



Tin Mining Licensing in the Era of Local Government Reform

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Abstract

The dynamics of the legal politics of regulating mineral and coal licensing authorities have undergone significant changes. Initially, the authority was given by law to local governments, and now this authority is taken over by the central government. The purpose of this research is to find out the direction and philosophical basis of the legal politics behind the amendments to the Mineral and Coal Law and its implications for the mining licensing authority. The benefits obtained from research are that some significant changes in mining licensing authority can be identified and the terms and stages. The research method uses normative legal research. The research study results concluded that the centralistic paradigm of granting permits in an integrated manner also marks the shift of regional authority from attribution to delegation authority. Affirming the political direction of mining law is a priority for the central government's authority when several strategic articles have been amended and even eliminated. Amendments to the formulation in Article 4 (mineral and coal control rights) and Article 6 (mining management authority) of the 2020 Mineral and Coal Law show no longer partiality for local governments to allocate mining licensing authority.

Keywords: *Mining; License; Reform*

Introduction

In general, changes to the law on local government can be classified into local government reform. However, the desired change from Law No. 5 of 1974 on Local Government to Law No. 22 of 1999 on Local Government and Law No. 25 of 1999 on Financial Balance between Central and Local Government, including *radical change*. Even compared to other countries governments, the local government change in Indonesia is classified as a big bang *approach*.¹

Judging from the theoretical level, the changes in local government include several aspects. First, the change of the model of local government from structural efficiency model to local democracy model.² Second, the change in the maintenance of decentralization rather than decentralization. Third, the change from unaccountable local government to accountable local government. Fourth, the reduction of various local government devices, such as the absence of Government Representatives in districts and cities. Only

¹. World Bank Regional Public Expenditure Review Overview Report. *Decentralizing Indonesia*, Report No. 26191 IND, 2003, p.1.

². Regarding the models - the models will be described in chapter II

the governor plays a dual role, as Regional Head and as a Representative of the Government. Fifth, the change from an integrated prefectural system intact to an integrated only at the provincial level. Sixth, the distribution of government affairs by detailing the affairs of government that are the competence of autonomous regions, replaced by a general formula by declaring districts and cities authorized. These organize various government affairs that are not prohibited by law or do not include the jurisdiction of other government arrangements (opened arrangement). At the same time, the affairs of the provincial government are detailed (ultra-vires doctrine). Seventh, government oversight of autonomous region legal products is only repressive without preventive supervision.

The consequences of changing models and the inclusion of open-end arrangements in the handover of government affairs to districts and cities, the affairs of district and city government are getting bigger. In addition, there is also a change in the type of local government affairs for districts and cities that did not initially cover mining affairs, now covering mining affairs.

Enlargement of district and city autonomy taken by handing over government affairs with a general formula, changing the authority of mining affairs. Initially, the mining licensing authority was in the hands of the government, then switched to districts and cities. The submission of mining affairs is regulated in Government Regulation No. 75 of 2001 on the Implementation of Law No. 11 of 1967. Along with these changes, there are various problems in granting mining permits in general and tin mining, especially on the island of Bangka.

First, the rise of unconventional mines³ on Bangka Island, basically the term is not known in Law No. 11 of 1967. Unconventional mining is a tin mining business conducted by a group of residents and is based only on the recommendation of the village head. A policy triggered this in the Department (now the Ministry of State) of Industry and Trade with the issuance of The Minister of Industry Decree No. 146 / MPP / Kep / 4 / 1999, which declared tin as a free (unsupervised) item, so SOEs no longer monopolized that tin.

Unconventional mining activities are rife as part of the community's economic activities as a whole. The increase in the number of IT occurred especially when reforms hit Indonesia at the end of 1999, with the enactment of Law No. 22 of 1999 on *Local Government*. When there was an economic crisis, people switched professions to find other sources of livelihood besides farming. Unconventional mining is mushrooming and operating everywhere, not only using traditional tools but already using modern equipment such as excavators. Data from Agency Assessment and Application of Technology in 2008 showed that of the approximately 70,000 mining units in the Bangka islands, only about 30% had a permit.⁴

Unconventional mining is the most significant contributor to land and forest destruction, reaching 150,000 hectares or 30% of Bangka Belitung forest area.⁵ Damage due to Unconventional mining at the mining site of the land area and occurred to the coast with the buoyant Unconventional mining. There is damage due to mud from Unconventional mining locations in coastal areas and mangrove forests. Former Unconventional mining is generally left alone without any effort to reclaim it to become perforated at the land's surface referred to as " vault " Unconventional mining also damages watersheds, protected forests, and production forests.⁶ Unconventional mining is currently done in the new area and done in the former

³.Unconventional Mining is the activity of the Bangka community who do tin mining in order to prosper their lives with simple equipment and ways similar to mining carried out by PT Timah. This method they get by observing the employees of PT Timah while doing mining. When the location of IT is on individual property, it can be done through cooperation. This is usually done by the Worker Boss, who approaches the landowner and also the financier. (Iskandar Zulkarnain, *Konflik di Kawasan Pertambangan Timah di Bangka Belitung*, Jakarta : Penerbit LIPI Press, 2005, p. 131).

⁴.Agus Suprihatin Utomo Mahasiswa Program Studi Fisika FPMIPA Universitas Pendidikan Indonesia, <http://www.kabarindonesia.com/berita>, *Realita Degradasi Area Hutan Pasca Penambangan Timah di Pulau Bangka*, Bandung : 27 Oktober 2008.

⁵.Arif Budiman, *Power and Mastery of Natural Resources, Case Study of Tin Mining in Bangka Islands*. (Jakarta: Indonesia Center for Sustainable Development, 2007), p.51.

⁶.Arif Budiman, *Ibid.*,hal. 52

area of PT Timah. While the land of the former PT. Timah mine is being reclamation, and the reclamation process becomes unreserved. Land excavation by unconventional mining and dredging of water base by mining activities has become uncontrolled and resulted in changes in land allocation to be not as it should be and trigger environmental degradation.

Based on provisional data compiled by the Bangka Belitung Islands Police in 2007, there are 3,653 unconventional mines. Using satellite imagery in 2004, an area of 378,042 hectares or 58 percent of the 657,510 hectares of Bangka Belitung islands forest area is critical land. On the other hand, the impact of the rise of unconventional mines at least until 2007 showed 28 (twenty-eight) cases of mine accidents with the death toll. Over the three years, Bangka Belitung Islands Police has solved 142 cases of *illegal* mining, 27 (twenty-seven) cases of forestry crimes, five cases of smuggling, and 56 (fifty-six) cases of land sabotage.⁷

Isu, which became a source of conflict in the era of reform in the tin mining business, is related to the authority to grant mining licensing, where there are overlapping cases of licensing and mining without permission (*illegal*). This illegal mining is a consequence of Law No. 22 of 1999 on Local Government. These issues have tremendous and long-term implications for the emergence of licensing conflicts in various autonomous regions.

The rollout of the reform era has impacted the change in the status of the Bangka Belitung region. This also adds to the length of problems in the islands and makes the situation more complex, considering that in the period of transfer of authority, the condition of the local government is still far from organized. The desire of the Regency / City to include tin mines as part of the source of regional budget revenue becomes constrained because areas that have the potential to contain tin have been under the mining power (KP) of PT Timah or the work contract (KK) of PT Koba Tin. This encourages district and city governments to make various policies that are often not in line with national policies. In the end, in the implementation of mining activities in the Bangka islands, there is legal uncertainty in the issuance of mining permits, high costs to obtain tin mining permits, the management of permits that are felt convoluted.⁸ All of which impacts the high cost of obtaining a tin mining permit.⁹

Research Methods

This study uses normative legal studies with normative legal research analyzing legal norms that apply in the mining sector in the reform era. Among others Law No. 11 of 1967 on The Basic Provisions of Mining, Law No. 4 of 2009 on Minerals and Coal, Law No. 22 of 1999 as it has been replaced by Law No. 32 of 2004 on Local Government, Government Regulation No. 32 of 1969 jo Regulation of The Government No. 75 of 2001 on Regulation of Implementation of Mining Law, Government Regulation No. 38 of 2007 and local regulations in Bangka Belitung Islands Province on Mining Management. The legislation is used to solve and analyze a licensing problem raised in mining management in general and tin mining in Bangka in particular.

In normative research, the primary data used in the form of *secondary data* is data obtained¹⁰

⁷http://www.belitungkab.go.id/news_detail.php?newsid=189, *Konsep Kapolda Menanggulangi dan Menertibkan Tambang Rakyat*, Penulis: Pemerintah kabupaten Belitung

⁸."Polisi Tutup Tambang Timah Inkonsvensional di Bangka", <http://kompas.com/kompas-cetak>

⁹."Polisi Tutup Tambang Timah Inkonsvensional di Bangka", <http://kompas.com/kompas-cetak>

¹⁰.Secondary data is based on: (1) primary legal materials: legal materials whose contents have binding power in society, various laws and regulations, namely various laws and regulations or positive laws that apply in the field of mining in general, and tin in Bangka in particular. For example: Basic torso regulations of the 1945 Constitution, Laws, Government Regulations, Presidential Regulations, Local Regulations. Then also include legal materials that are not codified, in the form of: Customary law of jurisprudence, tracts and legal materials from the Dutch colonial era that until now still applies (2) secondary legal materials: legal materials that explain the primary legal material, in the form of: books, newspapers, magazines, articles, draft laws, research results, works from the legal circles, (3) Tertier legal materials: legal materials that provide explanations for

from document study"¹¹, which can be in the form of written materials needed that contain the information studied, can be primary documents and secondary documents. Other data obtained in the field, in the form of the licensing in the autonomous region, will be studied through several sources on Bangka Island, among others: the head of mining offices both Provincial and Regency and the management of PT Timah. The secondary data was obtained from interviews with the sources as informants.

Data collection is also done by interviewing several sources from the government to complete the required secondary data. The selected sources include experts in mining law, experts in the field of state administrative law, the Director-General of Minerals and Geothermal, and other relevant parties in connection with licensing in mining that can provide information on the issues studied. Interviews are conducted using instruments in *interview guidelines (interview guides)*.

Data analysis with *qualitatively* to provide a comprehensive ¹²(*holistic*) picture of the facts and problems related to the research object so that conclusions can be obtained about the issues studied. Qualitative research procedures produce *descriptive* data, i.e., what written or oral informants state and actual behaviour. Thus, qualitative methods aim to understand or understand the symptoms studied and find the accuracy of the data through verification.¹³

Discussion

Mining Licensing Authority in the Mining Mining Law Tidal management is strongly influenced by the paradigm of the relationship between the central government and the local government. Since the presence of Law No. 11 of 1967 on The Basic Provisions of Mining, the regulation of mining licensing administration policy is carried out sectorally in mining law and its implementing regulations, most recently on Law No. 4 of 2009 on Mineral and Coal Mining. However, after Law No. 23 of 2014 on Local Government, the sectoral approach of licensing administration in mining law occurred a shift to the government affairs regime. This regulation happens because businesses in the mining sector have a node point that intersects directly with government affairs, especially the issue of autonomy and division of government affairs regarding the central government's relationship with local governments.

Permission is a form of authority in the form of decision-giving by the administrative body, in this case, is the government. According to Hadjon, the authority to create and issue permits can only be obtained through attribution and delegation. Attribution refers to the original authority. Delegates point to the transfer of authority to other government bodies. At the same time, the mandate gives authority to other officials and acts on behalf of the mandate giver.

Initially, the authority of mining licensing by attribution was given law to local governments at the provincial level to districts/cities. This is stated in Article 7 is the authority of the provincial government to issue mining permits, and Article 8 of the districts/city government can issue mining permits and People's Mining Permit.

It is reaffirmed in Article 37, where the regent/mayor grants the mining permits if the mining business license area (WIUP) is in one district/city area. Meanwhile, it becomes the governor's authority

primary and secondary legal materials. In the form of: abstract legislation, legal bibliography, court directory, legal dictionary, legal encyclopedia, legal malajah index. (Soerjono Soekanto and Sri Mamudji, *Op.Cit.*), p.13.

¹¹.a survey, experiment or observational study (Kenneth D. Bailey, *Methods of Social Research*. NewYork: Macmillan Publishing Co.,Ins., 1982), P.302

¹². According to Valerine J. L Kierkhoff, it is said that qualitative research has the following characteristics: (a) descriptive and explanatory; (b) analysis can be done deductively or inductively; (c) does not rely on measurements, variables may appear later, and the determination of the sample is not strict; (d) data collected using observations and interviews; (e) conclusions are difficult to generalize. (Vallerine JL. Kierkhoff, *Qualitative Research, Research Training Materials*, FHUI, 1998).

¹³. Agus Brotosusilo, Legal Philosophy Lecture Material, FHUI Graduate Program, *Paradigma Kajian Empiris dan Normatif, 2004*

if WIUP is located across districts/cities in one province after getting recommendations from local regents/mayors. Article 48 mentions the authority of the local government (regents/mayors and governors) to issue IUP Production Operations.

Similarly, people's mining permits are only given to residents, individuals, community groups, and cooperatives. Regents and mayors have the authority to permit business actors to carry out mining businesses in people's mining areas with limited area and investment.

Through the Mineral and coal Law of 2009, the authority to permit mining management is carried out proportionally by the central, provincial, and district/city governments. The arrangement of such authority is a breakthrough for the implementation of government within the framework of regional autonomy. The previous arrangement was highly centralistic, shifting towards the decentralization of authority.

Classification of mining business licenses includes; mining business licenses in the form of exploration and production operations mining permits, people's mining permits, and special mining business licenses.

The exit of the Mineral and coal Law in 2020 provides a shift in mining licensing authority on one hand, namely the central government. Initially, in terms of authority, the law gives attribution authority to local governments currently no longer have that authority since Article 7 and Article 8 were revoked or removed. Even in some other articles are changed, for example, Article 35 paragraph 1, namely mining business is carried out on the authority of the attempted permit of the Central Government.

As seen in Article 35 paragraph (4) Mineral and coal law, the Central Government can delegate the authority to grant permission to the provincial government by the provisions of the laws and regulations. Thus the provincial government carries out the delegation of authority from the central government.

Article 35 paragraph (4) in the Mineral and coal Law of 2020 will undoubtedly cause interpretation as if the local government has authority, even though it does not have independent authority as long as it means the absence of granting or delegation of authority from the central government to the provincial government. Moreover, Article 35 requires implementing rules such as Government Regulations to provide guarantees of legal certainty to the provincial government in order to how it obtains its authority and to what extent the authority can be exercised. The existence of legal certainty in implementing mining business activities is the purpose of mining management itself.

Referring to the opinion of Jan Michiel Otto, that how vital the essence of legal certainty is *sicherheit des rechts selbst*, which is the certainty of the rule of law itself. First, the law is positive, meaning that the law is the norm of legislation. Second, the law is based on facts (*tatchachen*), not a formulation of judgment. Third, legal facts must be formulated to prevent errors in interpretation and be easy to implement. Fourth, the law of long durable law, not too often changed.

Political Law on Mining Licensing Authority After Changes to The Mineral and Coal Law

Mahfud MD argued that legal politics is an official "legal policy or policy regarding the law that will be enforced either by making new laws and replacing old laws, to achieve the state's objectives". The urgency of the notion of legal politics is the policy by determining confident choices that want to formulate laws and regulations and oriented to basic ideas (values that are believed) to achieve state goals.

The political sense of law is increasingly based on three main essences. First, legal politics must be conducted within a rational policy framework about socio-philosophical, socio-political, socio-cultural, and comparative approaches. Second, legal politics is an effort to give birth to laws and regulations that

have helpful power. Third, legal politics is carried out solely in the framework of achieving the objectives of the state.

Reading the political direction of the law changes to the Mineral and coal Law related to the authority of mining management licensing cannot be separated from the three major studies, namely changes to the Mineral and coal Law must be done with reasonable policy measures, have usable power, and can support the achievement of state goals.

Before the amendment of the Mineral and coal Law in 2020, the local government still held the licensing system through the governor's authority as a representative representation of the central government. Regents/mayors who were previously entitled to issue mining business licenses in districts/cities do not necessarily lose duties related to mining business licenses. As a central government representative to issue mining business licenses, the governor can request assistance from the regent/mayor and related agencies to prepare documents related to licensing in the district/city area through the Assistance Task.

Currently, the political direction of mining law has changed where licensing authority is no longer a priority of local governments after changes to the Mineral and Coal Law in 2020. Some of these changes include; the right to master minerals and coal, mining management authority, and delegation of authority.

Fundamentally, the change in Article 4 of the Mineral and Coal Law of 2020 is the right of mineral and coal control in the state for the most excellent welfare of the people and is organized by the Central Government through policy, regulatory, management, management, and supervision functions. Previously the control was carried out in a balanced manner by the central and local governments. Currently, this control is entirely in the hands of the central government.

The granting of mining permits has various negative impacts in various aspects. In addition to the environmental damage it inevitably causes, it also causes many leaks in state financial receipts that the state should receive. The permit should be a controlling instrument in the mining business by the philosophical meaning as mandated by Article 33 paragraph (3) of the 1945 Constitution. The meaning in Article is the principle of "The Right to Control of the State" to natural resources and the mandate "for the greatest prosperity of the people". These two things must then be used as a basis in the preparation of various policies that are regulating (regeling) and set (decisions / licensing).

In its implementation, the phrase state-controlled sentences refer to the central government previously run by the central and regional governments. This implementation means the word government hints at the meaning of state organizers, which could mean the central government or local government. The government exercises its right of control over minerals and coal through policies that regulate and establish.

Licensing authority can be a decision that controls mining management to maintain the environmental sustainability. Thus, licensing is an aspect of authority that can reduce the number of environmental damage. The political policy of mining law has no fundamental reason by making the central government own the autonomy to control the licensing authority while control over the exit of the permit is not as strict as before. Nevertheless, the exit of permission from the central government relies heavily on recommendations from local governments.

Local governments are only recommendations. Even though the area and the area as a location that is mined. Material and formal aspects have been equipped by mining companies applying for permits, but there is an absolute rejection from the community regarding environmental and social aspects. The central government will have very little access to information on this. Only local governments are more aware of the socio-cultural conditions of their people. The complexity of this problem will always arise during the mining community. By cutting the right of local government control over minerals and coal, it

signifies that licensing is carried out in an integrated manner by the central government. The autonomy rights that have been granted to the local government to manage and manage its area, including the management of mineral and coal natural resources, are currently taken over by the central government. Local governments almost no longer have the right of autonomy independent of the right of mastery of natural resources to the authority of licensing.

The most reasonable effort is to give the right of management of natural resources so that every local government can conduct direct supervision related to licensing as a form of environmental literary control.

Furthermore, the change in the political direction of the law in the Mineral and coal Law of 2020 is the authority of mining management which again asserts the authority is in the central government. The arrangement on this matter is in Article 6 of the Mineral and Coal Law of 2020, giving twenty-three authorities to the central government, one of which is the authority to issue attempted permits. Whereas in the previous arrangement, Article 7, the provincial government can issue IUP, and Article 8, the district/city government issues IUP and IPR permits.

The authority of Article 7 and Article 8 in the Mineral and Coal Act of 2020 is currently removed or revoked. This further cements the existence of Article 6, which gives full sovereignty to the central government's authority in mining management. Of course, in line with what is written in Article 4 Mineral and Coal Law concerning the right to master minerals and coal by the central government.

The wiggle room given to the local government in the political change of mining law is regulated in Article 35 paragraph (4), which is about delegation of the central government's authority to the provincial government in terms of granting attempted permission. This delegated authority also needs to be supported by government regulations in its implementation. This means that not necessarily the provincial government can have the authority to grant permits when the central government does not delegate authority to him.

Conclusion

Since the Mineral and Coal Law, the politics of mineral and coal mining law have again eroded the licensing authority from the local government to the central government. The centralistic paradigm and the granting of permits in an integrated manner also mark the shift of regional authority that was initially attribution to its authority and is currently the authority of delegates in granting permits even if there is a delegation of authority to delegate the granting of permission from the central government to the local government. As stipulated in Article 35 paragraph (4) of the Mineral and Coal Law. Affirmation of the political direction of mining law is a priority of the authority of the central government when some strategic articles have been made changes and even abolished. Changes in the formulation in Article 4 (the right to control minerals and coal) and Article 6 (mining management authority) of the Mineral and coal Law of 2020 show the absence of partisanship towards local governments to allocate mining licensing authority. The right to mastery of minerals and coal is carried out entirely by the central government. Even in full power, mining management authority is in the hands of the central government authorities. The local government only recommends that or may not be issued a mining permit. The rest of the provincial government can be given the authority delegated by the central government to grant permits as long as there is a delegation of authority to him.

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