

Principle of Islamic Law and Moral Dilemmas of Religious Organisation's Involvement in Mining

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Abstract:

This paper aims to bridge the moral dilemmas that arise from government policies granting mining concessions to religious organisations and the role of religious organisations as social controls on the policy and practice of mining against the moral of law. Moral dilemmas revolve around the risks of involvement, the formation of new oligarchies, economic equity, economic actor diversification, and increased bargaining power for natural resource access. This exploratory study employs the Islamic legal maxim and *maqâşid shari'a* as ethical references. The data, such as legal acts and government regulations, were obtained from the literature. The findings indicate that the real problems of mining and other natural resource exploitation are mismanagement and environmental degradation. Islamic ethics based on the Islamic legal maxim and *maqâşid shari'a* can be used as guidance for civil society organisations to address natural exploitation. However, biocapacity deficit and mismanagement due to overlapping rules and authorities in Indonesia are major obstacles to applying Islamic ethics. This paper suggests that *hiż bi'âh* may act as a benchmark for state resource management policies to guide private rights in natural resource management to promote renewable energy industry capacity and ecosystem balance.

Keywords: *hiż bi'âh; maqâşid al-shari'a; mining concessions; moral dilemma.*

1 Introduction

The plan by Indonesian Government to grant religious organisations to get mining concession has sparked heat public debate. The polemics relate to the concerns that the policy may lead to the weakening of moral control by civil society over nature protection, social conflicts involving religious organizations, and the risk of mismanagement due to the lack experience of those organizations. Due to moral legitimacy and the understanding of religious values, religious organisations play important role in nature protection because they serve as role models for campaigns

to strengthen nature conservation values¹. The involvement in mining exploitation will turn religious organization to be actor in nature exploitation and then will weaken the role of religion in encouraging environmental conservation.

Besides, mining is seen as less successful in improving the welfare of local people and causing extensive environmental damage, leading to horizontal and vertical conflicts. The mining sector has resulted in land disputes due to the loss of land rights and the livelihoods of local communities.²

Previous studies have also shown that many Muslim majority countries experience difficulties in integrating Islamic principles in natural resource management. Nature management in the majority of Muslim majority countries is characterised by the risk of environmental degradation. According to research by Nasir, Nair and Ahmed³, most countries with Muslim majority populations face the challenge of *biocapacity deficit*, a condition where ecological utilisation exceeds the reproductive capacity of natural resources. In Indonesia, such problems are happening in rivers and agricultural land surrounding cities and mining areas.⁴

Consequently, the policy of granting mining concessions to religious organisations, such as the NU and Muhammadiyah, raise public concerns to the role of Islamic organization, supposed to be moral guide, in destructing natural resources as well as putting them as parties in social conflicts related to mining. Some argue that religious organisations do not have sufficient expertise to manage the complex and high-risk mining industry. The condition is worsened by the overlapping regulations that result in vagueness of authorities that make supervisors and environmental supervisors not being able to play their roles properly.⁵ The involvement of religious organisations also risks creating new conflicts of interest amid overlapping regulations and authority between the

¹Norshariani Abd Rahman and Muhammad Hilmi Jalil. "Awareness of the Role of "Religious People" in Environmental Conservation from the Perspective of Islamic Studies Students". *Creative Education*, Vol. 12. No. 8 (2021): 1755-1772.

²Robert Siburian. "Coal Mining: Between Earning Rupiah and Spreading Potential Conflict." *Indonesian Society* Vol. 38. No. 1 (June 2012): 69-92

³Norita Mohd Nasir, Mahendhiran Sanggaran Nair and Pervaiz Khalid Ahmed. "Environmental Sustainability and Contemporary Islamic Society: A *Shari'ah* Perspective." *Asian Academy of management Journal*. Vol. 27 No. 2 (2022): 211-231

⁴Resti Kharisma, Herry Purnomo and Budi Kuncachyo. "Ecological Footprint and Biocapacity Analysis of Upper Cisadane Watershed." *Journal of Natural Resources and Environmental Management*. Vol. 12. No. 2. (2022): 197-209

⁵Muhammad Nasir, Laurens Bakker and Toon van Meiji. "Environmental Management of Coal Mining Areas in Indonesia: The Complexity of Supervision." *Society and Natural Resources*. Vol. 36. No. 5 (2023): 534-553

central and local governments. This situation creates a moral dilemma for faith-based organisations involved in mine management in Indonesia.

This article seeks to provide an analysis of moral dilemma faced by religious organizations to deal with mining. This article is an attempt to look at mining management by religious organisations based on Islamic ethical principles. The purpose of this article is to bridge the moral dilemma arising from the government's policy of granting mining concessions to religious organisations and the fact that the mining activities have caused social and natural destructions.

The thesis statement of this article is that Islamic legal maxim and *maqâsid shari'a* can serve as both ethical reference and way out from moral dilemma faced by religious organization to deal with mining. The ethical references, however, cannot stand alone without applying them in real situation. In that case, religious organizations are struggling to harmonize moral values and the corrupt practice of mining.

2 Literature Review

There are several problems of mining governance in Indonesia, based on previous researches. The problems include the low estimation of carbon stocks on postmining land, the low level of CSR responsibility, vague regulation for mining companies' social responsibility, and land dispute with local people. The low estimation on carbon stocks has been shown by three types of postmining reclamation in East Kutai Regency, East Kalimantan. The low level of carbon storage in coal mining areas after the reclamation process contributes greatly to environmental degradation and the reduced ability of the land to absorb carbon from the atmosphere.⁶

Mining governance in Indonesia is also plagued by problems related to the low level of CSR responsibility in the mineral and coal mining sector. This is because the revised mining law, namely the Act No. 3/2020, does not involve community surrounding. This law weakens CSR regulations for mining companies and expands the scope of mining licences and activities that could harm communities as well as focuses

⁶Fauziah et al., "Carbon-Stock Estimation in Three Types of Coal Post-Mining Reclamation at East Kutai Regency, East Kalimantan," *Journal of Forestry Research Wallacea* 10, Nno. 2 (2021): 189-197. and L. Andari, L.L. Komara, and N.P. Kurniawan, "Estimation of Carbon Stock at the Mangrove Forest of Sangkulirang District, East Kutai Regency, East Kalimantan Province," in *IOP Conference Series: Earth and Environmental Science*, VVol. 1277, 2023.

more on occupational safety than health. In addition, the Act potentially criminalize communities that oppose mining activities in their area.⁷

The literature reveals several key themes for improving mining governance in Indonesia. First is the importance of multistakeholder collaboration and governance effectiveness, as shown by the research by Fajrina et al.⁸ They emphasize the value of multistakeholder platforms (MSPs) and collaboration between different actors (government, NGOs, local communities) to achieve effective resource management and conservation goals. Second is decentralisation and the challenges of mining governance, as highlighted by Savirani & Wardhani.⁹ Both identified complexities arising from decentralised governance structures in the mining sector, with data limitations and the need for better collaboration at the local level being key challenges.

In addition, power imbalances in governance are also important to tackle. Arai et al.¹⁰ conclude that collaborative governance, such as the formation of joint teams, the provision of training opportunities, and knowledge exchange, is solution for reducing the equality of mining governance capacity. Another challenge in mining governance is the balance between conservation, community rights and sustainable practices. Fatem et. al. exemplifies a successful governance approach in balancing conservation efforts with the protection of customary rights and promoting sustainable resource management.¹¹

Finally, expanding the scope of community-based resource management raise concern among researchers. Friedman et al.¹² challenge the

⁷Lelisari, Hamdi, and Imawanto, "Setback Of Corporate Social Responsibility Arrangements In The Mineral And Coal Mining Sector *Journal of IUS Legal and Justice Studies* Vol. 9, NNo. 2 (2021): 404-421 and Arupama Goel. "Corporate Social Responsibility and the Role of Government, Accounting, Finance, Sustainability, Governance and Fraud" in Harpreet Kaur (ed.). *Facets of Corporate Governance and Corporate Social responsibility in India*. (Singapore: Springer. 2021)..

⁸Amaliana Nur Fajrina et al., "Collaborative Governance of Narsalis Larvatus (Wurmb, 1787) Conservation in Barito Kuala Regency, Indonesia," *Ecological Questions* Vol. 34. NNo. 1 (2023): .

⁹Amalinda Savirani and Indah Surya Wardhani, "Local Social Movements and Local Democracy: Tin and Gold Mining in Indonesia," *South East Asia Research*. Vol. 30. NNo. 4 (2022): .

¹⁰Yuki Arai et al., "How Can We Mitigate Power Imbalances in Collaborative Environmental Governance? Examining the Role of the Village Facilitation Team Approach Observed in West Kalimantan, Indonesia," *Sustainability (Switzerland)* Vol. 13. NNo. 7 (2021): .

¹¹Sepus MF. Fatem et al., "The Sausapor Declaration: Challenges in Promoting Good Governance to Protect Customary Communities and Natural Resources in Tambrauw District, West Papua," *Forest and Society*. Vol. 4. NNo. 2 (2020): .

¹²Rachel Friedman et al. "Beyond the Community in Participatory Forest Management: A Governance Network Perspective." *Land Use Policy* 97. Issue C (2020): 1-26

idea that community-based forest management should be only based on grassroots initiative. Their research in Indonesia shows that a broader network of actors, including NGOs, plays an important role in supporting and facilitating the process.

In conclusion, the literature search above recognises the critical role of collaborative governance, transparency and attention to power dynamics in achieving responsible mining practices in addition to the mandatory transfer of knowledge between industry stakeholders and environmental activists. They also illustrate the need for adaptive governance approaches that can address the specific challenges and different contexts of different mining sectors.¹³

3 Conceptual Framework

Moral dilemma is a dilemma in the choice of norms related to a particular situation. Dilemma is a situation that demands the choice of two equally undesirable options so that moral dilemma can be defined as a situation where decision makers must prioritise one moral value over another when there is a conflict between values. Broadly speaking, moral dilemmas are divided into four patterns, namely truth versus loyalty, individual versus community, short-term interests versus long-term interests, and justice versus virtue. In a dilemma situation, it is not possible to fulfil all the conflicting values.¹⁴

Moral dilemmas in environmental issues can occur due to differences in views among experts in the field. Environmental philosophers and environmental activists sometimes differ in their views on different environmental policies made by the government. They differ in terms of the root causes of environmental problems. Environmental philosophers argue that environmental damage is caused by human chauvinism or strong anthropocentrism, which make humans feel powerful across the world. Environmental activists, on the other hand, believe that government policies on the environment are determined by a misconception of human needs that ignores human rights. Therefore, environmentalists focus on a better understanding of human needs, including future needs for the environment.¹⁵

Religion is one of the moral sources that contributes to moral dilemmas in environmental conservation as well as to the solution of it. Moral

¹³Isman Isman. *Protecting Indigenous Peoples' And Tenure Rights In IKN: Implications, Challenges and Prospects*, ed. Fira Himara (Surakarta: Muhammadiyah University Press, 2023).

¹⁴Oyvind Kvalnes. *Moral Reasoning at Work: Rethinking Ethics in Organisations* (Hampshire: Palgrave Macmillan. 2015): 10-12

¹⁵Andrew Light and Avner De-Shalit (eds.). *Moral and Political reasoning in Environmental Practice* (Cambridge: The MIT Press. 2003): 2-4

dilemmas in religious teachings are associated with the idea that human morality give effect on the destruction of nature.¹⁶ This view is not limited to one religion, rather applies to various religions, including Islam.

Moral dilemmas in Islam give birth to several decision-making principles in Islamic law. In addressing moral dilemmas that arise from equally unfavourable choices, Islamic legal maxims provide principles to find out way out of dilemma, such as "if there are two risks of loss, then preventing greater risk by taking the lighter one is suggested." The legal maxim was born as an elaboration of the principle to avoid harm as one main idea underlying Islamic law: "avoiding damage takes precedence over taking advantage."¹⁷ The Islamic legal maxims provide moslems with ethical reference to deal with moral dilemma situations.

4 Research Method

This exploratory research aims to identify and to understand how Islamic law principles can serve as moral benchmark to put the involvement of religious organizations in the mining industry. This exploration focuses on the theoretical and practical aspects of fiqh relating to the mining industry in light of the challenges and needs faced by natural resource governance in Indonesia.¹⁸

The purpose of this approach is to understand islamic legal maxims and Islamic law principles bridge the involvement of civil society in the mining industry. The data this research was collected through literature review. Data from one source is confirmed and falsified by data from other sources under data triangulation process. This technique involves comparing data obtained from various sources, including classic texts, contemporary studies, and recent scientific articles.¹⁹ By comparing data from these various sources, researcher can ensure that the findings obtained are valid and reliable.²⁰

¹⁶David Aberbach. *The Enviroenment and Literature of Moral Dilemma, From Adam to Michael K.* (Abingdon: Routledge. 2022): 44-46

¹⁷Abdullah Bin Sa'id Muhammad Ibadi al-Lahji. *Idlah al-Qawaid al-Fiqhiyyah.* (Surabaya: al-Haramain. No Year): 44

¹⁸Isman Isman and Ahmad Zainul Muttaqin, "Innovative Legal Modeling for Interdisciplinary Studies on Law and Economic Behaviour," *Indonesian Journal of Islamic Economic Law* 1, no. 1 (December 7, 2023): 60-71,

¹⁹Bachtiar S Bachri, "Assuring Data Validity Through Triangulation in Qualitative Research," *Educational Technology.* Vol. 10. No. 1. (2010): .

²⁰Mudjia Rahardjo, "Triangulation in Qualitative Research," (Malang: Paper in Research Methodology Course. Graduate School. UIN Maulana Malik Ibrahim. 2010)

This study involves analyses of classical texts from the Islamic legal literature; contemporary studies addressing environmental problems in Indonesia; and recent research addressing challenges and opportunities in the mining industry. The data are arranged according to the need for more comprehensive perspective on Islamic jurisprudence in the context of mining and civil society organisation engagement.²¹

5 Results and Discussion

The findings and discussion in this research will focus on an in-depth exploration of fiqh principles and how they can be applied in real-life situations. The findings will also discuss how civil society organizations play a role in maintaining Islamic ethics and values amidst mining activities, as well as the challenges and opportunities that arise from their involvement. Through two subchapters, the first will elaborate on the actual findings on the condition of mining governance, and the second subchapter will elaborate on the topic of the contribution of mining fiqh in bridging the moral dilemma of civil society organisations' involvement in the mining industry using the perspective of *maqâṣid shari'a* and Islamic legal maxims as ethical reference.

5.1 Moral Dilemmas in Mining Involvement

The religious organizations in Indonesia are classified as social organization, non-governmental organizations (NGO), or civil-society organizations (CSOs). The organizations are multilevel and generally operate in social service. The religious organizations do not share the accountability as well as strict job-descriptions with professional companies so that they potentially hinder the professional and accountable management of mining businesses. The involvement of CSOs in the licensing process and natural resource management are suspected by public as part of political bargaining from supporting status quo that could lead to conflicts of interest and abuse of power.

The involvement of CSOs in politics often leads to the exploitation of votes and legitimacy for power and financial gain. The misuse of power and resources by CSOs for political and personal gain can result in the oppression of communities and undermine the moral role of

²¹Ardiansyah, Risnita, and M. Syahran Jailani. "Collection Data and Educational Scientific Research Instruments in Qualitative and Quantitative approaches." *Journal Ihsan* . 1. NNo. 2 (July 2023): 1-9 and Bachri. "Assuring Data Validity Through Triangulation in Qualitative Research." *Educational Technology*. Vol. 10. No. 1. (2010): 46-62.

religion that should be upheld. This creates integrity damage and fairness degradation of natural resource management.

The suspicion stems from the fact that ongoing mining activities by public companies with long experience still causes inefficiencies, societal conflicts and deforestation. In that case, the involvement of CSOs in mining management is feared to reduce economic efficiency and increase the risk of mismanagement. The CSO's lack of expertise and experience in the mining sector may result in subcontracting to entrepreneurs or oligarchs, ultimately minimising the CSO's role in local economic development. The worsening fact is that mining activities is lack of supervision by authorities. Currently, there are many illegal mines and mines that do not heed environmental preservation due to a lack of supervision. Redi noted that the issue of mining supervision is inseparable from regulatory issues, licensing bureaucratic capacity and law enforcement.²² A lack of supervision and law enforcement related to mining activities often results in significant environmental damage and violations of the rights of indigenous peoples. The involvement of CSOs in mining without adequate supervision mechanisms has the potential to exacerbate economic disparities and trigger social conflicts in mining areas.

In the postmining phase, the uncertainty of regulation and the lack of strong commitment to rehabilitation and reclamation are equally important issues. The lack of clear regulations and accountability in the implementation of rehabilitation and reclamation can result in long-term environmental damage that is difficult to reverse. Therefore, the involvement of CSOs in mining needs to be further explored in terms of their accountability and responsibility in postmining environmental restoration.

The involvement of religious organisations in the mining industry in Indonesia presents a moral dilemma. First, mass organisations' activities are usually based on religious values so that they are perceived by the community as moral guardians. Religious organisations become a balancing power when political power or companies brings risks of harm to communities, such as customary land rights, corruption, and forest destruction. The involvement of CSOs in mining puts CSOs as perpetrators of natural exploitation with various negative impacts, even though CSOs are expected by the community to voice criticism and control over mining practices.

²²Ahmad Redi. "Dilemma of Law Enforcement of Unlicensed Mineral and Coal Mining in Small Scale Mining." *Journal of Rechtsfinding*. Vol. 5 No. 3 (2016): 399-420

5.2 Principles of Islamic Law in Navigating Moral Dilemmas

Islamic ethics provided by the principles of Islamic law are foundation for moslems to deal with their everyday activities. The reference to the ethic in Islam is considered as part of religious duty. In Islam, there is no separation between spirituality or religion and mundane activities. Mining activities related to public is subject to ethical principles in Islam. Therefore, moral dilemmas faced by Islamic Organizations to deal with mining concession given by The Government can be analysed using the principles of Islamic law, due to the fact law and ethic are closely intertwined in Islam.

The principle of Islamic law in the Islamic legal maxims and *maqâsid al-shari'a* that can be used to bridge the moral dilemma in mining concession issue. Moral dilemmas that arise from the potential exploitation of workers and environmental impacts be should be addressed under the principles of Islamic law. The principles can be used to ascertain how civil society organisations are prepared for the blueprint of a fair distribution of mining products that takes the welfare of the community and the environment into account. The application of these three rules helps maintain the integrity of the organisation. Transparency in financial and operational reporting ensures that all actions are accountable, reducing the risk of corruption and abuse of power.

According to the descriptions above, the rules of fiqh and *maşlahā* can act as a moral reference for *shari'a* in navigating moral dilemmas related to mining utilisation. *First*, fiqh rules provide general principles for addressing dilemmatic situations in which an opportunity for development through the exploitation of nature must also be considered along with the risks inherent in the exploitation process. Determining the attitude of accepting an offer to engage in the mining industry can be weighted using fiqh rules related to moral choices.

There are fiqh rules that are relevant in solving moral dilemmas, such as *al-darar yuzāl* (danger must be avoided) and *taşarruf al-imâm man ūt bi al-ma ş laha* (government policy should be based on *maşlahā*).²³ The first rule emphasises efforts to avoid risks in development. Conversely, the effort requires the principles of justice (*al-'adl*) and common good (*al-maşlahā al-'āmmah*) as the basis for designing policies and regulations for fair and sustainable mining governance. This includes the design of labour rights, environmental protections and profit distribution. These principles ensure that policies and regulations are

²³Ali Ahmad al-Nadwī. *Al-Qāw'id al-Fiqhiyyah: Maḥūmuhā, Nash'atuhā, Tathawuruhā, Dirāsatu Muallafatuhā, Adillatuhā, Muhimmatuhā, Taṭbīquhā*. (Damascus: Dār al-Qalam. 1991): 100, 122 - 123

strictly followed. Strong supervision and law enforcement are needed to ensure that all parties comply with the established rules so that the benefits of the mining industry are distributed equitably.

The second rule emphasises that public policy cannot be separated from the public interest as its priority. *Maqâṣid al-shari'a* (the goal of Islamic law), with *maṣlaḥa* (public good) at its core, is seen as the most practical Islamic ethical framework for addressing the development of science and technology. The five principles of *maqâṣid* are seen as more comprehensive than other principles, such as the principles of biotechnology.²⁴ There are five *maqâṣid al-shari'a* that provide the basis for understanding the ethical orientation of Islamic *shari'a*, namely, protecting religious values, protecting the soul, protecting honour, protecting reason, and protecting property. Today, *hiḏ al-bi'ah* (environmental protection) is emphasised as one of the basic values in Islamic scholarship, as Yusuf al-Qardlawi has argued.²⁵ This has received support from academics, so environmental protection has become the sixth goal of Islamic law.²⁶

By applying the principles of *maṣlaḥa* at every stage of mining activities, CSOs can decide their involvement to build a more transparent, balanced, and responsible structure. This ensures that mining activities bring maximum benefits to society and the environment and helps CSOs navigate ethical challenges and strike a balance between economic and moral interests.

The principles of Islamic law, however, do not specifically address the role of community organisations in mine management but rather focus on the general principles and responsibilities of mining managers. It requires a real-world context to see its relevant application. The literature review above shows the specific challenges faced by religious organisations in mining management, such as the risk of mismanagement, political transactions, and the potential for religious organisations to become a new oligarchy.

The notion of mining in accordance to Islamic values focuses on the long-term impacts of ethical and responsible mining management to the environment and society. It means that religious organization pay close attention in poor mining governance, such as environmental

²⁴Shaikh Mohd Saifuddeen, Chang Lee Wei, Abdul Halim Ibrahim and Nor AinaMhd Khotib. "Islamic Ethical Framework to Tackle Scientific and Technological Dilemma." *Journal of Dharmā*. Vol. 38. No. 4 (October - December 2013): 373-386

²⁵Yūsuf al- Qardāwī. *Ri'āyah al-Bi'ah fi Shari'ah al-Islām*. (Cairo: Dār al-Shurūq. 2001): 20

²⁶Choirur Rois, Nur Jannani and Moh. Hoirul Mufid. "Islamic Law Paradigm, responding to Conflict of Interest of economic Development and Ecological Conservation: Hifz al-Bi'ah Perspective." *Al-Istinbath*. Vol. 9. No. 1 (May, 2024): 193-210

degradation, low carbon storage, and social conflicts, and nontransparent regulation. The challenge, however, will not easily be overcome by religious organisations that have no high level of professional structures and enterprises experiences or expertises. This means that there is a gap between the Islamic requirement of *maṣlaḥa* (public good) as benchmark of mining activities and ongoing problems in mining activities.

The gap between Islamic values and the mining practice lies in the approach taken and the focus of the issues discussed. In fact, the Islamic moral principles are contradictory to ongoing process of mining. Bridging this gap requires the integration of ethical principles from mining jurisprudence with empirical solutions from the field. A transdisciplinary approach that combines ethical values, legal principles and empirical understanding enables coherence between values and practice so that mining management can be conducted ethically and effectively.

At this stage, religious organisations do not have strong experience and concepts in integrating Islamic ethical values with practical skills and experience in mining. Religious organisations' understanding of Islamic ethics and *maqāṣid al-sharī'ah* requires empirical confirmation. In practice, mining is not always in line with the ethical values of Islamic teachings and the situation put religious organization into clear obstacle to deal with mining well.

6. Conclusion

The involvement of CSOs in mining poses a moral dilemma. On the one hand, CSOs are expected by the community to be a balancing force and control to government policies that are not in favor of the community need. The involvement of CSOs as operator of natural exploitation raises a moral dilemma between whether CSOs remain a moral force or become mining actors who may commit actions that damage nature and harm the community.

The principles of Islamic law lay down references for Islamic organisations to pay carefully on mining matters. The value of protection of public good that is very basic in Islam provide protective principles and prevention of damage as well as the critique over public activities that bring harm to nature and society. In contemporary Islamic studies, environmental protection has been recognised as one of the objectives of Islamic law. With this ethical tool, people's attitudes towards mining and the exploitation of nature can be directed to be in line with good norms.

However, ethical values can only operate in a real context. The problem faced by CSOs is the lack of either understanding of Islamic principles or the lack of competence to deal with mining practice. Both situations are challenging for CSOs to protect nature and society while they exploit natural resources for sake of development. The principle of

Islamic law provides Islamic organizations with ethical consideration, but it will not be easy to escape from moral dilemmas in which ongoing practices are commonly considered mismanagement and bring societal problems as well as natural destructions.

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