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Legal Certainty in Agrarian Conflicts: Resolving Overlapping Mining and Agricultural Permits in Indonesia

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agrarian conflict, legal certainty, mining permits, overlapping permits, land rights

ABSTRACT

This study examines legal uncertainty caused by overlapping mining permits and community agricultural land in Indonesia. It aims to identify the causes of permit overlaps, assess existing agrarian dispute resolution mechanisms, and formulate an ideal legal policy model. Using normative legal research supported by documentary case studies, the study analyzes relevant legal materials, including the 1945 Constitution, Law No. 5 of 1960, and Law No. 3 of 2020. The findings show that regulatory disharmony allows Mining Business Permits (IUP) to overlap with community-controlled land, leading to the criminalization of farmers defending their rights. Existing litigation, mediation, and criminal proceedings have not provided sufficient legal certainty. The study recommends harmonizing mining and agrarian regulations through integrated spatial data, mandatory land-status verification, and specialized agrarian courts to ensure substantive justice.

Kata Kunci:

konflik agraria, kepastian hukum, izin pertambangan, tumpang

ABSTRAK

Penelitian ini mengkaji ketidakpastian hukum akibat tumpang tindih izin pertambangan dengan lahan pertanian masyarakat di Indonesia. Penelitian bertujuan mengidentifikasi penyebab tumpang tindih perizinan, mengevaluasi mekanisme penyelesaian sengketa agraria, dan merumuskan model kebijakan hukum yang ideal. Dengan metode hukum normatif yang didukung studi kasus dokumenter, penelitian ini menganalisis bahan hukum terkait, termasuk UUD 1945, UU Nomor 5 Tahun 1960, dan UU Nomor 3 Tahun 2020. Hasil penelitian menunjukkan bahwa ketidakharmonisan regulasi memungkinkan IUP tumpang tindih dengan lahan masyarakat, sehingga petani yang mempertahankan haknya dapat mengalami kriminalisasi. Litigasi, mediasi, dan peradilan pidana belum memberikan kepastian hukum yang memadai. Penelitian merekomendasikan harmonisasi regulasi pertambangan dan agraria melalui data spasial terintegrasi, verifikasi status tanah sebelum penerbitan izin, dan pembentukan pengadilan agraria khusus untuk menjamin keadilan substantif.

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A. Introduction

Indonesia's constitutional framework, particularly Article 33 paragraph (3) of the 1945 Constitution, establishes that land, water, and natural resources

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contained therein shall be controlled by the state and utilized for the greatest prosperity of the people.[1] This provision serves as the foundational principle for state control over natural resources, yet its implementation has frequently generated tensions between economic development imperatives and community land rights protection. The mining sector, as one of the primary drivers of national revenue and foreign investment, has expanded significantly across the archipelago, often encroaching upon community living spaces and productive agricultural lands that serve as the primary livelihood source for farming communities.[2]

The core problem underlying agrarian conflicts in Indonesia is the spatial and administrative overlapping of permits. Mining Business Permits (Izin Usaha Pertambangan/IUP) are frequently issued over areas that have been factually and historically controlled by communities through legitimate rights or customary land tenure.[3] This situation is exacerbated by the disharmony between regulations governing the mining sector, forestry, and agrarian spatial planning, creating profound legal uncertainty. When disputes arise, farmers and local communities defending their agricultural land often face criminalization, accused of land encroachment or destruction of company property.[4]

The legal framework in Indonesia distinguishes between two separate regulatory regimes: land rights are governed by Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), which emphasizes the social function of land, while the mining sector is regulated by Law No. 3 of 2020 on Mineral and Coal Mining, which grants the state broad authority to issue mining permits.[5] Unfortunately, these two legal frameworks operate sectorally without clear coordination and synchronization mechanisms, resulting in legal uncertainty and various

[1] Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Article 33 Paragraph (3).
[2] Mustofa and Anita, "IMPLIKASI HAK ATAS TANAH MASYARAKAT ADAT DALAM PENYELENGGARAAN KEGIATAN PERTAMBANGAN MINERBA DI INDONESIA."
[3] Prasetya et al., "Analisis Konflik Agraria Di Kalimantan Timur: Studi Kasus Sengketa Lahan Antara Masyarakat Adat Dan Perusahaan Tambang."
[4] Sawal, "Menyoal Jerat Hukum Dan Label Preman Pada Penolak Tambang Nikel Di Halmahera Timur."
[5] Nugroho, "Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba."

implementation problems. When mining permits are granted over land that has been certified as freehold property, the potential for agrarian conflict becomes inevitable.

Previous research has examined various aspects of mining-agricultural land conflicts. Mustofa and Anita analyzed the implications of customary land rights in mineral and coal mining activities, finding that disharmony between mining law and land law has caused legal uncertainty, particularly for communities living in mining concession zones. [6]Nugroho examined legal issues in land rights resolution based on amendments to the Mining Law, concluding that central government involvement in land rights resolution obscures the state's function as regulator and permit issuer.[7] Chrisputanto analyzed legal certainty of mining business permits following land ownership disputes with overlapping permit status, demonstrating that district courts lack authority to adjudicate cases involving permit overlaps between cultivation rights and mining permits.[8]

However, there remains a significant research gap regarding the comprehensive evaluation of dispute resolution mechanisms and the formulation of an ideal legal policy reconstruction model that balances community protection with investment certainty. This study addresses this gap by examining the effectiveness of litigation, non-litigation mediation, and criminal court approaches in providing legal certainty for agricultural landowners, while proposing a reconstructive legal framework.

The novelty of this research lies in its integrated approach combining normative analysis of regulatory disharmony with empirical examination of dispute resolution outcomes, ultimately proposing a comprehensive policy model that reconciles the competing interests of mining investment and agrarian rights protection. This study argues that legal certainty can only be achieved through systematic harmonization of sectoral regulations, mandatory verification of land

[6] Mustofa and Anita, "IMPLIKASI HAK ATAS TANAH MASYARAKAT ADAT DALAM PENYELENGGARAAN KEGIATAN PERTAMBANGAN MINERBA DI INDONESIA."
[7] Nugroho, "Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba."
[8] Chrisputranto, "Kepastian Hukum Izin Usaha Pertambangan Pasca Sengketa Kepemilikan Lahan Dengan Status Tumpang Tindih Izin (Analisis Putusan Nomor 28/Pdt-G/2020/Pn Tml)."

status before permit issuance, and establishment of specialized institutions for agrarian conflict resolution.[9]

B. Research Method

This study employed normative legal research supported by empirical case studies examining the dynamics of agrarian conflicts in the field. The research utilized three complementary approaches: the statute approach, which examined the consistency of positive legal norms; the conceptual approach, which analyzed the theory of State Control Rights and legal certainty; and the case approach, which analyzed court decisions and actual cases involving land disputes between farmers and mining corporations.

The primary legal materials included the 1945 Constitution of the Republic of Indonesia, particularly Article 33 paragraph (3); Law No. 5 of 1960 on Basic Agrarian Principles; Law No. 3 of 2020 on Mineral and Coal Mining; and related regulations on spatial planning and agricultural land protection. Secondary legal materials comprised legal reference books, national and international academic journals, research findings, and reports from agrarian watchdog organizations such as the Consortium for Agrarian Reform. Data collection was conducted through library research and document analysis, with data analyzed descriptively, analytically, and critically to address the formulated research questions.

C. Results and Discussion

1. Forms and Causal Factors of Overlapping Permits Between Mining and Agricultural Land in Indonesia's Agrarian Legal Framework

a. Regulatory Disharmony Between Mining Law and Agrarian Law

The fundamental issue underlying overlapping permits in Indonesia stems from the parallel existence of two legal regimes governing related but distinct objects. Land, as part of the earth's surface, is regulated under Law No. 5 of 1960 on Basic Agrarian Principles, which establishes various land rights including ownership rights (Hak Milik), cultivation rights (Hak Guna Usaha/HGU), building rights (Hak Guna Bangunan/HGB), and use rights (Hak Pakai).[10] Meanwhile,

[9] Muhammad Abdul Azis et al., "Causative-Based Integral Policy As A Response To Criminogenic Factors In The Distribution Of Subsidized Fuel."
[10] Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria.

mineral and coal resources contained within the earth are governed by Law No. 3 of 2020, which grants the central government authority to issue mining permits through mechanisms including IUP, IUPK, and other permit types.[11]

The critical legal problem emerges when these two regulatory frameworks intersect without adequate coordination. Mining operations do not merely extract subsurface resources but also require surface land access for infrastructure, facilities, and operational activities. The Mining Law provides that IUP holders have the right to conduct exploration and exploitation activities, yet it does not comprehensively address how these rights interact with pre-existing land rights. This regulatory vacuum creates what Nugroho describes as a "legal gray area" where mining permits can be issued over land already encumbered by community rights.[12] Table 1 illustrates the regulatory framework comparison between agrarian and mining law, highlighting the points of potential conflict.

Table 1 Comparison of Agrarian and Mining Legal Frameworks

Aspect	Law No. 5/1960 (UUPA)	Law No. 3/2020 (Minerba)
Object of Regulation	Land surface and rights thereto	Mineral and coal resources in the earth
Rights Granted	Ownership, HGU, HGB, Use Rights	IUP, IUPK, IPR, SIPB
Authority	National Land Agency (BPN)	Ministry of Energy and Mineral Resources
Duration	Ownership: unlimited; HGU: 35+25 years	Varies by stage (Exploration/Production Operation) and commodity (e.g., up to 20 years for production operation with extension

[11] Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara, Article 1.
[12] Nugroho, "Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba."

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		provisions under Law No. 3 of 2020)
Social Obligation	Social function of land	Community development programs

Source: Compiled by author from Law No. 5 of 1960 and Law No. 3 of 2020.

The table demonstrates that while agrarian law emphasizes the social function of land and provides various rights to individuals and legal entities, mining law focuses on resource extraction with permits that potentially override surface land rights. The absence of an integrative mechanism between these two frameworks creates the conditions for overlapping claims and disputes.

b. Administrative and Spatial Factors Contributing to Overlapping Permits

Several administrative and spatial factors contribute to the occurrence of overlapping permits.[13] First, the lack of comprehensive spatial data integration between the Ministry of Energy and Mineral Resources (ESDM), the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), and local governments results in permit issuance based on incomplete information regarding existing land rights.[14] Second, the decentralized permit issuance system, which grants authority to various levels of government, creates coordination challenges and opportunities for inconsistent decisions. Third, the absence of mandatory verification procedures requiring mining permit applicants to demonstrate that proposed concession areas are free from existing community land rights exacerbates the problem.

The study by Septiliana and Nur on the PT. Socfindo case in Batu Bara Regency illustrates how administrative failures contribute to agrarian conflicts.[15] The National Land Agency discovered that PT. Socfindo had cultivated approximately 472 hectares of land beyond its HGU boundaries, affecting

[13] Nursidi et al., "Revisiting Coastal Spatial Permitting Regulations toward Sustainable Coastal Zone Management."
[14] Mustofa and Anita, "IMPLIKASI HAK ATAS TANAH MASYARAKAT ADAT DALAM PENYELENGGARAAN KEGIATAN PERTAMBANGAN MINERBA DI INDONESIA."
[15] Nala Septiliana and Sitti Hazzah Nur, "Tata Kelola Penyelesaian Konflik Agraria Hak Guna Usaha Pada Pt. Socfindo Dan Kelompok Tani."

community agricultural land that had been claimed since 1977.[16] The measurement discrepancy between the original HGU permit (3,373 hectares) and the actual cultivated area (3,845 hectares) revealed serious weaknesses in administrative oversight and spatial verification.

c. The Impact of Overlapping Permits on Communities and Legal Uncertainty

The consequences of overlapping permits extend beyond administrative irregularities to create profound legal uncertainty for affected communities. When mining permits are issued over land that communities have historically controlled and utilized for agriculture, the resulting legal ambiguity leaves farmers vulnerable to displacement without adequate compensation and criminalization when they attempt to defend their land rights.[17]

The case analysis of Putusan Nomor 28/Pdt.G/2020/PN Tml demonstrates how overlapping permits between mining and plantation companies led to unlawful acts and substantial losses. PT. Aljabri Buana Citra, holding a mining permit issued in 2009 and upgraded in 2013, destroyed 1,670 oil palm trees covering 12.8 hectares within the HGU area of PT. Bhadra Cemerlang, which had obtained its cultivation rights in 2004 and plantation permit in 2006.[18] The court's decision failed to provide legal certainty regarding the mining permit's status, as the district court lacked authority to adjudicate permit overlap issues between cultivation rights and mining permits a matter that should have been resolved through the State Administrative Court (PTUN).

The empirical data from Konsorsium Pembaruan Agraria (KPA) indicates that the mining sector contributed 24 conflicts in 2019 alone, including 5 coal mining conflicts, 5 gold mining conflicts, 5 nickel mining conflicts, 5 sand mining conflicts, 2 tin mining conflicts, and 2 oil and gas conflicts.[19] These conflicts resulted from non-implementable norms in the previous mining law, including

[16] Kafrawi et al., "Tanggung Gugat Terhadap Penyalahgunaan Hak Guna Usaha Pada Lahan Perkebunan."
[17] Sonia Yolanda et al., "Konflik Lahan Dan HAM."
[18] Chrisputranto, "Kepastian Hukum Izin Usaha Pertambangan Pasca Sengketa Kepemilikan Lahan Dengan Status Tumpang Tindih Izin (Analisis Putusan Nomor 28/Pdt-G/2020/Pn Tml)."
[19] Nugroho, "Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba."

criminal provisions that were applied discriminatorily and land rights resolution provisions that were not effectively enforced.

2. Effectiveness of Agrarian Dispute Resolution Mechanisms in Providing Legal Certainty for Agricultural Landowners

a. Through General Courts

The litigation pathway through general courts has proven inadequate for resolving agrarian conflicts arising from overlapping permits. As demonstrated in the Putusan Nomor 28/Pdt.G/2020/PN Tml case, general courts lack the authority to adjudicate the validity of administrative decisions such as mining permits. The district court could only address the unlawful act aspect of the dispute (the destruction of oil palm trees) but could not resolve the fundamental issue of permit overlapping, which falls within the jurisdiction of the State Administrative Court.

Furthermore, the litigation process is often lengthy, expensive, and inaccessible to affected communities. The asymmetry of resources between communities and mining corporations creates structural disadvantages that undermine the possibility of achieving substantive justice.[20] In many cases, communities lack the legal knowledge and financial capacity to pursue litigation, while corporations have access to superior legal representation and can afford to prolong proceedings.

b. Non-Litigation Mechanisms Through Mediation and Negotiation

Non-litigation mechanisms, particularly mediation and negotiation, have been employed in various mining-agrarian conflicts with mixed results. The case study of PT. Mahakam Sumber Jaya in Kutai Kartanegara demonstrates that negotiation and mediation efforts often fail to produce lasting solutions when the underlying legal uncertainty remains unaddressed.[21]

The study by Harjanto, Sukirno, and Cahyaningtyas identified two categories of land disputes faced by PT. Mahakam Sumber Jaya: disputes arising from competing ownership claims resulting in land overlapping, and disputes

[20] Sonia Yolanda et al., "Konflik Lahan Dan HAM."
[21] Harjanto et al., "Penyelesaian Sengketa Lahan Masyarakat di Konsensi Tambang PT Mahakam Sumber Jaya." See also Al Banna and Fitriana, "Dispute Resolution on Overlapping Land Certificate Through Mediation."

related to compensation for land acquisition. In the first category, multiple individuals or farmer groups claimed rights over the same land area based on Land Ownership Certificates (SKPT) issued by different village or sub-district governments. In the second category, communities who had already received compensation later claimed additional payments, leading to operational disruptions and legal proceedings.

The mediation process conducted by the National Land Agency in the PT. Socfindo case similarly failed to achieve resolution. As documented by Septiliana and Nur, the mediation process reached only the coordination meeting stage, with both parties maintaining their respective positions PT. Socfindo insisting on its right to extend its HGU, while the Simpang Gambus Farmer Group demanded the return of 472 hectares of land.[22] The BPN's limited authority and the absence of binding enforcement mechanisms rendered the mediation ineffective.[23]

c. Criminal Justice System and Criminalization of Communities

The criminal justice system has been weaponized against communities defending their land rights, creating a chilling effect on legitimate resistance to mining expansion. Article 162 of Law No. 3 of 2020 provides criminal sanctions for any person who obstructs or interferes with mining operations conducted by IUP holders who have fulfilled all requirements, with penalties of up to one year imprisonment or fines up to Rp 100,000,000.[24]

This provision has been applied disproportionately against farmers and indigenous communities. Sawal documented the criminalization of indigenous communities resisting nickel mining in Halmahera Timur, where authorities arrested community members and labeled their actions as "premanism" (thuggery). Similarly, the Wadas case in Purworejo, Central Java, demonstrated the state's preference for security approaches over participatory dialogue, with large-scale

[22] Nala Septiliana and Sitti Hazzah Nur, "Tata Kelola Penyelesaian Konflik Agraria Hak Guna Usaha Pada Pt. Socfindo Dan Kelompok Tani."
[23] Diana Fitriana, "Faktor Berhasilnya Mediasi Dalam Perkara Perceraian."
[24] Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara, Article 162.

deployment of security forces to suppress community resistance against andesite mining for the Bener Dam project.

The criminalization of land rights defenders contradicts the constitutional guarantee of protection for all citizens and the principle of substantive justice. Furthermore, it undermines the possibility of achieving legal certainty by substituting force for legal resolution of underlying disputes [25]

3. Ideal Legal Policy Reconstruction Model for Resolving and Preventing Overlapping Permit Conflicts

a. Harmonization of Mining and Agrarian Legal Frameworks

The fundamental solution to overlapping permit conflicts requires systematic harmonization of mining and agrarian legal frameworks.[26] This harmonization should establish clear procedural requirements for coordination between the Ministry of ESDM, the Ministry of ATR/BPN, and local governments in issuing permits and managing spatial data.[27]

Specifically, the harmonization should include: first, mandatory integration of spatial data systems between mining permit authorities and land registration agencies to ensure that permit issuance decisions are based on complete information regarding existing land rights; second, establishment of a "one map" policy that consolidates all spatial data including mining concessions, land rights, customary land, and agricultural land protection zones; third, requirement for mining permit applicants to provide evidence of land rights resolution or compensation agreements with affected communities before permit issuance; and fourth, recognition of customary land rights as a legitimate consideration in mining permit decisions, consistent with Constitutional Court Decision No. 35/PUU-X/2012.

[25] Siti Fadila Nuramelia et al., "Reorientasi Perlindungan Saksi dan Korban dalam Sistem Peradilan Pidana Indonesia dari Pengaturan Parsial Menuju Model Perlindungan Terpadu." See also: Hasibuan, "When The Police Are Trusted By The Public."
[26] Sriwidodo and Sinaulan, "The Role of Legal Analysis and Evaluation in Realizing the Formation of Better Legislation."
[27] Nugroho, "Persoalan Hukum Penyelesaian Hak Atas Tanah Dan Lingkungan Berdasarkan Perubahan Undang-Undang Minerba."

b. Institutional Reform for Agrarian Conflict Resolution

The establishment of specialized institutions for agrarian conflict resolution formulated here as a de lege ferenda policy recommendation to overcome the jurisdictional limitations of existing courts would provide a dedicated forum for multi-sectoral disputes. [28] The proposed model includes, first, the legislative creation of specialized agrarian courts with the authority to adjudicate disputes involving overlapping permits between different sectors; second, the strengthening of the National Land Agency's mediation function with binding enforcement mechanisms; and third, the establishment of an independent agrarian ombudsman to investigate and recommend sanctions for administrative violations in permit issuance.[29]

The governance framework proposed by Septiliana and Nur, based on good governance principles including accountability, transparency, participation, effectiveness, and legal compliance, provides a useful model for institutional reform. Their analysis of the BPN Batu Bara's handling of the PT. Socfindo case revealed weaknesses in participation and effectiveness that could be addressed through enhanced community engagement and strengthened institutional capacity.

c. Strengthening Community Land Rights Protection

Legal policy reconstruction must prioritize the protection of community land rights as a fundamental element of agrarian justice. This requires first, acceleration of land registration programs to provide communities with formal legal documentation of their land rights.[30] Second, recognition and registration of customary land (tanah ulayat) in accordance with Constitutional Court decisions and Ministry of ATR/BPN regulations. Third, establishment of minimum standards for compensation in cases where mining operations necessitate land acquisition, including provisions for livelihood restoration and fourth, prohibition of criminal

[28] Pratama Maulu et al., "Agrarian Dispute Resolution Institution as a Manifestation of Progressive Legal Transformation."
[29] Septiliana and Nur, "Tata Kelola Penyelesaian Konflik Agraria Hak Guna Usaha." See also Gunawan, Dialog, and Fitriana, "Land Dispute Resolution: Village Deliberation and Consensus to Establish Public Order."
[30] Yubaidi et al., "Land Registration Acceleration in Indonesia."

sanctions against communities exercising their legitimate right to defend their land.[31]

The PT. Socfindo case demonstrates the importance of these measures. The community's inability to provide strong documentary evidence due to historical circumstances (land documentation lost during the 1965 political upheaval) illustrates how formal legal requirements can disadvantage communities with legitimate historical claims. Legal policy must accommodate such situations through flexible evidentiary standards and recognition of alternative forms of proof.

D. Conclusion

The analysis shows that legal uncertainty in agrarian conflicts caused by overlapping mining and agricultural land permits stems from the lack of coordination between Law No. 5 of 1960 and Law No. 3 of 2020. Weak integration of spatial data, land-status verification, and recognition of customary rights allows mining permits to overlap with community land and creates administrative irregularities that disadvantage landowners.

Existing dispute resolution through courts, mediation, and criminal proceedings has not provided adequate legal certainty. Courts have limited authority over permit overlaps, mediation often lacks binding enforcement, and criminal proceedings may be used against communities defending their land rights. These conditions undermine substantive justice and the constitutional principle that land and natural resources should serve the greatest prosperity of the people.

Legal reform should harmonize agrarian and mining regulations, integrate spatial data, require land-status verification before permit issuance, establish specialized agrarian courts, strengthen recognition and registration of community and customary land rights, and prevent the criminalization of communities defending their rights.

The Government and legislature should harmonize the relevant laws and establish mandatory coordination and verification procedures. The Ministry of

[31] Sonia Yolanda et al., “Konflik Lahan Dan HAM.”

Agrarian Affairs and Spatial Planning/National Land Agency should accelerate land registration and strengthen binding mediation mechanisms. The Ministry of Energy and Mineral Resources should require applicants to resolve land-rights issues and provide fair compensation before permits are issued. The Supreme Court should consider specialized agrarian courts and provide clearer judicial guidance. Civil society and communities should continue documenting conflicts and advocating for legal reform.

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