

## Harmonization of Mineral and Coal Mining Licensing Regulations in the National Legal System

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**Abstract:** *Harmonization of mineral and coal mining (minerba) licensing regulations is a crucial issue in the national legal system, particularly following the amendment to the Minerba Law and its integration into the Job Creation Law regime. These regulatory dynamics have raised issues of norm synchronization, both vertically and horizontally, which impact legal certainty and natural resource governance. This study aims to analyze the normative construction of mineral and coal licensing within the regulatory hierarchy, identify forms of norm conflict, and formulate the urgency of regulatory harmonization from a rule of law perspective. This study uses a normative juridical method with a statute approach, a conceptual approach, and a legal system approach. Primary legal materials include the 1945 Constitution, the Minerba Law, the Job Creation Law, the Regional Government Law, and environmental and spatial planning regulations, which are analyzed prescriptively. The results show norm conflict in the form of central-regional authority conflicts, disharmony between mining business permits and environmental approvals, and overlaps between WIUPs and land rights. This situation undermines the principle of legal certainty (rechtssicherheit), potentially violating the principles of utility and justice, and weakening the legitimacy of state administrative actions. Harmonizing regulations through legislative review, strengthening norm synchronization mechanisms, and consistently applying the principles of lex superior, lex specialis, and lex posterior are prerequisites for realizing equitable and sustainable mining governance.*

**Keywords:** *Licensing; Mining; Minerals and Coal; Regulatory Harmonization.*

### INTRODUCTION

Mineral and coal mining (minerba) is a strategic sector that is structurally embedded in the constitutional design of the Indonesian economy. Article 33 paragraph (3) of the 1945 Constitution affirms that the land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people, a norm that is not merely declarative, but also contains an operational mandate for lawmakers and government administrators.<sup>1</sup> In various decisions, the Constitutional Court has interpreted the phrase

<sup>1</sup> Nytotama, D. A. (2025). Hak Allah dan Hak Hamba dalam Pemikiran Madzhab Hanafi sebagai Basis Rekonstruksi Supremasi Negara atas Sumber Daya Alam (Pasal 33 Ayat (3) UUD 1945 dan Fatwa MUI No. 86 Tahun



"controlled by the state" to encompass regulatory (regelendaad), administrative (bestuursdaad), management (beheersdaad), and oversight (toezichhoudensdaad). Therefore, mineral and coal management cannot be separated from the state's constitutional responsibility to ensure a balance between economic exploitation and the protection of the public interest. This sector is not merely a business space, but rather an arena for the implementation of the state's economic sovereignty. Within this framework, licensing regulations serve as the primary legal instrument for translating the constitutional mandate into government administration practices.

Empirically, the contribution of the mineral and coal sector to the national economy is very significant, both through Non-Tax State Revenue (PNBP), taxes, royalties, and export foreign exchange from commodities such as coal, nickel, copper, and bauxite.<sup>2</sup> In recent years, the coal and nickel downstream subsectors have been the mainstays of Indonesia's trade balance surplus, as well as driving growth in energy-based industries and electric vehicle batteries. This contribution demonstrates that minerals and coal have significant fiscal and strategic leverage in financing development. However, high dependence on extractive commodities also creates structural issues such as global price fluctuations, the risk of environmental degradation, and unequal distribution of benefits in producing regions. From the perspective of sustainable development theory, natural resource exploitation must consider the balance between economic growth, environmental protection, and social justice.<sup>3</sup> Therefore, mining regulations must be able to organize development orientation so as not to get trapped in short-term exploitation that sacrifices the interests of future generations.

From the perspective of natural resource law theory, state control over minerals and coal must be based on the principles of distributive justice and public benefit. John Rawls, through his theory of justice, emphasized that inequality can only be justified if it provides the greatest benefit to those least advantaged (the difference principle).<sup>4</sup> Applying this theory to the mining context requires that mineral and coal management not only benefit corporations or the economic elite, but also improve the welfare of communities surrounding the mine. The state, as the holder of the constitutional mandate, must ensure the redistribution of benefits through tax schemes, royalties, profit-sharing funds, and corporate social responsibility.<sup>5</sup> Licensing regulations are the first step in controlling these commitments through administrative and technical requirements. Without equitable regulatory design, this strategic sector has the potential to become a source of inequality and social conflict.

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2023). *Jurnal Pemuliaan Lingkungan Hidup dan Sumber Daya Alam*, 2(02). <https://journal.upnvj.ac.id/index.php/esensihukum/article/view/365>

<sup>2</sup> Wau, F. T., Kiton, M. A., Wau, M., & Fau, J. F. (2024). Analisis strategis kebijakan hilirisasi mineral: Implikasi ekonomi dan pengaruhnya terhadap perekonomian Indonesia. *Journal Publicuho*, 7(3), 1215-1224. <https://doi.org/10.35817/publicuho.v7i3.481>

<sup>3</sup> Fatahillah, F., Arnita, A., & Nurarafah, N. (2024). Legitimasi Hukum Terhadap Perlindungan Ekologi dan Pembangunan Berkelanjutan Di Aceh. *Jurnal Syntax Imperatif: Jurnal Ilmu Sosial Dan Pendidikan*, 4(6), 709-721. <https://doi.org/10.54543/syntaximperatif.v4i6.303>

<sup>4</sup> Maghfiroh, L. (2025). Mewujudkan Justice As Fairness: Analisis Ketidakmerataan Pelayanan Kesehatan di Indonesia Menurut Teori John Rawls. *Media Hukum Indonesia (MHI)*, 3(4). <https://doi.org/10.5281/zenodo.17433104>

<sup>5</sup> Sawalni, S. (2025). Keadilan Islam Dan Politik Ekonomi Hilirisasi Nikel Di Indonesia TIMUR. *Equality: Journal of Islamic Law (EJIL)*, 3(2), 145-162. <https://doi.org/10.15575/ejil.v3i2.1963>



The dynamics of mining regulations in Indonesia demonstrate a significant legal paradigm shift from a decentralized model to a centralized one. Law No. 4 of 2009 granted broad authority to regional governments in issuing mining business permits, while Law No. 3 of 2020 reassigned this authority to the central government. Further integration through the Job Creation Law strengthens the approach of simplifying licensing and accelerating investment. Normatively, this step is justified by arguments to create legal certainty, reduce abuse of authority, and increase national competitiveness. However, this rapid change has consequences for the principle of regional autonomy guaranteed within the framework of a unitary state. The tension between administrative efficiency and democratic decentralization is a conceptual problem that requires harmonious arrangement.

Massive and simultaneous regulatory reforms have the potential to create disharmony between laws and regulations. In Hans Kelsen's theory of norm hierarchy, each norm derives its validity from a higher norm and must not conflict with it.<sup>6</sup> When changes are made to one law without comprehensive synchronization with other sectoral regulations, there is room for conflicting norms. In mining practice, this lack of synchronization often occurs between the Mineral and Coal Mining Law, the Environmental Law, the Regional Government Law, and spatial planning regulations.<sup>7</sup> This situation creates interpretive confusion for implementing officials and business actors. As a result, the principle of legal certainty, a pillar of the rule of law (*rechtstaat*), is threatened with being undermined by uncoordinated regulatory complexity.

In state administrative law, licensing is a concrete, individual, and final form of state administrative decision (*beschikking*). Prajudi Atmosudirdjo states that a permit is a form of government approval to permit an act that is fundamentally prohibited for the public interest.<sup>8</sup> In mining, permits are an instrument for controlling the exploitation of natural resources to ensure compliance with legal norms and technical standards.<sup>9</sup> Therefore, permit issuance must adhere to the principles of legality, accuracy, proportionality, and accountability. Any procedural or substantive flaws in permit issuance have the potential to give rise to state administrative disputes. Therefore, the quality of licensing regulations significantly determines the legitimacy of government administrative actions.

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<sup>6</sup> Martinelli, I., Gunawan, G. G., Alfariza, R. M., & Khoe, K. J. D. L. (2025). KEDUDUKAN HUKUM WARIS DALAM SENGKETA TANAH: ANALISIS TEORI HIERARKI NORMA HANS KELSEN PADA PUTUSAN MA NO. 1072 K/PDT/2024. *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial*, 12(5), 2013-2020. <https://doi.org/10.31604/jips.v12i5.2025.2013-2020>

<sup>7</sup> Galaxy, Y. B. (2025). URGENSI PENATAAN HUKUM ATAS TAMBANG PASIR TRADISIONAL DI LUMAJANG: PERSPEKTIF KEADILAN EKOLOGIS. *Causa: Jurnal Hukum dan Kewarganegaraan*, 12(5), 91-100. <https://doi.org/10.6679/4dnt0496>

<sup>8</sup> Lasut, S. (2022). PEMBERLAKUAN SANKSI ADMINISTRATIF TERHADAP KORPORASI APABILA MELAKUKAN PENAMBANGAN DALAM KAWASAN HUTAN TANPA IZIN. *LEX PRIVATUM*, 10(5). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/42842>

<sup>9</sup> Kartikasari, F. I. (2025). STRATEGI REGULASI UNTUK MENDORONG HILIRISASI PERTAMBANGAN YANG BERWAWASAN LINGKUNGAN Regulatory Strategies to Promote Environmentally Sustainable Mining Downstream. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 14(1). <http://dx.doi.org/10.33331/rechtsvinding.v14i1.2053>

The implementation of the risk-based Online Single Submission (OSS) system is an administrative innovation that aims to simplify and integrate the licensing process.<sup>10</sup> This system is designed to reduce layered bureaucracy and increase transparency in public services. Theoretically, the digitization of licensing reflects the modernization of state administration, in line with the principles of good governance.<sup>11</sup> However, the effectiveness of the OSS depends heavily on the consistency of the sectoral norms that underpin the system. If the mineral and coal sectoral norms are not aligned with general business licensing regulations, digital integration will not solve substantial problems. In other words, technical innovation cannot replace the need for normative harmonization.

The issue of overlapping mining business permit (WIUP) areas is an empirical fact that demonstrates weak inter-agency coordination. Disputes between permit holders and indigenous communities or land rights holders indicate a clash between mining and agrarian law. Under the principle of *lex specialis derogat legi generali*, special norms should override general norms, but their application is often inconsistent.<sup>12</sup> Differences in interpretation of authority and procedures have led to protracted conflicts. This situation demonstrates that regulatory harmonization has not been systematically implemented. Consequently, legal certainty for investors and protection of public rights are suboptimal.

Normative conflict is also evident in the relationship between the centralization of mining authority and the principle of regional autonomy. The Regional Government Law recognizes the right of regions to regulate and manage certain government affairs, including some aspects of natural resource management. The transfer of licensing authority to the central government has given rise to debate over the consistency of the principle of decentralization. From the perspective of democratic constitutional state theory, restrictions on regional authority must be based on constitutional rationality and policy proportionality.<sup>13</sup> Otherwise, centralization could be perceived as neglecting regional participation in resource management. Therefore, regulatory harmonization must maintain a balance between national effectiveness and local legitimacy.

The mismatch between environmental permits under the previous regime and environmental approvals under the risk-based system creates legal transition problems. Changes in terminology and procedures raise questions about the validity of environmental documents issued prior to regulatory reform. Under the principle of non-retroactivity and the protection of acquired rights, legal changes must not prejudice

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<sup>10</sup> Rokhman, B., Rokhman, A., & Kurniasih, D. (2024). Penyelenggaraan Perizinan Berusaha Berbasis Risiko Melalui Sistem Online Single Submission (OSS). *Journal of Social and Economics Research*, 6(1), 1562-1580. <https://doi.org/10.54783/jser.v6i1.399>

<sup>11</sup> Dewi, Y. S. (2025). Sistem Pemerintahan Berbasis Elektronik (SPBE) sebagai pilar good governance: Refleksi tata kelola pemerintah daerah. *JIANA (Jurnal Ilmu Administrasi Negara)*, 23(1), 53-63. <https://doi.org/10.46730/jiana.v23i1.8247>

<sup>12</sup> Ritonga, F. H., Ekaputra, M., & Mulyadi, M. (2024). Penerapan Asas *Lex Specialis Derogat Legi Generali* Dalam Tindak Pidana Perdagangan Orang Oleh Muncikari: Putusan Pengadilan Negeri Nomor 179/Pid. Sus/2023/Pn Bil Dan Nomor 255/Pid. Sus/2022/Pn Mjk. *Binamulia Hukum*, 13(2), 333-344. <https://doi.org/10.37893/jbh.v13i2.943>

<sup>13</sup> Rifa'i, I. J., & Azizah, N. (2025). Pembatasan Kegiatan Keagamaan oleh Pemerintah Daerah: Konstitusionalitas dan Prinsip Negara Hukum: Restrictions on Religious Activities by Local Governments: A Study on Constitutionality and the Rule of Law Principle. *Constitution Journal*, 4(1), 79-92. <https://doi.org/10.35719/constitution.v4i1.134>

legitimate rights.<sup>14</sup> The ambiguity of transitional norms has the potential to give rise to administrative disputes and investment uncertainty. Legal certainty demands clear and consistent transitional regulations. Without them, regulatory reforms can actually lead to normative instability.

Disharmony in mining licensing regulations has a systemic impact on the effectiveness of the national legal system. Lawrence M. Friedman emphasizes that legal success is determined by the harmony between legal structure, legal substance, and legal culture.<sup>15</sup> When legal substances conflict, implementing structures become hesitant to act, and the culture of public compliance weakens. In strategic sectors like the mineral and coal sector, this situation can trigger social conflict, hinder investment, and undermine public trust in the government. The principles of utility and legal certainty cannot be implemented if norms are not harmonized. Therefore, regulatory reform must be carried out comprehensively and systematically.

Based on this overall analysis, the main problem in regulating mineral and coal mining permits lies in the lack of harmonization of norms within the national legal system. Conflicting norms between laws and implementing regulations create uncertainty in the issuance, implementation, and oversight of permits. In a state governed by the rule of law, the supremacy of law requires consistency and coherence in the order of laws and regulations.<sup>16</sup> Regulatory harmonization is not merely a technocratic agenda, but a constitutional necessity to ensure that state control over natural resources truly benefits the people. Therefore, examining the normative construction of mineral and coal licensing is crucial for formulating a harmonization model that aligns with the principles of legality, legal certainty, justice, and utility within the national legal system.

## METHODOLOGY

The research method used in this article is normative juridical research, namely legal research that places law as a norm or rule contained in legislation, court decisions, and the doctrines of legal scholars. This research focuses on analyzing the harmonization of mineral and coal mining licensing regulations in the national legal system by examining the consistency, synchronization, and potential conflict of norms between regulations. The approaches used include the statute approach, the conceptual approach, and the case approach when relevant to strengthen normative arguments. Soerjono Soekanto and Sri Mamudji state that normative legal research is research conducted by examining library materials or secondary data as the main source, which consists of primary, secondary, and tertiary legal materials.<sup>17</sup> Thus, this research focuses

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<sup>14</sup> Rewur, G. C. (2025). KAJIAN YURIDIS TERHADAP PENGECUALIAN ASAS NON RETROAKTIF DITINJAU DARI KITAB UNDANG-UNDANG HUKUM PIDANA. *LEX PRIVATUM*, 16(1). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/61959>

<sup>15</sup> Putra, H. A. F., Bangun, J. A. C., Pradipta, F. S., & Sari, E. K. (2025). Membangun Budaya Hukum Yang Kuat Untuk Mendukung Supremasi Hukum. *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, 3(2), 983-990. <https://doi.org/10.61104/alz.v3i2.1256>

<sup>16</sup> Banola, A. J. P., Imut, B. R., Klau, C. L., Totnay, C. C., Mas'ud, F., & Wunu, M. A. W. (2025). Efektivitas Harmonisasi Peraturan Perundang-Undangan Dalam Menghindari Tumpang Tindih Regulasi di Indonesia. *CONSTITUO: Journal of State and Political Law Research*, 4(1), 68-79. <https://doi.org/10.47498/constituo.v4i1.4949>

<sup>17</sup> Arifuddin, Q., Riswan, R., HR, M. A., Bulkis, B., Latif, A., Salma, S., ... & Indah, N. (2025). *Metodologi Penelitian Hukum*. PT. Sonpedia Publishing Indonesia.

on a systematic analysis of the construction of legal norms that regulate mining permits and their relationship with legal principles within the framework of a state based on the rule of law.

Methodologically, the analysis is conducted through legal interpretation techniques (grammatical, systematic, and teleological interpretation) to discover the meaning of norms and test their consistency within the order of statutory regulations. Peter Mahmud Marzuki explains that normative legal research aims to discover legal rules, legal principles, and legal doctrines to address the legal issues at hand, thus making its reasoning prescriptive and argumentative.<sup>18</sup> Therefore, this study not only describes existing regulations but also provides critical arguments regarding the need for harmonization of norms in mineral and coal mining licensing regulations. Primary legal materials, including the 1945 Constitution, the Mining Law, the Job Creation Law, the Regional Government Law, and their implementing regulations, are analyzed hierarchically based on Hans Kelsen's hierarchy of norms theory. This method is expected to yield a comprehensive and systematic legal construction in formulating a model for harmonizing mineral and coal mining licensing regulations within the national legal system.

## RESULTS AND DISCUSSION

### Normative Construction of Mineral and Coal Mining Licensing in the Sequence of Legislation

The interpretation of Article 33 paragraph (3) of the 1945 Constitution as the basic norm (constitutional grundnorm) in regulating minerals and coal places the state as the holder of the highest mandate in managing strategic and non-renewable natural resources. In the construction of Hans Kelsen's *Stufenbau des Recht* theory, the constitution is the highest norm that is the source of validity for all regulations below it, so that every mineral and coal regulation must be derived consistently from this constitutional mandate.<sup>19</sup> The phrase "controlled by the state" cannot be interpreted narrowly as private ownership by the state, but rather as an imperative and binding attribution of public authority. This constitutional norm also embodies the legal ideals (*rechtidee*) of social justice as enshrined in the Preamble to the 1945 Constitution and the values of Pancasila. Therefore, Article 33 paragraph (3) serves as a constitutional parameter for assessing whether the design of mining permits and governance is truly directed towards the prosperity of the people or whether it has the potential to deviate towards exploitative liberalization. Therefore, every normative construction of mining permits must be tested for its legitimacy and orientation based on this constitutional mandate.

The State's Right to Control (HMN) in the context of Article 33 paragraph (3) is a public law concept that gives the state the authority to regulate (*regelendaad*), manage (*bestuursdaad*), administer (*beheersdaad*), and supervise (*toezichthoudensdaad*) natural resources. Constitutional Court decisions consistently emphasize that HMN is not identical to civil ownership, but rather public authority to guarantee the utilization of natural resources for the welfare of the people. The state may not relinquish strategic control over policy and supervision even if it involves the private sector or state-owned enterprises in management. From this perspective, state control has a gradation, where direct management by the state occupies the highest rank compared to merely granting permits. The Constitutional Court's interpretation emphasizes that all forms of mining contracts or permits must be subject to the principle of the supremacy of the public

<sup>18</sup> Kristiawanto, H., & SHI, M. (2024). *Pengantar Mudah Memahami Metode Penelitian Hukum*. Nas Media Pustaka.

<sup>19</sup> Rishan, I. (2024). *Teori & Hukum Konstitusi*. Sinar Grafika.



interest. Consequently, mineral and coal regulations that excessively guarantee corporate interests without room for state evaluation have the potential to conflict with the constitutional construction of HMN.

The principle of "maximum prosperity for the people" is a normative objective inherent in the National Mining Law (HMN) and serves as a benchmark for the legitimacy of mining policies. People's prosperity cannot be reduced solely to state revenue or increased investment; it must encompass equitable distribution of benefits, environmental protection, and the participation of affected communities.<sup>20</sup> The theory of distributive justice emphasizes that natural resources as common goods must provide proportional benefits to all people, not be concentrated in certain groups.<sup>21</sup> In mineral and coal, people's prosperity demands downstreaming policies, increasing added value, and empowering local workers.<sup>22</sup> Therefore, permits, as an instrument of state control, must be designed to control exploitation so that it does not exceed the environment's carrying capacity. If permits merely serve as a means of legalizing exploitation without strict oversight, this constitutional purpose loses its meaning.

The constitutional implications of the National Mining Law (HMN) on licensing design are fundamental because permits represent a concrete form of exercising state authority. In administrative law, permits are individual and concrete legal instruments, and their issuance must comply with the principle of legality and the General Principles of Good Governance (AAUPB). Mining permits cannot be understood as absolute rights for business actors, but rather as limited delegations that can be revoked if they violate legal provisions.<sup>23</sup> The transformation of the licensing system to a risk-based one through the Job Creation Law is intended to accelerate investment, but it must still ensure that the state's oversight function is not weakened. The centralization of licensing authority to the central government must also be tested within the framework of effective control and equitable distribution of benefits. Therefore, a constitutional licensing design is one that maintains a balance between ease of doing business and state control for the public interest.

In the hierarchy of laws and regulations, the Mining Law and the Job Creation Law have equal standing as laws under the 1945 Constitution, as per Article 7 of the Law on the Formation of Legislation. Based on Hans Nawiasky's theory, both fall into the category of Formell Gesetz, which must be derived from and

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<sup>20</sup> Merdiani, W., & Ruslina, E. (2025). PERAN HUKUM DALAM PENINGKATAN KESEJAHTERAAN MELALUI EKONOMI BERBASIS KEADILAN: Role Of Law In Enhancing Welfare Through A Justice-Based Economy. *Res Nullius Law Journal*, 7(1), 63-72. <https://doi.org/10.34010/rmlj.v7i1.15524>

<sup>21</sup> Arifin, M. Z., Nugraha, M., Putri, T. Y., & Ramadhan, M. S. (2024). Membumikan Teori Negara Kesejahteraan Dalam Penguatan Dana Desa Untuk Pengentasan Kemiskinan Menurut Keadilan Distributif. *Journal Of Law And Social Society*, 1(2), 29-42. <https://doi.org/10.70656/jolasos.v1i2.158>

<sup>22</sup> Putri, D. H. (2025). TANTANGAN DAN PELUANG HILIRISASI PERTAMBANGAN KOMODITAS MINERAL BATUBARA MENUJU INDONESIA EMAS 2045: EVALUASI PENEGAKAN HUKUM DAN PENATAAN ADMINISTRASI PERIZINAN TAMBANG. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 14(1). <http://dx.doi.org/10.33331/rechtsvinding.v14i1.2156>

<sup>23</sup> Priambudi, Z., Pambud, B. R., Bahar, M., & Hidayat, R. Meninjau Alasan "Tidak Dipenuhinya Kuota Domestic Market Obligation" Sebagai Dasar Pencabutan Izin Usaha Pertambangan Batubara. *Jurnal Hukum & Pembangunan*, 54(2), 289-312. <https://doi.org/10.21143/jhp.vol54.no2.1633>

must not conflict with the Staatsgrundgesetz, namely the 1945 Constitution.<sup>24</sup> This equal status implies that any conflicting norms between the two must be resolved through the principle of legal preference. The Job Creation Law, as an omnibus law, amends various sectoral laws, including the Mining Law, creating a complex revisionary relationship. Theoretically, the principle of *lex posterior derogat legi priori* allows a newer law to override an older norm as long as its substance is the same and equal.<sup>25</sup> However, the application of this principle must not ignore consistency with constitutional norms as *lex superior*.

The relationship between sectoral laws and omnibus laws presents challenges in integrating norms within a coherent legal system. Omnibus laws, such as the Job Creation Law, serve as a harmonizing umbrella, but simultaneously have the potential to rapidly and massively alter sectoral structures. These changes can lead to inconsistencies if not accompanied by comprehensive synchronization of implementing regulations. In the mineral and coal sector, simplifying licensing through an investment approach must remain aligned with the principles of environmental protection and public participation.<sup>26</sup> When policy orientation is too dominantly focused on ease of doing business, there is a risk of reducing normative protections previously strictly regulated in sectoral laws. Therefore, norm integration must be carried out systematically to avoid horizontal disharmony within the national legal system.

Vertical synchronization demands that every mineral and coal licensing norm be consistent with the 1945 Constitution and the principles of the rule of law as stipulated in Article 1 paragraph (3). The principles of the rule of law contain elements of the supremacy of law, protection of human rights, and limitation of power through law.<sup>27</sup> Provisions guaranteeing long-term permit extensions without substantive evaluation could be seen as reducing the state's flexibility in exercising its control function. Furthermore, norms that limit public participation or criminalize opposition to mining activities must be tested against Articles 28H and 28D of the 1945 Constitution. Vertical consistency testing is crucial to ensure that economic policies do not compromise citizens' constitutional rights. From a normative legal perspective, any norm that has the potential to violate fundamental rights must be interpreted strictly and proportionately.

The conformity of implementing regulations, such as Government Regulations and Ministerial Regulations, to their parent laws is part of vertical control in the legal system. Based on the principle of *lex superior derogat legi inferiori*, implementing regulations may not expand or diminish the substance established by the law.<sup>28</sup> The delegation of authority must be expressly stated in statutory norms to prevent the creation of

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<sup>24</sup> Prianto, W. (2024). Analisis hierarki perundang-undangan berdasarkan teori norma hukum oleh Hans Kelsen dan Hans Nawiasky. *Jurnal Ilmu Sosial Dan Pendidikan*, 2(1), 08-19. <https://jurnal.unsultra.ac.id/index.php/jisdik/article/view/52>

<sup>25</sup> Suriani, R., Elysa, N., Juansa, A., Syafril, R., Agustiwi, A., Minarsi, A., ... & Sugama, D. (2025). *Pengantar ilmu hukum*. PT. Star Digital Publishing, Yogyakarta-Indonesia.

<sup>26</sup> Nibras, N. B., Ariiq, M. D. F., Sianipar, B. B., & Halimatussadia'h, S. (2025). Penyalahgunaan Diskresi Administratif Dalam Perizinan Tambang Pasca UU Cipta Kerja: Konflik Investasi dan Keadilan Lingkungan. *Causa: Jurnal Hukum dan Kewarganegaraan*, 13(5), 101-110. <https://doi.org/10.6679/pt8vkr35>

<sup>27</sup> Alfidyah, M. (2025). Implementasi Prinsip Negara Hukum dalam Penegakan Hak Asasi Manusia di Indonesia. *Jurnal Ilmu Hukum Indonesia*, 1(1), 1-9. <https://pustakajurnal.web.id/index.php/jihi/article/view/43>

<sup>28</sup> Wijayanti, S., Sari, Z. N., Salam, S., & Firdaus, A. A. (2024). Norm Clash in *Lex Superior Derogate Legi Inferiori* Principle's Implementation on Circular Letters and Laws. *Reformasi Hukum*, 28(3), 234-250. <https://doi.org/10.46257/jrh.v28i3.732>

new norms that exceed limits. The phenomenon of ultra vires in technical regulations often arises when implementing regulations regulate material not explicitly mandated by law. This has the potential to create legal uncertainty and open up room for judicial review in the Supreme Court. Therefore, vertical synchronization concerns not only the substance, but also the limits of normative authority in the formation of derivative regulations. Overall, the normative construction of mineral and coal mining permits must be built within a consistent normative hierarchy framework oriented to the constitutional mandate. Article 33 paragraph (3) of the 1945 Constitution, as a constitutional grundnorm, demands that every mining policy be based on the prosperity of the people and effective state control. The Mineral and Coal Mining Law and the Job Creation Law, as formal laws, must be systematically integrated to avoid creating normative fragmentation. Vertical synchronization is an important mechanism to ensure the conformity of derivative regulations with the law and the constitution. The potential for ultra vires and normative inconsistencies must be prevented by strengthening the harmonization and normative testing mechanisms.<sup>29</sup> Thus, the order of legal regulations is not merely a formal structure, but rather a substantive instrument to maintain legitimacy and legal certainty in the management of minerals and coal.

The horizontal synchronization between the Minerba Law and the Regional Government Law demonstrates the conceptual tension between the principle of strategic centralization and the principle of regional autonomy. The revision of the Minerba Law through Law No. 3 of 2020 explicitly withdraws almost all mining licensing authority to the central government, including the issuance of Mining Permits (IUP) and the regulation of mining areas, thereby reducing the role of districts/cities. This policy is normatively justified under the pretext of national strategic interests and strengthened oversight, but systemically has the potential to conflict with the design of concurrent government affairs in Law No. 23 of 2014. Article 18A of the 1945 Constitution mandates a fair and harmonious relationship between central and regional authorities, not absolute subordination. From the perspective of decentralization theory, regional autonomy is not merely administrative delegation, but an instrument for democratizing local resource management.<sup>30</sup> Therefore, the withdrawal of authority without adequate participatory mechanisms and regional control has the potential to create horizontal disharmony in the national legal regime.

The relationship between the Mineral and Coal Mining Law and the Environmental Protection and Management Law (UU PPLH) positions environmental law as an umbrella act that must be normatively referenced in all extractive activities. The PPLH Law affirms the constitutional right to a good and healthy environment and mandates preventive instruments such as AMDAL (Environmental Impact Assessment) and KLHS (Environmental Impact Assessment). The integration of environmental permits into business permits through the Job Creation Law simplifies procedures, but raises concerns about the reduction of the preventive function of environmental control. When environmental approvals are integrated into the risk-based OSS system, there is the potential for weakening the substantive evaluation of mining's ecological impacts. From the perspective of sustainable development principles, horizontal harmonization should

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<sup>29</sup> Della Purnama, I., Dwiputri, N. Z., Setiadi, W., & Kaharuddin, K. (2024). Urgensi Penataan Ulang Mekanisme Pengujian Peraturan Perundang-Undangan di Indonesia:(Analisis Normatif terhadap Kewenangan Lembaga Yudikatif). *Jurnal Riset Rumpun Ilmu Sosial, Politik dan Humaniora*, 3(2), 37-59. <https://doi.org/10.55606/jurrish.v3i2.5569>

<sup>30</sup> Matin, H. N. A., Darmawan, C., & Bestari, P. (2025). Civic Governance and Good Governance: Dinamika Kebijakan Desentralisasi Pendidikan Di Era Otonomi Daerah. *Integralistik*, 36(1).

prioritize environmental protection as an absolute prerequisite, not merely an administrative formality.<sup>31</sup> Normative conflicts arise when mineral and coal regulations prioritize investment certainty over ecological caution as mandated by the PPLH Law.

The relationship between the Mineral and Coal Mining Law, the Spatial Planning Law, and the Basic Agrarian Law demonstrates the complexity of the legality of land ownership and the legality of spatial utilization. The Basic Agrarian Law regulates land rights based on social functions, while the Spatial Planning Law determines land allocation through the Spatial Planning (RTRW) and Regional Development Planning (RDTR). In practice, IUP issuances often occur in areas that are not fully synchronized with spatial plans or overlap with HGU plantations and forest areas. This lack of synchronization creates overlapping land that gives rise to horizontal disputes between different rights holders. The One Map Policy normatively aims to unify base maps to avoid spatial conflicts, but its implementation still faces technical obstacles and sectoral egos.<sup>32</sup> Horizontal harmonization demands the integration of spatial, agrarian, and mining data into a single, coherent system so that legal certainty does not stop at the normative level.

Evaluating the consistency of norms within a national legal regime must be based on the theory of norm hierarchy and the principle of legal system harmony. Pancasila, as the staatsfundamentalnorm, and the 1945 Constitution, as the basic law, require that all sectoral regulations be aligned in terms of values and objectives.<sup>33</sup> When mining, environmental, agrarian, and regional government norms operate within a fragmented sectoral logic, the legal system loses its coherence. A normative approach requires examining the substance, authority of the regulator, and consistency of definitions across regulations. Horizontal disharmony not only gives rise to multiple interpretations but also weakens law enforcement and opens up room for judicial review in the Constitutional Court and the Supreme Court. Therefore, harmonization is not merely a technical adjustment, but rather an integrative reconstruction within the framework of the national legal system. The application of the principle of *lex superior derogat legi inferiori* in mineral and coal licensing serves to maintain the supremacy of law and hierarchical consistency. Regional regulations or ministerial regulations that conflict with the Minerba Law or the Job Creation Law should theoretically be set aside. However, in practice, implementing regulations often expand or narrow statutory norms without clear delegation, potentially resulting in *ultra vires*. The principle of *lex superior* demands normative discipline in the formation of derivative regulations to avoid creating hidden vertical conflicts.<sup>34</sup> When this principle is not consistently enforced, legal certainty becomes an illusion because lower norms

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<sup>31</sup> Priyanta, M. (2025). Pembaruan dan harmonisasi peraturan perundangundangan bidang lingkungan dan penataan ruang menuju pembangunan berkelanjutan. *Hasanuddin Law Review*, 1(3), 337-349. <https://doi.org/10.20956/halrev.v1i3.113>

<sup>32</sup> Wahyuningsih, A. (2023, October). Arah Kebijakan One Map Policy dalam Percepatan Reforma Agraria: Upaya Penyelesaian Konflik Agraria. In *Prosiding Seminar Hukum Aktual Fakultas Hukum Universitas Islam Indonesia* (pp. 73-82). <https://journal.uui.ac.id/psha/article/view/30958>

<sup>33</sup> Sofiyani, F., & Erham, E. (2026). Arah Politik Hukum Pembangunan Nasional dalam Sistem Hukum Indonesia. *Pagaruyuang Law Journal*, 9(2), 237-250. <https://doi.org/10.31869/plj.v9i2.7575>

<sup>34</sup> Wijayanti, S., Sari, Z. N., Salam, S., & Firdaus, A. A. (2024). Norm Clash in *Lex Superior Derogate Legi Inferiori* Principle's Implementation on Circular Letters and Laws. *Reformasi Hukum*, 28(3), 234-250. <https://doi.org/10.46257/jrh.v28i3.732>

continue to be practiced even when they conflict with higher norms. Therefore, legislative oversight and norm-testing mechanisms are crucial instruments for maintaining the effectiveness of this principle.

The principle of *lex specialis derogat legi generali* positions the Minerba Law as a special regulation in the mining sector, overriding general rules in the event of a conflict of norms. Within its authority, this principle is used to justify the dominance of the Minerba Law over the Regional Government Law in issuing mining permits. However, the application of *lex specialis* must not negate other special norms with different specificities, such as the PPLH Law on environmental protection. Conflicts of interpretation arise when each sector claims to be *lex specialis* within its own scope.<sup>35</sup> Without clear delimitations, this principle becomes a tool of exclusive sectoral legitimacy. Horizontal harmonization requires the proportional and systematic application of *lex specialis*, rather than partial and opportunistic. The principle of *lex posterior derogat legi priori* gained significant relevance following the enactment of the Job Creation Law as an omnibus law. Newer regulations automatically override older provisions as long as they regulate the same or equivalent material. This mechanism does create formal certainty, but in practice, it often creates a vacuum of transitional norms due to the slow adjustment of implementing regulations. The dynamics of change from Law 11/2020 to Perppu 2/2022 to Law 6/2023 demonstrate legislative flexibility, but simultaneously create normative instability. Legal certainty is not sufficient with the posterior principle alone; it requires consistent implementation and synchronization of derivative regulations. Without this, regulatory changes have the potential to lead to multiple interpretations at the implementing level.

Licensing as a legal instrument in state administrative law emphasizes that mining permits are concrete, individual, and final decisions that have direct legal consequences. As a unilateral legal action by the government, their issuance must comply with the principles of legality, legal certainty, accuracy, and accountability as part of the AUPB. Permits with flawed authority or procedures can be the subject of disputes at the State Administrative Court (PTUN) and lead to cancellation. The transformation to a risk-based OSS system represents a paradigm shift from preventive controls to a risk management approach. Normatively, this model accelerates service delivery, but also has the potential to weaken initial administrative filters, particularly for low- and medium-risk businesses. Evaluation from the perspective of authority theory shows that centralization of attribution through the OSS must be balanced with effective oversight and clarity of legal responsibilities, so that investment facilitation does not compromise the principles of the rule of law and the protection of the public interest.

## **Analysis of Conflicting Norms in the Mineral and Coal Licensing System and the Urgency of Harmonization from the Perspective of the Rule of Law**

Conflicting norms in the mineral and coal licensing system are a concrete manifestation of the antinomy of norms, a situation where two or more norms govern the same object but contain commands, prohibitions, or authorities that cannot be implemented simultaneously without negating each other. In mining, the conflict of authority between the central and regional governments is the most prominent form of conflict, especially following the amendment to the 2020 Minerba Law, which shifted licensing and supervisory

<sup>35</sup> Safly, A. M. (2024). Dualisme kewenangan penyelesaian sengketa konsumen jasa keuangan dan implikasinya terhadap kepastian hukum sengketa jasa keuangan. *Journal of Islamic Business Law*, 8(3), 69-86. <https://doi.org/10.18860/jibl.v8i3.11399>



authority to the central level. This situation creates a horizontal conflict between laws of the same level, namely the Minerba Law and the Regional Government Law, which both have formal legitimacy within the hierarchy of Article 7 of the Law on the Formation of Legislation. At the same time, this conflict also has the potential to become a vertical conflict if technical regulations at the regional level are no longer aligned with the centralization policies established by the central government. This misalignment creates legal uncertainty for business actors and the public, as compliance with one normative regime can be considered a violation of another. From a legal theory perspective, this situation demonstrates the weak harmonization of the national legal system, which should operate coherently and integrally.

The conflict between central and regional authority in the mineral and coal sector is not only normative, but also administrative and implementative.<sup>36</sup> Normatively, the conflict arose from the paradigm shift from decentralization to centralization stipulated in the 2020 Minerba Law, while the Regional Government Law still recognizes the principle of autonomy in resource management. Administratively, regions lose the authority to issue Mining Permits (IUPs), but continue to bear the social and environmental impacts of mining activities within their territories. Implementationally, a vacuum in field oversight exists due to the widening gap between the licensing authority and the location of business activities. This situation gives rise to bilateral conflicts, as compliance with central authority automatically eliminates regional discretion. From the perspective of the principles of *lex specialis* and *lex posterior*, the Minerba Law as *lex specialis* and newer regulations are often used as the basis for legitimizing centralization, but their implementation does not always take into account the principle of regional autonomy guaranteed by the constitution. This situation demonstrates that conflict resolution is not sufficient solely with formal principles, but also requires constitutionality and proportionality tests.

The conflict between Mining Business Permits (IUP) and Environmental Approvals is a form of horizontal conflict that is partial but has systemic impacts. Prior to the amendments made through the Job Creation Law, environmental permits were a stand-alone condition precedent and an absolute requirement before issuing a business permit.<sup>37</sup> The shift to integrated "Environmental Approval" within risk-based Business Licensing has shifted the normative structure of environmental protection. In practice, this integration has the potential to create unilateral conflict, as compliance with the accelerated investment regime may disregard the principle of environmental prudence. This shift has also created internal conflict within the legal system, as the Environmental Protection and Management Law emphasizes preventive and participatory principles, while the Job Creation Law focuses on simplification and efficiency. When environmental norms are integrated into the administrative aspects of business permits, the power of public oversight and the mechanism for filing lawsuits with the State Administrative Court (PTUN) are weakened. This indicates a disharmony in legal substance that has the potential to undermine the principles of sustainable development.

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<sup>36</sup> Danasla, A. F. I., Asnawi, E., & Kadaryanto, B. (2025). ANALISIS KEWENANGAN IZIN USAHA PERTAMBANGAN DALAM PERSPEKTIF UNDANG-UNDANG MINERBA. *Lancang Kuning Law Journal*, 2(2), 144-150. <https://journal.unilak.ac.id/index.php/lklawjournal/article/view/28600>

<sup>37</sup> Prasetyo, E., Anggono, B. D., & Anggraeni, R. R. (2024). Penyederhanaan Perizinan Lingkungan Hidup di Kabupaten/Kota Melalui Undang-Undang Nomor 6 Tahun 2023 Tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 Cipta Kerja Menjadi Undang-Undang. *Hukum Inovatif: Jurnal Ilmu Hukum Sosial dan Humaniora*, 1(4), 40-50. <https://doi.org/10.62383/humif.v1i4.620>

The conflict between WIUP (Mining Business Permit Areas) and land rights, including the rights of indigenous peoples, reflects normative conflicts that are both total and partial. In some cases, the determination of WIUP by the central government overlaps with customary areas or pre-existing business use rights. This situation creates bilateral conflicts, because the implementation of land rights by communities can be considered to hinder the implementation of administratively valid mining permits. Vertically, conflicts also arise when technical mining policies do not pay attention to constitutional norms regarding the recognition of indigenous peoples' rights as stipulated in Article 18B paragraph (2) of the 1945 Constitution. This disharmony creates tension between the agrarian legal regime, customary law, and mining law. The application of the *lex specialis* principle is often used to prioritize the mineral and coal regime, but this approach has the potential to ignore the principles of social justice and the recognition of traditional rights.<sup>38</sup> Thus, the conflict over WIUP and land rights is not only administrative in nature, but also touches on the dimension of citizens' constitutional rights.

From a constitutional perspective, the conflict between centralization and decentralization is an inherent dynamic in a unitary state that adheres to the principle of regional autonomy. Article 1 paragraph (1) of the 1945 Constitution affirms Indonesia as a unitary state, while Article 18 mandates the broadest possible autonomy for the regions. Tensions arose when the 2020 Minerba Law withdrew strategic authority to the center under the pretext of effectiveness and investment certainty. This policy is often viewed as a disguised recentralization that has the potential to diminish the substantive meaning of regional autonomy. Normatively, the conflict between the Minerba Law and the Regional Government Law reflects a horizontal conflict whose resolution requires systematic and constitutional interpretation. The Constitutional Court has a central role in assessing whether the restrictions on regional authority are in line with the principles of a unitary state and decentralization. This conflict demonstrates that regulatory harmonization cannot be separated from the constitutional framework as the highest norm.

The proportionality test is a crucial tool in assessing the legitimacy of regional authority restrictions in the mineral and coal sector. These restrictions must meet three criteria: legitimate aim, necessity, and proportionality *stricto sensu*. If centralization is based solely on efficiency without considering regional capacity and rights, such restrictions are potentially unconstitutional. In practice, the argument of increased investment is often used as a justification for centralization, but this is not always accompanied by a mechanism for equitable distribution of fiscal benefits to regions.<sup>39</sup> This imbalance creates implementation conflicts that undermine the legitimacy of central policies at the local level. Therefore, norm conflict analysis should not be limited to regulatory hierarchy but must also consider the principles of distributive justice and balance of authority. A comprehensive constitutional approach is a prerequisite for preventing normative disintegration within the legal system.

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<sup>38</sup> Sorik, S., & Dwiatmoko, A. (2023). Pengaturan Hak Asasi Manusia Dan Pelindungan Hukum Masyarakat Adat Di Sektor Usaha Pertambangan. *Mimbar Hukum*, 35(1), 158-191. <https://doi.org/10.22146/mh.v35i1.6461>

<sup>39</sup> Halawa, L. L., Sukma, M., Limbong, E., & Pangestoeti, W. (2025). Pengaruh Kebijakan Desentralisasi Fiskal Terhadap Pertumbuhan Ekonomi Daerah Di Indonesia Dalam Hubungan Pemerintah Pusat Dan Daerah Terkait Keuangan Negara. *Studi Administrasi Publik dan ilmu Komunikasi*, 2(1), 43-53. <https://doi.org/10.62383/studi.v2i1.102>

The disharmony between the environmental and business licensing regimes following the Job Creation Law demonstrates a paradigm shift in state administrative law. The integration of environmental approvals into the risk-based OSS system creates ambiguity regarding the status of environmental norms as a preventive instrument. Under the previous regime, environmental permits had autonomous powers and could be challenged separately at the State Administrative Court (PTUN). This change has the potential to create internal conflict within the regulatory system, as protective environmental norms are merged with facilitative administrative norms. The ambiguity of transitional norms also raises questions about the protection of rights that existed before the regulatory changes. As a result, the principle of legal certainty (rechtssicherheit) is disrupted as businesses and the public face rapid and inconsistent changes in norms. This situation demonstrates a partial conflict with broad impacts on environmental governance.

The impact of this disharmony on legal certainty is significant, particularly in environmental protection and the right to public participation. Restrictions on public participation in the AMDAL process narrow the scope for social control over mining policies. This situation has the potential to create a bilateral conflict between the community's right to a healthy environment and policies to accelerate investment. From the perspective of a state governed by the rule of law (rechtstaat), legal certainty is not only about the clarity of norms, but also the consistency and predictability of their application.<sup>40</sup> When norms change drastically without a clear transition mechanism, legal stability is disrupted. This can erode public trust in the mineral and coal licensing system. Thus, the disharmony between environmental and business licensing is not merely administrative but also touches on the dimension of legal legitimacy.

Overall, the identification of conflicting norms in the mineral and coal licensing system reveals intertwined vertical, horizontal, internal, unilateral, and bilateral conflicts. Conflicts between central and regional authorities, conflicts between Mining Permits (IUP) and environmental approvals, and conflicts between Mining Permit Areas (WIUP) and land rights are clear manifestations of inconsistencies in the substance of national law. Applying the principles of *lex superior*, *lex specialis*, and *lex posterior* is often inadequate to resolve these multidimensional conflicts.<sup>41</sup> This situation demands a harmonized approach that is not merely formalistic, but also substantive and constitutional. Harmonization must maintain a balance between investment interests, environmental protection, and the rights of local communities. Without such efforts, the mineral and coal licensing system will continue to be mired in conflicting norms that undermine the effectiveness and legitimacy of the rule of law.

Conflicting norms in the mineral and coal licensing system directly erode the foundations of the rule of law (rechtsstaat), which demands certainty, justice, and the supremacy of law as the primary pillars of the exercise of power. The rule of law requires that every government action be based on a clear, consistent, and non-conflicting legal basis.<sup>42</sup> When conflicts arise between statutory norms, or between technical

<sup>40</sup> Neltje, J., & Panjiyoga, I. (2023). Nilai-Nilai Yang Tercakup Di Dalam Asas Kepastian Hukum. *Innovative: Journal of Social Science Research*, 3(5), 2034-2039. <https://j-innovative.org/index.php/Innovative/article/view/5009>

<sup>41</sup> Efendi, M. E. M. (2024). Hukum dan Politik dalam Penyelesaian Konflik dalam Mewujudkan Keadilan. *Indragiri Law Review*, 2(2), 6-15. <https://doi.org/10.32520/ilr.v2i2.31>

<sup>42</sup> Qamar, N., & Rezah, F. S. (2023). Wewenang Sebagai Instrumen Penyelenggaraan Pemerintahan Dalam Sistem Negara Hukum. *Asas Wa Tandhim: Jurnal Hukum, Pendidikan Dan Sosial Keagamaan*, 2(2), 201-222. <https://doi.org/10.47200/awtjhpsa.v2i2.1781>



regulations and their parent laws, citizens and businesses lose their normative orientation regarding which rules to comply with. This creates a dangerous space of ambiguity, as the law no longer serves as a predictive and reliable guide to behavior. From the perspective of classical legal theory, as developed by Julius Stahl, legal certainty is a prerequisite for protecting individual rights against arbitrary state action.<sup>43</sup> Therefore, normative conflicts that are left without systemic resolution have the potential to shift the rule of law towards a power-based state (machtstaat) that relies on discretion without normative control.

Disruptions to the principle of legal certainty (rechtssicherheit) are evident when mineral and coal licensing regulations change rapidly, overlap, and are unsynchronized across sectors. Legal certainty requires clear, non-contradictory norms that are stable over a sufficient period of time to allow the public to plan their actions rationally. When licensing authority is transferred to the central government without a clear transition mechanism, while regional regulations have not been fully adjusted, implementation ambiguity arises, detrimental to all parties.<sup>44</sup> Businesses face legal risks because permits that are valid today can be challenged tomorrow due to changing norms. Local communities also experience uncertainty about the protection of their living space due to fragmented oversight mechanisms. In this case, inconsistent norms not only create legal uncertainty but also erode public trust in the national legal system.

Besides undermining legal certainty, conflicting norms also have the potential to violate the principles of utility (doelmatigheid) and justice (gerechtigheid). Good law is not merely formally valid; it must also bring substantive benefits and justice to society.<sup>45</sup> When mining regulations emphasize accelerated investment without balancing environmental protection and indigenous peoples' rights, the law loses its focus on the public good. Rigid and legalistic administrative decisions, without considering socio-ecological impacts, can result in structural injustice. In such situations, the principle of *lex dura sed tamen scripta* becomes paradoxical, as formal certainty actually gives rise to real injustice. Therefore, the conflict of norms in mineral and coal licensing is not merely a technical legislative problem, but an ethical issue concerning the direction of social justice in natural resource management.

Further implications are evident in the legitimacy of state administrative actions, which are highly dependent on the legality and rationality of policies. Legitimacy stems not only from formal authority but also from consistency and accountability in the application of norms. When mining permits are issued amidst conflicting norms or in legally disputed areas, these administrative actions are vulnerable to challenge and revocation. Consequently, policy stability is compromised, and the state is perceived as incapable of ensuring legal order. Weak legitimacy triggers public resistance, lawsuits, and even prolonged

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<sup>43</sup> Rahmanto, F. (2025). RELASI POLITIK HUKUM, NILAI MORAL, DAN KEPASTIAN HUKUM DALAM PERSPEKTIF ASAS KEADILAN DI INDONESIA. *JURNAL ILMIAH ADVOKASI*, 13(2), 440-458. <https://doi.org/10.36987/jiad.v13i2.6319>

<sup>44</sup> Margaretha, V. (2025, June). REFORMASI REGULASI UNTUK MEMPERMUDA PROSES BERUSAHADI INDONESIA. In *SenHIB: Seminar Nasional Hukum dan Investasi Berkelanjutan* (Vol. 1, No. 1, pp. 17-35). <https://proceeding.unilak.ac.id/index.php/senhil/article/view/41>

<sup>45</sup> Harmono, H. (2024). Problematika Pertimbangan Hukum Oleh Hakim dalam Mewujudkan Keadilan di Masyarakat. *Jurnal Hukum Lex Generalis*, 5(10). <https://doi.org/10.56370/jhlg.v5i10.939>

social conflict. Within the framework of good governance, legitimacy is an absolute requirement for policy effectiveness; without it, the law loses its moral and social binding force.<sup>46</sup>

Analysis based on Lawrence M. Friedman's Legal System Theory shows that conflicting norms primarily reflect weaknesses in the legal substance dimension.<sup>47</sup> Dissonance in substance will directly impact the legal structure, namely licensing, supervisory, and law enforcement agencies, which experience confusion over their authority. Officials at the central and regional levels can shift responsibility due to unclear norms. Furthermore, the legal culture of society becomes distorted when the public views the law as an inconsistent and volatile instrument. When legal substance is incoherent, the structure becomes ineffective, and the legal culture tends to be cynical about regulations. Thus, the conflicting norms in mineral and coal licensing demonstrate the failure of the simultaneous integration of the three elements of the legal system.

The disharmony of legal substance also creates serious implementation obstacles. Bureaucratic officials face a dilemma in determining which norms should serve as the basis for action, especially when the principles of *lex specialis*, *lex posterior*, and *lex superior* do not provide adequate answers. This ambiguity opens up room for abuse of power because discretion becomes too broad without clear normative guidelines. In Friedman's opinion, this condition indicates an imbalance between law on the books and law in action. Written norms may appear comprehensive, but in practice they are difficult to apply consistently. As a result, the effectiveness of the national legal system decreases and the goal of regulating mining as an instrument of welfare is not optimally achieved.

The link between regulatory harmonization and legal system effectiveness becomes clearer when viewed from a systemic perspective. An effective legal system requires vertical and horizontal integration between norms to prevent regulatory dysfunction. Harmonization is not merely an administrative process, but rather the reconstruction of legal substance to align with constitutional principles and social needs. Without harmonization, normative conflicts will recur in the form of judicial review lawsuits and administrative disputes. This situation drains institutional energy and slows development in the mining sector, which should be oriented towards sustainability. Therefore, regulatory harmonization is a structural necessity, not a political choice.

From a prescriptive perspective, synchronizing regulations through legislative and regulatory review is a strategic step that cannot be postponed. Legislative review is necessary to review overlapping or conflicting legal provisions horizontally. Regulatory review is needed to ensure that implementing regulations do not exceed their authority (*ultra vires*) or conflict with higher norms.<sup>48</sup> The harmonization process must be conducted in a participatory and transparent manner to reflect public aspirations and the principle of accountability. Harmonization mechanisms also need to be strengthened during the planning stage of

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<sup>46</sup> Riwakore, J. R., Habaora, F., & Terttiaavini, T. (2022). Good Governance Dalam Mengukur Kinerja Lembaga Negara. *Jurnal Pemerintahan Dan Politik*, 7(1). <https://doi.org/10.36982/jpg.v7i1.1974>

<sup>47</sup> Christiani, V. M., & Wulansari, C. D. (2025). Dinamika Penegakan Hukum Di Indonesia: Analisis Dari Perspektif Sosiologi Hukum. *Jurnal Impresi Indonesia*, 4(12), 5641-5651. <https://doi.org/10.58344/jii.v4i12.7214>

<sup>48</sup> MUAWIYA, S. (2026). PROBLEMATIKA LEGAL DRAFTING DALAM PERATURAN PEMERINTAH DAN DAMPAKNYA TERHADAP PENEGAKAN HUKUM. *Jurnal Reformasi Hukum: Cogito Ergo Sum*, 9(1), 53-60. <https://doi.org/10.51804/jrhces.v9i1.17247>

legislative development to prevent conflicts between norms from the outset. This approach aligns with the principles of legality and prudence in legal development.

The recommended model for harmonizing mineral and coal licensing regulations must be based on the principles of legality, legal certainty, and sustainability. The principle of legality ensures that every permit granting authority has a clear and non-overlapping normative basis. Legal certainty demands consistency and stability of norms so that investment and community protection can go hand in hand. The principle of sustainability requires that every mining policy consider environmental carrying capacity and the rights of future generations. Regulatory harmonization is ultimately a prerequisite for equitable and sustainable mining governance. Without comprehensive harmonization, the national legal system will continue to be in tension between economic interests and the principle of the rule of law, which should be paramount.

## CONCLUSIONS

The main problem with mineral and coal mining licensing within the national legal system lies in the lack of vertical and horizontal harmonization of norms, resulting in conflicts between laws, overlapping authority, and inconsistent implementing regulations. The conflict between the Mineral and Coal Mining Law, the Job Creation Law, the Regional Government Law, the Environmental Management Law, and the agrarian regime demonstrates that the principles of *lex superior*, *lex specialis*, and *lex posterior* have not been systematically and proportionally applied within a coherent legal framework. While the centralization of licensing authority is intended to increase investment effectiveness and certainty, in practice it creates constitutional tensions with the principles of regional autonomy and the protection of community rights. The disharmony between risk-based business licensing and environmental protection also undermines the principles of legal certainty and sustainable development. From the perspective of a state based on the rule of law (*rechtsstaat*), this situation threatens the supremacy of law because norms no longer function harmoniously and predictably. Therefore, harmonization of mineral and coal licensing regulations is an urgent constitutional need through strengthening legislative review, synchronizing derivative regulations, and reconstructing policies based on the principles of legality, legal certainty, distributive justice, and sustainability, so that state control over natural resources is truly directed towards the greatest possible prosperity of the people.

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