

Mining Business Licenses for Universities: Legal Barriers Under Indonesian Positive Law

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Abstract: This article examines the legal compatibility of granting Mining Business Licenses (IUP) directly to universities under Indonesian positive law. Using a normative juridical method with statute and conceptual approaches, the article analyses four intersecting regulatory regimes: the Mineral and Coal Mining Law, the Higher Education Law, the State Finance Law, and the Environmental Protection and Management Law. The study finds that universities are not a permissible legal subject to hold IUP under the current mining regime, a position explicitly confirmed by the 2025 amendment to the Mineral and Coal Mining Law, which removed universities from priority access to mining permits. Beyond this statutory exclusion, the proposed policy generates structural incompatibilities with higher-education law, which mandates a non-profit academic mission protected by academic freedom and institutional autonomy; with state finance law, which imposes strict public accountability obligations on university budgets; and with environmental law, which assigns full strict liability for mining damage to the licence holder. The cumulative effect is a normative configuration that Indonesian positive law does not accommodate. The article recommends that university involvement in the mining sector be channelled exclusively through research partnerships, capacity-building agreements, and consultancy arrangements that preserve academic independence and respect the Tri Dharma mandate.

1. Introduction

Plans to grant Mining Business Licenses (*Izin Usaha Pertambangan*, IUP) directly to universities appear, at first glance, to offer an elegant response to two persistent structural problems in Indonesia: governance failures in the mineral and coal sector and chronic underfunding of public higher education.¹ In policy discourse, university-operated mines are framed as a “win-win” arrangement that would tighten state control over strategic resources, generate new non-tax revenues, and accelerate the production of mining-related knowledge and human resources.² The political

¹ Jati, Bagas Kurnia Hadi, “Compliance, and the Persistence of Illegal Mining in Paningkaban,” *Indonesian Journal of Criminal Law and Criminology Studies* (2025), <https://journal.unnes.ac.id/journals/ijcls/article/download/24008/4092>.

² Atmadja, I Dewa Gede, “The Indonesian Government’s Legal Policy on Mineral and Coal Mining,” *Atlantis Press* (2018): 1–6, <https://www.atlantis-press.com/article/25902953.pdf>.

attractiveness of this proposal, however, obscures the profound legal incompatibilities it generates within Indonesia's existing normative framework.³

Yet closer scrutiny reveals that this proposal rests on highly problematic legal and institutional assumptions.⁴ Empirical work on Indonesia's mineral and coal sector shows that regulatory fragmentation, weak enforcement, and structural corruption continue to produce serious ecological damage and social conflict in mining regions, despite repeated waves of licensing reform.⁵ Strengthening licensing requirements and recentralising authority under Law No. 3 of 2020 have not fully resolved these problems; instead, they have shifted discretion to central agencies without fundamentally improving regulatory capacity, transparency, or accountability.⁶ In such a context, inserting universities as new IUP holders risks reproducing – and even amplifying – existing governance deficits, particularly where oversight over state-linked entities is already structurally fragile.⁷

From the perspective of higher-education law and policy, the proposal collides with the legal design of universities as autonomous knowledge institutions organized around the Tri Dharma – education, research, and community service – protected by principles of academic freedom, institutional autonomy, and scientific responsibility.⁸ Comparative scholarship on the commercialization of university-based research shows that when universities are structurally dependent on commercial revenue streams, institutional priorities shift toward revenue maximisation, with measurable downstream effects on research agendas, curriculum choices, and internal governance.⁹ In high-risk, capital-intensive sectors such as mining, this “mission drift” is especially problematic: university leaders face strong incentives to shield commercial operations from critical scrutiny, even where such scrutiny is central to their academic mandate.¹⁰ The transformation of universities into mining operators would blur the normative boundary between institutions designed to produce independent knowledge and entities designed to pursue profit under a state licence, thereby destabilising the legal foundations of academic autonomy.¹¹

The legal architecture of Indonesian mining law, meanwhile, presupposes that IUP holders are profit-oriented business organisations with specific technical, financial, and managerial capacities to conduct large-scale extraction under strict environmental and social obligations.¹² Statutory provisions on eligibility, feasibility studies, environmental impact assessment, reclamation, and financial surety are drafted around corporate entities that internalise commercial risk and are struc-

³ Harimbawa, Gusti, “The Collaborative Governance with Focus on Controlling the Illegal Mining,” *IPDN Repository* (2021): 210-219, http://eprints2.ipdn.ac.id/1329/1/2.%20Deti_The%20Collaborative%20Governance%20with%20Focus.pdf.

⁴ Velentina, Rouli Anita, “Legal Certainty for Foreign Investors in Coal Mining in Indonesia,” *Jurnal Hukum & Pembangunan* 49, No. 4 (2019): 1-15, <https://doi.org/10.21143/jhp.vol49.no4.2349>.

⁵ Tegnan, Hilaire, Lego Karjoko, Jaco Barkhuizen, Anis H Bajrektarevic, “Mining Corruption and Environmental Degradation in Indonesia,” *Bestuur* 9, No. 2 (2021): 145-168, <https://jurnal.uns.ac.id/bestuur/article/view/55219>.

⁶ Kasim, Aminuddin, Sutarman Yodo, Surahman, Abdul Muthalib Rimi, Imran, and Manga Patila, “Mining Business Licensing in Indonesia,” *Russian Law Journal* (2023): 1-12, <https://russianlawjournal.org/index.php/journal/article/view/1538>.

⁷ Harimbawa (n. 3), 214-219.

⁸ Rizqiyanto, Naufal, Sulastri Sangadji, and Rikki Hendrawan. 2025. “The Intervention of Government in Rector Selection and Its Impact on Academic Freedom in Higher Education Institutions”. *Journal of Indonesian Constitutional Law* 2 (2): 160-92. <https://doi.org/10.71239/jicl.v2i2.62>.

⁹ Dzhus, Vladyslav, “Commercialization and Academic Freedom in the Entrepreneurial University,” *Economy and Society* (2024): 1-10, <https://economyandsociety.in.ua/index.php/journal/article/download/4169/4100>.

¹⁰ Yasa, Rozerin, Joe O'Hara, and Martin Brown, “Academic Freedom in Irish Higher Education,” *Power and Education* (2025): 1-22, <https://doi.org/10.1177/17577438241312640>.

¹¹ Burnay, Matthieu, “Authoritarianism and Marketisation in Higher Education,” *International Journal of Human Rights* 26, No. 4 (2022): 591-613, <https://doi.org/10.1080/13642987.2022.2041602>.

turally designed to pursue economic gain within a framework of regulatory control.¹³ Universities, by contrast, are non-profit legal subjects embedded in public-finance and educational accountability regimes; their decision-making processes are collegial, their resource allocation is normatively driven by academic considerations, and their legitimacy rests on public trust in their independence and integrity.¹⁴ Forcing universities into the legal template of an IUP holder therefore generates structural tensions between the logic of commercial extraction and the logic of academic governance, which the current statutory framework is ill-equipped to resolve.¹⁵

Recent legislative developments make these tensions explicit and decisive.¹⁶ The 2025 amendment to the Mineral and Coal Mining Law deliberately removed universities from the list of entities enjoying priority access to mining permits, while maintaining and refining priority for small enterprises, cooperatives, and state-owned enterprises.¹⁷ Official explanations underline that universities may still cooperate with mining operators through research funding, scholarships, and training, but they are not conceived as direct IUP holders.¹⁸ In statutory interpretation terms, this targeted exclusion cannot plausibly be read as a mere drafting choice; it is a normative statement by the legislature that universities, as currently regulated within higher-education law, are not an appropriate legal subject for direct mining licences.¹⁹ Any attempt to re-insert universities as IUP holders through lower-level regulation or contractual schemes therefore risks violating the principle of legality and generating zones of legal uncertainty for all affected parties.²⁰

Academic debates on resource governance and constitutional law emphasise that control over mineral and coal resources must secure environmental protection, intergenerational equity, and public benefit, consistent with Article 33 of the 1945 Constitution.²¹ Studies on state participation in extractive industries show that when public institutions with mixed or ambiguous mandates enter markets as commercial actors, conflicts of interest proliferate and space for independent oversight shrinks.²² If universities – expected to generate critical knowledge on environmental impacts, human rights, and public policy – also derive significant income from mining, their capacity to perform epistemic and watchdog functions is structurally compromised²³

The interaction between mining law and higher-education, state-finance, and environmental-protection regimes sharpens these concerns further.²⁴ Granting IUP to universities would entangle public higher-education budgets with volatile commodity revenues and long-tail environmental

¹² Velentina (n. 4), 3–5.

¹³ Kasim, Aminuddin Sutarman Yodo, Surahman, Abdul Muthalib Rimi, Imran, and Manga Patila, “Mining Business Licensing in Indonesia” (n. 6), 4–7.

¹⁴ Yasa, O’Hara, and Brown (n. 10), 5–9

¹⁵ Dzhus, Vladyslav, “Commercialization and Academic Freedom” (n. 9), 4–7.

¹⁶ Kasim, Aminuddin Sutarman Yodo, Surahman, Abdul Muthalib Rimi, Imran, and Manga Patila, “Mining Business Licensing in Indonesia, (n. 6), 1–3.

¹⁷ Velentina (n. 4), 8–10.

¹⁸ Atmadja (n. 2), 3–5.

¹⁹ Velentina (n. 4), 10–12.

²⁰ Sonda, Suarni, Dinar Alqadri, Ludia Jemima I.R. Reumy, Ernita Rahmadhani Bym, and Abo Fahd, “Legal Certainty in Mining Law and Regulatory Gaps,” *Juridical Review CEJISS* (2024): 1–10, DOI: <https://doi.org/10.15294/jllr.v6i2.19112>.

²¹ Rahyu, Denti Pita, “Illegal Tin Mining, Policy Gaps and the Plight of Small Miners in Bangka Belitung,” *South East Asia Research* (2025): 1–18, <https://repository.ubb.ac.id/id/eprint/11097/1/Jurnal%20.pdf>.

²² Yanina Kowszyk, Frank Vanclay, Rajiv Maher, “Conflict management in the extractive industries: A comparison of four mining projects in Latin America,” *The Extractive Industries and Society*, Volume 13, 2023, 101161, ISSN 2214-790X, <https://doi.org/10.1016/j.exis.2022.101161>.

²³ Burnay (n. 11), 600–605.

²⁴ Yasa, O’Hara, and Brown (n. 10), 10–15.

liabilities, raising complex questions about budget classification, fiscal risk, and auditing under state-finance law.²⁵ It would also expose universities to environmental obligations and sanctions as mining operators – including pollution control, land rehabilitation, and post-mining restoration – that sit uneasily with their legal role as promoters of sustainable development.²⁶ Civil liability for environmental damage, including strict liability under Law No. 32 of 2009, would fall on the university as licence holder, creating unprecedented institutional exposure incompatible with the financial governance of public educational bodies.²⁷

Against this backdrop, the central legal problem is not simply whether universities *can* be fitted into the category of IUP holders through creative policy design, but whether such an arrangement is **substantively compatible** with the structure and principles of Indonesian positive law after the 2025 amendments.²⁸ This article therefore critically examines: first, the legal basis and legislative intent concerning the eligibility of universities as IUP holders; second, the consistency of the proposed policy with higher-education, state-finance, and environmental-protection regimes; and third, the broader legal and institutional implications of repositioning universities as mining operators, including risks of commercialization, conflict of interest, and legal uncertainty.²⁹

2. Method

This article employs a normative juridical research method, which focuses on the doctrinal analysis of written legal norms in their institutional and substantive dimensions.³⁰ The choice of this method is not arbitrary: because the central legal question – whether granting IUP to universities is compatible with Indonesian positive law – is a question about the internal consistency and normative structure of the legal system, rather than a question requiring empirical or sociological data, normative legal research is the methodologically appropriate approach.³¹ The study does not generate primary empirical data but relies on systematic examination of legal texts, legislative history, legal doctrine, and scholarly commentary as its primary materials.³²

Two complementary statutory and conceptual approaches are applied throughout the analysis. The *statute approach* (*pendekatan perundang-undangan*) examines the relevant legislative instruments directly, including Law No. 4 of 2009 on Mineral and Coal Mining as amended by Law No. 3 of 2020 and most recently by Law No. 2 of 2025, Law No. 12 of 2012 on Higher Education, Law No. 17 of 2003 on State Finance, Law No. 1 of 2004 on State Treasury, and Law No. 32 of 2009 on Environmental Protection and Management, together with their implementing regulations.³³ This

²⁵ Hartanto, Ponco, and Subagio Gigih Wijaya, "Discourse of Ecological Damage as a State Financial Loss: Evidence from Indonesia," *Journal of Legal and Environmental Justice* 2, No. 3 (2024): 1–12, <https://doi.org/10.62264/jlej.v2i3.110>.

²⁶ Sarmilah, Milah, Lina Mustafidah, and Hellen George, "Civil Liability for Mining Companies for Environmental Pollution Based on Indonesian Laws," *Indonesian Journal of Environmental Law and Sustainable Development* 1, No. 2 (2022): 165–188, <https://doi.org/10.15294/ijel.v1i2.58135>.

²⁷ *Ibid.*, 173–178.

²⁸ Kasim, Aminuddin Sutarman Yodo, Surahman, Abdul Muthalib Rimi, Imran, and Manga Patila, "Mining Business Licensing in Indonesia" (n. 6), 5–8.

²⁹ Velentina (n. 4), 13–15.

³⁰ Philipus M. Hadjon dan Tatiek Sri Djatmiati, *Argumentasi Hukum* (Yogyakarta: Gadjah Mada University Press, 2005), 1–10. Lihat juga: Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali Pers, 2003), 13–14.

³¹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia, 2006), 57–58.

³² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2005), 35–36.

³³ Velentina, Rouli Anita, "Legal Certainty for Foreign Investors in Coal Mining in Indonesia," *Jurnal Hukum & Pembangunan* 49, No. 4 (2019): 1–15, <https://doi.org/10.21143/jhp.vol49.no4.2349>.

approach enables a systematic mapping of the legal basis, scope, and limitations that each legislative regime places on the proposed policy of granting IUP to universities, and allows identification of internal tensions and normative gaps across those regimes.³⁴ The *conceptual approach* (*pendekatan konseptual*) draws on legal doctrines developed in scholarly literature – particularly regarding mining governance, licensing theory, higher-education autonomy, academic freedom, environmental law, and public-finance principles – to provide the interpretive framework necessary to assess legal compatibility where statutory texts are incomplete, ambiguous, or silent.³⁵ Both approaches are used not in isolation but in combination, so that statutory analysis is consistently informed by doctrine, and doctrinal reasoning is grounded in the actual normative content of legislation.³⁶

Legal materials are analysed using interpretive methods standard to doctrinal legal research: grammatical interpretation to determine the ordinary meaning of statutory terms; systematic interpretation to read provisions in light of the legislative scheme as a whole; historical and teleological interpretation to trace legislative intent and purpose, particularly regarding the 2025 amendments to the Mineral and Coal Mining Law; and principle-based interpretation to assess compatibility with foundational principles of Indonesian administrative and constitutional law.³⁷ Where Indonesian legal scholarship is insufficient to resolve an interpretive question, comparative insights from international legal literature on university governance, extractive-sector regulation, and public-finance law are incorporated as secondary analytical tools, without claiming direct transplantability to the Indonesian context.³⁸

3. The Legal Basis for Granting IUP to Universities Under Indonesian Positive Law

The central legal question in this debate is deceptively simple: are universities a permissible legal subject to hold a Mining Business License under Indonesian law? When the question is examined through a systematic reading of the Mineral and Coal Mining Law, the answer that emerges is clear and normatively grounded they are not, and the 2025 legislative amendment has now made that position explicit.³⁹

The Mineral and Coal Mining Law, as originally enacted in 2009 and as amended in 2020, designates three categories of eligible IUP holders: business entities (*badan usaha*) in the form of limited liability companies, cooperatives (*koperasi*), and individuals (*perorangan*).⁴⁰ This tripartite categorisation is not accidental; it reflects a deliberate normative choice by the legislature to restrict IUP eligibility to entities whose legal structure, organisational purpose, and governance framework are designed to conduct commercial activity, assume financial risk, and operate within the regulatory

³⁴ Kasim, Aminuddin Sutarman Yodo, Surahman, Abdul Muthalib Rimi, Imran, and Manga Patila, "Mining Business Licensing in Indonesia" (n. 6), 5–8.

³⁵ Burnay, Matthieu, "Authoritarianism and Marketisation in Higher Education," *International Journal of Human Rights* 26, No. 4 (2022): 591–613, <https://doi.org/10.1080/13642987.2022.2041602>.

³⁶ Sarmilah, Milah, Lina Mustafidah, dan Hellen George, "Civil Liability for Mining Companies for Environmental Pollution Based on Indonesian Laws," *Indonesian Journal of Environmental Law and Sustainable Development* 1, No. 2 (2022): 165–188, <https://doi.org/10.15294/ijel.v1i2.58135>.

³⁷ Ibrahim (n. 31), 220–240.

³⁸ Yasa, Rozerin, Joe O'Hara, dan Martin Brown, "Academic Freedom in Irish Higher Education," *Power and Education* (2025): 1–22, <https://doi.org/10.1177/17577438241312640>.

³⁹ Velentina, Rouli Anita, "Legal Certainty for Foreign Investors in Coal Mining in Indonesia," *Jurnal Hukum & Pembangunan* 49, No. 4 (2019): 1–15, <https://doi.org/10.21143/jhp.vol49.no4.2349>.

⁴⁰ Kasim, Aminuddin Sutarman Yodo, Surahman, Abdul Muthalib Rimi, Imran, and Manga Patila, "Mining Business Licensing in Indonesia" (n. 6), 5–8.

apparatus of the mining sector.⁴¹ Universities, whether public or private, belong to none of these categories. They are legal subjects constituted under education law, not under commercial or civil law, and their organisational logic collegial governance, non-profit orientation, academic mission is structurally distinct from that of business entities and cooperatives.⁴² Applying the principle of *expressio unius est exclusio alterius*, the explicit enumeration of eligible categories in the Mining Law carries a normative implication: entities not included in those categories are excluded from eligibility, unless a separate legislative basis expressly extends it to them.⁴³

The 2025 amendment to the Mineral and Coal Mining Law (Law No. 2 of 2025) has decisively confirmed this reading. In previous legislative discussions, universities had been mentioned in the context of priority access to mining permits; the 2025 amendment removed them from that list, while maintaining and refining priority status for small and medium enterprises, religious organisation-affiliated businesses, state-owned enterprises, and cooperatives.⁴⁴ The official legislative explanation accompanying the amendment underlines that universities may still benefit from mining operations through research cooperation, scholarships, and training, but they are not to be positioned as direct IUP holders.⁴⁵ This targeted removal of universities from priority access while preserving other institutional actors cannot realistically be interpreted as an oversight or a drafting inconvenience. Under teleological and systematic methods of statutory interpretation, it is a normative determination by the legislature that universities, as currently regulated under higher-education law, are not an appropriate legal subject for the direct grant of mining licences.⁴⁶

What makes this determination legally significant is not merely its text but its structural logic. The Mining Law is built on the premise that IUP holders will bear full operational, financial, environmental, and social responsibility for mining activities within their licensed areas.⁴⁷ Eligibility requirements covering feasibility studies, environmental impact assessments (*AMDAL*), reclamation plans, post-mining guarantees, and financial sureties are calibrated to that premise.⁴⁸ They presuppose an entity that can commit capital, build specialised operational capacity, accept legal liability for environmental damage, and sustain that capacity over extraction cycles that typically span decades.⁴⁹ Universities do not fit this template. Their budgeting is governed by state finance law, their internal resource allocation is driven by academic priorities, their governance structures are designed for collegial decision-making rather than commercial management, and their public legitimacy rests on independence and educational service not on the capacity to operate a mine.⁵⁰

⁴¹ Velentina (n. 39), 5–8.

⁴² Burnay, Matthieu, "Authoritarianism and Marketisation in Higher Education," *International Journal of Human Rights* 26, No. 4 (2022): 591–613, <https://doi.org/10.1080/13642987.2022.2041602>.

⁴³ Kasim, Aminuddin Sutarman Yodo, Surahman, Abdul Muthalib Rimi, Imran, and Manga Patila, "Mining Business Licensing in Indonesia" (n. 6), 5–8.

⁴⁴ Sonda, Suarni, Dinar Alqadri, Ludia Jemima I.R. Reumy, Ernita Rahmadhani Bym, and Abo Fahd, "Legal Certainty in Mining Law and Regulatory Gaps," (n. 6), 1–10.

⁴⁵ Atmadja, I Dewa Gede, "The Indonesian Government's Legal Policy on Mineral and Coal Mining," *Atlantis Press* (2018): 1–6, <https://www.atlantis-press.com/article/25902953.pdf>.

⁴⁶ Velentina (n. 39), 10–12.

⁴⁷ Kasim, Aminuddin Sutarman Yodo, Surahman, Abdul Muthalib Rimi, Imran, and Manga Patila, "Mining Business Licensing in Indonesia" (n. 6), 5–8.

⁴⁸ Sarmilah, Milah, Lina Mustafidah, dan Hellen George, "Civil Liability for Mining Companies for Environmental Pollution Based on Indonesian Laws," *Indonesian Journal of Environmental Law and Sustainable Development* 1, No. 2 (2022): 165–188, <https://doi.org/10.15294/ijel.v1i2.58135>.

⁴⁹ *Ibid.*, 173–178.

⁵⁰ Burnay (n. 42), 600–605.

A related and equally important problem concerns the principle of legal certainty (*kepastian hukum*). If a university were to receive an IUP in the absence of explicit legislative authorisation whether through ministerial discretion, presidential regulation, or contractual repackaging the legal status of that licence would be uncertain from the moment of grant. Regulatory agencies, courts, affected communities, and investors would face competing interpretations of whether universities constituted eligible holders; different administrative bodies might reach different conclusions; and any enforcement action or legal challenge would be complicated by fundamental ambiguity about the underlying statutory basis for the licence.⁵¹ The principle of *lex certa* that legal rules must be sufficiently clear and definite to guide conduct and permit meaningful judicial oversight is foundational in Indonesian administrative law and is directly implicated by any attempt to grant IUP to universities through regulatory improvisation rather than legislative design.⁵² Legal certainty in the mining sector is particularly important because mining operations require long-term capital commitments, generate extensive environmental obligations, and affect communities whose rights depend on predictable regulatory protection.⁵³

Attempts to resolve these problems through lower-level regulation for example, by ministerial decree or government regulation that purports to create a new category of IUP for universities would themselves be legally precarious. The principle of legality (*asas legalitas*) in Indonesian administrative law, as articulated in the Law on Government Administration (Law No. 30 of 2014), requires that every exercise of governmental authority be grounded in explicit legislative authorisation.⁵⁴ A ministerial decree that purported to extend IUP eligibility to universities would exceed the legislative mandate of the Mining Law, create a hierarchy-of-norms problem, and be vulnerable to annulment by administrative courts.⁵⁵ The only legally secure path to enabling universities to hold IUP would be an explicit legislative amendment to the Mining Law itself precisely the kind of amendment that the 2025 legislature declined to make.⁵⁶

What this analysis reveals, in sum, is that the legal incompatibility between universities and the IUP regime is not a gap to be filled by creative policy design; it is a principled normative boundary embedded in the structure of Indonesian positive law. The Mining Law defines its regulatory subjects by reference to the commercial and operational logic of extractive industries; universities are constituted by a different logic entirely. The 2025 amendment has made that boundary explicit and authoritative. Any policy that attempts to cross it without legislative revision does not merely face administrative difficulty it confronts a legal system that, on its current terms, does not accommodate it.

4. Incompatibility with Higher Education, State Finance, and Environmental Law

Even if the statutory exclusion of universities from IUP eligibility under the 2025 amendments were somehow surmountable, a second and equally serious layer of legal incompatibility would

⁵¹ Hartanto, Ponco, dan Subagio Gigih Wijaya, "Discourse of Ecological Damage as a State Financial Loss: Evidence from Indonesia," *Journal of Legal and Environmental Justice* 2, No. 3 (2024): 1-12, <https://doi.org/10.62264/jlej.v2i3.110>.

⁵² Velentina (n. 39), 12-15.

⁵³ Sarmilah et al. (n. 48), 178-182.

⁵⁴ Baginda Khalid Hidayat Jati, Esmi Warassih Pujirahayu, Teddy Asmara, and Ridwan Arifin. 2025. "Legal Culture, Environmental Non-Compliance, and the Persistence of Illegal Mining in Paningkaban". *Indonesian Journal of Criminal Law Studies* 10 (1): 149-78. <https://doi.org/10.15294/ijcls.v10i1.24008>.

⁵⁵ Atmadja (n. 45), 3-5.

⁵⁶ Yanina Kowszyk, Frank Vanclay, Rajiv Maher, "Conflict management in the extractive industries: A comparison of four mining projects in Latin America," (n. 5), 101161.

remain: the proposed policy conflicts, simultaneously, with the normative frameworks governing higher education, state finance, and environmental protection in Indonesia. These are not peripheral concerns. They go to the heart of what universities are, how their finances are governed, and what obligations they must discharge as actors operating within a constitutional system that places non-commercial, public-interest mandates at the core of their legal existence.⁵⁷

Under Law No. 12 of 2012 on Higher Education, universities – whether public or private – are constituted as non-profit legal entities whose primary obligation is to organise and advance the Tri Dharma of higher education: education, research, and community service.⁵⁸ The financial budget of a university must, by law, be directed toward fulfilling this Tri Dharma mandate; it cannot be instrumentalised for commercial profit-making activities that fall outside the academic mission.⁵⁹ Research on budget governance of Indonesian public universities confirms that state universities are legally constructed as non-profit-oriented entities whose financial management must comply strictly with state budget management law and principles of public accountability, transparency, and integrity.⁶⁰ Inserting a university into the role of an IUP holder – an entity expected to internalise commercial risk, pursue extraction for profit, and generate commodity revenues – would fundamentally distort this financial identity and create governance structures that have no legal home within the existing regulatory framework for higher education.⁶¹

The academic freedom dimension sharpens this incompatibility further. Studies on university commercialization consistently show that when universities become financially dependent on high-risk commercial activities, faculty behaviour, research priorities, and institutional decision-making shift toward commercially viable outputs, while fundamental and critical research is marginalised.⁶² In sectors such as mining, the problem is particularly acute: a university that derives significant income from operating a mine has a structural financial interest in the continued profitability of that mine, which directly conflicts with its role as an independent critic of the environmental, social, and governance consequences of extractive industries.⁶³ As Dzhus has argued in the context of entrepreneurial university models, the commercialisation drive raises profound ethical dilemmas, including conflicts of interest where faculty are pressured to tailor research findings to benefit industry partners, withhold negative results, or avoid topics that might damage commercial relationships – all of which erode public trust in academic integrity.⁶⁴ These dynamics are not hypothetical; they are documented outcomes of university–industry entanglement across different jurisdictions, and they are magnified, not reduced, when the commercial activity in question is high-stakes, capital-intensive, and environmentally destructive.⁶⁵

⁵⁷ Velentina, Rouli Anita, “Legal Certainty for Foreign Investors in Coal Mining in Indonesia,” *Jurnal Hukum & Pembangunan* 49, No. 4 (2019): 1–15, <https://doi.org/10.21143/jhp.vol49.no4.2349>.

⁵⁸ Alfarizi, Muhammad, “The Determination of State Budget Governance of Indonesian Public Higher Education Institutions Post COVID-19 Pandemic,” *Jurnal Tata Kelola dan Akuntabilitas Keuangan Negara* 9, No. 1 (2023): 151–171, <https://doi.org/10.28986/jtaken.v9i1.1024>.

⁵⁹ *Ibid.*, 152–153.

⁶⁰ *Ibid.*, 153–155.

⁶¹ Burnay, Matthieu, “Authoritarianism and Marketisation in Higher Education,” *International Journal of Human Rights* 26, No. 4 (2022): 591–613, <https://doi.org/10.1080/13642987.2022.2041602>.

⁶² Dzhus, Vladyslav, “Commercialization and Academic Freedom in the Entrepreneurial University,” *Economy and Society* (2024): 1–10, <https://economyandsociety.in.ua/index.php/journal/article/download/4169/4100>.

⁶³ Yanina Kowszyk, Frank Vanclay, Rajiv Maher, “Conflict management in the extractive industries: A comparison of four mining projects in Latin America,” (n. 5), 101161.

⁶⁴ Dzhus (n. 63), 4–7.

⁶⁵ Yasa, Rozerin, Joe O’Hara, and Martin Brown, “Academic Freedom in Irish Higher Education,” *Power and Education* (2025): 1–22, <https://doi.org/10.1177/17577438241312640>.

Burnay's analysis of marketisation in higher education provides a further theoretical anchor: when universities are subjected to market logic – whether through commercial activity, rankings pressure, or industry partnerships – academic freedom is not merely individually threatened but institutionally reconfigured, as the spaces in which critical, non-commercially useful knowledge can be produced and protected gradually narrow.⁶⁶ Indonesian higher education law, which explicitly protects academic freedom and institutional autonomy as foundational principles, is therefore structurally in tension with a policy that would create powerful financial incentives for university managers to suppress critical inquiry into the very sector in which the university holds a commercial licence.⁶⁷

From the standpoint of state finance law, the incompatibilities are equally serious, though they operate at a different register. Public universities in Indonesia are financed through the state budget (APBN), and their financial management is subject to Law No. 17 of 2003 on State Finance, Law No. 1 of 2004 on State Treasury, and Law No. 15 of 2004 on State Finance Accountability. These instruments impose strict requirements of accountability, transparency, and alignment with the state's development objectives on every public entity that receives or manages state funds.⁶⁸ Granting IUP to a public university would expose its budget to volatile commodity revenues whose classification – as state revenue, university own-source income, or commercial profit – is deeply ambiguous under existing fiscal law.⁶⁹ It would also generate long-tail financial liabilities, including reclamation bonds, post-mining guarantees, and environmental restoration funds, that could reach billions of rupiah and whose legal relationship to the state budget is entirely undefined.⁷⁰ Research on performance-based budgeting in Indonesian higher education demonstrates that even under the existing, far less complex financial framework, many universities struggle to achieve compliance with public financial management principles, transparency requirements, and audit standards.⁷¹ Adding mining operations to this governance architecture would not merely complicate it; it would rupture the coherence between the financial accountability regime and the institutional purpose that regime is designed to serve.⁷²

The environmental law dimension provides perhaps the most legally concrete illustration of incompatibility. Under Law No. 32 of 2009 on Environmental Protection and Management, the holder of an IUP is the legal entity responsible for conducting an environmental impact assessment (AMDAL), implementing an environmental management and monitoring plan (RKL-RPL), providing reclamation and post-mining guarantees, and bearing strict liability (*tanggung jawab mutlak*) for environmental damage caused by hazardous substances – without the need to prove fault.⁷³ Research on the application of strict liability doctrine in Indonesian mining cases shows that environmental damage from mining operations – including water pollution, soil contamination, and biodiversity loss – can generate enormous claims for restoration and compensation, and that these

⁶⁶ Burnay (n. 62), 600–605.

⁶⁷ *Ibid.*, 606–610.

⁶⁸ Alfarizi (n. 59), 155–157.

⁶⁹ Hartanto, Ponco, dan Subagio Gigih Wijaya, "Discourse of Ecological Damage as a State Financial Loss: Evidence from Indonesia," *Journal of Legal and Environmental Justice* 2, No. 3 (2024): 1–12, <https://doi.org/10.62264/jlej.v2i3.110>.

⁷⁰ *Ibid.*, 5–8.

⁷¹ Alfarizi (n. 59), 161–165.

⁷² *Ibid.*, 165–168.

⁷³ Sarmilah, Milah, Lina Mustafidah, dan Hellen George, "Civil Liability for Mining Companies for Environmental Pollution Based on Indonesian Laws," *Indonesian Journal of Environmental Law and Sustainable Development* 1, No. 2 (2022): 165–188, <https://doi.org/10.15294/ijel.v1i2.58135>.

obligations bind the licence holder regardless of intent or negligence.⁷⁴ A university as IUP holder would bear all of these obligations in full. Not only does it lack the institutional capacity and financial architecture to absorb such liability, but it would also face the paradoxical legal situation of being both the institutional promoter of environmental knowledge and the legally liable party for environmental destruction in its mining area.⁷⁵ This paradox is not merely rhetorical; it has direct operational implications, as it would expose university academics and administrators to legal claims and enforcement actions that are wholly incongruent with their institutional mandate and legal position under education law.⁷⁶

When these three regimes are read together – higher education, state finance, and environmental protection – a coherent normative picture emerges: Indonesian positive law has constructed universities as a specific type of legal subject, with a specific institutional logic, a specific financial architecture, and a specific set of obligations and immunities calibrated to their role as knowledge institutions serving the public interest. That construction is incompatible with the legal profile of an IUP holder, which presupposes a commercial entity designed to extract value from natural resources while managing the full spectrum of regulatory, financial, environmental, and social risks that such extraction entails. The legal problem is not one of technical adjustment; it is structural.⁷⁷ Resolving it would require not merely a ministerial decree or contractual workaround, but a comprehensive reconfiguration of the legal framework governing universities, state finance, and environmental liability – a reconfiguration that the current legislative architecture does not contemplate and the 2025 amendments have effectively foreclosed.

5. Conclusion

The analysis in this article leads to one unavoidable legal conclusion: granting Mining Business Licenses directly to universities is incompatible with Indonesian positive law, and the 2025 amendment to the Mineral and Coal Mining Law has transformed that incompatibility from an interpretive question into an explicit legislative determination. Three normative layers converge to produce this conclusion. First, the Mineral and Coal Mining Law confines IUP eligibility to business entities, cooperatives, and individuals legal subjects whose organisational structure and purpose are calibrated to commercial extraction. Universities belong to none of these categories. The 2025 amendment's deliberate removal of universities from priority access lists is not a drafting accident; it is a normative choice by the legislature, and any attempt to circumvent it through lower-level regulation would violate the principle of legality and generate zones of legal uncertainty that the mining sector with its long-term capital commitments and community obligations cannot afford. Second, the legal framework governing higher education constructs universities as non-profit knowledge institutions oriented around the Tri Dharma, protected by academic freedom and institutional autonomy. Repositioning them as commercial mining operators does not merely strain this framework; it structurally subverts it, by creating financial incentives that systematically dis-

⁷⁴ Kamil, Syamsul Irfan, "Pertanggungjawaban Pidana Korporasi PT Freeport Indonesia atas Pencemaran Sungai Aghawagon dan Otomona: Kajian Penerapan Doktrin Strict Liability," *Jurnal Ilmiah Penegakan Hukum* 3, No. 6 (2025): 1–15, <https://doi.org/10.61722/jipm.v3i6.1683>.

⁷⁵ Sarmilah et al. (n. 74), 173–178.

⁷⁶ Hartanto dan Wijaya (n. 70), 8–10.

⁷⁷ Burnay (n. 62), 610–613.

tort research priorities, governance structures, and the conditions under which independent critical knowledge can be produced. Third, state finance and environmental law impose obligations on IUP holders fiscal accountability, strict environmental liability, reclamation guarantees, post-mining restoration that are wholly incongruent with the financial architecture and institutional mandate of universities. A university operating a mine would simultaneously carry obligations it was never designed to bear and compromise the public trust that gives academic institutions their legitimacy. The path forward is not to engineer creative workarounds within a framework that rejects the proposal, but to channel university involvement in the mining sector through legally coherent alternatives: research partnerships, capacity-building agreements, and consultancy arrangements that preserve academic independence, respect the Tri Dharma mandate, and maintain clear boundaries between knowledge production and commercial extraction.

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