

Analysis of Priority Criteria In Offering Special Mining Business Permit Areas (WIUPK) To Religious Community Organizations

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ABSTRACT

This study examines the legal implications and urgency of setting priority criteria for the offering of Special Mining Business License Areas (WIUPK) to Religious Community Organization-Owned Enterprises (BU-OMK) as stipulated in Article 83A of Law Number 3 of 2020 and Article 75 of Government Regulation Number 96 of 2021. The main focus of the study lies in the lack of norms governing priority parameters, including aspects of feasibility, operational capacity, and verification mechanisms for BU-OMK. Using a normative juridical method based on analysis of laws and regulations and the principles of good mining governance, this study finds that this lack of regulation creates legal uncertainty and opens up broad scope for interpretation for decision-makers. As a result, there is potential for unequal treatment, conflicts of interest, and abuse of power in the process of granting WIUPK. This study also shows that giving priority to BU-OMK is a form of positive discriminatory policy (affirmative discrimination) that is theoretically justifiable, as long as it is implemented through a proportional, objective, and accountable mechanism. However, without clear priority criteria—including legality of the business entity, financial capability, technical capacity, environmental protection assurance, and governance integrity—this policy risks inefficiency and potential irregularities, including the use of BU-OMK as intermediaries for certain interests (beneficial ownership risks). Therefore, this study emphasizes the need for the establishment of comprehensive, auditable derivative regulations that align with the principles of government administrative law to ensure the effectiveness, accountability, and sustainability of the WIUPK bidding policy.

Keywords: Religious Community Organization-Owned Enterprises, Good Mining Governance, Affirmative Discrimination, Legal Certainty, Mining Licensing.

1. INTRODUCTION

Indonesia is a country with abundant natural resources, including minerals and coal, forest products, and marine potential. Mineral resources are a strategic sector, making Indonesia the world's largest producer of mineral resources. According to a 2023 report by the Ministry of Energy and Mineral Resources, Non-Tax State Revenue (PNBP) from the mining sector reached IDR 300.3 trillion, or 116% of the target. The non-oil and gas sector contributed 58% of the total PNBP. The government also estimates that national coal production will reach 710–730 million tons per year in 2024–2026. This data demonstrates the vital role mining plays in supporting the national economy. The mining sector's significant contribution to state revenues places natural resource management as a strategic issue requiring measured and sustainable regulatory policies. Accordingly, the state has an obligation to regulate the use of natural resources in accordance with



sustainability principles, ensuring optimal utilization of the resources without compromising environmental sustainability and public welfare. This is crucial because the sustainability of the mining sector relates not only to state revenues but also to the potential environmental and social impacts that accompany it.

The state's position in managing natural resources is affirmed in Article 33 paragraph (3) of the 1945 Constitution, which states that the land, water, and natural resources contained therein are controlled by the state and used to the greatest extent possible for the prosperity of the people. The phrase "controlled by the state" provides legitimacy for the state to regulate, manage, and supervise the mining sector. However, this control is not interpreted as absolute ownership by the state, but rather a mandate to ensure that the utilization of natural resources is for the public benefit. The concept of state control is implemented through policies, regulations, and the granting of permits that serve as the legal basis for business entities to carry out mining activities. The state acts as a regulator and supervisor, providing legal certainty while ensuring that mining activities comply with statutory provisions. Thus, the existence of strong regulations is a fundamental element in maintaining a balance between economic interests and public interests. In line with the ongoing national development, the mining sector is one of the important pillars in economic development. Regulations regarding the mining sector were first compiled in Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law), which was later amended by Law Number 3 of 2020. This change has significant implications, especially with the centralization of licensing authority in the central government through the Ministry of Energy and Mineral Resources (ESDM). (Ali, 2002; Handoko, 2018) (Fadli & Hadi, 2023; Maxeiner, 2008)

As a follow-up to the Mineral and Coal Mining Law, the government issued Government Regulation Number 96 of 2021, which regulates the implementation of mining businesses. This regulation was further elaborated through Ministerial Regulation of Energy and Mineral Resources Number 7 of 2020, as amended by Ministerial Regulation of Energy and Mineral Resources Number 16 of 2021. This regulation not only regulates the granting of Mining Business Permits (WIUP) and Mining Business Permits (WIUPK) but also introduces aspects of ownership transparency through beneficial ownership obligations. The most recent development occurred through Government Regulation Number 25 of 2024, which included Article 83A, providing priority bidding opportunities for Mining Business Permits (WIUPK) to business entities owned by religious community organizations. This provision is groundbreaking because it opens a non-auction route for granting Mining Business Permits (WIUPK). Normatively, this policy is intended to improve community welfare, although in practice it raises a number of legal and policy



questions. The legitimacy for religious organizations to establish business entities refers to Law Number 16 of 2017 concerning Community Organizations. However, the strengthening of regulations through Law Number 2 of 2025 concerning the Fourth Amendment to Law 4/2009 has sparked controversy, as it expands the role of religious organizations in strategic industries. Concerns arose due to the lack of clear technical parameters regarding the eligibility of religious organizations to obtain WIUPK. Although Article 83A of Government Regulation 25/2024 and Article 51 of Law 2/2025 have provided a legal basis for priority offering to religious organizations, these regulations leave a normative vacuum. This includes the lack of regulations on eligibility criteria, mandatory technical, financial, and administrative capacity. The definition of a religious organization in Presidential Regulation 76/2024 is also still general, thus providing no clarity regarding which religious organizations are eligible.

Presidential Regulation Number 76 of 2024 in conjunction with Presidential Regulation 70 of 2023 does contain general criteria for mass organizations, but they are not priority requirements for receiving a Special Mining Business Permit (WIUPK). These provisions serve more as a prerequisite for organizational legality, rather than as criteria for assessing whether mass organizations are eligible to participate in the mining sector. This indicates a regulatory gap that has not been filled by legislation or derivative regulations. This situation is further contrasted with the regulations applicable to state-owned enterprises (BUMN) and regional-owned enterprises (BUMD), which have clear administrative, technical, and financial eligibility standards as stipulated in ESDM Ministerial Regulation Number 14 of 2023. The absence of similar requirements for religious organizations poses the risk of abuse of authority, the potential for stalled mining, and permit trading practices that are detrimental to the state. Therefore, the presence of more detailed and measurable implementing regulations is urgently needed to ensure that the implementation of Article 83A runs according to the principles of legal certainty, accountability, and transparency. The existing normative gap has created legal uncertainty and has the potential to hamper policy effectiveness. Based on these conditions, normative legal research is needed to comprehensively examine the gaps in norms in the regulation of priority offers for WIUPK for business entities owned by religious organizations. (Fadli & Hadi, 2023; Maxeiner, 2008)

2. RESEARCH METHODS

The research method used is Normative Juridical Research. The approach used in this study is carried out using the Statutory Approach and Conceptual Approach. Types and Sources of



Legal Materials are Primary Legal Materials and Secondary Legal Materials. Legal Material Analysis Techniques use various interpretation methods, including grammatical interpretation and systematic interpretation. Grammatical interpretation, namely interpreting words in laws in accordance with language rules, grammatical legal rules. In the technique of collecting legal materials in this study, it is carried out by analyzing and compiling them in a structured manner to answer the legal problems or legal issues in the research. Grammatical Interpretation is usually used to ensure that legal interpretations are in accordance with the objectives and basic principles of legal texts. This interpretation method begins with the meaning as used in general conversation. Juridical techniques that are widely used or considered standard. (Diantha, 2016; Marzuki, 2010)

3. RESULTS AND DISCUSSION

Legal Implications of the Lack of Priority Criteria for Offering Special Mining Business Permit Areas (WIUPK) for Business Entities Owned by Religious Community Organizations.

The government's policy of granting priority for the bidding of Special Mining Business Permit Areas (WIUPK) to Business Entities owned by Religious Community Organizations (Ormas Keagamaan) is a legal measure that has sparked widespread debate within the framework of national mining governance. Normatively, this policy stems from the mandate of Article 83A of Law Number 3 of 2020, which opens up space for the priority bidding of WIUPK to certain business entities. However, in practice, this regulation has not established clear, detailed, and measurable criteria regarding what parameters must be met by Religious Organizations and the business entities they establish to be eligible for this priority. This regulatory gap has given rise to various legal questions regarding legal certainty, orderly mining administration, and the potential for discriminatory practices and abuse of authority in the WIUPK bidding process. (Fadli & Hadi, 2023; Maxeiner, 2008).

The absence of comprehensive legal criteria leaves Religious Organizations in an ambiguous position between the privileges granted by the state and the obligation to comply with the principles of good mining governance. In the context of administrative law, any government action granting privileges (bestowal of privileges) must be based on measurable normative justification. However, when the parameters of eligibility, financial capacity, corporate governance standards, and technical and environmental requirements are not adequately explained, the priority offering is vulnerable to being questioned as a policy that contradicts the general principles of good governance (AUPB), particularly the principles of accuracy, prudence, transparency, and justice. (Sutedi, 2022; Haryadi, 2018)



Furthermore, the lack of clear criteria for Special Mining Business Permit Areas (WIUPK) also has the potential to create conflicts of authority between the central government, regional governments, and mineral and coal licensing agencies. Within the framework of asymmetric decentralization in the mining sector, the central government does have dominant authority, but the WIUPK bidding process still requires technical coordination with regional governments due to factors such as field conditions, the presence of local communities, regional accessibility, and previous licensing history. Without unified criteria guidelines, regional governments have the potential to reject, challenge, or subjectively interpret WIUPKs offered to religious organizations, potentially leading to disharmony in mining policy.

From an investment law perspective, the lack of regulatory criteria also impacts market predictability and certainty for non-religious investors who previously operated under an open competition regime in the WIUPK auction. When one group of economic actors gains priority without objective, legally verifiable criteria, this has the potential to undermine a healthy competitive climate and create moral hazard. Investors may view this policy as a form of political intervention in the mining sector, ultimately weakening the principles of business certainty, a key requirement in the natural resources sector.

No less significant implications arise in the accountability aspect of Religious Organizations as recipients of Special Mining Business Permits (WIUPK). The structure of religious organizations is fundamentally not designed to carry out high-risk extractive business activities, whether technically, financially, or environmentally. Without criteria that compel them to form professional business entities, have adequate capital, and meet mining safety standards, the potential for environmental violations, operational incompetence, or permit abuse becomes much greater. The absence of these criteria also complicates law enforcement in the event of a failed mining operation. In the context of legal politics, the lack of criteria indicates that policymakers have not provided a strong argumentative basis for the normative reasons for granting priority to Religious Organizations (WIUPK). In fact, every affirmative policy must be based on measurable rationale, for example, in the context of empowering the community's economy, redistributing mining benefits, or strengthening the economic capacity of religious organizations. Without these criteria, prioritizing Special Mining Business Permits (WIUPK) can be seen as purely political and potentially creating conflicts of interest at the national and local levels.

From an environmental law perspective, the absence of technical criteria also contradicts the principles of sustainable development mandated by Law Number 32 of 2009. Mining operations require high technical and managerial capabilities, as well as compliance with various



environmental licensing instruments such as AMDAL (Environmental Impact Assessment), B3 waste permits, and reclamation/post-mining plans. If religious organizations are not assessed using strict technical criteria, there is a significant risk that mining operations will be conducted without adequate preparation, ultimately resulting in environmental pollution, social conflict, and ecosystem damage. In the context of governance, this legal gap creates the potential for overlap between statutory norms and the discretion of government officials. When norms are unclear, officials have extensive room for interpretation in determining whether an organization meets the requirements. This excessively broad room for interpretation is vulnerable to being exploited for interests beyond the purpose of establishing regulations, such as political lobbying, conflicts of interest, or nepotism in the distribution of WIUPK (Special Mining Areas). This contradicts the principle of the rule of law, which requires limiting power through legal certainty. (Fadli & Hadi, 2023; Maxeiner, 2008)

The lack of criteria also impacts internal and external oversight. Internally, the Ministry of Energy and Mineral Resources lacks an objective assessment instrument to evaluate the suitability of religious organizations (CSOs). Externally, oversight bodies such as the Supreme Audit Agency (BPK), the Corruption Eradication Commission (KPK), or the Ombudsman will have difficulty assessing whether the WIUPK bidding process was conducted according to procedure. This lack of clarity weakens the checks and balances mechanism, which is crucial in mining governance, which is prone to corruption. From a local community rights perspective, the unclear WIUPK criteria for religious organizations creates uncertainty for communities living near mining areas. Communities are uncertain whether CSOs have the capacity to manage the mine responsibly, whether they will involve them in operational planning, and whether their access to land or traditional economic resources will be disrupted. This uncertainty can trigger social rejection, conflict dynamics, and resistance to mining projects.

The lack of criteria can also be constitutionally challenged. The 1945 Constitution stipulates that natural resource management must be utilized to the greatest possible extent for the prosperity of the people. If priority is given to certain groups within a Special Mining Business Area (WIUPK) without an objective evaluation mechanism, the policy could be deemed to violate the principles of non-discrimination and equality before the law. The potential for judicial review to the Supreme Court or the Constitutional Court is also wide open if this policy is deemed to violate general principles and the constitution. From a corporate law perspective, the lack of eligibility criteria makes it vulnerable to religious organization (CSO) business entities being established purely for formal purposes without a professional management structure. These



business entities may lack competent directors and commissioners in the mining sector. This lack of clarity opens up opportunities for third parties, including non-religious investors or certain political groups, to exploit CSO business entities to gain access to WIUPKs without having to participate in an open tender mechanism. This phenomenon can create "proxy corporations," which violate the principle of corporate transparency. (Ali, 2002; Handoko, 2018)

The lack of WIUPK criteria also creates problems in mining financing. Financial institutions typically require assurance of business feasibility before providing funding. If a religious organization (Organisasi Masyarakat Keagamaan) lacks a track record in the mining industry, and the government fails to provide feasibility indicators, banks and investors will hesitate to provide financing. As a result, many Ormas (Organisasi Masyarakat) businesses are potentially unable to execute WIUPK permits, rendering the permits unproductive and hindering the optimization of mineral resources. In terms of licensing law, the lack of WIUPK criteria can lead to lengthy and inconsistent bureaucratic licensing processes. Permit-issuing officials can issue additional requirements on an ad hoc basis, varying from case to case. This inconsistency not only violates the principle of equality before the law but also has the potential to give rise to administrative disputes in the State Administrative Court (PTUN) when applicants feel disadvantaged by official decisions lacking a strong normative basis.

Furthermore, the lack of criteria also creates uncertainty for the government itself in implementing regulations and revoking permits. If a WIUPK is not properly implemented by a religious organization, the government will have difficulty determining whether the permit revocation was based on objective parameters or merely subjective interpretation. This could lead to lawsuits with the State Administrative Court (PTUN) because the organization feels the revocation is disproportionate or lacks a clear basis for evaluation. The absence of WIUPK criteria also hampers the process of integrating national mining data, including the Minerba One Data Indonesia (MODI) and Minerba One Map Indonesia (MOMI) systems. These systems require indicator-based data, including business entity classification, permit track records, and the technical and financial capacity of permit holders. Without consistent WIUPK criteria, the data recorded in the system will be inconsistent, complicating national planning and cross-regional oversight.

From a local political economy perspective, the presence of religious organizations (Organisasi Masyarakat Keagamaan) that are not selected using objective criteria can disrupt the balance of social relations between local community groups and certain religious organizations. Prioritizing without criteria can be perceived as political bias toward certain groups, trigger



jealousy between religious organizations, and strengthen the politicization of identity in the mining sector. This type of politicization is dangerous because it touches on the sensitive relationship between religion and the economy. The regulatory vacuum also weakens the government's ability to measure the impact of affirmative action policies. Without clear indicators, the government cannot assess whether offering priority WIUPK areas to religious organizations actually improves community welfare, adds economic value to mining, or simply creates an unproductive permit structure. Public policies that cannot be evaluated will fail to achieve national development goals. From an academic perspective, the lack of WIUPK criteria indicates a disconnect between legal norms and the technocratic framework of mining policy. Affirmative action policies require economic, social, and environmental impact analysis before being implemented. However, without clear criteria, the WIUPK policy for Religious Organizations appears to be unfounded, threatening regulatory coherence and the sustainability of the mining sector as a pillar of the national economy. Ultimately, the legal implications of the lack of WIUPK criteria for Religious Organizations are extensive—covering constitutional aspects, government administration, mining governance, community rights, and the potential for legal disputes. Therefore, derivative regulations are needed that establish comprehensive criteria, encompassing technical, financial, governance, and environmental aspects, as well as periodic evaluation mechanisms. Without such regulations, this policy will continue to face legal challenges and potentially disrupt the stability of national mineral resource management.

Regulations on Priority Criteria for Offering Special Mining Business Permit Areas (WIUPK) to Business Entities Owned by Religious Community Organizations

The regulation regarding the priority of offering Special Mining Business Permit Areas (WIUPK) to business entities owned by religious organizations (Ormas Keagamaan) is a form of state affirmative policy that has broad legal consequences in the governance of the mineral and coal sector. Although Article 83A of Law Number 3 of 2020 provides a normative basis for the government to prioritize certain business entities, the regulation does not establish clear, measurable, and objective selection criteria to determine the eligibility of Ormas business entities to receive priority WIUPK. This normative gap encourages the need for more detailed regulations, both through Government Regulations and Ministerial Regulations as implementing instruments that must fulfill the principle of legal certainty in administrative law. The absence of objective criteria in the initial regulation creates very broad room for interpretation for the government in determining which Ormas business entities are eligible to receive WIUPK. In administrative law, unlimited room for interpretation is prone to arbitrary practices and can conflict with the principle



of non-discrimination. Therefore, regulations must contain substantive parameters that serve as the basis for the government in determining the eligibility of CSO business entities, including technical capacity, financial capability, governance track record, compliance with environmental regulations, and readiness to implement mining safety aspects. (Fadli & Hadi, 2023; Maxeiner, 2008)

Criteria regulations are also crucial to ensure that religious organization (CSO) business entities are not formed merely as a formality. In practice, there is the potential for the formation of pseudo-corporations (shell corporations) used by third parties as vehicles to indirectly gain access to WIUPK (Ministry of Energy and Mineral Resources) areas. When regulations do not contain strict provisions regarding ownership structure, operational control, and managerial independence, the risk of permit abuse increases and contradicts the objectives of policy affirmation. To prevent such practices, regulations must include requirements regarding organizational structure and competent human resources. The mining industry is a high-risk and capital-intensive sector, so CSO business entities must be able to demonstrate the presence of experts who meet mining competency standards and operational officers with official certification. Regulations on technical competency are already stipulated in the Ministerial Regulation of the Energy and Mineral Resources (ESDM), so proposed WIUPK criteria should require compliance with these provisions.

Besides technical aspects, financial capability is a fundamental criterion that must be regulated. Mining operations require significant funding, both in the exploration and production stages, and post-mining. Without adequate financial capability, CSOs are vulnerable to failure in fulfilling their obligations regarding reclamation, waste management, and environmental restoration. Therefore, regulations need to establish requirements for audited financial statements, proof of capital, and the ability to obtain bank or investor funding. Regulations on the criteria for Special Mining Business Permits (WIUPK) must also include requirements related to compliance with environmental provisions. This is in accordance with the precautionary principle stipulated in the Law on Environmental Protection and Management. Because mining activities directly impact the ecology, CSOs must demonstrate their ability to meet AMDAL (Environmental Impact Assessment) standards, Environmental Management Plans (RKL-RPL), and realistic reclamation and post-mining plans. Without regulations emphasizing this, prioritizing Special Mining Business Permits (WIUPK) could lead to extensive environmental damage.

In addition to technical, financial, and environmental aspects, regulations also need to address the principles of good corporate governance. This includes transparency, accountability, responsibility, independence, and fairness. When business entities owned by religious organizations are not required to implement good corporate governance principles, the risk of



conflicts of interest, abuse of authority, and corruption increases. Good regulations must prioritize governance as a primary parameter that must be met before a WIUPK is granted. From a formal legal perspective, regulations regarding WIUPK criteria must clarify the relationship between the business entity of the religious organization and its parent organization. Many religious organizations have large, multi-level organizational structures. Therefore, regulations must determine whether approval for mining business management must come from the central level, regionally, or through a legally established legal entity. Without such regulations, the potential for internal conflict within the organization is significant and could hamper the smooth operation of mining operations.

Another important aspect is regulating the relationship between religious organizations and local communities. Mining is often located in customary areas, villages, or areas with the potential for agrarian conflict. Regulations should include obligations for religious organizations to conduct public consultations, involve local communities, and establish dialogue-based dispute resolution mechanisms. The principle of Free, Prior, and Informed Consent (FPIC) can be used as a reference, although it is not yet explicitly recognized in national law. Regulations on the criteria for Special Mining Business Permits (WIUPK) must also consider data integration and public transparency. To improve mining governance, the government has developed the Minerba One Data Indonesia (MODI) and Minerba One Map Indonesia (MOMI) systems. The WIUPK criteria for religious organizations should align with these systems and require the use of digital technology in production reporting, royalty payments, and environmental monitoring.

Regulations regarding the priority criteria for Special Mining Business Areas (WIUPK) must also consider the prevention of money laundering (TPPU). The mining industry is a sector vulnerable to being used as a means of money laundering due to its high commodity value and complex international trade mechanisms. If religious organizations (Organisasi Masyarakat Keagamaan Keagamaan) are not required to implement Know Your Beneficial Owner (KBI) systems and anti-money laundering compliance, then the priority of Special Mining Business Areas (WIUPK) can be exploited by irresponsible parties to launder illegal funds through Organisasi structures that have historically not been identified with business activities. Therefore, regulations must explicitly require the application of principles of compliance with the Anti-Money Laundering Law.

Furthermore, regulatory criteria must also include limitations and oversight of potential conflicts of interest between the management of mass organizations and the established business entities. In many cases, business entities owned by mass organizations are potentially controlled by certain internal actors who use their authority personally. Regulations must establish clear



provisions regarding the fit and proper test for commissioners, directors, and controlling shareholders. Such regulations are commonly applied to state-owned enterprises and financial institutions, so their application to religious mass organization business entities represents a form of harmonization of governance obligations. From a state administration perspective, the priority criteria for WIUPK must be formulated in the form of a verifiable evaluation matrix. This is crucial to ensure that the prioritization process is not subjective. Evaluation should be based on quantitative indicators such as issued capital, net assets, debt ratio, exploration investment value, and reclamation financing capacity. Without measurable indicators, the selection process will rely on official interpretation, which can lead to legal flaws in the form of abuse of authority (*detournement de pouvoir*).

These criteria should also encompass compliance with taxes and non-tax state revenue (PNBP). Business entities granted a Special Mining Business License (WIUPK) must demonstrate a track record of timely payment of fiscal obligations. Clear regulations regarding fiscal compliance will increase state trust in CSO business entities. This also aligns with the principle that entities granted priority by the state must make a tangible contribution to state revenue. WIUPK priority regulations are also inseparable from the national investment policy framework. The government has designated several sectors as strategic priorities, and the mining sector is one of them. Therefore, the criteria for CSO business entities must align with the National Medium-Term Development Plan (RPJMN), mineral downstreaming policies, and the energy transition roadmap. Without this harmonization, the granting of WIUPKs has the potential to lead to policy inconsistencies, impacting the national investment climate.

Regulations also need to establish limits on foreign capital ownership in religious organization business entities. This provision is crucial to ensure that the priority of WIUPKs does not become a loophole for indirect foreign capital entry through the organization's structure. If regulations are not stringent, foreign investors could form partnerships or fiduciary agreements to control mining projects that should be awarded to national entities. Therefore, share ownership criteria must be strict, including a prohibition on beneficial control by foreign parties. Furthermore, regulations must outline mechanisms for periodic monitoring and evaluation of religious organization business entities that have received WIUPKs. This oversight includes technical audits, environmental audits, production audits, and financial audits. If oversight is not clearly regulated, the priority of WIUPKs could be used ineffectively and actually hinder the productivity of the national mining sector. Therefore, provisions regarding quarterly or semi-annual evaluations must be incorporated into regulatory criteria.



The priority criteria for WIUPK must also include a clear administrative sanction mechanism for CSOs if they fail to comply with the provisions. Sanctions can range from written warnings, permit suspension, to revocation of the WIUPK. These sanctions must be formulated proportionally and in a hierarchical manner to provide legal certainty. Sanctions are crucial to prevent permit abuse or delays in operational activities that could harm the state. Regulations must also address reclamation and post-mining guarantees for CSOs. These guarantees are a tool to ensure that mining activities do not leave permanent environmental damage. Experience shows that many companies abandon mine pits without reclamation. Therefore, CSOs should be required to submit bank guarantees or performance bonds before obtaining a WIUPK. (Fadli & Hadi, 2023; Maxeiner, 2008).

Further regulations must address transparency in the prioritization process. The selection mechanism must be publicly announced through the official portal of the Ministry of Energy and Mineral Resources. This transparency includes the list of applicants, the results of the evaluation of the criteria, and the reasons for selecting priority recipients. Transparency is a fundamental principle in administrative law that protects the public from nepotism and corruption. Another important aspect is the regulation prohibiting the transfer of WIUPK (Mining Business Permit) areas to other parties. Many cases have seen permit holders trade permits without conducting mining activities. Regulations must emphasize that business entities or mass organizations are prohibited from selling, transferring, or pledging WIUPK areas to other parties in any form. Strict provisions are needed to prevent permit brokering or mining land speculation.

On the other hand, regulations must also address the alignment of WIUPK priorities for religious organizations with social forestry, spatial planning, and protected area protection policies. Many WIUPKs are located in forested areas or near residential areas. Criteria regulations should include provisions prohibiting CSOs from conducting activities in certain zones with high ecological value. This aligns with the principles of sustainable development as stipulated in Article 33 of the 1945 Constitution. Regulations regarding WIUPK criteria should also include provisions regarding the obligation to report beneficial ownership. Often, the ownership structure of CSO-based companies is designed to conceal the true owners. Provisions requiring reporting of beneficial ownership to the Ministry of Energy and Mineral Resources and the Ministry of Law and Human Rights will increase transparency and prevent CSOs from being used as business fronts for other parties. (Ali, 2002; Handoko, 2018).

The government also needs to consider regulations limiting the number of Special Mining Business Permits (WIUPK) that can be granted to a single community organization. If left



unchecked, there is the potential for certain organizations to dominate the national mining sector. Quantitative restrictions are necessary to maintain equal opportunities and prevent oligopolies. These restrictions also align with the principle of fairness in natural resource management. Furthermore, regulations should provide provisions regarding partnership obligations with local communities. CSOs could be required to establish measurable community development schemes, such as allocating investment portions for village empowerment, public facility development, and local employment. This provision would strengthen the social function of prioritizing Special Mining Business Permits (WIUPK) and ensure that mining benefits reach surrounding communities.

The WIUPK criteria regulations must also emphasize that prioritizing religious organizations does not eliminate the obligation to follow the entire mining licensing process. Even if they receive priority, religious organizations must still obtain exploration permits, production operation permits, RKAB approval, and comply with all tax and non-tax revenue (PNBP) provisions. Priority should not be interpreted as an exemption from legal obligations. The WIUPK criteria regulations must also include an objection mechanism or administrative judicial review for aggrieved parties. If the government grants priority without a clear basis, other interested parties must be able to file objections through the objection mechanism with the Minister of Energy and Mineral Resources or file a state administrative lawsuit. This mechanism is necessary to ensure government accountability in decision-making. Furthermore, regulatory criteria must include a comprehensive due diligence mechanism before granting a WIUPK. The government is required to conduct field verification, document review, and investigations into the track records of religious organizations and business entities that will receive priority. Without due diligence, the risk of fraud, data manipulation, or document falsification is very high. Due diligence is a preventive control instrument that must be implemented in every strategic permit grant.

Regulations related to the WIUPK criteria also need to stipulate the mandatory digitalization of the entire process. Digitalization in the form of e-application, e-evaluation, e-reporting, and e-supervision will minimize physical interaction between applicants and officials, thereby reducing opportunities for corruption. Digitalization also increases efficiency, data accuracy, and public transparency. The digitalization policy aligns with the national bureaucratic reform agenda. Therefore, establishing WIUPK priority criteria for business entities owned by religious organizations is not merely a technical aspect of the law, but an urgent need to strengthen legal certainty, prevent permit abuse, improve mining governance, and ensure that prioritization truly brings social benefits to the community. Without comprehensive and detailed regulations,



prioritizing WIUPK has the potential to worsen mining sector governance and open up space for corrupt practices. Therefore, the development of comprehensive implementing regulations is a strategic step that must be taken immediately by the government. (Fadli & Hadi, 2023; Maxeiner, 2008)

4. CONCLUSION

The lack of regulations regarding the priority criteria for offering Special Mining Business License Areas (WIUPK) to Religious Community Organization-Owned Enterprises (BU-OMK) has created fundamental problems in the implementation of mining permits. The absence of technical norms governing the eligibility parameters of BU-OMK has led to excessively broad interpretation in the implementation of Article 83A of Law Number 3 of 2020 and Article 75 of Government Regulation Number 96 of 2021. This has resulted in legal uncertainty, the potential for unequal treatment, and the risk of abuse of power in the process of determining parties entitled to receive WIUPK. This condition also indicates the suboptimal principles of good mining governance, particularly the aspects of transparency, accountability, and administrative consistency. An analysis of the need for regulation of priority criteria confirms that the policy of granting WIUPK to BU-OMK constitutes a form of affirmative discrimination that can only be justified if implemented based on objective, proportional, and measurable criteria. (Sutedi, 2022; Haryadi, 2018)

Without clear standards regarding business entity capacity, financial capability, technical competence, and environmental management guarantees, this affirmative action policy has the potential to be misused and turn BU-OMK into mere vehicles for the interests of certain parties. Therefore, the presence of derivative regulations containing evaluation, verification, and oversight mechanisms is essential to ensure that the implementation of this policy does not conflict with the principles of government administration law and mining law. Therefore, this study as a whole confirms that the lack of regulations and the absence of comprehensive priority criteria are the main factors hindering the effectiveness of the policy of offering WIUPK to BU-OMK. Efforts to establish more detailed, harmonized, and auditable regulations are an important step to ensure legal certainty, prevent abuse of authority, and ensure that this affirmative action policy truly provides social, economic, and environmental benefits in accordance with the objectives of national mineral resource management. (Fadli & Hadi, 2023; Maxeiner, 2008)

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