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# CONCEPTION AND RESPONSIBILITY OF LOCAL GOVERNMENT ON MINING IN EAST TULABOLO VILLAGE

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**ABSTRACT**

Utilizing Natural Resources is indeed an interesting phenomenon, and this activity can benefit the parties involve, from local people's elements, companies, and government. However, in practice, the parties that carry out mining activities sometimes do not meet the applicable rules and do not get permission from the local government. This study aims to determine the conception of the regulation of the use of Natural Resources in the form of mining in the National Law and the extent of responsibility of local governments in regulating the mining of the people in the village of East Tulabolo. This study uses empirical juridical research methods. Using interview techniques and samples in this study amounted to 4 respondents. The results of this study indicate that the use of Natural Resources in the form of mining in the legal conception must obtain permission from the local government to be carried out based on Mining Permit (IUP), People's Mining Permit (IPR or IUPK) and for the responsibility carried out by the local government has not been maximized because of the eight mining sites only 1 location in order by the local government.

**Keywords:** People's Mining. Local Government Responsibiliy. Mining Law Conception.

## 1. Introduction

Law is a normative construct. In the doctrinal approach, the law is conceptualized as an instrument of the state or policy concerned with justice, with rules of conduct to regulate human behaviour. According to this view, the law is an instrument to enforce justice, the form of which is a code of conduct with the primary function of regulating human behaviour.[2]

Sudikno Mertokusumo defines *law* as the fundamental rule or method in life together, the whole behaviour that occurs together, which can be forced implementation with a sanction. Here the law is identified as written and

[1] **Submission:** 24 February 2023 I **Review-1:** 26 February 2023 I **Publish :** 19 April 2023
[2] Otje Salman and Anthon F. Susanto, *Teori Hukum (Mengingat, Mengumpulkan dan Membuka Kembali)*, Bandung, Refika Aditama, 2010, p. 1

unwritten law with its sanctions. The diversity of legal understanding shows that law is multidimensional.[3]

The highest legal foundation of Indonesia is based on the 1945 Constitution. Any applicable legal regulations cannot or cannot contradict the 1945 Constitution. The 1945 Constitution had four amendments. The last amendment was the beginning of the conception of the state of law or "Rechtsstaat ", which was previously only listed in the explanation of the 1945 Constitution, formulated firmly in Article 1 Paragraph (3), which states," the state of Indonesia is a state of law."[4] This conception affirms that every paradigm in the exercise of State Life Is the law, not politics or economics.

As a country of law based on the 1945 Constitution, Indonesia also has a role in its implementation and must meet every need of the Indonesian people, such as the right to obtain and maintain their lives.[5] As a state of law, the Constitution is the essence of realizing the goal of statehood, namely, the perfect happiness for all people, individuals, and social beings.[6] SF Marbun asserted that a state based on law must be based on sound and fair laws. A *good law* is a democratic law, which is based on the people's will according to the people's legal consciousness, while a just law is a law that suits and fulfils the purpose and purpose of every law.[7]

Article 33 paragraph (3) of the 1945 Constitution has stipulated that natural resources must be based on the principle of "controlled by the state" and the principle of "for the greatest prosperity of the people". Thus, when the

[3] FX. Adji Samekto, *Ilmu Hukum Dalam Perkembangan Pemikiran Menuju Post-Modernisme*, Bandar Lampung, Indepth Publishing, 2012, p. 2-3

[4] Article 1 Section (3) of the 1945 Constitution

[5] Article 28 A of the 1945 Constitution

[6] Juniarso Ridwan, *Hukum Administrasi Negara dan Kebijakan Pelayanan Publik*, Bandung: Nuansa Cendekia, 2019, p. 47

[7] SF Marbun, *Peradilan Administrasi dan Upaya Administratif di Indonesia*, Yogyakarta: Liberty, 2019, p. 8.

management of Natural Resources paralyzes the principle of" controlled by the state "and the principle of" for the greatest prosperity of the people".[8]

The above principles constitute a unity that cannot be separated. The separation of the two will be counterproductive to the state control concept in question. It can lead to the monopoly of natural resources by capital owners or foreign parties whose profits will only run abroad and be enjoyed by a few people rather than for the people and development of Indonesia.[9]

The Constitutional Court interprets "controlled by the state" to include the meaning of control by the state in a broad sense that comes from the conception of the sovereignty of the Indonesian people over all sources of wealth "Earth and water and Natural Resources contained therein", including the notion of public ownership by the people's collectivity of the sources of wealth in question. The people collectively were constructed by the Constitution of the Republic of Indonesia 1945 mandates the state to establish policies (*beleid*) and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*) and supervision (*toezichthoudensdaad*) for maximum prosperity of the people.[10]

State control comes from the sovereignty of the people. So control is not in the sense of having an absolute, but only exercising the authority to make policies and actions of Management, Regulation, Management and supervision, all of which are aimed at the prosperity of the people. Natural resources are public property whose management and the state regulate utilization through various regulations, such as Mineral and coal law, Forestry Law, Petroleum and Gas Law.

Moh. Mahfud MD hopes that the right to control the state should give way to other responsive actions. Because of these rights, the government can

[8] Article 33 of the 1945 Constitution, See also Recca Ayu Hapsari, *Konkritisasi Prinsip Internasional Minimum Standard Civilization Dalam Konsep Penguasaan Pertambangan di Indonesia*, Arena Hukum, Volume 11 Nomor 22, 2016, p. 3

[9] Dwi Haryadi, *Pengantar Hukum Pertambangan Mineral dan Batu Bara*, UBBPress, Bangka Belitung, 2018, p. 3

[10] Mahmakah Konstitusi, *Ikhtisar Putusan MK 2003-2008*, Jakarta, Sekjen dan Kepaniteraan MK, 2008, p. 6

take actions favouring the community's interests.[11] According to Marta SW Sumardjono, related to the authority of this country should be limited to 2 (two) things. First, matters regulated by the state should not result in violations of human rights guaranteed by the 1945 Constitution. Second, substantive restrictions in the sense of regulations made by the state must be relevant to the goals to be achieved, namely for the maximum prosperity of the people.[12]

As representatives of the state, central and local governments should make regulations on natural resource management that open access as much as possible for the people and tighten for private and foreign parties. The involvement of foreign parties must remain on the corridor that we are "sovereign over natural resources" and prioritize their contribution to the national economy that impacts public welfare. The experience of limited capabilities and dependence on foreigners has demanded that our human resources and technology mastery be prepared so that natural resources can be managed independently in the future.

The Republic of Indonesia is a unitary state with a decentralized system, in connection with which the administration of government in the region is carried out through three principles, namely the principle of decentralization, deconcentration and co-administration.[13] The regions of Indonesia will be divided into provinces, and the provinces will be divided into smaller regions. Those regions are autonomous or are mere administrative regions, all according to the rules established by law.[14] The division of territory, as said above, is the division of the government system on a small scale. The purpose of separating government areas is to minimize the vulnerability of the control of the central government system because it is only possible for some affairs in the Republic of Indonesia to be done by the central government. In the above description, The Indonesian regions will be divided into provincial

[11] Moh, Mahfud MD, *Politik Hukum Di Indonesia*, Jakarta, LP3ES, 1998, p. 349

[12] Marta SW Sumardjono, *Kewenangan Negara untuk Mengatur dalam Konsep Penguasaan Tanah oleh Negara*, Speech in UGM Law Facuty Professor Inauguration, February 14, 1998

[13] Josef Riwu Kaho. Prospek otonomi Daerah. Jakarta. Raja Grafindo Persada. 2010. p. VI

[14] *Ibid.*

regions, and provincial regions will be divided into smaller regions called districts. The regions that have been divided are autonomous.

Regional autonomy is the authority of the autonomous region to regulate and manage the local community's interests according to its initiative based on the community's aspirations in accordance with legislation.[15] Regional autonomy means the local government's right, authority, and obligation to organize and manage its own households. The regulating function is given to the legislative apparatus, namely the Regional House of Representatives (*DPRD*). Therefore, the *DPRD* in each region has the authority to make local regulations (*Perda*) for each applicable provision. At the same time, the function of taking care handed over to the regional executive is the head of the region and its autonomous agencies.[16]

*DPRD*, as a legislative institution, is an institution of a balance of executive power. Thus the state regulates the functions and duties of *DPRD* so that the government runs effectively, transparently and accountable. The functions and powers of the *DPR* are as follows:[17]

1.1. Related to the function of legislation, the *DPR* has the duties and powers:
   a. Develop National Legislation Program (*Prolegnas*).
   b. Prepare and discuss the draft law (*RUU*).
   c. Accept the bill submitted by Regional Representative (*DPD)* (related to regional autonomy; central and regional relations; the establishment, expansion and merger of Regions; management of Natural Resources and other natural resources; as well as the central and regional financial balance).
   d. Discuss the bill proposed by the president or *DPD*.
   e. Set the law together with the President.
   f. Approve or disapprove government regulations in lieu of the law (proposed by the president) to be enacted into law.

[15] Yulies Tiena Masriani. *Pengantar Hukum Indonesia*. Jakarta. Sinar Grafika.2004, p. 42
[16] *Ibid.*
[17] See https://www.dpr.go.id/tentang/tugas-wewenang, accessed at February 15, 2023

1.2. Related to the functions of the budget, the *DPR* has the duties and authorities:
   a. Give approval to the bill on the state budget (proposed by the President).
   b. Paying attention to the consideration of *DPD* on the bill on the state budget and the bill related to taxes, education and religion.
   c. Follow up on the results of the examination of the management and financial responsibility of the state submitted by Audit Board of The Republic of Indonesia *(BPK)*.
   d. Give approval to the alienation of state assets as well as to agreements that have a broad impact on people's lives related to the financial burden of the state.

1.3. Related to the supervisory function, the DPR has the duties and authorities:
   a. Supervise the implementation of laws, state budget and government policies.
   b. Discuss and follow up the results of supervision delivered by DPD (related to the implementation of the act on regional autonomy, the establishment, expansion and merger of Regions, management of Natural Resources and other natural resources, the implementation of the state budget, taxes, education and religion).

In addition to the functions and duties possessed by the DPR above, the DPR also has rights inherent to it as a representative of the people. especially related to the implementation of supervisory functions, DPR is equipped with 3 (Three) rights, namely:[18]

1. Right of interpellation: the right of the House of Representatives to ask the government for information on important and strategic government policies that have a broad impact on the life of society, nation, and state.

[18] See https://www.dpr.go.id/tentang/hak-dpr accessed at February 15, 2023

2. Right of Inquiry: the right of the House of Representatives to investigate the implementation of a law / government policy relating to important, strategic, and broad impact on the life of society, nation, and state that is suspected to be contrary to legislation.
3. Right to express opinion: the right of Parliament to express an opinion on:
    a. Government policy or regarding extraordinary events that occur in the country or in the international world;
    b. Follow up on the implementation of the right of interpellation and the right of inquiry; or
    c. Allegations that the president and/or vice president committed violations of the law in the form of treason against the state, corruption, bribery, other serious crimes, or misconduct, and/or the president and/or vice president are no longer eligible as president and / or Vice President.

Therefore, according to Law No. 32 of 2004 on Local Government Article 1 Paragraph 2 above, local government is the implementation of government affairs by local governments and DPRD according to the principle of autonomy and cooperation with the principle of the broadest autonomy in the system and principles of the Unitary State of the Republic of Indonesia as referred to in the Constitution of the Republic of Indonesia in 1945. In encouraging the implementation of Autonomous Regional Government, Local government is inseparable from its responsibility to realize the welfare of the people fairly for the prosperity of the people through the development and utilization of existing natural resources.

Anthony Scott calls this category of natural resources “fluid” or “fugacious” resources, which are different from mineral and forest natural resources and are natural resources that are not easily given physical limits and then allocated to private ownership rights. Failure to properly regulate the control of natural resources like this can lead to the exploitation and

destruction of these natural resources, ultimately leading to the "tragedy of the commons".[19]

One of the natural resources that can be utilized is mining. People can sustain their lives with mining. One example is the people's mining in Bone Bolango Regency. Bone Bolango Regency have a natural resource, gold, which can be managed by the local community. That the local government is obliged to regulate the mining process of that the people operates, because the people who participates in people's mining in Bone Bolango Regency do not have a license, including: (1). People's Mining in East Tulobolo Village. (2). People's Mining in Mohutango Village. (3). People's Mining in Tilangobula Village. (4). People's Mining in Gindapi Village. (5). People's Mining in Molotabu Village. (6). People's Mining in Moutong Village. (7). People's Mining in Mopuya Village. (8). People's Mining in Waluhu Village. (9). People's Mining in Mantulang Village. (10). People's Mining in Masiaga Village. (11). People's Mining in North Mongiilo Village.

The only Licensed mining activities in Bone Bolango Regency are mining operations by Gorontalo Mineral mining company. People's Mining in the village of East Tulabolo with an area of 20 Ha, has a fairly high gold content of 90% -95% which is managed by threshold workers totaling ± 2000 mine workers.[20]

Government Regulation No. 32 of 2010 on implementing mineral and coal mining activities stated that the mining business is based on mining permit (herein after referred as *IUP*), People's Mining Permit (herein after referred as *IPR* or *IUPK*). In Law No. 4 of 2009, article 1 Paragraph 10, people's mining license or *IPR*, is a permit to carry out mining business in the mining area of the people with a large area and limited investment.

Based on initial mining observations, people in the village of East Tulabolo, located in Botomboto until now, still need to get a license. They

[19] Anthony Scott, *The Evolution of Resource Property Rights*, Oxford University Press, Oxford. 2008, p. 55-58

[20] Interview result with Hairil, head of mining, on January 15, 2023, regarding the number of mining workers

are still operating as usual, while the local government has made local regulations (*PERDA*), regarding the people's mining permit (*IPR*), in the people's mining region (*WPR*). Regional Regulation No. 11 of 2013 on sustainable and environmentally sound people's Mining Management Article 12 states that any management of people's mining business can only be done after obtaining a people's mining permit. However, people's mining in East Tulabolo village do not have a license.

The term people's mining is officially contained in law No. 11 of 1967 on the introductory mining provisions. In the Minerba Law Article 33, mining enterprises that previously used the official contract of work and subsequent agreements are carried out through three forms, namely mining business license (*IUP*), people's Mining License (*IPR*), and mining business agreement (*PUP*).

Therefore, any utilization of natural resources by mining that does not have a license is a form of violation of the law that can have legal consequences for the mining workers. If activities that do not have a permit like this are carried out continuously, it will be a loss for the local community. This undermines the mandate of the 1945 Constitution to provide welfare for the people of Indonesia.

In order to provide this welfare, economic development, development policies, legal remedies, and legal awareness need to be done fairly, sustainably, and evenly, and can reach all levels of society. All these forms of efforts and ideas aim to achieve the goals to which they aspire.

Understanding all regulatory concepts related to mining in national law needs to be addressed and followed up on because knowledge of this still needs to be improved to reach people in remote areas. On the other hand, mining activities that do not have local permits are continuing, so this needs to be examined in terms of local government responsibilities in the region.

Based on the above, the authors formulate the following problems is what is the conception of the utilization of natural resources in the form of

mining according to national law and what is the local government's responsibility in regulating the people's mining in east tulabolo village.

## 2. Research Method

The research used is empirical juridical. Empirical research with a qualitative approach is based on reality in the field. Kirk and Miller define *qualitative research* as a particular tradition in social science knowledge that fundamentally relies on observing people in their domain and relating to those people in their language and their disputes.[21] Source data comes from the English language, interpreted as data, facts, or information materials.[22] The types and sources of primary data in the form of information from interviews and documentation, the primary data source in this study is the Mining Department of Bone Bolango Regency, and secondary data is Library data from various documents and relevant writings that are directly related to the object of the problem under study.

## 3. Results and Discussion

### 3.1. Conception of Utilization of Natural Resources in the Form of Mining According to National Law

Utilizing natural resources is also the utilization of Agrarian resources,[23] and the rights of control over it is an effort that is not easy to do because it covers an area of discussion with a vast scope. Following the Basic Agrarian Law (herein after referred as *UUPA*), the scope of

[21] Basrowi and Suwandi, *Penelitian Kualitatif*, Rineka Cipta. Jakarta. 2008. p. 21

[22] Syamsuddin Pasamai. *Metodologi Penelitian & Penulisan Karya Ilmiah Hukum (Suatu Pengetahuan Praktis)* Umitoha. Makassar. 2007, p. 66-67

[23] The term 'natural resources 'is broader in scope than the term 'agrarian' because it does not only include land, in this paper both terms are interpreted the same. The main consideration is because the legal norm does not distinguish the meaning of the two terms as can be seen in Article 1 Paragraph (1) of law no. 5 of 1960 (agrarian), and Article 1 Number 9 of Law No. 32 of 2009 (Natural Resources)

Agrarian resources is vast, consisting of earth, water, space and Natural Resources.[24]

Article 48 *UUPA* covers energy and elements in the airspace. Earth and water are limited to the control of space from each agricultural resource and related to the control of Natural Resources contained therein. The above article has also become the basis for the parties who want to control or utilize these natural resources.

Utilizing these resources also experienced difficulties, including how the law regulates it. This is because including concerning agricultural resources, are included in the "common pool resources." Common pool resources (CPR) is an agrarian resource that, due to its circumstances or nature, is very difficult to localize and on the plot, making it difficult to assert the right of control over it, both regarding the boundaries of its area of control and localizing the resources contained in it.[25]

It will be challenging to exercise control in the sense of authorizing and allocating obligations only to a person who owns the right of control over these agrarian resources to the exclusion of others who are not subjects of the right.

Common pool resources (CPR) are characterized by the difficulty of prohibiting or restricting actors from exploiting such natural resources, or by the high cost, although not impossible, of allocating such natural resources only to specific subjects of rights.[26]

The mastery and utilization of a natural resource are said to reach this state if the users (users) behave exploiting nature as much as possible because they do not feel they have it (individual property rights), so there

[24] Dyah Ayu Widowati, Ananda Prima Yurista, Rafael Edy Bosko, *Hak Penguasaan Atas Sumber Daya Alam Dalam Konsepsi Dan Penjabarannya Dalam Peraturan Perundang-Undangan, L*egislasi Indonesia Vol 16 No.2 - Juni 2019, p. 4

[25] Richard Barnes, *Property Rights and Natural Resources*, Hart Publishing, London, 2009, p. 2

[26] Margaret A McKean,"*Common Property: What Is It, What Is It Good for, and What Makes It Work?*" dalam Clark C. Gibson, Margaret A. McKean, dan Elinor Ostrom, *People and Forests :Communities, Institutions, and Governance,* MIT Press, Cambridge, 2000, p. 27

is no need to preserve it.[27] When viewed from this dimension, the reality of the control system is the coexistence of a rule system based on the state (state law) and the community (customary law).[28]

The right to control natural resources is related to the allocation and distribution of wealth reasonably to prevent the concentration of power that can lead to social conflict (social unrest). The right to control is a political institution because it is related to the distribution (or it could be concentration) of power (power) in society.[29]

Indonesia regulates natural resource control rights, which are regulated by different laws. This can be traced from Article 4, paragraph (2) of law no. 22 of 2001, which states that "the control by the state as referred to in Paragraph (1) shall be held by Government as the holder of mining power".[30] Based on these arrangements, the State control is held by mining power.

Article 4, paragraphs (2) and (3) of Law No. 4 of 2009 regulated the state's control of minerals and coal, organized by the government and local governments. This is then elaborated by looking at Law No. 23 of 2014 on Local Government in the Annex. The division of Government Affairs in the field of energy and Mineral Resources generally embodies the control referred to in authority for determining mining areas and issuing mining business licenses.

Speaking of mining, until now, the only law that applies today is Law No. 4 of 2009 on minerals and batteries as a non-renewable natural resource is a national wealth controlled by the state for the most excellent welfare of the people. Article 1 of Law No. 4 of 2009 provides that:[31]

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[27] Garrett Hardin, "*The Tragedy of the Common*", *Science* 162(3859): 1243-1248, 1968, p. 1243

[28] Moira Moeliono, *The Drums of Rural: Land Tenure and the Making of Place in Manggarai, West Flores*, Disseration in Hawaii University, United Stated of America, 2000

[29] Morris Cohen, "Property and Sovereignty," dalam C.B. Macpherson, *Property: Mainstream and Critical Positions*, Basic Blackwel, Oxford, 1978, p. 154

[30] Article 4 section (2) Law No. 22 of 2001

[31] Article 1 Law No 4 of 2009 Concering Mineral and Coal

> "Mining is part or all of the stages of activities in the framework of research, management and exploitation of minerals or coal that includes public investigation, exploration, feasibility studies, construction, mining, processing and refining, pengangltutan and sales, as well as post-mining activities."

The control of activities and this law has allowed other parties, such as companies, to manage and control Mining easily.

Mining is the excavation, demolition and transportation of mineral deposits in an area based on several stages of activity effectively and economically using mechanical equipment and some equipment following current technological developments. Mining has several characteristics, namely non-renewable, a relatively higher risk, and its business has a relatively higher physical and social impact than other commodity companies in general.[32] The development of the mining sector is to strive for a process of developing mineral resources to be used sparingly and optimally for the greatest prosperity of the people.[33]

Government Regulation No. 32 of 2010 on the implementation of mineral and coal mining business activities in Article 1 confirms that:[34]

> "Mining, Mineral, Coal, Mineral mining, coal mining, mining business, mining business license hereinafter referred to as IUP, business entity, mining business license area hereinafter referred to as WIUP, mining exploration business license hereinafter referred to as IUP exploration, mining production operation business license hereinafter referred to as IUP production operation, Special Mining Business Area hereinafter referred to as WUPK, special mining business license hereinafter referred to as IUPK, Exploration special mining business license hereinafter referred to as exploration IUPK, production operation Special Mining Business License hereinafter referred to as production operation IUPK, people's mining area hereinafter referred to as WPR, people's Mining License hereinafter referred to as IPR, exploration, and production operations are as referred to In Law Number 4 of 2009 concerning Mineral and coal mining."

[32] Adrian. *Hukum pertambanagan.* Jakarta. Sinar Grafika. 2012. p. 4

[33] See http://irfanzidny3id04.blogspot.com/2013/04/pertambangan-emas-dalam-pengetahuan.html
accessed at February 15, 2023

[34] Article 1 Government Regulation No 32 of 2010 concerning the Implementation of Mineral and Coal Mining Business

Based on the description above, it is clear that in order to be able to conduct mining as a rule in force, it must be licensed in advance by the relevant authorities and carried out based on *IUP*, *IPR* or *IUPK*.

Production operation *IUPK* is a business license granted after the completion of the exploration *IUPK* implementation to carry out the stages of production operation activities in the particular mining business license area.[35] So this is the primary basis that must be owned for those who want to master and manage to mine.

To follow up on this activity. Then the local government made local regulations (*PERDA*), regarding the people's mining permit (*IPR*), in the people's mining region (*WPR*). Regional Regulation No. 11 of 2013 on managing sustainable and environmentally sound people's mining Article 12 states that any management of people's mining business can only be done after obtaining a people's mining license.

People's mining is also officially affirmed in Law No. 11 of 1967 on the introductory provisions of mining, subsequently amended into law No. 4 of 2009 on mineral and coal mining, which is affirmed in Article 33, mining enterprises that previously used the official contract of work and subsequent agreements are carried out through three forms, namely mining business license (*IUP*), people's Mining License (*IPR*), and mining business agreement (*PUP*).

The people's mining permit (*IPR*) is granted to communities or cooperatives that carry out small-scale mining activities. In contrast, the mining business agreement (*PUP*) is carried out by mining companies with an implementation body established by the government. In the mineral and Coal Act, known as *IPR* (people's mining permit), which can be granted to individuals with a maximum of 1 Ha, cooperatives or community groups of 5 Ha, licensing is issued by the mayor or regent with a maximum area of 25 Ha. Therefore, the need for firmness from The Local Government in implementing Local Regulation No. 11 of 2013 on

[35] Article 1 section 10 Law No 4 of 2009

the management of sustainable and environmentally sound people's mining.

Mining and issuance of mining business licenses. Article 4 paragraph (2) of Law No. 21 of 2014 concerning geothermal stipulates that "the control of geothermal by the state as referred to in Paragraph (1) shall be held by the government, provincial government, and district/city government in accordance with its authority and based on the principle of utilization". This is then elaborated by looking at Law No. 23 of 2014 on Local Government in Annex CC. The division of Government Affairs in the field of energy and Mineral Resources generally embodies that the control in question is based on the authority for determining mining areas and issuing mining business licenses.

*Unlicensed mining* is a mining business carried out by an individual, a group of people, or a legal entity Foundation company that does not have permission from government agencies following applicable laws and regulations. Thus, any permit, recommendation, or letter given to an individual, group of people, Company or foundation by a government agency outside the provisions of applicable laws and regulations can be categorized as unlicensed mining. The people's mining permit, hereinafter referred to as IPR, is a permit to conduct mining business in the people's mining area with a limited area and investment.[36]

An exploration mining business license for metal mineral mining can be granted for eight years. Exploration mining business licenses for mining nonmetallic minerals can be granted for a maximum period of three years, and certain types of nonmetallic minerals can be granted for a maximum period of seven years. An exploration mining business license for rock mining can be granted for a maximum period of three years. An exploration mining business license for coal mining can be granted for a maximum period of seven years. In the case of exploration activities and

[36] See http://rachmatrisejet.blogspot.com/2013/06/izin-pertambangan-iup.html accessed at February 16, 2023

feasibility studies, holders of exploration mining business licenses that obtain minerals or coal excavated shall report to the mining business Licensor. Holders of exploration mining business licenses who want to sell minerals or coal must apply for a temporary permit to carry out transportation and sale of temporary permits granted by the Minister, Governor, or Regent/mayor following their authority. Mineral or coal excavated in the case of exploration activities and feasibility studies, exploration mining business license holders who get mineral or coal excavated are required to report to the mining business license provider subject to production dues.

*IUP* consist of two stages, there are:

3.1.1. Exploration mining business licenses include general investigation, exploration, and feasibility studies.

3.1.2. Mining business license production operations include construction, mining, processing and refining activities, as well as transportation and sales.

*IUP* are given to:

3.1.1. Business entity.

3.1.2. Cooperative (*Koperasi*).

3.1.3. Individual.

*IUP* include general investigation, exploration, and feasibility studies must contain provisions of at least:

3.1.1. Company name.

3.1.2. Location and area.

3.1.3. General plan of layout.

3.1.4. Assurance of truth.

3.1.5. Investment capital.

3.1.6. Extention of the activity stage.

3.1.7. Rights and obligations of *IUP* holders.

3.1.8. The period of validity of the stage activity.

3.1.9. Type of effort given.

3.1.10. Development and community empowerment plan around mining area.
3.1.11. Taxation.
3.1.12. Dispute resolution.
3.1.13. Fixed dues and exploration dues.
3.1.14. Environmental Impact Analysis (*AMDAL*).

*IUP* production operations include construction, mining, processing and refining activities must contain at least:

3.1.1. Company name.
3.1.2. Area.
3.1.3. Mining locations.
3.1.4. Processing and refining sites.
3.1.5. Transportation and sale.
3.1.6. Investment capital.
3.1.7. Period of validity of *IUP*.
3.1.8. The term of the activity stage.
3.1.9. Solving land problems.
3.1.10. The environtment includes reclamation and post-mining.
3.1.11. Reclamation and post-mining guarentee fund.
3.1.12. Extension of mining business license.
3.1.13. Rights and obligations of *IUP* holders.
3.1.14. Plan of the development and empowerment of mining communities.
3.1.15. Taxation.
3.1.16. Non-tax state revenues consist of fixed contributors and production contributions.
3.1.17. Dispute resolution.
3.1.18. Occupational saftey and health.
3.1.19. Conservation of minerals or coals.
3.1.20. Utilization of good, services and technology in the country.
3.1.21. Application of economic rules and good mining engineering.

3.1.22. Development of Indonesian workforce.

3.1.23. Processing of mineral and coal data.

3.1.24. Mastery, development, and application of mineral and coal mining.

The holder of a mining business license to cultivate Minerals is a mining business license production operations, including construction activities and mining, and must apply for a new mining business license to the Minister, Governor, and Regent/mayor under their authority. Mining business license holders not interested in working on other minerals must maintain the other minerals so that other parties refrain from using them. Mining business licenses for other minerals may be granted to other parties by the Minister, Governor, and Regent/mayor under their authority.

Article 2 Paragraph (2) of Law No. 11 of 1974, the right to control the state authorizes the government to: (a) manage and develop the benefits of water or water resources; (b) prepare, authorize, and give permission based on the planning and technical planning of water management and Irrigation Systems; (c) regulate, authorize, and give permission for the designation, use, provision of water, and water sources; (d) regulate, authorize, and; and (e) determine and regulate the deeds of water and water sources.

### 3.2. Local Government's Responsibility in Regulating People's Mining in East Tulabolo Village

Two terms refer to liability in the legal dictionary: liability and responsibility. *Liability* is a broad legal term designating almost any character of risk or responsibility which is definite, contingent or may include all actual or potential characters of rights and obligations such as losses, threats, crimes, costs or conditions that create a duty to carry out the act. Responsibility means things that can be accounted for as an obligation, including decisions, skills, abilities and skills and the obligation to be responsible for the laws implemented. In a practical

sense and use, the term liability designates legal liability, that is, liability due to errors committed by legal subjects, while the term responsibility designates political liability.[37] Regarding the issue of accountability of officials, according to Kranenburg and Vegtig, two theories underlie the following:

3.2.1. The fautes person's theory states that losses to third parties are charged to officials whose actions have caused losses. In this theory, the burden of responsibility is directed at Man.

3.2.2. Fautes de services theory, which is a theory that states that losses to third parties are charged to the agency of the official concerned. According to this theory, the responsibility is assigned to the position. In its application, the losses incurred are also adjusted, whether the mistakes made are severe or minor, where the weight and lightness of an error imply the responsibility to be borne. In general, the principles of responsibility in law can be distinguished as follows:

a. The principle of responsibility based on the element of error (fault liability or liability based on fault) is a reasonably common principle applicable in criminal and civil law. This principle is firmly held in the Civil Code, significantly articles 1365, 1366, and 1367. This principle states that a person can only be held legally accountable if there is an element of wrongdoing. Article 1365 of the Civil Code, commonly known as the article on unlawful acts, requires the fulfilment of four essential elements. What is meant by error is an element contrary to the law. Legal understanding is not only

[37] See http://sonny-tobelo.blogspot.com/2010/12/teori-pertanggungjawaban.html accessed at February 15, 2023

contrary to the law but also propriety and decency in the society.

b. The presumption of liability principle states that the defendant is always held liable until he can prove his innocence. The word “presumed “on the principle of” presumption of liability “is important since there is a possibility that the defendant absolves himself of responsibility, that is if he can prove that he has” taken” all the necessary measures to avoid the occurrence of harm. In this principle, the burden of proof is on the defendant. In this case, the burden of proof appears reversed (omkering van bewijslast). This is contrary to the legal principle of presumption of innocence. However, if applied in the case of consumers, it would seem that such a principle is quite relevant. If this theory is used, then the obligation to prove the error is on the side of the sued business actor. The defendant must present evidence of his innocence. Of course, consumers cannot voluntarily file a lawsuit. The consumer's position as a plaintiff is always open to being sued by the business actor if he fails to show the defendant’s guilt.

c. This principle is the opposite of the second principle. The principle of a presumption that is not always responsible is known only in a minimal scope of consumer transactions. An example of applying this principle is in the law of carriage. Loss or damage to cabin baggage or hand baggage usually carried and supervised by the passenger (consumer), is the passenger's responsibility. In this case, the carrier

(business actor) cannot be held accountable. The party charged with proving the error is on the consumer.

d. The principle of absolute responsibility (strict liability) is often identified with the principle of absolute responsibility (absolute liability). However, some experts distinguish the two terms above. An opinion states that strict liability is the principle of responsibility that sets the error, not as a determining factor. However, there are possible exemptions from liability answers, such as force majeure circumstances. Absolute liability isthe principle of responsibility without errors and no exceptions. According To E. Suherman, strict liability is equated with absolute liability. In this principle there is no possibility to absolve themselves of responsibility, except in the event of loss arising from the fault of the injured party alone. Responsibility is absolute.

e. The principle of responsibility with limitation of liability principle (limitation of liability principle) is very favored by businesses to be included as an exoneration clause in the standard agreement made. In the film printing washing agreement, for example, it is specified that if the film to be washed or printed is lost or damaged (including due to Officer error), the consumer is only limited to compensation of ten times the price of one new roll of film. In the provisions of Article 19 paragraph 1 of Law No. 8 of 1999 on consumer protection, it is determined that business actors are responsible provide compensation for damage, pollution and/or loss of consumers due to consumption of goods and/or services produced. In relation to the implementation of the notary's office,

professional responsibilities related to the services provided are required.

According to Komar Kantaatmaja as quoted by Shidarta, Professional Responsibility is legal liability in relation to professional services provided to clients. This professional liability may arise because they (the professional service providers) do not fulfill the agreements they have concluded with their clients or as a result of the negligence of the service providers resulting in unlawful acts.

Responsibility is a reflection of human behavior. The appearance of human behavior is related to the control of his psyche, is part of the form of his intellectual or mental considerations. When a decision has been taken or rejected, it is already part of the responsibility and consequence of the choice. There is no other reason why it was done or abandoned. The decision is considered to have been led by his intellectual awareness. Responsibility in the legal sense is one that is really linked to its rights and obligations, not in the sense that it is associated with a momentary or unconscious upheaval of the psyche as a result.[38]

H.D. Stout is of the view that authority is a notion derived from the law of governmental organization, which can be explained as the totality of rules pertaining to the acquisition and use of governmental authority by subjects of Public Law in relation to public law itself.[39] In a state of law, government authority comes from the prevailing laws and regulations as stated by RJHM Huisman that: government organs do not have their own government authority. Authority is granted only by law. The legislator may grant governmental authority not only to government bodies, but also to employees (e.g., tax inspectors, environmental inspectors, etc.), or to special bodies (e.g., electoral boards, special courts for land lease cases), or even to private law.

[38] See http://sonny-tobelo.blogspot.com/2010/12/teori-pertanggungjawaban.html accessed at February 15, 2023

[39] Fenty U. Puluhulawa. *Pertambangan Mineral dan Batubara dalam Prespektif Hukum.* Yogyakarta. Interpena Yogyakarta.2013. p. 147

Bone Bolango Regency is one of the regencies in Gorontalo province. Geographically, it has an area of 1,984.58 km or 16.24% of the total area of Gorontalo province, Bone Bolango Regency is divided into 18 districts, consisting of 166 villages. The district with the largest area is East Suwawa district while the district with the smallest area is South Bulango district.

Bone Bolango district consists of 18 districts, namely Tapa District, North Bulango District, South Bulango District, East Bulango district, Bulango Ulu district, Kabila district, Botupingge district, Tilongkabila district, Suwawa District, South Suwawa District, East Suwawa District, Central Suwawa district, Pinogu district, bone Pantai district, Kabila Bone district, Bone Raya district, Bone district, and Bulawa district.

Based on its geographical position, Bone Bolango Regency is directly adjacent to Bolaang Mongondow regency (North Sulawesi) and North Gorontalo Regency to the North. While in the East it borders South Bolaang Mongondow Regency, in the south it borders Gorontalo City and Tomini Bay, and in the West it borders Telaga District, South City, and North City.[40]

East Suwawa district is one of 18 districts in Bone Bolango Regency, this district consists of 9 villages namely Tulabolo, Dumbaya Bulan, Tilanggo Bula, East Tulabolo, West Tulabolo, Poduoma, Panggulo, Tineba, and Pangi, with the district capital located in Dumbaya Bulan Village.

The total area of East Suwawa District is 47.11 km or 2.37% of the total area of Bone Bolango Regency. The largest village is East Tulabolo Village which is 21%. The highland region is the largest because of the Earth's surface morphology. The business fields with the most jobs in East Suwawa District are the fields of tamaba, plantations, and mining.[41]

[40] Source of data comes from the Office of the Central Bureau of Statistics of Bone Bolango Regency, January 15, 2023

[41] Source of data comes from the Office of the Central Bureau of Statistics of Bone Bolango Regency, January 17, 2023

Geographically, Tulabolo Timur Village, Suwawa Timur district, Bone Bolango Regency, has an area of 13,600 km with a population of 657 people. East Tulabolo village is the first village in bloom in Bone Bolango Regency with 169 heads of families.[42]

To support the above description, there is a table of the number of inhabitants of the village of East tulabolo, namely:

| No | Hamlet | Number of Peoples |
|---|---|---|
| 1. | Hamlet 1 | 236 |
| 2. | Hamlet 2 | 209 |
| 3. | Hamlet 3 | 212 |

According to Law No. 4 of 2009 on Mineral and coal mining Article 1, mining is part or all stages of activities in the framework of research, management and exploitation of minerals or coal, which includes general investigation, exploration, feasibility study, construction, mining, processing and refining, transportation and sales, and post-mining activities.

The local government has issued a special regulation for people's mining where the local government plans how to do the activities carried out by mine workers in managing mines without damaging the surrounding environment caused by chemical substances such as cyanide, mercury, kostik and others.

Local governments have rights and obligations in regulating and managing their households for the prosperity of their people, so local governments are obliged to control everything that operates/runs in their areas that are not following existing regulations.

[42] Interview with Abd.Karim Sahrain, head of East Tulabolo Village, East Suwawa District, Bone Bolango Regency, January 26, 2023, at the East Tulabolo Village office regarding the area of East Tulabolo Village

The responsibility carried out by the local government in regulating the mining of the people in the village of Tulabolo East Suwawa East Bone Bolango District is by way of socialization to the public about the mining license of the people in the mining area of the people. However, the socialization carried out by the local government has yet to be maximized because the people of East Tulabolo village only know the local regulations about the existing *WPR*. Still, the realization of the *WPR* (people's mining area) in their town has never existed.[43] In addition, the local government once went directly to the mining site together with the relevant authorities in it, namely the police, the police assisted by the brimob unit and directed the mine workers to stop the activities they carried out at the mining site and leave the mining site of the people because the activities carried out by the mine workers did not follow the existing regulations or did not have a permit. The local government has twice conducted control at mining sites in the village of East Tulabolo.[44]

Based on the results of interviews with Ardin Mohi, the owner of the pit where the local government has regulated the mine location said, the provincial government only regulates one mining location. In contrast, the mining location in East Tulabolo village has several location points, namely the following; 1. Drill point 1; 2. Drill point 3; 3. Drill Point 9; 4. Drill Point 15; 5. Point drill 17; 6. Drill point 20; 7. Mohutango; 8. Sawn stone.[45]

Seeing so many mine sites located in East Tulabolo village can cause damage to the surrounding environment because managing the mine can not be separated from the name of the use of chemicals that can damage the environment. This is undoubtedly a considerable responsibility of the local government to regulate the mining of the

[43] Interview with Ardin Mohi, owner of mining holes, East Suwawa District, Bone Bolango Regency, January 26, 2023

[44] Interview with Hairil, Head of Mining Office, East Suwawa District, Bone Bolango Regency, February 13, 2023

[45] Interview with Ardin Mohi, owner of mining holes, East Suwawa District, Bone Bolango Regency, February 13, 2023

people. Because of this, it has become the obligation of the local government as an apparatus that has the authority to regulate and take care of their households, in this case, the relevant agencies, namely the Forestry and mining service of Bone Bolango Regency.

## 4. Conclusion

Article 33 paragraph (3) of the 1945 Constitution has stipulated that natural resources must be based on the principle of "controlled by the state" and the direction of "for the greatest prosperity of the people". Article 4, paragraphs (2) and (3) of Law No. 4 of 2009 regulated the control of minerals and coal by the state organized by the government or local governments. Sebagimana law No. 23 of 2014 concerning Local Government generally embodies that the power referred to in authority for the determination of mining areas and the issuance of mining business licenses to be able to do mining as applicable rules must obtain a permit based on *IUP*, *IPR* or *IUPK*.

The responsibility of the local government in regulating the mining of the people in the village of Tulabolo East Suwawa East Bone Bolango District is: the responsibility of the local government has not been maximized because of the eight mine sites the local government regulates only one mine site.

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