

Juridical Analysis of the Application of the Precautionary Principle in Business Contracts for the Utilization of Natural Resources in the Mining Sector

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Abstract

The application of the precautionary principle in the management of natural resources constitutes an essential aspect in ensuring the achievement of sustainable development. This principle requires the adoption of preventive measures in every activity that has the potential to cause environmental damage. This research aims to analyze the application of the precautionary principle in business contracts within the mining sector and its implications for environmental protection and legal certainty. The research method employed is normative juridical, utilizing a statutory approach. Legal sources were obtained through the study of legislation, legal doctrines, and academic literature. The findings indicate that, in practice, mining business contracts in Indonesia remain primarily focused on commercial aspects and have not yet fully internalized the precautionary principle. This condition results in weak environmental protection and potential long-term socio-ecological losses. The study recommends the construction of contracts that incorporate the precautionary principle as a normative standard, so that



contracts function not only as private agreements but also as preventive legal instruments to support environmental protection and sustainable development.

KEYWORDS

Precautionary principle, Business contracts, Utilization of natural resources, Mining

Introduction

The utilization of natural resources, particularly through mining activities, represents one of the strategic sectors that significantly contributes to national economic development¹. Nevertheless, the extractive and high-risk characteristics of the mining industry often generate adverse impacts on the environment, local communities, and ecosystem sustainability². Such impacts constitute forms of negative externalities that must be prevented and controlled through effective legal instruments. From a legal perspective, the management of natural resources should not merely be regarded as an economic activity, but also as an undertaking that must be aligned with the principles of sustainable development and the protection of community rights³. One of the most relevant principles is the precautionary principle. This principle underscores the obligation to take preventive measures in every decision-making process that has the potential to cause environmental harm, even in the absence of full scientific certainty

¹ Aliyusra Jolo and Rudi S Gautama, "Pengelolaan Dan Pemanfaatan Sumber Daya Mineral Berwawasan Lingkungan," *Techno: Jurnal Penelitian* 7, no. 01 (2021): 128.

² Halimatussa'diah, Marisa Listari, and Sherlie Anisa, "Dampak Eksploitasi Sumber Daya Alam Terhadap Ekonomi Lokal Dan Lingkungan : Studi Kasus Pertambangan MIGAS Di Kabupaten Siak, Riau," *Pediaqu : Jurnal Pendidikan Sosial Dan Humaniora* 4, no. 3 (2025): 5384–87, file:///C:/Users/user/Downloads/Halimatussa'diah.pdf.

³ Andreas Tedy Mulyono, "Relaksasi Pengelolaan Sumber Daya Alam Dalam Diskursus Hukum Lingkungan Hidup Di Indonesia," *Law Review* XIX, no. 1 (2019): 373426.

regarding such risks⁴.

Accordingly, the precautionary principle functions as a legal instrument to avert long-term and irreversible losses⁵. The application of the precautionary principle in business contracts concerning natural resources, particularly in the mining sector, is crucial given that contracts constitute binding legal instruments between parties and serve as the legal foundation for the utilization of natural resources. The precautionary principle, also referred to as the principle of early prevention, is one of the fundamental doctrines of environmental law that emerged from global awareness regarding the limitations of science in predicting environmental damage with certainty⁶. This principle emphasizes three core elements: the necessity of environmental protection, the existence of a threat or risk of serious harm, and scientific uncertainty, which should not preclude preventive measures⁷.

Ideally, mining business contracts should not only focus on commercial aspects but must also explicitly incorporate provisions on environmental protection⁸. This necessity arises from the reality that mining operations inherently pose significant risks to ecosystem degradation, pollution, and the disruption of resource sustainability if

⁴ Majambere Rodrigue, "The Precautionary Principle in Environmental Law," *Open Journal of Social Sciences* 11, no. 12 (2023): 548–67, <https://doi.org/10.4236/jss.2023.1112037>.

⁵ Zanuba Arifa, Khafsof Zm, and Amad Sudiro, "Penerapan Prinsip Kehati-Hatian Sebagai Perlindungan Hukum Preventif Dalam Pembuatan Akta Autentik Notaris" 6, no. 2 (2023): 4320–25.

⁶ Fachrizal Afandi et al., "Penggunaan Bukti Ilmiah Dan Penerapan Prinsip Kehati-Hatian Dalam Putusan Perkara Pidana Materiil Lingkungan Hidup Di Indonesia Tahun 2009–2020," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2023): 77–120, <https://doi.org/10.38011/jhli.v9i1.500>.

⁷ Jose Felix Pinto-Bazurco, "The Precautionary Principle," International Institute for Sustainable Development, 2020, [https://www.iisd.org/articles/deep-dive/precautionary-principle#:~:text=avoid using the term "principle%2C",widely recognized in the 1990s.](https://www.iisd.org/articles/deep-dive/precautionary-principle#:~:text=avoid using the term%20%22principle%2C%22,widely recognized in the 1990s.)

⁸ Sendi - Sanjaya et al., "Kerangka Hukum Kontrak Tambang Batubara Di Indonesia: Studi Kasus Wanprestasi Perjanjian Kerjasama Tambang Batubara Pihak Swasta Pada Pemda Kabupaten Kota Baru, Kalsel," *Marwah Hukum* 2, no. 2 (2024): 56, <https://doi.org/10.32502/mh.v2i2.8489>.

not managed with due precaution⁹. Therefore, contractual clauses should not only regulate the rights and obligations of the parties within the business framework, but also make explicit reference to the Environmental Impact Assessment (AMDAL) documents along with environmental management and monitoring plans. Consequently, contracts may serve as preventive legal instruments that affirm the mining companies' commitment to sustainable development¹⁰. In addition, the inclusion of stringent sanctions for breaches of environmental obligations within contracts will reinforce the precautionary principle as a binding legal norm, while simultaneously preventing environmentally negligent business practices that disregard community interests.

Research conducted by Achmad Haris Januari, entitled "Sustainable Development System in Mining Governance," highlighted that mining governance in Indonesia has yet to embody the concept of a welfare state or an environmentally oriented development paradigm. Several weaknesses were identified, particularly in the lack of transparency in contractual systems and the ineffectiveness of legal accountability mechanisms¹¹. Research on the precautionary principle has been widely conducted, whether through case-based approaches or normative analyses. Bella Anastasia Pratiwi, in her article "The Implementation of the Precautionary Principle in Interpreting Sustainable Development: A Critical Analysis of the Mandalawangi Garut and Kalista Alam Aceh Civil Cases," emphasized that sustainable development is inseparable from the application of the precautionary

⁹ Prawitra Thalib et al., "Post- Mining Reclamation as An Environmental Policy : A Gold Mining Case Study," *Halu Oleo Law Review* 4, no. 2 (2020).

¹⁰ Muhammad Jufri Dewa et al., "Penegakan Hukum Dalam Tata Kelola Pertambangan Berkelanjutan Berwawasan Lingkungan," *Halu Oleo Legal Research* 5, no. 1 (2023): 62–75.

¹¹ Achmad Haris Januari, "Sistem Pembangunan Berkelanjutan Terhadap Tata Kelola Pertambangan," *Jurnal Hukum Dan Bisnis (Selisik)* 1, no. 2 (2021): 46, file:///C:/Users/asus/Downloads/document (7).pdf.

principle¹².

Similarly, Hajril A. Abdul, through his article “The Existence of the Precautionary Principle in Environmental Management Based on Agrarian Law in Indonesia,” affirmed that the principle must be understood as a vigilant stance towards emerging challenges, requiring optimal enforcement of environmental law through the combination of administrative, criminal, and civil sanctions¹³. Meanwhile, La Ode Angga, in his dissertation “The Application of the Precautionary Principle in Environmental Protection and Management Policies in the Agricultural Sector for the Superiority of Genetically Engineered Products,” demonstrated that neglecting the precautionary principle in policymaking could potentially lead to legal uncertainty and irreversible environmental damage.

Based on this literature review, it appears that prior research has predominantly focused on the precautionary principle within the context of public regulation, emphasizing weaknesses in mining governance, environmental law enforcement, and policymaking in the agrarian and agricultural sectors. However, no study has specifically analyzed the application of the precautionary principle within business contracts in the mining sector, despite the fact that contracts occupy a strategic position as private legal instruments binding the parties, while simultaneously functioning as regulatory tools to ensure environmental protection. Accordingly, this research seeks to analyze the importance of integrating the precautionary principle into mining business contracts, so that contracts function not merely as commercial

¹² Bella Anastasia Pratiwi, “Pelaksanaan Precautionary Principle Dalam Menterjemahkan Pembangunan Berkelanjutan Analisis Kritis Putusan Kasus Kasus Perdata Mandalawangi Garut Dan Kalista Alam Meulaboh Aceh,” *Unes Law Review* 6, no. 3 (2024): 9594–9604, <https://www.review-unes.com/index.php/law/article/view/1907/1527>.

¹³ Hajril A. Abdul, “Eksistensi Precautionary Principle Dalam Pengelolaan Lingkungan Hidup Berdasarkan Hukum Agraria Di Indonesia,” *Journal of Comprehensive Science (JCS)* 2, no. 6 (2023): 1514–20, <https://doi.org/10.59188/jcs.v2i6.370>.

agreements, but also as preventive legal instruments supporting sustainable development and the protection of constitutional rights of the people.

The application of the precautionary principle in natural resource management is clearly regulated under statutory law. Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH), Article 2 letter (f), stipulates that the precautionary principle is one of the fundamental principles of environmental protection. This principle establishes the legal basis that every business activity with significant environmental impacts must be accompanied by an Environmental Impact Assessment (AMDAL) document and obtain an environmental license as preventive instruments to avert pollution and environmental damage¹⁴.

Furthermore, the precautionary principle also has constitutional foundations. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia provides that “the land, water, and natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people.” Philosophically, this norm underscores the State’s obligation to ensure sustainable and environmentally sound natural resource management¹⁵. Thus, natural resource utilization must not only prioritize short-term economic interests, but also safeguard ecosystem sustainability and the welfare of future generations. Accordingly, both the UUPPLH and the 1945 Constitution normatively establish the precautionary principle as a mandatory legal basis to be internalized in every mining business

¹⁴ Yura P. Yudhistira, “Penerapan Prinsip Kehati-Hatian (Precautionary Principles) Dalam Perkara Lingkungan Hidup,” Dandapala Direktorat Jenderal Badan Peradilan Umum, 2025, <https://www.dandapala.com/opini/detail/penerapan-prinsip-kehati-hatian-precautionary-principles-dalam-perkara-lingkungan-hidup#:~:text=Asas atau prinsip kehati,hatian>.

¹⁵ Arif Firmansyah, “Penafsiran Pasal 33 Uud 1945 Dalam Membangun Perekonomian Di Indonesia,” *Journal Article // Syiar Hukum*, 2022, 264–88.

contract.

The existence of this principle constitutes a fundamental framework to ensure that contracts function not only as binding private agreements, but also as public instruments bearing consequences for environmental protection and the fulfillment of constitutional rights of the people. Based on the foregoing introduction and issues, the research problems are formulated as follows: (1) Are business contracts in the mining sector required to incorporate the precautionary principle? (2) Can mining companies that violate the precautionary principle be held legally liable?

Methods

The research method employed in this study is normative legal analysis, utilizing a statutory approach, with a focus on the juridical analysis of the application of the precautionary principle in business contracts for the utilization of natural resources in the mining sector, as well as on environmental protection and corporate liability for violations of the precautionary principle. Normative legal research makes it possible to examine legal theories and principles in order to evaluate statutory provisions and relevant regulations that affect business actors, law enforcement authorities, and the general public¹⁶.

The approach adopted in this research is the statutory (legislation) approach. Statutory texts serve as the primary source for understanding the substance and provisions concerning the juridical analysis of the application of the precautionary principle in business contracts for the utilization of natural resources in the mining sector. Secondary sources

¹⁶ M.H. Dr. Nurul Qamar, S.H. and M.H. Farah Syah Rezah, S.H., *Metode Penelitian Hukum Doktrinal Dan Non-Doktrinal*, ed. Abd. Kahar Muzakkir and Faisal Rahman, 1st ed. (Makassar: CV. Social Politic Genius (SIGn), 2020), <https://repository.umi.ac.id/2676/1/9786025522468.pdf>.

such as legal journals and other relevant literature are employed to support the juridical analysis of the application of the precautionary principle in such business contracts.

The technique of collecting legal materials in this research is library research, which involves the collection and analysis of legal documents as well as legal theories forming the basis of the study in line with the research focus¹⁷. These documents include statutory texts, relevant expert opinions, and ministerial regulations. The analysis of legal materials is conducted by identifying and examining various regulations governing the application of the precautionary principle in business contracts for the utilization of natural resources in the mining sector, while also evaluating environmental protection measures and corporate liability for breaches of the precautionary principle.

Result and Discussion

1. The Obligation to Incorporate the Precautionary Principle in Business Contracts within the Mining Sector

Business contracts are essentially agreements between parties lawfully made under the provisions of civil law¹⁸. As stipulated in Article 1313 of the Indonesian Civil Code (KUHPerdara), an agreement is defined as a legal act by which one or more persons bind themselves to one or more other persons, thereby creating rights and obligations for each party involved. A contract constitutes a binding legal instrument (*pacta sunt servanda*), meaning that every party entering into the

¹⁷ Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2021): 145–60.

¹⁸ Ramziati, Sulaiman, and Jumadiah, *Kontrak Bisnis Dalam Dinamika Teoritis Dan Praktis*, Unimal Press, 2019.

contract is legally obliged to perform the terms thereof in good faith ¹⁹. In the business context, contracts function not only as a guideline for legal relations between parties but also as a guarantee of legal certainty and the protection of rights and obligations arising from such relations ²⁰. Juridically, business contracts are inseparable from the fundamental principles of contract law, such as the principle of freedom of contract, consensualism, and legal certainty ²¹.

Article 1338 of the Civil Code grants parties the freedom to make agreements. The freedom of contract provides space for parties to determine the content, form, and conditions of a contract, provided that it does not contravene statutory law, public order, or morality ²². However, in the mining sector, the principle of freedom of contract is not absolute, as its implementation is limited by mandatory legal norms (*dwingendrecht*) ²³. This includes provisions under Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH) and Law No. 4 of 2009 as amended by Law No. 3 of 2020 on Mineral and Coal Mining (the Mining Law). Both statutes explicitly mandate the necessity of environmental protection in every mining business activity, including through the application of the precautionary principle.

This reflects the understanding that business contracts in the mining sector are not merely private instruments but also carry a public dimension, binding corporate responsibility to the state and the wider

¹⁹ Willy Tanjaya, Heriyanti, and Ega Triwi Wijaya, "Tinjauan Hukum Tentang Penerapan Asas Pacta Sunt Servanda Dalam Hukum Bisnis Terhadap Penyelesaian Kasus Wanprestasi," *Unes Journal of Swara Justisia* 9, no. 2 (2025): 261–67, <https://doi.org/10.31933/rynrt05>.

²⁰ Joseph Hugo Vieri Iusteli Sola Kira and Richard C. Adam, "Penerapan Asas Kebebasan Berkontrak Dalam Perjanjian Kemitraan Dan Pengaruhnya Terhadap Praktik Persaingan Usaha Tidak Sehat," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 2 (2024): 1100–1111, <https://doi.org/10.38035/jihhp.v5i2.3762>.

²¹ Hukum Online, "5 Asas-Asas Hukum Perdata Terkait Perjanjian," 2022.

²² Rachmi Sulistyarini, "Makna Asas Kebebasan Berkontrak Dalam Hukum Perjanjian Menurut Hukum Indonesia," *Malang: Universitas Brawijaya* (2018).

²³ Melisa Febriani, "Studi Hukum Kritis: Pembatasan Asas Kebebasan Berkontrak Dalam Perjanjian Yang Posisi Para Pihaknya Tidak Seimbang," *Jurnal Hukum PRIORIS* 8, no. 2 (2022): 255–64, <https://doi.org/10.25105/prio.v8i2.14983>.

society ²⁴. Thus, mining business contracts must not be viewed solely from a commercial perspective but must also be positioned as legal instruments aligned with statutory regulations, including environmental law ²⁵. Given the inherently extractive and environmentally risky nature of mining activities, the integration of the precautionary principle into contractual clauses becomes indispensable ²⁶.

The precautionary principle has been widely recognized in both national and international law ²⁷. Internationally, the principle is enshrined in Principle 15 of the 1992 Rio Declaration, which affirms that the precautionary approach shall be widely applied by states, according to their capabilities, to protect the environment through prevention and restoration mechanisms, including explicit obligations such as Environmental Impact Assessments (EIA/AMDAL) ²⁸. Nationally, the principle is provided under Article 2(f) of Law No. 32 of 2009, which establishes precaution as one of the foundational principles in environmental protection and management. This recognition demonstrates that the precautionary principle not only originates in international law but has also become an integral part of Indonesia's national legal framework ²⁹, particularly in regulating high-risk business activities such as mining.

²⁴ Herdiansyah, "Tanggung Jawab Sosial Perusahaan (Corporate Social Responsibility) Dalam Perspektif Peraturan Perundang-Undangan Di Indonesia," *Hangoluan Law Review* 1, no. 1 (2022): 1–12, <https://mail.hlr.unja.ac.id/index.php/hlr/article/download/2/2/26>.

²⁵ Donna O Setiabudhi, Jemmy Sondakh, and Muhammad Hasbi, "Analisis Yuridis Perbedaan Antara Sistem Kontrak Karya Dengan Sistem Izin Usaha Pertambangan Di Tinjau Dari Kedudukan Dan Kewenangan Negara Dibidang Pertambangan," *Lex Privatum* IX, no. 7 (2021): 5.

²⁶ Kementerian ESDM, "Pengelolaan Pertambangan Harus Perhatikan Aspek Lingkungan," ESDM.GO.ID, 2023, <https://www.esdm.go.id/id/media-center/arsip-berita/pengelolaan-pertambangan-harus-perhatikan-aspek-lingkungan>.

²⁷ Emmy Latifah, "Precautionary Principle Sebagai Landasan Dalam Merumuskan Kebijakan Publik," *Yustisia Jurnal Hukum* 95, no. 2 (2021): 275–97, <https://doi.org/10.20961/yustisia.v95i0.2806>.

²⁸ UNCED, "Rio Declaration on Environment and Development," *United Nations* (Rio de Janeiro, Brazil, 1992), https://doi.org/10.1007/978-3-642-28036-8_19.

²⁹ Dony Yusra Pebrianto, Akbar Kurnia Putra, and Budi Ardianto, "Tinjauan Precautionary Principle Dalam Hukum Internasional" 6 (2022): 1–14.

The application of the precautionary principle in mining business contracts constitutes a concrete form of corporate legal obligation to ensure that business activities do not generate adverse environmental impacts ³⁰. Contractual clauses incorporating this principle function as binding commitments obligating corporations to comply with environmental duties, thereby extending beyond mere administrative compliance to civil obligations that can be legally enforced ³¹. Consequently, contracts transcend their private dimension as instruments regulating party-to-party relations, acquiring a public dimension as they concern the interests of the state, society, and the environment.

Mining contracts that fail to integrate the precautionary principle risk structural weaknesses, both in terms of environmental protection and legal certainty ³². Without the inclusion of precautionary clauses, contracts would merely regulate the economic interests of the parties without clear mechanisms to prevent or mitigate environmental risks. Yet, under the UUPPLH and the Mining Law, all mining activities are legally required to observe the principles of sustainability and precaution. Thus, the integration of the precautionary principle into contracts reflects corporate compliance with mandatory legal norms (dwingendrecht) ³³.

Moreover, the inclusion of precautionary principles in contracts creates clear sanction and liability mechanisms in the event that

³⁰ David Kriebel et al., "The Precautionary Principle in Environmental Science," *Environmental Health Perspectives* 109, no. 9 (2001): 871–76, <https://doi.org/10.1289/ehp.01109871>.

³¹ Alvi Syahrin, Martono Anggusti, and Abdul Aziz Alsa, *Hukum Lingkungan Di Indonesia*, ed. Fitri Yanni Dewi Siregar, Raudhatussyifa A'yuni, and Nurulla Ibrahim, 1st ed. (Jakarta: Penadamedia Group, 2018), <https://martonomily.com/wp-content/uploads/2024/07/Isi-Hukum-Lingkungan-di-Indonesia.pdf>.

³² SIP Law Firm, "Membedah Kewajiban Legalitas Di Sektor Pertambangan," 2025, <https://siplawfirm.id/membedah-kewajiban-legalitas-di-sektor-pertambangan/?lang=id>.

³³ I Wayan Yasa, "Penerapan Prinsip Kehati-Hatian Dalam Pembuatan Perjanjian Kredit Bank Dengan Jaminan Harta Bersama," *Journal Economic & Business Law Review* 2, no. 1 (2022): 48, <https://doi.org/10.19184/jebl.v2i1.31348>.

corporations neglect their environmental obligations. Such clauses may encompass obligations to prepare and implement Environmental Impact Assessments (AMDAL), post-mining reclamation duties, and requirements to provide financial guarantees for environmental restoration ³⁴. These provisions ensure that mineral exploration and exploitation are not only economically profitable but also consistent with the principles of sustainable development as mandated by the Constitution under Article 33(3) of the 1945 Constitution ³⁵. Accordingly, the obligation to incorporate the precautionary principle in mining business contracts serves not only as compliance with national regulations and international commitments but also as a manifestation of corporate social and environmental responsibility. This affirms the strategic role of mining contracts in bridging private and public interests while ensuring the sustainability of natural resource utilization for future generations.

2. Corporate Legal Liability for Violations of the Precautionary Principle in the Mining Sector

Corporate legal liability for violations of the precautionary principle constitutes a critical issue that cannot be disregarded, given the inherently extractive nature of mining activities and their potential to cause permanent environmental damage ³⁶. As a fundamental principle in environmental law, both at the national and international levels, the precautionary principle obliges corporations to anticipate, prevent, and minimize risks from the planning stage through the operational stage of

³⁴ Xun Wu et al., "Beyond Precautionary Principle: Policy-Making under Uncertainty and Complexity," *Policy Design and Practice* 7, no. 1 (2024): 1–16, <https://doi.org/10.1080/25741292.2023.2229090>.

³⁵ Ahmad Redi, "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam," *Jurnal Konstitusi* 12, no. 5 (2023): 401–21.

³⁶ Robyn Boldy et al., "Understanding The Impacts Of Mining On Ecosystem Services Through A Systematic Review," *The Extractive Industries and Society* 8, no. 1 (March 2021): 457–66, <https://doi.org/10.1016/j.exis.2020.12.005>.

their business activities ³⁷. Where this principle is neglected, the question arises as to the mechanisms of corporate liability civil, criminal, and administrative that may be imposed. Consequently, examining the forms and legal bases of liability for breaches of the precautionary principle is crucial to reaffirm the position of corporations as legal subjects that are not merely profit-oriented but also responsible to the environment and society ³⁸.

Mining particularly open-pit operations, entails substantial environmental risks, thereby requiring a massive application of the precautionary principle. The Environmental Protection and Management Act Law No. 32 of 2009 stipulates that scientific uncertainty regarding the impacts of a given activity cannot be used as a justification for delaying efforts to minimize threats of pollution or environmental damage ³⁹. In other words, mining corporations must adopt preventive and mitigation measures from the project planning phase, including incorporating the precautionary principle into contractual clauses. This requirement is further supported by the National Legal Development Agency, which argues that mining business contracts must be drafted in compliance with the precautionary principle in addition to statutory provisions ⁴⁰.

Liability for environmental damage is specifically regulated under the Environmental Protection and Management Act. Article 87 of Law No. 32/2009 expressly provides that every person in charge of a

³⁷ Nadjiha Fressa Ramadhani, "Penggunaan Prinsip Kehati – Hatian (Precautionary Principle) Dalam Tindak Pidana Lingkungan Hidup Perspektif Hukum Positif Dan Hukum Pidana Islam," *Universitas Islam Negeri* (2024).

³⁸ Abdul Aziz and Alsa Devi, "Corporate Environmental Responsibility Dalam Pencemaran Pulau-Pulau Kecil Di Indonesia" 19, no. 4 (2025): 93–101.

³⁹ Hasyry Agustin, "Sekali Lagi Tentang Precautionary Principle, Pak Hakim!," *Hukum Online*, 2017, <https://www.hukumonline.com/berita/a/sekali-lagi-tentang-iprecautionary-principle-i--pak-hakim-lt58c600227fb77/>.

⁴⁰ Restuadji Pangestu, "Perjanjian Kerjasama Di Sektor Pertambangan," *BPHN Kemenkumham*, 2025, <https://rechtsvinding.bphn.go.id/?page=artikel&berita=1025#:~:text=hubungan kerja sama yang adil%2C,perlindungan terhadap hak masyarakat lokal.>

business who commits an unlawful act in the form of pollution and/or environmental destruction that causes harm to other persons or to the environment is obliged to “pay compensation and/or undertake certain measures” ⁴¹. In practice, this subjects mining corporations to the polluter pays principle and strict liability where damage has occurred ⁴². In addition to damages, courts may order corporations to undertake corrective measures, such as installing waste treatment facilities, restoring environmental functions, or eliminating pollution sources ⁴³. These obligations are directly linked to the precautionary principle, as companies are required to take proactive measures to remedy the consequences of their pollution.

Furthermore, the Environmental Law also obliges corporations to undertake pollution control measures Article 53, Law No. 32/2009, such as issuing public warnings, isolating pollution sources, and halting polluting activities ⁴⁴. Even when administrative sanctions are imposed for example, suspension or revocation of a license, Article 78 of the Act affirms that such sanctions “do not release business actors from liability for restoration or criminal responsibility” ⁴⁵. Accordingly, civil liability for damages is not extinguished by the imposition of other sanctions. In enforcement practice, the community or the aggrieved party can pursue

⁴¹ Muhammad Fachri Hibatullah, Sofyan Jafar, and Hasan Basri, “Pertanggungjawaban Perdata Perusahaan Terhadap Pencemaran Lingkungan Hidup (Studi Penelitian Pt. Cionas Adisatwa),” *Jurnal Ilmiah Mahasiswa (Jim) Fh* 1 (2023): 58.

⁴² Kana Kurnia, Indra Rizqullah Fawwaz, and Lita Herlina, “Penerapan Polluter Pays Principle Dalam Perkara Tumpahan Minyak Di Teluk Kota Balikpapan,” *Jurnal Hukum Ius Quia Iustum* 30, no. 3 (2023): 561–82, <https://doi.org/10.20885/iustum.vol30.iss3.art5>.

⁴³ Ursula Lisa Tumilantouw, Isye Junita Melo, and Lesza Leonardo Lombok, “Analisis Hukum Asas Pencemar Membayar Sebagai Tanggung Jawab Korporasi Dalam Tindak Pidana Lingkungan,” *At- Tanwir Law Review* 5, no. 1 (2025).

⁴⁴ Annisa Fianni Sisma and Rahayu Subekti, “Konsep Pertanggungjawaban Penggunaan Dana Penjaminan Pemulihan Lingkungan Hidup Oleh Pemerintah Dan Pelaku Usaha Dan/Atau Kegiatan Annisa,” *Jayapangus Press Ganaya : Jurnal Ilmu Sosial Dan Humaniora* 6, no. 4 (2023): 820–30.

⁴⁵ **Ryan Akbar Fitriadi, ‘Penegakan Hukum Pidana Dibidang Lingkungan Hidup: Pidana Berbasis Konservasi Lingkungan Hidup’, Syntax Idea, 3.7 (2021) <<https://doi.org/10.36418/syntax->>.**

the resolution of environmental disputes through civil litigation ⁴⁶. Article 84 of the Act explicitly allows such recourse to the courts ⁴⁷. As a result, corporations that neglect the precautionary principle in their contracts and operations may be legally compelled to bear liability and restore the environment as ordered by the court.

Mining contracts are not merely instruments of private law between parties but also embody a public dimension, particularly in terms of environmental obligations ⁴⁸. If a contract clause explicitly stipulates a duty of care, any breach of that duty can be classified as a default under Article 1243 of the Indonesian Civil Code, thereby giving rise to remedies including damages or even contract termination. On the other hand, if a contract does not explicitly include the principle of prudence but corporate actions cause environmental damage, the basis for liability can still be invoked under Article 1365 of the Civil Code regarding unlawful acts. Law No. 32 of 2009 serves as *lex specialis* in governing civil liability mechanisms. Article 87 of the Act establishes strict liability for business actors whose activities result in environmental damage ⁴⁹.

Thus, mining corporations remain liable for environmental harm caused by their activities, regardless of whether their contracts explicitly contain precautionary clauses ⁵⁰. In addition to compensation,

⁴⁶ Ni Made Mc Gloriya Rahdnazs, Anna S. Wahongan, and Firdja Baftim, "Penyelesaian Sengketa Lingkungan Hidup Melalui Pengadilan Menurut Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Lex Privatum* IX, no. 11 (2021): 87–97.

⁴⁷ La Ode Angga, "Alternatif Penyelesaian Sengketa Lingkungan Hidup Di Luar Pengadilan (Non Litigasi) Alternative Settlement of Environmental Disputes Out of the Court (Non Litigation)," no. 32 (2018).

⁴⁸ Ahmad Redi, "Kontrak Karya PT Freeport Indonesia Dalam Perspektif Pancasila Dan UUD NRI 1945 Contract of Work of PT Freeport Indonesia in Pancasila and UUD 1945 Perspective," *Jurnal Konstitusi* 13, no. Nomor 3 (2022): 613–38.

⁴⁹ Etheldreda E L T Wongkar, "Meninjau Kembali Strict Liability: Perkembangan Konseptual Dan Tantangannya Dalam Ajudikasi Lingkungan Di Indonesia Informasi Artikel Abstract," *Jurnal Pro Natura* 1 (2024): 1–18.

⁵⁰ Siti Kotijah, "Tanggung Gugat Hukum Perusahaan Akibat Pengelolaan Pertambangan Batubara," *Yuridika* 26, no. 3 (2022): 293–94.

corporate civil liability may also include restorative measures, such as court-ordered reclamation, revegetation, or other technical measures to restore environmental functions. This aligns with the polluter pays principle: companies are required not only to compensate for damages but also to restore the environment to its original state⁵¹. Within the framework of mining business contracts, clauses on environmental restoration must therefore be regarded as integral provisions, ensuring that liability functions not only as a reparative instrument but also as a preventive mechanism to deter mining practices that disregard the precautionary principle.

Conclusion

The application of the precautionary principle in mining business contracts constitutes a legal necessity that cannot be disregarded. Although based on the principle of freedom of contract, in practice such agreements remain constrained by mandatory environmental and mining regulations. This demonstrates that mining contracts are not merely private arrangements but also possess a public dimension related to environmental protection and the broader interests of society. The incorporation of the precautionary principle within contractual clauses serves as an instrument obliging corporations to undertake prevention, control, and environmental restoration measures from the planning stage through post-mining activities. Consequently, contracts not only regulate the economic interests of the parties but also ensure compliance with the principle of sustainable development as mandated by Article 33 paragraph (3) of the 1945 Constitution. Violations of this principle entail serious legal consequences through civil liability, whether arising from breach of contract or tort, as stipulated in Law No. 32 of 2009 on Environmental Protection and

⁵¹ Elvira Fitriyani Pakpahan and Marsa Suhaila, "Cemaran Lingkungan Dalam Industri Pertambangan Berdasarkan Undang-Undang No. 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup (Studi Kasus Pt Gema Kreasi Perdana Di Pulau Wawonii) Corporate Legal Liability For Environmental Pollution In," *Jurnal Hukum Lex Generalis* 6, no. 8 (2025): 1–18.

Management, which reinforces the principles of strict liability and the polluter pays principle. Therefore, corporations must not solely pursue economic profit but also bear responsibility for environmental sustainability and social welfare. This research affirms that the integration of the precautionary principle into mining business contracts represents a concrete manifestation of the harmonization between business law and environmental law, while further research is required to evaluate the effectiveness of environmental clauses and to strengthen monitoring and enforcement mechanisms to ensure the consistent implementation of this principle.

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