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RECONSTRUCTING INDONESIAN LEGISLATION ON STATE CONTROL OF MINERAL AND COAL RESOURCES TO PROMOTE REGIONAL WELFARE

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Abstract

The recentralization of mineral and coal mining governance in Indonesia has generated constitutional debate regarding the implementation of the State's Right to Control under Article 33 paragraph (3) of the 1945 Constitution. Although the policy aims to strengthen national control over strategic natural resources, it has also reduced regional authority and raised concerns regarding accountability, regional welfare, and the constitutional balance between centralization and decentralization. This study aims to examine the constitutional framework of the State's Right to Control, analyze the legal implications of the shift from attributive to delegative regional authority, and formulate a balanced model for mining governance. This research employs a normative legal method using statutory and conceptual approaches. Primary, secondary, and relevant non-legal materials were analyzed through qualitative, descriptive, and prescriptive methods. The study concludes that the current centralized governance model weakens regional participation and supervisory functions, thereby creating constitutional and administrative inconsistencies. Accordingly, a balanced authority model is proposed to harmonize national strategic interests with regional autonomy and the constitutional objective of achieving the greatest prosperity of the people.

Keywords: Legal Reconstructing; State's Right to Control; Mineral and Coal Mining; Regional Welfare.

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A. Introduction

The constitutional foundation of state control over natural resources is established in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which mandates that the earth, water, and the natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people. This constitutional provision establishes the State's Right to Control as a public law authority rather than a form of private ownership, thereby requiring the state to exercise its powers exclusively for the realization of public welfare.[1] The Constitutional Court, through Decision Number 001-021-022/PUU-I/2003 affirmed that this constitutional mandate encompasses the functions of regulation, administration, management, policymaking, and supervision as integral components of state control over strategic natural resources.[2] Furthermore, Article 18A paragraph (2) of the 1945 Constitution requires that the utilization of natural resources within the relationship between the central and regional governments be implemented in a fair and harmonious manner under statutory law. In this constitutional framework, the concept of the State's Right to Control, as developed by Bagir Manan distinguishes state control from state ownership and confirms that the constitutional mandate requires a balanced governance model in which regional governments remain an integral component of the state's supervisory function.[3]

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1 Irene Eka Sihombing and Jimi Rambo R. Arranchado, "Land Acquisition Law in Indonesia: Between Legal Certainty and Substantive Injustice," *Jurnal Media Hukum* 33, no. 1 (May 26, 2026): 40–59, https://doi.org/10.18196/jmh.v33i1.27205.

2 Abd. Rohman and Rizky Bangun Wibisono, "Is 'Priority' Just? Rethinking Constitutional Fairness in Indonesia's Mining Law," *Mimbar Keadilan* 18, no. 2 (July 21, 2025): 199–217, https://doi.org/10.30996/mk.v18i2.13150.

3 Hisyam Hisyam, Rahmatul Hidayati, and Budi Parmono, "Executive–Legislative Relations in Appointing the Indonesian National Police Chief," *Academia Open* 11, no. 1 (January 19, 2026): 6–17, https://doi.org/10.21070/acopen.11.2026.13052.

The mineral and coal mining sector occupies a strategic position in Indonesia's national economy because it contributes significantly to state revenue, industrial development, and regional economic growth.[4] This strategic role is reflected in the considerations of Law Number 3 of 2020 amending Law Number 4 of 2009 on Mineral and Coal Mining, which recognizes mineral and coal resources as non-renewable national assets that must be managed under state control to promote equitable prosperity. The subsequent enactment of Law Number 2 of 2025 further reinforces national mining policy by prioritizing downstream industrialization, energy security, and long-term economic competitiveness. Despite these legislative developments, successive amendments have consistently retained a fundamental governance problem concerning the distribution of authority and economic benefits between the central government and resource-producing regions. Consequently, Indonesia's mining legal framework continues to exhibit a constitutional tension between the objective of strengthening nationally integrated mining governance and the obligation to ensure equitable welfare for local communities in mining-producing areas.

The transformation of Indonesia's mining regulatory framework has fundamentally altered the constitutional relationship between the central and regional governments in exercising authority over mineral and coal resources. Under Law Number 4 of 2009, provincial and regency or municipal governments possessed original attributive authority to issue mining business permits and regulate mining activities within their respective jurisdictions. This governance model was substantially restructured by Article 35 paragraph (1) of Law

4 Dudi Rahman and Francis Raphael, "Optimizing the Utilization of Coal in Indonesia through Downstreaming: Economic Benefits, Challenges and Solutions," *Economic Military and Geographically Business Review* 2, no. 2 (January 31, 2025): 107–123, https:// doi.org/ 10.61511/ emagrap.v2i2.2025.1472.

Number 3 of 2020, which centralized licensing, management, and supervision under the authority of the central government. Although Article 35 paragraph (4) of Law Number 3 of 2020 and Presidential Regulation Number 55 of 2022 permit limited delegation of certain licensing functions to regional governments, such authority no longer constitutes original constitutional competence because it remains subject to unilateral withdrawal by the central government.[5] This centralization was further consolidated through Law Number 6 of 2023, which integrated licensing mechanisms into a nationally controlled regulatory framework and significantly reduced the legal capacity of regional governments to determine and supervise mining activities within their own territories.

The consequences of this institutional transformation are increasingly evident in Indonesia's principal coal-producing regions, where substantial mineral wealth has not been accompanied by proportional improvements in public welfare. South Sumatra, which possesses the country's second-largest coal reserves and generated significant state revenue from coal production in 2024,[6] continues to record approximately 898.24 thousand people living below the poverty line.[7] Comparable conditions are observed in East Kalimantan, South Kalimantan, and Jambi, where abundant coal reserves coexist with persistent poverty despite their considerable contribution to national

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5 Ade Yuliasih et al., “Constitutional Consistency of Indonesia’s Job Creation Law and Its Impact on Regional Autonomy,” *Jambura Law Review* 1, no. 1 (February 8, 2026): 190–209, https://doi.org/10.33756/jlr.v1i1.34262.

6 Dwi Endah Pramesti, I Wayan Suparta, and Arivina Ratih Yulihar Taher, “Poverty and the Curse of Natural Resources on the Island of Sumatra,” *Journal of Economics, Finance And Management Studies* 08, no. 10 (October 31, 2025): 7031–38, https://doi.org/10.47191/jefms/v8-i10-48.

7 Badan Pusat Statistika, “Persentase Penduduk Miskin September 2025 Sebesar 9,85 Persen,” 2025, https:// sumsel.bps.go.id/ id/ pressrelease/2026/02/05/928/persentase-penduduk-miskin-september-2025-sebesar-9-85-persen.html.

mining production.[8] These empirical findings demonstrate that the economic benefits derived from mineral exploitation have not been distributed equitably to producing regions and their local communities.[9] The persistent disparity between resource abundance and regional welfare illustrates the paradox commonly described as the resource curse, whereby regions endowed with substantial natural resources continue to experience limited socioeconomic development despite their strategic contribution to the national economy.

These empirical conditions extend beyond socioeconomic disparities and reveal a broader constitutional and administrative law problem concerning the governance of mineral and coal mining. The concentration of licensing and supervisory authority at the national level raises serious questions regarding its compatibility with Article 18, Article 18A paragraph (2), and Article 33 paragraph (3) of the 1945 Constitution, which collectively require balanced intergovernmental relations, regional autonomy, and the realization of public welfare. The current governance model has weakened the capacity of regional governments to exercise effective oversight over environmental protection, social impacts, and mining activities occurring within their territories despite their continuing constitutional responsibility to safeguard local interests. At the same time, the existing fiscal arrangement and the implementation of revenue-sharing mechanisms have not fully reflected the principle of distributive justice for resource-producing regions, thereby reinforcing the structural characteristics of the resource curse. Accordingly, the existing legal framework reveals a significant constitutional and

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[8] Juhri Selamet, "A Visual Exploration of Resource Curse in East Kalimantan," *Visual Studies* 40, no. 2 (April 3, 2025): 331–36, https://doi.org/10.1080/1472586X.2024.2345157.

[9] Eka Sutisna et al., "The Geopolitics of Critical Minerals and the Future of National Economic Sovereignty," *Jurnal Pelita Raya* 2, no. 1 (April 2, 2026): 1–15, https://doi.org/10.65586/jpr.v2i1.43.

statutory gap regarding the appropriate allocation of authority between the central and regional governments in achieving both effective state control and equitable regional welfare.

Urgency of this research lies in the unresolved constitutional and statutory inconsistencies governing the implementation of the State's Right to Control over mineral and coal mining in Indonesia. The extensive centralization of governmental authority without meaningful regional checks and balances has created legal uncertainty regarding the constitutional limits of state control and has weakened the supervisory function of regional governments in managing mining activities within their respective jurisdictions. This condition has also contributed to the persistence of illegal mining activities because regional governments no longer possess adequate legal instruments to undertake preventive and corrective measures at the local level. The resulting dissonance between Article 33 paragraph (3) and Article 18A paragraph (2) of the 1945 Constitution and the centralized governance model introduced under Law Number 3 of 2020 demonstrates the need for a comprehensive constitutional and administrative law assessment. Therefore, this research seeks to examine the legal implications of the current allocation of mining authority and to formulate a balanced legal framework capable of preserving effective state control while ensuring regional justice and the greatest prosperity of the people.

Previous studies have extensively examined the legal and political dimensions of mineral and coal mining governance in Indonesia from various perspectives. Anthony Rahardjo and KMS Herman in *Asian Journal of Social and Humanities* argued that the evolution of mining legal policy has progressively reduced the authority of regional governments through successive legislative reforms, thereby reshaping the institutional framework of decentralization.[10] Irsan and Meria Utama in *Sriwijaya Law Review* emphasized that mining law should be interpreted within the constitutional objective of achieving public welfare and highlighted the importance of aligning legal policy with the mandate of Article 33 paragraph (3) of the 1945 Constitution.[11] Likewise, Muhammad Natsir et al. in *Diponegoro Law Review* critically examined the political and legal developments of Indonesia's mining legislation, concluding that the continuous amendments primarily reflect shifts in state policy toward investment facilitation and regulatory centralization.[12] Current literature on mining governance focuses on legislative dynamics rather than the constitutional shifts in authority delegation. Thus, a normative model balancing state control and regional welfare remains unformulated.

This research offers a novel contribution by positioning the transformation of mining governance as a constitutional issue concerning the implementation of the State's Right to Control rather than merely a question of legislative or political change. Unlike previous studies, this research develops an integrated analytical framework that combines constitutional theory, administrative law, and regional autonomy to evaluate the compatibility of Indonesia's recentralized mining regime with Articles 18, 18A paragraph (2), and 33 paragraph (3) of the 1945 Constitution. Furthermore, this study proposes a normative reconstruction of Indonesia's mineral and coal mining legislation

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[10] Anthony Rahardjo and KMS Herman, "Dynamics of the Development of Mineral and Coal Mining Legal Policy Management by Regional Governments," *Asian Journal of Social and Humanities* 3, no. 10 (July 3, 2025): 1771–81, https://doi.org/10.59888/ajosh.v3i10.570.

[11] Irsan Irsan and Meria Utama, "The Political Law on Coal Mining in the Fulfilment of People's Welfare in Indonesia," *Sriwijaya Law Review* 3, no. 1 (January 31, 2019): 11–25, https://doi.org/10.28946/slrev.Vol3.Iss1.202.pp11-25.

[12] Muhammad Natsir, Andi Hidayat Anugrah Ilahi, and Titien Pratiwi Adnas, "Political And Legal Developments In Mineral And Coal Mining Laws: A Critical Review," *Diponegoro Law Review* 9, no. 2 (October 31, 2024): 186–203, https://doi.org/10.14710/dilrev.9.2.2024.186-203.

by introducing a balanced governance model that preserves effective state control while strengthening regional participation and distributive justice for resource-producing regions. Accordingly, this research seeks to examine three principal issues, namely (i) the constitutional and theoretical framework of the State's Right to Control over mineral and coal resources, (ii) the recentralization of mining governance through the transformation of authority from attributive to delegative jurisdictions, and (iii) the reconstruction of Indonesia's mining legislation toward a balanced model that harmonizes state control with regional welfare.

This research is a normative legal study that examines the constitutional implementation of the State's Right to Control over mineral and coal resources within Indonesia's mining governance framework, particularly in relation to the recentralization of governmental authority and its implications for regional welfare. The research employs a statutory approach and a conceptual approach. The statutory approach is utilized to examine the consistency and interrelationship among constitutional provisions and legislation governing mineral and coal mining, regional government, and the distribution of governmental authority, while the conceptual approach is employed to analyze the concepts of the State's Right to Control, constitutionalism, decentralization, regional autonomy, attributive and delegative authority, public welfare, and distributive justice within constitutional and administrative law. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Constitutional Court Decision Number 001-021-022/PUU-I/2003, Law Number 4 of 2009 concerning Mineral and Coal Mining as amended by Law Number 3 of 2020 and Law Number 2 of 2025, Law Number 23 of 2014 concerning Regional Government, Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law, Presidential Regulation Number 55 of 2022, and other relevant implementing regulations concerning mineral and coal mining governance. Secondary legal materials consist of legal journals, academic books, scholarly articles, commentaries, constitutional court decisions, and previous research discussing natural resource governance, mining law, constitutional law, administrative law, and regional autonomy, while non-legal materials include government reports, official statistical publications, policy papers, and other authoritative publications concerning Indonesia's mineral and coal mining sector that are relevant to the research. The legal materials were collected through literature studies and subsequently processed using systematization and classification techniques based on the hierarchy, authority, and relevance of legal sources. Data analysis was conducted qualitatively using descriptive-analytical and prescriptive methods to identify constitutional and statutory issues, interpret legal norms, evaluate the coherence of the existing legal framework, and formulate recommendations for reconstructing a balanced mining governance model that harmonizes effective state control with regional welfare.

B. Research Outcome and Discussion

1. The Constitutional and Theoretical Framework of the State's Right to Control Mineral and Coal Resources

The 1945 Constitution of the Republic of Indonesia establishes the philosophical foundation for natural resource management through Article 33 paragraph (3), which mandates that land, water, and their contained natural resources are controlled by the state and utilized for the greatest prosperity of the people. This constitutional provision is not an ordinary legal norm but rather a fundamental norm (staatsfundamentalnorm) that serves as the highest source of legal authority and a means of control over all lower-level legal regulations.[13] The placement

[13] M. Imam Nasef, Ali Rido, and Eko Primananda, "Legality of State Debt Management: A Study on the Principle of the Rule of Law and Legislative

of Article 33 under the heading "Social Welfare" underscores its integral connection to the overarching national goal of advancing general welfare and establishing social justice as articulated in the fourth paragraph of the Preamble.[14] Consequently, the implementation of this article in sectoral legislation, particularly in the mineral and coal mining sector, necessitates a precise interpretation of the critical phrases "controlled by the state" and "for the greatest prosperity of the people". This interpretation must be grounded in a comprehensive doctrinal understanding that distinguishes the state's right of control from private proprietary rights and integrates it with broader constitutional principles.

The doctrinal essence of the state's right of control, as encapsulated in the phrase "dikuasai oleh negara," fundamentally rejects any equation with the civil law concept of dominium or *eigendomsrecht* (private ownership).[15] Instead, it constitutes a *publiekrechtelijke bevoegdheid*, a public legal authority inherent in the state as the highest organizational power of the people.[16] Bagir Manan elaborates that this state control is not a form of private ownership (staatseigendom) but rather a collection of public functions manifesting in regulatory (regelen), administrative (besturen), managerial (beheer), and

Order," *As-Siyasi: Journal of Constitutional Law* 5, no. 2 (October 29, 2025): 215–28, https://doi.org/10.24042/as-siyasi.v52.28322.

14 Runtukahu Joi Meinhart Moningka, Burhan Niode, and Welly Waworundeng, "Social Welfare in the Sustainable Development of the Bitung Special Economic Zone in Bitung City of North Sulawesi Province," *Santhet (Jurnal Sejarah Pendidikan Dan Humaniora)* 7, no. 2 (November 6, 2023): 746–57, https://doi.org/10.36526/santhet.v7i2.3206.

15 Gema Mutiara Insani and Muhammad Helmi Fahrozi, "Legal Certainty of Private Land Ownership Against the Control of Land by the Indonesian National Armed Forces," *Journal of Law, Politic and Humanities* 6, no. 1 (November 20, 2025): 861–69, https://doi.org/10.38035/jlph.v6i1.2611.

16 Raden Hamidi et al., "Comparison of Authority of Village Government Before and After the Implementation of Law Number 6 of 2014 Concerning Village," *The Journal of Social Sciences Research* 5, no. 11 (November 10, 2019): 1609–13, https://doi.org/10.32861/jssr.511.1609.1613.

supervisory (toezicht houden) capacities,[17] thereby dogmatically prohibiting unilateral control monopolies by a single government organ without layered supervision. This distinction was historically established to sever the colonial doctrine of *domeinverklaring* from the Agrarische Wet 1870, which positioned the state as the absolute owner of land and subsurface resources.[18] The post-independence constitutional framework thus envisions the state's role purely as a public trustee (wali publik) managing assets to dismantle economic monopolies by the ruling elite. This foundational distinction is critical for understanding the nature and limits of state authority over mineral and coal resources.

The Constitutional Court's landmark decision in Case Number 001-021-022/PUU-I/2003 provides the operational instruments for the state's right of control by formulating it as a bundle of five distinct functions. These functions comprise policy formulation (beleid), administration (bestuursdaad), regulation (regelendaad), management (beheersdaad), and supervision (toezichthoudensdaad). This formulation serves as a vital analytical tool for mineral and coal governance, as it affirms that state authority is measurable and accountable rather than an unchecked blank authority without administrative limits. The centralization of licensing authority must therefore be rigorously tested, particularly concerning the supervisory function (toezichthoudensdaad) at the local level,[19] which factually

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17 Susi Dwi Harijanti, "Khazanah : Bagir Manan," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 2, no. 3 (2015): 626–43, https://doi.org/10.22304/pjih.v2n3.a12.

18 M Masyrullahushomad and S Sudrajat, "Penerapan Agrarische Wet (Undang-Undang Agraia) 1870: Periode Awal Swastanisasi Perkebunan Di Pulau Jawa," *HISTORIA: Jurnal Program Studi Pendidikan Sejarah* 7, no. 2 (January 24, 2020): 159, https://doi.org/10.24127/hj.v7i2.2045.

19 Ilham Aji Pangestu, Tiara Ayu Lestari, and Dian Yulviani, "The Constitutionality of the Recentralization of Forestry Authority in Indonesia from the Perspective of Regional Autonomy," *Politica: Jurnal Hukum Tata Negara dan Politik Islam* 13, no. 1 (June 17, 2026): 122–53, https://doi.org/10.32505/politica.v13i1.14633.

cannot be amputated from regional government roles due to the central bureaucracy's physical limitations in reach. The Court's elucidation ensures that the exercise of state control remains tethered to concrete functions rather than abstract ownership.

Building upon this foundation, Constitutional Court Decision Number 3/PUU-VIII/2010 advanced the interpretation by establishing four substantive parameters that the state's right of control must satisfy. These parameters include the level of benefit derived from natural resources for the people, the level of equitable distribution of such benefits, the level of public participation in determining those benefits, and respect for the rights of indigenous and local communities on a hereditary basis.[20] These substantive elements shift the paradigm of mining governance from a mere formalistic-bureaucratic affair in Jakarta to an outcome-based assessment of social justice. This parameter becomes a critical testing tool to prove that the centralization of Mining Business Permits (IUP) under Article 35 paragraph (1) of Law Number 3 of 2020 risks substantive defects if the unilateral licensing mechanism excludes regional participation and produces uneven economic distribution patterns.[21] The Court's progressive interpretation thus imposes a qualitative duty on the state beyond mere procedural compliance.

The international legal framework of Permanent Sovereignty over Natural Resources (PSNR), as enshrined in United Nations General Assembly Resolution 1803 (XVII) of 1962, establishes the inalienable sovereign right of every

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20 Elisa Morgera, "The Role of Fair and Equitable Benefit-Sharing in Environmental Peacebuilding," in *Research Handbook on International Law and Environmental Peacebuilding* (Cheltenham: Edward Elgar Publishing, 2023), 62–88, https://doi.org/10.4337/9781789906929.00011.

21 Radina Hamza Hairun, Sultan Alwan, and Nam Rumkel, "Legal Analysis of Regional Legislative Council Supervision of Regional Government Regarding Overlapping Mining Business Permits in North Maluku Province," *Journal of Social Science* 4, no. 2 (March 20, 2023): 363–79, https://doi.org/10.46799/jss.v4i2.548.

independent state to regulate its subsurface natural wealth for national development.[22] In the evolution of modern international law, this permanent sovereignty cannot be misused as a shield by the Central Government for authoritarian power concentration. Conversely, the PSNR principle imposes an international obligation on state institutions to ensure that natural resource utilization must accommodate the rights of local and indigenous communities where extractive commodities are exploited.[23] This principle reinforces the constitutional mandate by adding an external dimension of accountability that transcends domestic legal frameworks. Therefore, any centralization policy must be evaluated against the PSNR's requirement for inclusive and development-oriented resource governance.

The conception of Indonesia as a welfare state (verzorgingsstaat) is firmly anchored in the fourth paragraph of the 1945 Constitution's Preamble through the phrase "to advance the general welfare," which serves as the highest normative source for Article 33 paragraph (3). Within this theoretical perspective, the state's right of control is positioned purely as a means (instrument), while the guarantee of collective socio-economic welfare acts as the ultimate end (goal) of statehood. The consequence of this positioning is that the formal legality of withdrawing mineral and coal licensing instruments to the center will lose its moral-constitutional legitimacy if empirically proven to produce policy disorientation in the form of structural poverty around mining areas. The welfare state theory demands that all state actions, including resource

22 Imad Antoine Ibrahim, "Redefining the Principle of Permanent Sovereignty over Natural Resources from a Geographical Perspective," *International Community Law Review* 25, no. 5 (August 29, 2023): 456–75, https://doi.org/10.1163/18719732-bja10098.

23 Dorothée Cambou, "Indigenous Peoples Right to Self-Determination and the Principle of State Sovereignty over Natural Resources: A Human Rights Approach and Its Constructive Ambiguity," in *Research Handbook on the International Law of Indigenous Rights* (Cheltenham: Edward Elgar Publishing, 2022), 148–68, https://doi.org/10.4337/9781788115797.00020.

management, be evaluated based on their contribution to the common good rather than mere procedural correctness.[24] This teleological interpretation places a heavy burden of proof on the central government to demonstrate tangible welfare outcomes from its centralized policies.

The Public Trust Doctrine, as developed by Joseph L. Sax reinforces the juridical position of the state not as an owner but as a trustee bound by a fiduciary duty to manage public wealth for the benefit of the people as beneficiaries.[25] This doctrine strictly prohibits the trustee (the Central Government) from producing unilateral policies that demonstrably ignore, distort, or harm the living rights of beneficiaries at the local level.[26] Through this analogical approach, the relationship of mineral and coal control in Indonesia must place the environmental, social, and fiscal aspirations of regional governments as part of the fiduciary responsibility that cannot be set aside by central authority. The trustee's obligation requires active engagement with and protection of beneficiary interests, not their subordination to central administrative convenience.[27] This doctrine provides a robust normative basis for challenging policies that concentrate power while neglecting local welfare.

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[24] Moh. Ferdi Hasan, "Educational Authority and Regulatory Legitimacy: Comparing Normative Systems in Pesantren and Public Schools in Indonesia," *Legal Pluralism and Critical Social Analysis* 57, no. 2–3 (September 2, 2025): 182–206, https://doi.org/10.1080/27706869.2025.2556586.

[25] Anthea-Lee September-Van Huffel, "The Evolving Developmental Role of the State as Public Trustee of South Africa's Natural Resources and Property," *Law, Democracy and Development* 28 (July 16, 2024): 152–73, https://doi.org/10.17159/2077-4907/2024/ldd.v28.7.

[26] Elizabeth LoPreiato, "The Public Trust as an International Solution to Climate Inaction," *German Law Journal* 25, no. 3 (May 30, 2024): 481–96, https://doi.org/10.1017/glj.2024.17.

[27] Abdelaziz Mohamed Hamad Satti, "The Fiduciary Obligation: A Proposal for the Sudanese Courts and Legislature," *Journal of Afro-Asian Studies*, no. 27 (November 30, 2025): 56–80, https://doi.org/10.63939/JAAS.2025.N27.56-80.

Philipus M. Hadjon's theory of governmental authority distinguishes three primary sources of administrative power: attribution (creation of new authority by law), delegation (transfer of authority accompanied by responsibility shift), and mandate (granting of power without responsibility transfer).[28] The implementation of Article 35 paragraph (1) of Law Number 3 of 2020 creates an acute conflict of norms by revoking the attributional authority over concurrent energy and mineral resources management held by regions under Law Number 23 of 2014 on Regional Government, and centralizing it into a single attribution for the Central Government. The subsequent delegation scheme through Presidential Regulation Number 55 of 2022 serves merely as a fragile "tension dampener" that transforms the character of robust regional autonomous rights into mere secondary delegative authority that can be unilaterally withdrawn at any time by Jakarta. This theoretical framework exposes the structural weakness of the centralization policy, as it fundamentally alters the nature of regional authority from an attributional right to a precarious delegation. The conflict between these legal regimes raises serious questions about the coherence and legitimacy of the current mining governance framework.

The constitutional guarantee of the broadest possible autonomy in Article 18 paragraphs (2) and (5) of the 1945 Constitution mandates a rational division of governmental affairs in alignment with the spirit of functional decentralization. The subsidiarity principle establishes the basic rule that public affairs and urgent decision-making should be placed as close as possible to the level of government most intimately confronted with their

[28] Lumba Agung Masben and Achmad Edi Subiyanto, "Appointment of Acting Regional Heads by The Central Government: Analysis of Authority and Principles of Local Democracy," *International Journal of Science and Environment (IJSE)* 6, no. 1 (January 17, 2026): 417–25, https://doi.org/10.51601/ijse.v6i1.352.

direct impacts.[29] Given that all negative externalities resulting from mineral and coal exploitation, such as ecological damage, infrastructure degradation, and agrarian conflicts, are inherently local in nature, the removal of regional control rights through total centralization constitutes a clear violation of the subsidiarity principle.[30] This principle requires that decisions affecting local communities be made at the local level unless there is a compelling reason for centralization. The current policy framework fails to justify why local governments, which bear the brunt of extraction's negative consequences, should be stripped of meaningful regulatory authority.

John Rawls's theory of justice, particularly through the difference principle, establishes that socio-economic inequalities are only permissible if they provide the greatest benefit to the least advantaged members of society.[31] This principle of justice is deeply rooted in the noble value of Social Justice embodied in the fifth precept of Pancasila, which demands a balance of rights over the wealth of the Indonesian archipelago. When fiscal benefits from strategic commodity extraction are asymmetrically absorbed by the central treasury and large corporations, while regional producing communities are forced to bear the residual ecological burden, this confirms the total failure of distributive justice in operation. The difference principle serves as a critical benchmark for evaluating whether the centralization of mining permits actually improves the condition of the least advantaged

29 Michael Da Silva, "Subsidiarity and the Allocation of Governmental Powers," *Canadian Journal of Law & Jurisprudence* 36, no. 1 (February 8, 2023): 83–111, https://doi.org/10.1017/cjlj.2022.26.

30 Andrea Morrone, "Intergovernmental Relations in Italy: The Search for Balance Between Devolution and Centralisation," in *Perspectives and Futures of Public Administration in Italy*, ed. Edoardo Ongaro et al. (Cham: Palgrave Macmillan, 2026), 111–31, https://doi.org/10.1007/978-3-032-11744-1_7.

31 Maurizio Bovi, "Tolerable Inequality According to John Rawls," in *The Dual Challenge of Tolerable Economic Inequality* (Cham: Springer, 2025), 59–71, https://doi.org/10.1007/978-3-031-97066-5_6.

or merely exacerbates existing inequalities.[32] This theoretical lens exposes the substantive unconstitutionality of policies that concentrate benefits while externalizing costs onto vulnerable local populations.

The State's Right of Control over minerals and coal is not an absolute instrument of unlimited power but rather a conditional authority of a fiduciary nature. The validity of mining governance depends entirely on the integration of the Constitutional Court's five functions, the fulfillment of the four parameters of public benefit, the commitment to inclusive PSNR sovereignty, the fulfillment of the welfare state's means, adherence to the subsidiarity principle in administrative law, and the ultimate achievement of distributive justice. Therefore, the legislative engineering in Law Number 3 of 2020, extending to the recent amendments in Law Number 2 of 2025 that expand the granting of priority permit areas without including the reconstruction of regional supervision, is theoretically assessed as suffering from constitutional defects due to violating the absolute prerequisites of state control itself. The centralization policy, by failing to meet the substantive and procedural requirements of the state's right of control, undermines the constitutional compact between the state and the people. A constitutional recalibration that restores the balance between central authority and regional autonomy, while ensuring the people's prosperity, is urgently required to realign mining governance with its foundational constitutional mandate.

2. The Recentralization of Mining Governance: Shifting Authority from Atributive to Delegative Jurisdictions

32 Madhura Manish Pawar, Fariba Karimi, and Fernando Pascoal Dos Santos, "Fairness Beyond Popularity: Auditing and Mitigating Betweenness Centrality Disparities in Link Recommendation," in *Proceedings of the 2026 ACM Conference on Fairness, Accountability, and Transparency* (New York: ACM, 2026), 5068–94, https://doi.org/10.1145/3805689.3812364.

The debate concerning the recentralization of mining governance essentially concerns the legal character of governmental authority rather than merely the redistribution of administrative functions. Every governmental action must derive its legitimacy from authority conferred by law because authority constitutes the legal basis upon which public institutions exercise their rights, duties, and responsibilities.[33] As Ridwan HR explains, governmental power cannot be separated from authority, although the two concepts possess different legal meanings.[34] Power reflects the capacity to influence public affairs, whereas authority refers to legally recognized competence that enables government institutions to perform public functions within the limits prescribed by legislation.[35] Consequently, any change in the allocation of mining authority must first be examined from the perspective of administrative law to determine whether it remains consistent with the constitutional structure of governmental powers.

The administrative law framework developed by Philipus M. Hadjon distinguishes governmental authority into three legal sources consisting of *attributie*, *delegatie*, and *mandaat*, each of which produces different legal consequences concerning responsibility and accountability.[36] *Attributie* creates original

33 Ahmad Ahmad, "Analysis of Abuse of Authority by Government Apparatus in the State Administrative Legal System," *International Journal of Constitutional and Administrative Law* 1, no. 1 (June 18, 2025): 69–83, https://doi.org/10.66502/v2wdah74.

34 Jaya Ashari, Herlita Eryke, and Marlis Tarmizi, "Analysis Of The Limits Of Authority Of General Practitioners In Community Health Centers In Issuing Visum Et Repertum Based On Law No. 17 Of 2023 On Health," *Sosioedukasi : Jurnal Ilmiah Ilmu Pendidikan Dan Sosial* 15, no. 1 (March 31, 2026): 1801–12, https://doi.org/10.36526/sosioedukasi.v15i1.7621.

35 William D. Ferguson, "Power and Public Authority," *Global Policy* 15, no. S4 (July 6, 2024): 11–23, https://doi.org/10.1111/1758-5899.13205.

36 Mohammad Zamroni, "Accountability in Government Contracts: A Measure of Performance from the Commitment-Making Officials?," *Hasanuddin Law Review* 5, no. 2 (August 14, 2019): 199, https:// doi.org/ 10.20956/ halrev.v5i2.1074.

authority directly through legislation, *delegatie* transfers both authority and legal responsibility from one governmental organ to another, whereas *mandaat* merely authorizes another official to act on behalf of the original authority without transferring responsibility.[37] These distinctions are particularly significant because they determine whether regional governments exercise mining powers as autonomous public authorities or merely implement powers temporarily entrusted by the Central Government. Accordingly, the constitutional issue arising from the reform of mining legislation is not simply whether authority has shifted, but whether the legal character of that authority has fundamentally changed from autonomous constitutional competence into revocable administrative delegation.

Before the enactment of Law Number 3 of 2020, the allocation of mining authority reflected the constitutional orientation of decentralization adopted after the reform era. Law Number 4 of 2009 expressly conferred original authority upon regional governments through Articles 7 and 8, which authorized provincial governments to regulate and administer mining activities within their jurisdiction and empowered regency and municipal governments to issue Mining Business Permits (*Izin Usaha Pertambangan* or *IUP*) and Community Mining Permits (*Izin Pertambangan Rakyat* or *IPR*).[38] From the perspective of Philipus M. Hadjon's theory, these powers constituted *attributie* because they originated directly from legislation and were exercised by regional governments under their own legal responsibility (*eigen verantwoordelijkheid*). Consequently, regional governments did not merely implement policies

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37 Tri Achmad Budi Susilo et al., "Artificiality in the Delegation of Authority of Regional Heads and Their Impact on Autonomous Development," *International Journal of Sustainable Social Culture, Science Technology, Management, and Law Humanities* 1, no. 1 (June 13, 2024): 22–32, https://doi.org/10.71131/6xsaeg84.

38 Derita Prapti Rahayu et al., "Implications Of Illegal Community Mining For Economic Development In Bangka Regency, Indonesia," *Law Reform* 19, no. 2 (December 6, 2023): 270–93, https://doi.org/10.14710/lr.v19i2.52866.

formulated by the Central Government but exercised autonomous public authority as part of the constitutional framework of regional autonomy. This legislative model reflected a balanced distribution of governmental functions in which state control over mineral and coal resources remained unified while its implementation was institutionally shared between the central and regional governments.

A fundamental change occurred with the enactment of Law Number 3 of 2020, which repealed Articles 7 and 8 of Law Number 4 of 2009 and introduced Article 35 paragraph (1) as the principal legal basis for the recentralization of mining governance. The amended provision stipulates that the management of mineral and coal resources, including licensing, supervision, and other administrative functions, falls under the authority of the Central Government.[39] This amendment did not merely reallocate administrative responsibilities but fundamentally altered the legal source of governmental authority by eliminating the original attributive powers previously vested in regional governments. As a consequence, regional governments no longer possessed independent legal competence in mining administration and instead became institutions whose involvement depended upon decisions of the Central Government. Therefore, the principal legal consequence of Law Number 3 of 2020 lies not simply in the transfer of authority but in the transformation of the constitutional relationship between the central and regional governments from one based on decentralization to one increasingly characterized by administrative centralization.

The policy of recentralization introduced by Law Number 3 of 2020 was subsequently reinforced through Law Number 2 of 2025, which further consolidates the Central Government's control over strategic mineral and coal resources. One of the

39 Natsir, Ilahi, and Adnas, "Political And Legal Developments In Mineral And Coal Mining Laws: A Critical Review."

most significant changes concerns the introduction of a priority mechanism for granting Mining Business Permit Areas (*Wilayah Izin Usaha Pertambangan* or *WIUP*) to support downstream industrial development and strengthen national economic competitiveness.[40] Although this policy is intended to accelerate investment and mineral processing, it simultaneously places strategic decisions concerning mining areas, licensing priorities, and resource allocation under the direct authority of the Central Government. As a result, regional governments exercise an increasingly limited role in determining how mineral resources located within their territories are managed and utilized. This legislative development demonstrates that the contemporary direction of Indonesia's mining policy favors centralized decision making while reducing the institutional space previously available for regional participation in natural resource governance.

The expansion of central authority, however, does not place governmental discretion beyond constitutional scrutiny. In Constitutional Court Decision Number 160/PUU-XXIII/2025, the Court clarified that the statutory phrase concerning the priority allocation of *WIUP* cannot be interpreted as authorizing arbitrary or subjective appointments by the Central Government. The Court emphasized that every priority mechanism must be implemented through objective, transparent, measurable, and accountable criteria that are capable of ensuring equal treatment among eligible applicants. This interpretation confirms that legislative authority over strategic natural resources remains subject to the constitutional principles of legality, accountability, and good governance, regardless of the breadth of discretion granted by statute. Accordingly, the constitutional significance of this decision lies in reaffirming that recentralization cannot be understood as an unlimited transfer of governmental power, but

[40] Feby Ivalerina Kartikasari, "Assessing Environmental Protection In Indonesian Mining Laws," *Arena Hukum* 18, no. 2 (August 5, 2025): 232–56, https://doi.org/10.21776/ub.arenahukum2025.01802.4.

must remain constrained by legal standards that prevent the abuse of administrative discretion.

In response to concerns regarding the extensive concentration of mining authority, the Government introduced Government Regulation Number 96 of 2021 and Presidential Regulation Number 55 of 2022, both of which provide opportunities for certain licensing and supervisory functions to be carried out by regional governments. At first glance, these regulations appear to restore regional participation in mineral and coal governance. A closer examination from the perspective of administrative law, however, demonstrates that the legal character of the authority exercised by regional governments has fundamentally changed.[41] Unlike the original authority granted under Law Number 4 of 2009, the powers exercised under these implementing regulations derive from delegation by the Central Government and therefore remain dependent upon the continued existence of that delegation. Consequently, regional governments no longer act on the basis of autonomous authority established by statute but perform functions whose legal validity ultimately depends upon the discretion of the Central Government as the delegating authority.

The transformation from attributive authority to delegated authority has significant constitutional and administrative implications. Under Philipus M. Hadjon's theory, *delegatie* transfers the exercise of authority from one governmental organ to another, yet its existence remains inseparable from the legal framework established by the delegating institution.[42] This differs fundamentally from *attributie*, where authority originates

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41 Arben Hysi et al., "Role of Legal Regulation in the Establishment and Development of the Public Administration System with Local Self-Government Aspects," *Social Legal Studios* 7, no. 1 (February 28, 2024): 27–36, https://doi.org/10.32518/sals1.2024.27.

42 Sholahuddin Al-Fatih and Moh. Fadli, "History of The Development of The Principle of Delegatus Non-Potes Delegare and Its Implementation," *Arena Hukum* 17, no. 1 (April 2, 2024): 210–25, https:// doi.org/ 10.21776/ ub.arenahukum.2024.01701.12.

directly from legislation and forms an inherent component of regional autonomy.[43] As a result, the authority currently exercised by regional governments in mining administration no longer reflects constitutionally guaranteed autonomous competence but instead represents secondary administrative authority that may be modified or withdrawn through subsequent regulatory policies. This juridical transformation confirms that the recent regulatory framework has altered not only the distribution of governmental functions but also the legal status of regional governments within Indonesia's mining governance system

A similar tendency is reflected in Minister of Energy and Mineral Resources Regulation Number 3 of 2023 concerning the implementation of deconcentration to governors. The regulation expressly provides that governors perform mining functions in their capacity as representatives of the Central Government pursuant to Article 91 of Law Number 23 of 2014 concerning Regional Government rather than as autonomous regional executives. Consequently, the exercise of authority follows the administrative logic of *deconcentratie*, under which responsibility is directed vertically to the Central Government instead of politically and institutionally to regional representative bodies and local communities. This institutional arrangement substantially weakens the constitutional meaning of decentralization because regional governments no longer determine mining policies on the basis of their own autonomous authority but merely implement national policies within their respective administrative territories.[44] Therefore, the

43 Qianhong Qin, "Selection of Legislative Paths and Establishment of Legislative Principles for the People's Supervisor System," in *Legislative Research on the People's Supervisor System* (Singapore: Springer Nature Singapore, 2026), 135–84, https://doi.org/10.1007/978-981-95-7972-3_4.

44 Sukirno Sukirno, "Environmental Law And Regional Autonomy: Opportunities And Challenges In Managing Natural Resources," *International Journal of Science and Environment (IJSE)* 5, no. 3 (July 4, 2025): 1–9, https://doi.org/10.51601/ijse.v5i3.161.

combination of Law Number 3 of 2020 and its implementing regulations demonstrates that the involvement of regional governments has shifted from substantive decision making toward administrative execution under the supervision of the Central Government.

The gradual transformation of mining authority from decentralization to delegation has also produced significant consequences for administrative accountability at the local level. From the perspective of administrative law, the replacement of attributive authority with delegated and deconcentrated authority creates an *accountability gap* because regional governments remain institutionally close to the social and environmental impacts of mining activities while no longer possessing sufficient legal competence to respond independently.[45] This situation becomes particularly evident in cases involving environmental degradation, land conflicts, and illegal mining (*Pertambangan Tanpa Izin* or *PETI*), where regional governments frequently lack the legal instruments necessary to undertake effective preventive or corrective measures. At the same time, the Central Government faces practical limitations in exercising continuous supervision over geographically dispersed mining operations throughout Indonesia. Consequently, the current institutional arrangement weakens the effectiveness of preventive oversight and reduces the responsiveness of mining governance to local conditions despite maintaining formal administrative control at the national level.

The emergence of this accountability gap demonstrates that the issue extends beyond administrative efficiency and concerns the constitutional design of the relationship between the Central Government and regional governments in the

[45] Hezron Sabar Rotua Tinambunan et al., "Recentralization of Mining Licensing Authority and Its Impact on Local Autonomy in Indonesia," *Jurnal Suara Hukum* 7, no. 2 (August 26, 2025): 520–39, https://doi.org/10.26740/jsh.v7n2.p520-539.

management of strategic natural resources. The progressive replacement of attributive authority with delegated and deconcentrated powers has transformed regional governments from autonomous holders of public authority into administrative executors acting on behalf of the Central Government. Although this model may strengthen policy uniformity and support national investment objectives, it simultaneously narrows the constitutional space for regional participation in performing the supervisory function that forms an integral element of the State's Right to Control under Article 33 paragraph (3) of the 1945 Constitution. This development raises an important constitutional question as to whether the current legislative framework has preserved an appropriate balance between effective national control over strategic mineral resources and meaningful regional involvement in protecting the interests of local communities. Accordingly, the discussion can no longer be confined to the legality of recentralization itself but must proceed to examine how Indonesia's mining legislation should be reconstructed in order to reconcile constitutional state control with regional welfare within a balanced and accountable system of natural resource governance.

3. Reconstructing Indonesian Mining Legislation: A Balanced Model for State Control and Regional Welfare

The current pattern of mining governance reveals that the constitutional debate no longer concerns whether the State has the authority to control mineral and coal resources, but rather how that authority should be exercised within Indonesia's decentralized constitutional system. Recent legislative developments have tended to equate state control with the concentration of governmental powers at the national level, even though such an interpretation is not fully supported by constitutional jurisprudence. Constitutional Court Decision Number 001-021-022/PUU-I/2003 demonstrates that the State's Right to Control is exercised through the integrated functions of *beleid*, *bestuursdaad*, *regelendaad*, *beheersdaad*, and *toezichthoudensdaad*, while Decision Number 3/PUU-VIII/2010 further requires that those functions produce tangible public benefit, equitable distribution, meaningful participation, and respect for local communities. These constitutional benchmarks indicate that the State's Right to Control should be understood as a *conditional authority*, whose legitimacy depends not merely on the concentration of power but on the extent to which constitutional objectives are substantively achieved.[46] Accordingly, the reconstruction of mining legislation should move beyond the dichotomy between complete centralization and unrestricted decentralization by establishing a balanced allocation of authority that preserves national sovereignty while enabling regional governments to perform substantive governance functions.

The existing regulatory framework also leaves unresolved the question of which governmental functions should remain under regional authority when mining activities primarily generate local environmental and social consequences. This issue deserves reconsideration because Law Number 30 of 2014 concerning Government Administration recognizes that *attributie* constitutes original authority conferred directly by legislation, together with the corresponding legal responsibility of the authority holder, as reflected in Article 1 point 22 and Article 12 paragraph (2). Viewed from the perspective of the *proportionality principle*, the allocation of governmental authority should correspond to the geographical scope of the impacts that require public regulation. For that reason, regional governments should regain limited attributive authority over community mining permits (*Izin Pertambangan Rakyat*), small-scale mineral extraction, and other mining activities whose risks

[46] Totok Dwi Diantoro, "A Critical Review of the Actualization of the Right to Control by the State Doctrine in the Policy on Revocation of Forest Area Permits/Concessions," *Jurnal Pembangunan Hukum Indonesia* 7, no. 2 (June 30, 2025): 250–72, https://doi.org/10.14710/jphi.v7i2.71-93.

and externalities remain predominantly local, whereas strategic policies concerning national mineral reserves, export quotas, and large-scale concessions should continue to be administered by the Central Government. Such a differentiated allocation of authority would preserve constitutional coherence by ensuring that governmental powers are exercised at the level most capable of responding effectively to the public interests affected.[47]

The concentration of strategic mining authority at the national level does not eliminate the practical need for regional implementation, particularly in licensing supervision and law enforcement. Although Presidential Regulation Number 55 of 2022 attempts to involve regional governments in several administrative functions, the existing arrangement remains legally fragile because it reflects a model of *dekonsentratie* rather than a genuine transfer of governmental authority. This approach leaves regional institutions responsible for implementing central policies without providing them with corresponding legal responsibility or institutional independence. A more coherent framework should therefore follow Article 13 of Law Number 30 of 2014, which requires that *delegatie* involve not only the transfer of administrative competence but also the transfer of legal accountability to the receiving authority. By transforming the present mechanism into a genuine system of delegation, regional governments would exercise mining authority with greater legal certainty while remaining fully accountable for their administrative decisions through judicial review before the administrative courts.

The proposed redistribution of authority is also supported by broader principles of public administration and economic governance. Wallace Oates' *Decentralization Theorem* explains that public functions should generally be exercised by the lowest

[47] T.R.S. Allan, "Constitutionalism At Common Law: The Rule Of Law And Judicial Review," *The Cambridge Law Journal* 82, no. 2 (July 22, 2023): 236–64, https://doi.org/10.1017/S000819732300017X.

level of government capable of internalizing the costs and benefits arising from those functions.[48] Applied to mineral and coal mining, this principle suggests that centralization is justified only for matters involving national strategic interests, such as mineral policy, export regulation, and energy security, where significant *economies of scale* can be achieved. By contrast, environmental degradation, infrastructure damage, social conflict, and other mining externalities are experienced directly within producing regions and therefore require a stronger regional regulatory presence.[49] This functional division creates a more rational distribution of governmental authority by allowing the Central Government to concentrate on macroeconomic objectives while enabling regional governments to respond effectively to localized impacts.

The effectiveness of a balanced authority model also depends on whether institutional arrangements are supported by an equitable fiscal framework. Article 18A paragraph (2) of the 1945 Constitution requires that financial relations between the Central Government and regional governments reflect the principles of fairness and proportionality in managing natural resources. This constitutional mandate has been implemented through Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, particularly through the mechanism of natural resource revenue sharing. When viewed alongside Constitutional Court Decision Number 3/PUU-VIII/2010, the distribution of mining revenues is not merely a fiscal matter but also an essential indicator of whether state control genuinely produces public benefit and

48 Mustafe Mahamoud Abdillahi, "Theoretical Perspectives on Administrative Decentralization: Concepts, Models, and Implications," *International Journal of Research and Innovation in Social Science* IX, no. VIII (2025): 5884–5904, https://doi.org/10.47772/IJRISS.2025.908000479.

49 Laode Muhammad Adlu et al., "Analysis of the Impact of the Mining Industry on the Social and Economic Conditions of the Community Around the Industrial Area of Konawe Regency," *Architecture Image Studies* 7, no. 1 (February 9, 2026): 2080–86, https://doi.org/10.62754/ais.v7i1.1166.

equitable prosperity. For that reason, future mining legislation should integrate revenue-sharing arrangements into the overall governance framework so that fiscal justice becomes an inherent component of mining regulation rather than a separate administrative policy.

A balanced fiscal arrangement alone is insufficient unless the distribution of mining benefits also reflects substantive justice for the communities most affected by resource exploitation.[50] This concern becomes particularly relevant because mining-producing regions bear the greatest environmental degradation, infrastructure deterioration, and social consequences arising from extractive activities. From the perspective of John Rawls' *difference principle*, inequalities in the allocation of economic benefits are constitutionally and morally acceptable only when they provide the greatest advantage to those who are least benefited by the existing system.[51] Applying this principle to Indonesia's mining sector supports a differentiated distribution of fiscal benefits that gives producing regions a greater share of mining revenues in recognition of the burdens they disproportionately carry. Such an approach is consistent with the constitutional commitment to social justice embodied in the fifth principle of *Pancasila* and reinforces the welfare-oriented purpose underlying the State's Right to Control.

Another weakness of the current mining regime lies in the limited role of regional governments in strategic decision-making processes that directly affect their territories. Although Law Number 30 of 2014 incorporates the General Principles of Good Governance (*Asas-Asas Umum Pemerintahan yang Baik*) particularly the principles of openness and public interest under

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50 Emmanuel Mensah Aboagye, "Assessing Inclusiveness for Indigenous Communities in Mineral Rights Allocation in Ghana," *Heliyon* 10, no. 8 (April 2024): 1–13, https://doi.org/10.1016/j.heliyon.2024.e29710.

51 Georgios Anagnostopoulos and Gerasimos Santas, "Aristotle and Rawls on Economic (In)Equalities and Ideal Justice," in *Principles and Praxis in Ancient Greek Philosophy*, ed. David Keyt and Christopher Shields (Cham: Springer, 2024), 321–70, https://doi.org/10.1007/978-3-031-51146-2_16.

Article 10, these principles have not been adequately reflected in the centralized licensing framework introduced by Law Number 3 of 2020. In practice, important decisions concerning mining permit areas are largely determined by the Central Government, while regional participation often remains procedural rather than substantive. A more balanced governance model should therefore institutionalize joint decision-making mechanisms that require the meaningful involvement of regional governments[52] before strategic mining areas or *Wilayah Izin Usaha Pertambangan* are designated. Strengthening regional participation in this manner would improve the legitimacy of administrative decision-making while ensuring that environmental, spatial planning, and local development considerations are incorporated into national mining policy.

The effectiveness of any redistribution of authority ultimately depends on the availability of an institutional mechanism capable of ensuring continuous oversight across different levels of government. Excessive concentration of supervisory functions at the national level has repeatedly exposed weaknesses in monitoring mining activities, particularly in remote producing regions where environmental violations and illegal mining frequently occur. To address this problem, the principle of *checks and balances* may be adapted vertically through a system of *multi-level checks and balances* that combines the supervisory capacities of central and regional institutions.[53] Under this model, inspection, environmental monitoring, and regulatory enforcement would be exercised jointly by national mining authorities and regional governments within clearly defined legal responsibilities. Such an institutional

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52 Silvia Bolgherini and Andrea Lippi, "Politicization without Institutionalization: Relations between State and Regions in Crisis Governance," *Contemporary Italian Politics* 14, no. 2 (April 3, 2022): 224–40, https://doi.org/10.1080/23248823.2022.2049513.

53 Undrakh Banzragch, "An Analysis of Power Distribution in Mongolia's Multi-Level Environmental Governance," *Beijing Law Review* 16, no. 01 (2025): 290–317, https://doi.org/10.4236/blr.2025.161014.

design would reduce the risk of regulatory failure by preventing both excessive central discretion and weak local supervision from undermining effective mining governance.

Institutional reform will not achieve its intended objectives unless it is accompanied by a coherent legislative framework across related sectors of public law. The reconstruction of mining legislation therefore cannot be undertaken solely by amending sectoral mining laws without considering their relationship with broader constitutional and administrative legislation. Law Number 13 of 2022 concerning the Formation of Legislation requires that statutory regulations maintain both vertical and horizontal harmonization in order to preserve legal certainty (*rechtszekerheid)*. Consequently, any revision of mining legislation should be synchronized with Law Number 23 of 2014 concerning Regional Government and Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments so that the distribution of authority and fiscal responsibilities remains internally consistent. This integrated legislative approach would provide greater legal certainty for public institutions, business actors, and local communities while minimizing future regulatory conflicts.

The constitutional shortcomings of Indonesia's mining governance cannot be resolved solely by redistributing administrative authority between different levels of government. A more fundamental reconstruction is required to realign the exercise of the State's Right to Control with its original constitutional purpose of achieving the greatest prosperity of the people. The proposed balanced authority model offers such a framework by combining limited *attributie*, genuine *delegatie*, fiscal federalism, equitable revenue distribution, meaningful regional participation, and a system of *multi-level checks and balances* within a coherent legislative structure. Under this model, the Central Government continues to exercise authority over matters of national strategic importance, while regional governments regain substantive responsibilities over mining activities that directly affect their territories and communities. By integrating these institutional and constitutional elements, the proposed reconstruction provides a more balanced framework for mineral and coal governance that strengthens national interests without diminishing regional welfare, thereby restoring the welfare-oriented vision embodied in Article 33 paragraph (3) of the 1945 Constitution.

C. Conclusion

This study concludes that the State's Right to Control over mineral and coal resources, as mandated by Article 33 paragraph (3) of the 1945 Constitution, constitutes a constitutional public authority that must be exercised to achieve the greatest prosperity of the people rather than merely to centralize governmental power. The recentralization of mining governance under Law Number 3 of 2020, as reinforced by Law Number 2 of 2025, has transformed regional authority from an attributive into a delegative character, thereby reducing regional capacity to perform supervisory and governance functions. This shift has created legal and institutional challenges that weaken regional participation and accountability in mining governance. Accordingly, this study proposes a balanced authority model that maintains the Central Government's role in national strategic policies while restoring substantive regional authority over mining activities that directly affect local communities and regional welfare.

To strengthen the constitutional implementation of the State's Right to Control, future legislative reform should harmonize mining law with the principles of regional autonomy, subsidiarity, and equitable fiscal distribution. Greater regional participation in licensing, supervision, and benefit-sharing should be incorporated into the legislative framework to ensure more accountable and effective mining governance. Future research is encouraged to examine the practical implementation of this balanced authority model through comparative studies or empirical analyses of mining governance in decentralized legal systems.

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