


LAW POLITICS OF PEOPLE'S MINING BASED ON MAQASHID SYARIAH'S WELFARE AND SOCIAL JUSTICE VIEWPOINT

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Abstract: *Establishing a national law, particularly one pertaining to mining, that can ensure the legal Protection of small-scale miners' rights is a critical issue that needs to be addressed right away in Indonesia. Are there protection guarantees based on welfare and social justice in the people's mining law policy? From a maqashid shariah perspective, how does the legal system of people's mining give guarantees of protection based on welfare and social justice? Using a statutory approach, historical approach, conceptual approach, and prophetic approach, this work is normative legal research (an approach based on text instruments that are sourced from revelations received by prophets and apostles as well as sunnah). The first finding is that Law No. 4 of 2009 covering mining for minerals and coal does not explicitly define the term of people's mining because the legal politics of mining has not provided legal guarantees for people's mining as mandated by the 1945 Constitution of the Republic of Indonesia and Pancasila. The second finding on the position of people's mining in maqashid shariah is that one of the principles of maintaining property, namely hifdz al-mal, is by maintaining mining land and managing it. Protecting the environment is part of maqashid shariah, namely maintaining the survival of living things for security and peace of mind of hifdz nafs.*

Keywords: *Law, Maqashid Sharia, Mining, Politics*

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INTRODUCTION

In the Pancasila legal system, social justice refers to the equitable allocation of resources with a focus on fostering social welfare, particularly for the most marginalized social groups or those with low socioeconomic standing. In order to pull vulnerable groups of people out of poverty and to lessen socioeconomic inequities in society, social justice also calls for an equitable distribution of resources. In order to lessen the number of socioeconomic disparities between different groups of people, it is necessary to improve the socio-economic lives of the poor. Only then can the allocation of available resources be called to be socially fair (Mahfud MD. 2010). It is



then connected to the idea of social justice in the Republic of Indonesia's 1945 Constitution's preamble elaborated in Article 33 of the 1945 Constitution of the Republic of Indonesia.

Wasisusetio's views place Indonesia as a country that adheres to a conservative regime and a democratic socialist regime in relation to the welfare state. In a conservative regime, more emphasis is placed on the role of the state as ruler, owner, as well as manager. This is as explained in Article 33 of the 1945 Constitution of the Republic of Indonesia which states that the earth, water, and the natural wealth contained in the earth are the mainstays of people's prosperity, whereas in a democratic socialist regime, it is indicated by Article 33 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which regulates that branches Production that is important to the state and affects the livelihood of the people at large is controlled by the state.

Where the sources of prosperity are carried out jointly between the state and members of society as public agents of the welfare state (WasiSusetio. 2007). Thus, the concept of social justice, especially when associated with Article 33 of the 1945 Constitution of the Republic of Indonesia, the Pancasila legal state is more inclined to socialist concepts (socialist legality) when compared to Jeremy Banthem's utilitarian concept of justice. The reason is that basically in socialist legality the goal must be to be able to provide equal and maximum happiness for every human being, guarantee every citizen to have a decent livelihood, proper distribution of sustenance for everyone, as well as state control over all means of production. important and dominate the lives of many people (Bernard L.Tanya. 2011).

If the definition of social justice is followed (Bambang Daroeso, 1989), it is clear that it is one of the ideals that a value system aspires to (together with the other Pancasila core principles). The fundamental principles of Pancasila are global and enduring, and for the Indonesian people, they have even been incorporated into a legal and political framework. These values are placed in a pyramidal and hierarchical manner. A value system makes up the core principles of Pancasila, which include social justice, humanism, divinity, and the union of all people. The ideals and aspirations of the Indonesian people that will be realized into tangible reality, both in the present and the future, are the fundamental principles that contain specific attributes fields of social, national, and state life (Kaelan. 2003). When viewed from the stratification (Kaelan. 2003) of the basic values of Pancasila, the value of social justice is the top value of the pyramid of the Pancasila value system. As Notonagoro said that Pancasila values include spiritual values, but spiritual values recognize material values and vital values. The first sila value, namely divinity as its basis and social justice as its goal (Hamka. 2015)

Therefore, the position of justice in Pancasila when studied is the same as legal justice in Islam, is not just a beautiful theory that cannot or has never been put into practice, testimonies in history have many examples in maintaining and defending justice, the general public must obey *Ulu Amri* (Hamka. 2015). As in this study examines the Politics of People's Mining Law Based on Welfare and Social Justice from the Maqashid Shariah Perspective. The formulation of the problem raised in this study is Does the Political Law of People's Mining Provide Guarantees of Protection Based on Welfare and Social Justice? And how is the Political Law of People's Mining Based on Welfare and Social Justice from the Maqasihd Syariah Perspective?

1. METHOD

The method used in this study uses normative legal research, with statutory approaches, historical approaches, and conceptual approaches and prophetic approaches (approaches based on texts based on the revelations received by the Prophets and Apostles and sunnah).

2. RESULTS AND DISCUSSION

A. Politics of People's Mining Law Providing Guarantees of Protection Based on Welfare and Social Justice



Working to change these unequal social institutions is necessary in order to pursue welfare and social justice, particularly in the legal politics governing the regulation of mining, particularly people's mining (Budhy Munawar-Rachman. 2004). In order to realize a thriving society, social justice can also be described as action, namely behavior that grants others what is legally theirs. The primary objective of social justice is welfare. In the meantime, the fifth precept of Pancasila and Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia invite the public to participate in making reasonable contributions to the state in accordance with their respective abilities and positions in order to realize general welfare, namely as follows: complete as possible physical and mental well-being for all people. For this reason, the law is needed in realizing order and peace in society, order and peace are only intermediate goals, the ultimate goal is to realize true peace which can be realized if, 1) its survival does not depend on force; 2) that as long as he does not violate rights and harm other people, he can do what he believes is right; 3) can fully develop themselves; and 4) get treated fairly and humanely, justly and civilly, also when you don't make mistakes (SoedimanKartohadiprodo. 2010).

In accordance with Pancasila's worldview, which views society as a collection of people who are actually social creatures. It is obvious from his position as a social creature that he is not value-free; Pancasila is incompatible with a value-free notion. SoedimanSoedimanKartohadiprodo (2010) claims that the realization of justice is the goal of the law. In other words, "law as a shelter" shields people either passively by preventing them from acting.

Alon Fuller claims that there is an "inner morality of law" in the interim. It follows that the law must be upheld. Certain sorts of injustice can be avoided if inner morality is respected. According to Fuller, every procedure for creating laws and regulations must take the following matters:

1. The need for a general principle and not an unpredictable momentary interest;
2. Rules should not be changed too often and should not open up opportunities for multiple interpretations;
3. Reaching to the future (Maria S.W. Sumardjono, 2013) law is nothing but a guideline for regulating behavior. Apart from that, it must be based on a general principle which is implicitly found in the law, none other than morality. A similar opinion was put forward by Hart, who stated that the principles of justice implicitly exist in his conception of law (David Lyons, 1993).

Pancasila must always be a reference in legal development. Thus, the legal formation of natural resource management is built on the values of Pancasila. Efforts to realize the ideals of a rule of law state require effort to build national law with a national spirit. For Indonesia, building a national law, especially a mining law that is capable of guaranteeing legal protection for the rights of people's miners, is a serious issue that must be renewed immediately. Related to this, there are at least three factors that influence it, as stated by Lili Rasjidi, namely:

1. Not too many legal experts pay attention to conceptual legal issues;
2. Among the experts who pay attention to this matter, there are still different views regarding the conception and scope of the law as a system; And
3. Both of these problems are also supported by various problems that greatly affect the movement of law in carrying out its functions, both originating from internal factors and external factors (Lili Rasjidi, 2008).

In connection with the existence of community mining, mining in the traditional way, as one of the means of livelihood to meet the needs of daily life, is the basis of local wisdom that can guarantee the protection of the rights of indigenous and local communities to the legal, social, cultural and political systems that have been he strengthened this, in the hope of preventing and



minimizing conflicts over natural resources in Indonesia, especially with the existence of Mining Law No. 4 of 2009 concerning Minerba in the provisions of the WPR criteria. With this AriefSidharta proposes, the Indonesian national legal order must contain the following characteristics (Bernard AriefSidharta, 2000):

- a. National insight and archipelago insight;
- b. Able to accommodate legal awareness of regional ethnic groups and religious beliefs;
- c. As far as possible in written and unified form;
- d. Rational nature which includes efficiency rationality, fairness rationality (*redelijkheid*), rule rationality, and value rationality;
- e. Procedural rules that guarantee transparency, that allow rational review of the government's decision-making process;
- f. Responsive to the development of community aspirations and expectations.

In line with the above proposal with the results of a seminar on national law at the Faculty of Law of the Islamic University of Indonesia, which has been published in book form with the title "National Legal Identity" recommends that the national law that is being developed must be (ArtidjoAlkostar, 1997):

1. Based on Pancasila (philosophical) and the 1945 Constitution of the Republic of Indonesia (constitutional);
2. Serves to protect, create social order, support the implementation of development, and secure the results of development.

The creation of justice is the next purpose of the law, and the notion of a rule of law is based on the conviction that governmental power must only be used in accordance with good and fair law (Franz MagnisSuseno, 1995). The law must, therefore, uphold legal principles in addition to meeting formal criteria. It must be good and fair, both because they are consistent with the community's desire for the law itself and because they are fair both officially and substantively.

Social justice is distributive justice that the state must implement for its people. The state's desire to uphold social justice is therefore a major factor in its achievement. Based on an appreciation of how significant justice must always be realized, in realizing social justice, the state should no longer just use an approach that merely produces formal justice in overcoming disputes between the state and society in the management of natural resources (Karen Lebscqz, 1986).

Something that is unfair is: (1) separates a person or society from things that should be owned as legal rights; (2) separates humans from the things they should have as moral rights; (3) eliminating the opportunity for a person or society to get what they deserve; (4) threatening or suppressing other people or people who are not equal to them (Karen Lebscqz, 1986). This opinion is certainly not in line with social justice. ancestral inheritance in the form of land that is not solely valued in nominal money).

In the context of the legal politics of natural resource management in Indonesia, the reconstruction of legal politics based on local wisdom and customary law in the future is a strategic step that must be taken to create better legal policies on natural resource management. This can be realized with regional autonomy that is responsive and accommodative to local wisdom and recognition of the rights of indigenous peoples and local communities in Indonesia. Concretely this can be done through the formation and implementation of Regional Regulations (*Perda*) and reviving customary law, including customary rights which have so far been neglected and have not received proportional recognition in the national legal system. Striving for social welfare and justice, especially in the legal politics of regulating natural wealth in the form of mining, especially



people's mining, means that it must be carried out through a struggle to improve these unfair social structures (Budhy Munawar-Rachman, 2004).

The following criteria must be specified in natural resource management arrangements in accordance with the constitution: (1) Legal requirements based on the Pancasila philosophy and the Republic of Indonesia's 1945 Constitution's preamble, as well as sociological justification based on the dynamics of local, national, and international community development; (2) continuing to maintain the vertical and horizontal synchronization of legal requirements, particularly those in the administrative sphere, such as laws and regulations governing permits and the like. The management of natural resources, which frequently sparks disagreements between the state and society, will be vulnerable to administrative challenges without synchronized legislative norms. Consistent implementation of regulations in practice, taking into account different interests, must come after a well-established legal system appropriately (FX.AdjiSamekto, 2015).

In line with legal protection for the people, according to Philipus M. Hadjon, preventive legal protection, namely: Preventive legal protection means that people are given the opportunity to submit objections or opinions before a government decision gets a definitive form, meaning that preventive legal protection aims to prevent disputes from occurring. As the implementation of customary law or regional law in the form of PERDA, it means independence and separate freedom for individuals and communities in the regions in carrying out the long-desired decentralization and democracy. Recognition and enforcement of customary laws and regional regulations as part of the national legal system will be able to dilute crucial legal and law enforcement issues and at least provide a new brightness for the rule of law and the rule of law (Fathullah, 2000).

In this regard, I NyomanNurjaya (I NyomanNurjaya. 2004) stated that in order to create a government capable of forming good law, which respects, recognizes and accommodates access, interests, rights, and wisdom of indigenous peoples and local communities, then the ideology of legal pluralism must be adhered to in the development of regional autonomy legal politics by providing space for the principles of justice, democracy, participation, transparency, respect, and recognition of local wisdom as reflected in knowledge systems, institutions, and various traditions that are actually life and develop within indigenous communities in the management of natural resources and the environment in Indonesia. Meanwhile, according to Soediman (I NyomanNurjaya. 2004) briefly, the purpose of the law is to bring about justice. In terms, it is said "law as a shelter", which protects humans either passively in the form of prevention from the action. Therefore, SatjiptoRaharjo said that "law is the bearer of the value of justice".

Meanwhile, according to Radbruch that is a measure of fairness and unfairness of the legal system. Not only that, the value of justice is also the basis of the law as law. Thus, justice has both normative and constitutional characteristics for law. It is normative because it functions as a transcendental prerequisite that underlies every dignified positive law. It becomes the moral basis of law and at the same time a benchmark for the positive legal system.

In formulating and enacting laws that have been and will be carried out, of course, legal politics will hand over legislative authority to administrators, provided that they still pay attention to the values prevailing in society. The output of all of this is directed toward achieving the desired goals of the country. The national legal politics of natural resource management in Indonesia is contained in the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3) which reads, "earth, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".

The right to control the state is basically a reflection of the implementation of values, norms, and configurations of state law governing the control and utilization of natural resources, or is an expression of ideology that gives authority and legitimacy to the state to control and utilize natural resources within its sovereign territory. Referring to the regional government law as regional government administrators, it must be directed at accelerating the realization of



community welfare through improving services, fostering, empowering, and community participation in regional development, and legal protection for miners, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, fairness, and the uniqueness of a region within the unitary state system, that the efficiency and effectiveness of local government administration need to be increased by paying more attention to aspects of the relationship between the central government and the regions and between regions, the potential, and diversity of regions, as well as the opportunities and challenges of global competition in the unity of the state administration system, on this basis, the principle of autonomy adopted is real.

Autonomy is really needed in accordance with the situation and objective conditions in the regions, responsible, the granting of autonomy is aligned/strived to expedite development in all corners of the country, and dynamically, the implementation of autonomy is always the target with encouragement to be better and more advanced. With regard to the management of natural resources (SDA), it shows that regional government regulations should be able to describe effective management in strengthening regional original income (PAD), especially in the management of community mining (I NyomanNurjaya. 2004).

These legal instruments include: (1) Law no. 5 of 1960 concerning Basic Agrarian Regulations, (2) Law no. 4 of 2009 concerning Minerba, (3) Law no. 41 of 1999 concerning Forestry, and Law no. 32 of 2004 concerning Regional Government, part two, Article 203 paragraph (2) places the rights of indigenous peoples in a subordinate position under regional regulations and government regulations. Article 203 paragraph (2) states that "the election of a village head in a customary law community unit along with their traditional rights as long as they are still alive and whose existence is recognized applies the provisions of local customary law stipulated in regional regulations based on government regulations". These legal instruments shows that the national law made by the state ignores and displaces the existence of other systems that live in society, such as customary law in indigenous peoples' communities. Therefore, the legal construction developed by the state in policies in the field of natural resource management law in Indonesia is more repressive in nature (I NyomanNurjaya. 2004).

UU no. 11 of 1967 defines community mining that community mining is a business of mining minerals from all groups a, b, and c as carried out by local people on a small scale or in mutual cooperation with simple tools for their own livelihood. People's mining aims to provide opportunities for local people to work on minerals to participate in developing the country in the mining sector with government guidance. UU no. 11 of 1967 was implemented through PP no. 32 of 1969. This provision stipulates that people's mining can be carried out after obtaining a people's mining permit decree issued by the Minister. A people's mining permit decree is a mining authorization granted by the Minister to local people to carry out mining business on a small scale and with a very limited area. While Law no. 4 of 2009 concerning Mineral and Coal Mining does not regulate in detail the term community mining (I NyomanNurjaya. 2004). Therefore, mining legal politics has not provided legal guarantees for people's mining.

B. Politics of People's Mining Law Based on Welfare and Social Justice Perspective of Maqashid Syariah

Implementation of Islamic mining must be based on determined processes and mechanisms. Mining activities begin with a feasibility study process involving community stakeholders, then carried out in an environmentally friendly manner, not causing damage and environmental pollution through continuous monitoring, followed by reclamation, restoration, and rehabilitation. In addition, the utilization of mining products must support national resilience and realize community welfare in accordance with the mandate of the 1945 Constitution of the Republic of Indonesia.

The implementation of mining is obliged to avoid damage (daf'u al mafsadah), including causing damage to land and sea ecosystems, causing water pollution and damage to the hydrological cycle (water cycle), causing extinction or disruption of the surrounding biodiversity,



causing air pollution and contributing to as well as accelerating global warming, encouraging the process of impoverishment of the surrounding community, and threatening public health. As (Sanawiah, MohFadli, RachmatSyafaat, Moch Bakri, 2017) the Word of Allah SWT which means:

“And do not make mischief on the earth, after (God) has repaired it and pray to Him with fear (will not be accepted) and hope (will be granted). Indeed, Allah’s mercy is very close to those who do good” (QS. Al A’raf verse 56)

In the Qur’an, it is explained that humans were created as caliphs on earth. Mentioned in the Al-Quran Surah Al Fathir verse 39, which partially means:

“He is the one who made you caliphs on earth.....”

Humans have a responsibility to preserve and control the earth and everything on it as the caliphs of the earth. As a result, the caliphate’s responsibility to protect the world under Allah’s command must be fulfilled in line with the wishes of its creator and the goals for which it was created (Sanawiah, MohFadli, RachmatSyafaat, Moch Bakri, 2017). Even though there are numerous environmental protection laws in Indonesia (the Law of the Republic of Indonesia, 1997) and the majority of the population is Muslim, with environmental protection being one of the values espoused by Islam, these two factors have not yet been able to stop the overuse of nature and suppress the behavior of people who are ignorant of the environment so that it has an impact on damage to the surrounding environment.

Meanwhile, according to al-Syatibi, the essence or core purpose of implementing shari’ah is to realize and maintain five things, namely religion (al-din), soul (al-nafs), family (al-nasl), reason (al-aql), and treasure (al-mal). Although al-Syatibi does not mention *ḥifdh al-’alam* (caring for the environment) as part of *maqāṣid al-sharīḥah*, according to researchers when talking about the form of maintaining these five things it is inseparable from the obligation to protect the environment or nature.

One of them is that people’s mining activities are one of the cores of Maqashid Syariah, namely *Hifdz al Maal* in maintaining and managing land assets that obey the rules, are well planned, apply appropriate technology based on effectiveness and efficiency, carry out conservation of minerals, control and maintain environmental functions, ensuring work safety, accommodating the wishes and participation of the community, generating added value, increasing the capability and welfare of the surrounding community and creating sustainable development. Meanwhile, developing the potential and welfare of the local community is mainly from optimizing and converting mineral utilization. Ensure the sustainability of development activities after the post-mining period (mine closure) (Perter and Koesrianiswosoebroto, 1998).

Therefore, the Indonesian State requires a modern legal system, namely a set or a legal system that is capable of anticipating and overcoming various problems that might arise. Max Weber’s view is that it has the following characteristics, among others, modern law is secular, its substance is completely separate from religious considerations in ethics, meaning that grief no longer depends on its moral correctness and procedures which are of religious meaning and have become a rational effort to achieve a rational purpose if Max Weber’s perspective applied in Indonesia is clearly irrelevant because the perspective of Pancasila and the 1945 Constitution religion, morals, law and the state are an inseparable unit (Perter and koesrianiswosoebroto, 1988) Dismissing revelation and religion from policy think the State is a western perspective (Absori, A, 2018) Islam believes that legal modernization does not have to be accompanied by secularization (Absori, KelikWardiono, WardahYuspin, Moh. Indra Bangsawan, 2021).

Meanwhile, in terms of Good Mining Practice aspects, good mining permits and legality aspects are mining activities that comply with legal and statutory provisions in force in the area or country where the mining activity is carried out. In good legal protection of people’s mining, there



must be a sync between the interests of regulators and the interests of holders of mining business permits (IUP). The government must be able to provide certainty and clarity regarding mining regulations and policies on the one hand, while holders of mining business permits (IUP) must comply with the regulations and policies that apply in that place on the other hand. The regulation of people's mining areas in the calculation of mineable reserves must be well-defined (high level of accuracy). geohydrology, geotechnical and metallurgical studies must be carried out properly and correctly.

A comprehensive feasibility study, supported by sufficient data, needs to be prepared properly, including environmental studies (AMDAL or UKL/UPL). Mining techniques and systems as well as processing/refining processes must be planned and implemented properly (mine systems for loose and solid materials are very different, as are the processing processes) (Absori, KelikWardiono, WardahYuspin, Moh. Indra Bangsawan, 2021).

Construction techniques and equipment selection must be appropriate. The mining material transportation system must be well planned, including the selection of transportation equipment and other heavy equipment. Production should be adjusted to the amount of reserve availability and specifications. The post-mining program must be properly planned before all activities are stopped. In post-mining, structuring and reclamation activities must be carried out immediately on ex-mining land according to the planning. Implementation of structuring and reclamation should refer to the spatial plan of the area concerned and be adjusted to the conditions of the land. As there are many hadiths regarding the use of natural wealth, the hadith regarding the use of wealth is any hadith that implies advocating good use of natural potential without damaging the environment or managing the natural wealth contained in the bowels of the earth to take advantage of it and maintain natural wealth effectively so as not to damage it. natural. Based on (Sanawiah, MohFadli, RachmatSyafaat, Moch Bakri, 2017). Hadith History of Thabrani "*from Aisha, may Allah SWT be pleased with her, the Messenger of Allah said: look for your sustenance that is hidden in the ground*".

The mandate to manage mines, one of which is people's mining, in the context of this hadith is to safeguard riches (Hifdz al-mal) and protect souls (Hifdz al-nafs) by enacting rules and utilizing Personal Safety Equipment (PPE), in order to prevent accidents that frequently happen at work. a mining environment that consistently demonstrates care for environmental effects. Although it cannot be completely prevented, the advantages are increased and the risks are decreased. Environmental considerations should be given careful consideration during exploration, production planning and design, method and technology selection, placement of supporting structures, tailings management, reclamation, and post-exploitation.

Justice is created by positive law. Without justice, a rule does not deserve to be considered a law, even though it is necessary for it to be constitutional and become law. as Maqashid Syariah is for the benefit of humans both in the world and in the hereafter, and is realized either through *jalb al manafi'* (withdrawing benefits) or through *dar'almafasiid* (rejecting damage/damage). So that the values of Pancasila and the 1945 Constitution of the Republic of Indonesia as a constitutional mandate provide guarantees for the protection of miners, the concept of justice and prosperity in line with Maqashid Syariah.

3. CONCLUSION

Law No. 4 of 2009 concerning Mineral and Coal Mining's legal politics hasn't yet offered fair and successful assurances for the mining of the populace. Social justice is a goal of both the Pancasila's mandate and the Republic of Indonesia's 1945 Constitution; its fulfillment no longer rests on an individual's good intentions or on the justice of other just people; rather, it is structural in nature and does not conflict with religious law. This indicates that the development of a just social structure in protecting resources (al-mal), the soul (al-nafs), and the environment is crucial to the execution of Maqashid Syariah social justice

4. SUGGESTION

1. The purpose of the socialist concept (socialist legality) is in accordance with the formulation contained in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution of the Republic of Indonesia which stipulates that branches of production which are important for the state and which affect the livelihood of the public are controlled by the state and the land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
2. The state should not be trapped in the logic of the capitalists which gave birth to liberal regulations, the state must be present for the welfare of its people. The politics of people's mining law provides guarantees of protection based on welfare and social justice from the perspective of Maqashid Syariah with the principle of preserving wealth (HifdzMaal) and soul (al-nafs) in maintaining mining land so that it does not cause damage to Allah's earth.

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