



The Lost Role of Local Government Post the Work Creation Law in the Mining Field Which Caused Environmental Damage

Lia Pujiastuti

Faculty of Law, Lampung University, Indonesia

<http://dx.doi.org/10.18415/ijmmu.v10i7.4769>

Abstract

It is considered that the issuance of the Job Creation Law still ignores environmental aspects. In fact, it is believed that the issuance of this law will further increase environmental violations and pollution by corporations in the natural resources sector. The research formulation in this study is the implementation of the withdrawal of regional authority by the central government in the field of mining. (2) Limitations of Local Government Authorities in the Mining Sector. The method used is descriptive qualitative method, with data sources from books, journals and articles related to the research being carried out. The presence of Law Number 11 of 2020 concerning Job Creation presents new problems, there are at least 4 (four) first issues. All mining authority and authority is now under the authority of the second central government. can again report to the local government. Third, if you follow the rules of Law no. 4 of 2009, mining companies are required to carry out all reclamation and post-mining activities as well as deposit reclamation and post-mining guarantee funds. Then fourth, there is a 0% royalty guarantee. all regional government authority arrangements, both provincial and district/city, regarding mineral and coal mining are revoked and transferred to the central government. Based on Article 169 letter c, it is also regulated that there is local government authority related to the management of non-metal mineral and rock mining. Regional government authorities that are still granted in accordance with Law Number 3 of 2020 include: Article 35 paragraph (4) amendments stipulate that the Central Government can delegate authority Article 128 paragraph (1) amendments provide authority for regional governments to collect regional income from IUP, IUPK, IPR or SIPB

Keywords: *Mining; Authority; Damage; Cipta Kerja Law*

Introduction

Article 33 paragraph (3) and paragraph (4) of the 1945 Constitution of the Republic of Indonesia explains that the management of natural resources aims to maximize the prosperity of the people and is based on sustainable and environmentally sound principles. Systematic and integrated efforts made to preserve environmental functions and prevent environmental pollution and/or damage¹, which include planning, utilization, control, maintenance, supervision, and law enforcement. The government and the

¹ Irwan Hafid Mahrus Ali, 2022. "Human Rights-Based Criminalization in the Environmental Sector Law," USM Law Review 5(1): 1-15,

entire community have the obligation to protect and manage the environment², in order to realize the implementation of sustainable development, namely that the environment can still support life for the people of Indonesia and other living things.

It is considered that the issuance of the Job Creation Law still ignores environmental aspects. In fact, it is believed that the issuance of this law will further increase environmental violations and pollution by corporations in the natural resources sector. This law also regulates other issues outside of the economy and employment. Some quite significant are environmental issues including the forestry, plantation, and land or agrarian sectors. This problem will threaten the sustainability of forests and the environment. In fact, it is also considered that the passage of the Job Creation Law will further distance people's hopes for true agrarian reform.

The Job Creation Law made changes to several provisions in Law Number 32 of 2009 concerning Environmental Management Protection. For this reason, there are 39 points of amendment to the Article in Law 32 of 2009. All of this is emphasized in Law 11 of 2020 concerning Job Creation as stated in articles 21 and 22. This is an effort to change regulations relating to the ease of creating jobs through ease of doing business, protection management of environmental permits for the empowerment of cooperatives, micro, small and medium enterprises. For this reason, there are 39 points in Law Number 32 of 2009 concerning Environmental Protection and Management³.

Indonesia is one of the countries that has the most mining commodities so that the country's largest revenue is also from exports of mining materials such as nickel, lithium and or other metal minerals, the Ministry of Energy and Mineral Resources

Mineral Resources (ESDM) recorded the realization of state revenue from the mineral and coal mining or minerba sector as of September 6, 2021, reaching IDR 42.36 trillion, or 108.33 percent of this year's target of⁴ Based on the Minerba One Data Indonesia website, the state revenue plan is not taxes (PNBP) in the mineral and coal mining sector reached IDR 39.10 trillion. The most revenue from the minerba sector was recorded in August 2021. Royalties received by the state from the minerba sector amounted to IDR 4.2 trillion, and sales of mining products amounted to IDR 2.98 trillion. The Ministry of Energy and Mineral Resources also noted that the realization of state revenue in the mineral and coal mining sector reached IDR 34.65 trillion in 2020, or 110.29 percent of the projected IDR 31.41 trillion.⁵

Article 9 of Law Number 23 of 2014 divides government affairs into 3 (three) parts, namely absolute government affairs, concurrent government affairs, and general government affairs⁶. Concurrent government affairs are divided into obligatory government affairs and optional government affairs. Furthermore, Article 12 paragraph (3) stipulates that government affairs in the field of energy and mineral resources are included in elective government affairs. The provisions of Article 14 paragraph (1) of Law Number 23 of 2014 state that the implementation of governmental affairs in the forestry, marine, and energy and mineral resources sectors is divided between the Central Government and the Provincial Governments. The division of authority between the central government and provincial governments can be seen in the Appendix to Law Number 23 of 2014. In the Appendix to Law Number 23 of 2014, letter cc concerning the division of government affairs in the energy and mineral resources sector stipulates that

² Yokotani, 2019. "Unlawful Acts Committed by the Government Related to Misuse of Mining Permits by Permit Recipients in Bangka Belitung Province," *Jurnal Ius Constituendum* 4(2): 146

³ <https://dlh.acehtimurkab.go.id/Berita/Kategori/news-aceh-timur/39-poin-persejuang-dinding-di-tegaskan-dalam-uu-nomor-11-tahun-2020-cipta-kerja>

⁴ Risenly Faturahman Tapada, J. Ronald Mawuntu, Maarthen Y. Tampanguma. 2022 Legal Consequences of Implementing Law Number 3 of 2020 Concerning Amendments to Law Number 4 of 2009 Concerning Mineral and Coal Mining Against Increasing Mining Added Value. *Lex Private* 10(4):1-15

⁵ <https://economy.business.com/read/20210906/44/1438633/harga-batu-bara-meningkat-penerimaan-negara-dari-pertambangan-already-passed-target> accessed on May 22, 2023 at 19:53

⁶ Yusdianto. Relations between Central and Regional Authorities According to Law Number 23 of 2014 concerning Regional Government. *PADJADJARAN Journal of Law*, Volume 2 Number 3 of 2015:483- 504

these government affairs fall under the authority of the central government and the government province. Even though in the corridor of Law Number 23 of 2014 the authority of the Regional Government has been narrowed only to the Provincial Government, decentralization is still being carried out in the framework of regional autonomy.

According to Law Number 32 of 2009 concerning Environmental Protection and Management, environmental protection and management are systematic and integrated efforts made to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement. Environmental protection and management is carried out based on the principles of state responsibility, sustainability and sustainability, harmony and balance, integration, benefits, prudence, fairness, ecoregion, biodiversity, paying polluters, participation, local wisdom, good governance, and regional autonomy⁷.

The Republic of Indonesia is a unitary state adhering to the principle of decentralization by providing space in the form of opportunity and flexibility for the regions to carry out regional autonomy⁸. Regional autonomy according to Kaho is self-regulation or power/authority to create its own regulations. Then the notion of regional autonomy developed into self-government which includes self-regulation and self-execution. But the definition of autonomy in general is the division of powers between the center and the regions in the form of rights, powers and obligations.⁹

In the new Minerba Law of 2020 the authority for attribution shifts to the authority of the delegation. Article 35 paragraph (4) in the 2020 Minerba Law will certainly lead to interpretations as if the regional government has authority, even though it does not have independent authority as long as it is interpreted as not giving or delegating authority from the central government to the provincial government. What's more, Article 35 requires implementing regulations such as Government Regulations in order to guarantee legal certainty to the provincial government in terms of how it obtains its authority, and to what extent this authority can be exercised. As for the formulation of the problem in this study are (1) Implementation of the withdrawal of the authority of the Regional Authorities by the Central Government in the Mining Sector (2) Limitations of Local Government Authorities in the Mining Sector.

Discussion

1. Implementation of the withdrawal of the authority of the Regional Authorities by the Central Government in the Mining Sector

After the ratification of UU No. 3 of 2020 changes to UU No. 4 of 2009 concerning Mineral and Coal Mining, after review, there are several crucial articles that have the potential to harm society and the environment. The objects of study in this research are Article 8, Article 96, Article 162, and Article 169 A of Law no. 3 of 2020 concerning Mineral and Coal Mining Article 8. Prior to Law No. 4 of 2009 the authority in the mineral and coal mining sector is divided equally between the Central Government, Provincial Governments and District/City Regional Governments¹⁰. Where the regional government in the mining area has the task of carrying out coaching, conflict resolution and monitoring of mining businesses. With the role of the local government, if there is a conflict between a mining company and the community in a mining area, the local government can play a role like a mediator. So, every time there is

⁷ Surabaya, "Study of the Job Creation Law: A Way Back in Commitment of P

⁸ Lusie Stella Anjeli Simbolon, Audi Pondaag, Carlo Gerungan the influence of Law Number 11 of 2020 Concerning Job Creation on Regional Government Authorities in Spatial Planning. *Lex Administrator* Vol. 11 No.(2023

⁹ Abdul Kholiq Azhari. Abdul Haris Suryo Negoro, Decentralization and Regional Autonomy in the Unitary State of the Republic of Indonesia, (Malang: Intrans Publishing, 2019), page 29

¹⁰ Anggraini Dewi et al., Transfer of Authority in the Mineral and Coal Mining Sector and Its Implications for the Implementation of Good Mining Practice in West Sumatra Province After Law No. 23 of 2014 concerning Regional Government, *Journal of Nagari Development*, Vol.2, No.2 (December 2017), p.127.

a report regarding a violation committed by a mining company, the local government has the authority to temporarily stop and even revoke the Mining Business Permit (IUP).

The presence of Law Number 11 of 2020 concerning Job Creation presents new problems, there are at least 4 (four) first problems. All mining authority and authority is now under the authority of the central government, which makes local governments unable to take action against mining companies that commit violations such as revoking the Mining Business Permit (IUP), secondly, local communities who are harmed by mining company activities that destroy their living space can no longer report to the regional government which is because the mining authority lies with the central government, even in Article 162 which states that the community Those who try to interfere with mining activities in any form can be reported back by the company and subject to criminal sanctions, even a fine of up to 100 million rupiah. Third, if you follow the rules of Law no. 4 of 2009, mining companies are required to carry out all reclamation and post-mining activities as well as deposit reclamation and post-mining guarantee funds. Even though there are regulations like this, in fact in the field there are still many violations in the form of holes in former coal mines being left open and turning into giant lakes that claim lives. Instead of emphasizing the rules for Reclamation and Post-mining Activities, Law Number 11 of 2020 concerning Job Creation actually frees up companies' obligations in repairing ex-mining land where mining companies can freely choose between Reclamation Activities or Post-mining Activities. Then fourth, there is a 0% royalty guarantee for activities to increase the added value of coal which is considered to prioritize the maximum use of coal compared to minimizing the risks from mineral and coal mining itself.¹¹

However, with the enactment of Minerba Law No. 3 of 2020, if someone is harmed as a result of the actions of a mining company, either in the form of environmental destruction or a conflict over land disputes, the local district or city government can no longer take any action. So that when people want to protest related to mining activities in their area, they must report to the central government or at least the provincial government. Yet so far, most of the mining locations are in remote areas. This rule is very far from the logic of good governance, because people who live in mining areas cannot do much when their environment is damaged by the actions of mining companies.

Article 96. The regulation of this article gives the impression of "pampering" entrepreneurs in terms of their responsibility for repairing ex-mining land. This is because the rules for repairing ex-mining land consist of two separate activities, namely reclamation and post-mining activities. Reclamation is an activity carried out throughout the stages of the mining business to organize, restore and improve the quality of the environment and ecosystem so that it can function again according to its designation¹². Meanwhile, Post-mining Activities are planned, systematic and continuing activities after mining business activities¹³. If it follows the rules of Law No. 4 of 2009, mining companies are required to carry out Reclamation activities and Postmining activities as well as deposit Reclamation and Postmining guarantee funds.

Even though there are strict rules governing, in fact there are still many violations in the form of ex-mining holes being left open and even causing fatalities. As was the case in East Kalimantan in 2020, a 14-year-old junior high school child drowned in a former mining lake due to a mining company not fulfilling its obligations to carry out Reclamation and Post-Mining Activities.

The regulations in this article do not reinforce the rules for reclamation and post-mining activities. Instead of penalizing companies that do not repair ex-mining land, the government actually makes new regulations by changing the contents of the law. As written in Article 96 letter BUU Minerba

¹¹ FX Sumarja, Muhammad Akib, Self Desman Satriawan. Legal Politics of Mining Management Based on the Job Creation Law. LPPM Unila

¹² Rusdi, Farisatul Amanah: Planning, Key Points of Reclamation and Postmining, accessed from <https://nikel.co.id/farisatul-amanah-pedindungan-poin-penting-reklamasi-dan-pascatambang/>

¹³ fita Consultant, Post Mining Reclamation, accessed from <https://afitaconsultant.co.id/reklamasi-post-tambang/>,

which states "management and monitoring of the Mining environment, including Reclamation and/or Post-mining activities". The company's obligation to repair ex-mining land is now sufficient to carry out only one of the repair obligations. In contrast to the previous Article 96 letter b of the Minerba Law (before amendment) which reads "management and monitoring of the mining environment, including reclamation and post-mining activities". Currently mining companies can freely choose between Reclamation Activities or Post-mining Activities.

Article 162. states that people who try to interfere with mining activities in any form can be reported by the company and subject to criminal penalties, even a fine of up to 100 million rupiah. Of course this article is very contrary to Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia because it is considered to be an environmental destroyer. Also in Article 66 of Law No. 32 of 2009 Protection and Management of the Environment which states that environmental fighters or people fighting for environmental sustainability may not be criminalized either criminally or civilly¹⁴.

This regulation is actually like a poisonous thorn for the community, in the midst of widespread injustice and criminalization that many companies have committed against communities in mining areas. Through the new Minerba Law, in addition to natural wealth that will be consumed by a handful of mining conglomerates, those who try to refuse their area to be exploited will also be subject to punishment. Just because it seeks to protect the environment and voice aspirations, but it is considered as an attempt to obstruct Article 169A. Companies that are proven to be negligent and do not carry out reclamation or post-mining activities can still extend their contract permits. Holders of a coal mining concession contract of work or work agreement have the right to re-enter the Mining Area in the form of an IUPK for a maximum period of 2 (two) times 10 (ten years). In accordance with Article 169 A of the Minerba Law, under the pretext of increasing state revenue, the government guarantees contract extensions in the form of KK and PKP2B twice every 10 years. This is a problem because there is no evaluation process but the state provides guarantees. Residents should be given an aspiration room from the losses experienced as an evaluation.

2. Limitations of Local Government Authorities in the Mining Sector

In 2020 the Government and the DPR determined amendments to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining in which this was done to improve the mineral and coal mining sector and improve community welfare, the Authority to manage mineral and coal mining Coal has experienced a shift where referring to Article 6, Article 7 and Article 8 of Law Number 4 of 2009 concerning Mineral and Coal Mining, the management is divided into the authority of the central government, provincial regional governments, and district/city governments.

However, after the birth of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the authority to manage mining is actually centralized in which the authority lies with the central government. still in the same year Law No. 20 of 2020 amended into Law no. 11 of 2020 concerning Job Creation. When comparing the Revisions to the Minerba Law and UUCK, there are similar legal political slices which lie in the respective points of the considerations of the two laws, namely realizing the welfare and prosperity of the Indonesian people. Specifically in UUCK, there is a motive to encourage economic growth by making economic development the central point by providing conveniences and incentives to owners/investors who are considered as main business actors¹⁵.

¹⁴ Basthotan Milka Gumilang, Sherly Oktariani and Tari Suswinda. 2022. Analysis of Law No. 3 of 2020 which has the potential to harm society and the environment based on the principles of sustainable development goals. *Lex Generalis Law Journal*. Vol.3. No.11

¹⁵ F.X. Sumarja, Muhammad Akib, Self Desman Satriawan. *Legal Politics of Mining Management Based on the Job Creation Law*. Fh Unila, Bandar Lampung

Even though the Ministry of Energy and Mineral Resources has made it easy to apply for permits that take advantage of the digital era 4.0, it still doesn't work

records found. Some of these notes include, among others, the lack of socialization and assistance with Law Number 3 of 2020 regarding the authority that was originally held by the Provincial Government to become the authority of the Central Government, so that many entrepreneurs in the regions still do not understand the management mechanism at the Central Government. In addition, the existence of a Data Centralization System in the ESDM MINERBA MODI system makes some entrepreneurs confused because of several permits

There are still regional mining businesses that have not been registered in the MODI system.

Related to the readiness of the Central Government (Director General of Energy and Mineral Resources) who still have to maximize services considering that all controls are in the Central Government such as Approval of Work Plans and Budgets (RKAB). Improving or maximizing data system services (MODI MINERBA) is very important considering that licensing activities in the mining sector are often under the spotlight because they are an important part of the concept of state control rights.¹⁶

Talking about the authority of the Regional Government, we need to include the existence of Law Number 23 of 2014 as the legal basis for the implementation of regional government after the 1945 Constitution UUD 1945. This law was formed with the philosophy that the implementation of regional government is directed at accelerating the realization of social welfare through improving services, empowerment, and community participation, as well as increasing regional competitiveness by taking into account the principles of democracy, equity, justice, and the uniqueness of a region in the system of the Unitary State of the Republic of Indonesia. The provisions of Article 9 map out the existence of a division of authority affairs which are entirely the affairs of the central government and affairs which are divided between the central government and regional governments. In the provisions of Article 10 paragraph (1) states that absolute affairs include foreign policy, defense, security, justice, national monetary and fiscal, and religion.

Article 12 paragraph (3) stipulates that energy and mineral resources affairs are optional concurrent affairs. Thus, not all matters of energy and mineral resources are regulated by the Central Government. The existence of Law Number 23 of 2014 generally provides several changes to regional government affairs in managing mineral and coal mining. If previously the affairs of mineral and coal mining were decentralized to the district/city governments, based on Law Number 23 of 2014 this authority was revoked and transferred to the provinces. According to the Director General of Regional Autonomy at the Ministry of Home Affairs, the authority over the control of mineral and coal mining is an ecological authority and in practice is prone to irregularities.¹⁷

Several things that according to the Central Government were obstacles because they were implemented by 497 regencies/cities and added by division areas. This sociological foundation helped form the formulation of Article 14 of Law Number 23 of 2014 which regulates the division of mineral and coal mining affairs between the central government and provincial governments.¹⁸ Then this norm is explained in detail in the Appendix, which explains the distribution of authority in each sub-affairs. Article 14 paragraph (1) of Law Number 23 of 2014 does not explain in detail the relationship of authority between the central and regional governments regarding matters of energy and mineral resources. The authority to mine minerals and coal is also not explicitly stated in Article 14 paragraph (1).

¹⁶ Friskilia Darongke Dientje Rumimpunu, Sarah Roeroe. 2022. Effectiveness of Law Number 3 of 2020 in Granting Mineral Mining Business Licenses in Indonesia. *Lex Private* Vol. 10 No. 3 (2022)

¹⁷ [Republika.co.id, "Gubernur Kuasai Izin Pertambangan," republika.co.id, 2014, https://www.republika.co.id/berita/ncc8k97/gubernur-kuasai-izin-pertambangan](https://www.republika.co.id/berita/ncc8k97/gubernur-kuasai-izin-pertambangan)

¹⁸ *ibid*

The relationship between central and regional government authorities in matters of energy and mineral resources is explained in more detail in letter cc Appendix to Law Number 23 of 2014.¹⁹ Appendix to Law Number 23 of 2014 letter cc regulates the authority of the provincial government in relation to mineral and coal affairs. The division of authority is contained in 7 (seven) provincial authorities in accordance with the mandate of the Appendix to Law Number 23 of 2014, including:

1. Determination of non-metal mineral and rock mining business permit areas within 1 province and sea area up to 12 miles;
2. Issuance of metal mineral and coal mining business permits in the framework of domestic investment;
3. Issuance of business permits for mining non-metallic minerals and rocks in the framework of domestic investment;
4. Issuance of people's mining permits;
5. Issuance of mining business permits for special production operations for processing and refining in the framework of domestic investment whose commodities come from the same 1 province;
6. Issuance of mining service business licenses and certificates of registration in the context of domestic investment; And
7. Determination of benchmark prices for non-metallic minerals and rocks.

Law Number 3 of 2020 has regulated the transfer of authority owned by local governments, both provincial and district/city, to the central government. The articles that give authority to the local government are deleted or the formulation of the article is changed so that no authority is left to the regional government. Article 169 letter c of Law Number 3 of 2020 stipulates that all regional government authorities in Law Number 4 of 2009 and other laws governing regional government authority in the field of mineral and coal mining must be interpreted as the authority of the central government unless otherwise stipulated in the law This.

Thus, all regional government authority arrangements, both provincial and district/city, regarding mineral and coal mining are revoked and transferred to the central government. Based on Article 169 letter c, it is also regulated that there is local government authority related to the management of non-metal mineral and rock mining. Regional government authorities that are still granted in accordance with Law Number 3 of 2020 include:

1. Article 35 paragraph (4) amendment stipulates that the Central Government can delegate the authority to issue Business Permits to regional provincial governments in accordance with statutory provisions.
2. Article 128 paragraph (1) amendments provide authority for regional governments to collect regional income from holders of IUP, IUPK, IPR or SIPB. Regional income consists of: a) Regional taxes; b) Regional levies; c) People's mining fees; and d) Other legal regional revenues based on statutory provisions.

Thus, the provisions of Law Number 28 of 2009 are still applied to regional taxes and fees related to non-metal mineral and rock mining. The explanation of the above arrangements concludes that the authority to local governments in the management of non-metal mineral and rock mining exists, but has been limited and conceptualized as the authority of the central government.²⁰ The conception of authority in the management of mineral and coal mining, both licensing and supervision as well as guidance has become centralized or controlled by the central government. This is certainly not in line with the concept of decentralization which should animate the regional autonomy system implemented in Indonesia

¹⁹ Tri Sulistianing Astuti, Luthfi Widagdo Eddyono. *Dinamika Pengaturan Dan Kepastian Hukum Kewenangan Pemerintah Pusat Atas Pengelolaan Pemanfaatan Tidak Langsung Panas Bumi*. Jurnal Rechts Vinding: Media 11(3)

²⁰ Christian Hido. 2022. *Dientje Rumimpunu, Reymen M. Rewah. The Authority of the Provincial Government in Granting Mining Business Permits (Iup) After the Entry into force of Law No. 3 of 2020*. Lex Administratum Vol. 10 No. 4 (2022)

The stipulation of Law Number 3 of 2020 which was later amended by Law Number 11 of 2020 concerning Job Creation has had a legal impact on the implementing regulations of Law Number 4 of 2009. With the concept of statutory simplification adopted by the current Government, the entire delegation of regulations from Law Number 4 of 2009 which was amended by Law Number 3 of 2020 and Law Number 11 of 2020 contained in one implementing regulation. The implementing regulation is PP Number 96 of 2021, as a regulation that is more technical than the law, there are several technical matters regulated by PP Number 96 of 2021 in relation to the authority of the Regional Government in managing non-metal mineral and rock mining.

- a. There is no element of involving regional governments in the preparation and determination of the National Mineral and Coal Mining Management Plan. This contradicts Article 8A paragraph (3) of Law Number 3 of 2020 which states that the National Mineral and Coal Mining Management Plan takes regional development plans into account. If viewed from the principle of laws and regulations, the provisions in PP Number 96 of 2021 should guide and should not conflict with Law Number 3 of 2020 which has a higher hierarchical position.
- b. Based on Article 6 paragraph (1) PP Number 96 of 2021, business licensing is the authority of the Central Government. Furthermore, in paragraph (4) mentions the permits granted in the context of business permits in the mineral and coal mining sector which include: IUP; IUPK; IUPK as Continuation of Contract/Agreement Operations; IPR; SIPB; assignment permit; transport and sale license; IUJP; and IUP for sales. Furthermore, in paragraph (5) it is stated that business licensing can be delegated to the Provincial Government in the form of standard certificates and/or permits. This arrangement is slightly different from the reference article, namely Article 35 of Law Number 3 of 2020. In Article 35 paragraph (4) of Law Number 3 of 2020, the delegation of authority to issue Business Permits does not limit the form. But in paragraph (5) PP Number 96 of 2021, the Provincial Government is not given the authority to determine business identification numbers. The provisions of Article 8 PP Number 96 of 2021 delegation of business permits will be further regulated by Presidential Regulation. The current Presidential Regulation is still being drafted into regulations so that it can produce laws and regulations that are able to spell out the business licensing authority itself. At a minimum, this Presidential Regulation must clearly regulate the authority of the provincial government, including: The scope of authority to be delegated; Type of permits to be delegated; Implementation of coaching and supervision; Funding in the implementation of delegation; Reporting on the implementation of delegation; and Withdrawal of delegation of authority.
- c. There is an obligation for business entities holding IUP and IUPK originating from foreign capital to divest shares of at least 51% (fifty one percent) in stages to the Central Government, Regional Government, BUMN, BUMD and/or national private business entities. However, in practice, the Provincial Government and Regency/City Regional Government are given the right to buy the divestment shares if the Central Government is not interested or does not respond to the share divestment offer. In the event that the Central Government will provide an answer regarding the divestment offer, the Central Government through the Minister in charge of energy and mineral resources affairs can jointly with the Regional Government, BUMN and BUMD to express interest and determine the divestment scheme and the amount of divestment shares purchased.
- d. IUP and IUPK holders are required to prepare a master plan for community development and empowerment programs around WIUP and WIUPK which must be consulted with the Minister, Provincial Government, Regency/City Regional Government and the community. However, the technical implementation will be further regulated in a ministerial regulation.

The limitations of regional government authority in the management of mineral and coal mining in Law Number 3 of 2020 need to be studied. This study can be conducted to analyze the legitimacy of the transfer of authority from the regional government to the central government, both in terms of laws and regulations (normative) and the transfer mechanism (procedural). Stufenbau's theoretical approach by Hans Kelsen, we will look at statutory regulations in tiered levels. This level in the legal system in

Indonesia is called the hierarchy of laws and regulations. We can find arrangements regarding the hierarchy of laws and regulations in Law Number 12 of 2011 concerning the Establishment of Legislation. The provisions of Article 7 paragraph (1) of Law Number 12 of 2011 map out the types and hierarchy of laws and regulations in Indonesia

The transfer of centralized mineral and coal mining authority to the central government is basically a contradiction to the concept of decentralization of regional autonomy that we adhere to.²¹ Decentralization is one of the joints in the unitary state of a democratic country.²² However, this is meaningless if the implementation is not carried out consistently and seriously. For the Indonesian people, the need for the implementation of decentralization is intended to improve public services in the field of mineral and coal mining, so that it will have an impact on accelerating the realization of social welfare.

Conclusion

1. The presence of Law Number 11 of 2020 concerning Job Creation presents new problems, there are at least the first 4 (four) issues. All mining authority and authority is now under the authority of the central government, which makes local governments unable to take action against mining companies that committing violations such as revoking the Mining Business Permit (IUP), secondly, local communities who are harmed by mining company activities that damage their living space can no longer report to the regional government which is because the mining authority lies with the central government. Third, if you follow the rules of Law no. 4 of 2009, mining companies are required to carry out all reclamation and post-mining activities as well as deposit reclamation and post-mining guarantee funds. Even though there are regulations like this, in fact in the field there are still many violations in the form of holes in former coal mines being left open and turning into giant lakes that claim lives. Then fourth, there is a 0% royalty guarantee for activities to increase the added value of coal which is considered to prioritize the maximum use of coal compared to minimizing the risks from mineral and coal mining itself.
2. All regional government authority arrangements, both provincial and district/city, regarding mineral and coal mining are repealed and transferred to the central government. Based on Article 169 letter c, it is also regulated that there is local government authority related to the management of non-metal mineral and rock mining. Regional government authorities that are still granted in accordance with Law Number 3 of 2020 include: Article 35 paragraph (4) amendments stipulate that the Central Government can delegate the authority to issue Business Permits to provincial regional governments in accordance with statutory provisions. Article 128 paragraph (1) changes provide authority for regional governments to collect regional revenues from holders of IUP, IUPK, IPR or SIPB. Regional income consists of: a) Regional taxes; b) Regional levies; c) People's mining fees; and d) Other legal regional revenues based on statutory provisions.

References

Anggraini Dewi et al., Transfer of Authority in the Mineral and Coal Mining Sector and Its Implications for the Implementation of Good Mining Practice in West Sumatra Province After Law No. 23 of 2014 concerning Regional Government, *Journal of Nagari Development*, Vol.2, No.2 ,December, 2017, p.127.

²¹ Baura, L., Saptanno, M., & Pietersz, J. (2022). Regional Government Authority in Managing Coal Mineral Mining. *PATTIMURA Legal Journal*, 1(3),

²² Ahmad Robi. 2023. Supervision of the Implementation of Decentralization Principles in Regional Government Based on Law No. 23 of 2014 concerning Regional Government. *Journal of Islamic, social, religious education* Vol 13, No 1

- Abdul Kholiq Azhari. Abdul Haris Suryo Negoro, Decentralization and Regional Autonomy in the Unitary State of the Republic of Indonesia, (Malang: Intrans Publishing, 2019), p. 29 Basthotan Milka Gumilang, Sherly Oktariani and Tari Suswinda. 2022. Analysis of Law No. 3 of 2020 which has the potential to harm society and the environment based on the principles of sustainable development goals. *Lex Generalis Law Journal*. Vol.3. No.11
- Baura, L., Saptanno, M., & Pietersz, J. 2022. Regional Government Authority in Managing Coal Mineral Mining. *PATTIMURA Legal Journal*, 1(3),
- F.X. Sumarja, Muhammad Akib, Self Desman Satriawan. Legal Politics of Mining Management Based on the Job Creation Law. Fh Unila, Bandar Lampung.
- Friskilia Darongke Dientje Rumimpunu, Sarah Roeroe. 2022. Effectiveness of Law Number 3 of 2020 in Granting Mineral Mining Business Licenses in Indonesia. *Lex Private Vol. 10 No. 3, 2022*.
- Jailani, Siti Fatimah. 2023. Transfer of Mining Business Licensing Authority in the Mineral and Coal Law with a Decentralization Perspective. *Journal of Tana Mana Vol. 4, No. 1*
- Christian Hido. 2022. Dientje Rumimpunu, Reymen M. Rewah. The Authority of the Provincial Government in Granting Mining Business Permits (Iup) After the Entry into force of Law No. 3 of 2020. *Lex Administratum Vol. 10 No. 4, 2022*.
- Lusie Stella Anjeli Simbolon, Audi Pondaag, Carlo Gerungan the influence of Law Number 11 of 2020 Concerning Job Creation on Regional Government Authorities in Spatial Planning. *Lex Administrator Vol. 11 No.1 (2023)*.
- Irwan Hafid Mahrus Ali, 2022. "Human Rights-Based Criminalization in the Environmental Sector Law," *USM Law Review 5(1): 1–15*,
- Muhammad Aib. 2009. Legal Politics of Environmental Management and Its Reflection in Regional Autonomy Legal Products. *Legal Media Journal*. 16(3):572- 584
- Tri Sulistianing Astuti. Luthfi Widagdo Eddyono. Dynamics of Regulatory and Legal Certainty on the Authority of the Central Government for the Management of Geothermal Indirect Utilization. *Journal of Rechts Vinding: Media 11(3)*
- Risenly Faturahman Tapada, J. Ronald Mawuntu, Maarthen Y. Tampanguma. 2022 Legal Consequences of Implementing Law Number 3 of 2020 Concerning Amendments to Law Number 4 of 2009 Concerning Mineral and Coal Mining Against Increasing Mining Added Value. *Lex Private 10(4):1-15*
- Yusdianto. Relations between Central and Regional Authorities According to Law Number 23 of 2014 concerning Regional Government. *PADJADJARAN Journal of Law, Volume 2 Number 3 of 2015:483- 504*
- Yokotani, 2019. "Unlawful Acts Committed by the Government Related to Misuse of Mining Permits by Permit Recipients in Bangka Belitung Province," *Jurnal Ius Constituendum 4(2): 146*

Article

Republika.co.id, "Governor Controls Mining Permits," *Republika.co.id*, 2014, <https://www.republika.co.id/berita/ncc8k97/gubernur-kuasai-izin-pertambangan>

Rusdi, Farisatul Amanah: Planning, Key Points of Reclamation and Postmining, accessed from <https://nikel.co.id/farisatul-amanah-pedindingan-poin-penting-reklamasi-dan-pascatambang/>

fit Consultant, Post Mining Reclamation, accessed from <https://afitaconsultant.co.id/reklamasi-post-tambang/>,

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).