

## **Data-Based Policy as a solution to overcome illegal mining of Mount Botak, Buru Regency, Mollucas Province for sustainable development**

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**Abstract** Gold mining in Mount Botak, Buru Regency, Mollucas Province is processed traditionally so that it produces waste containing heavy metals that are harmful to human health and cause environmental damage. Although the government has taken various control measures in the form of judicial operations, they have not been effective in stopping illegal mining activities, even indigenous peoples in the name of customary rights have urged the government to manage them professionally for economic reasons. The Buru Regent is challenged to make legal policies that respond to the demands of the community while at the same time paying attention to environmental sustainability. This study aims to find the ideal policy concept for overcoming illegal mining that supports environmental sustainability. To achieve this goal, doctrinal legal research is used based on a conceptual approach, with a positivist paradigm, and relies on normative juridical research, and deductive analysis. The results of the study show that a data-based policy model that is supported by science becomes a reliable policy and supports sustainable environmental development.

**Keywords:** Illegal mining, Environmental Damage, Policy, Sustainable Development

### **1. Introduction**

Mining has an important role in providing added value for economic growth and development in the region. The management of mineral and coal mining activities is beneficial for the income of the community, region, and even the state and creates jobs. In the Law of the Republic of Indonesia number 3 of 2020 concerning Amendments to Law number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba), Mining is stated as part or all of the stages of activities in the framework, management and exploitation of minerals or coal which includes general investigations, exploration, feasibility study, construction, mining, processing and/or refining or development and/or utilization, transportation and sale, as well as post-mining activities. Therefore, there is a great potential for problems financially, environmental damage, social conflict, economic inequality or even encouraging the creation of new poverty. The phenomenon that appears in the exploration of natural resources is the rise of illegal mining carried out by small community groups in very large numbers and involves parties with power, owners of capital, or weapons. Iskandar Zulkarnain stated Illegal Mining as a mining or excavation activity carried out by the community or company without having a permit and not using good and correct mining principles<sup>(1)</sup>

Which different from the concept of community mining where in the Minerba Law number 4 of 2009 community mining activities are carried out in people's mining areas determined by the Regent/Mayor after consulting with the Regency/City Regional People's Representative Council, then the People's Mining Permit (IPR) is granted by the Regent/Mayor to local residents, both individuals and to the community, which then in the Minerba Law number 3 of 2020 stated that IPR is given by the Minister to individuals who are local residents; or cooperatives whose members are local residents. Then in Presidential Regulation (Perpres) number 55 of 2022 concerning Delegation of Authority in Mineral

and Coal Mining Management which principally delegates the authority of the Central Government to the Provincial Government regarding the granting of Mining Business Permits (IUP) for certain types of non-metal minerals, non-metallic minerals, and rocks. In addition to IUP, other permits are granted in the form of Rock Mining Permits (SIPB), People's Mining Permits (IPR), Mining Services Business Permits (IUJP) for 1 Provincial Region, Transportation, and Sales Permits and IUP for Sales of non-metallic minerals, non-metallic minerals certain types, and rocks are also delegated. The delegation of Licensing is also accompanied by the delegation of authority to grant and determine the Mining Business Permit Area (WIUP) of Non-Metal Minerals, WIUP of Certain Types of Non-Metal Minerals, and WIUP of Rocks, determination of benchmark prices for groups of non-metallic minerals, certain types of non-metallic minerals, and rocks, providing recommendations or approvals relating to the delegated authority<sup>(2)</sup>

Mining activities in Mount Botak, Buru district, Mollucas Province are illegal mining activities that began with the discovery of gold deposits in the hills of Wamsaid hamlet, Waeapo District in 2011 and then became a magnet for economic profit seekers from various regions. At first, the local community cultivated it on a small scale and traditionally, without government regulation, currently the excavation area in Mount Botak reaches 75.27 hectares, then in other areas near Gogrea Village, there is an excavation area of 104.16 hectares caused by illegal mining. Illegal mining is used by indigenous peoples to obtain economic benefits by granting permits to miners through miner cards which are sold and paid to the traditional soa-soa (marga-marga) who have land rights in the mining location such as the Wael clan (Raja Kayeli/Village Head), the Nurlatu clan, the Belen clan, and the Besan clan (Soar Pito Soar Pa) on the grounds that the mine site is regulated by the customary village government and managed by the head of the kewang, namely the term traditional village in Mollucas which refers to the king's assistant (Village Head) with the task of regulating and guardian of natural resources in the village, who is in charge of guarding the highlands. This was done without the permission of the Buru District Government.

Until recently, in August 2022, the phenomenon of the Anahoni river water in the Mount Botak Gold Mine area changed to blue, according to Dr. Yusthinus Thobias Male, Environmental Ecotoxicology Researcher, Department of Chemistry, Faculty of Mathematics and Natural Sciences, Pattimura University (Unpatti) Ambon, said that the river's color changes to blue due to the reaction between cyanide and iron ions in the soil. According to research at 2014; sample which was tested in a laboratory in Australia, showed that various marine biota in Kayeli Bay had been contaminated with mercury with a concentrate level or pollution level of more than 3%. Police officers assisted by the TNI have carried out raids and arrested miners in the Mount Botak area many times, but the enforcement has not deterred the miners. There are seven cases with nine suspects revealed in 2021 and four cases with four suspects in 2022<sup>(3)</sup>. The Regional People's Representative Council of Buru Regency even requested the deployment of the Indonesian National Army on Mount Botak to monitor and observe the environment in order to maintain the safety of the people, and preserve the environment, so as to avoid the possibility of current and future natural disasters, ensure the safety of the people and ensure resilience. region to support national security<sup>(4)</sup>.

The problem faced by the Government of Buru Regency in handling these illegal miners is that there is no legal policy or regional regulation that forms the basis for regional action. The local government only carries out orders and appeals not to carry out illegal gold mining and as a matter of fact, the appeal is not affected by the decline in the activities of residents who carry out mining. The absence of policies issued by the Regional Government of both Mollucas Province and Buru Regency regarding gold mining activities on Mount Botak resulted in unavoidable environmental damage on Buru Island.

## 2. Materials and Methods

This research is doctrinal research, which is prescriptive legal research, normative legal research includes research on legal principles, research on legal systematics, research on legal synchronization levels, legal history research and legal comparative research<sup>(5)</sup>. Although normative legal research is often classified as qualitative research, because it involves data and its consequences for analysis, normative research is also empirical research. Even normative legal research – which is qualitative – needs to be supported by field research. In this case, the research target is not only norms and rules, but behavior. What is sought is primary data obtained directly in the field, including habits, agreements, law enforcement, legal awareness, etc<sup>(6)</sup>. placed with a conceptual approach (conceptual approach) is a type of approach in legal research that provides an analytical point of view of problem solving in legal research seen from the aspects of the legal concepts that lie behind it, or even can be seen from the values contained in the normalization of a regulation in relation to the concepts used. Most of these types of approaches are used to understand the concepts related to normalization in a legislation whether it is in accordance with the spirit contained in the underlying legal concepts. This approach departs from the views and doctrines that develop in the science of law. This approach is important because an understanding of the views/doctrines that develop in legal science can be a basis for building legal arguments when solving legal issues at hand. Views/doctrines will clarify ideas by providing legal understandings, legal concepts, and legal principles that are relevant to the problem<sup>(7)</sup>.

## 3. Result and Discussion

### 3.1 Local Government Authority in Natural Resources Management

The government's authority in the concept of a state based on law comes from the applicable laws and regulations. An organ of government cannot assume that it has its own governmental authority. Authority is only given by law. Legislators not only give government authority to government organs, but also to employees or special agencies. Government authority does not fall from the sky but is determined by legal ethics<sup>(8)</sup>. Theoretically, the authority that comes from the applicable laws and regulations is obtained through 3 (three) ways they are; attribution, delegation, and mandate, the definitions of which are as follows: a) Attribution is the granting of government authority by lawmakers to government organs. b) Delegation is the delegation of government authority from one government organ to another government organ. c) Mandate occurs when a government organ allows its authority to be exercised by another organ on its behalf<sup>(9)</sup>.

The state as the holder of the right to control<sup>1</sup> Indonesia's natural resources gives the government the authority to manage natural resources through the instruments of permits, licenses and concessions. The authority to manage mineral and coal natural resources is contained in the Minerba Law in Article 4 paragraph (2) which states that State Control of Mineral and Coal is carried out by the Central Government in accordance with the provisions of the Law, Then in Article 6, Article 35 to Article 63 regulates concerning the authority of the Central Government regarding licensing, both business licensing and business area licensing<sup>2</sup> and the determination of mining areas. However, in Article 35

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<sup>1</sup> The Constitutional Court in its decision number 001-021-022/PUU-I/2003 provides an interpretation of the phrase "controlled by the state" in Article 33 of the 1945 Constitution: "The word "controlled by the state" must be interpreted to include the meaning of control by the state in a broad sense originating from and stems from the conception of the sovereignty of the Indonesian people over all sources of wealth "earth and water and the natural resources contained therein", including the notion of public ownership by the people's collectivity of these sources of wealth. The people are collectively constructed by the 1945 Constitution giving a mandate to the state to carry out policies (beleid) and management actions (bestuursdaad), regulation (regelendaad), management (beheersdaad) and supervision (toezichthoudensdaad) for the greatest prosperity of the people.

<sup>2</sup>The mineral and coal mining area consists of a mining business area (WUP), a state reserve area (WPN), a Special Mining Business Area (WUPK) and a people's mining area (WPR).

paragraph 4, it is stated that the Central Government may delegate the authority to grant business permits to the Provincial Government in accordance with the provisions<sup>3</sup>.

Table 1. Licensing Authority in the Minerba Law

Legal Basis	Authority of Central Gov	Provincial Authority	District/City Authority
Law no 4 of 2009	WP (WUP, WPN, WUPK), WIUP, inter-provincial IUP, IUPK, evaluation of IUPK issued by the local government that causes environmental damage,	IUP Cross District, WUP	IUP and IPR for Regency area and/or sea area up to 4 miles, WPR
Law number 3 of 2020 and its derivatives in Presidential Regulation 55 of 2022	WP (WUP, WPR, WPN, WUPK), metal mineral WIUP and coal WIUP, non-metal mineral WIUP and rock WIUP, WIUPK, IUP, IUPK, IUPK continuation of agreement, IPR, SIPB, assignment permit, transportation and sales permit, IUJP, IUP for Sales	IUP in 1 (one) province/sea area up to 12 (twelve) nautical miles, SIPB, IPR, Transportation and Sales Permit for non-metal mineral commodities, certain types of non-metallic minerals, and aid commodities, IUJP for 1 (one) Province, IUP for the sale of non-metallic mineral commodities, certain types of non-metallic minerals, and aid commodities	--

This follows the provisions of law number 23 of 2014 concerning Regional Government (UUPemda) where government affairs in the energy and mineral resources sector including the granting of mining business permits are submitted to the provincial government as regulated in Article 14 Paragraphs (1) and (3) are;

- 1) The administration of government affairs in the forestry, marine, and energy and mineral resources sectors is divided between the Central Government and the Provinces;
- 2) Government affairs in the field of energy and mineral resources as referred to in paragraph (1) relating to the management of oil and natural gas become the authority of the center.

<sup>3</sup> Delegation of Permits to Provincial Governments includes the Granting of Certificates and Permits, guidance on the implementation of the granting of delegated permits, supervision of the implementation of the granting of delegated permits. Such delegation cannot be sub-delegated to district/city governments. See article 2 of Presidential Regulation number 55 of 2022 concerning Delegation of Licensing in the Mineral and Coal Mining sector.

The Regional Government Law clearly states that regardless of the extent of autonomy granted to regions<sup>4</sup>, the final responsibility for administering regional government will remain with the central government, and policies made and implemented by regions are an integral part of national policies. The difference lies in how to utilize local wisdom, potential, innovation, competitiveness, and creativity to achieve these national goals at the local level, which in turn will support the achievement of overall national goals. Furthermore, it is the duty of the Governor acting on behalf of the Central Government to provide guidance and supervision to regencies/municipalities in order to carry out their autonomy within the corridors of norms, standards, procedures and criteria set by the Central Government. With the consequence that the central government can cancel regional policies made without referring to the norms, standards, procedures and criteria set by the Central Government.

However, the concept of the authority to manage mining natural resources in the Minerba Law is considered detrimental to the community, as a result the Indonesian Forum for the Environment (WALHI)<sup>5</sup> submitted a judicial review of the Minerba Law to the Constitutional Court in case number 37/PUU-XIX/2021 dated 26 July 2021 regarding this matter by filing reasons as follows (Konstitusi, 2022);

- a. With the loss of the authority of the local government in controlling coal minerals to the central government, the Petitioners and other communities who have been struggling through the Regional Government will find it more difficult, far and require much more expensive costs to participate in fighting for collective rights for a good and healthy environment. , fair legal certainty of government policies in the field of mineral and coal mining;
- b. Supervision by the public on government policies in the field of coal mineral mining to the central government which will be more difficult and remote to access from the regions and is contrary to the general principles of good governance (AUPB), which is the principle of openness as regulated in Law Number 30 of 2014 concerning Government Administration. (Government Administration Law);
- c. By eliminating the role of local governments in the management, management, supervision and policy, it would violate the principle of openness, which is the principle of government to provide services to the community to gain access and obtain correct, honest and non-discriminatory information;
- d. The absence of a regional role in supervision, management, management, and policy also contradicts the function of regional autonomy and decentralization itself, because the purpose of regional autonomy and decentralization is to bring the government closer to society so that services prove to the community will be better and public control over the government becomes strong and real.

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<sup>4</sup> Article 18 paragraph (2) and paragraph (5) of the 1945 Constitution of the Republic of Indonesia states that the Regional Government is authorized to regulate and manage its own Government Affairs according to the Principle of Autonomy and Co-Administration and is given the widest possible autonomy. to the Regions is carried out based on the principle of a unitary state. The goal is to accelerate the realization of community welfare through service improvement, empowerment, and community participation. In addition, through broad autonomy, in the strategic environment of globalization, regions are expected to be able to increase competitiveness by taking into account the principles of democracy, equity, justice, privileges, and specificities as well as the potential and diversity of regions in the system of the Unitary State of the Republic of Indonesia.

<sup>5</sup> WALHI, JATAM Kaltim questioned 4 issues of the Minerba Law that harm the wider community; a. The community cannot complain to the local government because all mining authorities and authorities are now under the authority of the central government and local governments cannot take action against mining companies that commit violations such as revoking an IUP; b. there is a risk of being policed if the mining company refuses due to the provisions in article 162 that threaten people who interfere with mining activities with fines; c. Mines can still operate despite damaging the environment with a contract extension of 2 times 10 years; d. In the UU Cipta Kerja, companies that can increase the added value of coal will receive preferential treatment from the government in the form of imposition of 0% royalty (WALHI, 2021).

Argues that the elimination of regional authority in mining management is contrary to the 1945 Constitution of the Republic of Indonesia and the principles of managing natural resources and the environment because even in the Constitutional Court Decision No. 91/PUU-XVIII/2020 confirms the existence of meaningful participation which aims to create or realize genuine public participation and involvement which at least fulfills three prerequisites, namely: first, the right to be heard; second, the right to be considered; and third, the right to get an explanation or answer to the opinion given (right to be explained). Community involvement in decision-making, especially in the process of preparing Environmental Impact Analysis (Amdal) and environmental approvals is an absolute right and the state must be present to facilitate it because this is part of human rights. In addition, centrality will clearly distance local communities from access to justice and the law because all processes of management authority and mining permit processes are in the central government. The main idea is appropriate if it is associated with the goal of realizing sustainable development. According to Sonny Keraf, there are 3 (three) main principles of sustainable development, consisting of<sup>(10)</sup>;

- 1) The principle of democracy is that development is carried out as a manifestation of the common will of all the people for the common interest of all the people with important aspects, including: (a) the main agenda of development is the people's agenda for the sake of the people; (b) community participation; (c) honest and open access to information; and (d) public accountability.
- 2) The principle of justice. This principle demands that losses due to the development process experienced by certain community groups must be redeemed or compensated in a balanced or proportional manner either by the state or by the group that caused the loss. Environmental taxes are a form of justice for people who are affected by the environment by adverse development activities.
- 3) The principle of sustainability. This principle requires us to design a development agenda in a long-term visionary dimension, to see the impact of development both positive and negative in all its aspects, not only in the short-term dimension.

Meanwhile, Sudharto P. Hadi stated that the principles of sustainable development are<sup>(11)</sup>;

- 1) Fulfillment of basic needs both material and non-material. Environmental damage causes poverty and decreases the quality of life because people no longer have natural resources that can be used as assets to sustain life. Non-material needs are reflected in an atmosphere of openness, freedom from pressure, and democracy which is an important requirement for people to be able to take part in decision-making that affects their lives. Community participation will be able to improve the quality of decisions because the community is actually local experts in the sense of better understanding the conditions and character of the environment around where they live. Having the opportunity to express opinions will foster feelings as part of the process;
- 2) Environmental maintenance. With regard to environmental protection, there are two important principles, namely the principle of conservation and reducing consumption. Environmental care is actually closely related to the principle of fulfilling human needs. Even if the damage is so severe it will threaten the existence of humans themselves. It is no exaggeration to say that the cause of pollution and environmental damage is a form of violation of human rights. Therefore conservation is meant for environmental protection. While the principle of reducing consumption has a double meaning. First, reducing consumption is aimed at developed countries due to the large pattern of energy consumption that causes pollution and environmental degradation. Second, the change in consumption patterns is a call addressed to anyone (as individuals) both in developed and developing countries to reduce the burden of the earth.
- 3) Social Justice. With regard to justice, the present principle of justice shows the need for equity in the principles of development. Today's justice has a broad dimension, including the allocation of natural resources between the regions and the center. While future justice means the need for solidarity between generations. This shows the need for recognition of the limitations of natural resources that must be regulated so as not to sacrifice the interests of future generations.

- 4) Self-determination. Self-determination includes the principle of realizing an independent society and participatory democracy. An independent community is a society that is able to make its own decisions on matters relating to its destiny and future. This includes determining the allocation of natural resources. Meanwhile, the principle of participatory democracy is openness and transparency. By providing opportunities for the community to take part in every decision-making process concerning their fate, the community will feel part of the process so that a sense of belonging grows and in turn can benefit from the changes that occur around them.

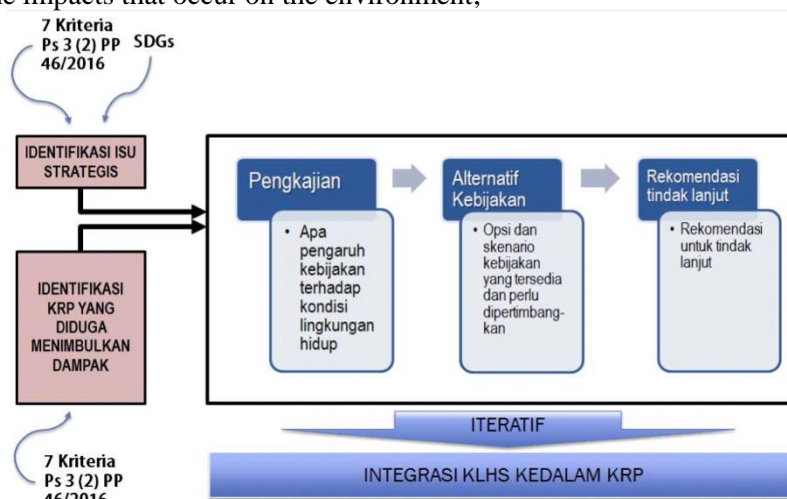
### 3.2 Policy Concept for Local Government.

Reflecting on the way the local government responded to the existence of a gold mine in Mount Botak, it turns out that it is not as simple as the number of mining by individuals without a permit, referring to the Ombudsman of the Republic of Indonesia Mollucas Representative in 2018 it was stated that there was maladministration in the gold mining of Mount Botak in Buru Regency, Mollucas Province<sup>(12)</sup>. There are brokers who finance the gold mineral mining process by providing drums, tons, dompeng and soaking tubs with the aim of getting gold the fastest and using mercury as the main ingredient to bind gold metal, resulting in waste resulting from the use of mercury being uncontrolled and causing environmental damage. As a form of countermeasures at the local level, on 26 February 2018 the Buru Regent made a notice with the Chairman of the Buru Regency DPRD, the Buru Island Police, Dandim 1506 Buru, and the Buru Kejari, number 549/94; number 170/6; number Mak/01/II/2018; number Mak/87/II/2018; number B-135/S.1.14/II/2018, regarding the prohibition of mining metallic minerals containing mercury/mercury (cinnabar stone). The announcement is an affirmation of the Governor's instruction number 04 of 2014 dated December 20, 2014 concerning the prohibition of mining metallic minerals containing mercury and mercury (cinnabar stone) and the announcement of the Governor of Mollucas, Pangdam XVI/PTM and the Mollucas Police Chief number: 544-45/ 2017; number 1030/XI/2017; and number Mak/01/XI/2017, concerning the prohibition of mining metallic minerals containing mercury/mercury (cinnabar). Then the results of the Ombudsman's search as outlined in the 2018 Ombudsman Brief stated that the Head of the Mollucas Province ESDM Office still issued a Special Operations mining business permit for processing and refining gold minerals at Mount Botak using non-mercury liquids in the process of binding and separating heavy metals to mining companies. gold which often uses mercury (PT. Buana Pratama Sejahtera, PT. Prima Indo Permai, PT. Citra Cipta Prima and PT. Sinergi Sahabat Setia). Meanwhile, the regional regulations that serve as the legal basis are the Mollucas Province Regional Regulation number 18 of 2014 concerning the Management of Mineral and Coal Mining in the Mollucas Province which in its considerations still refers to the provisions of Article 10 of Law Number 32 of 2004 concerning Regional Government as amended by Law Law Number 12 of 2008 concerning the Second Amendment to Law Number 32 of 2004, of course, cannot be used as a legal basis for the government to issue permits.

At this stage, both the local government of Mollucas Province and Buru Regency seem to focus on the authority approach so that the actions taken by the Buru Regency Government are none other than following the policies of the Provincial Government. The relationship model is a top-down policy implementation, namely policy decisions made by government officials (central) and centralized policy implementation carried out by administrators or bureaucrats at lower levels<sup>(13)</sup>. Under such conditions, regional leaders are challenged to change the mindset of the apparatus. How these regions make decisions independently and logically. How the region adapts to the environment through bargaining. Bargaining in this case adapts the environment with a "central letter" (from top to top-down). What is bargaining capital? So back to the expert's signal "in a situation like this, the actor will make a decision by choosing an ideological or political approach. This is where an evidence-based policy model emerges to link public problems with public policy. Evidence-based policy (EBP) encourages governments and policymakers to combine evidence in the form of evidence. The main point of such activity is to increase the reliability of various considerations to increase the efficiency and effectiveness of policies and programs<sup>(14)</sup>. The evidence-based policy also emerged as an effort to reduce the influence of ideology

and political interests in the policy-making process. Evidence that can be integrated into the policy-making process varies from research, knowledge and information, ideas and interests, and political considerations to economic evidence<sup>(15)</sup>.

The concrete form is through the preparation of a Strategic Environmental Assessment (KLHS) for the Mount Botak and Gogrea areas with the aim of ensuring that various environmental impacts are taken into account and integrated early on in the decision-making and/or decision-making process, along with considerations of social, economic, and environmental aspects. political. KLHS can be used as a tool to critically evaluate the impacts that occur on the environment;



**Figure 1.** Workflow Strategic Environmental Assessment (KLHS)

The process begins on October 25, 2022, the First Phase of Public Consultation is carried out in the context of screening Sustainable Development Issues for the Preparation of a Strategic Environmental Study Document (KLHS) for People's Mining Activities in the Mount Botak Mining Area, Waelata District, Buru Regency, Moluccas Province, which in turn produces a long list of Sustainable Development issues. namely 59 issues which were then evaluated into a short list of Sustainable Development issues into 18 issues then the Centering of Sustainable Development Issues was carried out into 10 sustainable development issues then evaluated to be the most strategic to 7 issues, then re-evaluated the most priority development issues with a score > 30 to 5 issues;

- 1) Environmental pollution
- 2) Opening of job opportunities
- 3) Transfer of Profession
- 4) Economic Growth and Regional Income
- 5) Crime Rate Rises

**Table.2** Scoring priority development issues

No	Grup Issues	Scoring Criteria (Article 9 paragraph (2) PP 46/2016)										Score
		A	B	C	D	E	F	G	H	I	J	
<b>A</b>	<b>Environtment</b>											
1	Landslide and Sedimentation	4	3	2	2	3	3	3	3	3	3	29
2	Pollution	4	4	4	4	3	3	3	4	4	4	37
<b>B</b>	<b>Economic Aspect</b>											
1	Price Increase	2	4	2	2	2	2	2	4	2	2	24
2	Employment	2	4	2	3	4	3	3	3	3	3	30
3	Transf Profesion	3	4	3	3	3	3	3	3	3	3	31
4	Economic& Income	3	4	3	3	4	3	3	3	3	3	32
<b>C</b>	<b>Soc&amp;Institution</b>											
1	Crime rate rises	3	4	3	3	4	3	3	3	3	3	32



#### 4. Conclusion

Governments, both provincial and district/municipal, are an integral part of national policies. Regardless of the extent of the autonomy granted to the Regions, the final responsibility for administering Regional Government will remain in the hands of the Central Government, the difference lies in how to utilize the wisdom, potential, innovation, competitiveness, and creativity of the Regions to achieve these national goals at the local level. This, in turn, will support the achievement of overall national goals for that data-based policy model is ideal to encourage the government and policymakers to combine data or evidence in the form of primary evidence to increase the reliability of various considerations to improve the efficiency and effectiveness of policies and programs implemented by the regions. . For the Buru Regency Government itself, it can capture sustainable development issues as a stage of Compiling a Strategic Environmental Study Document (KLHS) for People's Mining Activities in the Mount Botak Mining Area, Waelata District, Buru Regency, Mollucas Province.

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