

Kepastian Hukum dan Keadilan terhadap Pengaturan Peningkatan Nilai Tambah (PNT) Mineral dan Batubara di Indonesia dalam *Economic Analysis Of Law* (EAL)

INTISARI

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Penelitian ini bertujuan untuk menganalisis dasar penerapan pendekatan *Economic Analysis of Law* (EAL) dalam pembentukan peraturan pertambangan di Indonesia, serta mengevaluasi kepastian hukum dan keadilan distributif dalam kebijakan Peningkatan Nilai Tambah (PNT) mineral dan batubara melalui pendekatan EAL.

Penelitian ini menggunakan metode hukum normatif dengan pendekatan perundang-undangan dan konseptual, didukung oleh wawancara mendalam sebagai klarifikasi terhadap data sekunder. Analisis dilakukan secara kualitatif dengan penalaran deduktif.

Hasil penelitian menunjukkan bahwa meskipun EAL belum secara eksplisit diatur dalam sistem perundang-undangan Indonesia, esensi nilainya telah diakomodasi melalui *Regulatory Impact Analysis* (RIA) dalam penyusunan Naskah Akademik. Namun, implementasinya masih lemah akibat ketiadaan pedoman teknis, rendahnya efektivitas evaluasi regulasi, serta belum terakomodasinya prinsip keadilan distributif secara komprehensif. Selain itu, kebijakan PNT belum menjamin kepastian hukum karena masih terdapat disharmonisasi dan kekosongan norma dalam lima aspek utama, yaitu perluasan subjek prioritas WIUP/WIUPK, pelaporan eksplorasi, transisi KK dan PKP2B ke IUPK, pengaturan mineral kritis dan strategis, serta tumpang tindih pengelolaan produk samping. Ketidakpastian hukum ini berdampak pada rendahnya minat investasi dan potensi kerugian terhadap negara dan pelaku usaha pertambangan. Lebih lanjut, implementasi PNT di Sulawesi Tengah, Maluku Utara, dan Sumatera Selatan menunjukkan bahwa dampak kebijakan cenderung negatif, terutama pada aspek sosial, kesehatan, dan lingkungan. Dari 39 indikator yang dianalisis, mayoritas menunjukkan hasil *cost* yang jauh lebih banyak dibandingkan *benefit* yang diterima masyarakat sekitar kawasan tambang. Hal ini menunjukkan bahwa kebijakan PNT gagal mencerminkan keadilan distributif.

Kata Kunci: *Economic Analysis of Law* (EAL), Peningkatan Nilai Tambah (PNT), mineral dan batubara, kepastian hukum, keadilan distributif

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Legal Certainty and Justice in Indonesia's Mineral and Coal Downstreaming Regulation within the Framework of Economic Analysis of Law (EAL)

ABSTRACT

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This research aims to analyze the foundational application of the Economic Analysis of Law (EAL) approach in the formulation of mining regulations in Indonesia, as well as to evaluate the legal certainty and distributive justice of the country's mineral and coal downstreaming regulation through the lens of EAL.

The study employs a normative legal method using statutory and conceptual approaches, supported by in-depth interviews to clarify and complement secondary data. The analysis is conducted qualitatively using deductive reasoning.

The findings show that although EAL is not explicitly regulated within Indonesia's legislative framework, its core values have been partially incorporated through Regulatory Impact Analysis (RIA), particularly in the drafting of academic papers for legislation. However, its implementation remains weak due to the absence of clear technical guidelines, low effectiveness in regulatory evaluation, and the lack of comprehensive integration of distributive justice principles. Furthermore, the downstreaming regulation has not yet ensured legal certainty, as reflected in regulatory disharmony and normative gaps in five key areas. These include the expansion of prioritized WIUP and WIUPK holders, unclear standards for exploration reporting, inconsistent procedures for transitioning from KK and PKP2B to IUPK, the absence of technical regulation for critical and strategic minerals, and overlapping regulatory regimes for by-product management. These uncertainties have negatively affected the investment climate and pose risks of financial loss to both the state and mining businesses. In addition, the implementation of the downstreaming regulation in major processing regions such as Central Sulawesi, North Maluku, and South Sumatra has shown predominantly negative impacts, particularly in social, environmental, and public health aspects. Based on the analysis of 39 indicators, the regulation has imposed significantly greater costs than benefits on communities surrounding mining areas. This demonstrates that the downstreaming regulation has failed to achieve distributive justice within the EAL framework.

Keywords: Economic Analysis of Law (EAL), Value-Added Enhancement (PNT), mineral and coal, legal certainty, distributive justice

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