



## **Restoration of Pamekasan Regency Government Policy in Resolving Illegal Mining Issues**

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### **Abstract**

Mining is one of the sectors that has a lot of problems in Indonesia, more specifically in this research is in Pamekasan Regency. Legal violations in Pamekasan begin with administrative violations with many mining activities with illegal status scattered at several points in the Pamekasan area. The legality limitations that are very visible by some mining activities there, can be seen from the perpetrators who cannot provide their licenses. Basically, this has been regulated based on Law Number 32 of 2009, more specifically regulated in Law Number 3 of 2020. Then this problem becomes the authority of the Provincial Government based on the affirmation of Presidential Regulation Number 55 of 2022. So that the policy of the Pamekasan Regency Regional Government related to mining as outlined in Pamekasan Regency Regional Regulation Number 2 of 2023, the articles are mostly in accordance with the Law. As if regional autonomy is invisible, this is what must be restored by the Regional Government of Pamekasan Regency based on the consideration of the lack of effective supervision and guidance carried out by the Provincial Government on the mining sector spread in the Pamekasan Region.

**Keyword:** Illegal Mining, Restoration, Surveillance

### **INTRODUCTION**

Indonesia has a lot of dynamics that occur in it. One dynamic that is often problematic is the Natural Resources in Indonesia itself. This is very natural, considering that Indonesia as a country that has the potential for very abundant Natural Resources certainly has an impact on life in its society, both positive and negative impacts. This happens because based on the mandate of the Indonesian constitution, Natural Resources are controlled by the state, in this

interpretation the state does not mean control and ownership.<sup>1</sup> Rather, the state is given the right to control in terms of management for the prosperity of its citizens based on the results that have been managed.

Mining is indeed a sector that has very complex legal problems. The problems that occur start from management problems, geographical problems, and even legal problems.<sup>2</sup> The focus of the study of this Journal is on legal issues in the mining sector, more specifically in the Pamekasan Regency area.<sup>3</sup> The mining problems in Pamekasan Regency do look very much, this happens because Pamekasan Regency is one of the regions on Madura Island which geographically has many points containing Mineral Resources. This is what then triggers its citizens to be able to explore the resources contained therein, so that it has an impact on legal problems in the mining sector in Pamekasan Regency.

Normatively, the existence of mining problems in Indonesia already has its own legal basis. The legal harmonization that has been formed is quite dynamic by looking at Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 3 of 2020 concerning Minerals and Coal, Presidential Regulation Number 55 of 2022 concerning Delegation of Business Licensing in the Mineral and Coal Mining Sector, which can then be further regulated in their respective Regional Regulations.<sup>4</sup> But in fact, although the legal harmonization looks quite effective, in practice it can be said to be ineffective.

With some of the descriptions that have been described, the urgency of this research is so that there are preventive efforts from the Regional Government of Pamekasan Regency in suppressing the rate of increase in the number of scattered illegal mining points. If this is not done, it will have a wider impact, as well as not creating the rule of law in Pamekasan. This should be the Government's moral responsibility to its citizens because actually if the mines operating in Pamekasan itself get legal status, of course there will be an increase in economic growth as well as an increase in employment. So that by being named Pamekasan as the most advanced district on Madura Island, it will grow even better in the future.

Research on the focus of scientific article studies with the type of normative legal research.<sup>5</sup> The approach method used is the Legislation approach method and also the case approach.<sup>6</sup> The legal materials used are

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<sup>1</sup> Azhari, *The Indonesian Legal State: Its Elements A*

<sup>2</sup> Feby Febriana Nadeak, "Why Illegal Mining is Difficult to Eradicate in RI, Is Mahfud MD Right?" *CNN Indonesia*, 2024, <https://www.cnnindonesia.com/ekonomi/20240124062016-85-1053541/kenapa-tambang-ilegal-sulit-diberantas-di-ri-benarkah-kata-mahfud-md>.

<sup>3</sup> Khoirul Umam Syarif, "Illegal Mining Controls 980.55 Hectares of Land in Pamekasan," *Madura News*, 2023, <https://kabarmadura.id/tambang-ilegal-kuasai-98055-hektare-lahan-di-pamekasan/>.

<sup>4</sup> Derita Prapti Rahayu and Faisal Faisal, "The Existence of People's Mining After the Enactment of Amendments to the Law on Mineral and Coal Mining," *Indonesian Journal of Legal Development* 3, no. 3 (2021): 337-53, <https://doi.org/10.14710/jphi.v3i3.337-353>.

<sup>5</sup> Masfi Sya'fiatul Ummah, "Variety of Legal Research Methods," *Institute for Criminal Law Studies* 11 (2022).

<sup>6</sup> PETER MAHMUD MARZUKI, *Legal Research* (Jakarta: Kencana Prenada Media, 2014).

primary and secondary legal materials interpreted with descriptive qualitative, on the basis of field studies and library searches.<sup>7</sup>

## RESULTS AND DISCUSSION

### 1. Paradigm Reconstruction For A More Appropriate Regulation Model

Indonesia is a country rich in natural resources, including various types of minerals and coal that play an important role in the national economy. Indonesia's mining sector has experienced significant development over time, along with policy changes that lead to more sustainable and responsible management.<sup>8</sup> The policies implemented in this sector are not only influenced by economic and social needs, but also by domestic political dynamics and global demands to maintain environmental sustainability.

In the main part of the discussion on Paradigm Reconstruction and Development of Development Law for Environmental Management in Indonesia as an effort to restore the policy of the Pamekasan Regency government in the mining sector. In this section of the subject matter explores the basic substance of the need for a breakthrough and new changes to the paradigm of environmental management and the importance of developing development law in environmental management in Indonesia<sup>9</sup> as a means of realizing the concept of sustainable development and environmentally sound development. This certainly requires elaboration between all elements of the state drivers.

### 2. Principles To Be Met In Restoration Policy

The basic rules that underlie development, especially in the field of environmental management in Indonesia, are contained in the preamble of the 45th Constitution,<sup>10</sup> in the 4th paragraph which reads "then than that form an Indonesian State government that protects the entire Indonesian Nation and the entire Indonesian blood spill and to advance the general welfare, educate the nation's life and participate in implementing world order based on the independence of the Indonesian nation formed in an arrangement of the Republic of Indonesia, which is people's sovereignty based on: The One True God, Fair and Civilized Humanity, Indonesian Unity and Democracy Led by Wisdom in Consultation/Representation, and by realizing a Social Justice for All Indonesian People".<sup>11</sup> It is as mentioned that the interpretation of the state is not to control and own.

This provision emphasizes the state's obligation and the government's duty to protect all Indonesian human resources and the Indonesian

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<sup>7</sup> Johnny Ibrahim Jonaedi Efendi, *Legal Research Methods: Normative and Empirical*, 1st ed. (Jakarta: Prenadamedia Group, 2016).

<sup>8</sup> Greeners, "Walhi Research Results; Systematic Breakthroughs Needed to Deal with Environmental Issues," 2017, <http://www.greeners.co/berita/hasil-riset-walhi-perlu-terobosan-sistematis-hadapi-isu-lingkungan/>.

<sup>9</sup> Mukhlis, *Environmental Law* (Surabaya: Scopindo Media Pustaka, 2019).

<sup>10</sup> Yusuf Qardhawi, *Islam is an Environmentally Friendly Religion* (Jakarta: Al-Kautsar Library, 2002).

<sup>11</sup> Muwafiq Jufri, "Nuances of Maqashid Al-Syari'ah in Law Number 39 of 1999 on Human Rights," *Istinbath Journal* 14, no. 1 (2017): 4-5.

environment for the happiness of all Indonesian people and all mankind. This basic idea is formulated more concretely in Article 33 paragraph (3) of the 1945 Constitution "The land and water and the natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people."<sup>12</sup> The 1945 Constitution as a constitutional foundation requires that natural resources be used for the greatest prosperity of the people. The prosperity of the people must be enjoyed by present and future generations in a sustainable manner. One of the points of consideration for the issuance of UUPH is that public awareness and life in relation to environmental management has shifted or developed in such a way that the subject matter as regulated in UUPH 82 needs to be refined to achieve the goal of environmentally sound sustainable development.<sup>13</sup> When compared to UUPH'82 which only has 24 Articles with limited arrangements, the presence of UUPH has an increased number of articles and is more detailed in regulating new matters that were not previously regulated.

The formulation of national development (Propenas) as stipulated in Law Number 25 of 2000 and the Preamble of the 45th Constitution, also includes the development of national law, especially with regard to environmental management (Environmental Law). Indonesia as a developing country that is actively spurring economic growth is also inseparable from the risk of environmental degradation.<sup>14</sup> But along with the emergence of the idea of sustainable development, in 1973 Indonesia made an environmentally sound development policy through MPR Decree Number IV of 1973 concerning the Guidelines for State Policy (GBHN).<sup>15</sup> It states that in development, Indonesia's natural resources must be used rationally, the extraction of natural resources must be sought so as not to damage the human environment, carried out with a comprehensive policy by considering future generations.<sup>16</sup>

One factor in the threat to the environment is the presence of development as a commodity or necessity for society and the nation.<sup>17</sup> The presence of development may not contribute to the destruction of the ecological system as severe as it is today, if the paradigm of development can be seen as a relationship that is not contradictory to environmental management issues.<sup>18</sup>

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<sup>12</sup> Agung Ali Fahmi, Muwafiq Jufri, and Ansori, "Forms of Application and / or Absorption of Islamic Law in Regional Legal Products in Madura," *Indonesian Law Symposium* 1, no. 1 (2019): 555.

<sup>13</sup> Mukhlis, "Constitutional Ecology: Between Reconstruction, Investment or Exploitation in the Name of NKRI," *Journal of the Constitutional Court of the Republic of Indonesia* 8, no. 3 (2011): 169, <https://jurnalkonstitusi.mkri.id/index.php/jk/article/view/831>.

<sup>14</sup> Hikmahanto Juwanto, *Regulating Environmental Issues in International Law: Conflicts of Interest of Developing and Developed Countries*, in *Law and Environment in Indonesia, 75 Years of Prof. Dr. Koesnadi Hardjosoemantri* (Jakarta: University of Indonesia Graduate Program, 2001).

<sup>15</sup> Mukhlis, "REGIONAL REGULATION PROBLEMS IN THE FIELD OF SALT INDUSTRY," *Trunojoyo Law Review* 6, no. 1 (2023): 78-95.

<sup>16</sup> Sinta et al., "The Dilemma of Law Enforcement for Unlicensed Mineral and Coal Mining Activities," *Amanna Gappa* 29, no. 1 (2021): 2021.

<sup>17</sup> Rezki Purnama Samad, A. M. Yunus Wahid, and Hamzah Halim, "The Urgency of Community Participation in Sand Mining Business License," *Al-Ishlah: Scientific Journal of Law* 24, no. 1 (2021): 143-62, <https://doi.org/10.56087/aijih.v24i1.87>.

<sup>18</sup> Ivaini Andesgur, "Analysis of Environmental Law Policy in Pesticide Management," *Bestuur* 7, no. 2 (2019): 93-105, <https://doi.org/10.20961/bestuur.v7i2.40438>.

Instead, development is interpreted as the goal of everything because it tends to solve poverty, underdevelopment and other socio-economic problems. Such a view gives birth to the assumption that forests, mountains, seas, mining objects, fish in the sea and others are goods that must be drained in order to pursue human welfare through the instrument of "development".<sup>19</sup> Until now, there is still an expression that development is the commander in disturbing poverty and backwardness.<sup>20</sup> Science and technology are engineering data that can overcome poverty and underdevelopment, but at the same time become part of development that has contributed to destroying the environment throughout this hemisphere.<sup>21</sup>

When looking at the Indonesian commitment to the environment in its national development agenda, it shows a high concern in protecting the environment from the threat of damage or pollution due to the strengthening of national development activities in the long term.<sup>22</sup> The Indonesian nation's concern for the environment, theoretically idealistic, is a demand that is difficult to avoid by power holders in articulating the forward motion of development itself, especially its implications for environmental problems in the country.<sup>23</sup>

For developing countries like Indonesia, the paradigm towards the environment is certainly very different from environmental problems in developed or industrialized countries.<sup>24</sup> Environmental problems in developed countries are caused by pollution as a side effect of the use of natural resources and energy-intensive production processes, advanced energy-intensive technologies in industry, transportation and communication activities and other economic activities.<sup>25</sup> In contrast, environmental problems in Indonesia are mainly rooted in underdevelopment.<sup>26</sup> Therefore, if industrialized countries have a strong view to overcome environmental problems by not increasing

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<sup>19</sup> Tri Hayati, "The Right of State Control over Natural Resources and Its Implications for the Form of Mining Business," *Journal of Law & Development* 49, no. 3 (2019): 768, <https://doi.org/10.21143/jhp.vol49.no3.2199>.

<sup>20</sup> Muhammad Syaiful Anwar and Silvia Yuniarti, "Post-Mining Environmental Management Policy in the Coastal Region of Bangka Belitung Islands Based on Good Governance," *Proceedings of National Colloquium Research and Community Service* 6 (2022): 36-40.

<sup>21</sup> Silvia Yuniarti Muhammad Syaiful Anwar, "POLICY ON THE MANAGEMENT OF THE POST-MINE ENVIRONMENT IN THE BEACH AREA OF THE BANGKA BELITUNG ISLAND BASED ON GOOD GOVERNANCE," no. 3 (2022): 36-40.

<sup>22</sup> Muhammad Erwin, *Environmental Law in the Environmental Development Policy System* (Bandung: Refika Aditama, 2008).

<sup>23</sup> Muhammad Nasir Safar, "Analysis of Sources of Regional Original Income After a Decade of Regional Autonomy," *Journal of Economic Dynamics of Development* 2, no. 1 (2019): 30-45, [https://ejournal.undip.ac.id/index.php/dinamika\\_pembangunan/index](https://ejournal.undip.ac.id/index.php/dinamika_pembangunan/index).

<sup>24</sup> Al Hamasy Atiek Islahiyah, "Nickel Mine in Central Halmahera Deprives Residents of Their Lives," *Kompas*, 2023.

<sup>25</sup> Rika Putri Wulandari and Muhammad Helmi Fahrozi, "Legal Politics of the Transfer of Mining Licenses to the Central Government against the Authority of the Regional Government," *SALAM: Journal of Syar-I Social and Culture* 8, no. 1 (2021): 191-206, <https://doi.org/10.15408/sjsbs.v8i1.19445>.

<sup>26</sup> I. Gede Yusa and Bagus Hermanto, "Implementation of Green Constitution in Indonesia: Guaranteeing the Constitutional Right to Sustainable Environmental Development," *Journal of the Constitution* 15, no. 02 (2018).

development.<sup>27</sup> commonly known as zero growth.<sup>28</sup> For Indonesia, it is precisely to overcome the environment that economic growth is needed by increasing national development.<sup>29</sup>

The principles that must be accommodated in legislation relating to the management of natural resources and the environment include: <sup>30</sup>

- a. Maintaining and defending the integrity of the Unitary State of the Republic of Indonesia;
- b. Respect and uphold human rights;
- c. Respect the rule of law by accommodating diversity in legal unification;
- d. To improve the welfare of the people, especially through improving the quality of Indonesia's human resources;
- e. Developing democracy, legal compliance, transparency and optimizing community participation;
- f. Realizing justice including gender equality in the control, ownership, use, utilization and maintenance of agrarian/natural resources;
- g. Maintaining sustainability that can provide optimal benefits, both for current and future generations, while taking into account the capacity and carrying capacity of the environment;
- h. Carry out social functions, sustainability, and ecological functions in accordance with local socio-cultural conditions;
- i. Improving integration and coordination between development sectors and between regions in the implementation of agrarian reform and natural resource management;
- j. Recognize, respect and protect the rights of customary law communities and the nation's cultural diversity over agrarian/natural resources;
- k. Strive for a balance of rights and obligations of the state, government (Central, Regional, Provincial, Regency/City, and Village or equivalent), communities and individuals;
- l. Carry out decentralization in the form of division of authority at the national, Provincial, Regency / City, and Village or equivalent levels, related to the Allocation and Management of agrarian resources / natural resources

The matters referred to above should be the basic points to be fulfilled in the local government before formulating a policy. Of course, when looking at this proportionality, it must prioritize how the management and impact on the environment.<sup>31</sup> Indeed, a good and healthy environment is part of the basic

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<sup>27</sup> Jimly Ashiddiqie, "Green Constitution" *Green Nuances of the 1945 Constitution of the Republic of Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2009).

<sup>28</sup> Philipus M Hadjon, *Legal Protection for the People in Indonesia* (Surabaya: PT. Bina Ilmu, 1987).

<sup>29</sup> Ahmad Hariri, "The Existence of Village Government Viewed from the Perspective of the Principle of Subsidiarity in Law Number 6 of 2014 concerning Villages," *Legality: Scientific Journal of Law* 26, no. 2 (2019): 253.

<sup>30</sup> Mahfud MD, *Legal Politics in Indonesia*, 7th ed. (Jakarta: PT. RajaGrafindo Persada, 2020).

<sup>31</sup> Muh. Nur Alamasyah Nining Hapsari, Irwan Waris, "Implementation of Minerba Mining Management Policy in Poboya Village, Mantikulore District, Palu City" 1, no. 7 (2024): 305-16.

rights of Indonesian citizens that have been enshrined in the Indonesian Constitution.

### 3. Policy Development In The Mining Sector In Indonesia

The policy journey of Indonesia's mining sector can be divided into several important phases, ranging from the colonial era, post-independence, to the reform period, and finally to an era more focused on sustainability and energy transformation.<sup>32</sup> Each of these phases had legal and regulatory underpinnings that steered the sector towards different goals, but increasingly emphasized the importance of a balance between natural resource exploitation and environmental protection.<sup>33</sup>

During the colonial era, Indonesia was known as an area rich in natural resources, particularly minerals and mining products such as tin, gold and coal.<sup>34</sup> In this era, mining policies were aimed at supporting Dutch colonial interests, which exploited Indonesia's natural resources for their economic benefit.<sup>35</sup> There was no significant concern for the sustainability of natural resources or the welfare of the Indonesian people at the time.

Following Indonesia's independence in 1945, the mining sector became an integral part of national economic development. In an effort to manage natural resources more effectively, Indonesia began to develop policies governing the sector.<sup>36</sup> One important first step was the enactment of Law No. 11/1967 on Basic Mining Provisions, which became the first legal basis in Indonesia to regulate the exploration and exploitation of mineral and coal resources.<sup>37</sup> This law marked the beginning of efforts to regulate the mining sector, although at that time the focus was still limited to managing natural resources to increase state revenue, without much consideration of environmental aspects.

During the New Order period (1966-1998), under the rule of President Soeharto, Indonesia's mining sector experienced rapid growth, especially with increased production of oil, gas, coal and various other minerals. Government policy at the time emphasized accelerating economic development by optimizing the use of natural resources.<sup>38</sup> Indonesia became one of the world's major exporters of coal and oil during this period.

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<sup>32</sup> Moh Fadli, *Environmental Law and Policy* (Malang: UB Press, 2016).

<sup>33</sup> Aullia Vivi Yulianingrum et al., "Implications of Coal Mining Management Policy on the Existence of Customary Law Communities in Samarinda," *AL-MANHAJ: Journal of Islamic Law and Social Institutions* 5, no. 1 (2023): 915-24, <https://doi.org/10.37680/almanhaj.v5i1.2826>.

<sup>34</sup> Nafi Mubarak, "History of Environmental Law in Indonesia," *Journal of Islamic Legal Thought and Reform* 22, no. 02 (2019).

<sup>35</sup> Mu adzil Faizin, "The Urgency of Environmental Fiqh in the Development of Contemporary Environmental Fiqh as a Supporting Instrument for Environmental Law" 5, no. 2 (2016): 145-48.

<sup>36</sup> Lusi Wulandari, "Village Development Planning Strategy in Sukaresik Village, Sidamulih Subdistrict, Pangandaran Regency," *Moderat: Scientific Journal of Government Science* 3, no. 3 (2017): 55-66.

<sup>37</sup> Yusa and Hermanto, "Implementation of Green Constitution in Indonesia: Guaranteeing the Constitutional Right to Sustainable Environmental Development."

<sup>38</sup> Nyoman Nurjaya, *Natural Resource Management in the Perspective of Legal Anthropology*, Published in Cooperation of the Master of Law Program, Postgraduate Program, Arena

However, despite the rapid growth of the mining sector, policies during this period were often characterized by exploitative practices that tended to ignore social and environmental aspects.<sup>39</sup> Foreign mining companies operating in Indonesia at the time were given enormous freedom to manage natural resources, often without adequate obligations to rehabilitate or manage environmental impacts.

During the New Order period, the policy of creating Mining Business License (IUP) and Contract of Work (KK) was born as the basis for mining companies to operate in Indonesia. In this context, many parties felt that the management of Indonesia's natural resources was carried out without regard to the interests of the people, and natural resources were mostly controlled by foreign companies with unequal profits.<sup>40</sup> Environmental sustainability has also become an increasingly neglected issue.

After the fall of the Soeharto government in 1998, Indonesia entered the reform era marked by decentralization of power and major changes in government policy, including in the mining sector. One of the biggest changes was the enactment of Law No. 22/1999 on Regional Government, which gave greater authority to local governments in managing natural resources, including mining resources. This creates the potential for conflict between central and local governments over mining licenses and management, which is often poorly coordinated.<sup>41</sup>

During this period, there was greater awareness of the importance of sustainable and environmentally friendly mining sector management. The emergence of a movement for mining sector reform led to the issuance of **Law No. 4/2009 on Mineral and Coal Mining (Minerba Law)**.<sup>42</sup> This law regulates in more detail the governance of the mining sector, including the obligation for companies to protect the environment, conduct reclamation and post-mining, and limit mining activities that damage the environment.<sup>43</sup> It also regulates **share divestment**, which requires foreign companies to sell part of their shares to the government or Indonesian parties after a certain period, with the aim of improving mine management by domestic companies.<sup>44</sup>

In addition, the Minerba Law also introduces the concept of **downstreaming** in the mining sector, which requires mining companies to

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*Hukum Majalah Faculty of Law, Universitas Brawijaya with the Publisher of State University of Malang* (Malang: UM Press, 2006).

<sup>39</sup> Megawati Ihyamuis, Farida Patittingi, and Kahar Lahae, "Alternative Mining Dispute Resolution: Study of Land Dispute between Karunsi'e Dongi Community and PT Vale Indonesia Tbk," *Amanna Gappa* 30, no. 1 (2022): 2022.

<sup>40</sup> Putri Kemalasari, Nila Trisna, and Dara Quthni Effida, "Responsibility for Reclamation and Post-Mining Implementation of Coal Production Operation IUP Holders Based on Good Mining Practice Principles," *Journal of Law* 18, no. 01 (2023).

<sup>41</sup> tjoe kang Long, "KONFLIK DALAM PENERAPAN HUKUM PENGELOLAAN SUMBER DAYA ALAM PERTAMBANGAN MINERAL DAN BATUBARA TANPA IZIN PADA SKALA KECIL," *Jurnal, Politik, Sosial, Hukum Dan Humanoria* 1, no. 4 (2023).

<sup>42</sup> Syarifudin, "Environmental Pollution in Fiqh Perspective," *Journal of Islamic Law* 13, no. 1 (2013): 48.

<sup>43</sup> Sri Hastuti Puspitasari, *Development, Ecological Risk and Gender Perspective* (Jakarta: Postgraduate Program, Faculty of Law, University of Indonesia, 2001).

<sup>44</sup> Nurul Listiyani, "The Impact of Mining on the Environment in South Kalimantan and Its Implications for Citizens' Rights," *Journal of Law* 09, no. 01 (2017).



process mining products domestically, instead of just exporting raw materials.<sup>45</sup> This aims to increase added value and reduce dependence on raw material exports, as well as create more jobs in the country. However, while the Minerba Law aims to promote more sustainable mining management, Indonesia's mining sector still faces many challenges, such as corrupt practices, uncontrolled exploitation, and serious environmental impacts due to environmentally unfriendly mining activities.

In the 2010s, Indonesia's mining sector entered an era of policy refinement. The government began to prioritize sustainability and more efficient management. Some of the policies and regulations that emerged included:

- a) **Government Regulation No. 78/2010 on Reclamation and Post-Mining**, which requires mining companies to carry out reclamation and environmental restoration after mining activities end. This is important to prevent ecosystem damage due to uncontrolled mining exploitation.
- b) **Minister of Energy and Mineral Resources Regulation No. 7/2014 regulating Mineral Processing and Refining**, which encourages companies to process domestic mining products, in order to increase the competitiveness of Indonesian mineral products.
- c) **Law No. 3 of 2020 on Minerals and Coal**, which is a revision of the 2009 Minerba Law. In this law, the government emphasizes the principles of sustainability, management based on environmentally friendly technology, and increasing added value through the downstream mining industry.

During this period, awareness of the importance of sustainable management of natural resources grew stronger. Indonesia began to take steps to be more serious in addressing climate change issues, by ratifying the Paris Agreement on reducing carbon emissions. In this context, Indonesia's mining sector is required to transform to conform to the principles of sustainable development, including by reducing greenhouse gas (GHG) emissions from mining activities. On the other hand, the implementation of the Omnibus Law on Job Creation in 2020 also has an impact on mining sector policies, especially related to the simplification of business licenses and regulations that are considered to hinder investment. This policy aims to improve Indonesia's competitiveness in attracting investment, but has also drawn criticism for being too easy for companies in terms of licensing and environmental control.

As Indonesia enters the 2020s, it faces major challenges in managing its mining sector, particularly in relation to sustainability and energy transition issues. One of the biggest challenges is how to balance the utilization of abundant natural resources with the protection of the environment and the rights of local communities. The Indonesian government is committed to developing policies that are more environmentally friendly and sustainable. Policies related to Green Mining, which encourage the use of environmentally friendly technology in mining activities, are starting to receive serious

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<sup>45</sup> See in Rahayu and Faisal, "The Existence of People's Mining After the Enactment of Amendments to the Law on Mineral and Coal Mining."

attention. In addition, efforts to promote renewable energy and reduce dependence on fossil energy are increasingly important, so the mining sector must also adapt to these changes.<sup>46</sup> Indonesia also needs to strengthen regulatory oversight and implementation to prevent further environmental damage, as well as ensure that the economic benefits of the mining sector can be equitably enjoyed by the entire community, not just by a handful of elites or large companies.

#### 4. Appropriate Regulatory Design For Pamekasan Local Government Policy Restoration

Restoration of mining sector policies at the regional level is essential to ensure more sustainable, equitable, and profitable natural resource management for local communities, without neglecting environmental protection aspects. In the context of decentralization,<sup>47</sup> where natural resource management authority has largely been transferred to local governments, good regulations must accommodate the principles of good governance, transparency, accountability, and sustainability.

Regulatory Objectives in this case:

- a) **Improving Sustainable Mining Governance:** Establish a management system that integrates environmental, social and economic aspects in mining activities at the regional level.
- b) **Community Empowerment and Social Justice:** Ensure that mining products provide optimal benefits to local communities, and reduce social and economic inequality.
- c) **Environmental Protection:** Reduce the negative impacts of mining activities on ecosystems and other natural resources, and ensure mining companies are responsible for environmental restoration.
- d) **Transparency and Accountability:** Improve information disclosure related to licenses, taxes, social contributions, and environmental impacts of mining activities.

Of course, every law or policy line that wants to be made must contain basic principles<sup>48</sup> including:

- a) **Openness Principle:** All data and information related to mining activities must be accessible to the public, whether economic, social or environmental.
- b) **Principle of Community Involvement:** The licensing process, impact evaluation, and implementation of mining activities should involve the active participation of local communities, including indigenous peoples, in the decision-making process.

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<sup>46</sup> Safrin Salam, "Reconstructing the Philosophy of Science Paradigm: A Critical Study of Law as a Science," *Journal of Legal Research and Education* 18, no. 2 (2019): 12-27, <https://jurnal.iain-bone.ac.id/index.php/ekspose/article/view/511>.

<sup>47</sup> Atika Thahira, "Environmental Administration Law Enforcement in View of the Concept of the State of Law," *JCH (Journal of Legal Scholarship)* 5, no. 2 (2020): 260, <https://doi.org/10.33760/jch.v5i2.229>.

<sup>48</sup> David Tan, Hari Sutra Disemadi, and Lu Sudirman, "Decoding the Special Purpose Acquisition Companies: A New Frontier in Tech Start-Up Financing," *Padjajaran Jurnal Ilmu Hukum* 11, no. 1 (2024).

- c) **Sustainability Principle:** Every mining activity must be carried out with due regard to environmental sustainability and the long-term welfare of the community.
- d) **Principle of Accountability:** Local governments and mining companies must be accountable for the implementation of their mining-related policies, programs and policies.
- e) **Principle of Fairness:** Revenues and benefits obtained from mining activities must be distributed fairly and equitably to local communities, especially those directly affected by mining activities.

In the law of drafting laws and regulations, which must be one of the prefixes in formulating regulations, it must determine the regulatory framework that will be compiled. To restore policies in Pamekasan Regency, in this case a framework is obtained by researchers as follows:

### 1.) Granting of Mining Business License (IUP)

- a) **Integrated Supervision:** All mining licenses must go through transparent and integrated procedures between the central and local governments. Local governments are required to integrate data and analysis of social, economic and environmental impacts in granting licenses.
- b) **Social and Environmental Impact Assessment:** Any company applying for a mining license in the region must conduct an adequate **Environmental Impact Assessment (EIA)**, as well as a **Social Assessment** to assess potential impacts on local communities and cultures.
- c) **Implementation of Prohibited Mining Areas:** Regions must determine areas that should not be disturbed by mining activities, such as nature conservation areas, dense residential areas, agricultural areas, and areas of high cultural value.

### 2.) Environmental Management and Reclamation

- a) **Reclamation Obligation:** Every mining company is required to develop a comprehensive reclamation plan and long-term implementation for post-mining area restoration. This reclamation must be carried out in accordance with provisions approved by the local and central government.
- b) **Application of Environmentally Friendly Technology:** Local governments shall encourage the use of environmentally friendly mining technologies, including the reduction of air, water and soil pollution, and the use of safer chemicals in the extraction process.
- c) **Continuous Environmental Monitoring:** Local governments should involve independent institutions or NGOs in conducting regular environmental impact monitoring during and after mining activities take place.

### 3.) Regional Community Economic Empowerment

- a) **Natural Resource Revenue Sharing:** Local governments should ensure that funds generated from the mining sector are used for infrastructure, education and health development in mining areas. A significant portion of tax and royalty revenues from mining

companies should be channeled to fund projects that benefit local communities.

- b) **Training and Community Empowerment Programs:** As part of their corporate social responsibility (CSR), mining companies should provide funding and skills training programs for local communities to enable them to take advantage of employment opportunities in the mining sector and other economic sectors.
- c) **Local Labor Absorption System:** Local governments should develop policies that ensure mining companies prioritize the use of local labor in their operations, and provide technical training so that local communities have the necessary skills.

#### 4.) Increased Transparency and Accountability

- a) **Open Information System:** Local governments should establish an open information system on mining data, including data on licenses, taxes, social and environmental impacts, and social contributions made by mining companies. This allows communities to monitor and assess mining activities.
- b) **Public Audit and Annual Evaluation:** Every year, the local government should conduct a public audit involving communities, academics, and environmental organizations to evaluate the sustainability and impacts of existing mining activities.

#### 5.) Monitoring and Law Enforcement

- a) **Establishment of a Regional Monitoring Team:** Local governments need to establish an oversight team consisting of government representatives, communities, NGOs, and environmental experts to oversee and assess the implementation of mining policies. This team will be instrumental in identifying violations and providing recommendations for improvement.
- b) **Strict Enforcement of Sanctions:** The regulation should include strict sanctions for companies that violate environmental provisions and applicable regulations, including fines, termination of business licenses, or revocation of mining licenses.

Of course, there is an effort to restore a policy, there must be an evaluation of the previous policy, based on the researcher's analysis which is an evaluation of the implementation of the previous policy including:

- a) **Preparation of a Regional Action Plan (RAD):** Each local government that has mining potential must develop a **Regional Action Plan (RAD)** that includes policies, priorities and strategies for sustainable mining management, involving various stakeholders.
- b) **Empowerment of Local Communities:** Local governments should organize education and training for communities and local governments to give them the capacity to manage the mining sector and mitigate its impacts.
- c) **Periodic Evaluation:** This policy should be periodically evaluated every 3 years to ensure its effectiveness and make improvements where necessary. The evaluation should be conducted with the involvement of communities and environmental organizations.

This regulatory design aims to create a more sustainable mining management ecosystem at the regional level. Local governments must play a key role in overseeing and managing mining activities, as well as ensuring that the policies implemented can provide maximum benefits for local communities, preserve the environment, and support overall regional economic development. With strict, transparent and accountable regulations in place, Indonesia's mining sector can develop more responsibly and sustainably.

## CONCLUSION

In the case described above, it can be interpreted that the harmonization of laws that have been formed in a regulatory matter requires an ability to carry it out. Local governments are required to be pro-active in the development of life and rules that must be adjusted to the existing bureaucracy. There are so many legal problems in Pamekasan Regency that even though there is already a Regional Regulation Number 2 of 2023, it cannot be said to be successful in its implementation. The step to restore the policy of the Pamekasan Regency Regional Government is expected to be able to solve a handful of legal problems related to illegal mining at several points in Pamekasan Regency.

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