



Corporate Liability for Extractive Activities Following the Constitutional Court Ruling on Mineral and Coal Mining

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Abstract

This study examines the implementation of the precautionary principle in the mining licensing regime in Indonesia following regulatory reforms based on Law Number 3 of 2020 concerning Mineral and Coal Mining and Law Number 11 of 2020 concerning Job Creation. Although Article 33 (3) of the 1945 Constitution explains that natural resources should be managed optimally for the welfare of the community and also for environmental sustainability, extractive activities continue to pose a risk of environmental damage. The reforms discussed will explain the risk-based licensing system. Using normative juridical research methods with a statutory, case, and conceptual approach. This study also analyzes the Constitutional Court Decision Number 37/PUU-XIX/2021. The findings indicate that the precautionary principle is explicitly recognized in environmental law but only implicitly included in mining regulations through administrative obligations such as environmental approvals, reclamation guarantees, and post-mining responsibilities. While a risk-based approach theoretically aligns with preventive governance by imposing stricter requirements on high-risk activities, its effectiveness depends heavily on accurate risk classification, institutional capacity, public participation, and consistent oversight. Furthermore, the Constitutional Court's decision reaffirmed that business permits do not absolve corporations of responsibility for environmental damage and emphasized the state's constitutional obligation to ensure sustainable and accountable natural resource management.

Keywords: Mining; Licensing; Post-Mining; Precautionary Principle; Reclamation.

I. Introduction

Article 33(3) of the 1945 Constitution of the Unitary State of the Republic of Indonesia states that all elements of society are obligated to preserve and utilize natural resources in the best possible way for the

prosperity of the people themselves.¹ This means that when a company engages in economic activities, it must protect the surrounding environment to the best of its ability for the well-being of the communities living in the areas surrounding the company.

Extractive industries, such as mineral and coal mining, play a vital role in supporting national economic development and providing energy resources and industrial raw materials.² In practice, extractive activities particularly in the mining sector often serve as a primary cause of environmental damage, as waste from mining operations leads to water pollution in the areas surrounding the mines, and the excavation pits alter the landscape to varying degrees, thereby disrupting the balance of the ecosystem.³ However, in practice, there are still mining companies that have not fully implemented the principle of due diligence in their economic activities.

In the context of environmental protection, the concept of the precautionary principle is a key element of environmental law. This principle emphasizes that when an activity has the potential to cause serious or irreversible harm to the environment, the absence of complete scientific certainty must not be used as a reason to delay preventive measures against such harm.⁴ Companies must be held accountable for impacts that cannot yet be clearly predicted.

This principle is explicitly adopted in Law No. 32 of 2009 on Environmental Protection and Management (PPLH Law), which establishes the precautionary principle as the foundation for environmental protection and management.⁵ In practice, regulatory dynamics in the extractive industries sector reveal a tension between balancing environmental protection and the need to accelerate investment.

Law No. 3 of 2020 Amending Law No. 4 of 2009 on Mineral and Coal Mining (the Minerba Law) does not explicitly define the precautionary principle as a fundamental principle, but rather reflects obligations regarding reclamation, post-mining activities, environmental safeguards, and the

¹ Undang Undang Dasar Negara Republik Indonesia Tahun 1945, Legis. No. Pasal 33 (1945).

² Nordina Sapitri dan Yunita Sopiana, "Produktivitas Pertambangan Batubara Terhadap Pertumbuhan Ekonomi di Provinsi Kalimantan Selatan," *JIEP: Jurnal Ilmu Ekonomi dan Pembangunan*. Vol 8, no. 2 (November 2025): 480–88, <https://doi.org/10.20527/jiep.v8i2.383>.

³ Mawardi Heru Prasetyo, Dewi Wahyuni K. Baderan, dan Marini Susanti Hamidu, "Dampak Kerusakan Lingkungan Akibat Eksploitasi Sumber Daya Mineral dari Kegiatan Pertambangan," *Hidroponik : Jurnal Ilmu Pertanian Dan Teknologi Dalam Ilmu Tanaman* 2, no. 2 (Mei 2025): 01–11, <https://doi.org/10.62951/hidroponik.v2i2.328>.

⁴ Elly Kristiani Purwendah, "PERLINDUNGAN LINGKUNGAN DALAM PERSPEKTIF PRINSIP KEHATI-HATIAN (PRECAUTIONARY PRINCIPLE)," *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan* Vol 1, no. 2 (Oktober 2019): 82–94, <https://doi.org/10.23887/jmppkn.v1i2.49>.

⁵ Undang Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, Legis. Lembaran Negara RI Tahun 2009 Nomor 140 (2009).

administrative and civil liabilities of mining companies.⁶ Thus, this Law can be said to only partially incorporate the precautionary principle in relation to environmental control; it does not establish this principle as a fundamental pillar within the framework of sustainable mining management.

A further significant change occurred through Law No. 11 of 2020 on Job Creation (the Job Creation Law), which introduced a risk-based business licensing scheme and streamlined environmental approval procedures.⁷ These reforms are intended to improve the ease of doing business for economic actors, but at the same time have sparked debate regarding the potential weakening of preventive functions in environmental law. A number of studies have concluded that simplifying the permitting process risks reducing the quality of substantive oversight if it is not balanced by strengthened control mechanisms and public participation.⁸

A comparison of the provisions in the Environmental Protection and Management Law (UU PPLH), the Mining Law (UU Minerba), and the Job Creation Law (UU Cipta Kerja) is relevant for assessing the extent to which the precautionary principle remains internalized or codified within the post-regulatory-reform mining legal framework. These regulatory changes were subsequently reviewed in Constitutional Court Decision No. 37/PUU-XIX/2021. In that decision, the Constitutional Court affirmed that the centralization of mining authority must not disregard the state's obligation to ensure environmental protection as part of citizens' constitutional rights. The Court also emphasized that the legality of a business permit does not absolve a company of its responsibility for the ecological impacts resulting from mining activities. This ruling demonstrates that investment policies and streamlined permitting processes must remain within the framework of protecting the constitutional right to a clean and healthy environment.

A number of studies have examined the precautionary principle from various perspectives, but have not yet comprehensively addressed regulatory reforms related to mining permitting mechanisms. In his study, Prasetyo (2024) examined the risk-based permitting oversight system following regulatory reforms, but his focus was more on the effectiveness of administrative oversight than on the harmonization of the precautionary principle across legal regimes. Meanwhile, in their study, Firdausiah et al. (2025) identified changes in environmental classification and approval mechanisms following the Job Creation Law and their relevance to the precautionary principle, but did not integrate a normative analysis of Law No. 3 of 2020 on Mineral and Coal Mining. These studies have not explicitly

⁶ Undang-undang (UU) Nomor 3 Tahun 2020 tentang Perubahan atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara., Lembaran Negara RI Tahun 2020 Nomor 147 (2020).

⁷ Undang Undang (UU) No 11 Tahun 2020 tentang Cipta Kerja, Lembaran RI Tahun 2020 Nomor 245 (2020).

⁸ Fitri Yanni Dewi Siregar, "Aspek Hukum Penyederhanaan Perizinan Badan Usaha di Bidang Lingkungan Hidup dalam Undang-Undang Cipta Kerja", *Jurnal Ilmiah Penegakan Hukum*, 7(2) (2020): 184–92, <https://doi.org/10.31289/jiph.v7i2.3968>.

analyzed whether the provisions in the Mineral and Coal Mining Law remain consistent with the principle of prudence as affirmed in the Environmental Protection and Management Law.

Several studies on Constitutional Court Decision No. 37/PUU-XIX/2021 have focused more on the constitutionality of the centralization of mining authority rather than on its relevance to the strengthening or weakening of the precautionary principle within the mining regime. Thus, there remains scope for research to conduct a conceptual analysis and examine regulatory conflicts regarding the precautionary principle and mining permitting following regulatory reform.

II. Research Method

This study employs normative legal research⁹ to examine corporate liability for environmental harm arising from extractive activities in Indonesia, particularly in the mineral and coal mining sector, following the Constitutional Court's ruling and the development of the risk-based licensing regime.¹⁰ The research is conducted through three interconnected legal approaches. First, the statutory approach is applied by identifying, collecting, and systematically examining the relevant constitutional provisions, mining legislation, environmental legislation, corporate liability provisions, and regulations governing risk-based business licensing, followed by an analysis of their hierarchy, substance, consistency, and interrelationship to determine the normative basis of corporate responsibility for environmental damage. Second, the case approach is applied by examining Constitutional Court Decision Number 37/PUU-XIX/2021, particularly the Court's legal reasoning concerning state control over natural resources, mining activities, environmental protection, and the responsibility of business actors, and by comparing the Court's reasoning with the applicable statutory framework to identify its implications for the construction of corporate liability.¹¹ Third, the conceptual approach is employed by identifying and analysing relevant legal doctrines and principles, including corporate liability, environmental liability, the precautionary principle, sustainable development, and state control over natural resources, in order to construct a coherent legal framework for determining the scope and limits of corporate responsibility in extractive activities.¹² The legal materials consist of primary legal materials, including legislation and judicial decisions, and secondary legal materials, including scholarly books, peer-reviewed journal articles, and authoritative legal commentaries. These materials are collected through a

⁹ Soerjono Soekanto, Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2020).

¹⁰ Peter Marzuki, *Penelitian Hukum*, Cetakan ke 13 (Jakarta: Kencana, 2017).

¹¹ Peter Mahmud Marzuki, *Penelitian Hukum*, edisi 1 (Jakarta: Kencana Prenada Media Group, 2010).

¹² Hajar M, *Model-Model Pendekatan Dalam Penelitian Hukum dan Fiqh* (Pekanbaru: UIN Suska Riau, 2015).

literature-based legal research process, classified according to their relevance to the research questions, and analysed qualitatively through legal interpretation and deductive reasoning. The analysis proceeds in four stages: identifying the applicable legal norms, interpreting the relevant statutory provisions and judicial reasoning, examining the coherence between mining licensing requirements and corporate environmental liability, and formulating a prescriptive legal argument regarding whether compliance with licensing requirements can exempt or limit corporate liability for environmental harm. The study therefore does not merely describe the existing regulatory framework but evaluates its normative adequacy in ensuring corporate accountability and sustainable governance of extractive activities.

III. Result & Discussion

A. Application of the Precautionary Principle in Granting Mining Activity Permits to Protect the Environment

Normatively, the precautionary principle is enshrined in Law No. 32 of 2009 on Environmental Protection and Management (UU PPLH). However, in the Mining Law, this principle is not specifically formulated as a guiding principle but is integrated through administrative and technical obligations.¹³ The implementation of licensing for extractive activities in accordance with the precautionary principle in environmental protection is essentially a preventive measure undertaken by the state, local governments, and company owners to minimize the risk of environmental damage, even though there is no research that definitively establishes the impacts of extractive activities. The precautionary principle emphasizes how to take preventive measures so that environmental degradation and pollution do not occur (Wibisana, 2008: 214).

The precautionary principle as it relates to mining licensing mechanisms requires that any activity with the potential to cause serious environmental impacts must undergo several processes to obtain a business license. Such as scientific assessments of environmental impact risks (AMDAL), public participation in the permitting process, control of potential impacts before they occur, and mechanisms for revoking permits or regulating operations in the event of a threat of serious damage.¹⁴ According to Bradley and Caldwell (1978), an EIA is a process of internalization within mining activities that occurs during the planning phase

¹³ Farhan Setyo Oetomo, "Sentralisasi Kewenangan dalam Pengelolaan Pertambangan atas Penurunan Peran Pemerintah Daerah dalam Pembaharuan hukum pertambangan," *Jurnal Riset Multidisiplin Edukasi* 2, no. 5 (Mei 2025): 380–96, <https://doi.org/10.71282/jurmie.v2i5.340>.

¹⁴ Azzahra Amalia W, "Pemberian dan Pencabutan Izin Usaha Pertambangan Nikel di Raja Ampat Dalam Perspektif Negara Hukum dan Demokrasi," *Jurnal Media Akademik* 3(6) (2025).

prior to decision-making. They argue that there is a guarantee that all relevant considerations must be incorporated into the planning process.¹⁵

The concept of the precautionary principle is a key element in modern environmental law. This principle asserts that if an activity has the potential to cause serious impacts or irreversible damage to the environment, scientific uncertainty must not be used as a reason to delay or disregard preventive measures (Philippe Sands 2018). This is linked to the view that the state and businesses are obligated to prioritize preventive measures rather than waiting for damage to occur. This principle is explicitly enshrined in Law No. 32 of 2009 on Environmental Protection and Management (Environmental Protection and Management Law), which establishes the precautionary principle as one of the fundamental principles guiding environmental protection and management.

The precautionary principle is a crucial element in modern environmental law. This principle asserts that if an activity has the potential to cause serious impacts or irreversible damage to the environment, scientific uncertainty should not be used as a reason to delay or ignore preventative measures (Philippe Sands 2018).¹⁶ This principle relates to the view that the state and business actors are obliged to prioritize preventive measures over waiting for damage to occur.¹⁷ This principle is explicitly accommodated in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH), which establishes precaution as one of the principles in the implementation of environmental protection and management.

In comparison, the provisions in Law Number 3 of 2020 concerning Mineral and Coal Mining (UU Minerba) are still more oriented towards investment certainty and the sustainability of mining business activities. Although the Minerba Law still requires permit holders to carry out reclamation and post-mining activities and comply with environmental regulations, the precautionary principle is not explicitly emphasized as a primary principle. The approach is more administrative and technical, encompassing licensing requirements, reclamation guarantees, and sanctions.

Amendments to Law Number 11 of 2020 concerning Job Creation (the Job Creation Law) resulted in deregulation and simplification of licensing processes, including in the mining and environmental sectors. Through a risk-based licensing scheme, several environmental instruments underwent adjustments, such as changes to the environmental approval mechanism and

¹⁵ Rahadyan Widarsadhika Wisnumurti, "Authority Of Local Governments In Issuing Environmental Impact Assessment Permits," *JURNAL HUKUM SEHASAN* 10(1), (April 2024), <https://doi.org/10.37676/jhs.v10i1.5934>.

¹⁶ Kathryn A Miller, "An overview of seabed mining including the current state of development, environmental impacts, and knowledge gaps," *Frontiers in Marine Science* 4 (2018): 312755.

¹⁷ Muhammad Jufri Dewa, et al, "Penegakan Hukum dalam Tata Kelola Pertambangan Berkelanjutan Berwawasan Lingkungan," *Halu Oleo Legal Research* 5(1) (2023): 62–75.

centralization of authority. From a precautionary principle perspective, a risk-based approach can be considered progressive if implemented strictly and based on comprehensive scientific studies. However, there are concerns that simplifying procedures could weaken its preventive function if oversight and law enforcement are not strengthened.

The reforms to Law Number 11 of 2020 concerning Job Creation introduced a new system, namely a risk-based business licensing approach, which shifts the environmental licensing mechanism from a conventional administrative approach to a classification of business activity risk levels.¹⁸ Under this scheme, business activities are categorized as low, medium, and high risk, with varying licensing consequences ranging from the requirement for a Business Identification Number (NIB) to the requirement to prepare an Environmental Impact Assessment (AMDAL) for high-risk activities.¹⁹ Conceptually, this mechanism appears to align with the precautionary principle, recognizing that the greater the potential impact, the stricter the control instruments applied.

According to Agustin et al. (2025), this alignment is theoretical and highly dependent on the quality of risk assessments and the integrity of supervisory institutions. Inaccurate risk classification can lead to activities with potentially high impacts being categorized lower than their actual risk level, resulting in disproportionate control mechanisms.²⁰ When viewed in light of the precautionary principle, the streamlining of permitting procedures through the OSS system should not, in essence, be interpreted as a lowering of environmental protection standards. Ease of doing business must remain balanced by comprehensive environmental risk assessment mechanisms, effective oversight, and strong interagency coordination. Thus, the simplification of licensing procedures should only streamline administrative aspects without compromising the substance of environmental controls. If data integration, oversight, and inter-agency coordination are not yet functioning optimally, there is a risk that the precautionary principle may be weakly applied in the licensing process, particularly in the extractive industries, which carry high environmental risks. Consequently, the effectiveness of the OSS system is not only measured by the ease and speed of licensing services but also by its ability to ensure that all business activities continue to meet environmental

¹⁸ Novita F, "Begini Beda Legalitas Kegiatan Usaha dengan Risiko Rendah, Menengah, dan Tinggi," *hukumonline*, 2021, <https://www.hukumonline.com/berita/a/begini-beda-legalitas-kegiatan-usaha-dengan-risiko-rendah--menengah--dan-tinggi-lt61a63902e5eb4/>.

¹⁹ Evan Devara, Maret Priyanta, dan Yulinda Adharani, "INOVASI PENDEKATAN BERBASIS RISIKO DALAM PERSETUJUAN LINGKUNGAN BERDASARKAN UNDANG-UNDANG CIPTA KERJA," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 1, no. 1 (September 2021): 101–16, <https://doi.org/10.23920/litra.v1i1.641>.

²⁰ Syifa Sofia Agustin, Andini Nurul S, dan Garri Selastiani, "Pengelolaan Sampah dan Limbah B3 dalam Perspektif Hukum Lingkungan: Disharmonisasi Regulasi dan Tantangan Prinsip Kehati-hatian," *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 2 (Desember 2025): 316–25, <https://doi.org/10.65310/psz79m75>.

protection standards and sustainable development goals.²¹ These impacts include a reduced quality of life for communities and the death of flora and fauna living around mining areas.

Simplifying procedures through licensing through the Online Single Submission (OSS) system is considered to facilitate business actors because it is accessible online. In practice, the implementation of the risk-based Online Single Submission (OSS) system still faces a number of significant challenges. Data from the Coordinating Ministry for Economic Affairs shows that the system's implementation still faces obstacles related to data integration between the central and regional governments, as well as coordination between relevant institutions.²²

Environmental approval no longer exists as a separate permit, but is integrated into business licensing.²³ This change in structure has given rise to controversy over whether the preventive function previously inherent in environmental permits has been reduced in normative significance. If environmental approval is perceived solely as an administrative prerequisite, then the essence of the precautionary principle, which requires substantive and in-depth evaluation, is potentially diminished. From a public participation perspective, this reform has also drawn criticism. Public participation in the environmental impact analysis (EIA) process following the Job Creation Law has been limited to those directly affected. This limitation is considered to narrow the scope for social control and reduce checks and balances against potential bias Economic impacts in the licensing process.²⁴ However, within the precautionary principle, transparency and public participation are crucial for early risk identification and preventing future environmental conflicts.

There are arguments in favor of a risk-based approach. This approach is considered more rational and efficient because it avoids lumping all business activities into one lengthy and bureaucratic procedure. By allocating oversight resources to high-risk activities, the state can theoretically increase control effectiveness. In the context of national economic development, this policy is seen as a compromise between environmental protection and the need to accelerate investment.

Analysis shows that the effectiveness of a risk-based system is largely determined by two main factors: first, the quality of risk analysis instruments

²¹ Vania Fahreyna, M, et.al, "Literatur Review: Dampak Penambangan Emas Terhadap Pencemaran Sungai di Indonesia.," *Banua: Jurnal Kesehatan Lingkungan* 5(1) (2025): 42–53.

²² Bakhrur Rokhman dkk., "PENYELENGGARAAN PERIZINAN BERUSAHA BERBASIS RISIKO MELALUI SISTEM ONLINE SINGLE SUBMISSION (OSS)," *Journal of Social and Economics Research* 6, no. 1 (Juli 2024): 1562–80, <https://doi.org/10.54783/jsr.v6i1.399>.

²³ Dewi Tuti Muryati, Dharu Triasih, dan Tri Mulyani, "Implikasi Kebijakan Izin Lingkungan Terhadap Lingkungan Hidup Di Indonesia," *JURNAL USM LAW REVIEW* 5, no. 2 (November 2022): 693–707, <https://doi.org/10.26623/julr.v5i2.5773>.

²⁴ Musa Krisnaputra, et.al, "Efektivitas Partisipasi Publik dalam Proses Analisis Dampak Lingkungan (AMDAL) Pasca Undang-Undang Cipta Kerja," *Iuris Studia: Jurnal Kajian Hukum* 6(3) (2025): 651–59.

and second, the capacity of post-licensing oversight. Without consistent and independent oversight, a risk-based system can become simply a deregulatory instrument that expedites permit issuance without ensuring substantive ecological protection. In the mining context, weak oversight can lead to under-compliance, where reclamation and waste management obligations are not optimally implemented.

B. Implications of Constitutional Court Decision Number 37/PUU-XIX/2021 on corporate responsibility for extractive activities

Constitutional Court Decision No. 37/PUU-XIX/2021 serves as an important reference in assessing the consistency of mining regulatory reforms with environmental protection principles.²⁵ In this decision, the Constitutional Court emphasized that state control over natural resources cannot be separated from the constitutional obligation to protect the environment and guarantee citizens' rights to a good and healthy environment. One of the main implications of this decision is the affirmation that the legality of a mining business permit does not automatically absolve a company from responsibility for the environmental damage it causes. In other words, an administrative permit is not a shield against legal liability. Companies can still be held administratively, civilly, or criminally liable if proven to have caused environmental pollution or damage.²⁶

Reclamation is an activity undertaken by companies to organize, restore, and improve the quality of the environment they use for economic activities (Ramadhan et al. 2025). When linked to the precautionary principle, reclamation and restoration are not merely administrative obligations, but concrete manifestations of the prevention and remedial strategies outlined in environmental law.

Post-mining restoration and reclamation are crucial activities before extractive activities cease.²⁷ Post-mining restoration and reclamation are inseparable from discussions on the precautionary principle and corporate responsibility following Constitutional Court Decision Number 37/PUU-XIX/2021. In the context of national mining law, reclamation and post-mining obligations are regulated by Law Number 3 of 2020 concerning Mineral and Coal Mining, as a form of responsibility for business permit holders to restore environmental functions after exploitation activities have ended.

²⁵ Putusan Mahkamah Konstitusi Nomor 37/PUU-XIX/2021 (2021).

²⁶ Annisa Khusnul R, et.al, "Tanggung Jawab Hukum Korporasi atas Pencemaran Lingkungan: Analisis Yuridis terhadap Konsep Pertanggung Jawaban dalam Undang-Undang Uo. 32 tahun 2009 dan Peraturan Pelaksananya," *Jurnal Tana Mana* 6(2) (2025): 294–304.

²⁷ Priyaji Agung Pambudi dkk., "Reklamasi Tambang Berkeadilan dan Mensejahterakan," *Jurnal Mineral, Energi, dan Lingkungan* 7, no. 2 (Maret 2024): 8, <https://doi.org/10.31315/jmel.v7i2.9064>.

The precautionary principle requires that companies, from the planning stage of mining activities, calculate environmental risks and prepare adequate mitigation and restoration measures.²⁸ Therefore, reclamation and post-mining plans should not be developed merely as a formality for obtaining permits, but rather as instruments for long-term risk management against landscape damage, water pollution, and ecosystem degradation.

This ruling not only challenges norms in the mining sector but also reaffirms the constitutionality of Article 33 of the 1945 Constitution regarding environmental protection. The Court explicitly stated that state control over natural resources must be interpreted as a mandate to regulate, manage, and supervise their utilization for the greatest prosperity of the people, which includes the dimension of ecological sustainability. In the context of the precautionary principle, this implication is highly significant because it emphasizes that ecological risks are the primary responsibility of business actors, not the community or the state.

The Court, in Constitutional Court Decision Number 37/PUU-XIX/2021, emphasized that the centralization of mining authority cannot be interpreted as a concentration of administrative power that reduces environmental protection standards. While centralization is permissible within the framework of effective governance, it must not eliminate oversight mechanisms, public participation, and ecological control, which are part of the state's constitutional obligations. From the perspective of environmental administrative law, centralized authority demands higher standards of accountability, as the risk of regulatory capture and weak horizontal control increases if not balanced by a transparent and participatory oversight system.²⁹

The Court's affirmation implies that the state retains a positive obligation to ensure that all mining activities are conducted in accordance with the principles of sustainability and prudence. The state's role is not limited to issuing permits; it must also consistently implement guidance, supervision, periodic evaluation, and law enforcement. In this context, centralization of authority must not result in a reduction in the role of regions in field monitoring or a weakening of public access to information and complaint mechanisms.

The obligation to provide reclamation guarantees and post-mining funds reflects the principle that ecological risks must be borne by business actors, not transferred to the state or the community. This aligns with the logic of the polluter pays principle, which runs alongside the precautionary principle. This principle stipulates that the costs of pollution must be borne

²⁸ Ferina Ardhi Cahyani dan Ariesta Wibisono Anditya, "Implementation of Precautionary Principles in Environmental Impact Assessment (EIA) in Indonesia," *Unifikasi : Jurnal Ilmu Hukum* 11, no. 01 (Juni 2024): 40–45, <https://doi.org/10.25134/unifikasi.v11i01.765>.

²⁹ Andri Gunawan Wibisana, "Campur Tangan Pemerintah dalam Pengelolaan Lingkungan: Sebuah Penelusuran Teoretis Berdasarkan Analisis Ekonomi Atas Hukum (Economic Analysis Of Law)," *Jurnal Hukum & Pembangunan* 47, no. 2 (Juli 2017): 151, <https://doi.org/10.21143/jhp.vol47.no2.812>.

by the business actors responsible for causing the pollution.³⁰ If reclamation is not implemented optimally, the company remains liable, even if Even though production activities have ceased,

The Constitutional Court Decision No. 37/PUU-XIX/2021 is not only declarative but also substantive, emphasizing that extractive activities must adhere to the principles of sustainability and prudence. However, its effectiveness still depends on consistent law enforcement and the oversight capacity of state institutions. As Kartikasari noted, the main problem with environmental protection in the mining sector lies not in a lack of norms, but rather in weak implementation and oversight. This decision strengthens the constitutional basis for corporate responsibility, but its realization is largely determined by consistent and accountable law enforcement practices.

IV. Conclusion

The implementation of the precautionary principle in mining permitting is currently undergoing a transformation from a substantive-ecological approach to a risk-based administrative approach through the Mining Law and the Job Creation Law; while the risk-based framework theoretically tightens standards for high-impact activities, the simplification of procedures and restrictions on public participation risk reducing the preventive function of environmental law to a mere administrative formality. Furthermore, Constitutional Court Decision No. 37/PUU-XIX/2021 reinforces the constitutional principle that the state's control over natural resources must be exercised for the greatest possible prosperity of the people while ensuring the protection of the environment as part of citizens' constitutional rights. The ruling affirms that holding a mining business permit does not absolve a company of its legal liability for the environmental pollution and damage it causes. Therefore, obligations regarding reclamation, post-mining management, the provision of environmental guarantees, and the implementation of effective oversight constitute concrete manifestations of the application of the precautionary principle and corporate responsibility in extractive activities. Ultimately, the successful application of the precautionary principle is determined not only by the existence of legal norms but also by consistent law enforcement, accountable oversight, public participation, and the harmonization of investment policies with environmental protection to achieve sustainable mining management.

³⁰ Elly Kristiani Purwendah dan Eti Mul Erawati, "Prinsip Pencemar Membayar (Polluter Pays Principle) Dalam Sistem Hukum Indonesia," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9(2) (2021): 340-355.

References

- A Miller, Kathryn. "An overview of seabed mining including the current state of development, environmental impacts, and knowledge gaps." *Frontiers in Marine Science* 4 (2018): 312755.
- Amalia W, Azzahra. "Pemberian dan Pencabutan Izin Usaha Pertambangan Nikel di Raja Ampat Dalam Perspektif Negara Hukum dan Demokrasi." *Jurnal Media Akademik* 3(6) (2025).
- Bakhrur Rokhman, Tobirin, Ali Rokhman, dan Denok Kurniasih. "Penyelenggaraan Perizinan Berusaha Berbasis Risiko Melalui Sistem Online Single Submission (OSS)." *Journal of Social and Economics Research* 6, no. 1 (2024): 1562–80. <https://doi.org/10.54783/jser.v6i1.399>.
- Cahyani, Ferina Ardhi, dan Ariesta Wibisono Anditya. "Implementation of Precautionary Principles in Environmental Impact Assessment (EIA) in Indonesia." *Unifikasi : Jurnal Ilmu Hukum* 11, no. 01 (2024): 40–45. <https://doi.org/10.25134/unifikasi.v11i01.765>.
- Devara, Evan, Maret Priyanta, dan Yulinda Adharani. "Inovasi Pendekatan Berbasis Risiko dalam Persetujuan Lingkungan Berdasarkan Undang-Undang Cipta Kerja." *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 1, no. 1 (2021): 101–16. <https://doi.org/10.23920/litra.v1i1.641>.
- F, Novita. "Begini Beda Legalitas Kegiatan Usaha dengan Risiko Rendah, Menengah, dan Tinggi." *Hukumonline*, 2021. <https://www.hukumonline.com/berita/a/begini-beda-legalitas-kegiatan-usaha-dengan-risiko-rendah--menengah--dan-tinggi-lt61a63902e5eb4/>.
- Fahreyna, M, et.al, Vania. "Literatur Review: Dampak Penambangan Emas Terhadap Pencemaran Sungai di Indonesia." *Banua: Jurnal Kesehatan Lingkungan* 5(1) (2025): 42–53.
- Farhan Setyo Oetomo. "Sentralisasi Kewenangan dalam Pengelolaan Pertambangan atas Penurunan Peran Pemerintah Daerah dalam Pembaharuan hukum pertambangan." *Jurnal Riset Multidisiplin Edukasi* 2, no. 5 (2025): 380–96. <https://doi.org/10.71282/jurmie.v2i5.340>.
- Hajar. *Model-Model Pendekatan Dalam Penelitian Hukum dan Fiqh*. t.t.
- Jufri Dewa, et al, Muhammad. "Penegakan Hukum dalam Tata Kelola Pertambangan Berkelanjutan Berwawasan Lingkungan." *Halu Oleo Legal Research* 5(1) (2023): 62–75.

- Khusnul R, et.al, Annisa. “Tanggung Jawab Hukum Korporasi atas Pencemaran Lingkungan: Analisis Yuridis terhadap Konsep Pertanggung Jawaban dalam Undang-Undang Uo. 32 tahun 2009 dan Peraturan Pelaksanaanya.” *Jurnal Tana Mana* 6(2) (2025): 294–304.
- Krisnaputra, et.al, Musa. “Efektivitas Partisipasi Publik dalam Proses Analisis Dampak Lingkungan (AMDAL) Pasca Undang-Undang Cipta Kerja.” *Iuris Studia: Jurnal Kajian Hukum* 6(3) (2025): 651–59.
- Kristiani Purwendah, Elly, dan Eti Mul Erawati. “Prinsip Pencemar Membayar (Polluter Pays Principle) Dalam Sistem Hukum Indonesia.” *Jurnal Pendidikan Kewarganegaraan Undiksha* 9(2) (2021): 340-355.
- Mahmud Marzuki, Peter. *Penelitian Hukum*. edisi 1. Kencana Prenada Media Group, 2010.
- Marzuki, Peter. *Penelitian Hukum*. Cetakan ke 13. Kencana, 2017.
- Mawardi Heru Prasetyo, Dewi Wahyuni K. Baderan, dan Marini Susanti Hamidu. “Dampak Kerusakan Lingkungan Akibat Eksploitasi Sumber Daya Mineral dari Kegiatan Pertambangan.” *Hidroponik : Jurnal Ilmu Pertanian Dan Teknologi Dalam Ilmu Tanaman* 2, no. 2 (2025): 01–11. <https://doi.org/10.62951/hidroponik.v2i2.328>.
- Muryati, Dewi Tuti, Dharu Triasih, dan Tri Mulyani. “Implikasi Kebijakan Izin Lingkungan Terhadap Lingkungan Hidup Di Indonesia.” *JURNAL USM LAW REVIEW* 5, no. 2 (2022): 693–707. <https://doi.org/10.26623/julr.v5i2.5773>.
- Pambudi, Priyaji Agung, Suyud Warno Utomo, Soemarno Witoro Soelarno, dan Noverita Dian Takarina. “Reklamasi Tambang Berkeadilan dan Mensejahterakan.” *Jurnal Mineral, Energi, dan Lingkungan* 7, no. 2 (2024): 8. <https://doi.org/10.31315/jmel.v7i2.9064>.
- Purwendah, Elly Kristiani. “Perlindungan Lingkungan dalam Perspektif Prinsip Kehati-Hatian (Precautionary Principle).” *Jurnal Media Komunikasi Pendidikan Pancasila dan Kewarganegaraan* 1, no. 2 (2019): 82–94. <https://doi.org/10.23887/jmpppk.v1i2.49>.
- Putusan Mahkamah Konstitusi Nomor 37/PUU-XIX/2021 (2021).
- Sapitri, Nordina, dan Yunita Sopiana. “Produktivitas Pertambangan Batubara Terhadap Pertumbuhan Ekonomi di Provinsi Kalimantan Selatan.” *JIEP: Jurnal Ilmu Ekonomi dan Pembangunan* 8, no. 2 (2025): 480–88. <https://doi.org/10.20527/jiep.v8i2.383>.
- Soekamto, Sri, Soerjono, Mamudji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Rajawali Pers, 2020.
- Syifa Sofia Agustin, Andini Nurul S, dan Garri Selastiani. “Pengelolaan Sampah dan Limbah B3 dalam Perspektif Hukum Lingkungan:

Disharmonisasi Regulasi dan Tantangan Prinsip Kehati-hatian.” *Journal of Legal, Political, and Humanistic Inquiry* 1, no. 2 (2025): 316–25. <https://doi.org/10.65310/psz79m75>.

Undang Undang Dasar Negara Republik Indonesia Tahun 1945, Legislation No. Pasal 33 (1945).

Undang Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, Legislation No. Lembaran Negara RI Tahun 2009 Nomor 140 (2009).

Undang Undang (UU) No 11 Tahun 2020 tentang Cipta Kerja, Lembaran RI Tahun 2020 Nomor 245 (2020).

Undang-undang (UU) Nomor 3 Tahun 2020 tentang Perubahan atas Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara., Lembaran Negara RI Tahun 2020 Nomor 147 (2020).

Wibisana, Andri Gunawan. “Campur Tangan Pemerintah dalam Pengelolaan Lingkungan: Sebuah Penelusuran Teoretis Berdasarkan Analisis Ekonomi Atas Hukum (Economic Analysis Of Law).” *Jurnal Hukum & Pembangunan* 47, no. 2 (2017): 151. <https://doi.org/10.21143/jhp.vol47.no2.812>.

Wisnumurti, Rahadyan Widarsadhika. “Authority Of Local Governments In Issuing Environmental Impact Assessment Permits.” *JURNAL HUKUM SEHASSEN* 10, no. 1 (2024). <https://doi.org/10.37676/jhs.v10i1.5934>.

Yanni Dewi Siregar, Fitri. *Aspek Hukum Penyederhanaan Perizinan Badan Usaha di Bidang Lingkungan Hidup dalam Undang-Undang Cipta Kerja*. 7(2) (2020): 184–92. <https://doi.org/https://doi.org/10.31289/jiph.v7i2.3968>.

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