



# Human Rights Perspective in Guaranteeing Community Opinion Rights Against Mining Crimes (Illegal Mining)

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**Abstract.** The government's enthusiasm for enacting Law no. 11 of 2020 concerning Job Creation, Mineral and Coal chapter, is that it can stimulate investment, create jobs and improve the business climate in Indonesia. This legislation has experienced significant dynamics since it was passed in 2020. There are several main dynamics related to Law no. 11 of 2020 concerning Job Creation, namely: changes in regulations, where Law no. 11 of 2020 concerning Job Creation contains significant changes to various sectoral laws such as employment, investment, licensing, the environment and freedom of expression. For example, in article 162 of Law no. 11 of 2020 concerning Job Creation, Mineral and Coal chapter, which is contrary to the 1945 Constitution, the Constitutional Court further issued a decision to continue enforcing 162 of Law no. 11 of 2020 concerning Job Creation, Minerba chapter. With this, the author uses normative research methods as well as the conceptual basis of Indonesian human rights in analyzing the guarantee of the public's right to opinion after the enactment of Law no. 11 of 2020 concerning Job Creation, Minerba chapter. From research on the problems above, the author finds that there is disharmonization of norms between Law no. 11 of 2020 concerning Job Creation and the 1945 Constitution, Law no. 9 of 1998 concerning Freedom to Express Opinions in Public, Law no. 39 of 1999 concerning Human Rights, which has the impact of injuring the right to freedom of expression in Indonesia.

**Keywords:** Guarantee, Human Rights, Crime, Mining

## 1 Introduction

Human rights are intrinsic entitlements possessed by individuals from birth, which are inviolable and cannot be subject to dispute. These rights have acquired the status of personal property rights and are safeguarded by the state to ensure the protection of all citizens. Their validity is very strong in Indonesian laws and regulations even before the declaration of Human Rights. UN Human Rights in 1948 Indonesia has made a statement of human rights which has raised human rights and protected them in the

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life of the country as stated in the 1945 Constitution, the declaration of the Indonesian nation is in principle contained in the preamble to the 1945 Constitution and this preamble is the normative source for Indonesian positive law, in the preamble to the 1945 Constitution, paragraph I, states that "independence is the right of all nations", this statement contains a juridical recognition of human rights [1].

The basic rights above are stated in the articles of the 1945 Constitution, one of article 28 E in chapter aspirations as wide as possible, providing space for the people to contribute in providing constructive criticism and suggestions, starting from persuasive approaches such as dialogue, discussion, friendship, consolidation, to massive approaches, namely through demonstrations or demonstrations, which are on behalf of the people and extend in the hands of the people, but in reality this right to freedom is often heard in disagreement between the bearers of aspirations and the recipients of aspirations, where is the error and the procedures for the bearers of these aspirations? These honest and holy voices are often silenced.

New round of testing of Law no. 11 of 2021 concerning Job Creation (hereinafter referred to as the Job Creation Law) has met its final point at the Constitutional Court. The reason is, the Constitutional Court in its Decision No. 91/PUU-XVIII/2020 has confirmed that the process of forming the Job Creation Law is conditionally unconstitutional, so it asks the government and the DPR to improve the process of drafting the Job Creation Law for a maximum of two years. In fact, if you look closely, after the passing of the Job Creation Law, there have been various implementing regulations that further regulate the provisions in the Job Creation Law. The existence of these implementing regulations is a problem because the implementing regulations are based on a law that was formed with procedural flaws as in Constitutional Court Decision No. 91/PUU-XVIII/2020.

Constitutional Court Decision No. 91/PUU-XVIII/2020 confirms that the Job Creation Law is conditionally unconstitutional and this certainly affects the existence of implementing regulations for the Job Creation Law, including hampering implementation in the field regarding implementing regulations for the Job Creation Law. If that happens, then the phenomenon of legal uncertainty will occur, especially regarding the status and validity of implementing regulations for the Job Creation Law following Constitutional Court Decision No. 91/PUU-XVIII/2020. Laws that should be able to guarantee certainty and benefit to society actually have the potential to confuse society, the impact of which is that society cannot be served optimally by the presence of law and the presence of law actually complicates and confuses society.

One of the laws and regulations that has an impact on the enactment of the Job Creation Law is the Mineral and Coal Law in Indonesia. The regulations in the Mining and Coal Law that have undergone changes lie in the human rights freedom to express opinions, this is due to the stipulation of Article 162 of Law no. 3 of 2020 concerning Job Creation. This article implies that people who try to interfere with mining in any form can be reported back by mining business actors, even mining business actors can ask individuals or groups who provide reports regarding their anxiety about business actors who harm individuals or community groups with their

activities. mining companies receive fines of up to 100 million rupiah. This then injures freedom of opinion as stated in article 28 E in chapter XA concerning human rights paragraph 3, which the author has previously explained above.

Therefore, civil society groups are currently proposing a Judicial Review of the Minerba Law no. 3 of 2020 concerning Job Creation, to the Constitutional Court. In 2021 the Constitutional Court (MK) held a Preliminary Examination hearing on Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) [2]. According to Decision Number 37/PUU-XIX/2021, the Constitutional Court panel of judges rejected the request for a judicial review or judicial review of the Job Creation Law, in article 162. According to I Gusti Made Wardana, in his capacity as a petition expert in the trial for material review of the Minerba Law No. 3 of 2020 concerning Job Creation. through guarantees that space utilization for designated mining business areas will not be changed, this will result in the closure of space for community participation to continue fighting for their right to a good and healthy living space. According to him, Article 162 of the Mining and Coal Law has become an instrument to silence environmental defenders, in this case people who reject mining, from continuing to fight and defend a good and healthy environment which is violated by mining activities.

With this Constitutional Court decision, criminalization will still be a threat to mining opponents. Because Article 162 contains a penalty of 1 year or a fine of up to IDR 100 million, for anyone who obstructs or disrupts mining business activities, the material review is also rejected. The reason is because the request for material review of Article 162 is considered premature. "It is premature because it was submitted during the 2 year grace period for formal revisions to Law 11 of 2020, and does not rule out the possibility of substantive changes or improvements made by the legislators," said Constitutional Justice Wahiduddin Adams, reading out the considerations of the Constitutional Court Judges. In his consideration, the constitutional judge stated that the request regarding this article was premature because it was also regulated in Article 39 point 2 of Law 11/2020 concerning Job Creation. Meanwhile, the MK has decided that the Job Creation Law is conditionally unconstitutional in December 2021. The MK has given the government and DPR two years to improve the law.

From the description above, the author is interested in conducting research on human rights freedoms in guaranteeing the community's right to refuse after the enactment of the work copyright law. This is considered important by the author considering Article 162 No. 3 of 2020 concerning Job Creation in the mineral and coal sector will have a negative impact in terms of its implementation.

## **2 Research methods**

This study employed a descriptive analysis approach, which relied on a comprehensive examination of existing literature and utilised secondary sources as the primary source of information. This study employs a normative legal framework to examine the role of human rights freedom in safeguarding the community's right to reject ac-

tivities following the implementation of work copyright legislation. The author aims to present a theoretical perspective on ensuring the right of communities to refuse mining operations that have detrimental effects on the environment.

### **3 Discussion**

#### **3.1 Freedom of Opinion Theory**

Freedom is often a negative meaning, which means that everyone can do everything according to one's will, this then gives rise to negative interpretations, this is because individual freedom will collide with the freedom of other individuals. Nowadays, freedom can be given to every individual, of course with ethical and moral boundaries which are manifested through the norms that exist in society. Freedom is one of the basic rights of all individuals. Every human being has the right to his position as an individual who has basic rights such as acting, thinking, interacting with anyone. According to some experts, this freedom is the freedom of the mind and realizing ideas from the work of the natural mind. The embodiment of these ideas often takes the form of conveying the content of opinions as a result of thinking, studying experiences and various things in the cultural, social, scientific or artistic fields. This is what differentiates humans from other living creatures, namely the power of their own autonomy and freedom. However, there are loopholes that limit his freedom, namely the freedom of other people. This will have to make people tolerant of the rights of other individuals.

Two main principles are closely related to the principle of freedom. Everyone basically has the same rights as a basis for freedom and this also applies to other people. In this particular scenario, the fundamental liberties afforded to individuals encompass political freedom, which includes the entitlement to participate in elections and assume public positions, freedom of expression and assembly, freedom of conscience and thought, the ability to possess property, and protection against arbitrary detention and expropriation. This freedom is needed to create justice so that all people have the same rights and position. However, sometimes the social structure of institutions and society never treats humans with equality and full freedom. Oppression and suppression of ways of thinking, ideology and beliefs still often occur. Even in a democratic society, the social system is designed and developed to have these basic rights. However, institutions such as the state, do not treat their citizens fairly. It does not provide equal and maximum freedom to all its citizens. Violations of these rights also occur in various places, even in democratic countries.

As rational creatures, humans are expected to act to achieve their freedom in order to uphold the principles of justice. It is aimed primarily at achieving the good of all people. Every human being will be born according to his or her own destiny and be in a certain social structure position. The state holds primary responsibility. Even though it seems difficult, the state must use its institutions and authority to protect the freedoms of all citizens. This is related to one of the conceptions of original position. The

state must treat every citizen, regardless of religion or race, equally in their position before the law. Freedom of expression in public is one part of Human Rights (HAM). The ability of each individual to publicly articulate their viewpoints is a manifestation of democratic principles within the framework of societal, national, and governmental affairs. Human rights refer to fundamental entitlements inherent to all individuals by virtue of their humanity, sometimes regarded as bestowed upon them as an inherent endowment from a divine source. Human rights can be understood as encompassing the fundamental rights of equality and freedom, which are considered to be the most essential. The emergence of various human rights is predicated upon the existence of these two fundamental rights, as the absence of these two basic rights would pose challenges to the enforcement of other human rights.

Freedom of opinion in Indonesia at this time according to the percentage level of citizens expressing their opinions and according to what is currently visible in its essence, freedom in Indonesia is considered quite high because currently Indonesia is a democratic country in all fields. Currently, citizens can legally express what is on their mind to criticize every public policy made by the government and state institutions so that the policy can be controlled by the people themselves if the policy is not in accordance with the objectives of the public policy.

Recently, various organizations have emerged that work on freedom of expression. Most of the existing organizations have the aim of being a means for citizens to convey all their opinions and suggestions which the organization will later convey or facilitate to be heard by policy makers. So that the life of the nation and state binds each other. However, the process of freedom of expression in Indonesia is not free from abuse of freedom of opinion which can trigger lasting divisions. There is abuse of freedom of expression due to lack of control. Without clear control, citizens will assume that all policies that do not benefit themselves and their organizations will be opposed and considered irrelevant policies using the reason of freedom of opinion. So, freedom that exceeds these limits can cause divisions in this country. This means that in Indonesia there are a small number of people who have exceeded the limits in expressing their opinions. The ability to publicly express one's thoughts should be predicated upon a careful equilibrium between individual rights and societal responsibilities, thoughtful discussion and collective agreement, legal predictability and fairness, as well as proportionality. This entails operating within the bounds of one's expertise, considering the potential advantages, and recognising that expressing opinions serves not only personal interests but also the interests of others. The Republic of Indonesia, functioning as a legal and democratic unitary state, possesses the jurisdiction to govern and safeguard the practise of freedom of expression. The regulation of freedom of thought and expression of opinion is stipulated in Article 28 E (2) of the fourth amendment to the 1945 Constitution of the Republic of Indonesia. The fundamental human right to freedom of association, assembly, and expression of opinion is universally recognised. The fundamental right to freedom of expression, encompassing the freedom to hold and express opinions, is often regarded as a cornerstone of civil society. According to Law no. 9 of 1998, which pertains to the Freedom to ex-

press opinions in public, it is stated in article 1 paragraph (1) that the freedom to express opinions is a fundamental right granted to all citizens. This right allows individuals to freely and responsibly express their thoughts using various means such as oral communication and written expression, while adhering to the regulations outlined in the relevant legislation.

Indonesia is a nation that upholds the principles of the rule of law, thereby implementing a comprehensive set of rules aimed at safeguarding human rights. The attribution of human rights is not contingent upon official recognition, but rather, as posited by the hypothesis, human rights are inherent individual entitlements that transcend the natural realm, inherent in every human being from the moment of birth. Every citizen of Indonesia has the fundamental entitlement to use their freedom of speech and express their thoughts, irrespective of their ethnic, racial, or religious background. The field of information technology presents a dichotomy as it simultaneously contributes to the advancement of human well-being, progress, and civilization, while also serving as a potent tool for illicit activities. The transmission and distribution of information via print and electronic media frequently adheres to the societal norms and regulations. According to Article 2, paragraph (1) of Law no. 9 of 1998, it is stipulated that every person, whether individually or in groups, possesses the freedom to express their thoughts. This freedom is regarded as a manifestation of democratic rights and obligations within the context of societal, national, and state affairs. The objective of facilitating the expression of opinions in public is to actualize responsible freedom as a manifestation of human rights in alignment with Pancasila and the 1945 Constitution. This objective also seeks to establish enduring and consistent legal safeguards to ensure the protection of the freedom to express opinions. Moreover, it aims to foster a favourable environment that encourages the active engagement and innovative contributions of individuals. In democratic societies, citizens serve as the embodiment of both rights and obligations. They have a social responsibility within the realms of social, national, and state life, while also acknowledging the importance of individual and group interests.

### **3.2 Guaranteeing Human Rights in the Right of Rejection for Communities Who Feel the Impact of Mining Business Actors on Environmental Destruction**

Human Rights (HR) encompass fundamental entitlements inherent to all individuals, bestowed by a divine entity, and moreover seen as inherent rights that cannot be rescinded by fellow human beings or other sentient beings. The concept of human rights is widely seen as possessing inherent universality, hence transcending spatial and temporal limitations [3]. The fundamental principles that underpin human rights are freedom, equality, autonomy, and security. Furthermore, it is important to note that human dignity is the fundamental principle underlying the concept of human rights [4]. The recognition of human rights by individuals stems from their cognizance of their inherent value and dignity as human beings. Hence, the concept of human rights

has been inherent from the inception of humanity, rendering it a longstanding principle rather than a recent development [5]. The historical and ongoing endeavours to actualize human rights are seen in the endeavours of individuals to safeguard their inherent worth as human beings against the capricious conduct of despotic rulers [6]. The genesis of human consciousness regarding their entitlements as individuals is a pivotal catalyst in the conception and subsequent development of concepts that eventually came to be recognised as human rights.

The struggle for the rise of human rights in England began with King John Lockland's recognition (coercion) of the people's rights with the existence of Magna Charta in 1215. However, in the course of history, the struggle to protect human rights was hampered because Magna Charta was often violated [ 7] so that in 1679 the Habeas Corpus Act was issued (Regulation on the Right to be examined before a judge), a document of historical legal civilization which stipulates that a person who is detained must be brought before a judge within three days and told on what charges he is being detained. The freedom of speech is a fundamental right that grants every individual the ability to articulate their opinions verbally or in written form, without any undue restrictions, while adhering to the legal framework and regulations in place. The law governing freedom of opinion, among other things, is regulated by Law Number 9 of 1998 concerning freedom of expression in public. Freedom of expression, also known as freedom of speech, is a fundamental right that entails the ability to communicate without censorship or limitations. However, it is important to note that this right does not extend to the dissemination of hate speech. The term "freedom of expression" is often used to encompass not only the freedom to verbally express oneself, but also the activities of seeking, receiving, and sharing information or ideas. However, freedom of expression does not express disgust and defamation which is basically an act that has been considered a form of injustice before the state of law because it violates the rules of decency. Freedom of speech and freedom of the press are part of individual freedom that cannot be restricted by state governments. and national [8].

In the work of Bonaventure Rutinwa, it is asserted that the concept of freedom of speech encompasses two fundamental components. The initial part pertains to the liberty to actively pursue, acquire, and disseminate knowledge and ideas, without being constrained by geographical boundaries. The second aspect involves the entitlement to exercise discretion in determining the manner in which this freedom is exercised. This perspective is aligned with the scholarly discourse presented by Jimly Asshiddiqie. Therefore, the concept of freedom of speech serves to safeguard not only the content of ideas and information, but also encompasses their structure, the mediums through which they are conveyed, and the methods by which they are received. Meanwhile, according to Lorens Bagus, freedom is the quality of the absence of obstacles from fate, necessity or circumstances in one's decisions or actions [10]. Lorenz Bagus also distinguished four types of freedom in the history of philosophy, the first is the power of selecting one of two or more alternatives (possibilities). The second meaning places freedom consistently in line with the teachings of determinism, identifying freedom with doing as we wish, even though our will is determined by a set of

causes. The third meaning is freedom centered on human internal motives. The fourth meaning, freedom demands a condition of normative connotation, so that freedom means doing what must be done [11].

Democracy allows criticism, but criticism is different from insult. Democracy guarantees the protection of freedom of expression. Amien Rais stated that there are democratic criteria that must be met by a country. One of them is the fulfillment of four types of freedom, namely: freedom of expression, freedom of the press, freedom of assembly and freedom of religion. If people are no longer allowed to speak or express opinions, then that is a sign of the absence of democracy [12]. Several definitions of freedom of expression put forward by the experts mentioned above show that freedom of expression cannot be reduced in any form, including the distribution of freedom of opinion itself, nor can it be reduced.

The legal foundation for the protection of freedom of expression in Indonesia is enshrined into the 1945 Constitution. There are several regulations pertaining to this matter, specifically, article 28 paragraph (3) of the 1945 Constitution, which affirms the entitlement of every individual to the freedoms of association, assembly, and expression of opinion. Furthermore, Article 28F paragraph (1) is further strengthened, by strengthening obtaining information and developing that information for personal needs and the social environment. Furthermore, in order to strengthen the above regulations, further derivative legislation was made to the 1945 Constitution, namely, Law no. 39 of 1999 concerning Human Rights (HAM), which confirms the right of every person to express opinions orally, in writing, in images or other forms. UU no. 9 of 1998 concerning Freedom to Express Opinions in Public, where this regulation regulates the freedom of a person or group to express their opinion in public, as well as regulating the procedures and limits for expressing opinions in public spaces. However, it is important to remember that freedom of expression also has limitations regulated by law, for example it is not permitted to spread hateful information, threaten or harm other people. If someone violates these legal restrictions, they can be prosecuted according to applicable regulations. Therefore, freedom of opinion is a right guaranteed by the Indonesian constitution, this includes expressing opinions and ideas freely, provided that these ideas are based on accurate data.

UU no. 11 of 2020 concerning Job Creation is legislation that involves various economic sectors and aims to stimulate investment, create jobs and improve the business climate in Indonesia. This legislation has experienced significant dynamics since it was passed in 2020. There are several main dynamics related to Law no. 11 of 2020 concerning Job Creation, namely: changes in regulations, where Law no. 11 of 2020 concerning Job Creation contains significant changes to various sectoral legislation such as employment, investment, licensing, the environment, human rights and other sectors. The Indonesian government responded to these changes with the aim of simplifying licensing, increasing employment flexibility, and speeding up business processes in Indonesia. The next dynamic lies in several articles in Law no. 11 of 2020 concerning Job Creation which is considered by several legal experts to trigger controversy and protests in various circles of society. For example, curbing public partic-



ipation in expressing opinions. Furthermore, significant changes can be seen after the enactment of Law no. 11 of 2020 concerning Job Creation, this regulation does not have clear implementing regulations, causing confusion at the implementation level.

In the context of freedom of expression in the Mining and Coal Law after the enactment of Law no. 11 of 2020 concerning Job Creation suppresses the democratic rights of individuals or community groups in expressing opinions, criticism or input regarding policies or regulations in the mining sector. This can be seen in article 162 of Law no. 11 of 2020 concerning Job Creation. This regulation is considered by several mining law experts to be a setback to democracy in Indonesia. This issue was then answered by the Constitutional Court of the Republic of Indonesia (MK) in Decision Number 37/PUU-XIX/2021, in this decision maintaining and enforcing Article 162 of Law No. . 11 of 2020 concerning Job Creation, and is deemed not to conflict with the 1945 Constitution, namely Article 28 paragraph (3) and Article 28F paragraph (1).

If viewed from the perspective of legal norms, according to the author, Article 162 of Law no. 11 of 2020 concerning Job Creation, experienced disharmonization of norms by the 1945 Constitution, Law no. 9 of 1998 concerning Freedom to Express Opinions in Public, Law no. 39 of 1999 concerning Human Rights. It can be seen that the legislation before the advent of Law no. 11 of 2020 concerning Job Creation, has granted the constitutional right to freedom of opinion, this is a manifestation of the democratic government system adopted by the Indonesian state. Norm disharmony occurs when there is a conflict or inconsistency between various applicable legal regulations or norms. This can occur at various regulatory levels, such as conflicts between laws, government regulations, regional regulations, or even conflicts between national and international legal norms. Disharmonization of norms can result in uncertainty and conformity in implementing regulations. It can also lead to unfairness in the application of the law, confusion for citizens, and difficulties for legal scholars in providing clear and consistent advice. To overcome this, steps that can be taken are:

1. Revision of regulations: the government or legislative body can revise regulations that conflict with or are not in line with other regulations in order to achieve consistency and harmonization of norms.
2. Legal interpretation: courts and judicial institutions can revise to provide clear and consistent legal interpretations to address inconsistencies between various legal norms.
3. Inter-institutional coordination: it is necessary to carry out good coordination between government institutions and legislative bodies in the process of formulating and implementing regulations to ensure consistency and harmonization of norms.
4. Clarification and guidance: issuance of legal interpretation guidelines or guides by the government, in this case implementing regulations, to help clarify uncertainties and direct the implementation of conflicting regulations

Furthermore, according to the author, in adding the steps to harmonize norms above, the government is actually able to listen to legal scientists and stakeholders when

making laws and regulations, in order to get the right solution and ensure justice and better legal certainty. Therefore, in the author's opinion, the government should not only use Law no. 11 of 2020 concerning Job Creation is only a basis for stimulating investment, but it is necessary to look at other legal aspects such as conflict of norms, as well as the public's right to freedom of opinion which is protected by the Indonesian constitution.

## 4 Conclusion

Indeed, the freedom of human opinion constitutes a fundamental aspect of human rights. The aforementioned entitlement necessitates adherence, and within a lawful society, adherence is demonstrated through the implementation of statutory provisions. The 1945 Constitution of Indonesia effectively establishes legal provisions to govern and safeguard the rights of its inhabitants within the framework of a nation-state. The extent to which individuals are able to freely express their thoughts is contingent upon the proportion of the population that possesses this capability, as well as the prevailing circumstances in contemporary society. As members of the citizenry, it is incumbent upon us to utilise our entitlement to articulate viewpoints within prudent boundaries, given that Indonesia is a nation governed by the rule of law and democratic principles.

A worry that arose pertained to the prominence given to the right to freedom of expression within the Mining Law and Law no. 11 of 2020 on Job Creation, namely in relation to Minerba, which has been observed to potentially infringe against the human rights of Indonesian individuals. The disharmony of norms between Law no. 11 of 2020 on Job Creation and the 1945 Constitution, Law no. 9 of 1998 on Freedom of Expression in Public, and Law no. 39 of 1999 on Human Rights can be observed in the context of article 162 of Law no. 11 of 2020, which pertains to Minerba. Article 162 of Law no. 11 of 2020, which pertains to Job Creation, specifically addresses the subject of Minerba. This article underscores the significance of both individual and community involvement in expressing their viewpoints regarding environmental preservation, while concurrently promoting the well-being of the community. The failure to attain human rights protection in Indonesia can be attributed to the provision outlined in article 162 of Law no. 11 of 2020, which pertains to Minerba, as substantiated by the ruling of the Constitutional Court in decision Number 37/PUU-XIX/2021.

Hence, the government, comprising the legislative, executive, and judicial institutions. The enhancement of Law no. 11 of 2020 pertaining to Job Creation in Indonesia has the potential to facilitate the harmonisation of rules and regulations in the country, while concurrently safeguarding the human rights of its citizens. In addition to engaging legal professionals and anyone with a vested interest in the development of high-quality legal products.

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