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ABSTRACT

Coal mining activities on small islands, undertaken to increase national production, have caused significant environmental degradation and infringed upon civil rights to a healthy environment. These activities distribute the risks associated with mining waste to both local communities and ecosystems. Sludge and waste contaminate agricultural areas, thereby compromising food security, while direct discharge into coastal and marine environments disrupts fish farming and fishing grounds. Targeting small islands for coal mining not only contravenes the principle of legal certainty regarding the prohibition of mining on small islands but also perpetuates environmental injustice. The licensing system, intended as a regulatory safeguard, fails to adequately protect vulnerable communities and small islands. Inadequate licensing procedures, tolerance of regulatory violations, and weak law enforcement contribute to persistent patterns of injustice.

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Introduction

Indonesia is recognised as the largest archipelagic nation in the world, comprising 17,508 islands and with the fourth-longest coastline, extending for 95,181 kilometres (km).¹ Its territorial waters form a significant portion of the Coral Triangle and support 23 per cent of the global mangrove population.² Among these islands, 111 are classified as small, each with an area of less than 2,000 hectares.³ These small islands typically contain substantial mineral resources, including coal, oil, and gas.⁴

In recent years, economic activities in coastal areas have changed drastically due to coal mining activities on small islands, resulting in environmental injustices. In addition to coal mining, other sources of pollution such as hydrocarbons,⁵ dumping,

plastic pollution,⁶ and land-based contaminants with mining activities being a substantial contributor.

Mining activities on small islands often result in significant reductions or complete loss of biodiversity, as well as environmental degradation and pollution within and surrounding mining sites. These islands and their resident communities are particularly susceptible to the adverse effects of mining, such as heightened risks of environmental injustice.

Increasing state revenue from extractive sources through simplifying permits and regulations creates latent problems for the environment and society,⁷ including loss of biodiversity,⁸ conflict, political and economic cronyism,⁹ and environmental injustice.¹⁰ This situation arises from

1 Law No 6 of 1996 on Indonesian Waters, Art 3 and Explanatory Notes.

2 Coral Triangle Center, 'Indonesia' (n.d.) <<https://www.coraltrianglecenter.org/indo-nesia/>>.

3 Indonesia, Law No 1 of 2014 concerning Amendments to Law No 27 of 2007 concerning Management of Coastal Zones and Small Islands, Art 1(3).

4 Yoesep Budianto, 'Eksplorasi Pertambangan Dan Ancaman Akhir Hayat Pulau-Pulau Kecil' KOMPAS.id (Jakarta, 9 September 2023) <<https://www.kompas.id/artikel/eksplorasi-pertambangan-dan-anca-man-akhir-hayat-pulau-pulau-kecil-di-indonesia>>; Global Witness, 'Indonesia's "Amazon of the Seas" Threatened by EV Nickel Rush' (Global Witness, 12 June 2025) <<https://globalwitness.org/en/campaigns/transition-minerals/indonesias-amazon-of-the-seas-threatened-by-ev-nickel-rush/>>.

5 Marsudi Triatmodjo, Muhamad Muhdar and Mahendra Putra Kurnia, 'Indonesia's Offshore Oil and Gas: Decommissioning Uncertainty and the Legal Struggle' (2024) 17(3) Australian Journal of Maritime & Ocean Affairs 1.

6 Dikdik Mohamad Sodik, 'Marine Pollution in Indonesia and the Regulatory Framework' (2020) 36(1) International Journal of Marine and Coastal Law 114; Ingeborg Reichle, *Plastic Ocean: Art and Science Responses to Marine Pollution* (Walter de Gruyter 2021).

7 Muhamad Muhdar, Rikardo Simarmata and Mohamad Nasir, 'Legal Policy Preference for Coal Mining Over Other Land Use Alternatives Jeopardizes Sustainability in Indonesia' (2023) 18(1) Journal of Land Use Science 395.

8 M Iqbal P, Imadadienan FJ and Pius G, 'The Threat of Coal Mine Expansion towards Biodiversity in Kalimantan' (Perkumpulan Aksi Ekologi dan Emansipasi Rakyat (AEER) 2022) <<https://www.aeer.or.id/wp-content/uploads/2023/07/The-Threat-of-Coal-Mine-Expansion-Towards-Biodiversity-in-Kalimantan.pdf>>.

9 Tessa Toumbourou and others, 'Political Ecologies of the Post-mining Landscape: Activism, Resistance, and Legal Struggles over Kalimantan's Coal Mines' (2020) 65 Energy Research & Social Science 1.

10 Muhamad Muhdar, Mohamad Nasir and Juli Nurdiana, 'Risk Distribution in Coal Mining: Fighting for Environmental Justice in East Kalimantan, Indonesia' (2020) 499 Atlantis Press 656.

coal mining activities that are close to settlements and community agricultural land, around forest areas, coastal areas, and small islands. It is recorded that there are 11 provinces that have small islands and carry out mining activities with 159 companies (coal and minerals),¹¹ as a consequence of the determination of mining areas on small islands.

The national coal production target for 2025 to 2035 has increased substantially. Output reached 834.10 million tons in 2024,¹² with a projected reduction to 790 million tons in 2025. This elevated production level suggests an expansion of mining operations, including the utilisation of small islands as coal mining sites.

Bunyu Island is a sub-district level area in Bulungan Regency, North Kalimantan Province and consists of three villages: East Bunyu, West Bunyu, and South Bunyu. The total area of Bunyu Island is 198,32 km² which directly faces the Indonesian Archipelago Sea Line Passage 2 (IASLP-2). Bunyu Island has a population of 11,273 residents and is home to coal mining and hydrocarbon activities. Bunyu's people generally work as fishermen and farmers. Bunyu Island has sandy beaches and has high value for tourism activities in addition to fisheries and other maritime activities before mining operation came in this small island.

Coal mining activities on Bunyu Island have generated significant challenges for the local community. The operations of mining companies have redistributed

environmental risks, leading to the erosion of environmental rights and the disruption of community economic activities, despite the legal authorisation of these extractive practices. Legally, Indonesian mining law determines mining permit areas based on the presence of mineral and coal deposits, irrespective of the mine's geographic location. However, several regulations, especially those related to environmental protection and management, small island management, and land and sea spatial planning, appear to conflict with mining law. These issues extend beyond normative conflicts to include the implementation of the licensing system and the coordination among authorities responsible for mining activities on small islands.

This study investigates the challenges associated with coal mining governance on small islands. The second and third sections describe the theoretical framework and research methods. The fourth section details the research findings. The subsequent section analyses the legal performance of mining on small islands, examines the distribution of coal mining risks to communities and the environment, and discusses the underlying causes of injustice. The final section provides the study's conclusions.

1 Theoretical framework

This section delves into existing scholarship concerning the unique vulnerabilities of small island developing states to environmental degradation, particularly in the context of resource extraction industries such as coal mining, and examines how governance failures exacerbate these vulnerabilities.¹³ The

11 JATAM, 'Hundreds of Mining Concessions Are Destroying a Small Island' (26 March 2019) <<https://jatam.org/id/lengkap/ratusan-konsesi-tambang-merusak-pulau-ke-cil>>.

12 Ministry of Energy and Mineral Resources, 'Minerba One Data Indonesia (MODI)' <<https://modi.esdm.go.id/filter?ta-hun=2023>>.

13 Kalim U Shah, 'Editorial Overview: On the Environmental Sustainability of Small Island States' (2023) 64 *Current Opinion in Environmental Sustainability* 1.

study further investigates environmental justice within this context, highlighting the disproportionate burdens faced by island communities. It specifically analyses how inadequate regulatory frameworks, limited institutional capacity, and industrial interests interact to undermine effective environmental protection and community safeguards in these vulnerable regions. This analysis examines how governance gaps result in an unequal distribution of environmental risks, exposing marginalised island populations to heightened threats from pollution, habitat destruction, and displacement. These outcomes represent a clear case of environmental injustice.¹⁴ This analysis further distinguishes between procedural and distributive justice in environmental decision-making,¹⁵ with particular attention to the processes and outcomes associated with coal mining on small islands.¹⁶

In Indonesia, the state has the right to control natural resources and use them for the welfare of the people, as stipulated in Article 33(3) of the 1945 Constitution.¹⁷

14 Gabriel Weber and others, 'Exploring Resilience in Public Services within Marginalised Communities during COVID-19: The Case of Coal Mining Regions in Colombia' (2023) 415 *Journal of Cleaner Production* 1.

15 David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (OUP 2007) 5; David Schlosberg, 'Justice, Ecological Integrity, and Climate Change' in Allen Thompson and Jeremy Bendik-Keymer (eds), *Ethical Adaptation to Climate Change: Human Virtues of the Future* (MIT Press 2012) 165.

16 Omar Pérez Figueroa and Nicola Ulibarri, 'Navigating Justice: Examining the Intersection of Procedural and Distributive Justice in Environmental Impact Assessment in Puerto Rico' (2024) 109 *Environmental Impact Assessment Review* 1.

17 Constitution of the Republic Indonesia, 1945, Art 33.3.

Article 28H (1) of the Indonesian Constitution also gives the state the authority to protect every person's right to a good and healthy living environment as a basic right. With this authority, the state must maintain and distribute wealth fairly while maintaining its sustainability through regulations, including protecting citizens and the environment from excessive or unfair exploitation by the private sector.¹⁸

2 Methods

This study followed a two-step approach. The first step involved a desk study to analyse the legal framework of the licensing system for coal mines in small islands. We performed a doctrinal analysis to review the available laws, regulations, and documents relevant to the governance of coal mining activities in small islands.¹⁹ The second step involved a field study on how the problems identified in the legislation analysis manifest themselves in the actual coal mining practices in Bunyu Island, North Kalimantan Province. We conducted in-depth interviews to obtain detailed information about various perspectives and behaviours and to explore new and complex issues. The research location was Bunyu Island, North Kalimantan (Figure 1).

This site was chosen for two reasons. Firstly, Coal mining activities persist despite

18 Samuel Mermin, *Law and the Legal System: An Introduction* (Little, Brown, 1982) 7.

19 Muhamad Muhdar, *Penelitian Doctrinal Dan Non-Doctrinal: Pendekatan Aplikatif Dalam Penelitian Hukum* (Mulawarman University Press 2019) 39; Terry Hutchinson and Nigel Duncan and Terry Hutchinson, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 85.; Jay Lawrence Westbrook and Kelsi Stayart White, 'The Demystification of Contracts in Bankruptcy' (2017) 91(3) *American Bankruptcy Law Journal* 481.

the existence of multiple regulations that prohibit mining operations on small islands. Secondly, Mining activities in this area have adversely affected the livelihoods

of fishermen due to waste contaminating fishing grounds and negatively impacting coastal tourism.



Fig. 1: Bunyu Island as a research site

3 Result

By the late 1990s, coal deposits had been discovered across nearly all of Bunyu Island. By 2018, the Mining Advocacy Network identified six companies occupying land for coal mining, and subsequent environmental conditions have continued to deteriorate.²⁰

The negative impacts of mining on Bunyu Island directly affect seaweed farmers and fishing communities, thus affecting the ecological and socio-economic

conditions of local communities. Land-based pollution, especially waste from the mining area, is discharged through the river into the sea (Figure 2), which results in seawater conditions, as shown in Figure 3. This is not only a violation of state law, ethics (Javanese, Buginese, Timorese, Banjarese, and Dayak), and even a violation of Muslim values as espoused by most of the people on Bunyu Island, such as the prohibition of destroying the environment and the commandment to protect the environment.²¹ This fact also ethically violates the norms of wisdom in the orientation of community-based

²⁰ Mining Advocacy Network (Jaringan Advokasi Tambang, JATAM), *Small Islands of Indonesia, the Land of Mines: Report on the Destruction of the Entire Bodies of Small Islands of Indonesia by Mineral and Coal Mines* (JATAM 2019) <<https://tile.loc.gov/storage-services/service/gdc/gdcov-op/2021307525/2021307525.pdf>>.

²¹ Qur'an, Surah al-R m (30): 41; Surah al-A'r f (7): 56.

natural resource management.²² Effective natural resource management should prioritise environmental sustainability and safeguard local residents' livelihoods. On Bunyu Island, limited environmental carrying capacity combined with coal company operations has resulted in

environmental degradation and significant disruption to residents' livelihoods. For example, increased levels of heavy metals in river water or seawater due to mining waste can damage the ecosystem in the area and threaten the health of the consumers who consume products from the waters in the area.



Fig. 2. River condition on Bunyu Island (Source: Mongabay)

Waste from coal mining, discharged into rivers and the sea, damages marine and

coastal ecosystems and harms fisheries and tourism.



Fig. 3: Coastal and marine in Bunyu Island-Foto provided by HRN, 12 June 2023.

²² *ibid*, Quran Surah Ar-Rum (30): 41, Dan Al-Araf (7): 56; Nurhasan and Nurul Chotidjah, 'Local Wisdom as a Form of Development Principles of Environmental Sustainability in Indonesia' (2023) 39(1) *Mimbar: Jurnal Sosial dan Pembangunan* 27; Cox M, G Arnold and S Villamayor Tomás, 'A Review of Design Principles for Community-based Natural Resource Management' (2010) 15(4) *Ecology and Society* 38.

As a result, mining activities not only damage the land but also pollute the sea along the coast and border of Bunyu Island Beach. This makes seaweed production no longer possible, and the distance travelled by fishermen to catch fish increases due to the damage to the fisheries ecosystem near the island. The mining area is adjacent

to the beach, at 0 km, as shown in figure 4. This situation has a direct impact on the coastal and marine ecosystems, which

serve as the fishermen’s catchment area, and even harms the soil structure due to the lack of reclamation.



Fig. 4. Coal mines that are only 0 Km from the beach on Bunyu Island by HRN, 12 June 2023.

The decision of the Ministry of Energy and Mineral Resources (ESDM) to issue a Mining Business Licence Area on Bunyu Island has categorised risk as a disaster for the local community because both sides of the island are designated as mining areas, as shown in Figure 5.

PT Lamindo Inter Multikon’s coal mining business license, valid from 27 December 2017 to 7 August 2036 and covering 2,413.73 hectares (ha), is also located within a protected forest area, as shown in figure 6. Furthermore, PT Lamindo faced conflict with the local community who felt aggrieved by the impact of mining activities in 2018. The rivers in the village became dirty when the settling pond of the company broke down and entered the river and the dumping or barge washing activities made the sea water around the beach also dirty.



Fig. 5. Mining Business Licence Area in Bunyu Island.²³

²³ Ministry of Energy and Mineral Resources, 'One Map Data of the Ministry of Energy and Mineral Resources' (2022) <<https://ge-oportal.esdm.go.id/>>.

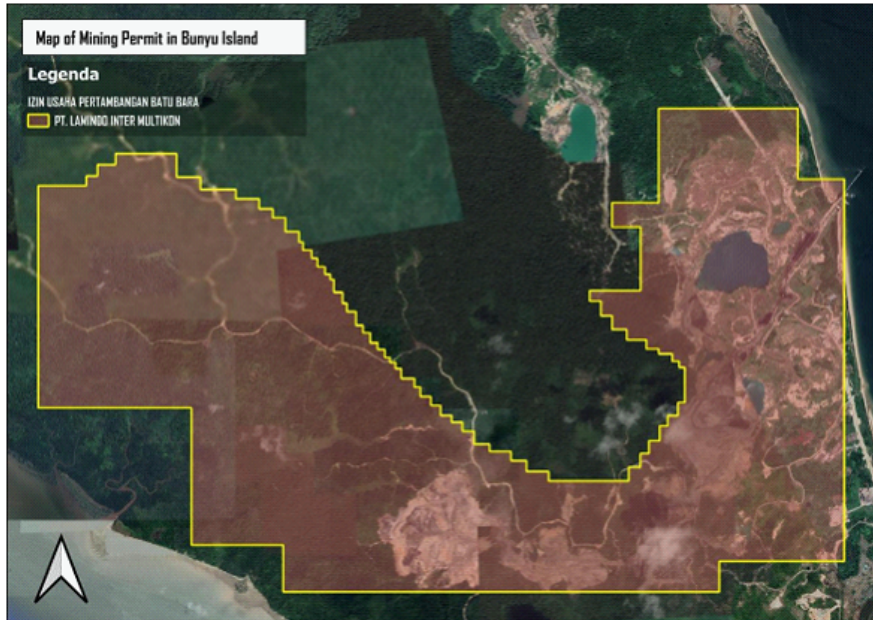


Fig. 6. Overlap map mining business licence area of PT Lamindo Inter-Multikon and the forest Area.²⁴

Besides Lamindo's, another coal company is PT Saka Putra Perkasa, whose license is valid from 3 April 2014 to 3 April 2028, covering an area of 728.59 ha. From the Mining Business Licence Area map published on One Map Data of the Ministry of Energy and Mineral Resources, it is known that PT Saka Putra Perkasa's mining business licence area is also located on the coastal boundary of Bunyu Island as shown in figure 6. The use of the coastal boundary area results in all waste threatening the aquatic ecosystem.

The effective date of the licences of the two coal mining companies occurred after the issuance of Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands, stating that coal mining is not included in the priority

utilisation of small islands and their surroundings. The designation of Bunyu Island as a coal mining licence area is contrary to the laws and regulations and is therefore both materially and formally defective. Several respondents confirmed formal defects that they were not included in the planning process, especially information regarding the impacts that would be caused. Local fisherman HRN, a Javanese, stated that 'the local community was not involved in the planning process for the use of Bunyu Island for coal mining activities, especially regarding information regarding the impacts that would arise'.²⁵ Similarly, RD, a community leader on Bunyu Island, observed that 'various impacts began to be felt some time after mining activities began operating and

²⁴ *ibid.*

²⁵ Anjani, Interview with HRN, local fisherman (Bunyu, North Kalimantan, 7 July 2023).

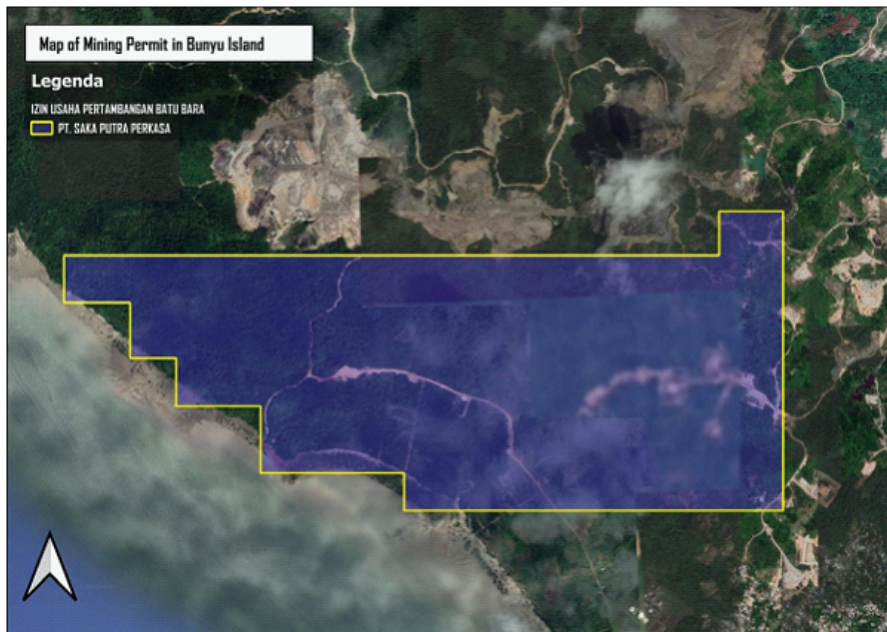


Fig. 7. Map mining area of Saka Putra Perkasa Company in Bunyu Island.²⁶

polluted the coastal area'.²⁷ Nevertheless, mining activities have created employment opportunities for small parts of the Bunyu Island community.

4 Discussion

1 The Regulatory Performance of Mine Operations in Small Island

Bunyu Island, with an area of only 198.32 km², is considered a small island based on the criteria stipulated in Law Number 1 of 2014 concerning the Management of Coastal Areas and Small Islands

(Amendment to Law Number 27 of 2007). This provision states that islands with an area of less than 2,000 km² are categorised as small islands, thus prohibiting mineral and coal mining. The prohibition on mining on small islands is reinforced by the Constitutional Court of the Republic of Indonesia's Decision Number 35/PUU-XXI/2023.

Doctrinal legal analysis shows that mining permits on small islands strongly indicate inconsistency, and then legal uncertainty arises.²⁸ Legal certainty is an important factor for many people, as it helps them build trust in the government over

²⁶ *ibid.*

²⁷ Muhdar, interview with RD, community leader (Bunyu, North Kalimantan, 7 Juli 2023).

²⁸ Martijn Hesselink, 'A European Legal Method? On European Private Law and Scientific Method' (2009) 15(1) *European Law Journal* 20.

individual interests or estimate what is permitted, ordered, and prohibited.²⁹ Thus, legal uncertainty itself could generate injustice. Environmental justice arises when a few people receive significant benefits from natural resource utilisation, and they should have the opportunity to participate in decision-making.³⁰

Based on Law number 1 of 2014, mining on small islands is prohibited, because the environmental capacity cannot accommodate the burden of damage and pollution caused, including socio-economic problems for the people who inhabit small islands. Regulations relevant to the analysis of this research will cover small island spatial planning, mining, maritime affairs, forestry, environment, and fisheries.

Mining in coastal and small island areas in Indonesia frequently conflicts with the principles of environmental sustainability enshrined in Law Number 32 of 2009 concerning Environmental Protection and Management. This law provides an obligation to protect and manage the environment in order to prevent damage, including mining activities in coastal areas or small islands that can cause damage to highly vulnerable coastal and marine ecosystems. Mining in these areas is of concern because it will cause degradation of marine habitats, damage to coral reefs, and threaten the sustainability of the lives of coastal communities that depend on

natural resources. The absence of a direct prohibition of mining activities in coastal areas and small islands in this law raises big questions about the government's commitment to environmental protection in these areas.

Law Number 41 of 1999 concerning Forestry, Article 38(4) expressly prohibits open mining activities in protected forest areas, which often overlap with coastal areas and small islands. Mining activities in these areas can potentially damage the ecological functions of protected forests, such as the protection of life support systems, water systems, and preservation of biodiversity. However, in practice, mining licences in forest areas are still often granted through the forest area borrow-to-use mechanism.³¹ This has caused controversy because it contradicts the principles of conservation and ecological sustainability.³² This shows that the licensing regime plays an important role in mining activities, especially in forested coastal areas and small islands.

The right of the people of Bunyu Island to use the marine area as an activity for fisheries including seaweed cultivation depends on the condition of the aquatic environment that is not polluted by pollutants originating from land-based or from the sea caused by marine pollution. The aquaculture area must obtain water quality assurance for aquaculture purposes,³³ including the prevention

29 Joseph Raz, 'The Rule of Law and Its Virtue' in Richard Bellamy (ed), *The Rule of Law and the Separation of Powers* (Routledge 2017) 77-94.

30 Jan Michiel Otto, WSR Stoter and J Arnscheidt, 'Using Legislative Theory to Improve Law and Development Projects' in Jan Michiel Otto and others (eds), *Law Making for Development: Explorations into the Theory and Practice of International Legislative Projects* (Leiden University Press 2008) 53.

31 Regulation of The Minister of Environment and Forestry, Republic of Indonesia, No P.7/MENLHK/SETJEN/Kum. 1/2/2019, Concerning Guidelines for Lend-to-Use Forest Area.

32 Law Number 32 of 2009 concerning Environmental Protection and Management, Art. (2)b; and Law No 41 of 1999 concerning Forestry, Art. (3)b.

33 Law No 31 of 2004 on Fisheries, Art 18(2).

of waste from land or from the sea.³⁴ Consideration of the issuance of licenses for land-based activities must be based on the consideration that any activity must not cause pollution and damage to the environment.³⁵

The various regulations above are not a priority to be implemented when dealing with provisions regarding coal mineral mining. Other land users will be occupied by mining activities despite overlapping land use as long as the area in question has coal resources.³⁶ Law Number 2 of 2025, concerning the fourth amendment to Law Number 4 of 2009 regarding Mineral and Coal Mining, confirms that coal mining can operate in all areas with mineral and coal resources, including those previously designated for other purposes. This law is weak in regulating environmental and community protection. In this law, open-pit mining practices are not prohibited, even on small islands. Open-pit mining not only creates contestation with other land users but also causes environmental damage.

2 Distribution of Risks from Coal Mining Waste

Risk is commonly conceptualised as the interplay among hazards, exposure, and vulnerability.³⁷ Waste produced by

mining activities that contaminates rivers or seawater has detrimental effects on the environment.³⁸ These adverse consequences for human populations represent a form of environmental injustice.

Coal mining risks are distributed to communities and the environment as something that cannot be avoided due to the continuation of mining practices on small islands. This study also found that regulations do not have consistency between the objectives of environmental and community protection or prioritising the amount of coal production. The designation of small islands as mining areas is a law-making process that lacks credibility due to poor public participation, especially in identifying risks. The risk distribution of negative impacts from the mining process in small islands illustrates the blurring of how the government protects the civil rights of citizens.

The lack of participation of communities living on small islands in determining decisions should not happen because they have the potential to be negatively affected. Community involvement should be interpreted as a form of good governance on mining activities.³⁹ Environmental Impact Assessment (AMDAL) as a filtering instrument that ultimately provided no guarantee for businesses to comply with environmental and community safety

34 Government Regulation No 22 of 2021 on the Implementation of Environmental Protection and Management, Art 261(2).

35 Law No 32 of 2009 on Environmental Protection and Management, General Explanation.

36 Muhdar, Simarmata and Nasir (n 7) 395.

37 Omar Dario Cardona and others, 'Determinants of Risk: Exposure and Vulnerability' in Christopher B Field and others (eds), *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: Special Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2012) 65.

38 Zhi-Hua Li and others, 'Distribution and Risk Assessment of Toxic Pollutants in Surface Water of the Lower Yellow River, China' (2021) 13(11) *Water* 1582.

39 Jason Prno and D Scott Slocombe, 'Exploring the Origins of 'Social License to Operate' in the Mining Sector: Perspectives from Governance and Sustainability Theories' (2012) 37(3) *Resources Policy* 346.

criteria. In the latest version, environmental impact assessment (AMDAL) in the licensing system is considered non-legally binding,⁴⁰ and more as a mechanism to negate the involvement of objections to the potential distribution of environmental risks.

The application of environmental licenses does not always contribute to achieving the objectives of maintaining public safety and equitably sharing natural resources. The license procedure is only interpreted as a formality process to obtain the legitimacy of mining activities on small islands. The license as an instrument to protect the public interest is based on something that was previously prohibited and then allowed when it meets certain criteria and certain restrictions, but the licensor has an obligation to re-examine the license that has been issued when it is proven to cause environmental and social problems.

This study also found that mining regulations are not free from the 'intersection' of various interests. Coal mining legislation, for example, reflects the political and economic interests of the oligarchy behind the lawmaking process or regulatory capture occurs in the process of drafting the Coal Mining Law that has no provisions on the prohibition of mining on small islands. This is a form of state neglect towards the protection of community and environmental rights. In this study, we found that mining is prioritised over the protection of the civil rights of citizens. Environmental justice should be oriented towards the distribution of environmental quality, which is the core of environmental

justice,⁴¹ including a fair distribution of environmental benefits and drawbacks, such as local air pollution, residential noise exposure, access to clean drinking water, or proximity to nearby green spaces.⁴² This implies that distributive justice is achieved through risk reduction, not risk transfer or risk distribution. Environmental burdens and reduced access to natural resource benefits for local communities constitute environmental injustice.⁴³ The state is obliged to provide equal protection based on environmental laws and regulations,⁴⁴ and no longer 'considering' the state as a 'neutral force',⁴⁵ when environmental justice movement or community against to the polluter.⁴⁶

The state should not entrust the responsibility for protecting the environment and society to coal mining companies, as the companies have no legal obligation to assume the state's role. Weak supervision and law enforcement of the implementation of laws and permits is a strong confirmation that when the

40 Government Regulation No 22 of 2021 on the Implementation of Environmental Protection and Management.

41 Scholesberg (n 15) 17.

42 Ulf Liebe and others, 'One Justice for All? Social Dilemmas, Environmental Risks and Different Notions of Distributive Justice' (2024) 15(4) *Games* 25.

43 Rebecca Pearse and others, 'Compounding Barriers to Environmental Justice' (2025) 30(11) *Local Environment* 1439.

44 Robert D Bullard, 'Environmental Justice: It's More than Waste Facility Siting' (1996) 77(3) *Social Science Quarterly* 493.

45 Laura Pulido, 'Geographies of Race and Ethnicity II: Environmental Racism, Racial Capitalism and State-Sanctioned Violence' (2017) 41(4) *Progress in Human Geography* 524.

46 Jill Lindsey Harrison, 'Environmental Justice and the State' (2023) 6(4) *Environment and Planning E: Nature and Space* 2740.

government issues coal mining permits,⁴⁷ the responsibility of protecting the environment and society shifts to business actors.

The waste that continues to be dumped into the environment by coal mining companies is a significant indicator of poor mining governance. Environmental risks that continue to be produced by mining companies and the lack of authority to limit excessive actions by polluters also confirm that the state allows environmental injustice.

3 Root Causes of Injustice

Small islands have a wealth of biodiversity which, due to their vulnerability, must be managed with due regard to the carrying capacity of the environment and must be sustainable.⁴⁸ The use of small islands for mining activities is correlated with the performance of the law in protecting the environment and society, especially in evaluating consistency in its implementation.

The location of coal mining in a small area has been proven to cause damage to the coastal environment, agricultural land, the sea, and contaminated rivers as a source of fresh water. The risks of coal mining activities lead to environmental damage and are the root cause of injustice because they disrupt community access to a clean environment, disrupt tourism sources,

cause land-based pollution and disrupt fisheries activities.

The root cause of injustice, represented by the damage and pollution of small islands, is exacerbated by an inconsistent regulatory system. The granting of mining activity licenses on small islands demonstrates that the character of mining law shows superiority in its application. The allocation of areas that prohibit mining on small islands confirms that the law is unable to safeguard the sustainability of environmental functions in regions that require high protection.

The law should function to protect the community from the dominant position of private sector interests in mining companies that obtain licenses from the government. The legal regime of the licensing system, which was originally intended to control prohibited activities,⁴⁹ turn into an instrument for facilitating extractive activities that are destructive to the environment and communities. The pattern of licensing tends to repeat procedures that do not ensure safety and even replicate coal mining practices in large land areas and are irrelevant to small islands.⁵⁰

Allowing mining on small islands by violating the provisions of spatial planning is a conflict between norms that should be the main indicator before issuing licences. This condition shows that the law is no longer seen as right or wrong but rather

47 M Nasir and others, 'Environmental Management of Coal Mining Areas in Indonesia: The complexity of supervision' (2023) 36 (5) *Society & Natural Resources* 534.

48 Sitti Hilyana, 'Uniknya Biodiversitas Pulau-Pulau Kecil' (paper presented at discussion hosted by Forest Watch Indonesia, Mataram, 2023).

49 Muhamad Muhdar, *Pertanggungjawaban Hukum Dalam Sistem Penegakan Hukum Lingkungan Di Indonesia* (Pustaka Ilmu 2020) 50.

50 Tim T Werner and others, 'Patterns of Infringement, Risk, and Impact Driven by Coal Mining Permits in Indonesia' (2024) 53(2) *Ambio* 242.

as the validity of the licence held by the licensee.

The findings of this study indicate that the primary causes of mining-related injustices on small islands include, first, coal production targets established to meet domestic energy requirements and international market demand, which have prompted mining activities in diverse locations, including small islands. Second, the licensor and licensee ignore the prohibition of coal mining on small islands as regulated in the North Kalimantan Regional Regulation on the Zoning Plan for Coastal Areas and Small Islands (RZWP3K) Number 4 of 2018, Law Number 1 of 2014, and Law Number 32 of 2009 on Environmental Protection and Management. These provisions are not respected, and do not provide problem-solving effectiveness. Thirdly, law enforcers add to the environmental injustice of small island communities by acting more as guardians of the licensing system for state revenue, and even worse as protectors of capital owners.

This study also found indications of a tendency to bring together various interests. Coal mining legislation accommodates the interests of mining companies to continue mining throughout Indonesia, including small islands, through intervention in drafting laws for specific purposes, often called regulatory capture.⁵¹ This theory postulates that private interests override public interests. Capture refers to the takeover of the law-making process by private actors, the consequences of which are designed and implemented primarily for their benefit

⁵¹ Toumbourou and others (n 9) 1.

and at the expense of the community.⁵²

The findings of this study indicate that the government prioritises mining activities over the protection of citizens' rights. Distributing a quality environment is the core of environmental justice.⁵³ In other words, distributive justice is risk reduction, not sharing or equalising existing risks,⁵⁴ including providing distributive, procedural, and recognition justice.⁵⁵

Conclusion

The issuance of coal mining permits on small islands illustrates a fragmented legal framework characterised by inconsistencies and the neglect of constitutional mandates that guarantee communities the right to a healthy environment. This disregard for the law by permit issuers and mining companies is evidenced by their failure to maintain

⁵² Liam Wren-Lewis, 'Regulatory Capture: Risks and Solutions' in Antonio Estache (ed), *Emerging Issues in Competition, Collusion, and Regulation of Network Industries* (CEPR Press 2011) 147 <https://www.researchgate.net/publication/265962949_Regulatory_Capture_Risks_and_Solutions>; David A Moss and Daniel Carpenter, 'Conclusion: A Focus on Evidence and Prevention' in David A Moss and Daniel Carpenter (eds), *Preventing Regulatory Capture: Special Interest Influence and How to Limit It* (Cambridge University Press 2014) 451.

⁵³ Brendan Gleeson and Nicholas Low, *Justice, Society and Nature: An Exploration of Political Ecology* (Routledge 2002) 133.

⁵⁴ Clifford Rechtschaffen and Eileen Gauna, *Environmental Justice, Law, Policy & Regulation* (Carolina Academic Press 2002) 8-11.

⁵⁵ Darren McCauley and others, 'Advancing Energy Justice: The Triumvirate of Tenets' (2013) 32(3) *International Energy Law Review* 107; Schlosberg (n 15) 17.

environmental quality, adequately reduce risks, and prevent the distribution of waste-related risks to populations that do not benefit from the economic outcomes of coal mining.

The decline in environmental quality shows the same repetitive pattern in coal mining practices: operational locations are chosen based on the location of the coal source, without considering environmental carrying capacity, destructive exploitation, or environmental and social interests. Small islands have environmental and social vulnerabilities due to limited land area, making them susceptible to damage that undermines the source of community livelihoods. This pattern results in the distribution of mining waste, including soil, rock, and chemical runoff, which pollutes water sources, degrades land quality, and becomes a burden for the environment and society.

Permitting mining activities that fail to meet legal requirements, combined with inadequate law enforcement, constitutes a primary cause of injustice, despite intentions to increase national coal production. The state has a duty to actively safeguard communities and the environment from harm. The authorisation of mining operations on small islands in the absence of effective law enforcement not only signals state neutrality but may also be interpreted as protecting extractive activities that give rise to injustice.

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