Jurnal Hukum, Administrasi Publik dan Negara
Volume. 3, Nomor. 3 Mei 2026
e-ISSN: 3063-7864; p-ISSN: 3063-7872, Hal. 181-189
DOI: https://doi.org/10.62383/hukum.v3i3.1054
Tersedia: https://ejournal.appisi.or.id/index.php/hukum

Legal Politics of Tax Expenditure in Fiscal Incentives in the Mineral and Coal Sector

Hary Kesowo Wibowo[1*], Afdhal[2]
[1,2]Faculty of Law, Borobudur University, Indonesia
**Penulis Korespondensi:* bowo.hkw@gmail.com

Abstract*. Fiscal incentive policies in Indonesia's mineral and coal sector have been promoted to stimulate investment and economic growth through tax allowances and tax holidays that reduce corporate tax liabilities. This study examines these incentives from a legal and political perspective by positioning them as tax expenditures, representing a sacrifice of state revenue equivalent to public spending. Using normative legal research with conceptual, statutory, and constitutional approaches, the study analyzes taxation, mining, and state finance regulations in light of constitutional principles. The findings indicate that fiscal incentive policies tend to prioritize investment interests over fiscal justice, state revenue optimization, and the constitutional mandate of state control over natural resources. Tax allowances and tax holidays have not been adequately integrated into a framework of fiscal accountability and public oversight, creating tension with the constitutional principles of justice, public benefit, and sustainability. Accordingly, this study proposes reconstructing the legal policy on fiscal incentives by recognizing tax expenditures as state expenditures, strengthening evaluation and oversight mechanisms, and imposing constitutional limits on fiscal incentives to ensure alignment with public prosperity and the sustainable management of natural resources.*

Keywords*: fiscal justice, fiscal incentives; legal policy; mineral and coal; tax expenditure.*

1. INTRODUCTION

The mineral and coal mining sector has long been positioned as a strategic sector that determines the direction of national development (Redi, 2021). The natural wealth contained within it makes minerals and coal a source of state revenue and an instrument for equitable distribution of public welfare (Taufiq, 2024). The reality of fiscal policy, however, shows the opposite trend, as this sector enjoys various tax benefits on a large scale (Yossinomita, 2024). These fiscal incentives are provided through various schemes that reduce the tax obligations of mining corporations (Hutapea, 2024). This condition creates a paradox between the strategic status of minerals and coal and fiscal practices that tend to provide relief to large business actors.

This paradox is increasingly apparent because state fiscal policy is no longer solely directed at optimizing revenue. Policy orientation has shifted toward creating a globally competitive investment climate. The state positions itself as a facilitator of economic growth through incentives, rather than as the holder of full control over fiscal resources. This approach assumes that investment will have a ripple effect on the national economy (Endaryono, 2024). This assumption is often accepted as policy truth without adequate normative testing from the perspective of constitutional law and fiscal law.

Naskah Masuk: 27 Maret 2026; Revisi: 26 April 2026; Diterima: 26 Mei 2026; Terbit: 30 Mei 2026

Tax allowances and tax holidays are concrete examples of this shift in orientation. Both schemes provide tax exemptions or reductions for a specific period to mining companies (Pohan, 2022). These facilities are not recorded as state expenditures in the State Budget. The impact is actually evident in the reduction of potential state revenues that could otherwise be used for the public interest. This lack of fiscal recording raises issues of transparency and policy accountability.

The phenomenon of fiscal incentives in the mineral and coal sector has rarely been examined as a comprehensive legal issue, as existing studies predominantly emphasize economic efficiency, competitiveness, and investment growth, while giving limited attention to incentives as a form of tax expenditure requiring normative legal oversight (Nasarudin, 2025). Given that mineral and coal management is constitutionally linked to the state's control over natural resources, fiscal policies affecting state revenue must be evaluated against constitutional principles to determine whether they genuinely promote public prosperity, thereby ensuring that fiscal incentives remain aligned with the mandates of the 1945 Constitution rather than lacking clear constitutional direction (Setiawan, 2025; Rakhmindyarto, 2024).

The concept of tax expenditure arose from the realization that tax policy is not always neutral. Taxes can be used as an indirect instrument for state spending (Huda, 2024). Tax expenditure refers to the deliberate sacrifice of state revenue to achieve specific policy objectives (Susena, 2025). This sacrifice has a character equivalent to public spending. This perspective positions tax incentives as legal political decisions, not merely technical policies.

The fundamental difference between tax expenditure and state spending lies in the recognition and oversight mechanisms. State spending is explicitly recorded in the State Budget (APBN) and undergoes a political approval process in parliament (Aminah, 2024). Tax expenditure operates outside of these mechanisms, despite its equally significant impact on state finances (Aqbar, 2025). This situation creates a gray area in fiscal governance. The state actually spends fiscal resources without equivalent oversight instruments.

Accountability issues are a major issue in tax expenditure practices. Tax incentive policies are often not accompanied by adequate public evaluation (Dalimunthe, 2025). Policy success parameters are rarely measured transparently. The public does not receive sufficient information regarding the real benefits of sacrificed state revenues. This vacuum of democratic oversight has the potential to undermine the legitimacy of fiscal policy (Viona, 2025).

Legal politics plays a crucial role in understanding the dynamics of fiscal policy. The formation of fiscal norms is never free from economic interests and power (Fathu, 2024). The state, business actors, and political actors interact in determining the direction of tax policy. The law serves as a medium that legitimizes these compromises (Irianto, 2022). A political-legal perspective helps interpret fiscal policy as a product of complex power relations.

Taxes and fiscal incentives represent a contestation between the state's interest in preserving revenue and fiscal stability and corporations' pursuit of cost efficiency and business certainty, with tax incentives often serving as the legal compromise between these competing objectives (Mubila, 2025). While the law legitimizes such policies, it also has a corrective function to prevent fiscal measures from undermining the values of justice or becoming instruments that disproportionately favor particular economic interests (Sebayang, 2024). Within this framework, the constitutional principle of state control over natural resources requires that fiscal incentive policies be evaluated against their contribution to fiscal justice and public prosperity, reaffirming that fiscal sovereignty is inseparable from the state's constitutional responsibility to manage mineral and coal resources for the benefit of the people (Ahmad, 2023).

2. METHOD

This research employs a normative legal research method using conceptual, statutory, and constitutional approaches. It examines the legal framework governing fiscal incentives in the mineral and coal sector through an analysis of taxation, mining, and state finance regulations, while assessing the concept of tax expenditure, the coherence of legal norms, and the constitutionality of fiscal incentive policies under Articles 23A and 33(3) of the 1945 Constitution of the Republic of Indonesia. Primary, secondary, and tertiary legal materials are analyzed qualitatively using systematic and critical interpretation to formulate a reconstruction of legal politics that promotes fiscal justice, public accountability, and the sustainable management of natural resources.

3. RESULT AND DISCUSSION

Legal Politics of Fiscal Incentives in the Mineral and Coal Sector

The development of fiscal policy in Indonesia's mineral and coal sector has shifted from an orientation centered on maximizing state revenue through taxes, royalties, and other levies as an expression of state control over natural resources, toward a framework that increasingly prioritizes investment attractiveness. This transformation became more evident following national investment reforms, where the state's role evolved from being the primary controller of mining activities to providing legal certainty and fiscal incentives for business actors. As a result, tax incentives have become an important policy instrument, reflecting the view that investment is a key driver of economic growth and significantly influencing the formulation of fiscal policies in the management of strategic natural resources.

Regulations in the mineral and coal sector and taxation develop through normative channels that are not always aligned. Law Number 4 of 2009 concerning Mineral and Coal Mining and its amendments emphasizes the management of natural resources for the national interest. Tax law operates with a more flexible logic through various government regulations and regulations of the Minister of Finance. A lack of synchronization is evident in the regulatory objectives, with one emphasizing state control while the other prioritizing fiscal convenience. This situation creates a wide room for interpretation in the implementation of incentive policies.

Regulatory synchronization is a serious problem in the practice of mineral and coal fiscal policy. Mineral and coal legal norms place the state as the holder of the constitutional mandate over natural resources. Tax legal norms, in contrast, open up opportunities for reducing fiscal obligations through certain facilities. The confluence of these two legal regimes is often not accompanied by an adequate normative evaluation framework. As a result, mineral and coal fiscal policy operates without a consistent value basis.

Tax allowances and tax holidays were introduced as strategic instruments to encourage long-term investment. The normative rationale used is based on the assumption that the mineral and coal sector requires significant capital and is high-risk. The state then provides tax relief to compensate for these risks. This approach prioritizes economic efficiency and business certainty. Fiscal justice and the sustainability of state revenues are ignored in norm formulation.

The position of fiscal incentives in national development policy is increasingly central. Tax incentives are no longer treated as exceptions but as key policy instruments. Medium-term development plans and national investment policies explicitly link economic growth to the provision of incentives. The mineral and coal sector is prioritized as a recipient of these incentives. This policy choice reflects a development orientation that relies heavily on attracting capital.

The narrative of increasing investment has an impact on the formation of fiscal norms in the mineral and coal sector. Policy discourse focuses primarily on competition between countries to attract investors. This argument is accepted without critical examination from a constitutional law perspective. Tax law then functions as a tool to legitimize predetermined economic policies. The space for deliberation regarding the public interest is increasingly limited in the norm-formation process.

The relationship between the state and mining corporations reflects an imbalance in bargaining power, with large corporations possessing significant economic and political influence over fiscal policymaking, resulting in tax incentive schemes that tend to prioritize investment interests while limiting meaningful public participation. Although these incentives are legally justified through statutory regulations, their formal legality does not necessarily ensure substantive justice, making the distinction between legal validity and normative legitimacy a central issue in evaluating fiscal policy. This dynamic places the state in a dual role as both regulator and investment facilitator, where the increasing emphasis on facilitating private capital risks weakening fiscal sovereignty and the constitutional mandate under Article 33(3) of the 1945 Constitution of the Republic of Indonesia to ensure state control over natural resources for the public interest.

Critical Analysis and Reconstruction of the Legal Politics of Mineral and Coal Tax Expenditures

Tax expenditures in the mineral and coal sector fiscal policy reveal a facet of public spending that is never openly acknowledged as state expenditure. Fiscal incentives are provided through tax reductions, exemptions, or deferrals, but their impact is equivalent to budget expenditures. The state consciously relinquishes the right to collect taxes that should have gone to the public treasury. This relinquishment constitutes a legal political decision with direct implications for state finances. The covert nature of tax expenditures allows them to escape the public scrutiny that typically applies to state budget expenditures.

Public spending through tax mechanisms has serious consequences for the principle of fiscal transparency. State spending typically requires political approval and strict accountability mechanisms. Tax expenditures operate through more technocratic, normative channels with minimal public debate. The public rarely receives information about the extent of state revenue sacrifices from tax facilities in the mineral and coal sector. This situation creates a gap between fiscal impact and policy accountability.

The loss of potential state revenue due to tax allowances and tax holidays is not simply a matter of fiscal figures. This potential reflects resources that could be used to finance education, health, and social protection. The mineral and coal sector is extractive and non-renewable, so any revenue sacrifice is permanent. Providing long-term incentives risks narrowing the country's fiscal space. This policy prioritizes investment interests over public financing needs.

The long-term impact of tax expenditure is evident in the decline in the country's fiscal capacity. Dependence on other sectors to cover revenue shortfalls increases. The tax burden is potentially shifted to groups of people who do not directly benefit from mining activities. This imbalance creates a fragile fiscal structure. The country's financial resilience becomes highly dependent on the assumption of investment success.

Fiscal justice is undermined by the preferential treatment of the mineral and coal sector. Extensive tax benefits are not always granted to other economic sectors with significant social contributions. The state creates a hierarchy of fiscal treatment that favors certain sectors. This policy raises questions about the principle of equality before the tax law. Such unequal treatment is difficult to justify from a distributive justice perspective.

The ecological and social burdens of mining activities are not directly proportional to their fiscal contributions. Local communities often bear environmental damage, agrarian conflict, and health impacts. The state faces significant environmental recovery costs after mining activities cease. Fiscal incentives restrict the state's ability to finance recovery. The imbalance between economic benefits and social costs is becoming increasingly apparent.

The polarization between private benefits and public risks reflects a problematic policy pattern. Corporations take profit from mining through profits and fiscal incentives. Ecological and social risks are spread among the public and the state. This pattern demonstrates the privatization of profits and the socialization of losses. This policy structure has the potential to deepen social and economic inequality.

A constitutional review of fiscal incentive policies in the mineral and coal sector is essential to ensure compliance with the rule of law and the constitutional mandates of Articles 23A and 33(3) of the 1945 Constitution of the Republic of Indonesia. While Article 23A requires that taxes and compulsory levies be regulated by law, Article 33(3) affirms the state's authority to control natural resources by regulating, managing, and deriving economic benefits for the greatest prosperity of the people. Accordingly, fiscal incentives that reduce state revenue must be assessed against these constitutional objectives to ensure they safeguard the public interest, preserve fiscal sovereignty, and maintain the legitimacy of mineral and coal governance.

The current design of fiscal incentives in the mineral and coal sector deviates from the principles of justice, public benefit, and sustainability by prioritizing short-term investment over environmental protection, intergenerational equity, and equitable fiscal returns for the state. To address these shortcomings, the legal and political framework should be reconstructed by recognizing tax incentives as a form of tax expenditure equivalent to public spending, thereby strengthening transparency, regular evaluation, and public oversight. Guided by constitutional principles, fiscal incentives should function as strictly exceptional measures, with every tax benefit assessed against its contribution to the people's prosperity, reaffirming the state's constitutional role in managing natural resources for public welfare rather than merely promoting investment growth.

4. CONCLUSION

The legal policy of fiscal incentives in the mineral and coal sector predominantly prioritizes investment interests through tax allowances and tax holidays, despite the sector's strategic role in generating state revenue. These incentives function as tax expenditures that reduce potential state income without always ensuring proportional public benefits, creating tension with the principles of fiscal justice and the constitutional mandate of state control over natural resources.

Improving fiscal incentive policies in the mineral and coal sector requires a paradigm shift in national fiscal law. Explicit recognition of tax expenditures as a form of state spending is the first step to creating greater accountability and public oversight. Evaluation and oversight mechanisms for fiscal incentives need to be strengthened through clear, measurable, and sustainable legal instruments. Restructuring the legal policy of fiscal incentives must be directed at balancing investment needs with the protection of the state's fiscal rights. A policy orientation that places the prosperity of the people and the sustainability of natural resources as the primary objective will reaffirm the role of the state as a manager of natural resources for the public interest.

REFERENCES

Ahmad, A, R Mina, N Hipan, and F. Fality. 2023. "Penguasaan Negara Atas Usaha-Usaha Pertambangan Mineral di Indonesia." Jurnal Yustisiabel 7 (1): 88-102.

Aminah, S. 2024. "Wewenang Dewan Perwakilan Rakyat Dalam Pengawasan Anggaran Pendapatan Dan Belanja Negara Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." Innovative: Journal Of Social Science Research 4 (2): 3193-3204.

Aqbar, M. R, A Hafizhah, and A. Wijayanto. 2025. "The Implementation of Tax Expenditures in Indonesian Tax Law: Evaluating Impacts on MSMEs and Economic Justice." Mahadi: Indonesia Journal of Law 4 (01): 95-102.

Dalimunthe, M. I, and R. Y. Parinduri. 2025. "Sinergi Kebijakan Pajak dan Reformasi Birokrasi dalam Meningkatkan Kepatuhan Wajib Pajak: Studi Evaluatif pada Administrasi Perpajakan di Indonesia." All Fields of Science Journal Liaison Academia and Sosiety 5 (2): 163-175.

Endaryono, B. T, and T. Djuhartono. 2024. "Faktor Faktor Yang Menentukan Tingkat Investasi Dalam Pertumbuhan Ekonomi." JABE (Journal of Applied Business and Economic) 10 (4): 399-410.

Fathu, L. N. 2024. "Kebijakan Fiskal Dan Moneter Sebagai Produk Politik." Jurnal Dinamika Sosial dan Sains 1 (1): 1-6.

Huda, R. A, R. A Puspita, S. N Hasanah, and A. Malik. 2024. "Peran Kebijakan Fiskal Dalam Meningkatkan Kesejahteraan Sosial Di Indonesia Sebagai Negara Berkembang." Kalianda Halok Gagas 7 (2): 189-201.

Hutapea, L. H. 2024. "Formulasi Hukum Sistem Insentif Perizinan Pertambangan Batubara Untuk Efisiensi Penggunaan Sumber Daya Alam Dalam Perspektif Economic Analysis of Law." Jurnal Ilmu Hukum, Humaniora Dan Politik (JIHHP) 5 (1).

Irianto, H. E. S, and S. Jurdi. 2022. Politik Perpajakan Kontemporer: Pertautan Ekonomi, Politik, Dan Demokrasi. Jakarta: Prenada Media.

Mubila, A. M. 2025. "Implikasi Hukum Bisnis Atas Kebijakan Pajak: Kajian Terhadap Keadilan Dan Efisiensi Fiskal." Judakum: Jurnal Dedikasi Hukum 4 (1): 21-31.

Nasarudin, M. 2025. "Mendorong Reformasi Tata Kelola Penerimaan Negara Bukan Pajak Melalui Strategi Optimalisasi Integrasi E-Pnbp Dan Simbara Di Sub-Sektor Minerba." Journal of Innovation Research and Knowledge 5 (1): 261-278.

Pohan, C. A. 2022. Optimizing corporate tax management: Kajian perpajakan dan tax planning-nya terkini. Jakarta: Bumi Aksara.

Rakhmindyarto, R, and D. Rahmawati. 2024. "Merangcang Kebijakan Insentif Pajak yang Efektif ." Kajian Akademis BPPK 207-244.

Redi, A, and L. Marfungah. 2021. "Perkembangan kebijakan hukum pertambangan mineral dan batubara di Indonesia." Undang: Jurnal Hukum 4 (2): 473-506.

Sebayang, S. 2024. "Peranan Hukum dalam Meningkatkan Pembangunan." Jurnal Indragiri Penelitian Multidisiplin 4 (3): 78-83.

Setiawan, E. B. 2025. "Prinsip Konstitusi Ekonomi dalam Hilirisasi Nikel untuk Mewujudkan Pengelolaan Sumber Daya Alam yang Berkelanjutan." Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional 14 (1).

Susena, K. C, E. P. M Damarsiwi, and R. Putriani. 2025. "Tax Collection Reform: Challenges And Solutions For Improving Taxpayer Compliance." Journal of Business Management 1 (2): 75-80.

Taufiq, M. 2024. "Korelasi Pengelolaan Pertambangan Dengan Cita-Cita Negara Hukum Kesejahteraan. Social." SOCIAL: Jurnal Inovasi Pendidikan IPS 4 (3): 265-273.

Viona, M, N Nabila, D. G Katanging, and W. Pangestoeti. 2025. "Hubungan Antara Kepatuhan Wajib Pajak dan Penerimaan Negara: Perspektif Ekonomi Publik." Socius: Jurnal Penelitian Ilmu-Ilmu Sosial 2 (11).

Yossinomita, Y, H Haryadi, S Nainggolan, and Z. Zulfanetti. 2024. Pertumbuhan Ekonomi Dan Perpajakan. Bandung: Widina.