



**CONSTITUTIONAL COURT
OF THE REPUBLIC OF INDONESIA**

**SUMMARY OF DECISION
FOR CASE NUMBER 77/PUU-XXII/2024**

Concerning

**Constitutionality of Priority Offering of Special Mining Business Permit Areas (WIUPK)
for Religious Community Organizations**

Petitioner	: Rega Felix
Type of Case	: Judicial Review of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining (Mineral and Coal Mining Law) against the 1945 Constitution of the Republic of Indonesia (1945 Constitution)
Subject Matter	: Article 6 paragraph (1) letter J of Mineral and Coal Mining Law is contrary to Article 33 paragraph (3) of the 1945 Constitution
Verdict	: On Preliminary Injunction: To dismiss the Petitioner's petition for preliminary injunction in its entirety On the Merits: To dismiss the Petitioner's petition in its entirety
Date of Decision	: Friday, January 3, 2025
Overview of Decision	:

Whereas the Petitioner is an Indonesian citizen who works as a non-civil servant university lecturer and advocate. The Petitioner believes that his rights are violated by the enactment of the norm of Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law because it has expanded the authority of the Central Government to offer special mining business permit areas (*Wilayah Izin Usaha Pertambangan Khusus* or WIUPK) on a priority basis to entities other than State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD), and then the provisions of Article 83A of Government Regulation Number 25 of 2024 concerning Amendments to Government Regulation Number 96 of 2021 concerning the Implementation of Mineral and Coal Mining Business Activities (Government Regulation 25/2024) has provided priority offers of WIUPK to religious organizations.

Whereas regarding the Court's authority, because the Petitioner petitions for a review of the constitutionality of statutory norms, *in casu* Article 6 paragraph (1) letter j of Mineral and Coal Mining Law against the 1945 Constitution, the Court has the authority to hear the petition *a quo*.

Whereas with respect to the legal standing, the Petitioner has been able to describe his legal standing as an individual Indonesian citizen who works as a lecturer and an advocate. The Petitioner is also able to explain, specifically and actually or at least potentially, that his constitutional rights have been violated by the enactment of the norm of Article 6 paragraph (1) letter j of the Mineral and Coal

Mining Law, which is being petitioned for review. The Petitioner has also been able to explain that there is a causal relationship (*causal verband*) between the alleged loss of his constitutional rights and the enactment of legal norms being challenged, namely that the unfair granting of priority for WIUPK to certain groups has the potential to create inequality in the management of natural resources, thereby causing such resources not to be utilized for the greatest prosperity of the people.

Whereas with regard to the petition for preliminary injunction, the Court is of the opinion that in the case *a quo*, the Court did not find a strong basis for postponing the enactment of the norm *a quo*, because this could actually create legal uncertainty. Delaying the enactment of the norm challenged by the Petitioner, in the absence of urgency and concrete evidence, would open opportunities for actions that are inconsistent with the principle of legal certainty. Therefore, there is no relevance in considering the Petitioner's petition for preliminary injunction concerning the postponement of the enactment of the norm being petitioned for review. Moreover, pursuant to Article 55 of the Constitutional Court Law, it is stipulated that "Judicial review of statutory regulations under a law that is being conducted by the Supreme Court must be suspended if the law forming the basis of such review is under review by the Constitutional Court, until a decision of the Constitutional Court is rendered." Therefore, the Petitioner's petition for preliminary injunction is legally unjustifiable.

The Court is of the view that the constitutional issue to be resolved is whether the phrase "priority" in Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law is inconsistent with Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, on the grounds that it grants expanded authority to the Central Government to offer Special Mining Business Permit Areas (WIUPK) to community organizations or any parties other than State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD), thereby potentially giving rise to discriminatory treatment through the creation of categorized social structures and posing risks of environmental damage.

Whereas the State, through the Central Government, bears responsibility for the utilization of mineral and coal resources within the jurisdiction of the Unitary State of the Republic of Indonesia by managing and utilizing such resources in an optimal, effective, and efficient manner, so as to encourage and support the development and independence of national industries based on mineral resources and/or coal energy. One form of management of mineral and coal resources in Indonesia is the enactment of Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law, which grants the Government the authority to determine, on a priority basis, the parties eligible to receive offers for Special Mining Business Permit Areas (WIUPK). Thus, the enactment of the norm *a quo* aims to ensure that natural resources can be managed and utilized optimally for the greatest prosperity of the people.

Whereas the initial steps in the management of mineral and coal mining commence with the determination of mining areas, which serves as the basis for the conduct of mining business activities. At this stage, mining areas are determined by the Central Government, following coordination with provincial regional governments in accordance with their respective authorities and consultation with the House of Representatives (Dewan Perwakilan Rakyat or DPR). Consultation with the DPR is essential because, as an institution representing the voice of the people, the DPR exercises a supervisory (control) function, including oversight of WIUPK activities to ensure their alignment with the objectives of the Mineral and Coal Mining Law. Furthermore, the Government determines mining areas, including Mining Business Areas (*Wilayah Usaha Pertambangan* or WUP), People's Mining Areas (*Wilayah Pertambangan Rakyat* or WPR), State Reserve Areas (*Wilayah Pencadangan Negara* or WPN), and Special Mining Business Areas (*Wilayah Usaha Pertambangan Khusus* or WUPK). The determination of mining areas must be carried out in accordance with the principles of transparency, participation, and accountability. In determining the areas and boundaries of Special Mining Business Permit Areas (WIUPK), the Central and Regional Governments coordinate with one another, with such determination being made after the fulfillment of the following criteria: (a) utilization of space and areas for mining business activities in accordance with statutory provisions; (b) reserve resilience; (c) national production capacity; and/or (d) fulfillment of domestic needs. Once the WIUPK has been determined, the subsequent stage is the granting of a Special Mining Business Permit (Izin Usaha Pertambangan Khusus or IUPK), namely a permit issued by the Minister to conduct mining business activities within the Special Mining Business Permit Area.

Whereas the expansion of the Central Government's authority in the management of mineral and coal mining under the Mineral and Coal Mining Law through the provision of "presenting WIUPK

offers on a priority basis” does not provide an explicit explanation of the meaning of the phrase “on a priority basis,” as the elucidation of the article *a quo* merely states that it is “sufficiently clear.” However, upon closer examination, the substance of Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law is closely related to the norm set out in Article 75 of the same Law. Although the norm of Article 75 of the Mineral and Coal Mining Law, *in casu* Article 75 paragraph (3), does not expressly refer to Article 6 paragraph (1) letter j, in substance, these provisions are interconnected.

The norm set out in Article 75 of the Mineral and Coal Mining Law is related to the preceding norm concerning the granting of IUPK, which is carried out based on considerations of changes in the status of National Reserve Areas (Wilayah Pencadangan Nasional or WPN) that have obtained the approval from the DPR and may subsequently be designated as Special Mining Business Permit Areas (WUPK). In this regard, areas that may be designated as WUPK may originate from former WIUP or former WIUPK, Contract of Work (*Kontrak Karya* or KK) areas, or Coal Mining Concession Agreement (*Perjanjian Karya Pengusahaan Pertambangan Batubara* or PKP2B) areas. The granting of IUPK as regulated in Article 75 of the Mineral and Coal Mining Law cannot be separated from the process stipulated in Article 28 of the same Law. In this context, Article 75 paragraph (3) of the Mineral and Coal Mining Law stipulates that State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD) are given priority in obtaining IUPK. This is because Article 75 paragraph (2) of the Mineral and Coal Mining Law also provides for the participation of other business entities besides BUMN and BUMD, namely private business entities. With respect to private business entities, the acquisition of IUPK is conducted through a WIUPK tender. Accordingly, there are two (2) schemes for obtaining IUPK, namely: (i) priority allocation to BUMN and BUMD [*vide* Article 75 paragraph (3) of the Mineral and Coal Mining Law]; and (ii) allocation through tender for private business entities.

With regard to the implementation of the tender, further provisions are set out in Government Regulation Number 25 of 2024, which stipulates that, in the requirements of WIUPK tenders for metal minerals or coal, prospective tender participants are required to satisfy three categories of requirements, namely administrative requirements, technical and environmental management requirements, and financial requirements. This tender process is intended to ensure that private business entities obtaining IUPK genuinely possess the capacity to manage the designated areas in a responsible and sustainable manner, and in accordance with the principles of fairness and transparency.

Upon closer examination, the use of the term “priority” in Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law is in fact intended to emphasize that the management of mineral and coal resources must be carried out for the greatest possible prosperity of the people, as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia. Accordingly, the principle of priority as regulated in the norm *a quo* must be understood as a mechanism to direct the management of mineral and coal resources toward parties that have the capacity to fulfill administrative, technical, environmental, and financial requirements [*vide* Article 75 of the Mineral and Coal Mining Law]. With respect to the Government’s authority to offer WIUPK “on a priority basis” as provided in Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law, within reasonable reasoning, the objective is to ensure that WIUPK offers are made only to business entities that have fulfilled the prescribed requirements, so that such entities may be prioritized in obtaining IUPK. In this regard, WIUPK offers are granted solely to business entities with legal entity status, with priority given to State-Owned Enterprises (BUMN) and Regional-Owned Enterprises (BUMD). In this context, priority in WIUPK offers is determined not only by the status of the area, but also by the results of evaluations that take into account economic considerations, technological capability, and environmental sustainability impacts.

Furthermore, when viewed from the legislative history, the provisions of Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law emerged as a result of amendments to Law Number 4 of 2009. In this case, the Court is of the view that, in formulating Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law, the lawmakers intended to emphasize that the offering of WIUPK, which falls under the authority of the Central Government, cannot be carried out in a non-selective or arbitrary manner, but must comply with the provisions set out in Article 75 paragraph (3) of Law Number 4 of 2009. This is because, although the wording of Article 75 paragraph (3) of Law Number 4 of 2009 has been amended, its substance remains the same, namely that BUMN and BUMD are prioritized in obtaining IUPK. Therefore, regardless of the phrase “priority” in the provisions of Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law, there is a phrase that functions as an affirmation of the existence of priority-based requirements in the offering of WIUPK, which are

subsequently articulated more clearly in Article 75 of the Mineral and Coal Mining Law governing the granting of IUPK. Pursuant to the above legal considerations, the Court is of the view that the phrase “priority” in Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law must be understood as an affirmative instrument intended to achieve national strategic objectives in the management of mineral and coal resources. Such priority does not merely reflect a preference for state-owned or regionally owned enterprises, but may also be accorded to private parties or business entities that fulfill the prescribed requirements, as part of efforts to address issues such as illegal mining. Accordingly, the phrase “on a priority basis” in Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law is not contrary to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, and therefore the Petitioners’ argument *a quo* is legally unjustifiable.

With regard to the Petitioner’s argument questioning the priority offering of WIUPK to community organizations that allegedly lack technical experience and are, therefore, considered to pose a potential risk of environmental damage, the Court is of the view that the Mineral and Coal Mining Law has established specific requirements for obtaining an IUPK, in the form of technical requirements and environmental management obligations, which are implemented through the WIUPK tender mechanism. In relation to technical requirements and environmental management, business entities are required to have personnel with a minimum of three (3) years of experience in the mining and/or geology sector, thereby underscoring the importance of technical expertise as an essential prerequisite for the management of mining areas. To assess commitment to environmental protection, prospective tender participants are also required to submit a statement of commitment to comply with the provisions of laws and regulations concerning environmental protection and management. These requirements constitute measures to mitigate the risk of environmental damage arising from mining activities, while at the same time promoting sustainable and responsible resource management. In addition, the tender participants are also required to prepare a Work Plan and Budget (*Rencana Kerja dan Anggaran Biaya* or RKAB) during exploration activities, which functions as a technical plan that must be adhered to in carrying out mining activities. This RKAB functions as a supervisory instrument to ensure that business entities conduct exploration activities in accordance with applicable technical and environmental standards. Therefore, the argument *a quo* of the Petitioner is legally unjustifiable.

Whereas, in addition to the two arguments set out above, the Petitioner also challenges the norm of Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law as being contrary to Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, on the grounds that it confers overly broad authority upon the Central Government to determine the priority offering of WIUPK to religious community organizations, as regulated in Government Regulation Number 25 of 2024. In this regard, although the Elucidation of Article 83A paragraph (1) of Government Regulation Number 25 of 2024 directly refers to the provisions of Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law, the Court considers it important to emphasize that government regulations, as implementing regulations, are enacted to properly implement laws [*vide* Article 5 paragraph (2) of the 1945 Constitution of the Republic of Indonesia]. This means that the formulation of government regulations must consistently adhere to the provisions of the law and must not be contrary to or inconsistent with the substantive content of the law. As the Petitioner’s argument *a quo* does not concern the constitutionality of the norms of Article 6 paragraph (1) letter j of the Mineral and Coal Mining Law, but rather relates to the legality of its implementing regulations, *in casu* Government Regulation Number 25 of 2024, such matter falls outside the Court’s jurisdiction to adjudicate. Therefore, the argument *a quo* of the Petitioner is legally unjustifiable.

Accordingly, the Court subsequently passes down a decision, the verdict of which states as follows:

On Preliminary Injunction:

To dismiss the Petitioner’s petition for preliminary injunction in its entirety.

On the Merits:

To dismiss the Petitioner’s petition in its entirety.