Lex Scientia Law Review
Vol. 10 Issue 2 (2026) 475-506
ISSN 2598-9677 (Print) 2598-9685 (Online)
DOI: https://doi.org/10.15294/lslr.v10i2.40247
Online since: November 3, 2026

LEX SCIENTIA LAW REVIEW
https://journal.unnes.ac.id/journals/lslr/index

Coal Mining: A Comparison of Indonesian and Malaysian Laws

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Abstract

Malaysia is decentralized, while Indonesia is centralized. However, both countries have natural resources and the right to freely dispose, without interference from other countries. This means that the utilization of coal mining is determined by the policies of each country through regulations. This study is a comparative legal study that raises several issues, namely how state sovereignty over natural resources is regulated in the constitutions of Indonesia and Malaysia, how the coal mining legal systems of the two countries work, and what forms of permits and criminal sanctions are used in the regulation of coal mining in Indonesia and Malaysia. The results of the study show that state sovereignty over Indonesia's natural resources is constitutionally regulated through Article 3 Paragraph (3) of the 1945 Constitution, which states that the earth, water, and natural resources contained therein are controlled by the state for the welfare of the people. Malaysia is constitutionally regulated in Articles

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83-91 of the Federal Constitution of the Malay Peninsula of August 31, 1957, which explicitly states that control of land and its management is entrusted to the Malaysian State. The Malaysian coal mining law system is decentralized in terms of licensing, while Indonesia's is centralized and granted by the Ministry of Energy and Mineral Resources, although it was previously decentralized and granted by local governments before the issuance of Law No. 3 of 2020. The types of licenses granted to business actors in Indonesian coal mining law are more varied and not limited to IUPs when compared to the Malaysian state of Selangor. While Indonesia imposes heavier criminal sanctions because they are cumulative with fines, whereas Malaysia imposes alternative sanctions. However, in general, Indonesia's coal mining law system, particularly in terms of licensing, is less consistent compared to Malaysia's law, which has remained decentralized.

KEYWORDS: *Coal Minerals, Comparative Law, Malaysia Indonesia.*

Introduction

The coal mining sector is one of the main pillars of national economic development in Indonesia. Coal and other mineral reserves show that Indonesia holds a strategic position on the global stage. This is because Indonesian mining accounts for a significant percentage of certain mineral reserves: for example, nickel up to six percent, cobalt up to nearly seven percent, and tin up to nearly seventeen percent of total world reserves.[1] In addition, the coal mining sector has provided benefits as a major source of non-tax state revenue (PNBP) in the form of royalties, taxes, and production fees.[2]

Natural resource use policies can determine whether mining provides benefits or becomes a curse that creates income dependency for a country.[3] Natural resource use policies are implemented in legislation, but Malaysia and Indonesia have different systems of government. The Indonesian government

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1 Setiawan, A. "Minerals and Coal Reserves Potential in Indonesia and the World: Potensi Cadangan Mineral dan Batubara di Indonesia dan Dunia". *INTAN Jurnal Penelitian Tambang* 1, no. 1 (2022): 20–31. https://doi.org/10.56139/intan.v1i1.7

2 Kementerian Energi dan Sumber Daya Mineral, *Keputusan Menteri / Peraturan tentang Neraca Sumber Daya dan Cadangan Mineral dan Batubara Nasional*. JDIH ESDM, (2024). https://jdih.esdm.go.id/dokumen/download?id=2024abskmesdm132k.pdf&utm_source=chatgpt.com

3 Mehlum, H., Moene, K., & Torvik, R. "Institutions and the Resource Curse" *The Economic Journal* 116, no. 508 (2006): 1–20. https://www.annualreviews.org/content/journals/10.1146/annurev-resource-100820-092612

adheres to a presidential system of government with a separation of powers between the executive, legislative, and legislative branches. A presidential system is a system of government in which the president is both the head of state and the head of government.[4] The presidential system has several characteristics that differ from the parliamentary system, such as a clearer separation of powers and the ability to separate the head of state from the head of government.

The characteristics of a parliamentary system of government include the parliament having a central role and holding significant power in policy-making and control over the government, the separation of the head of state and head of government, the cabinet (executive) being formed from members of parliament and requiring the confidence of the parliamentary majority, the parliament being able to dismiss the cabinet through a vote of no confidence, the Prime Minister having the right to dissolve parliament before the end of its term, and the Prime Minister has the prerogative to appoint and dismiss ministers.[5] Malaysia's system of government is a democracy that prioritizes the sovereignty and freedom of the people. Malaysia is a country that practices democracy with a focus on the sovereignty and freedom of the people, who play an important role in electing the government in Malaysia.[6]

Both Indonesia and Malaysia have different systems of government and their own territories. A global agreement through Article 1 of the 1933 Montevideo Convention explains that a country can be considered a complete country if it has a territory. It is impossible to be considered a country if both countries do not have a territory, and a country's territory includes not only land but also sea. The respective territories of both countries, especially the land, contain not only soil but also rocks and other minerals that can be considered natural resources. This means that both countries have territories and natural resources within their respective territories.

International law, through Resolution 1803 (XVII) of the United Nations General Assembly on December 14, 1962, declares the permanent sovereignty of each State over its natural resources. States have the full right to regulate,

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4 Tundjung Herning Sitabuana, *Hukum Tata Negara Indonesia* (1st ed.) Jakarta: Konstitusi Press (Konpress), 2020. p. 97

5 KPU, Demokrasi Parlementer: Pengertian Ciri Aspek Prinsip dan Penerapanya di Era Modern, 06 Oktober 2025. https://papuapegunungan.kpu.go.id/blog/read/683_demokrasi-parlementer-pengertian-ciri-aspek-prinsip-dan-penerapannya-di-era-modern

6 Redwan, M. A. F. M., & Besar, J. A. "Pembentukan Kerajaan Persekutuan Majoriti Melayu dan Impaknya Terhadap Tingkah Laku Politik di Kawasan DUN Kajang, Selangor", *Jurnal Wacana Sarjana* 6, no 1 (2022): 1–14.

explore, develop, and utilize their natural resources, making this Resolution the basis for developing countries to assert their ownership rights over their natural resources and freely use the natural resources they possess.

The United Nations Declaration on Permanent Sovereignty over National Resources (PSNR) is an international instrument successfully established by countries to serve as law and guidelines, part of which addresses the regulation and protection of foreign investment activities or assets in recipient countries. However, there is now a growing recognition that permanent sovereignty over natural resources must be given a broader scope and can begin to legitimize the claims of non-state actors and communities in defining ownership and use rights over natural resources within a country.[7]

A country's freedom to dispose of its natural resources is closely related to regulation, because every country, in addition to having citizens and territory, has regulations or laws to govern its people. Regulations on the disposal of natural resources can determine whether these resources are beneficial or become a curse of dependence on economic income. Indonesia and Malaysia have different systems of government, but both countries have their own territories and both have rights or sovereignty over natural resources. This means that each country is free to dispose of its natural resources without interference from other countries.

International law recognizes that countries have rights to their natural resources, but how each country regulates them is up to each country. The originality of this research does not compare coal mining policies in the United States, China, and Australia,[8] nor between Chile, Ghana, and Indonesia,[9] and does not inventory and classify regulations regarding Indonesian state land, particularly Law No. 5 of 1960, although a legal analysis of Malaysian state land regulations is used.[10] The fundamental difference in this study raises several

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7 Ricardo Pereira & Orla Gough, "Permanent Sovereignty Over Natural Resources in The 21st Century: Natural Resource Governance and the Right to Self-Determination of Indigenous Peoples Under International Law", *Melbourne Journal of International Law* 14 (2013): 1-45. https://law.unimelb.edu.au/__data/assets/pdf_file/0005/1687487/04PereiraGough-Depaginated.pdf

8 Mathieu Blondeel & Thijs Van de Graaf, "Toward a global coal Mining Moratorium? A Comparative analysis of Coal Mining Policies in the USA, China, India and Australia", *Climate Change* 150, (2018): 89-101. https://link.springer.com/article/10.1007/s10584-017-2135-5

9 Mirian Kene Omalu & Armando Zamora, "Key Issues in Mining Policy: a Brief Comparative Survey on the Reform of Mining Law", *Journal of Energy & Natural Resources Law* 17, Issue 1 (1999). https://doi.org/10.1080/02646811.1999.11433154

10 Iwan Permadi, "Masalah Regulasi Tanah Negara di Indonesia dan Perbandingan Regulasinya dengan Malaysia", Proceedings of the 2022 Brawijaya International Conference (BIC 2022), Y. A. Yusran et al. (Eds.): BIC 2022, AEBMR 235 (2023): 352-361. https://doi.org/10.2991/978-94-6463-140-1_35

issues, including how state sovereignty over natural resources is addressed in the Malaysian and Indonesian constitutions, how the Indonesian and Malaysian legal systems for coal mining work, and what forms of permits and criminal sanctions exist in the regulation of coal mining in Indonesia and the Malaysian state of Selangor. The weakness of this study, particularly with regard to the form of permits and criminal sanctions, is limited to the regulations stipulated in Indonesian mining law and the Mineral Enacment (Selangor) 2000.

This research is a comparative normative legal study designed using a legislative approach, a conceptual approach, and a comparative approach. The comparative approach was chosen on the consideration that legal comparisons can serve as a basis for legislators to strengthen new draft laws and add to the legal literature related to policies in the coal mining sector.

A comparative approach was taken with regard to each country's legal system and the constitutional treatment of natural resources. In Malaysia, laws governing natural resources—specifically mineral and coal mining—are delegated to the states.

Selangor is one of the most developed states in Malaysia. It exemplifies modern legal dynamics and legal pluralism, encompassing both civil law and Sharia law. Additionally, Selangor was chosen because data availability and access to legal sources are more readily accessible there compared to other regions.

The data collection technique used was a literature study through online media. The main data sources for this study are Indonesian and Malaysian coal mining laws and regulations, including Law No. 4 of 2009 concerning Mineral and Coal Mining (Law No. 4 of 2009), Law No. 2 of 2025 concerning Mineral and Coal Mining (Law No. 2 of 2025), Regulation of the Minister of Energy and Mineral Resources (Permen ESDM) No. 15 of 2024, the Malay Federation Constitution of August 31, 1957, the Mineral Development Act 1994, the Mineral Enactment (Selangor) 2000, and others, while secondary data sources were scientific papers, books, journals, and relevant printed and electronic information related to the research problem.

Data obtained from primary sources was then analyzed qualitatively to identify strengths and weaknesses, while secondary sources were used to support the primary sources and critique the implementation of the primary sources, which were then presented objectively as the results of the study. This allowed for the identification of the strengths and weaknesses of each coal mining

regulation and the provision of recommendations for the development of Indonesian coal mining laws to be more effective and consistent.

State Sovereignty over Natural Resources in the Constitutions of Indonesia and Malaysia

True sovereignty always reclaims its sovereignty.[11] The concept of sovereignty forms the basis of a doctrine known as the act of state doctrine. This doctrine is known in England as "the sovereign act doctrine." This legal doctrine, which emerged in the nineteenth century, asserts that every sovereign state is bound to respect the independence of other sovereign states and that the courts of one state will not judge the actions of another state's government within its own territory.[12]

Article 2 of the Committee on the Elimination of Racial Discrimination (CERDS) emphasizes that no country may be forced to give special treatment to foreign investors. State sovereignty over natural resources is a prerogative right possessed by the State because this sovereignty is supported by the United Nations (UN) General Assembly Resolution.[13] General Assembly resolution 1803 (XVII) of December 14, 1962, PSNR 1803 was introduced in the UN debate to underline the claims of colonial societies and developing countries to the right to enjoy the benefits of resource exploitation and to enable fair legal arrangements, whereby foreign investors who had acquired rights to exploit resources in the past could have those rights changed or even revoked, as they were considered contrary to the concept of permanent sovereignty.[14] This condition is in line with the theory of dependence on Foreign Direct Investment (FDI).

FDI can have a negative impact on recipient countries, especially developing countries. FDI in capital recipient countries is carried out by

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11 Jean Bodin, *Six Books Of the Commonwealth*, translated by M. J. Tooley, Oxford: Kemp Hall Bindery, Without Year, p. 25

12 Sigit Riyanto, "Kedaulatan Negara Dalam Kerangka Hukum Internasional Kontemporer", *Jurnal Yustitia* 1, no. 3, (2012): 7 – 8. Diperoleh dari: https://jurnal.uns.ac.id/yustisia/article/view/10074

13 Cut Asmaul Husna TR, "Adopsi Prinsip Permanent Sovereignty Over Natural Resources (PSNR) Migas", *Jurnal Hukum & Pembangunan* 46, no. 4 (2023). DOI: https://doi.org/10.21143/jhp.vol46.no2.74

14 Nico Schrijver, *Sovereignty Over Natural Resources*, Balancing Rights and Dutie, Cambridge University Press Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, Sao Paulo (1997): 1.

multinational companies that serve the interests of the developed countries where they are headquartered. Developing countries become economic sources or economic servants for developed countries. Economic development in capital recipient countries is difficult to achieve because foreign investors are tied to their countries of origin (developed countries). Economic development only benefits the elite class in developing countries, who easily form alliances with foreign capital.[15]

FDI in capital recipient countries is not limited to the coal mining sector, because coal mining not only requires a small amount of capital but also requires technology transfer. The significant capital required for mining is evidenced by research conducted by Nieto et al, which explains that an analysis of 78 international mining projects found that initial capital investment required more than USD 50 million between 1995 and 2015. Furthermore, in the study by Nieto et al., the estimated costs can experience cost overruns of up to 40% of the predetermined amount. FDI is closely related to environmental sustainability.[16] The impact of FDI on Sustainable Development Goal 7 (SDG 7) varies according to a country's income level. In high-income countries, FDI has a more detrimental effect on sustainable energy development, while in low-income countries, FDI appears to stimulate technology transfer and innovation in clean energy solutions.[17]

Despite the negative impact of FDI and the country's need for FDI in the coal mining sector, the UN Secretary-General's Panel on Critical Energy Transition Minerals on April 26, 2024, sought to support a fair and equitable transition to renewable energy while utilizing critical energy transition minerals for sustainable development and ensuring that countries and local communities blessed with these minerals reap the full economic benefits, including through local value addition, while maintaining their security.[18]

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15 Sornarajah, M. *the International Law on Foreign Investment*, Third Edition, Cambridge University Press, New York United States of America (2010): 53.

16 Luis Suárez Nieto, Gregorio Fidalgo Valverde, Alicja Krzemień, Pedro Riesgo Fernández, Francisco Javier Iglesias Rodríguez, "Economic Risks in Mining Investments: A Prospective Analysis of Capital Cost Estimation in Copper Mining Projects", *Resources Policy* 99, (2024): 105427. https://doi.org/10.1016/j.resourpol.2024.105427

17 Fairouz Mustafa, Chima Mordi, Ahmed A. Elamer, "The role of Foreign Direct Investment and Environmental Taxation in Promoting Renewable Energy Sustainability", *Journal of Cleaner Production* 505, (2025): 145515. https://doi.org/10.1016/j.jclepro.2025.145515

18 United Nations, The UN Secretary-General's Panel on Critical Energy Transition Minerals, https://www.un.org/en/climatechange/critical-minerals?_gl=1*pmhrs9*_ga*MTM0NTE3MDA0NS4xNzA5MTUwNjUz*_ga_TK9BQL5X7Z*MTczOTU0MDYwMy4zNy4wLjE3Mzk1NDA2MDUuMC4wLjA.

Nationalization policies are a strategy for capital-receiving countries to restore their economies when they experience economic decline, and foreign investors can become easy targets for capital-receiving countries to bring about changes in government and popular actions that appease nationalist forces.[19] Nationalistic sentiment is a threat to foreign investment because it plays a dominant role in restricting foreign investment flows in developed countries. The 1979 Iranian Revolution resulted in the takeover of US business interests.[20]

The state has sovereignty over natural resources located within its territory. The state is granted the freedom to determine whether to pay compensation or to freely determine the amount of compensation, up to and including the right to resolve disputes over nationalization and compensation based on national law.[21] The state is given the power to freely utilize, manage, control, and regulate its natural resources in the complex transition to energy and economic growth for the people. The state is given the obligation to improve the welfare of its people in national economic development as a responsibility for its power over natural resources, so that the law plays an important role in promoting economic development and ensuring the overall welfare of society. Therefore, even though the State is given the freedom to dispose of its natural resources without interference from other countries, mining laws must be in line with the direction of sustainable legal development, one of which is for the economic interests of the community in the mining location and to maintain sustainability.

Countries are free to dispose of or utilize their natural resources in accordance with the needs and economic interests of their people, particularly to regulate the presence of foreign investors who have been managing natural resources in the capital recipient country. The takeover of the management of coal mining natural resources by the State is the right of the State that owns the natural resources located within its territory. The takeover of foreign capital ownership, particularly in Indonesia's coal mining sector, is carried out by requiring foreign capital owners to divest their shares to Indonesian parties,

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19 David A. Jodice "Sources of Change in Third World Regimes for Foreign Direct Investment, 1968–1976", *Jurnal: International Organization* 34, no 2 (1980): 177–206. DOI: https://doi.org/10.1017/S0020818300018737

20 Jiyoung Ko & Mi Jeong Shin "Not risky business? Nationalism and foreign direct investment," *Jurnal: The Social Science Journal* 63, no 1 (2021): 159–174. DOI: https://doi.org/10.1080/03623319.2021.1996172

21 James N. Hyde "Permanent Sovereignty over Natural Wealth and Resources," *Jurnal: American Journal of International Law* 50, no. 4 (1956): 854–867. DOI: https://doi.org/10.2307/2195626

either through government or private companies, in accordance with the procedures and provisions set by Indonesia.

The divestment obligation on foreign capital ownership of coal mining businesses can provide the benefit of transferring control of coal mining businesses to Indonesian parties. This is an Indonesian strategy regulated by mining law. The transfer of more than 51% of share ownership can determine the direction of company policy. In addition, the greater the share ownership in a company, the greater the dividends it will receive.[22] The nationalization carried out by the Indonesian government in the mining sector today by requiring foreign capital divestment is different from when Indonesia gained independence and took over tobacco companies that were to be auctioned on the Bremen market in 1958 through Law No. 86 of 1958 concerning the Nationalization of Dutch-Owned Companies.[23]

This difference stems from current mining laws, specifically Article 112 of Law No. 3 of 2020, which stipulates that the divestment obligation—or the requirement to sell shares—applies to mining companies with 51% foreign ownership, to be carried out in stages to Indonesian parties, and carries no criminal penalties; whereas nationalization, as regulated in No. 86 of 1958, is more extreme, as it provides for criminal penalties if foreign parties are unwilling to transfer their assets to Indonesian parties within a specified timeframe.

The Constitution of the Republic of Indonesia, through Article 33 Paragraph (3) of the 1945 Constitution (UUD 1945), explains that the earth, water, and natural resources contained therein, including coal minerals, are under the authority of the State and are used for the welfare of all Indonesian people. The state is indirectly granted the right by the people to control natural resources, but it is also given the obligation to improve the welfare of the people. The Constitution of the Republic of Indonesia through the 1945 Constitution mandates that the management and exploitation of mineral and coal mining be carried out by the Government. The Government itself must have a more dominant role, whereby the role of the government is not only to formulate

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22 Suwarsit, S., & Arifardhani, Y. "Role of Divestment: Realizing Welfare Indonesian", *Indian Journal of Law and Justice* 14, no. 2 (2023): 1–20. https://ir.nbu.ac.in/handle/123456789/5058

23 Suwarsit Suwarsit, Heru Sugiyono, Ali Abdullah,Yoyo Arifardhani, Purgito, Ifa Latifa, "Nasionalisasi Saham Asing Pertambangan Mineral Batubara Perwujudan Bela Negara", *Widya Yuridika: Jurnal Hukum* 8, no. 3 (2025). https://publishing-widyagama.ac.id/ejournal-v2/index.php/yuridika/article/view/6900

policies, administrative actions, management, supervision, but also regulation as interpreted by Constitutional Court Decision Number 111/PUU-XIII/2015.[24]

Malaysian Legal Framework

The constitution of Indonesia regarding natural resources is certainly different from that of Malaysia. Malaysia is composed with 13 states and 3 federal territories. The Malaysian Constitution, in addressing ownership of natural resources, according to Articles 83-91 of the Perlembagaan Persekutuan Tanah Melayu (Malay Federation Constitution) of August 31, 1957, explicitly states that the federation's land is handed over to the federal government or the states. Malaysia, with its federal system of government, hands over control of state land to the states.

The Malaysian federal constitution divides legislative powers between the federation and the states, most of which are listed in Articles 73-79, 95b-95e, and Appendix IX of the Malaysian Constitution (Government of Malaysia, 2006a). Appendix IX contains three lists: the Federal List, the State List, and the Common List. The federal government may enact laws relating to matters listed in the state list and the shared list. The federal Parliament may also enact laws for specific purposes as detailed in Article 76 of the Constitution relating to matters listed in the state list. Parliament may enact laws for the purpose of promoting uniformity of law between two or more states. However, such laws only come into effect in a state after they have been adopted by the state legislature and enacted.

Based on the Malaysian federal constitution, states have authority over land and natural resources within their territories. Malaysia's natural resource legal framework uses a dual system, whereby federal laws and policies set national standards and guidelines, while state governments have authority over land and resource management, including the issuance of mining permits and leases. Mining activities in Malaysia naturally involve land that is under the jurisdiction of the states. Each state has the authority to approve mining applications after consulting with federal agencies such as the Department of Minerals and Geosciences and the Department of Environment, which means

[24] Ivan Ferdiansyah Agustinus, "Mineral and Coal Mining Business and Management in Indonesia from the Indonesian Constitutional Viewpoint", *Journal of World Science* 1, no. 7 (2022), DOI: https://doi.org/10.58344/jws.v1i7.68

that the Ministry of Natural Resources and Environment is responsible for overseeing the Malaysian mining industry.[25]

The Malaysian Constitution is based on the doctrine of constitutional supremacy, which places it above all legislative and executive acts. This structure reflects a hierarchical legal order in which Parliament and state legislative bodies must operate within constitutional limits. The Malaysian Constitution serves as the fundamental norm of the legal system, particularly following independence in 1957, which marked the legal transition from colonial rule to a sovereign constitutional government. In addition, Malaysia's constitutional system embodies constitutionalism, which means that government power is limited and governed by law at both the federal and state levels.[26]

A distinctive feature of the Malaysian Constitution is its federal structure, which divides powers between the federal government and the states. This division reflects a model of dual federalism, in which both levels of government possess constitutionally defined powers. However, the relationship between the federal government and the states has evolved, often exhibiting a tendency toward central dominance despite constitutional provisions for the division of powers.[27]

Basic Principles of Control over Indonesia's Natural Resources under Article 33, Paragraph (3) of the 1945 Constitution, the State holds a direct mandate from the people to manage and ensure welfare, whereas the Malaysian Constitution does not centralize control over natural resources within the federal government but instead divides ownership between the federal government and the states, with a strong emphasis on state authority over land and resources as stipulated in Appendix IX of the Malaysian Constitution. The Indonesian government has a dominant and comprehensive role, encompassing: policy-making, regulation, management, and oversight of administrative actions, reinforced by decisions of the Constitutional Court. Malaysia adopts a federal and decentralized model, in which the states play a dominant role in the management of natural resources, while the central government functions as a policy guide.

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25 Mohammad Ashraf Mohamed Sopiee & Syed Zomael Hussain, *The Legal Framework Of Mining Industry In Malaysia*, Mondag, 26 Juli 2021. https://www.mondaq.com/mining/1095416/the-legal-framework-of-mining-industry-in-malaysia?msg=15#authors

26 Stephanie Chng, "The Federal Constitution of Malaysia: A Kelsenian Perspective", *Asian Journal of Comparative Law* 17, Issue 2 (2022).

27 Shafruddin Hashim, "The Constitution And The Federal Idea In Peninsula Malaysia", *Journal of Malaysian and Comparative Law* 11 (1984).

The Mining Mineral and Coal Law Systems of Indonesia and Malaysia

The 1945 Constitution establishes the legal foundation that regulates the structure of government, fundamental rights, and the basic principles of national and state life.[28] Article 33 of the 1945 Constitution specifically addresses the country's economic system. This article not only provides guidance on the structure of the economy and the authority of a country to regulate its economic activities, but also reflects the ideals that must be upheld and consistently pursued by the state.[29]

Article 33 of the 1945 Constitution, after the current amendment, consists of five paragraphs, with the fifth paragraph as an implementation of the previous paragraphs explaining further provisions regulated in the law, which means that the implementation of paragraph one related to the economy is structured as a joint effort based on the principle of kinship. paragraph two relates to branches of production that are important to the state and control the livelihoods of many people, which are controlled by the state; paragraph three relates to land, water, and natural resources controlled by the state, which are used for the prosperity of the people; and paragraph four relates to the national economy being organized based on economic democracy, with one of its principles being environmental awareness.

The implementation of Article 33 Paragraph 3 of the 1945 Constitution regarding natural resources for coal mining since Indonesia's independence from Dutch colonial rule is regulated by Law No. 10 of 1959, Law No. 11 of 1967, Law No. 4 of 2009, Law No. 3 of 2020, Law No. 2 of 2025. In short, Indonesia's coal mining industry after independence, specifically in 1959, saw Indonesia no longer granting business licenses to private companies with the issuance of Law No. 10 of 1959. However, eight years later, in 1967, through Law No. 11 of 1967, Indonesia once again granted coal mining business licenses

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28 Zainudin Hasan, Sanyyah Majidah, Aldi Yansah, Rahmi Fitrinoviana Salsabila, Made Sera Wirantika, "Konstitusi Sebagai Dasar Hukum Dalam Pembangunan Sistem Hukum Nasional", *JIMA: Jurnal Ilmiah Mahasiswa, Research Findings, Literature Review, and Systematic Review* 2, no. 1, January-June(2024). https://ejournal.penerbitjurnal.com/index.php/JIMA/article/view/745

29 Nelly Pinangkaan, "Makna Pasal 33 UUD 1945 dalam Pembangunan Hukum Ekonomi Indonesia", *Lex Administratum* 3, no. 5 (2015). https://ejournal.unsrat.ac.id/index.php/administratum/article/view/18972

to private companies. At that time, PT Freeport Indonesia was the first company to collaborate with Indonesia through a contract of work system. Coal mining operations under Law No. 11 of 1967, which were granted under a contract system, meant that the state, as the owner of natural resources, and business actors, as entrepreneurs engaged in management, were on an equal footing.

Mining law through Law No. 4 of 2009 stipulates that mining business permits are granted to the Central Government and Regional Governments. Mining business permits granted to local governments are in line with mining laws and decentralization laws, namely Law No. 23 of 2014, Law No. 32 of 2004, and Law No. 22 of 1999. Indonesia's decentralization laws have given local governments more authority to generate higher local revenues and provide decentralized public services that are more tailored to local needs. However, there is evidence that inefficient and ineffective local governance continues to dominate post-decentralization. Particularly in the natural resources sector, the implementation of these laws has created uncertainty for most social actors.[30]

Law No. 4 of 2009 remained in effect for more than ten years. In 2020, mining law through Law No. 3 of 2020, particularly regarding business licensing, was no longer decentralized. This is because Article 4 of Law No. 3 of 2020 explicitly states that control over coal minerals is exercised by the Central Government. However, criticism of mining law through Law No. 3 of 2020 is that the formulation of the articles that regulate it can hamper efforts to eradicate corruption and contradict the general principles of good governance, because the policy is considered not to be in the public interest.[31]

Following the enactment of Law No. 4 of 2009, changes in mining law mean that policies on foreign share divestment are not only regulated in Law No. 3 of 2020, but also in its implementing regulations. In the implementing regulations related to divestment, there is no time limit for implementing the

[30] Ana Duek & Ridwan Rusli, "The natural Resources industry in Decentralised Indonesia: How has Decentralisation Impacted the Mining, Oil and Gas Industries?," DEM Discussion Paper Series 10-25, Department of Economics at the University of Luxembourg, (2010). https://ideas.repec.org/p/luc/wpaper/10-25.html

[31] Zico Junius Fernando, Beni Kurnia Illahi, Yagie Sagita Putra & Ikhbal Gusri, "Deep Anti-corruption Blueprint Mining, Mineral, and Coal Sector in Indonesia", *Cogent Social Sciences* 9, no. 1, (2023): 2187737. DOI: 10.1080/23311886.2023.2187737

obligation to release the first shares for foreign investment, and Indonesian parties must respond to offers within a maximum period of 30 calendar days.[32]

The enactment of Law No. 2 of 2025 on mining provides new opportunities for mining management, which is not only granted to the government and private legal entities but also to religious organizations and universities in improving access to and educational services for the community. Law No. 2 of 2025 stipulates that control over coal mining in terms of management, supervision, and licensing remains with the Central Government and is no longer delegated to Regional Governments as regulated in Law No. 11 of 1967. Indonesian coal mining law, particularly regarding licensing, is no longer decentralized but centralized by the Central Government, in this case the Ministry of Energy and Mineral Resources (ESDM). Law No. 2 of 2025 is the fourth amendment to Law No. 4 of 2009, meaning that Indonesia's mining laws have undergone four policy changes since 2009.

Next, what about Malaysia? The regulation of coal mining activities in Malaysia is not limited to the Mineral Development Act 525 of 1994 and related state mineral laws and regulations, but there are other regulations that must be complied with, such as the Occupational Safety and Health Act of 1994, the Factories and Machinery Act 1967, and the Environmental Quality Act 1974. The Environmental Quality Act 1974 requires large-scale mining operations to undergo an Environmental Impact Assessment (EIA) to evaluate the potential environmental impact of mining activities. The EIA process includes consultation with local communities and other stakeholders. For example, the controversial Raub Gold Mine in Pahang was temporarily closed due to concerns over waste disposal and water pollution practices, leading to stricter environmental regulations in the mining sector.[33]

The Mineral Development Act 525 was enacted in 1994 and consists of several sections. Section one covers the introduction, section two covers administration, section three covers exploration and mining regulations, section four covers damage and exploration, section five covers supervision, which consists of law enforcement, investigation, evidence, violations, and sanctions.

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32 Suwarsit Suwarsit, An-An Chandrawulan, Isis Ikhwansyah, Zainal Mutaqin, "State Regulation and Sovereignty Over the Divestment of Foreign Shares After Changes in the Mining Laws", *Journal of Legal, Ethical and Regulatory Issues* 25, Special Issue 1, (2022).

33 Azmi & Associates, *The Legal Framework Relating to Extraction, Trade and Dealing of Precious Metals*, LEXOLOGY, January 2025. https://www.lexology.com/library/detail.aspx?g=0fdfe56d-d5a3-4e73-879f-f1f2c1dc2375#:~:text=The%20management%20and%20regulation%20of,mining%20leases%20and%20enforcing%20compliance.

Section 6 regulates other matters such as restrictions on the disclosure of information, prohibitions on the misuse of information obtained in an official capacity, the authority of government agencies and their protection. Section 7 contains regulations that grant the Minister the authority to make specific regulations without reducing the general regulations, such as determining the procedures for collecting and disbursing fees, determining the submission of statistical reports, and determining the procedures for conducting investigations. Furthermore, Section Eight of the 1994 Mineral Development Law regulates transitional provisions and the resolution of legal conflicts.

In Malaysia, mining is a matter that falls under the jurisdiction of the states. Activities related to minerals and rock materials are regulated by separate laws. The two main legal instruments governing activities related to minerals are the Mineral Development Act 525 of 1994 and the State Mineral Enactment .[34] The Mineral Development Act came into force in August 1998, while the State Mineral enactment is currently in various stages of adoption by each State Government.

The Mineral Development Act 525 of 1994 defines the Federal Government's authority to inspect and regulate mineral exploration and mining and other related issues. The State Mineral enactment grants authority and rights to the State to issue mineral exploration and prospecting permits as well as mining permits and other related matters. By the end of 2008, ten states had adopted State Mineral Acts, namely Kelantan: Mineral Enactment 2001, Terengganu: Mineral Enactment (Terengganu) 2002, Pahang: Mineral Enactment 2001, Selangor: Mineral Enactment (Selangor) 2000, N. Sembilan Mineral Enacment Negeri 2002, Melaka: Mineral Enacment (Melaka) 2002, Perak: Mineral Enacment (Perak) 2003, Johor: Mineral Enacment (Negeri Johor) 2003, Pulau Pinang: Mineral Enacment (Pulau Pinang) 2001, Kedah: Mineral Enacment (Kedah) 2004, Perlis: Mineral Enacment 2002, and Sarawak: Mineral Ordinance, 2004, Chapter 56.

A decentralized approach means that each state has its own guidelines for granting mining permits and enforcing compliance. For example, states such as Kelantan have enacted additional laws to effectively regulate mining operations, such as the Mineral Act 2001. State authorities issue and revoke mining permits

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[34] Pui-Kwan Tse, *The Mineral Industry of Malaysia*, Minerals Yearbook, Area Reports: International 2013, Asia and the Pacific 3, (2013). https://books.google.co.id/books?hl=en&lr=&id=aNPvPgq_kpcC&oi=fnd&pg=SA17-PA1&dq=mining+business+permit+Selangor+Malaysia&ots=S8_tp3Td8J&sig=oGW6i6Wr_yfMZgwyBNWhkB2nkRs&redir_esc=y#v=onepage&q&f=false

based on compliance with state laws, ensuring that mining operations follow the appropriate protocols. On the other hand, in support of sustainable mineral policies, the Malaysian government has formulated a national energy policy since petroleum began to add renewable energy to its energy mix and promote renewable energy. This energy policy is also in line with the country's economic development and is periodically promoted through the national budget and the Malaysian Development Plan.[35]

The National Mineral Policy Framework 2 was strategically developed by the Malaysian government. The economic sustainability of the mineral resources sector refers to, among other things, encouraging the optimal use of locally produced minerals and further promoting the recovery, recycling, and reuse of metals and minerals that have been used in the construction and industrial sectors for further development. This is a revised regulatory framework of the Malaysian Government to create a more conducive, transparent, and environmentally friendly economic climate to encourage more potential investors to engage in mineral resource businesses in Malaysia towards world-class status, as well as to contribute to the economic growth of the Malaysian nation and society.[36]

Although most of Malaysia's state mining laws and amendments are based on outdated mining concepts and contain provisions that are inadequate for environmental protection, as a corrective measure, the state has included terms and conditions in mining leases such as mining schemes must be approved by the mining department inspector, mining is not permitted within a certain distance, rehabilitation of former mining areas, taking measures to prevent soil erosion and water pollution, and land must be stabilized after mining is complete.[37]

Malaysian coal mining law is generally regulated by the Mineral Development Act 525 of 1994 and State Mineral Enactments. Malaysian mining law regarding the granting of permits to business actors is administered by the local or state government. Section one paragraph (2) of the Mineral

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35 Shing Chyi Chua & Tick Hui Oh, "Review on Malaysia's national energy developments: Key policies, Agencies, Programmes and International Involvements", *Renewable and Sustainable Energy Reviews* 14, Issue 9 (2010): 2916-2925. https://doi.org/10.1016/j.rser.2010.07.031

36 Eric Goh & Shahar Effendi, "Overview of an effective Governance Policy for Mineral Resource Sustainability in Malaysia", *Resources Policy* 52, (2017): 1-6. https://doi.org/10.1016/j.resourpol.2017.01.012

37 United Nations Conference on Trade and Development Environmental Legislation for the Mining and Metals Industries in Asia, 1994, page 15. https://unctad.org/system/files/official-document/pocomd40.en.pdf

Development Act 525 of 1994 explicitly states that "This Act applies throughout Malaysia, but the Minister may by order suspend the application of all or part of the provisions of this Act in any state." Unlike Indonesia, the coal mining law system in Indonesia, particularly with regard to the granting of permits, was previously decentralized, but after the issuance of Law No. 3 of 2020, the granting of permits was once again centralized to the Central Government.

TABLE 1: Comparative of Mining Laws, Governmental Authority, and Regulatory Consistency in Indonesia and Malaysia.

Aspect	**Indonesia**	**Malaysia**
Mineral and coal mining regulations at the level of laws or central government regulations	Law No. 4 of 2009, Law No. 3 of 2020, Law No. 2 of 2025.	Mineral Development Act 525 of 1994 and State Mineral Enactment.
Authority of Local Governments/State Governments	Since 2020, it has once again become centralized	Kelantan: Mineral Enactment 2001, Terengganu: Mineral Enactment (Terengganu) 2002, Pahang: Mineral Enactment 2001, Selangor: Mineral Enactment (Selangor) 2000, N. Sembilan Mineral Enacment Negeri 2002, Melaka: Mineral Enacment (Melaka) 2002, Perak: Mineral Enacment (Perak) 2003, Johor: Mineral Enacment (Negeri Johor) 2003, Pulau Pinang: Mineral Enacment (Pulau

		Pinang) 2001, Kedah: Mineral Enacment (Kedah) 2004, Perlis: Mineral Enacment 2002, and Sarawak: Mineral Ordinance, 2004.
Legal consistency	Since 2009–2025, Indonesia's mining laws, as set forth in Law No. 4 of 2009, have undergone four amendments	Coal mining laws across all states in Malaysia have remained unchanged from 2004 to the present, making them more consistent compared to Indonesia's coal mining laws.

Source: Author's compilation based on Law No. 4 of 2009 concerning Mineral and Coal Mining, as amended by Law No. 3 of 2020 and Law No. 2 of 2025; Presidential Regulation No. 55 of 2022 concerning the Delegation of Governmental Authority in the Mineral and Coal Mining Sector; Mineral Development Act 1994 (Act 525); the respective State Mineral Enactments of Malaysia; Sabah Mining Ordinance 1960; and Sarawak Minerals Ordinance 2004.

Types of Business Licenses and Criminal Sanctions in Indonesian Mineral and Coal Mining Law & Selangor State, Malaysia

The granting of permits to Indonesian coal mining companies is required to follow an integrated electronic licensing system managed by the Central Government. The centralization of licensing in the Indonesian coal mining sector is an effort by the Indonesian government to improve the overlap of business licenses held by companies and to regulate mining companies in the interests of the country's economy. Despite the centralization of licensing in the coal mining sector, several companies, such as PT Perdana Maju Utama, PT Fajar Bahari, PT Mandiri Biofuels, PT Sri Mulya Agung, PT Garuda Agung

Perkasa, and CV Siti Maju Sejahtera, have filed lawsuits in the State Administrative Court against the Ministry of ESDM.[38]

The granting of mining permits by Indonesia is not selective and is considered excessive or too easy, even though Indonesia's permit granting is centralized in the central government. In addition, monitoring and supervision are not carried out, resulting in deforestation, widespread overlapping of concessions with settlements, extensive boundary and regulatory violations, lack of reclamation, and numerous deaths.[39] Following the enactment of Indonesia's coal mining law, the centralization of licensing also shows that the removal of social responsibility from mining companies can worsen the social and economic conditions of communities around mining areas and environmental management dynamics that can threaten ecological sustainability.[40]

Regulations on the granting of business licenses are not only given to the Central Government through State-Owned Enterprises, Local Governments through Regional-Owned Enterprises, Foreign Parties directly managing the establishment of Limited Liability Companies in Indonesia, Indonesian Private Parties through Limited Liability Companies, Religious Community Organizations, and Universities. Mining permits for coal minerals in Indonesia are granted by the Central Government, which issues the following types of permits: Mining Business Permit (IUP), Special Mining Business Permit (IUPK), Special Mining Business Permit (IUPK) as a Continuation of Contract/Agreement Operations, People's Mining Permit (IPR), Transportation and Sales Permit, Assignment Permit, Mining Services Business Permit (IUJP), IUP for Sales,[41] Work Contract (KK) or Coal Mining Concession Work Agreement (PKP2B) and other permits that are still in effect.

The types of business licenses granted by the Indonesian government through its regulations vary in name and, of course, in the duration they are granted for. Specifically, production operations include construction, mining, processing, refining, development, utilization, transportation, and sales. The

38 Suwarsit Suwarsit, Heru Sugiyono, Dwi Aryanti Ramadhani, Dwi Desi Yayi Tarina, "The Measuring Effectiveness of Centralization of Indonesian Coal Mineral Mining Licensing", *Law Development Journal* 7, no. 3 (2025).

39 Tim T. Werner, Tessa Toumbourou, Victor Maus, Martin C. Lukas, Laura J. Sonter, Muhamad Muhdar, Rebecca K. Runting & Anthony Bebbington, "Patterns of Infringement, Risk, and Impact Driven by Coal Mining Permits in Indonesia", *Ambio* 53, (2024): 242–256. https://doi.org/10.1007/s13280-023-01944-y

40 Andre Noverizky & Faidatul Hikmah, "The Legal Aspects Of Regulating The Submission Of Mining Business Permits In The Perspective Of The Mineral And Coal Mining Law", *UIR Law Review* 8 no. 1 (2024). DOI: https://doi.org/10.25299/uirlrev.2024.vol8(1).16539

41 Article 35 Undang-Undang Nomor 2 Tahun 2025 tentang Pertambangan Mineral dan Batubara

maximum duration of production operations for metal mineral mining is twenty years, with two extensions of ten years each after meeting the requirements. For non-metal mineral mining, the maximum duration is ten years, with two extensions of five years each after meeting the requirements. For coal mining, the maximum duration is twenty years, with two extensions of ten years each after meeting the requirements.

Mining permits for coal minerals in Indonesia are not limited to regulations at the level of law but are further regulated in Government Regulations and Regulations of the Minister of Energy and Mineral Resources as implementing regulations that provide more detailed provisions. Specifically, regulations at the level of government regulations regulate mining permit activities for coal minerals. In the last five years, Indonesia has issued three government regulations on licensing, namely PP No. 96 of 2021, PP No. 25 of 2024, and PP No. 39 of 2025, as well as ministerial regulations, namely Regulation of the Minister of Energy and Mineral Resources (Permen ESDM) No. 7 of 2020, Permen ESDM No. 10 of 2023, and Permen ESDM No. 15 of 2024.

Regulations on licensing, particularly for continuing IUP and IUPK more than once in the current year under Article 10 of ESDM Regulation No. 15 of 2024, business operators may submit one amendment to the Work Plan and Budget (RKAB) in the event of circumstances that prevent operations, environmental carrying capacity that cannot support production activities, changes in government policy regarding national mineral and coal production volumes, failure to meet national mineral and coal production targets, failure to meet domestic demand for minerals and coal, and force majeure events.

ESDM Regulation No. 15 of 2024 provides legal updates that are not regulated in ESDM Regulation No. 10 of 2023, as stipulated in Article 10A, which explicitly provides for changes to the RKAB regulations regarding the approval of the RKAB for the Production Operation phase with a production volume of zero, allowing for changes to the RKAB for the Production Operation phase at any time. ESDM Regulations as stipulated in ESDM Regulation No. 15 of 2024 and ESDM Regulation No. 10 of 2023 are implementing regulations of Government Regulations and Laws that are subject to rapid change.

What about the mining license for coal minerals in the Malaysian state of Selangor, which is regulated by the Mineral Enactment (Selangor) 2000? The Mineral Enactment (Selangor) 2000 consists of fourteen sections, the first of

which regulates the introduction, the second section regulates administration, the third section regulates minerals and similar substances, the fourth section regulates licensing and leasing of mineral rights, the fifth section regulates land access, the sixth section regulates compensation, the seventh section regulates financial obligations, the eighth section regulates provisions regarding water, the ninth part covers registration and documentation, the tenth part covers restoration or joint restoration funds, the eleventh part covers law enforcement, investigation, evidence, violations, and sanctions, the twelfth part covers miscellaneous matters, the thirteenth part covers regulations that explain how to establish and create regulations regarding fees, leases, and royalties, and the fourteenth part covers revocation, rescue, and transitional provisions.

Mining permits in Selangor are in accordance with the provisions stipulated in Articles 63 and 66 of Part IV concerning licensing and leasing of mineral rights in the Mineral Enactment (Selangor) 2000, which explains that mining permits are only granted for a maximum period of twenty-one years and that applications for mining permits must be submitted to the State-Owned Enterprise using the specified form and accompanied by a pre-feasibility study. Furthermore, the permit application imposes an obligation and time limit on the Selangor government to respond to the application, and once the permit is obtained, there is also a prohibition on business operators from transferring the permit or misusing it outside the designated mining area.

The Selangor State Government, in legalizing industrial factories with permanent structures on agricultural, residential, or commercial land as a whole, and located within industrial zones, has issued Circular Letter of the Director of the Selangor Land and Mining Office No. 6/2006 (Pekeliling Pengarah Tanah dan Galian Selangor Bilangan 6/2006). The issuance of this circular letter offers affected landowners a solution, whereby industrial businesses operating on agricultural land will be legalized through land conversion and subject to industrial land tax.[42]

Criminal penalties of imprisonment and fines contained in the Mineral Enacment (Selangor) 2000 are of many types, including unauthorized counterfeiting, which is punishable by a fine of five thousand ringgit or imprisonment for a term of six months under Article 154. the use of minerals for explosives or firearms, if proven guilty, is punishable by a fine of ten

[42] Liyana Zainudin, Zaharah Mohd Yusof, Jaiya Abu, "Temporary Land Use Permit in Selangor: An Overview of Land Policies and Practice in the District of Petaling, Malaysia", *Built Environment Journal* 20, no. 1, (2013): 31-39. https://journal.uitm.edu.my/ojs/index.php/BEJ/article/view/6425/3634

thousand ringgit or imprisonment for a period of one year, as stipulated in Article 155; conducting business without a valid permit is punishable by a fine of ten thousand ringgit or imprisonment for one year, as stipulated in Article 156; mining without a permit is punishable by a maximum fine of five hundred thousand ringgit or ten years' imprisonment under Article 158, holders of mineral exploitation rights who violate the law are subject to a fine of one hundred thousand ringgit or five years' imprisonment under Article 159, moving soil outside the mining area for other purposes is punishable by a fine of fifty thousand ringgit or imprisonment for three years, as stipulated in Article 160. Persons who do not comply with the orders of officials in the performance of their duties are punishable by a fine of five thousand ringgit or six months' imprisonment, as stipulated in Article 164.

Indonesian mining law regarding criminal sanctions in Law No. 3 of 2020 is regulated in Article 158, which states that mining without a permit is punishable by five years' imprisonment and a fine of one hundred billion rupiah. Article 159 stipulates that persons who store, utilize, process, refine, transport, sell, or export minerals and/or coal that do not originate from holders of valid IUP, IUPK, IPR, or SIPB shall be punished with five years' imprisonment and a fine of one hundred billion rupiah. Article 160 stipulates that holding an IUP or IUPK at the exploration stage but conducting production operations is punishable by five years imprisonment and a fine of one hundred billion rupiah. Article 161 stipulates that conducting processing or refining, development and/or utilization, transportation, Sale of Coal Minerals not originating from holders of IUP, IUPK, IPR, SIPB shall be punished with imprisonment of up to five years and a fine of one hundred billion rupiah. Article 161A, namely transferring IUP, IUPK, IPR, or SIPB shall be punished with imprisonment of up to two years and a fine of five billion rupiah. Article 161B states that revoking an IUP or IUPK without carrying out reclamation and placing reclamation guarantee funds shall be punished with imprisonment of five years and a fine of one hundred billion rupiah, Article 162 states that obstructing or interfering with the mining activities of a legitimate license holder is punishable by one year imprisonment or a fine of one hundred million rupiah, and Article 163 regulates criminal sanctions for the misuse of mining business licenses (IUP).

Criminal sanctions in the Mineral Enactment (Selangor) 2000 are alternative to fines, whereas criminal sanctions in Indonesian coal mining law are cumulative with fines. In general, criminal sanctions in Indonesia's coal

mining law are more severe, but in reality, Article 162 of Law No. 3 of 2020 has become an instrument of violence used by the state, which is contrary to the state's objective of protecting and improving the welfare of the Indonesian people.[43]

TABLE 2: Comparative Analysis of Mining Licensing, Environmental Governance, and Criminal Sanctions in Indonesia and Selangor, Malaysia.

Aspect	**Indonesia**	**Selangor State Government, Malaysia**
Licensing System	The Central Government uses an integrated (centralized) electronic licensing system, which aims to reduce overlapping permits and strengthen government oversight. In practice, however, the issuance of permits is considered too lenient and excessive (over-licensing). There are still many legal disputes (lawsuits filed with the State Administrative Court).	Licensing is governed by the Mineral Enactment (Selangor) 2000. The system is more decentralized (at the state level). The licensing process requires a formal application and a pre-feasibility study. The government is required to respond within a specified timeframe. The process is more selective and involves stricter procedures than in Indonesia.
Types and Complexity of Permits	Diverse and complex, including: IUP, IUPK, IPR, IUJP, KK, PKP2B, etc. Regulated at various levels: laws,	Simpler and more systematic. Focuses on the licensing and leasing of mineral rights. Governed by a single

[43] Diang Anggraini, "Criminal Law Policy Regarding Criminal Sanctions In Law Number 4 Of 2009 As Amended By Law Number 3 Of 2020 Concerning Mineral And Coal Mining And Law Number 32 Of 2009 Concerning Environmental Protection And Management", *Jurnal Multidisiplin Sahombu* 4, no. 2 (2024). DOI10.58471/jms.v4i02

	government regulations, and ESDM ministerial regulations. Regulations change frequently (dynamic and complex).	main regulation (Mineral Enactment 2000).
Permit Duration	Coal: Maximum 20 years + two 10-year extensions. Non-metallic minerals: Maximum 10 years + two 5-year extensions	Maximum age of 21 (with no specific details regarding extensions in the text).
Environmental Monitoring and Impact	Enforcement is considered weak, leading to: deforestation, land overlaps, boundary violations, and insufficient land reclamation; corporate social responsibility tends to weaken due to a centralized system	Includes specific provisions regarding reclamation and restoration funds, compensation, and water management, with a greater emphasis on administrative compliance and environmental restoration.
Regulatory Flexibility	Highly dynamic and subject to frequent changes: Government Regulation No. 96/2021, 25/2024, 39/2025; Ministry of Energy and Mineral Resources Regulation No. 7/2020, 10/2023, 15/2024. Example: The RKAB can be amended under certain conditions. It can even have a volume of zero	Relatively stable and does not change frequently. It is set forth in a single enactment with a clear structure.

	and be amended at any time.	
Criminal Penalties	The penalties are cumulative (imprisonment + a fine). Example: Illegal mining: 5 years + Rp100 billion. The penalties are very severe and wide-ranging.	The penalties are alternative (imprisonment OR a fine). Example: Mining without a permit: up to 10 years in prison or a fine. The penalties are more varied but are not always cumulative.

Source: Author's compilation based on Law of the Republic of Indonesia No. 4 of 2009 concerning Mineral and Coal Mining, as amended by Law No. 3 of 2020 and Law No. 2 of 2025; Government Regulation No. 96 of 2021, as amended by Government Regulation No. 25 of 2024 and Government Regulation No. 39 of 2025; Law No. 32 of 2009 concerning Environmental Protection and Management, as amended; and the Mineral Enactment (Selangor) 2000, particularly Sections 9–10, 63–66, 99–114, 126–132, and 152–173.

Conclusion

State sovereignty over natural resources in the Indonesian constitution is regulated in Article 33 Paragraph (3) of the 1945 Constitution, which explains that land, water, and natural resources within the land are controlled by the State to be used for the welfare of the people. The Malaysian Constitution, through Articles 83-91 of the Perlembagaan Persekutuan Tanah Melayu (Malay Federation Constitution) of August 31, 1957, explicitly states that control over federal land is handed over to the federal government or the states. Malaysia has a federal system of government that hands over control of state land to the states.

Malaysia's coal mining legal system is decentralized. The Mineral Development Act 525 of 1994 explicitly stipulates that state governments may use it specifically for regulating coal mining business licenses, with the authority to grant licenses to business operators given to states such as Kelantan: Mineral Enactment 2001, Selangor: Mineral Enactment (Selangor) 2000, and separate regulations in other states. In contrast, since the issuance of Law No. 3 of 2020, Indonesia's coal mining legal system, particularly with regard to the granting of permits, has been centralized under the central government, even though

Indonesia's coal mining licensing system prior to the enactment of Law No. 3 of 2020 was decentralized.

The types of mining permits for coal minerals in Indonesia consist of IUP, IUPK, IPR, IUJP, Transportation and Sales Permits, Assignment Permits, and other types of permits such as KK and PKP2B. The types of mining permits for coal minerals in the Malaysian state of Selangor consist only of IUP. The Malaysian state of Selangor imposes lighter criminal sanctions compared to Indonesian mining law, because fines and alternative penalties are not cumulative with fines, unlike in Indonesian mining law.

Indonesia's legal framework for coal mining, particularly in terms of licensing, has undergone rapid changes, in contrast to Malaysia, which has been more consistent since the enactment of the Malayan Federation Constitution on August 31, 1957. Therefore, consistency in Indonesia's coal mining policy needs to be the main focus of improvement by the Indonesian government. This is because inconsistent laws fail to function as guidelines for behavior, undermine voluntary compliance, create uncertainty, open up opportunities for abuse of power, and destroy the character of the law itself. Inconsistency also results in substantive injustice and weakens the effectiveness of governance. Without consistency, the law loses its legitimacy and has the potential to become an arbitrary tool of power, because maintaining legal consistency is a fundamental moral obligation in legal practice and theory.[44] In essence, the Indonesian government—particularly those responsible for drafting regulations—must uphold the laws it has enacted and not rush to make changes, as was the case previously when permits were issued by local governments but are now issued by the central government.

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Acknowledgment

None.

Funding Information
None.

Conflicting Interest Statement
The authors state that there is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement
All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

Generative AI Statement Statement
N/A