmful to the sustainability of the environment (Olivia, 2020).

Mining investment should be seen as one of the objective ways of the state in implementing the goals and functions of the state in order to achieve people's prosperity. Thus, the impact of mining activities on the environment, especially for the community, is also based on the reason that there is no appropriate regulatory model as a guideline for mining companies in managing and utilizing natural resources.

In line with the target of this study, namely to examine important characteristics analytically and experimentally to identify and analyze the form of legal responsibility of mining companies for damage to agricultural land due to mining activities in Wasile District, East Halmahera Regency.

In addition, the substantive problem is that the community does not directly feel the form of legal responsibility for damage to agricultural land, where the researcher focuses on mining activities in Wasile District, East Halmahera Regency. Based on the description of the background above, the problems that can be formulated in the study are: What are the indicators and impacts caused by environmental damage to agricultural land due to mining activities and How is the legal responsibility of mining companies for damage to agricultural land due to mining activities?

## 2. Literature Review

### 2.1. Understanding THE Mining Law

According to Van Apeldorn (1949), that law is actually difficult to define, but in order to facilitate the discussion in the following description, it is very important to provide a limitation on mining law, namely simply providing a working definition. The definition of Mining Law can be simply formulated as follows "a collection of legal rules that regulate policies, prohibitions, permits, permissions, cooperation agreements and supervision of mining business in Indonesia". The written laws in the field of mining business that have been in effect in Indonesia are as follows: Indische Mijn Wet Stb.1899 which came into effect in 1907, Amendments to Indische Mijn Wet in 1899 which changed Article 5 a (Article on Work Contracts). Furthermore, when we were independent, the Mining Law I in 1960 came into effect, namely: Law Number 37 Prp. 1960 concerning "Mining" and Law Number 44 Prp. 1960 on "Oil and Natural Gas". In 1967, in order to facilitate the entry of foreign capital, Law Number 11 of 1967 was issued on "Basic Provisions on Mining" as an improvement on Law Number 37 Prp of 1960, which could not attract foreign investors.

### 2.2. Mining License

Mining businesses are grouped into mineral mining and coal mining. Mineral mining is grouped into:

- a. Mining of radioactive minerals;
- b. Mining of metal minerals;
- c. Mining of non-metallic minerals; and
- d. Rock mining.

Mining business is carried out in 3 (three) forms, namely Mining Business Permit (IUP), People's Mining Permit (IPR) and Special Mining Business Permit (IUPK). Mining Business Permit (IUP) IUP consists of two stages, namely:

### 2.2.1. *Exploration IUP*

Covering general investigation activities, exploration, and feasibility studies. Exploration IUP must contain the company name, location and area, general spatial plan, and guarantee of seriousness, tax up to AMDAL. The period for granting exploration IUP is regulated according to the mineral group. If a mineral or coal is found in the feasibility study, it is mandatory to report to the IUP grantor and it is also mandatory to apply for a temporary permit if you want to carry out transportation and sales, accompanied by production fees.

### 2.2.3. *Production Operation IUP*

Covers construction, mining, processing and refining activities, as well as transportation and sales. IUP Production Operations must contain the company name, location and mining area, reclamation and post-mining guarantee funds, dispute resolution, taxes and the technology used. The period for granting IUP production is regulated according to the mineral group.

## 2.3. *Overview of Legal Responsibility*

The theory of legal responsibility states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a contrary act

Furthermore, Hans Kelsen states that:

"Failure to exercise the care required by law is called negligence; and negligence is usually regarded as another kind of fault (*culpa*), although not as severe as the fault fulfilled by anticipating and intending, with or without malice, the harmful consequences."

Hans Kelsen further divided responsibility into (Kelsen, 2008, p. 140):

1. Individual liability, that is, an individual is responsible for the violations he/she commits;
2. Collective liability means that an individual is responsible for a violation committed by another person;
3. Liability based on fault, which means that an individual is responsible for a violation he/she commits intentionally and is expected to cause harm;
4. Absolute liability, which means that an individual is responsible for a violation he/she commits unintentionally and unexpectedly.

Responsibility in the legal dictionary can be termed as liability and responsibility, the term liability refers to legal responsibility, namely liability due to errors made by legal subjects, while the term responsibility refers to political responsibility. The theory of responsibility emphasizes more on the meaning of responsibility that arises from the provisions of the Laws and Regulations so that the theory of responsibility is interpreted in the sense of liability (Azheri, 2011, p. 54). as a concept related to the legal obligation of a person who is legally responsible for certain actions that he can be subject to sanctions in cases where his actions are contrary to the law.

The organization of a country and government, responsibility is attached to the position that has also been attached to authority, in the perspective of public law, the existence of this authority is what gives rise to accountability (Yuspin et al., 2022, pp. 267–282), in line with the general principle; "geenbevegedheid zonder verantwoordelijkheid; there is no authority without responsibility; there is no authority without responsibility). According to Abdulkadir Muhammad, the theory of responsibility in unlawful acts (tort liability) is divided into several theories, namely (Muhammad, 2010, p. 336):

- a. Liability due to unlawful acts committed intentionally (intentional tort liability), the defendant must have committed an act in such a way that it harms the plaintiff or knows that what the defendant did will result in a loss.

- b. Liability due to unlawful acts committed due to negligence (negligence tort liability), is based on the concept of fault (concept of fault) which is related to morals and laws that are already mixed (interminglend).
- c. Absolute liability due to unlawful acts without questioning fault (stirck liability), is based on his actions whether intentionally or unintentionally.

### 3. Research Methods

This research is empirical using a legislative approach. (*statute approach*) and case approach (*case approach*) (Absori, Nugroho, Budiono, et al., 2020, pp. 140–143). In this research, the researcher used the live case study approach as an approach to a legal event whose process is still ongoing (Izziyana et al., 2019). Thus, the author conducted direct observation or research in the field in order to obtain accurate truth in the process of perfecting this writing, so the purpose and usefulness of this study are basically used to show the way to solve research problems (Wardiono, 2019, p. 17-41).

The research entitled "Legal Responsibility of Mining Companies for Damage to Agricultural Land Due to Mining Activities in Wasile District, East Halmahera Regency" took the research location in the mining area of Wasile District, East Halmahera Regency. The reason this location was used as the object of research, the research team took the research location, namely based on the reason that in the area there are several actual problems that are currently raging and express the form of symptoms or social processes to see directly the implementation of legislation or legal regulations related to recommendations for policy makers in reconstructing independent natural resource and environmental management institutions from the center to the regions as a form of legal accountability in the mining sector within the framework of environmental management in North Maluku Province.

### 4. Research Results and Discussion

#### 4.1. What Are the Indicators and Impacts Caused by Environmental Damage to Agricultural Land Due to Mining Activities?

The condition of the research location is very important, because to find out the influence on a problem, it is determined by several things, including spatial aspects (regarding space and place) in a study, because it concerns a certain regional area that becomes the space and place where a certain rule (law) exists in a region. In this spatial aspect, it is reflected in the institution (Absori, Nugroho, Triharyani, et al., 2020, pp. 204–208).

The mining world is often considered as a "destroyer of nature and the environment", therefore a country with quite large mining reserves such as East Halmahera, must have guidelines for mining environmental standards. North Maluku Province is known as a nickel producing area. The Nickel Mining Business Unit (UBPN) of the North Maluku operational area is one of the production units of PT. Alam Raya Abadi.

Along with its development, Wasile District is still slow in economic growth, with the second largest population in East Halmahera Regency with abundant natural resources. Industry emerged to meet human needs. In addition to producing maximization of ways of thinking, industry also brings material benefits to anyone who succeeds in moving and utilizing it. However, something that cannot be avoided is that industry also has a detrimental impact on nature, the environment, and of course also on humans.

Before changing the company name from PT Makmur Jaya Lestari to PT. Alam Raya Abadi Tbk in the field of Nickel exports then by referring to the Decree of the Regent of East Halmahera Number 140 of 2004, dated December 6, 2004 concerning the Mining Authorization Permit (KP) for Nickel Exploitation intends to assist the Regional Government and the people of North Maluku to utilize the potential of Nickel through investment so that it becomes an economic and social commodity. The existence of the company PT. Araya Raya Abadi Tbk. also has a very big influence on the conditions of social change where in the past the community was very dependent on nature to fulfill their living needs, now the community has shifted to being dependent on companies that are in the midst of the

community itself. This is indexed due to the needs of the community which are increasing day by day and the fulfillment of living income is increasing. The mining sector in Indonesia is a sector that functions to obtain the largest state foreign exchange, however, the existence of mining activities and/or businesses in Indonesia is now being questioned by various groups in its implementation, the state is often faced with a dilemma between optimal utilization and environmental and social losses (Sutedi, 2011, p. 1).

Mining activities are expected to provide a large contribution compared to other fields and increase the Regional Original Income (PAD) of a region. However, de facto, in Indonesia itself there is no strategy to save environmental preservation, the interests of local communities, and the neglect of mineral and coal mining is not measured for future generations (Absori et al., 2019).

Some educated people assume that mining actors in Indonesia can be categorized into three, namely the State, Contractors and KP (Mining Authority) Holders who ignore the principles and laws related to the management of the mining sector (Sumarjono & Purnomo, 2016, pp. 2–3). This policy uncertainty results in the absence of legal guarantees and policies that can attract foreign investors to invest in Indonesia. Various policies have also been issued as an effort by the Indonesian government to help facilitate investors and potential investors (Ease of Doing Business) including spreading across the mining sector.

Investment data for five years shows that there are still many foreign investors in the mining sector. Although the flow of dollars into the business fluctuates every year. However, the mining sector remains the largest in attracting foreign funds. As of 2014, it has disbursed US\$18.84 billion, or equivalent to 12.74% of the total PMA investment of US\$148.17 billion over five annual periods. In other words, each year the mining sector absorbs an average of US\$3.768 billion from foreign investors (Kahfi, 2019). No exception, the position of North Maluku is an interesting note and a new favorite for foreign investment in eastern Indonesia. This can be proven based on data released in 2019 showing that there has been a sharp spike in investment realization in North Maluku Province with a value of 1.0 billion US dollars, making it the eighth largest PMA location (Fatah, 2020).

In this case, for example, conflicts in spatial planning and utilization, environmental preservation, and mining conflicts with the forestry sector in the use of protected forest land for mining activities. The causes of conflicts between the mining sector and other sectors include:

#### 4.1.1. *Difficulty in Accommodating Mining Activities into Spatial Planning*

Mining activities in spatial planning consist of the concept of land use and land cover in spatial planning. Land use is the allocation of land based on its function, such as settlements, agriculture, plantations, trade, and so on. While land cover is the allocation of land based on its land cover, such as rice fields, bushes, built-up land, open land, and so on. However, mining is not included in both, because mining sector activities can only take place if potential mineral content is found below the ground surface at a certain depth. Although it is known to have potential mineral content, it is not certain that it can be fully exploited, because it is related to the size and economic value of the mineral content. The process of determining mining areas that require land above the ground surface takes longer than the spatial planning process itself.

#### 4.1.2. *Environmental Damage*

Kerusakan akibat pertambangan dapat terjadi selama kegiatan pertambangan maupun pasca pertambangan. Dampak lingkungan sangat terkait dengan teknologi dan teknik pertambangan yang digunakan. Sementara teknologi dan teknik pertambangan tergantung pada jenis mineral yang ditambang dan kedalaman bahan tambang, misalnya penambangan batubara dilakukan dengan sistem tambang terbuka, sistem *dumping* (suatu cara penambangan batubara dengan mengupas permukaan tanah). Akibatnya beberapa permasalahan lingkungan yang terjadi akibat kegiatan pertambangan, antara lain masalah *tailing*, hilangnya *biodiversity* akibat pembukaan lahan bagi kegiatan pertambangan, serta meningkatnya air asam akibat aktivitas di area tambang.

#### 4.1.3. *Overlapping of Space Utilization with Forestry Land*

Forests are natural ecosystems where organic compounds naturally decompose and accumulate. After a long time, the organic materials decompose, eventually being buried because they are pressed by layers of new organic materials. That is why forests are places that are very likely to contain a lot of organic mineral materials and are very potential to be used as mining materials. As a result, in its implementation there is often an overlap in the use of space with forests managed by indigenous communities.

The negative impression that mining is a zero value business activity is caused by the reality of the development of mining activities that do not meet the criteria. Thus, to minimize this negative stigma, Natural Resource management should carry out mining activities properly and correctly (good mining practice).

According to Absori, one of the things that can be achieved in an effort to improve people's welfare is the implementation of sustainable development with the following steps; first, political decisions should consider aspects of ecosystem carrying capacity and protection of natural resource and environmental functions.

Second, determine concrete policy steps (politics) in realizing justice for the community in accessing natural resources in order to prevent and overcome prolonged conflicts that can trigger national disintegration. Third, reconstruct and reconsolidate natural resource and environmental management institutions to become stronger and more integrated. Fourth, prepare a Development Program that focuses on the natural resources sector (Absori & Nurhayati, 2018, pp. 97–104).

Suryaningsih in her writing, *The Existence of the State in the Management and Business of Mineral and Coal Resources*, comprehensively explains that natural resource management policies are directed at: (1) Implementing the priority of fulfilling natural resources for domestic needs; (2) Providing certainty of transparency in exploration or exploitation activities; (3) Implementing increased supervision and guidance; (4) Encouraging increased investment and state revenue; (5) Encouraging the development of added value of mining commodity products; (6) Paying attention to environmental sustainability (Suryaningsih, 2017, p. 63).

The purpose of the presence of this institution is to provide reinforcement for the provisions that have been stipulated in Article 14 of Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH), which focuses on instruments for preventing environmental pollution and/or damage, which consist of:

1. Strategic Environmental Assessment (KLHS),
2. Spatial Planning,
3. Environmental Quality Standards,
4. Amdal (Environmental Impact Analysis),
5. UKL-UPL
6. Licensing
7. Environmental Economic Instruments.
8. Environmental-Based Legislation.
9. Environmental-Based Budget.
10. Environmental Risk Analysis, and
11. Environmental Audit.

Several problems still have to be faced by the state in relation to the handover of former mining land even though it has been reclaimed, namely:

The risk if environmental pollution still occurs will automatically become a risk for the state considering that there is no special guarantee fund provided for maintenance after the handover of former reclamation and post-mining land. 2. Former mining land that has gone through the reclamation and post-mining process is land with a special form of treatment that is supported by sufficient funding, both in terms of maintenance and land security aspects. It is feared that when it is handed over to the state with limited maintenance funds, the land that has been reclaimed with a reclamation period of

approximately 5 years will be damaged again. 3. The absence of specific regulations regarding the handling of reclamation and post-mining land that has been handed over to the government has resulted in mishandling by the local government of the land, both in the form of neglect/mismanagement by the government, as well as encroachment of forests and mining materials from the surrounding community. If environmental management results in damage and pollution, Article 54 of Law No. 32 of 2009 states that anyone who causes environmental damage and pollution is obliged to restore environmental functions by, among other things, stopping the source of damage and pollution and cleaning up polluting elements, remediation, rehabilitation, restoration and other methods in accordance with the development of science and technology (Absori, Hernanda, Wardiono, et al., 2023, pp. 844–851).

- a. Remediation is an effort to restore environmental pollution to improve the quality of the environment.
- b. Rehabilitation is a recovery effort to restore the value, function, and benefits of the environment including efforts to prevent land damage, provide protection, and repair ecosystems. Land rehabilitation is an effort to repair, restore and improve the condition of damaged (critical) land, so that it can function optimally, both as an element of production, a medium for regulating water management, and as an element of environmental protection.
- c. Restoration is a restoration effort to make the environment or parts of it function again as the original ecosystem. Land restoration is an effort to return the function of ex-mining land to its original condition. Furthermore, it is emphasized by Law No. 32 of 2009, Environmental Permit Holders as referred to in Article 36 paragraph (1) are required to provide guarantee funds for the restoration of environmental functions.

#### *4.2. Legal Liability of Mining Companies for Damage to Agricultural Land Due to Mining Activities*

The beginning of the right to a good and healthy environment has been stated in Article 28 of the Human Rights Charter as an inseparable part of the Decree of the MPR RI No. XVII/MPR/1998 concerning Human Rights which states: "everyone has the right to a good and healthy environment". Furthermore, on August 18, 2000, the second amendment to the 1945 Constitution of the Republic of Indonesia formulated the rights in question in Article 28 H paragraph (1) which states: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and has the right to receive health services". In 1999, Law No. 39 of 1999 concerning Human Rights was issued, which in Article 9 paragraph (3) states: "everyone has the right to a good and healthy environment". This is also stated in Article 5 Paragraph (1) of Law No. 23 of 1997 and is further deepened in its meaning on the philosophical basis of the right to a good and healthy environment in Law No. 32 of 2009 concerning Environmental Protection and Management. The essence of law enforcement is the process of making efforts to uphold or function legal norms in real terms as guidelines for behavior in traffic or legal relations in community and state life (Budiono et al., 2022, pp. 223–233). Law enforcement in the environmental perspective can be interpreted broadly, namely it can include preventive and repressive aspects. Environmental law enforcement is very complicated, because environmental law occupies the intersection of various classical legal fields. Each of these legal fields can be applied to address environmental violations, such as administrative law, civil law, criminal law, tax law and international law.

Basically, environmental law in the context of law enforcement has interdisciplinary law which includes: administrative, criminal and civil, even outside the legal discipline. Basically, in legal science, there are two large parts of law, namely public law and private law (Budiono et al., 2023, pp. 207–213). Administrative legal aspects that are directly related to administrative or government officials. Civil legal aspects that are related to the injured party themselves, either individually or as a group, even society or the state in the name of public interest. While the Criminal aspect whose prosecution is monopolized by the state whose tool is the prosecutor as the personification of the state

Civil environmental law substantially contains provisions related to the fulfillment of the civil rights of an individual, group of people and civil legal entities in relation to a good and healthy environment.



The right to a good and healthy environment in the Environmental Protection and Management Law still needs to be further elaborated, especially the problem of legal administration contained therein and the legal protection it guarantees (Hamzah, 2005, p. 3).

Preventive efforts in the context of controlling environmental impacts need to be implemented by maximally utilizing monitoring and licensing instruments. In cases where environmental pollution and damage have already occurred, repressive efforts need to be made in the form of effective, consequential, and consistent law enforcement against perpetrators and government officials who have implemented wrong policies so far (Absori, Hernanda, Fitriciada, et al., 2023, pp. 25–32).

The environment has been regulated, but the reality shows that the environment is increasingly damaged by human actions. The environment is positioned as an object of exploitation: mining the earth's bowels without control, deforesting without compromise, polluting water without control, and other arbitrary actions. In fact, the environment also has the rights to naturalize and evolve, which is a natural law that cannot be prevented by humans. Violations of environmental human rights have resulted in disasters, both natural and man-made. Environmental destruction by a handful of people or companies has caused suffering and violations of Human Rights against the largest part of other humans. Thus, according to the author, before being prosecuted through criminal law, in the framework of environmental management, environmental law enforcement should be carried out through a civil law approach (Fadli et al., 2016, p. 85).

If these civil rights are harmed by one of the parties, for example due to environmental pollution or destruction, then in an effort to protect the law, civil environmental law means are used. Environmental protection for victims of environmental pollution and/or damage is provided by giving the plaintiff the right to file a lawsuit for compensation or environmental restoration measures against the polluter (Akib, 2013, p. 180). Thus, the enforcement of environmental law in the context of civil law is related to legal instruments that regulate private (personal) relationships between fellow citizens. Various affirmations regarding civil rights are stipulated in environmental law. For example, the right to a good and healthy environment, the right to conduct business or activities for one's life, the right to obtain information about the environment, the right to carry out participation or involvement, the right to have an existence, such as the right of local communities to interpret the presence of the environment as customary norms (local wisdom) that can be used to maintain environmental sustainability in North Maluku, namely:

1. Tonaka akere wongana manege dema dohutu (Land, water and forests have owners and their owners act as guards from disturbances from irresponsible parties).
2. Wako belom toma pasi, dadi nao sedodoho tanam tiang (a place that has been marked means that place already has an owner).
3. Toma ua hang moju toma limau gapi matubu jou se ngofa ngare (when time has not yet passed, the sun has not reached its highest point in the Moloku Kie Raha region, there are already leaders and people, who are accustomed to carrying out customary norms so that their lives are peaceful and calm).
4. Lua-lua yoito ngolo dawongi karohe majangi ngofa toloro yomaha susa ngori toyohu kaibena (the waves of the sea hit the beaches so that they are clean and beautiful but the grass and plants spread their hearts because their homes have been destroyed).

## 5. Conclusion

Environmental protection and management requires the development of an integrated system in the form of a national policy for environmental protection and management that must be implemented in a principled and consistent manner from the center to the regions. In the end, the community will be the victim of unhealthy environmental conditions, especially for residents living around mining areas. Fresh air is certainly no longer an easy thing to get. Disturbed health is often experienced by the community. Not to mention the condition of the land that continues to have holes as former mining excavations, without any effort to close them up, which can cause victims. Therefore, now is the time for mining

companies to think about the importance of environmental management programs in the former mining areas that they are managing. The reason is, if the company pays attention to the condition of the surrounding environment, then dangers and victims can be prevented early. In addition, by carrying out good environmental management, the community will be able to live healthier, and natural conditions will improve.

Legal responsibilities of mining companies include: The company must ensure that environmental costs are included in the management fund including environmental preservation after mining activities are carried out. The company must also ensure that environmental management, control, and protection are integrated into the project design when submitting an AMDAL permit. In fact, the company must also consider what must be done in order to restore the condition of the land after mining to its original condition. Compensation (liability) in the environment is part of the things related to responsibility for the emergence of pollution and environmental damage by someone's actions (environmental responsibility). Environmental responsibility is a series of obligations of a person or party to bear responsibility for sufferers whose rights to a good and healthy environment have been violated.

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### References

- [1] Absori. (2004). Pembangunan, Problem Lingkungan dan Peran Organisasi Keagamaan Muhammadiyah. *Tajdid*, 2(2), 2004.
- [2] Absori, A., Hernanda, T., Fitriaciada, A., Wardiono, K., & Budiono, A. (2023). Analysis of the Issues on Bengawan Solo River Basin Management Policies. *WSEAS Transactions on Environment and Development*, 19, 25–32.
- [3] Absori, A., Hernanda, T., Wardiono, K., Fitriaciada, A., & Budiono, A. (2023). Critical analysis of River Basin Management Regulation in Bengawan Solo for Water Tourism: Local Legislation in 7 Regency. *WSEAS Transactions on Environment and Development*, 19, 844–851. <https://doi.org/10.37394/232015.2023.19.80>
- [4] Absori, A., Nugroho, S. S., Budiono, A., Ellyani, E., Nurani, S. S., & Fadlillah, M. (2020). Indonesia as an ecocratic country: The state's responsibility and the people's participation in preserving and in managing the environment quality. *Quality: Access To Success*, 21(179), 140–143.
- [5] Absori, Nugroho, S. S., Triharyani, A., Sarjiyati, Budiono, A., Nugroho, H. S. W., Rangga, & Jayanuarto. (2020). The Prospect of Environmental Law to Achieve Healthy Environmental Development in Indonesia. *Medico Legal-Update*, 20(1), 204–208. <https://doi.org/10.37506/mlu.v20i1.356>
- [6] Absori, & Nurhayati, N. (2018). Kebijakan Perizinan, Sengketa Lingkungan Hidup Dan Kepentingan Investasi (Licensing Policy, Environmental Disputes and Investment Interests). *Jurnal Jurisprudence*, 7(2), 97–104. <https://doi.org/10.23917/jurisprudence.v7i2.5539>
- [7] Absori, Yulianingrum, A. V., Dimiyati, K., Harun, H., Budiono, A., & Disemadi, H. S. (2019). Environmental Health-Based Post-Coal Mine Policy in East Borneo. *Scientific Foundation SPIROSKI, Skopje, Republic of Macedonia Open Access Macedonian Journal of Medical Sciences*, 9(E). <https://doi.org/10.3889/oamjms.2021.6431>
- [8] Akib, M. (2013). *Politik Hukum Lingkungan – Dinamika dan Refleksinya Dalam Produk Hukum Otonomi Daerah (Environmental Legal Politics – Dynamics and Reflections in Regional Autonomy Legal Products)*. Rajagrafindo Persada.
- [9] Azalia, R., & Anganthi, N. R. N. (2017). *Kesejahteraan yang Berorientasi Nilai-Nilai Islam*. Universitas Muhammadiyah Surakarta.
- [10] Azheri, B. (2011). *Corporate Social Responsibility dari Voluntary menjadi Mandatory*. Raja Grafindo Pers.
- [11] Budiono, A., Prasetyo, Y., Wardiono, K., Yuspin, W., Dimiyati, K., & Iriani, D. (2022). Legal Conscience and the Pressure of the Formal Law System. *Wisdom*, 22(2), 223–233. <https://doi.org/10.24234/wisdom.v22i2.790>
- [12] Budiono, A., Yuspin, W., Nurani, S. S., Fairuzzaman, F., Pradnyawan, S. W. A., & Sari, S. D. (2023). The Anglo-Saxon System of Common Law and the Development of the Legal System in Indonesia. *WSEAS Transactions on Systems*, 22, 207–213. <https://doi.org/10.37394/23202.2023.22.21>
- [13] Fadli, M., Mukhlis, & Lutfi, M. (2016). *Hukum dan Kebijakan Lingkungan (Environmental Policies and Laws)*. UB Press.
- [14] Fatah, A. (2020). *BKPM: Maluku Utara Menjadi Primadona Baru Investasi Asing di Timur Indonesia (BKPM: North Maluku Becomes New Primadonna of Foreign Investment in Eastern Indonesia)*. Antara News. <https://www.antaraneews.com/berita/1455364/maluku-utara-primadona-investasi-asing-di-timur-indonesia>
- [15] Hamzah, A. (2005). *Penegakan Hukum Lingkungan (Environmental Law Enforcement)*. Sinar Grafika.
- [16] Iswandi, & Dewata, I. (2020). *Pengelolaan Sumber Daya Alam*. Deepublish.

- [17] Izziyana, W. V., Harun, Absori, Wardiono, K., Nugroho, H. S. W., & Budiono, A. (2019). Health insurance for Indonesian migrant workers. *Medico-Legal Update*, 19(1), 188–192. <https://doi.org/10.5958/0974-1283.2019.00038.0>
- [18] Kahfi. (2019). *Tren Investasi 5 Tahun: Tambang Tetap Primadona Pma, Pmdn Masih Intip Cuan Industri Makanan (5 Year Investment Trends: Mining Remains PMA's Favorite, PMDN Still Eyes Food Industry Profit)*. Ekonomi Bisnis. <https://ekonomi.bisnis.com/read/20190131/9/884413/tren-investasi-5-tahun-tambang-tetap-primadona-pma-pmdn-masih-intip-cuan-industri-makanan>
- [19] Kelsen, H. (2008). *Teori Hukum Murni, Edisi Terjemahan (Pure Legal Theory, Translated Edition)*. Nusa Media.
- [20] Muhammad, A. (2010). *Hukum Perusahaan Indonesia (Indonesian Company Law)*. Citra Aditya Bakti.
- [21] Mumbunan, S. (2015). Menautkan Dua Mata Rantai: Perizinan dan Penerimaan Negara di Sektor Berbasis Lahan di Indonesia (Linking the Two Links: Licensing and State Revenue in the Land-Based Sector in Indonesia). In T. N. Samadhi & S. Mumbunan (Eds.), *Tambang Hutan dan Kebuan: Tata Kelola Perizinan dan Penerimaan Negara di Sektor Berbasis Lahan* (pp. 41–84). IPB Press.
- [22] Olivia, D. (2020). *Implikasi Penerapan Undang-Undang Penanaman Modal Terhadap Iklim Investasi Asing Pasca Pandemi Covid-19 Di Indonesia (Implications of the Implementation of the Investment Law on the Foreign Investment Climate Post Covid-19 Pandemic in Indonesia)*. Klik Legal. <https://kliklegal.com/Implikasi-Penerapan-Undang-Undang-Penanaman-Modal-Terhadap-Iklim-Investasi-Asing-Pasca-Pandemi-Covid-19-Di-Indonesia/>
- [23] Subagyo, J. (2022). *Hukum Lingkungan (Masalah dan Penanggulangan)*. Rineka Cipta.
- [24] Sumarjono, E., & Purnomo, H. (2016). Tumpang Tindih Kepentingan Lahan Kehutanan dan Pertambangan Antara Peraturan dan Pelaksanaannya (Overlapping Interests in Forestry and Mining Land Between Regulations and Their Implementation). *Prosiding Seminar Nasional ReTII Ke-10 (Proceedings of the 10th ReTII National Seminar)*. <https://journal.itny.ac.id/index.php/ReTII/article/view/192>
- [25] Suryaningisi. (2017). *Eksistensi Negara Atas Pengelolaan dan Pengusahaan Sumber Daya Mineral dan Batu Bara (State Existence Over the Management and Business of Mineral and Coal Resources)*. Kreasi Total Media.
- [26] Sutedi, A. (2011). *Hukum Pertambangan (Mining Law)*. Sinar Grafika.
- [27] Yulianingrum, A. V. (2021). Kebijakan Pengelolaan Sumber Daya Alam Berbasis Kesejahteraan Profetik (Studi Analitik Regulasi Mineral dan Batubara di Indonesia). *Prosiding Seminar Nasional "Hukum Dan Pembangunan Yang Berkelanjutan."*
- [28] Yuspin, W., Wardiono, K., Budiono, A., & Gulyamov, S. S. (2022). The Law Alteration on Artificial Intelligence in Reducing Islamic Bank's Profit and Loss Sharing Risk. *Legality: Jurnal Ilmiah Hukum*, 30(2), 267–282. <https://doi.org/10.22219/ljih.v30i2.23051>
- [29] Wardiono, K. (2019). Prophetic : An Epistemological Offer for Legal Studies. *Journal of Transcendental Law*, 1(1), 17-41 <https://doi.org/10.23917/jtl.v1i1.8797>