Centralization of Authority for Mineral and Coal Mining Business Permits in the Context of the Power Relationship Between Central and Regional Governments

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Abstract. The relationship between the central and regional governments regarding mining permits for minerals and coal is complex and marked by conflicts of interest. This is due to the central government taking over the authority of local governments in managing forestry, marine, and mineral energy sources affairs, which were originally under the jurisdiction of local governments according to local government regulations. As a result, local governments have lost most of their authority in this area. The control authority in charge of forestry, marine, and mineral energy sources experienced a nuanced dynamic centralism then decentralization through the concept of regional autonomy then switched back to the authority of the central government centrally. As a result of this situation, there will be friction in the rule of law that is disharmonious because the legal rules of authority for mineral and coal mining permits are regulated in two different characteristics of laws and regulations. Holistically, this change in the rule of law is also colored by legal politics in the formation of mineral and coal laws and regulations.

Keywords: Power Relations, Central Government, Local Government, Regional Autonomy, Mining Permit

1 Introduction

In Article 33, Paragraph 3 of the Constitution of the Republic of Indonesia, the State has control over the land, water, and natural resources within its borders, and these resources should be utilized for the maximum benefit of the people.[1] The constitutional provision outlines the spiritual essence guiding the State's management of national natural resources toward enhancing the people's well-being. The intertwined principles of State control and public prosperity serve as safeguards against the potential monopolization of natural resources when kept separate.[2] In the interpretation presented by the Constitutional Court as the Guardian of the Constitution, State control means the State's control in a broad sense that originates from the concept of the people's sovereignty over all the wealth of the land, water, and the wealth contained therein, including the concept of public ownership by the people's collectivity over these wealth resources. This collective people is constructed by the 1945 Constitution of the Republic of

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Indonesia, giving the State a mandate to make policies (beleid) and administrative actions (*bestuursdaad*), regulations (*regelendaad*), management (beheersdaad), and supervision (*toezichthoudensdaad*) for the purpose of the greatest benefit of the people. For the sake of sustainable development, the management of natural resources in this context must also be designed to support sustainable development.[3]

The interpretation of the Constitutional Court clarifies that the idea of State control over natural resources is derived from the people's sovereignty, which is not absolute but involves a mechanism for implementing policies, regulations, and administrative actions that are aimed at promoting the people's prosperity through effective management and supervision.[4] The State regulates natural resources, considered as assets accessible to all living organisms, through laws such as the Mineral and Coal Mining Law, Forestry Law, and Oil and Gas Law. Furthermore, the 1945 Constitution grants local regions the authority to oversee potential natural resources within their boundaries through regional regulations.[5]

According to the viewpoint expressed by Moh. Mahfud MD, the authority of the State to exercise control should serve as a foundation for subsequent responsive measures. This is because, through this authority, the government can undertake actions that align with the welfare of the public.[6] Martwa SW Sumardjono proposes limitations on the State's authority based on two factors. First, governmental regulations should not violate the human rights protected by the 1945 Constitution. Second, there should be substantive constraints, implying that State regulations must be pertinent to the intended goal of maximizing benefits for the people.[7]

The central government and regional governments, representing the State, are obligated to establish legal guidelines for the administration of natural resources. These regulations should offer alternative opportunities for citizens to contribute to the national economy within the framework defined by the authorities granted by the 1945 Constitution. In the context of mining law and activities, as outlined in Law No. 3 of 2020 on mining permits (IUP), Mining Business Permits are linked to the management of power dynamics between the central government and regional governments.[8]

This power dynamic creates a legal issue when the mining permit authority returns to a more centralized approach, which was previously decentralized under the notion of regional autonomy provided to regions by Law No. 23 of 2014 concerning Regional Governments. The retraction of authority to the central government has indicated a disharmonious atmosphere in the application of positive legal regulations in Indonesia, concerning mining and regional government regulations in the dimension of power control between the central government and regional governments via regional autonomy.[9]

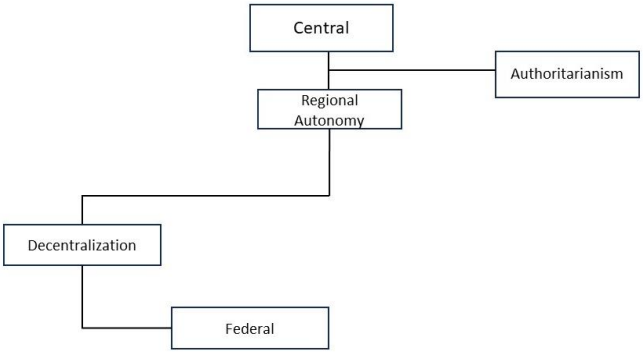

Fig. 1. Concept of Regional Autonomy Division

The shift in authority over the management of mineral and coal mining permits, which was originally handed over to regional governments and has now been withdrawn back to the central government, is something of legal and political consequence in the relationship between the central government and regional governments.[10] This shift from a decentralized to a more centralized approach has altered the dynamics of power relations, which previously emphasized regional autonomy through decentralization and broad delegation of authority in accordance with the constitutional norms of Articles 18, 18A, and 18B of the 1945 Constitution on Regional Government. This constitutional foundation is the driving force behind the regulation and management of their affairs through maximum autonomy, which includes the authority to regulate and grant mining permits and manage them through local government regulations, specifically Law No. 23 of 2014 concerning Regional Governments.

However, the government's issuing of Law No. 4 of 2009 on Mineral and Coal Mining (now Law No. 3 of 2020) has traditionally been inconsistent with the ideals of regional autonomy. Given the complexity of this situation, the disharmony and lack of coherence between Law No. 23 of 2014 and Law No. 3 of 2020 regarding the changes in mining regulations, which have shifted from a broad autonomy perspective to a more centralized one, have had an impact on the loss of authority for districts and cities in managing mining. Furthermore, the attribution previously granted to provincial governments for the management of coal mining permits has now become the authority of the central government through Law No. 3 of 2020. This change also undoubtedly affects the regional income (PAD) in potential mining regions, such as Bangka Belitung Province. In essence, the goal of the law is to create an orderly society. In the dimension of a stable and optimal power relationship between the central government and regional governments regarding the management of mining permits, the focus is on achieving this objective.Taking into account the above issues, this writing reconstructs two main problems:

1. How does the power relationship between the central government and regional governments affect the authority to issue mineral and coal mining permits?
2. What is the concept of centralization in the issuance of permits in Law No. 3 of 2020 concerning Mineral and Coal Mining?

The purpose of this writing is to understand the impact of the power relationship between the central government and regional governments on the authority to issue mineral and coal mining permits and to examine the concept of centralization in Law No. 3 of 2020 concerning Mineral and Coal Mining.

2 Method

This paper employs a normative legal research method, as it focuses on the ambiguity and normative conflicts.[11] The research approach involves three methods: the statute approach, conceptual approach, and analytical approach. The statute approach is used to analyze the existing legal regulations. The conceptual approach aids in elucidating relevant legal concepts, while the analytical approach is employed to dissect complex legal issues.[12] In the process of gathering legal materials, a document study technique is utilized to identify and collect pertinent legal documents. Once the data is collected, the next step involves data classification, where relevant documents are organized according to the research issue. The classified data is then subjected to qualitative analysis.[13] Through qualitative descriptive analysis, data is logically and sequentially arranged to derive valid conclusions that are correlated with the issues addressed by the author in this research. This method is used to explain and comprehend inconsistencies and conflicts within the existing legal regulations.

3 Result and Discussion

3.1 Power Relations Between the Central Government and Regional Governments Regarding the Authority for Mineral and Coal Mining Licensing

In the view articulated by Mahfud MD concerning the power relationship between the central government and regional governments, it is based on three principles:[6]

a) Principle of Decentralization: This principle entails the complete transfer of authority from the central government to regional governments for specific issues. It enables regional governments to independently engage in policymaking, planning, execution, and financing.
b) Deconcentration Principle: Under this principle, authority is delegated to central government officials at the regional level for the implementation of central government affairs. While policymaking, planning, and financing remain the responsibility of the central government, regional-level officials from the central government are tasked with carrying out the implementation.
c) Assistance Principle: The assistance principle involves regional governments actively participating in the execution of central government affairs within their regions. This means that local (regional) government organizations are assigned tasks and authority to aid in the implementation of central government matters.

In this study, the dynamics of power between the central government and regional governments revolve around the concept of regional autonomy. Regional autonomy represents a pivotal concern that has caused a notable transformation in the dynamics of power between the central and regional governments, particularly following the conclusion of the New Order era and the transition to the reform era.[14] In the post-reform era, there is a need to examine the dynamics

of democracy and how the relationship of power and authority is organized between the central government and regional governments within the context of a democratic state. As quoted by Mahfud MD, Yamin asserts that a democratic state framework requires a division of powers within the central government and a distribution of powers between the central government and regional entities. The principles of democracy and decentralization in governance reject the notion of consolidating all power. Yamin's conclusion implies that regional autonomy and decentralization are fundamental elements of a democratic state.

In the literature, two forms of autonomy are recognized: limited autonomy and broad autonomy.[15] According to Bagir Manan, limited autonomy can be characterized by three key aspects. Firstly, regional affairs are explicitly defined, and their development is regulated in specific ways. Secondly, supervisory and oversight systems are structured in a manner that diminishes the independence of autonomous regions in determining how to govern and manage their regional affairs. Thirdly, the financial relationship between the central and regional governments imposes constraints on the financial capabilities of the regional government, thereby restricting regional autonomy. This is contrasted with the concept of broad autonomy, which operates on the principle that, by default, all governance matters are considered regional affairs, except those explicitly designated as central government affairs.

he principle of regional autonomy, delineated in Article 18, Paragraph 2 and Paragraph 5 of the 1945 Constitution, is a component of the political democratic framework that governs the interaction between regional and central governments. This autonomy acknowledges the regions' capacity to self-govern, aiming to enhance their decision-making efficiency. Article 18, Paragraph 5 specifically seeks to delegate residual authority to regions, covering all governance powers except those retained by the central government. The Constitution aims to empower regions while ensuring the central government retains control over strategic governance matters for national sovereignty and Indonesian unity. This increased authority includes coordination, synchronization, standardization, evaluation, and oversight to promote effective and balanced governance.

However, local governments were not involved in the post-enactment of Law Number 3 of 2020 regarding mineral and coal mining management and operations. This exclusion was due to perceived overlapping authority between the central government and local governments, considered less efficient and less likely to yield optimal added value. The drafting of the law also revealed a tendency to interpret regional autonomy euphorically as an unlimited transfer of power for short-term and territorial interests.

Weaknesses in natural resource management, exemplified by inadequately integrated practices in licensing, environmental oversight, and conflicts within communities surrounding mining activities, reflect the challenges of managing natural resources in the current era of political autonomy. Consequently, inconsistencies between the central government and regional governments in resource management are inevitable, leading to operational conflicts perceived as a power struggle. According to Article 4 of Law Number 3 of 2020, mineral and coal mining falls under the complete authority of the State, specifically the central government.

Within the constitutional framework, in a unitary state where the central government oversees all governance matters, the primary authority rests with the central government.[16] Nevertheless, due to Indonesia's governance system, which includes the principle of a

decentralized unitary state, specific responsibilities are autonomously handled by regions. This dynamic creates a mutual relationship that results in the distribution of authority, financial allocations, and oversight. As highlighted by Bagir Manan, autonomy plays a crucial role in the endeavor to attain prosperity. [15]

Under Law Number 3 of 2020, numerous powers previously held by regional governments in overseeing mineral and coal mining activities were revoked. This action essentially departs from the principle of decentralization and transitions towards a centralized system. In this new framework, all authorities related to the governance of mineral and coal mining, encompassing policymaking, regulation, management, oversight, and administration, are consolidated at the central government level. The implications of this shift will impact the dynamics between the central and regional authorities as long as this law remains in force.[19]

As per the provisions outlined in Law Number 23 of 2014 regarding Regional Governance (UU PEMDA No. 23 Tahun 2014), the licensing authority for the mineral and coal mining sector specifies jurisdiction shared between the central government and provincial governments. Consequently, local governments at the district/city level lack the authority in the sub-sector of mineral and coal mining licensing. Within this decentralized system, not all state/government affairs are exclusively managed by the central government. In various governance matters, collaboration with governments below it is facilitated through the concepts of autonomy or auxiliary tasks (medebewind). The organizational structure of the central government is governed by the 1945 Constitution of the Republic of Indonesia and additional legislation (such as MPR decisions, laws, or decisions of regional governments). Governance affairs are either directly managed by the government below or delegated to regional governments, involving the transfer of specific central government responsibilities to the region or assistance in managing particular central government affairs. Once delegated, governance matters become regional affairs, granting regions the freedom (verijheid) to regulate and manage them independently under the supervision of the central government or a higher-level government entity than the relevant region. Despite this oversight, it's essential to note that this freedom does not imply complete independence (*onafhankelijk*).[15]

In practical terms, the interaction between the central government and regions frequently leads to conflicts of interest. Specifically, within the domain of mineral resources and coal mining, the state, represented by the central government, retains complete authority over the administration of these resources. Shifts in policy are intricately linked to the political landscape and dynamics of those in positions of power. Following the ascent of new leadership that initially introduces more open policies, there is a potential for these policies to become more restrictive, authoritarian, or even totalitarian as the leadership consolidates its power.[20]

2.1 The concept of centralization of mining permits in Law No. 3 of 2020 on Mineral and Coal Mining (Minerba Law)

Centralization was a characteristic of governance in Indonesia before the advent of regional autonomy.[8] The drawback of a centralized system is rooted in the fact that individuals at the central government level make all decisions and policies for regions, leading to frequently prolonged decision-making processes. On the positive side, centralization's strength lies in the fact that regional governments are relieved from dealing with complications arising from diverse

decision-making processes or conflicting opinions since all decisions and policies are meticulously coordinated by the central government.

Within the context of legal-political theory, as elucidated in Law Number 3 of 2020 on Mineral and Coal Mining (UU MINERBA No. 3/2020), the centralization of licensing was implemented as a tactic to simplify the licensing processes. This initiative aimed to navigate through bureaucratic complexities and enhance the ease of investment for mining entrepreneurs and investors at the local level. Furthermore, the considerable incidence of corruption associated with mining licenses at the regional level played a pivotal role in motivating the transfer of authority to the central government.

The shift of mining licensing policies to the central government, as stipulated in Law Number 3 of 2020, has abolished the provisions for power-sharing between the central government established in Law Number 4 of 2009 on Mineral and Coal Mining. This change contradicts the 1945 Constitution, particularly in Article 18, Article 18A, and Article 18B, as well as the definition of regional governments outlined in Law Number 23 of 2014 concerning Regional Governance. According to the latter law, regional governments, as per Article 1, paragraph 2, are characterized as "the implementation of government affairs by regional governments and regional representative councils according to the principle of regional autonomy and auxiliary tasks, with the principle of autonomy as broadly as possible within the system and principles of the Unitary State of the Republic of Indonesia, as set out in the 1945 Constitution." It also delineates regional autonomy as "the rights, authority, and obligations of autonomous regions to independently manage and regulate government affairs and the interests of the local community within the framework of the Unitary State of the Republic of Indonesia."

The transfer of mining licensing management authority from regional governments to the central government was not absolute. According to Article 35, paragraph 4 of Law Number 3 of 2020 amending Law Number 4 of 2009 on Mineral and Coal Mining, the central government retains the option to delegate business licenses to regional governments, stating, "The central government may delegate the authority for Business Licensing as referred to in paragraph (2) to the Provincial Regional Government by the prevailing regulations." However, this provision indicates a reduction in the authority of regional governments in mining, as they now need to await delegation from the central government instead of receiving direct authority allocation, as stipulated in the original Law Number 4 of 2009 before its amendment by Law Number 3 of 2020 on Mineral and Coal Mining. Specifically, Article 4, paragraph 2 of the original law stated: "The control of minerals and coal by the state as referred to in paragraph (1) shall be carried out by the Government and/or regional governments."[21]

	Law No. 32/2004			Law No. 23/2004			Law No. 11/2020		
	Central	Province	Region	Central	Province	Region	Central	Province	Region
IUP	✓	✓	✓	✓	✓	X	✓	X	X
IUPR	X	X	✓	X	X	✓	✓	X	X
IUPK	✓	X	X	✓	X	X	✓	X	X

Fig. 2 Differences in Licensing Authority Based on Law No. 32/2004 on Regional Governance, Law No. 23/2014, and Law No. 11/2020

The existence of the Mineral and Coal Mining Law (UU MINERBA) with its centralized

licensing features signifies a move by the Indonesian government to simplify the licensing process, promoting investments in Indonesia and fostering job opportunities. Nevertheless, these regulations also carry the potential to jeopardize environmental and indigenous concerns.[22] This Mineral and Coal Mining Law (UU MINERBA) also holds the possibility of contradicting the principle of externality in delineating shared governance responsibilities between the central government and provincial and district/city governments.[21]

Regarding licensing, UU MINERBA classifies licenses into three types: "Mining Business License (Izin Usaha Pertambangan or IUP), Special Mining Business License (Izin Usaha Pertambangan Khusus or IUPK), and People's Mining License (Izin Pertambangan Rakyat or IPR)."[23] However, as stated in Article 35, paragraph (3) of the Revised UU MINERBA, the types of licenses include the following: As mentioned in paragraph (4) of the Revised UU MINERBA, which states: "The central government may delegate the authority to grant Business Licensing as referred to in paragraph (2) to provincial governments according to the provisions of the prevailing regulations." The explanation in this paragraph provides an alternative option for provincial governments to issue mining licenses through delegation with the approval of the central government.

4 Conclusion

The policy and legal framework concerning the power relations between the central government (Pempus) and regional governments (Pemda) related to mining activities should be designed to meet the needs and ensure fairness. While the central government has the right to take over the capacity to regulate mining activities, it is essential to consider local issues. Non-vital and strategic aspects should be delegated to regional governments. Granting mining permits to regional governments for mining activities can promote fairness in resource management and contribute to local revenue. According to the author's perspective, this approach should not create conflicts of interest between the central government, regional governments, local communities, and stakeholders involved in resource management, especially in mining. Even though the concept of permitting involves delegating authority from the central government to provincial regional governments, it is still considered reductionist due to the shift of authority from decentralization to the central government. Additionally, control over the power relations between the central government and regional governments may experience disharmony due to the normative conflicts related to the authority for mining permits in mineral and coal mining, vested in the central government through the Minerba Law, and regional governments governed by the concept of regional autonomy outlined in the constitution and regional autonomy law (UU PEMDA). This situation underscores the complex nature of resource management and the need for careful consideration and collaboration between the central government and regional governments to ensure a fair and effective regulatory framework for mining activities.

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