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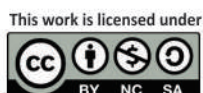
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Legal Services and Advocacy
in the Industrial Revolution 4.0 Era

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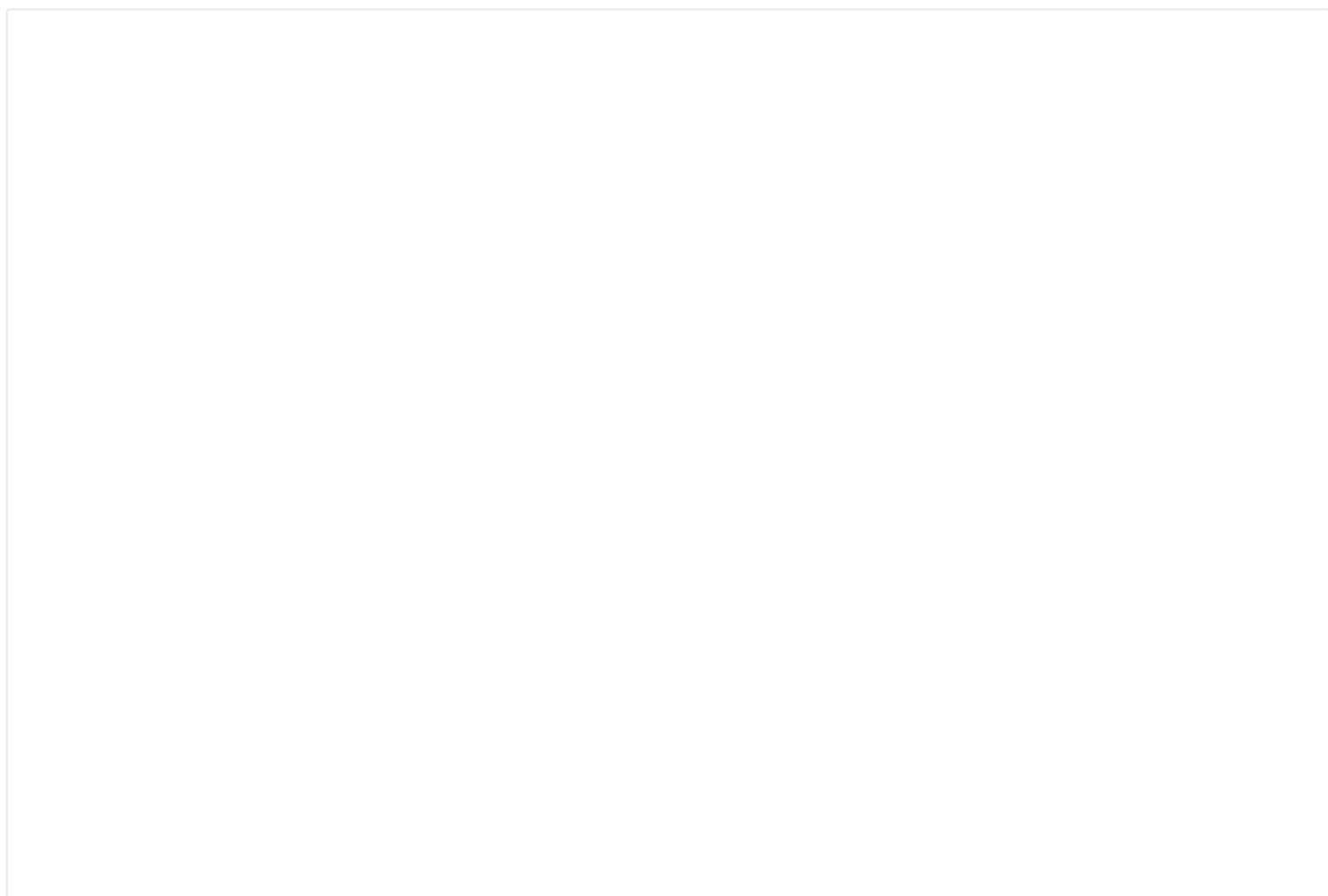
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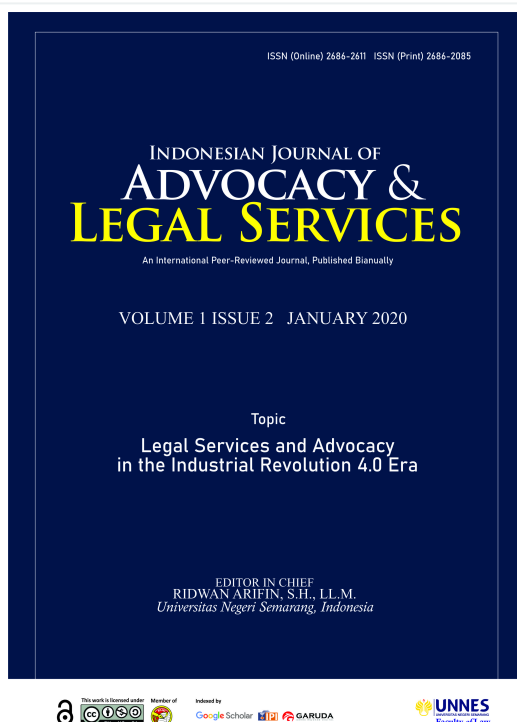
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The industrial revolution 4.0 had a significant influence in various sectors, including the law enforcement sector. Law enforcement, legal aid, legal services and advocacy in the industrial revolution 4.0 era have their own characteristics of challenges. This edition of the Indonesian Journal of Advocacy and Legal Services raises the theme of **Legal Services and Advocacy in the Industrial Revolution 4.0** in the hope of providing a new picture, discourse, and treasury in the provision of services and legal assistance, advocacy and community assistance. This edition is filled with various papers on topics related to the Industrial Revolution 4.0 from various institutions in Indonesia. For example, a paper relating to the Advanced Training of Intellectual Property Documents of Industrial Designs for the Goyor Sarong Craftsman in Pemalang District, looks at how in the era of the industrial revolution 4.0 the copyright management of MSMEs became very important. Other papers, relating to providing assistance and legal education in preventing the circulation of illegal drugs in the era of information disclosure, Legal Education Regarding the Dangers of Drug Abuse in Tegalrejo District, Yogyakarta, along with various other papers. In particular we would like to thank all the Authors, Editors, and Reviewers, as well as the entire team involved in publishing this edition of the journal.

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/ Research Article

Unraveling Authority of Coal Mining Management by the Regional Government and Its Implications for Regional Autonomy

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Dolot Alhasni Bakung

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Abstract

The region has the authority to manage and regulate its territory independently based on the mandate of Article 18 paragraph (2) of the 1945 Constitution. One such authority is to manage natural resources in this case conducting coal mining. The management of coal mining under the Minerba Act places the district/city government in authority in its management. Meanwhile, the Local Government Law places the provincial government also in possession of this management authority. This gave birth to the dualism of regulation in terms of the authority to manage coal, giving rise to a contradiction between one rule and another. The problem in this study is First, how is the condition of coal mining management by local governments in the perspective of regional autonomy? Second, what are the implications of the current coal mining arrangements by the regional government? The results of the study showed that coal mining authority from the district/municipal government under the Minerba Act then was transferred to the provincial government based on the Regional Government Law was reasonable because of various problems that arose from the authority of the district/city government. However, this fact puts the authority of coal mining management in dualism and disharmony in its regulation. This dualism has implications for the disruption of the pattern of authority relations between the central and regional governments, financial management between the central and regional governments, and the division of supervisory authorities between the central and regional governments.

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Section

Research Article



Research Article

Unraveling the Authority of Coal Mining Management by the Regional Government and Its Implications for Regional Autonomy

Dolot Alhasni Bakung^{1*}

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Abstract: The region has the authority to manage and regulate its territory independently based on the mandate of Article 18 paragraph (2) of the 1945 Constitution. One such authority is to manage natural resources in this case conducting coal mining. The management of coal mining under the Minerba Act places the district/city government in authority in its management. Meanwhile, the Local Government Law places the provincial government also in possession of this management authority. This gave birth to the dualism of regulation in terms of the authority to manage coal, giving rise to a contradiction between one rule and another. The problem in this study is First, how is the condition of coal mining management by local governments in the perspective of regional autonomy? Second, what are the implications of the current coal mining arrangements by the regional government? The results of the study showed that coal mining authority from the district/municipal government under the Minerba Act then was transferred to the provincial government based on the Regional Government Law was reasonable because of various problems that arose from the authority of the district/city government. However, this fact puts the authority of coal mining management in dualism and disharmony in its regulation. This dualism has implications for the disruption of the pattern of authority relations between the central and regional governments, financial management between the central and regional governments, and the division of supervisory authorities between the central and regional governments.

Keywords: Authority; Regional government; Coal Mining; Implication

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A. Introduction

The region has the authority to independently manage and manage the region and its government. This is clearly mandated by Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), which states that “*Provincial, Regency and City Regional Governments regulate and administer their own government affairs according to the Autonomy Principle and duties assistance*”. The granting of authority to local governments aims to encourage efforts to improve people’s welfare, equitable development and justice in the form of regional autonomy to the greatest extent.¹

Affairs that can be managed by local governments include the management of natural resources included in the territory of an area. The implementation of the task of managing and utilizing natural resources by the regional government will be directly related to the principle of authority in the form of regional autonomy. Basically, the management of natural resources by regional governments must not be carried out without considering various factors, one of which is not in conflict with the policies or legal rules set by the central government.²

Affairs that are the authority of the regions in the principle of regional autonomy are divided into compulsory matters that are closely related to basic community services, including basic health education, public works and spatial planning, public housing and residential areas, peace, public order, and community protection, and social.³ In addition, there are regional government affairs that are optional that relate to the utilization and management of superior potentials and specificities of the region concerned. Selected governmental affairs include marine and fisheries, tourism,

¹ Ridwan Arifin & Lilis Eka Lestari, Penegakan Dan Perlindungan Hak Asasi Manusia Di Indonesia Dalam Konteks Implementasi Sila Kemanusiaan Yang Adil Dan Beradab, *Jurnal Komunikasi Hukum (JKH)*, Vol. 5 No. 2, 2019, pp. 12-25; Kania Dewi Andhika Putri & Ridwan Arifin, Tinjauan Teoritis Keadilan Dan Kepastian Dalam Hukum Di Indonesia (The Theoretical Review of Justice and Legal Certainty in Indonesia), *MIMBAR YUSTITIA*, Vol. 2 No. 2, 2019, pp. 142-58.

² Julyatika Fitriyaningrum & Ridwan Arifin, The Regulatory Model for Eradication Corruption in Infrastructure Funding, *Varia Justicia*, Vol. 15 No. 1, 2019, pp. 36-42; Ridwan Arifin & Devanda Prastiyo, Korupsi Kolektif (Korupsi Berjamaah) Di Indonesia: Antara Faktor Penyebab Dan Penegakan Hukum, *Jurnal Hukum Respublica*, Vol. 18 No.1, 2018, pp. 1-13.

³ Article 12 paragraph (1) of Law Number 23 of 2014 concerning Regional Government as amended by Law No. 9 of 2015 the second amendment to Law No. 23 of 2014 concerning Local Government.

agriculture, forestry, energy and mineral resources, trade, industry, and transmigration.⁴

One of the natural resources that can be managed by local governments is the coal mining sector. The exercise of regional government authority in the coal mining business was handed over to the provincial government as an extension of the central government in the regions. This is clearly seen in the mandate of Law No. 23 of 2014 as amended by Law No. 9 of 2015 concerning Regional Government (Local Government Law).⁵

Based on the latest Local Government Law, the authority of the regency or city government in the administration of government affairs in the mineral and coal mining sector is eliminated again. Whereas previously based on Law No. 4 of 2009 concerning Mineral and Coal Mining (Minerba Law), regency/city local governments have authority in terms of coal mining management, starting from the granting of Mining Business Permits (*Izin Usaha Pertambangan*, hereafter called as IUP) to the development and supervision of post-land mine.⁶

The management and utilization of coal mining is related to regional own-source revenue and is directly correlated with the division of authority at the level of government in carrying out regional government based on the principle of decentralization. Therefore, the dualism of regulation in terms of the authority to manage coal creates a contradiction between one rule and another. On one hand the government is delegating authority to manage natural resources in the field of coal mining to the district / city government in the form of decentralization with legal umbrella under the Minerba Law, on the other hand the government through the latest Regional Government Law transfers the authority to manage the mining to the provincial government.⁷

⁴ Article 12 paragraph (3) of the Local Government Law

⁵ See Articles 14 and 15 (Attachment) of the Local Government Law

⁶ See Article 8 of the Coal Mineral Law, also see Rodiyah, *Membangun Politik Hukum Sumber Daya Alam (Politik hukum pengelolaan SDA Indonesia (Perspektif UU No. 23 Tahun 2014 Berbasis pada Efektifitas Pemerintahan yang Mensejahterakan)*, Thafamedia, Yogyakarta, 2016, pp. 155-142.

⁷ For further reading, see Nabbilah Amir, Lady Grace Natalia Mintia, Tasya Maulina Kharis, Responsibilities of Mining Entrepreneurs for Losses from Mining Activities in Indonesia (Case Study in Samarinda Province of East Kalimantan), *Advances in Social Science, Education and Humanities Research Proceedings of the 2nd International Conference on Indonesian Legal Studies (ICILS 2019)*, Vol. 363, pp. 133-139; Rodiyah, Reformation of the Administration of Village Government in Indonesia Based on Law Number 6 of 2014 on Villages (Comparing Normative and Empirical Facts on Villagers Participation), *Advances in Social Science, Education and Humanities Research Proceedings of the 1st International Conference on Indonesian Legal Studies (ICILS 2018)*, Vol. 192, pp. 264-269.

Starting from the description of the above thought, the problems raised are: First, how is the condition of coal mining management by the regional government in the perspective of regional autonomy? Second, what are the implications of the current local coal mining arrangements?

B. Method

This research is a juridical-normative research using the statutory approach, case approach and historical approach. Through these three approaches, problems can be seen that the implications of the management of coal mining are based on existing arrangements, as well as from the perspective of regional autonomy.

C. Result and Discussion

1. Management of Coal Mining in the Regional Autonomy Perspective

Regional autonomy is the right of authority, and the obligation of autonomous regions to regulate and manage their own government affairs and the interests of local communities in accordance with statutory regulations.⁸ Regional autonomy is held not only to ensure the efficiency of governance, but also a way to maintain a unitary state.⁹ Referring to the unitary state institutions, in autonomy there is an element of supervision (*toezicht*).¹⁰ Therefore, the implementation of regional autonomy cannot be separated from the process of supervision by the central government within the framework of a unitary state.

Regional autonomy in a unitary country like Indonesia was born from decentralization or the distribution of authority from the central government to regional governments. The decentralization model adopted in the concept of a unitary state will ultimately also affect relations between the central and regional governments, especially those relating to the distribution of regulatory authority over government affairs, and therefore, the existence of a multi-layered and multi-level government unit whose purpose is to prevent the domination of higher government authority.¹¹

⁸ Article 1 paragraph (5) of the Local Government Law

⁹ Bagir Manan, *Menyongsong Fajar Otonomi Daerah*, Pusat Studi Hukum (PSH) Hukum UII, Yogyakarta, 2001, p. 3.

¹⁰ Bagir Manan, *Hubungan Antara Pusat dan Daerah Menurut UUD 1945*, Pustaka Sinar Harapan, Jakarta, 1994, pp. 22-29.

¹¹ Muhammad Fauzan, *Hukum Pemerintahan Daerah Kajian Tentang Hubungan Keuangan Antara Pusat dan Daerah*, UII Press, Yogyakarta, 2006, p. 80.

The regional autonomy regime is currently contained in the Regional Government Law. In the current practice of regional autonomy, in addition to the decentralization model, the Regional Government Law also provides the authority to grant authority from the central government to the provincial government based on the principle of deconcentration. Even though the Regional Government Law regulates such principles as the principle of division of authority based on the principles of decentralization and deconcentration, in the Regional Government Law it also still carries problems related to the relationship between the center and the regions, these problems in practice have led to spanning interests between the two government units, especially in a unitary state, the efforts of the central government to always be in control of various government affairs are very clear.¹²

In a unitary state, all governmental power is in the hands of the central government. The central government can delegate its power to constituent units but what is delegated may also be withdrawn. One of the authorities that can be given by the central government to local governments is the process of natural resource management, in this case specifically coal mining.

Coal mining in the Indonesian jurisdiction, is a non-renewable natural wealth, plays a very important role in fulfilling the lives of many people. The mining sector also plays a role in providing an economic multiplier effect. Mining business has a positive impact which is to increase the country's foreign exchange and local original income.¹³ In the field of manpower, mining businesses absorb a lot of labor both nationally and internationally. Apart from the positive impact, the mining business should be managed by taking into account the principles of environmental management as stipulated by the law.¹⁴

Mining companies have a very significant role in the regional economy, both in increasing the economic income of the community, employment, and the development of education. With regard to the national economy, the mining business contributes to increased exports in the mining sector.¹⁵ Meanwhile, coal mining is specifically expected to grow the regional economy through local tax revenue, employment which has an impact on

¹² Dudung Abdullah, Hubungan Pemerintah Pusat Dengan Pemerintah Daerah, *Jurnal Hukum Positum*, Vol. 1, No. 1, 2016, p 83.

¹³ Fenti U. Puluhulawa, *Pertambangan Mineral Batubara Dalam Perspektif Hukum*, Interpena, Yogyakarta, 2014, p. 15.

¹⁴ *Ibid.*, p. 16

¹⁵ Irwandy Arif, *Permasalahan dan Tantangan Industri Pertambangan di Masa Yang Akan Datang*, Presented at National Seminar of Mineral and Coal Mining, Geology Students Union, Universitas Hassanuddin, 20 April 2009, p. 2.

local community income. Its presence greatly contributes greatly to the local economy and community acceptance.¹⁶

As a state that adheres to the principle of a unitary state, where the holder of state power is carried out centrally by the central government, so that all state affairs become the rights, authority, and obligations of the central government. However, through the concept of decentralization or autonomy, the government delegates as its authority to be implemented by the regions. The delegation of authority of this region is in order to provide opportunities for regions to participate in improving the welfare of the community.

In this regard, the process of managing coal mining whose authority is given to local governments is a form of implementing regional autonomy in accordance with the mandate of the Regional Government Law. In addition, the authority to manage coal mining by local governments is also contained in the Minerba Law. Therefore, the main idea of conducting a mining business is in the context of the implementation of decentralization and regional autonomy, the management of coal mineral mining is carried out based on the principle of externality and efficiency involving the government and regional governments.¹⁷

Constructively the mining management authority is handed over directly by the central government to the regional government in the form of regional autonomy so that the utilization of natural resources in the field of coal mining in the form of exploration must be carried out in a sustainable manner and based on good planning so that it will bring prosperity and prosperity to all existing communities in the area.

2. Problems in Management of Coal Mining by Regency or City Region

The authority of regency or city management of coal mining which was born from regional autonomy creates problems in the process of granting permits. The authority of the regency or city regional head who carelessly and carelessly abolishes mining permits without a clear environmental impact analysis procedure thereby damaging the ecosystem of the area. In addition to the environment, it is not uncommon for people in the environment around mining to also experience social friction with mining owners.

¹⁶ Teuku Adi Pahlevi, et.al, Dampak dan Evaluasi Pertambangan Batubara di Kecamatan Mereubo, *Risalah Kebijakan Pertanian dan Lingkungan*, Vol. 2 No. 2, 2015, p. 176.

¹⁷ Fenti U. Puluhulawa, *Op.cit.* p. 169

Salim emphasized that a result of the mining business in Indonesia is the emergence of negative impacts in the mining of minerals as a result of the mining business. The negative impacts of the existence of the mining business such as: the destruction of the forest area in the area around the mine, pollution of the sea, disease outbreaks for residents who live in the mining area, as well as conflicts between communities around the mine and the mining company.¹⁸

The environmental problem is the first thing that is felt from the issuance of a coal mining permit. Data releases from Kompas Research and Development state that mining activities in East Kalimantan currently have an impact on environmental damage and eviction of residents. Damage to the environmental function includes erosion of the former mining area to form large holes resembling artificial lakes, landslides, and pollution of river water that has been consumed by residents. Whereas mining activities in this area are mostly based on 33 coal mining concession agreements (PKP2B) from the central government and 1,212 mining authorities from districts or cities (867 mining contract¹⁹ of which are in Kutai Negara Regency, 138 in West Kutai Regency, and 76 in Samarinda).²⁰

The cause of environmental cases according to Hartiwiningsih is partly sourced from policies that do not favor environmental interests, not exactly the type of sanctions at the application stage, there is no common perception among law enforcement regarding environmental cases, the low legality of employers regarding the importance of preserving environmental functions, the absence of synchronization vertical and horizontal in general environmental law and sectoral environmental law, there is no synchronization, synchronization, and harmony.²¹

In terms of licensing, data from the East Kalimantan Mining and Energy Office stated that a total of 1,180 mining authorization permits had been issued. Based on that number, an area of 391 thousand hectares originated from mining authorization permits that have entered the exploitation stage. Judging from the number of mining authorization permits, Kutai Kartanegara Regency ranks highest with 271 KP licenses followed by West Kutai with 138 KP permits and 73 permits districts, and then other regencies or cities. The largest coal mining area in East

¹⁸ H. Salim HS, *Hukum Pertambangan Indonesia*, PT.Raja Grafindo Persada, Jakarta, 2008, p.6.

¹⁹ Hereinafter referred as KP (*kontrak pertambangan*)

²⁰ Kompas, 28 July 2010, *Mahakam Pun Sudah di Kapling*; Kompas, 29 July 2010, *Bumi Tak Berona*.

²¹ Hartiwiningsih, *Penegakan Hukum Pidana Lingkungan*, Professor Inaugural Speech on Universitas Sebelas Maret, 2009, p.3.

Kalimantan Province is Kutai Kartanegara with an area of 1.2 million hectare, East Kutai with 670 hectares, and West Kutai with an area of 395 thousand hectare. The coal mining area above is the mining authority whose permit is issued by the regency or city government.²²

Mining exploration that starts from land clearing or forest, stripping the soil layer and up to scouring soil at a certain depth directly results in the disruption of the ecosystem and environment in the area. In addition, the issuance of Law No. 19 of 2004 concerning Establishment of Government Regulations in lieu of Law Number 1 of 2004 concerning Amendment to Law Number 41 of 1999 concerning Forestry into a law allowing mining in protected forests is a disaster in environmental Conservation.²³

The surge in mineral and coal mining licenses has increasingly pushed the acceleration of environmental damage. Changes in the landscape caused by mining activities increase the risk of disaster and vulnerability of an area. Drought, landslides, floods, and pollution caused by waste from mining activities. This environmental damage can be seen in Samarinda where the coal mining concession area which covers 71% of Samarinda City causes more and more regular flooding. Up to 2015, 35 flood points were recorded, up from 29 flood points in 2011. Not only crippling residents' activities, Samarinda floods have also undermined the State's finance amounting to Rp 600 billion taken from the East Kalimantan Regional Budget (APBD) each year.²⁴

This explosion of licensing in a relatively short time has caused many problems, both administrative and field problems. Findings of the Corruption Eradication Commission (KPK) in the Coordination and Supervision of the Mineral and Coal Sector conducted since 2014, recorded: as many as 4,843 licenses that do not have a Taxpayer Identification Number; 4,563 licenses for the status of Non Clear and Clean; only 2,304 or 29% permits are obedient in paying taxes; as many as 25.8 million Ha of mining concessions out of 6,163 permits are in Conservation Forests, Protected Forests and Production Forests, but only 441,000 Ha or 517 permits have a Forest Area Borrowing Permit (*Izin Pinjam Pakai Kawasan Hutan* or IPPKH).²⁵

The issuance of various mining authorization permits by the regional head indicates that there has been a sale in terms of mining licensing in the

²² www.kaltimpost, 4 June 2009

²³ Suparto Wijoyo, *Sketsa Lingkungan dan Wajah Hukumnya*, Airlangga University Press, Surabaya, 2005, p.28.

²⁴ Artikel 33, *Kilas Balik UU Pertambangan dan UU Pemda*, p.2, accessed on www.artikel33.co.id.

²⁵ *Ibid.*

region. This raises another problem, namely the regional head who flirted with the owner of the mining company so that a criminal bribery case ensnared in order to smooth a mining permit. Some regional heads such as the former Governor of North Sulawesi, Regent of Kutai Kartanegara, Regent of North Konawe, were caught in an arrest operation by the Corruption Eradication Commission in the case of coal mining licensing involving mining entrepreneurs.

In the case of mining business supervision, the region has only one technical supervision instrument, namely the mine inspector. Other issues related to mine inspectors also vary, ranging from the lack of number and quality of mining inspectors owned by the region, the extent of the mining area that must be monitored by the mine inspector, to the skewed view that the presence of mining inspectors is only a formality solely by mining companies and by regional officials. Therefore, any results resulting from the work of the mine inspector are merely administrative matters, so the resolution is carried out outside the court. Another problem related to the mine inspector is that when reporting on irregularities committed by a mining company, the party will get a transfer to another regional government unit, this is due to the anxiety of the mining company that has been previously reported to the regional head, resulting in practice which is not healthy under mine supervision in the area.

The number of permits issued by the local government indicates that there has been excessive use of regional authority in the management of natural resources in the field of coal mining. In addition, in its application in the field it also shows the transparency of the licensing process from the submission to the issuance of permits. There is almost no open information about who makes the permit application, who gets the permit, and what the process is. All forms of mining sector information have never been made accessible by the district government.

With the protracted mining conflicts that cannot be completely resolved by the local government, it is very natural that the coal mining permit implementation process will be withdrawn by the central government and given to the provincial government in the form of deconcentration through the Regional Government Law No. 23 of 2014.

3. Authority of Coal Mining Management by Local Governments

The birth of the Law on Mining is a form of fragmentation of natural resource arrangements that had previously been regulated in the Basic Agrarian Law. In general, the initial regulatory arrangements in the mining sector had begun during the Dutch East Indies through the *Indische*

Mijnwet Staatsblad of 1899 Number 214. The Staatsblad regulates the classification of minerals and mining operations. After the Staatsblad, the Netherlands Indies Government subsequently issued several other regulations related to mining, namely Mijndonnantie 1907 which regulates work safety supervision, Mijndonnantie 1930 which revoked Mijndonnantie 1907 which in Mijndonnantie 1930 the work supervision regulation was abolished.²⁶

Regulations regarding mining regulations have gone through various phases, starting with Law No. 10 of 1959 concerning the Cancellation of Mining Rights, Law No. 37 of 1960 concerning Mining, Law No. 11 of 1967 Concerning Mining Principles to the last phase is Law Number 4 of 2009 concerning Mineral and Coal Mining.

Based on the Minerba law, the exploitation of mining activities, particularly related to management authority and the granting of mining authorization business permits, is also the authority of the regional government, in this case the provincial and district or city governments. This is clearly seen in Article 7 and Article 8 of the Minerba Law.

Article 7 stated that: Provincial authorities in the management of mineral and coal mining, *inter alia*, are:

- a. Making regional legislation
- b. Granting Mining business permit (*izin usaha pertambangan*, or IUP), fostering, resolving community conflicts and supervising mining businesses in cross regency/city and/or sea areas 4 (four) miles up to 12 (twelve) miles
- c. Provision of IUP, guidance, resolution of community conflicts and supervision of mining operations in production operations whose activities are in crossing regency or city areas and/or sea areas 4 (four) miles up to 12 (twelve) miles
- d. Provision of IUP, guidance, resolution of community conflicts and supervision of mining businesses that have direct environmental impacts across regencies /cities and/or sea areas 4 (four) miles up to 12 (twelve) miles
- e. Inventory, investigation and research and exploration in order to obtain mineral and coal data and information in accordance with their authority
- f. Management of geological information, information on potential mineral and coal resources, as well as mining information in provincial areas / regions

²⁶ Ahmad Redi, *Hukum Pertambangan Indonesia*, Gramata Publishing, Bekasi, 2014, pp. 40-41.

- g. Preparation of mineral and coal resource balance in provincial areas / regions
- h. Development and increase of added value of mining business activities in the province
- i. Development and improvement of community participation in businessmining with regard to environmental sustainability
- j. Coordinating permits and supervising the use of explosives in the mining area in accordance with their authority
- k. Submitting information on the results of an inventory, general investigation, and research and exploration to the Minister and regents / mayors
- l. Submitting information on the results of production, domestic sales, and exports to the Minister and regents/mayors
- m. Guidance and supervision of post-mining land reclamation

Article 8 stated that: The authority of Regency/City Governments is regulated in the management of Mineral and Coal mining, including but not limited to:

- a. Making regional legislation
- b. Provision of IUP and IPR, guidance, resolution of community conflicts, and supervision of mining businesses in the regency/city area and/or sea area up to 4 (four) miles
- c. Provision of IUP and IPR, guidance, resolution of community conflicts and supervising mining operations in production operations located in the district/city area and / or sea area for up to 4 (four) miles
- d. Inventory, investigation and research, and exploration in order to obtain mineral and coal data and information
- e. Management of geological information, mineral and coal potential information, and mining information in the regency/city area
- f. Preparation of mineral and coal resource balance in the region district/city
- g. Development and empowerment of local communities in mining operations by paying attention to environmental sustainability
- h. Development and improvement of added value and benefits of activities mining operations optimally
- i. Submitting information on the results of inventory, general investigation and research, as well as exploration and exploitation to the Minister and Governor
- j. Submitting information on the results of production, domestic sales, and exports to the Minister and the Governor

- k. Guidance and supervision of post-mining land reclamation
- l. Increasing the ability of the district/city government apparatus in managing mining business
- m. Enhancing the capacity of the provincial and district/city government apparatus in managing mining business.

The difference in authority is only in the jurisdiction of government alone. The intended difference is that the central government has the authority to cover management of the entire national territory, or across provinces, or if it is more than 12 miles from the coastline. Meanwhile, for the authority of the provincial and district/city governments, it is only up to 12 miles and four miles. In addition there are also forms of natural resource management which are carried out by monopolies by district/city governments, namely the granting of community mining permits.

Holistically, the Minerba Law clearly shows the spirit of decentralization within the framework of regional autonomy by regional governments. Therefore, through this Minerba Law, the Regency/City regional government is the government unit that receives the most benefits in managing coal mining. These benefits, for example, can be seen from the increase in local revenue. If the local government usually gets a smaller portion of the mining results, then given the authority, the opposite happens, where the district/city local government has a larger portion than the central government.

The granting of authority to the regions in the management of mining and coal shows that the Minerba Law is a response to the spirit of decentralized natural resource management. This attribution authority has never been given in the previous mining laws. The granting of the authority of the government to the regency/city is in line with the sting of regional autonomy in the principle of implementing decentralization. This is clearly illustrated in the general explanation of the Minerba Law which states that in the framework of the implementation of decentralization and regional autonomy, the management of mineral and coal mining is carried out based on the principles of externality, accountability and efficiency involving the government and regional governments. In addition, the authority possessed by the regency/city is very appropriate, because the regency/city government best understands the conditions of the potential natural resources contained in its area.

The birth of the Minerba Law which gives authority to government units other than the central government has been in line with legal

considerations. The Constitutional Court Decision²⁷ which states the meaning of “controlled by the state” must be interpreted to include the meaning of control by the State in the broad sense derived from the conception of sovereignty of the Indonesian people over all sources of wealth "Earth and water and natural resources contained therein, including the notion of public ownership by the collectivity of the people over the intended sources of wealth. The people collectively constructed by the 1945 Constitution of the Republic of Indonesia gave a mandate to the state to carry out its functions in carrying out policies (*beleid*) and management measures (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) by the State.

Based on Minerba, the regency/city government is the level of government that has the authority to regulate authority and is responsible for all coal mining utilization and management activities. However, this is inversely proportional to the birth of the latest Local Government Law. In this Local Government Law, the authority for mineral and coal mining permits lies with the central and provincial government.

District/city government does not have the authority to determine whether or not mining licenses are issued. Considering that the regions are not producing natural resources for minerals and coal and have no income, the regional original income, this law is expected to equalize the general allocation fund (DAU) and the Special Allocation Fund (DAK).²⁸ Therefore, the granting of mining licenses is more focused on the central government, so that other regions do not feel abandoned or disadvantaged, but also in the context of the unitary state of Indonesia, it is hoped that all regions can develop.

The birth of this Local Government Law directly resulted in disharmony of the authority to manage coal mining by regencies/cities. The principle of regional autonomy that puts district/city as a government unit that can receive benefits directly from the management of coal mining places the district/city government in a weak position and will not benefit from a coal mining process carried out in its area.

4. Implications of Dualism Authority of Coal Mining Management

The problem that often arises in countries where the law is the foundation of state administration as in Indonesia is the number of

²⁷ Decision of the Constitutional Court Number 002 / PUU-I / 2003 concerning the Testing of Law Number 22 of 2001 concerning Oil and Gas against the 1945 Constitution of the Republic of Indonesia, December 15, 2004, pp. 208-209.

²⁸ DAU (*Dana Alokasi Umum*), DAK (*Dana Alokasi Khusus*), see Minutes of the Draft Bill on Regional Government, 12 April 2012

regulations that are born from state government units, both horizontally and vertically. With so many existing regulations, it is not uncommon for disharmony between one regulation and another. This will result in the non-maximum regulation which becomes the legal umbrella of a policy. Disharmonization of regulations that occur directly affects the life of the state administration in Indonesia, namely the relationship between the composition of government (central government and provincial government).

With regard to the authority of coal mining management currently experiencing disharmony in the implementation of governmental tasks between the provincial government in the form of deconcentration from the central government and district/city governments mandated by two different laws, according to the authors, it has implications for three things, namely as follows.

1) The pattern of authority relations between the central and regional governments

The absence of district/city government authority in managing coal mining will affect coordination between the center and the regions. This pattern of authority has the potential to make the relationship between the Central Government and District/City Governments less mutually supportive as a whole. This is of course caused by the regency / city area which still feels heavy giving its authority to the provincial government.

In addition to disrupting the constitutional mandate in the implementation of regional autonomy, the Regional Government Law will also create other problems, for example the Governor will need a long time to review and take solutions related to mining problems that occur. At the beginning of the governor must be swift to make changes in the form of placement/transfer of competent employees in the field of mineral and coal mining to be placed in the province. If the state civil apparatus does have a mining background it will certainly make it easier for the governor. However, if the province does not or even has employees with a mining background, this will certainly cause other problems in the form of the governor recklessly appointing employees in line with his security to occupy that position. With the opening of the provincial authority, it is not impossible that the practice of Corruption and Collusion and Nepotism which previously undermined mining management issues in the district/city will also occur to the provincial government.

2) Financial management between the central and regional governments

Since the beginning of decentralization, it has been intended to support the achievement of the objectives of regional autonomy in order to improve people's welfare. To support this condition, the implementation of regional autonomy accompanied by fiscal decentralization, which includes the General Allocation Fund (DAU), Revenue Sharing Funds (*Dana Bagi Hasil*, or DBH) and Special Allocation Funds (DAK). In addition to the three fiscal instruments as a balancing fund, the government also allocates expenditure within the framework of the principle of deconcentration and co-administration tasks that are directly to the regions without going through the APBD.

Based on Law No.33 of 2004 concerning Fiscal Balance between the Central Government and Regional Governments, financial balance is defined as a system of financial sharing that is fair, proportional, democratic, transparent, and efficient in the framework of funding the implementation of decentralization by considering the potential, conditions, and needs of the region and the amount of funding for the implementation of deconcentration and co-administration tasks.²⁹ The policy of financial balance between the Center and the Regions is carried out by following the division of authority or money follows function. This means that the financial relationship between the Center and the Regions needs to be regulated in such a way that the expenditure needs that will be the responsibility of the Region can be financed from existing revenue sources.³⁰ Basically, it can be said that related to central-regional financial balance, that is, the money provided follows decentralized functions.

The implementation of fiscal decentralization follows the legal umbrella of implementing regional autonomy. Changes in legal instruments regarding regional authority in managing their regions will affect each of the fiscal decentralization policies. This can be seen in the change of authority in the financial pattern of coal mining management as a result of changes in the Regional Government Law.

With the current Local Government Law, the municipal district government will lose one source of Regional Original Revenue (PAD) due to

²⁹ Article 1 paragraph (3) of Law No.33 of 2004

³⁰ Machfud Sidik, *Format Hubungan Pemerintah Pusat dan Daerah yang Mengacu pada Pencapaian Tujuan Nasional*, Paper on National Seminar "Public Sector Scorecard", Directorate General of Central and Regional Balance of the Ministry of Finance of the Republic of Indonesia, 2002.

the loss of authority in the field of mineral and coal mining.³¹ In addition, another thing that has changed is about the provision of profit sharing funds. The 2014 Local Government Law only provides for elaboration and not nominal related to revenue sharing between the center and the regions.³² This is different from Law Number 33 of 2004 which details the distribution of revenue sharing funds between the center and the regions. The absence of a clear division of the Regional Government Law according to the authors is odd, because between the two Acts accommodate the same financial principles. This will also have implications for the regulation of the Financial Balance Act between the Central Government and the Regions if there is a change in substance in the future.

3) Distribution of supervisory authority between the central and regional governments

The authority of the regency/city government is not given, so it is not only in terms of supervision that the regency/city government loses its authority but also in terms of the research process, the determination of coal mining areas. With the loss of district / city government authority in regard to the authority to exploit coal mining, it will affect many things. As it is known that mineral and coal mining is a type of non-renewable natural resources and its destructive nature is very high, so however, mining activities will be very detrimental to the environment and people who are in the mining area. Meanwhile, mining areas are always located within the regency/city. Therefore, according to the researchers, it becomes ambiguous when an area that should be managed by a local government is instead transferred to another government. By removing the authority of the district /city government indirectly, the supervision process cannot be carried out by the district/city government anymore, so this will certainly affect the environmental area and increase the consequences of damage to the ecosystem in the district/city.

³¹ Article 285 paragraph (1) of the 2014 Regional Government Law specifies that regional own-source revenues include: (1) local taxes; (2) local user fees; (3) results of the management of separated regional assets; and (4) others legitimate regional original income. Meanwhile, based on Article 2 paragraph (2) letter f of Law Number 28 Year 2009 concerning Regional Taxes and Regional Levies, it states that the PAD Component relating to the control of the Regency/City Regional Government in the field of mineral mining is the regional tax and the results of the management of regional assets that are separated.

³² According to Law Number 33 of 2004 concerning Fiscal Balance between the Central Government and Regional Governments, DBH is 20% for the Central Government and 80% for Regional Governments (with details 16% for provinces and 64% for producing districts/cities). This is stated in Article 17 of Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Governments.

With the negative impacts that always arise from an exploration and exploitation of natural resources, the supervision process will not be effective without involving local government structures. The absence of authority involving the district or city government in assisting the provincial government, will directly the process of integration and harmonization of policies will not run effectively. In addition, with a wide range of work, the provincial government in this case the Governor cannot intensively monitor, foster, and supervise if there are problems in the coal mining area.

D. Conclusion

The authority to manage coal mining owned by the regency /city government as contained in the Minerba Law has been in line with the spirit of regional autonomy mandated by the 1945 Constitution. However, with various kinds of problems that occur after the authority has been granted, it is very reasonable for the central government to withdraw the authority. The step of the central government through the legislators who then transferred the authority to the provincial government in the form of deconcentration actually gave birth to dualism and disharmony in the regulation of coal mining management authority. In addition to the loss of authority of district / city governments, the dualism also has implications for: the pattern of authority relations between the central and regional governments, financial management between the central and regional governments, and the division of supervisory authority between the central and regional governments.

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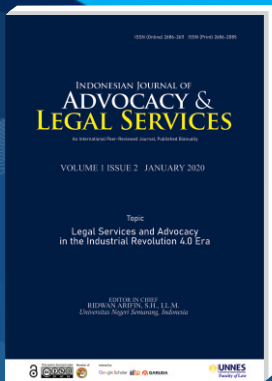
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QUOTE

Governments will always play a huge part in solving big problems. They set public policy and are uniquely able to provide the resources to make sure solutions reach everyone who needs them. They also fund basic research, which is a crucial component of the innovation that improves life for everyone.

Bill Gates, *American Businessman*

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