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# The Study of Public Trust Doctrine Theory in Environmental Cases: Case Study of the New Mining Law

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## *ABSTRACT*

*The Public Trust Doctrine (PTD) stipulates that the government must prioritize public interests, even when natural resource access has been granted to individuals or entities. This study will explore the incorporation of PTD into Indonesian law and utilize it to assess the constitutionality of the Mineral and Coal Law enacted on May 12, 2020. Criticism has arisen from various quarters regarding this law, as it appears to endorse unsustainable resource exploitation, posing a threat to the well-being of communities residing near mining areas. Employing a normative juridical approach and relying on secondary sources such as legal documents and Constitutional Court decisions (MK), this research seeks to examine the compatibility of PTD with Article 33(3) of the Indonesian Constitution. Our findings suggest that PTD is applicable if natural resources play a vital role in the public domain, and their regulation fully aligns with the principle of "to the fullest extent of public welfare." However, an analysis of specific provisions such as Article 22, Article 169A(1), and Article 169B(5) within the Mineral and Coal Law reveals inconsistencies with the PTD concept.*

***Keywords***: *Public Trust Doctrine, Natural Resources, Mining Law*

## 1. INTRODUCTION

Public Trust Doctrine (PTD) is a doctrine that originates from Roman times and developed in several countries by indicating the public interest that must be taken into account in managing natural resources. The PTD doctrine has been widely developed in various environmental and natural resource disputes in the United States because the concept of its application is considered a new breakthrough in environmental law. According to Richard Frank, PTD is a doctrine that is the basis for environmental law and natural resource management, which shows the government's obligation to safeguard and protect the public interest in natural resource management (Liu et al., 2023).

In the case of Juliana v. United States, a group of teenagers filed a lawsuit against

the United States government for failing to reduce the impact of greenhouse gas emissions. The government is also considered to have violated the constitutional rights of teenagers to a decent life and the government's obligation to safeguard several natural resources as a "trust" for the people and future generations. These young people are demanding an open declaration that their constitutional rights are being violated and that the government must develop a real plan to reduce emissions. Although the PTD concept has developed more in countries with a common law system such as the United States, several principles contained in the PTD have relevance in the Indonesian legal context. Daud Silalahi explained that the PTD concept is the root of environmental legislation in Indonesia. The PTD concept is closely related to the principle of common ownership and returns to the initial essence where the environment is legally shared property, including water, sea, land, air and its surroundings. Apart from that, the dimension of public ownership of natural resources is reflected in Article 33 paragraph (3) of the 1945 Constitution, which reads: "Earth and Water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people ." (Mahardika & Bayu, 2022)

This paper uses a "judicial review" analysis to see the potential for conflicting norms in the UUMB with the PTD concept contained in Article 33 (3) of the 1945 Constitution. Judicial review is defined by Jimly Asshiddiqie as a test carried out through the mechanisms of a judicial institution regarding the truth of a norm. In this article, a judicial review was carried out on the UUMB and its alignment with the 1945 Constitution, specifically examining the existence of constitutional rights of citizens which were violated by the issuance of the UUMB.

## 2. THEORY OF THE RESEARCH

### 2.1. Tinjauan Umum Tentang Lingkungan:

Humans live on earth not alone, but together with other creatures, namely plants, animals and microorganisms. These other living creatures are not just living friends who live together neutrally or passively towards humans, but human life is closely related to them. Without them humans cannot live. This fact can be seen by assuming that there are no plants and animals on this earth. Where do you get oxygen and food? On the other hand, if there were no humans, plants, animals and microorganisms would be able to continue their lives, as can be seen from the history of the earth before humans existed. The assumption that humans are the most powerful creatures is not true. Humans should realize that they need other living creatures for survival and not plants that need humans for their survival. Therefore, humans should behave more humbly.(Oktaviani, 2022)

Because the determining factors for survival are not in human hands alone, so life is actually very vulnerable. Humans together with plants, animals and microorganisms occupy a certain space. Apart from living things, in that space there are also non-living things, such as air which consists of various gases, water in the form of steam, liquid and solid, soil and rocks. The space occupied by a living creature together with living and non-living objects in it is called the living environment of that creature. The environment is a spatial unity with all objects, forces, conditions of living creatures, including humans and their behavior and influences nature itself. In

ecology, nature is seen as a network of living systems that are interconnected with each other. This means that every living creature is in a process of adapting to the living system which is influenced by the principles of ecological continuity of life.

### 2.2. Previous Research

Research on environmental studies has been widely carried out, but links with law and the Public Trust Doctrine are still very rare. There are several studies that provide thinking space for researchers to develop ideas for this article. Huffman (2007) discussed about the public trust doctrine, rooted in roman law, has evolved over centuries to become a fundamental principle in environmental jurisprudence. this doctrine asserts that certain natural resources, such as navigable waters and shorelines, are held in trust by the government for the benefit of the public, imposing a duty to protect and preserve these resources for current and future generations. Ryan (2001) discussed about the public trust doctrine, as a theoretical framework, poses significant implications for natural resource management by emphasizing the government's fiduciary responsibility to safeguard public resources. This concept encourages a shift towards a more participatory and accountable approach in decision-making, aiming to balance resource utilization with the long-term interests of the public and the preservation of environmental integrity. Arianto & Simanjuntak (2020) discussed about The folklore surrounding the Mak Ungkai spirit provides a unique lens through which ecocriticism can be explored, as it intricately weaves together cultural narratives and environmental themes. This representation underscores the interconnectedness between human societies and the natural world, offering insights into the reciprocal relationship, responsibilities, and consequences tied to ecological harmony within the context of folklore. Last, Muqarramah, Gani, & Septriani (2024) discussed about Impact of Changing Rubber Plantations to Palm Oil Plantations in Nagari Manganti, Sumpur Kudus District, Sijunjung Regency, West Sumatra Province

## 3. RESEARCH METHOD

The type of research applied is normative research using a conceptual approach and a statutory approach. The data collection method used in this research includes literature study techniques, which involve analysis of various references, especially statutory regulations related to environmental law. (Sood, 2021) These references include statutory regulations, journal articles and reference books. has a connection with environmental and mining law. All the data that was collected was then analyzed descriptively qualitatively by referring to the theoretical basis.

## 4. RESULT AND DISCUSSION

### Results

### 4.1. Public Trust Doctrine in Indonesian Legal Systematics

According to Butt and Murharjanti (2019), the PTD concept in the common law system can be found in Article 33 paragraph (3) of the 1945 Constitution, namely "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity people". M. Daud Silalahi also understands this article as an embodiment of PTD in Indonesia on the basis of controlling natural resources to be managed or used for the greatest prosperity of the people, which gives the

government an obligation as the people's representative, to protect the interests of those who are harmed (parens patriae principle)" .(Novitasari, 2021)

PTD elements in common law, such as the existence of public rights in the use of natural resources even though ownership of natural resources is given to certain individuals, can also be found in several laws in the field of natural resources which refer to Article 33 of the 1945 Constitution. For example, Article 6 UUPA regulates that land has a social function. This means that a person cannot use his land solely for personal interests, if this causes harm to society. (Muthmainnah & Lestari, 2020) Article 58 of Law no. 39/2014 concerning Plantations also regulates that plantation business permit holders must provide 20% of the working area for community plantations (plasma plantations). Furthermore, based on the MK's opinion, Article 33 of the 1945 Constitution must be read systematically to understand the meaning of each paragraph. (Nurlani, 2018) The explanation itself confirms that collective prosperity takes priority over the prosperity of a person and important branches of production. controlled by the state because it can oppress the people if it falls into the hands of individuals. (Arliman, 2018)

For a more in-depth analysis, UUMB will be used as a case study in using the PTD concept with a judicial review approach. Judicial review methods are divided into 2 models, namely the court sector and the constitutional sector. Judicial review in the field of the constitution is the review of laws against the Constitution as regulated in Article 24 C of the 1945 Constitution as one of the authorities of the Constitutional Court, while judicial review in the field of courts, namely testing the harmony of regulations under the law with the law. , falls under the authority of the Supreme Court. This article emphasizes the judicial review approach in the field of the constitution, especially its material aspects, because the object being studied is the alignment of the UUMB with the 1945 Constitution. Apart from that, the Constitutional Court has jurisdiction based on Article 51 paragraph (1) of the Constitutional Court Law, the applicant is the party who considers His "constitutional rights and/or authority" are impaired by the enactment of the law. In this case, the existence of the rights of Indonesian citizens in Article 33 of the 1945 Constitution relates to "the right to obtain prosperity from natural resources controlled by the state." (Septiarani et al., 2021)

According to the author, the PTD concept in Article 33 of the 1945 Constitution has two operational requirements to determine whether the regulations in a Natural Resources Law are unconstitutional or not: First, whether the natural resources in question are included in an important production branch of the state and which affect the livelihoods of many people so that they must be controlled by state whose authority is given by the public. (Fahruddin, 2019) Second, does the government consider "the greatest prosperity of the people" when implementing the Right to Control the State (HMN). In the Constitutional Court decision no. 001-021-022/PUU-I/2003, the Constitutional Court judges used the first condition to assess whether the "electricity" business should be controlled by the state so that the privatization of electricity in Law no. 20 of 2002 concerning Electrical Power is unconstitutional. The judge looked at the preamble to Law no. 20/2002 which emphasizes "that electric power is very useful for advancing general

welfare, educating the nation's life and improving the economy". This sentence shows that the government as a regulator recognizes the importance of electricity for the country and has implications for the lives of many people. Expert opinions also explain that electricity is very important for the country as a commodity, infrastructure and source of income needed to carry out development tasks. Apart from that, public services for electricity needs are considered only inferior to food needs. (Said & Nurhayati, 2020)

**4.2. Testing the PTD Concept in UUMB**

As discussed in the previous chapter, two PTD operational requirements will be used to study UUMB. The first test is used to review whether UUMB is an "important branch of production for the country and affects the lives of many people". As the judge considers in the Constitutional Court decision no. 001-021-022/PUU-I/2003 in determining whether a natural resource is an important branch, the consideration of a natural resources law must first be looked at. The consideration in part a of the UUMB emphasizes that mineral and coal "have an important role and fulfill the livelihood needs of many people". Having a form of acknowledgment from the law maker is important because it helps the judge in formulating his considerations regarding the fulfillment of the first condition of the PTD.

Article 22 regulates changes to the WPR area to 100 hectares and 100 meters for the maximum excavation depth. The government should be wiser by first improving the governance of small-scale mining. In practice, community mining does not solve economic problems because people often work as miners without permits and are asked to make deposits to the barons. It is feared that the expansion of the area and depth associated with the WPR is very vulnerable to the issuance of mining permits to inappropriate people. This is contrary to the PTD concept where the government as the trustee is the party that should look after it, not let the private sector carry out commercial activities that can have a negative impact on the environment. Articles 169 A and B provide great freedom to private parties who still hold KK and PKP2B to continue their business with a permit regime. These two articles do not mention the basis for consideration of environmental and social aspects that are protected based on the PTD concept in Article 33 of the 1945 Constitution. If only state revenue is taken into consideration, then it can be ensured that almost all KK and PKP2B owners will receive certainty of continuity. business due to the large amount of state income from the mining sector. In 2019 alone, the realization of PNBP from the mining sector reached IDR 172 trillion. (Wibowo et al., 2021)

Even though the government uses aspects of environmental carrying capacity as the basis for determining the minimum area of an exploration IUP, the Constitutional Court granted the request for a judicial review because Law 4/2009 does not regulate further regarding aspects of land adequacy that influence the carrying capacity and carrying capacity of the environment. The judge considers that the Indonesian people have given the state a mandate to be able to manage natural resources for the prosperity of the people, which is realized through giving priority to mineral and coal mining operations to people from small and medium economies. In the UUMB, articles 169 A and B can be said to benefit several parties because there are around eight large mining companies whose KK and PKP2B will expire

in the near future (2020-2021). IPB professor Hariadi Kartodihardjo is of the opinion that natural resource regulation in Indonesia is very vulnerable to state capture, namely the inclusion of the interests of certain parties which are accommodated by certain regulations. 49 This argument is not intended to accuse the government or certain parties because the problem of state capture is not relevant to implementation. The PTD and MK themselves do not have the authority to adjudicate this issue. However, UUMB drafters should be more sensitive to social welfare by considering the consistency of norms which also originate from the Constitutional Court's decision on the Old Mineral and Coal Law. It should be noted that the Constitutional Court's decisions are sometimes inconsistent and give partiality to investors in carrying out natural resource exploitation businesses. For example, the Protected Forest Mining case concerns the review of Article 83A of Law no. 19/2004, which essentially allows open-pit mining in protected forest areas. 50 Even though the Constitutional Court acknowledged the existence of the right to a healthy environment and the impact of mining on the environment, the lawsuit was rejected on the grounds that the level of norms regulated in Article 83 A is abstract norms which are implementing (executive) in nature, namely the appointment of certain officials, in this case the President, who is given the authority to grant permits by Presidential Decree. 51 In fact, after the issuance of Law no. 19/2004, President Megawati issued a Presidential Decree containing a list of 13 companies whose mining concessions overlap with protected forest areas, which, if debated, contains concrete individual norms.

## 5. CONCLUSION

The PTD theory is a Roman concept in natural resource management which provides for the state's obligation as a "guardian" in managing natural resources for the public interest. This study discusses in more depth the implementation of PTD by taking the legal system in the United States into consideration. There are four elements of PTD that can be seen from several cases in the United States, including: the existence of a conflict of public and private interests in the management of natural resources in public spaces; the existence of natural resources that can be accessed by the public and used as commercial facilities (fishing, navigation, etc.) and entertainment (Recreational Activity) or activities to enjoy nature; there are land conversion activities aimed at advancing the economy or benefiting private parties; If natural resources in public spaces are degraded and reduce public access rights, the community has the right to file a lawsuit in court. In its development, PTD began to be recognized for its application in climate change cases with several limitations related to the court's authority in regulating government policies and proving non-speculative losses. In the Indonesian legal system, PTD is present in Article 33 paragraph (3) of the 1945 Constitution. In the context of judicial review in the field of the constitution, there are two operational requirements for using PTD: First, whether the natural resources in question are included in "branches of production that are important for the state and which controls the lives of many people." Second, does the government consider "the greatest prosperity of the people" when implementing the Right to Control the State (HMN). In the UUMB considerations, the important role of

Minerals and Coal has been very clearly stated by the law makers so that the first requirement for the application of the PTD theory has been fulfilled. Next, the elements of "greatest prosperity of the people" are tested against Article 22 letter d, 169A paragraph (1) and 169B paragraph (5) in the UUMB. The results of the analysis in table 1 show that these three articles are not in accordance with the PTD concept because they do not fulfill the aspects of the benefits of natural resources for the people, equal distribution of the benefits of natural resources for the people, participation of the people in determining the benefits of natural resources and respect for the people. from generation to generation in utilizing natural resources. Even though it uses a judicial review approach in the constitutional field, this analysis does not intend to limit the use of the PTD concept in environmental cases in general courts. However, according to the author, the use of the PTD concept in environmental cases in general courts must be preceded by the regulation of PTD instruments in Law 32/2009 concerning the Environment or other related Natural Resources Laws. If the relevant law does not adopt this PTD concept, it is unlikely that this concept will be implemented in Indonesia considering that the Indonesian legal system is characterized by written regulations (written law).

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