

TRANSFER OF AUTHORITY OVER MINERAL AND COAL MINING TENURE RIGHTS

Tri Suhendra Arbani¹, Prasasti Amelia², Nurfaika Ishak³

State Islamic University (UIN) Alauddin Makassar
Sultan Alauddin Street Number 63, Rompodong, Somba Opu District, Gowa
Regency, South Sulawesi 92113|
tri.suhendra@uin-alauddin.ac.id

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Abstract: The transfer of mining licenses with the birth of the work copyright law has shifted back to the central government. There are two issues studied, namely the main basis for the transfer of authority related to the control of mineral and coal mining and the impact of the Transfer of Authority related to the Control of Mineral and Coal Mining. The research method used is a juridical normative research method with a statute approach, data analysis using a descriptive method. The results of the research are aimed at reorganizing related to the regulation of authority affairs and improving the mechanism for granting mineral and coal mining business permits so that mine management is better in the future. In addition, the transfer of authority to issue permits is carried out to realize an efficient mining licensing system, but it cannot be denied that from the wide range of mining areas and the lack of authority possessed by the regional government as the 'host' party to supervise mineral and coal mining activities, it is not impossible. maybe this will actually have an impact on the non-intensive process of monitoring, fostering, and supervising mineral and coal mining activities.

Keywords: Transfer, Authority, Mining, Minerals and Coal

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Abstrak: Pengalihan izin pertambangan dengan lahirnya undang-undang hak cipta karya telah bergeser kembali ke pemerintah pusat. Terdapat dua isu yang dikaji, yaitu dasar utama pengalihan kewenangan terkait penguasaan pertambangan mineral dan batubara dan dampak dari Pengalihan Kuasa terkait Penguasaan Pertambangan Mineral dan Batubara. Metode penelitian yang digunakan adalah metode penelitian yuridis normatif dengan pendekatan undang-undang, analisis data menggunakan metode deskriptif. Hasil penelitian ditujukan untuk melakukan penataan ulang terkait pengaturan urusan kewenangan dan penyempurnaan mekanisme pemberian izin usaha pertambangan mineral dan batubara agar pengelolaan tambang ke depan menjadi lebih baik. Selain itu, pengalihan kewenangan penerbitan izin dilakukan untuk mewujudkan sistem perizinan pertambangan yang efisien, namun tidak dapat dipungkiri dari luasnya wilayah pertambangan dan minimnya kewenangan yang dimiliki oleh pemerintah daerah sebagai pihak 'tuan rumah'. Untuk mengawasi kegiatan pertambangan mineral dan batubara, bukan tidak mungkin. Mungkin hal ini justru akan berdampak pada tidak intensifnya proses pemantauan, pembinaan, dan pengawasan kegiatan pertambangan mineral dan batubara.

Kata Kunci : Pengalihan, Kewenangan, Pertambangan, Mineral dan Batubara

Introduction

The acceleration of economic development towards economic stability and growth, needs to be supported by capital, especially capital derived from productive projects because if you only expect capital from foreign aid, it is very

limited and very cautious.¹ Indonesia is geologically traversed by three tectonic plates.² Therefore, one source of capital for Indonesia's economic development efforts can come from mining its natural resources.

Indonesia is a unitary state. This will be different when we look at the local government system in Indonesia, which has adopted the principles of federalism such as regional autonomy.³ This regional autonomy affects various sectors of natural resource management, one of which is the management and licensing of the mineral and coal mining sector.

The mining sector is one of the biggest drivers of the economy and national development for Indonesia. One of them is coal. Total coal resources in Indonesia in 2011 were estimated at 105 billion tons. Currently, 75% of total coal production is exported, mainly to Japan, Taiwan, South Korea

¹ Elisabet Siregar, "Universitas Sumatera Utara Skripsi," *Analisis Kesadahan Total Dan Alkalinitas Pada Air Bersih Sumur Bor Dengan Metode Titrimetri Di PT Sucofindo Daerah Provinsi Sumatera Utara L*, no. Cmc (2018): 44-48.

² Muhammad Nuha Maulana Pasya, "Dampak Lingkungan Dan Kepastian Hukum Dalam Pengelolaan Pertambangan Di Indonesia," 2020, 1-13.

³ 2004:4 Departemen Agama, "Kepentingan Daerah Otonom Terhadap Peraturan Perundang-Undangan Tentang Pertambangan Mineral Dan Batubara Di Indonesia," *Journal Information* 10, no. 3 (2009): 1-16.

and Europe. The rest is used for domestic needs (MEMR, 2011).⁴ Until 2050, the contribution of coal as an energy source is still estimated to reach 31%.⁵ Based on Minerba (Mineral and coal) One Data Indonesia (MODI) data, as of July 26, 2021, the realization of Indonesia's coal production was 328.75 million tons with details of 96.81 million tons (domestic realization), 161.99 million tons (export realization), and 52.22 million tons for DMO. Currently, 80 percent of coal is for power plants.⁶

Furthermore, in mining management, an important aspect to map concerns the "authority" of management. So far, the authority of mining management in Indonesia related to mining has experienced significant changes, especially in the reform era in 2000.⁷ One aspect that often undergoes changes related to authority is the control of mineral and coal mining.

⁴ Onesimus Patiung, "Pengaruh Umur Reklamasi Lahan Bekas Tambang Batubara Terhadap Fungsi Hidrologis No Title," *Jurnal Hidrolitan* 2 (2011): 60.

⁵ Retno Damayanti, "Abu Batubara Dan Pemanfaatannya: Tinjauan Teknis Karakteristik Secara Kimia Dan Toksikologinya," *Jurnal Teknologi Mineral Dan Batubara* 14 (2012): 213.

⁶ KEMENTERIAN ENERGI DAN SUMBER DAYA RI MINERAL, "Cadangan Batubara Masih 38,84 Miliar Ton, Teknologi Bersih Pengelolaannya Terus Didorong," KEMENTERIAN ENERGI DAN SUMBER DAYA MINERAL RI, 2021, 2 DESEMBER 2021.

⁷ Tri Hayati, *Era Baru Hukum Pertambangan Di Bawah Rezim UU No. 4 Tahun 2009*, 1st ed. (Jakarta: Yayasan Pustaka Obor Indonesia, 2015).

Article 4 of Law No. 3 of 2020 shows that control includes regulatory, management, management and supervision policies, as it reads: "control as referred to in paragraph (2) is carried out through the functions of regulatory policy, management, management, and supervision."⁸

To achieve the goals of the state, the central government and local governments have the right to determine the attitude in every decision and policy making. Regulations regarding this matter are contained in Chapter 4 Article 9 through Article 26 of Law Number 23 of 2014 concerning Regional Government. Article 33 paragraph (3) of the Law of the Republic of Indonesia emphasizes that mining management is intended to provide benefits for the greatest prosperity of the community.

On June 10, 2020 the President signed the Minerals and Coal Bill into law.⁹ The Minerba Bill is an initiative of the DPR,

⁸ Pemerintah Republik Indonesia, "Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Undang-Undang Nomor 4 Tahun 2009 Tentang Pengusahaan Tambang Mineral Batubara," Pemerintah Republik Indonesia § (2020).

⁹ Anisatul Umah, "Baru Disahkan UU Minerba Digugat Ke MK, Ada Apa?," CNBC Indonesia, 2020, <https://www.cnbcindonesia.com/news/20200710170211-4-171801/baru-disahkan-uu-minerba-digugat-ke-mk-ada-apa>.

the drafting of which has begun since 2015.¹⁰ Law No. 3 of 2020 is an amendment to Law No. 4 of 2009 (concerning Minerba) which regulates mining management and is a hope to solve various existing problems. Considerations for the amendment of Law No. 4 of 2009 with Law No. 3 of 2020, namely because it is considered no longer in accordance with the development of problems and legal needs in mineral and coal affairs, the implementing regulations have not been able to answer the actual problems and conditions in the implementation of mineral and coal mining business, including cross-sectoral problems between the mining sector and the non-mining sector.¹¹ One of the points of change that is highlighted in Law No. 3 of 2020 (Minerba), namely in article 4 paragraph 2 and article 35 paragraph 1, shows that the control of minerals and coal is again organized by the central government (centralized). Previously, in Law No. 4 of 2009 the control of minerals and coal was located in the provincial, district / city

¹⁰ KEMENTERIAN HUKUM DAN HAM RI, *Badan Pembinaan Hukum Nasional Kementerian Hukum Dan HAM RI, Tahun 2012*, vol. 1999, 2012.

¹¹ JogloAbang, "UU No 3 Tahun 2020 Tentang Perubahan Atas UU No 4 Tahun 2009 Tentang Pertambangan Minerba," JOGLOABANG, 2020, <https://www.jogloabang.com/pustaka/uu-3-2020-perubahan-uu-4-2009-pertambangan-minerba>.

where the mining excavation material was located (decentralized).¹²

But then with the issuance of local government law number 23 of 2014, the authority previously owned by the regency / city is now the authority of the provincial area.¹³ Then, the regulation of the Minister of Energy and Mineral Resources Number 2 of 2014 has divided the authority between the central government and the provincial government related to the management of mining business licenses including its supervisory function.

The return of control to the central government over mineral and coal mining certainly has an impact, such as disharmonization with existing regulations. Indonesia itself is a country that has adopted the principles of federalism such as regional autonomy. Regional Autonomy is the authority of autonomous regions to regulate and manage the interests of the community according to their own practices based on community aspirations.¹⁴ Other impacts concerning the central

¹² R P Rosmalia, "Kewenangan Izin Pertambangan," *Academia.Edu*, n.d.

¹³ Rosmalia.

¹⁴ HAW WIDJADJA, "Otonomi Daerah Dan Daerah Otonom,"
PERPUSTAKAAN BADAN PENGEMBANGAN SUMBER DAYA
MANUSIA, 2009,

government or local government are also behind the decision. This article aims to examine this.

Problem Formulation

Based on the findings above, this article will examine two important things, namely the main basis for the transfer of authority related to the control of mineral and coal mining and the impact of the Transfer of Authority Related to Mineral and Coal Mining Control. These two studies then become the most important issues in the development of mining environmental studies in Indonesia.

Research Methods

This research uses a juridical normative research method with a statutory approach. The data used is secondary data sourced from legislation related to minerals and coal, local government laws and related regulations and legal scientific journals. The data analysis method used is the prescriptive method.

Discussion

http://elibrary.bpsdm.jabarprov.go.id/index.php?p=show_detail&id=609.

Transfer of Authority Related to the Control of Mineral and Coal Mining

Centralization is the concentration of all governmental authority (political and administrative) in the Central Government.¹⁵ According to Roddinelli, Nelis, and Chema decentralization is the creation or strengthening, both financially and legally, of sub-national units of government whose operations are substantially outside the direct control of the central government.¹⁶

It should be noted that the purpose of the mineral and coal law is to provide real added value to national economic growth and sustainable national development.¹⁷ Consideration for the amendment of Law No. 4 of 2009 with Law No. 3 of 2020 is because it is considered no longer in accordance with the development of legal issues and needs in mineral and coal affairs, the implementing regulations

¹⁵ Hanif Nurcholis, "Konsep Dasar Pemerintahan Daerah," 1945, 1–59.

¹⁶ Novi Fuji Astuti, "Arti Desentralisasi Menurut Para Ahli, Lengkap Dengan Tujuannya," merdeka.com, 2020, <https://www.merdeka.com/jabar/arti-desentralisasi-menurut-para-ahli-lengkap-dengan-tujuannya-klh.html>.

¹⁷ Fine Ennandrianita, "Politik Hukum Pertambangan Mineral Dan Batubara Saat Berlaku Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah," *Jurnal Hukum Dan Pembangunan Ekonomi* 6, no. 2 (2014): 35–54.

have not been able to answer the actual problems and conditions in the implementation of Mineral and Coal Mining business, including cross-sectoral issues between the Mining sector and the non-mining sector.¹⁸

One of the points of change that is highlighted in Law No. 3 of 2020 (Minerba) is in article 4 paragraph 2 where the control of minerals and coal is again organized by the central government (centralized). However, the regulation of small-scale rock licensing and People's Mining Permit (IPR) will be delegated to local governments. According to Minister of Energy and Mineral Resources Arifin Tasrif, there are a number of considerations for the withdrawal of mining management authority to the center. Among other things, to control production and sales, especially of metals and coal as strategic commodities for energy security and supply of downstream metals. He also guaranteed that it would not affect regional revenues derived from the Revenue Sharing Fund (Dana Bagi Hasil/ DBH) for Mining.¹⁹

¹⁸ JogloAbang, "UU No 3 Tahun 2020 Tentang Perubahan Atas UU No 4 Tahun 2009 Tentang Pertambangan Minerba."

¹⁹ Kompas.com, "Ini Poin-Poin Penting Dalam UU Minerba Yang Baru Disahkan," [kompas.com](https://www.kompas.com), 2020,

The usual pattern regarding the political-legal background of changes in the authority to grant mining business licenses from the local government to the central government is usually caused by internal factors of political and legal irregularities committed by the local government. External factors are at least influenced by the interests of investors who will invest in the mining sector. The main interest of investors is that they want a climate of legal certainty for investment in the implementation of mining businesses.²⁰

One indication of the return of authority related to the control of mineral and coal mining to the central government is where when the control of mineral and coal mining is still under the control of the regional government there is an overlap of regulations regarding the division of government affairs between the center and the regions, where in Law No.4 of 2009 the district/city government has the authority to issue Mining Business Permits (IUP) but in

<https://money.kompas.com/read/2020/05/13/152543126/ini-poin-poin-penting-dalam-uu-minerba-yang-baru-disahkan?page=all>.

²⁰ Derita Prapti Rahayu, "Eksistensi Pertambangan Rakyat Pasca Pemberlakuan Perubahan Undang-Undang Tentang Pertambangan Mineral Dan Batubara" 3 (2021): 337-53.

the 2014 regional government law the authority is only owned by the central and provincial governments.²¹

There are many legal deviations in the field of licensing at the district / city government level, in this case there is leeway by the local government.²² Centralized management and licensing of mining businesses aims to improve Mineral and Coal mining policies and governance such as minimizing the abuse of granting ecological permits which are often issued arbitrarily, anticipating natural damage and is expected to facilitate supervision from the center over the use of natural resources in the Mineral and Coal subsector.²³

One of the findings of the Ministry of Energy and Mineral Resources (ESDM) in early 2012, there were around 10,000 licenses issued by local governments, of which there were an estimated 5,000 problematic mining licenses, in

²¹ Ennandrianita, "Politik Hukum Pertambangan Mineral Dan Batubara Saat Berlaku Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah."

²² Rizkyana Zaffrindra Putri et al., "Usaha Pertambangan Mineral Dan Batubara" 11 (2015): 199-206.

²³ Zsazsa Dordia, "Sentralisasi Kewenangan Pengelolaan Dan Perizinan Dalam Revisi Undang-Undang Mineral Dan Batu Bara" 10, no. 1 (2021): 167-82.

addition to fake mining licenses, overlapping licenses and unlicensed mining practices (*peti*).²⁴ In Law Number 3 of 2020 concerning Mineral and Coal Mining, a greater task and role is in the hands of the Regional Government, which is related to determining the mining area even before the permit is issued. Then at the level of this Law, it raises legal issues that include the interpretation of licensing authority in the field of Mineral and Coal mining and the sociological effects caused as a consequence of the application of related roles.²⁵

Based on the description of the problems above, which can be the background for the central government to take back authority or control over mineral and coal mining, especially on mining business licenses, namely with the aim of reorganizing related authority affairs arrangements and improving the mechanism for granting mineral and coal

²⁴ Nabila Desyalika Putri and Dian Agung Wicaksono, "Implikasi Legislasi Pengambilalihan Kewenangan Di Bidang Pertambangan Mineral Dan Batubara Oleh Pemerintah Pusat," *Jurnal Legislasi Indonesia*, no. 3 (2016): 19-32.

²⁵ Benedikta Bianca Darongke et al., "Amanna Gappa Dilema Penegakan Hukum Kegiatan Pertambangan Mineral Dan Batubara Tanpa Izin" 29, no. 1 (2021): 61-69.

mining business licenses so that mining management is better in the future.

The Impact of Transfer of Authority Related to Mineral and Coal Mining Tenure

The relationship between the central government and local governments is based on the formulation of Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia which states that;²⁶

"Regional governments exercise the widest possible autonomy, except for government affairs that are determined by law to be the business of the Central Government".²⁷

The granting of broad autonomy to the regions is directed at accelerating the realization of community welfare

²⁶ Mohammad Ali and Moh Abd Rauf, "Problem Yuridis Penyelesaian Perkara HAM Berat Dalam Sistem Pidana Indonesia Dan Pidana Islam," *Al-Qanun: Jurnal Pemikiran Dan Pembaharuan Hukum Islam* 24, no. 2 (2021): 469–94, <https://doi.org/10.15642/alqanun.2021.24.2.469-494>.

²⁷ Putri and Wicaksono, "Implikasi Legislasi Pengambilalihan Kewenangan Di Bidang Pertambangan Mineral Dan Batubara Oleh Pemerintah Pusat."

through improved services, empowerment and community participation.²⁸

Whereas in Article 35 of Law No. 3 of 2020 "*Mining Business is carried out based on Business Licensing from the Central Government*".²⁹ Indonesia is a country that adheres to a unitary form of state, but this will be different when we look at the regional government system in the Indonesian state that has adopted the principles of federalism such as regional autonomy.³⁰ So that returning control to the central government over mineral and coal mining certainly has a disharmonizing impact with the regulation of Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, where we know that Indonesia itself is a country

²⁸ IQBAL SHALIHIN, "PENGALIHAN KEWENANGAN PEMBERIAN IZIN USAHA PERTAMBANGAN MINERAL-BATUBARA OLEH PEMERINTAH PROVINSI SUMATERA BARAT MENURUT UNDANG-UNDANG NOMOR 23 TAHUN 2014 TENTANG PEMERINTAHAN DAERAH" (2018).

²⁹ Pemerintah Republik Indonesia, Undang-Undang Nomor 3 Tahun 2020 tentang Perubahan Undang-Undang Nomor 4 Tahun 2009 tentang Pengusahaan Tambang Mineral Batubara.

³⁰ Departemen Agama, "Kepentingan Daerah Otonom Terhadap Peraturan Perundang-Undangan Tentang Pertambangan Mineral Dan Batubara Di Indonesia."

that has adopted the principles of federalism such as regional autonomy.

Indonesia does not recognize the system of separation of authority, but what Indonesia adopts is the system of division of authority, including in matters of management and business licensing in the Minerba sector. But in fact, with the revision of the Mineral and Coal Law, it seems that the system of coordination and division of power no longer exists, this can be seen from the transfer of Mining Management and Licensing to the Central Government to realize the values of Pancasila in terms of managing non-biological natural resources, namely in the mining sector of the Mineral and Coal sub-sector.³¹

As we know, this Mining Law leads to centralization, even though the Constitutional Court (MK) in the Constitutional Court decision No. 10 / PUU-X / 2012 this decision considers that the facultative division of government affairs must be based on the spirit of the constitution which provides the widest possible autonomy to local governments.³²

³¹ Dordia, "Sentralisasi Kewenangan Pengelolaan Dan Perizinan Dalam Revisi Undang-Undang Mineral Dan Batu Bara."

³² Muhammad Salman Al Farisi, "Desentralisasi Kewenangan Pada Urusan Pertambangan Mineral Dan Batubara Dalam Undang-Undang

However, there is one interesting thing related to the authority to issue mining licenses, where the provisions of Article 35 paragraph (4) of Law Number 3 of 2020 which states that "The Central Government may delegate the authority to grant Business Licenses as referred to in paragraph (2) to the provincial Regional Government in accordance with the provisions of laws and regulations."

The provisions of this article imply an opportunity to involve provincial governments in the issuance of mining licenses. It becomes an interesting discussion when the provisions of the article directly use the phrase delegation whereas in general the provisions in the law usually use the phrase handed over or others. Delegation means the transfer of authority from higher to lower officials. Although Article 35 of the Minerba Law 2020 actually states that licensing authority can be delegated to regional governments through government regulation, in reality the government regulation that is the delegation of the Minerba Law 2020 does not grant licensing

Nomor 3 Tahun 2020," *Jurnal Ilmiah Ecosystem* 21, no. 1 (2021): 20–31, <https://doi.org/10.35965/eco.v21i1.699>.

authority other than to the Minister of Energy and Mineral Resources.³³

The next impact is that with the passing of the Minerba Law No. 3 of 2020, from now on if the community is harmed by the actions of mining companies, be it in the form of environmental destruction or land dispute conflicts and also other problems that can arise, the Regional Government can no longer take any action. Because all mining authority is regulated by the central government, no longer the local Regency or City Government. So that people who want to protest related to mining activities in their area, must report to the central government or at least the province. Whereas so far most mining locations are in remote areas.³⁴

Indeed, the transfer of license issuance authority is carried out to realize an efficient mining licensing system, but it cannot be denied that due to the wide range of mining areas and the lack of authority owned by local governments as the

³³ Ahmad Redi, “Perkembangan Kebijakan Hukum Pertambangan Mineral Dan Batubara Di Indonesia” 4, no. 2 (2021): 473–506, <https://doi.org/10.22437/ujh.4.2.473-506>.

³⁴ WALHI, “Menyoal 4 Masalah UU Minerba Yang Merugikan Masyarakat Luas,” walhi.or.id, 2021, <https://www.walhi.or.id/menyoal-4-masalah-uu-minerba-yang-merugikan-masyarakat-luas>.

'host' party to supervise mineral and coal mining activities, it is not impossible that it will have an impact on the non-intensive process of monitoring, coaching and supervision of mineral and coal mining activities.³⁵

Conclusion

The aim is to reorganize mining licenses that were previously owned by the regional government and then taken back by the central government. Related to the arrangement of authority affairs, it intends to improve the mechanism for granting mineral and coal mining business licenses so that mining management is better in the future. However, on the other hand, it raises various new problems related to the expansion of the authority of the central government's affairs and undermines the authority of local governments. When the affairs of regional autonomy are drawn to the center, it is tantamount to returning the position of government power to centralization.

³⁵ Muhammad Helmi Fahrozi Rika Putri Wulandari, "Politik Hukum Pengalihan Izin Pertambangan Pada Pemerintah Pusat Terhadap Kewenangan Pemerintah Daerah," *Jurnal Sosial Dan Budaya Syar-i* 8, no. 1 (2021): 191-206, <https://doi.org/10.15408/sjsbs.v8i1.19445>.

The transfer of license issuance authority is carried out to realize an efficient mining licensing system, but it cannot be denied that from the wide range of mining areas and the lack of authority owned by the local government as the 'host' party to supervise mineral and coal mining activities, it is not impossible that this will have an impact on the non-intensive process of monitoring, coaching and supervision of mineral and coal mining activities. Another impact is the absence of the role of regional governments in realizing regional autonomy in managing their own household affairs. Then on the other hand, the role of the region and how much environmental impact the region receives can no longer be fully recognized by the local government.

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