Journal of Progressive Law and Legal Studies

E-ISSN 2986-9145

Volume 1 Issue 02, May 2023, Pp. 88-96 DOI: https://doi.org/10.59653/jplls.v1i02.46





Distribution of Authority for Mining Business Permits between the Central Government and Regional Governments After the Enactment of the Minerba Law Number 4 of 2009

Pandu Adi Cakranegara¹, Dedi Rianto Rahadi², Etty Susilowati³

Universitas Pelita Harapan, Indonesia | cakranegara@gmail.com¹ Universitas Presiden, Indonesia | dedi1968@president.ac.id² Universitas Budi Luhur, Indonesia | ettysslwt@gmail.com³

Received: 02-05-2023 Reviewed: 10-05-2023 Accepted: 28-05-2023

Abstract

Mining commodities are strategic commodities for the Indonesian people because they are a source of state revenue. On the other hand, mining has a significant social, economic, and political impact. Therefore, the decision to grant a mining permit needs to be considered carefully. The Minerba Law of 2009 took over some authority to the Central Government. This takeover creates a conflict in the Regional Government which wants the authority to grant permits to reside with the regional government. By using normative analysis, this study tries to see the purpose of the Minerba Law Number 4 of 2009. This research shows that apart from granting permits, other factors need to be considered, namely how the mining sector provides revenue and benefits the local community.

Keywords: Mining, Central Government, Regional Government, Minerba Law, Authority

Introduction

Law Number 3 of 2020 takes over the granting of Mining Business Permits from the Regional Government to the Central Government. When viewed as mandated by the Constitution, namely Law Article 33 Paragraph 3, which states that land, water and natural resources in Indonesia are controlled by the state and used for the greatest prosperity of the people. The concept adopted by Indonesia differs from that adopted in other countries, for example, in the United States. The United States adheres to the philosophy of finder keepers, meaning that those who own land and find resources in the land, these resources become theirs. The state only acts as a permit provider to conduct mining and has the right to collect taxes (Thendry, 2016).

Bagir & Harijanti (2017) interpret government control authority into three things:

1. The government is authorized to grant mining rights.

- 2. The government is the supervisor and regulator of mining management.
- 3. The government has the right to invest in capital.

The mining industry has unique characteristics that distinguish the mining business from other industries. This characteristic is that mining materials are non-renewable materials. The characteristics of a mining business that exploits the earth will have environmental, social and economic impacts (Satriawan, 2021). Social impacts can occur when land owned by the community and used together will now be exploited to lose everyday use. An example is when a forest in Papua is used as a community to collect food, and then this forest is cut down, the community can no longer collect food. Communities that have been formed can then be damaged because these communities lose their food sources. The economic impact is that the transfer of land functions will make the land previously used for agricultural production unusable. As a result, people will lose their factors of production. When this happens, it will affect both consumptions and then distribution. Reduced production factors will reduce consumption levels and further increase distribution costs because people have to bring in food ingredients from outside. Environmental impacts occur when mining waste can cause disease or environmental damage. Even after mining is completed, it can cause a permanent environmental impact, so the land cannot return to its pre-mining function.

Because mining has tremendous economic, social and political impacts, mining permits must be given carefully. The question is, who has more authority to grant mining permits? The central government wants to be a policy maker to prevent over-exploitation. On the other hand, local governments feel that they are the most entitled because the impact of mining will be felt directly in the regions. Because of the areas most affected, the regional government felt that it had the right to determine its own destiny. The question from this research is, who is more entitled to give the right to mine?

The purpose of this research is to provide an analysis that can be used as a consideration in policies in the mining sector. Mining is one of Indonesia's mainstay sectors. Because of this, mining governance is an important matter that can affect everyone living in Indonesia, both directly and indirectly.

Literature Review

In constitutional law, there is a concurrent principle. What is under the authority of the Central Government also becomes the authority of the Regional Government, namely the Provincial Regency and City Governments, although on a different scale. The authority held only by the Central Government consists of foreign policy authority, defense, security, justice, monetary and national fiscal (Solechah, 2012). Government Regulation Number 38 of 2007 regulates in more detail the matters that are the affairs of the Regional Government, which consist of thirty-one areas, namely: social, environment, trade, marine and fishery, forestry, education and culture, health, small business and medium, labor and transmigration, agriculture and plantations, mining of energy and mineral resources, transportation, investment, tourism and creative economy, population, women's empowerment and child protection, family

planning and family welfare, industry, public works, spatial planning, youth and sports, communication and information, housing, archives, land affairs, national unity and politics, statistics, general government, village community empowerment, staffing, library. These thirty-one fields are permitted to be managed by the government based on the criteria in Law Number 32 of 2004. In Law Number 32 of 2004, there are three criteria, namely externality, accountability and efficiency criteria. First, as a unitary state, the Indonesian state is one country when carrying out strategic matters related to foreign relations, defense and various external relations. The second criterion is accountability. As the manager of state policies, the government needs to be transparent in its management, including in the management of resources. The third is the efficiency criterion. By giving authority to regional governments, the central government can focus on making strategic policies and managing essential state assets.

The mandate of Law Number 32 of 2004 in practice faces many challenges in its application in the field. Instead of accountability and efficiency, there are many conflicts between mining entrepreneurs and the surrounding community who live in mining areas in the economic and environmental fields (Noble, 2022). Economically, the people around the mining business feel they need help to feel the economic benefits of the mining business. Environmentally there is environmental pollution caused by the mining business.

Rahman (2018) states that many regional heads sell out mining permits in the regions. There are allegations that the ease of permitting is related to the efforts of regional heads who want to quickly return the capital spent to be elected as regional heads. The reason often used to justify this is to increase Local Own Revenue, but the environment is sacrificed. After Indonesian independence, the legal basis for mining activities in Indonesia was Law 11 of 1967 concerning Mining Principles. Article 11 of Law Number 11 of 1967 states that the state gives rights to the people to carry out mining, which is called people's mining. People's mining is only permitted by local people who hold mining permits. This law is the basis for mining permits granted by the Regional Government.

Satriawan (2021) stated that there are seven problems related to mining permits:

- 1. A problem related to the number of permits a mining entrepreneur must pocket to start a mining business. These permits are not only vertical, namely permits from the central government and the government are available but horizontal permits, namely permits for cross-sectoral departments.
- 2. The change in the licensing regime has now become the Mining Business Permit regime. This change causes entrepreneurs with mining contracts to convert them into business licenses.
- 3. There is no legal umbrella to free up land for mining purposes.
- 4. The government's desire to carry out downstream activities to provide added value to mining goods by encouraging the construction of smelters.
- 5. When a divestment occurs, the Regional Government must provide sufficient funds to repurchase it. When the Regional Government does not have sufficient funds, the share

divestment cannot be absorbed by the Regional Government and can be transferred to other parties.

- 6. The limited funds of the Regional Government in carrying out the initial exploration phase.
- 7. The problem related to the Mining Business Permit Area auction rules.

The government is trying to overcome various problems, from granting mining license authority to regional governments by issuing Law Number 4 of 2009 concerning Mineral and Coal Mining, or the Minerba Law. The Minerba Law provides proportional authority between central, provincial, district, and city governments. Article 7 of the Minerba Law explicitly regulates regional governments' authority to make local laws. Grant limited Mining Business Permits, supervise mining operations and supervise post-mining reclamation. Article 8 of the Minerba Law gives district and city governments the right to issue Mining Business Permits and People's Mining Permits.

Delegating mining permit authority from the Central Government to Regional Governments in Indonesia raises various problems. However, on the other hand, after the 1998 reform, there was a spirit to change the centralized government to be decentralized by giving autonomy to the regions. The government is trying to overcome the problems arising from the decentralization of authority granting by issuing mining licensing reforms as stipulated in Law Number 3 of 2020 concerning Minerba and Law Number 11 2020 concerning Coal. Mining is also one of the industries regulated by the Omnibus Law. As the name implies, the purpose of the Omnibus Law is to create the broadest possible employment opportunities. Therefore, this research examines whether withdrawing authority to the centre can create more significant employment opportunities and achieve the goals of the Omnibus Law.

Research Method

This research method is to use the normative method. The normative method is carried out by analyzing legal materials to find the will of the existing law. The legal materials used are secondary legal materials consisting of secondary legal materials, namely related laws and regulations, secondary legal materials consisting of previous legal studies and opinions of experts, tertiary, secondary legal materials consisting of supporting materials that can be used to help explain legal phenomena such as the Big Indonesian Dictionary.

In this research, the researcher will first carry out an inventory of related laws and then analyze them to find their meaning. This analysis is also supported by using previous studies and other materials that can be used to carry out the normative analysis.

Result/Findings

Jakarta is the center of the economy. Economic sources in urban areas mainly come from the service and manufacturing sectors around urban areas. Where there is economic activity, there is the creation of labor. One of the resources is natural resources. Natural resources in Indonesia consist of renewable natural resources and non-renewable natural resources. Both types of natural resources are located outside urban areas and are generally located in areas. When viewed from its value, this resource consists of resources with high economic value and low economic value. In the short term, all of these natural resources can be volatile in value. However, the government tightly controls essential natural resources, such as agricultural products related to basic needs such as food, so their volatility is low. This is different from commodities such as mining and mineral products, whose prices are more volatile in the short term, and their prices depend on prices formed on world markets.

The local community certainly hopes that the natural resources in their area can be used for the welfare of the area. It's the same with urban people who enjoy the results of economic activities that occur in the city. From the state's point of view, not all resources have the same value. Some resources are more critical and strategic for the Indonesian people. In this case, mining materials are classified by the government into three: strategic minerals for development, minerals that are vital for development, and minerals outside the two types. On behalf of development, the government, through PP No. 39 of 1960. Regional governments are given the authority to manage non-strategic and non-vital minerals for national development. Meanwhile, the central government controls the authority for strategic and vital minerals.

In the Omnibus Law Number 11 of 2020, the authority to issue regional permits is withdrawn to the central government. In the Omnibus Law, some articles were trimmed to streamline the bureaucracy. But on the other hand, with power in the hands of the central government, there is a concentration of power. In this case, parties close to the central government can obtain permits. Entrepreneurs close to the central government tend to be entrepreneurs at the national level and not regional entrepreneurs. In addition, in the amendment to the Article on the Omnibus Law, there is an expansion of land tenure from 25 hectares to 100 hectares and an increase in depth from 25 meters to 100 meters.

Each industry has its characteristics. These characteristics can be differentiated based on the intensity of resources used to run an industry. There are three primary resources in each industry, namely human resources, land resources, capital resources, and technological resources. When talking about investing in an area, what needs to be considered is the benefits that the area will receive. For example, when a company is technology-intensive, the people who work in the company will receive technology transfer so that later when they work in another company, they can use this ability. When a company is labor-intensive, the hope is that many local workers will be absorbed. A labor-intensive company will absorb direct labour and cause a high multiplication effect.

An example is when a factory comes in and employs a thousand people. These These thousand people will need food, transportation, and a place to live. If a thousand people need food, the food stall will have income. These food stalls must buy raw materials from the market and employ people. Sellers in the market now also have additional income. So if in the context of creating a workforce, those most likely to create a workforce following the mandate of the Omnibus Law are labor-intensive industries or companies.

Ningrum (2008) states that there has been a decrease in the workforce absorbed by the manufacturing industry sector in Indonesia, regardless of the increase in the amount of incoming foreign investment. The cause of the decline in employment per one billion rupiahs of investment is the use of high technology by manufacturing companies. Machines with high technology that have more mechanical properties require less labour but with higher quality. Darmawan (2017) states that one of the foreign investment sectors that are expected to be able to absorb labor is the garment. However, in reality, the garment industry has increased efficiency, so employment has decreased. Based on these two, it can be seen that technological resources and human resources have a tradeoff. The higher the technology, the fewer human resources are needed in an industry.

The third characteristic of the industry is a capital-intensive industry. In this industry, the reason for inviting foreign investment is limited funds. Therefore, additional funds are needed to allow a company to be started. Mining is a capital-intensive industry. This means that high capital is required to start a mining process.

On the other hand, mining also requires technological resources. The more difficult it is to reach the materials or minerals to be mined, the higher the technology required. So based on the industry, not all industries will have the same ability to create workers, even with foreign investment.

Suseno (2017) examines the added value of various industries in Central Java. In the Central Java economy context, the agricultural sector provides the primary added value. Other sectors, such as mining, expected to create added economic value, are lagging behind the agricultural industry. This is only when viewed from the added value of the economy, not from the creation of labor. The agricultural sector is a labor-intensive sector, meaning that economically this sector provides the most significant contribution, and so does the creation of the workforce. While the mining sector provides added value economically but because this industry is capital intensive, this industry will absorb a small amount of labour. Thus, the mining sector, regardless of the permits granted by the central government or regional governments, is an industry with the characteristic of absorbing a small workforce. So there is no urgency to withdraw permits from the central government.

One of the reasons for withdrawing permits from the central government is to create licensing efficiency so that foreign investment can enter more easily. Ummam (2020) states that withdrawing licensing authority to the central government tends to create an oligarchy in mining control. Bentzen (2012) said there are two types of corruption: petite and state. Petite corruption is a form of minor administrative corruption with little value. Meanwhile, state corruption is a form carried out at the policymakers' level, which is large and has excellent value.

Apart from the capital-intensive mining industry, the mining industry can provide high economic added value. Suparji & Mizi (2021) states that the government can create jobs and add economic value by banning minerals and minerals from being exported in raw form. One of the policies being pushed is downstream mining, such as by building a smelter. Extending

the supply chain in Indonesia, the addition of this supply chain will increase the number of workers absorbed and thereby create additional jobs.

The mining industry is cyclical. Mining company revenue comes from two factors: production capacity and commodity prices formed in the international market. When commodity prices rise, income will increase while costs to dig for mining materials tend to remain the same. This means there will be an economic profit above the usual or windfall profit. Rao (2018) states that under these conditions, the government can collect a tax on this windfall profit or what is known as a windfall tax.

Furthermore, this temporary tax that is only when commodity prices are high can be used to subsidize other sectors, such as the education sector or small businesses. Subsidies in the education sector improve the workforce's quality in the long run, while subsidies for the MSME sector are expected to help increase workforce creation. So the approach taken is to utilize the value approach from the mining sector to create employment indirectly through a fiscal approach, namely taxes and subsidies.

Highlight the most significant results, but do not repeat what has been written in the Results section. Connect your findings with the literature review or theories you use in your research

Conclusion

The Omnibus Law aims to create as many job vacancies as possible for the Indonesian people. One of the efforts to create a workforce is inviting foreign investors to enter. The hope is that with the influx of foreign investment, these investors will open companies in Indonesia and create jobs. One of the factors attracting investment is the ease of licensing. One way to create ease of licensing is to simplify and cut unnecessary bureaucracy. This also applies to the mining industry.

On the other hand, mining is a capital-intensive industry. In capital-intensive industries, the absorption of labor will be negligible. Meanwhile, from year to year, the trend of employment per one billion investments in Indonesia continues to decline due to the efficiency of technology. Ultimately, technological and capital-intensive factors will make the mining industry less attractive to rely on as a labor-absorbing industry. On the other hand, the central government's centralization of granting mining licenses has the potential to create state corruption and an oligarchy of mining entrepreneurs.

However, there are things the government can do. This research suggests that there are two approaches that the government can take. The first is through the downstream mining sector approach. Increasing the value of mining and mineral materials before export through the construction of smelters, for example, jobs will be created. The second approach is through a fiscal approach. The mining industry is cyclical, in which the price of mining materials will follow the increase and decrease in commodity prices formed in the international market. Therefore, when commodity prices in the international market rise, the mining company's income will increase.

Meanwhile, in terms of costs, there was no significant change in mining costs. As a result, the mining company will obtain a profit above the usual windfall profit. Against this windfall profit, the government can impose taxes. Furthermore, this tax can subsidize education and small businesses so that small businesses can grow and create jobs. This means that the mining sector can indirectly create a workforce following the mandate of the Omnibus Law.

Declaration of conflicting interest

The authors declare that there is no conflict of interest in this work.

References

- Bangsawan, M. I. (2022, April). Persoalan Hukum Penyelesaian Sengketa Agraria di Bidang Mineral dan Batubara menurut Undang-Undang Nomor 3 Tahun 2020 tentang Pertambangan Mineral dan Batubara. In *Prosiding Seminar Nasional Program Doktor Ilmu Hukum* (pp. 26-41).
- Bentzen, Jeanet Sinding. (2012). 'How bad is Corruption? Cross-Country Evidence of the Impact of Corruption on Economic Prosperity'. Review of Development Economics 16 (1), 167-184
- Darmawan, B. (2017). Sumber Peningkatan Produktivitas Perusahaan Garmen di Indonesia dengan Adanya Penanaman Modal Asing Periode 2007-2013. *Jurnal Ekonomi dan Bisnis*, 22(1), 9-22.
- Jalil, H. (2021). Kewenangan Pusat dan Daerah dalam Pengelolaan Pertambangan. *Jurnal Ilmiah Mahasiswa Bidang Hukum Kenegaraan*, 5(2), 132-140.
- Manan, B., & Harijanti, S. D. (2017). Artikel Kehormatan: Peraturan Pemerintah Pengganti Undang-Undang dalam Perspektif Ajaran Konstitusi dan Prinsip Negara Hukum. *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)*, 4(2), 222-243.
- Marbun, I. F. (2021). Dampak Investasi Sektor Pertambangan Terhadap Pertumbuhan Ekonomi Setelah Diterbitkannya UU No. 11 Tahun 2020.
- Mayer, HDS. (2019). Pengaturan Pengawasan Pusat Terhadap Izin Usaha Pertambangan Mineral dan Batubara di Era Otonomi Daerah. *Jurnal Legislasi Indonesia*, 16(1), 133-146.
- Ningrum, V. (2008). Penanaman Modal Asing dan Penyerapan Tenaga Kerja di Sektor Industri. *Jurnal Kependudukan Indonesia*, 3(2), 29-43.
- Rahman, A. (2018). Dinamika Gerakan Sosial Masyarakat Samarinda dalam Memperjuangkan Keadilan Lingkungan (Studi Kasus Pada "Gerakan Samarinda Menggugat" Di Kalimantan Timur). *Jurnal Analisa Sosiologi*, 7(1).

- Rao, N. L. (2018). Taxes and US oil production: Evidence from California and the windfall profit tax. *American Economic Journal: Economic Policy*, 10(4), 268-301.
- Satriawan, D. D. (2021). Pengelolaan Usaha Pertambangan Mineral Dan Batubara Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja. *Jurnal Esensi Hukum*, *3*(2), 123-133.
- Solechah, S. N. (2012). Realisasi desentralisasi sektor pertambangan. *Jurnal Info Singkat Pemerintahan Dalam Negeri*, 4.
- Suparji, S., & Mizi, R. (2021). Penataan Regulasi Mineral Dan Batubara Untuk Kesejahteraan Rakyat. *Jurnal Magister Ilmu Hukum*, 4(2), 1-8.
- Suseno, D. A. (2017). Multiplier Effect Sektor Basis Terhadap Perekonomian Daerah Provinsi Jawa Tengah. *Jurnal REP (Riset Ekonomi Pembangunan)*, 2(1), 113-126.
- Thendry, S. (2016). Desentralisasi Kewenangan Dalam Pengaturan Usaha Pertambangan Di Era Otonomi Daerah. *Lex et Societatis*, 4(4).
- Umam, A. K. (2020). Reformasi Tata Kelola ataukah Resentralisasi Kekuasaan Negara? Arah Perubahan UU Minerba di Indonesia. *Dalam Kuasa Oligarki atas Minerba Indonesia*, 8-25.