



The Effectiveness of Regional Government Authority on Mining Business Permits Post Presidential Regulation Number 55 of 2022 Concerning Delegation of Authority in the Management of Mineral and Coal Mining.

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Abstract. The mining business is a business that has the most layers of regulations. This is because in addition to the various types of mining, it is also because the mining processing process is so complex. Judging from the legal review, the mining regime has experienced very significant changes. At that time, the mining regime used a contract of work model between mining companies and the government, both local and central government. In practice, contracts of work provide opportunities for mining companies to control mining areas for a certain period of time. At this time the mining regime is the licensing regime. This was marked by the issuance of Law Number 4 of 2009 concerning Minerba. In accordance with the law, the relationship between the government and mining corporations has shifted from that of partners to that of government administrators. As part of its ongoing effort to improve the legal system, the government plans to release new rules in 2022 governing the transfer of power from the federal to the state and local levels in the administration of mineral and coal mining. This Government Regulation is considered very appropriate and effective. The extraction of non-metallic minerals and coal encompasses a significant presence of small-scale mining enterprises or entities engaged in small-scale mining operations. So it is hoped that permit arrangements will be adjusted to the needs of small-scale mining.

Keywords: Delegation of Authority, Coal, Local Government.

1 Introduction

The mining sector in Indonesia is seeing significant growth as a result of the nation's rich endowment of natural resources. Silver, gold, copper, coal, oil, natural gas, and many others can all be found in mines. Mining, as defined in Law Number 4 of 2009 concerning Mineral and Coal, includes pre-mining activities such as general investigations and exploration as well as post-mining activities such as processing and refining, transportation and sales, and post-mining activities such as transportation and sales. Mining materials in Indonesia are found on land and at sea. The process of obtaining and processing these minerals requires a lot of capital, expertise, and high

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technology. The government collects all of this from within and from abroad. (Aswir, 2019)

The results from mining are processed to meet daily needs, for example, copper is used as a conductor of electricity. Apart from being a good conductor of electricity, copper is also a good conductor of heat. Some household appliances are made from a mixture of iron and copper, which makes a good combination. The benefits of copper in everyday life are centered on heat and electricity because the benefits of copper are very large in this regard.

The use of mining products must be carried out wisely, because as is known mining goods are classified as non-renewable natural resources. Excessive use or on a large scale can be very detrimental. The loss that is borne is not small, all elements can feel the impact, it can even have a negative effect, namely when these mining goods run out, it is certain that we will be at a loss or have difficulty finding replacements. to damage or leave the environment that has a bad effect on society. In addition to the management of mining goods which must pay attention to the environment, in its use it must also be friendly to the environment.

The potential for mineral reserves in Indonesia is extremely great. For example, Indonesia is ranked third in the world for its nickel ore reserves. Indonesia secured the second position, following China, in terms of its significant contribution of 39% to the global production of gold goods. This assures that Indonesia maintains a steady position within the top 10 countries globally. The mining sector possesses the capacity to create substantial sums of non-tax revenue (PNBP) in addition to state tax income. Sustainability in mining refers to the practise of minimising negative effects on the environment while maximising benefits to society and progress towards the Sustainable Development Goals (SDGs) (Sony, 2019).

Even though the mining sector is also played by many private parties, both through domestic companies and foreign companies, the utilization of these mining products must be able to be felt by the Indonesian people in general. This is in accordance with Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which states that: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." The mining sector is a commodity with high economic value and has proven to have a major contribution in driving Indonesia's economic growth. During the 1975-1985 period, often called its golden age, this sector even contributed more than 20 percent to the national economy. Even though after this period the contribution of the mining sector in general had decreased, in non-oil and gas mining, especially coal, iron ore and copper, it has become more enthusiastic, especially since the 2000s. In the 2000-2010 period, non-oil and gas mining grew six percent, while in 2011-2019 it grew an average of 3.4 percent (World, 2010). This important contribution to the economy can also be seen in non-tax state revenue (PNBP), at the end of 2018, for example, the mineral and coal sector contributed Rp. 50 trillion or 155.8 percent of the initial target of Rp. 32.09 trillion (Indonesia, 2019). This industry has historically been vital not just for generating energy, but also for providing fuel to the steel and cement industries, alumina processing facilities, paper mills, chemical and pharmaceutical manufacturers, and more (S., 2021).

Indonesia's mineral wealth, both those that have been identified as prospect areas and mines as well as unexplored potential, is a potential source of state revenue and some (for certain minerals) have the potential to be a driving force for the development of alternative energy which is urgently needed at this time. The government is tasked with managing these resources in order to provide optimal benefits for the welfare of the people. Meanwhile, the task of stakeholders is to encourage and strengthen so that natural resources can become strategic capital in building national resilience and sovereignty.

In view of the significance of resource management and exploitation of mineral mining in Indonesia, it is imperative to execute various measures aimed at increasing the management of national mineral and coal. An exhaustive inventory of coal and other mineral resources is one of them. The Geology Agency, the Directorate General of Mineral and Coal, research institutes like LIPI, and university-level research institutions like the Unconventional Geo-Resources Research Group (UGRG) must all be involved, as well as private sector entities like exploration and mining companies. The inventory should be conducted in adherence to scientific principles and relevant reporting rules, such as the SNI and KCMI Code.

Exploration efforts should also be supported in order to keep the mineral and coal resource balance in good standing. So that the state can plan for its future use, it is vital to promote the idea that "exploration is the future" (exploration is the future), with the primary goal of exploration as inventory. The discoveries and technical information gleaned from exploration have numerous applications, including but not limited to the following: asset inventorying and planning, business or production, revenue growth, job creation, and alternative energy research.

Reviving dormant exploration efforts can be aided by speeding up and loosening restrictions on the introduction of new exploration regions. It is imperative for the government to expand its energy portfolio beyond the reliance on petroleum and natural gas by incorporating minerals. The strategic allocation of priority mineral resources by the government can effectively drive industrial growth and enhance the national economy, thereby benefiting the local industry. The export of resources in the form of raw materials will be reduced as a result of this. Humanity's continued technological progress necessitates an ever-increasing mineral supply (Prihatmoko, 2020).

2 Research methods

Studies in the body of prior legal precedent provide the basis of this investigation. Multiple statutes and regulations serve as primary legal materials, while law books serve as secondary legal data, and scholarly publications and independent writers serve as tertiary legal data. Processing information makes use of qualitative data.

3 Discussion

3.1 History of Mining Regulations

The first legal regulation that regulates mining is Law Number 78 of 1958 concerning Foreign Investment (UU PMA 1958). The nomenclature employed indicates that this legislation does not possess explicit provisions pertaining to the regulation of mining activities. Nevertheless, a segment of the provided material addresses and subsequently governs the mining industry. Article 3 paragraph (1) of this Law, which elaborates further on the provisions on restrictions on business fields open to foreign investment, defines "mining of vital materials" as a company closed to foreign investment. This provision is a sign that at the beginning of its development in national law, the mining sector was included in those that were not open to foreign investment. In the Explanatory Memorandum section of this Law it is emphasized that certain companies, including those in the mining fields for vital materials, must be owned by the government (central or regional). The second legal regulation that regulates mining is Law Number 10 of 1959 concerning Cancellation of Mining Rights. The background to the issuance of Law 10/1959 was the number of cancellation rights issued and spread in almost all parts of Indonesia during the Dutch East Indies Government based on Indische Mijnwet 1899 and its amendments. In the consideration section of this law, it is stated that there are four reasons for its formation. First, there are mining rights that were granted before 1949, which until now have not been or have not been exercised at all, so that in essence they are very detrimental to the country's development. Second, the omission of the non-existence of mining rights for longer cannot be justified and cannot be accounted for. Third, in order for these mining rights to be exercised in the shortest possible time in order to smooth development, these mining rights must be revoked in the shortest possible time. Furthermore, the utilisation of the mining rights cancellation approach, as stipulated in the existing Indische Mijnwet, is not employed, therefore necessitating the enactment of a distinct legislation (Ahmad Redi, 2021).

In the year 1960, the government implemented a mining policy known as Government Regulation in Lieu of Law Number 37 of 1960 concerning Mining (Perpu Pertambangan 1960). In the year 1967, under the initial stages of the New Order regime, the enactment of Law Number 11 of 1967 pertaining to the field of Mining took place. This legislation implemented a framework for the establishment of employment contracts, work agreements pertaining to coal mining concessions, and mining concessions. Furthermore, until 1992, there were not many changes to mining policy regulations. The Central Government through PP Number 79 of 1992 gives the role to Regency and City governments to also have authority in mining management, with a balance of revenue from state levies in the form of fixed fees, exploration fees, and exploitation fees. This was developed within the framework of the spirit of regional autonomy.

At the beginning of the reform, the opportunity for local governments to have a greater role in mining management, this was marked by Government Regulation Number 75 of 2001 concerning the Second Amendment to PP Number 32 of 1969

concerning Implementation of Law Number 11 of 1967 giving authority to the governor, mayor or the regent to issue a Mining Authorization Decree. The decentralisation of authority from the central government to regional governments has resulted in instances of overlapping decision-making. Several decisions at the regional level are no longer in sync with decisions at the central level. This happened because the Mining Law of 1967 which adhered to a centralized contract system in the central government was still valid. In practice, the implementation of this shift in authority has caused many problems and friction in society. Such as communal land disputes at mining sites, horizontal and vertical licensing frictions.

3.2 Authority of the Central Government and Regional Government in the field of Mining.

At the time of enactment of Law Number 41 of 1999 concerning Regional Government, there was a wide deviation of authority to regional governments in regulating and managing mining based on the principle of autonomy. The purpose of this broad delegation of authority is for local governments to increase local revenue (PAD) from the mining sector because they can draw revenue from taxes, fees and other fees. The provisions outlined in Law Number 41 of 1999 regarding Regional Government encompass various aspects of regional governance. These include the implementation of natural resource utilisation and other regional authorities, collaboration and equitable distribution of benefits pertaining to natural resource utilisation and other resources among regional governments, as well as collective management of permits for the utilisation of natural resources and other resources.

Furthermore, the authority of the local government was strengthened by the enactment of Law Number 4 of 2009 concerning Mineral and Coal Mining which gave regional governments both governors and regents/mayors wide-ranging authorities. This authority is in the form of permits that are determined based on regional boundaries. While the form of the term "Mining Authorization" was replaced with three forms of permits, namely Mining Business Permits (IUP), People's Mining Permits (IPR) and Special Mining Business Permits (IUPK).

The recent enactment of Law Number 3 of 2020, which amends Law Number 4 of 2009 on Mineral and Coal Mining, has resulted in the transfer of all regional government authority to the central government. This transfer encompasses various permits and licences, including the IUP, IPR, IUPK, SIPB, Assignment Permits, Transportation and Sales Permits, IUJP, and IUP for sales. Despite the total withdrawal of jurisdiction over mining permits from the regional government, it is still possible for the regional government to assume responsibility for such permits if the central government distributes authority in accordance with statutory provisions. Even with the enactment of Law Number 11 of 2020 concerning Job Creation, the energy and mineral resources sector is included in the simplification of business licensing with ease and investment requirements made by the central government (Pradana, 2022).

The ongoing power struggle between the Central Government and Regional Governments regarding control over the mining sector highlights the Central Government's struggle to establish effective regulatory measures for national mining man-

agement. One perspective suggests that the inefficiency of centralising the authority to give mining permits to the Central Government arises from the dispersed nature of mining sites throughout various regions in Indonesia. In addition, the tasks of the central government are getting heavier and more numerous.

There are several problems that arise related to centralized mining permits such as controlling mining activities which is difficult to do. This is because the central government that gave the permits did not know the situation in the mining area itself which incidentally is its territory in the regions. Mining licenses that use the OSS (One Single Submission) system are good, but become ineffective for a very complex permit such as a mining business. According to the Ombudsman Commissioner of the Republic of Indonesia, Hery Susanto, there has been a significant increase of over 100% in reports within the mining sector subsequent to the issuance of a letter by the Director General of Mineral and Coal of the Ministry of Energy and Mineral Resources, specifically Letter Number 20004/30/DJB/2000 dated 26 August 2020, addressed to the Head of the Provincial Office. The letter provides confirmation pertaining to the submission of Non-C&C Mining Permits, highlighting that matters related to mining permits can be brought before both judicial bodies and alternative conflict resolution institutions, such as the Ombudsman. The letter unequivocally provides opportunities for potential misuse of administrative power (IMANDAKARTIKA, 2021).

3.3 Presidential Regulation Number 55 of 2022 concerning Delegation of Authority in the Management of Mineral and Coal Mining.

On April 11, 2022, a Presidential Regulation, specifically Presidential Decree Number 55 of 2022, was enacted in response to various issues that arose under the Central Government and Regional Governments' jurisdiction. This regulation pertains to the delegation of authority in the management of mineral and coal mining. According to Article 2 of Presidential Regulation Number 55 of 2022, delegation encompasses:

Article 2:

- (1) Delegation includes:
 - a. award: 1. standard certificate; And 2. permission;
 - b. fostering the implementation of delegated Business Licensing; And c. supervising the implementation of delegated Business Licensing.
- (2) The issuance of standard certificates, as mentioned in paragraph (1) letter a number 1, encompasses consulting activities and the development of business plans for mining services in several domains, such as:
 - a. A comprehensive inquiry;
 - b. exploration;
 - c. Feasibility study;
 - d. Mining construction;
 - e. Transportation;
 - f. Mining environment;

- g. Reclamation and post-mining;
- h. Mining safety; and/or
- i. mining.

(3) The process of granting permissions, as mentioned in paragraph (1) letter a number 2, encompasses:

a. IUP in the framework of domestic investment for non-metal mineral commodities under the condition:

- 1. is located in one provincial area; or
- 2. sea area up to twelve nautical miles;

b. IUP in the context of domestic investment for non-metal mineral commodities certain types provided that:

- 1. is located in 1 (one) provincial area; or
- 2. sea area up to 12 (twelve) nautical miles;

c. IUP in the context of domestic investment for rock commodities with the following provisions:

- 1. is located in 1 (one) provincial area; or
- 2. sea area up to 12 (twelve) nautical miles; d. SIPB;

e. IPR;

f. Transportation and Sales Permit for non-metal mineral commodities;

g. Transportation and Sales Permits for certain types of non-metal mineral commodities; h. Transportation and Sales Permits for rock commodities;

i. IUP for one provincial area;

j. IUP for the sale of non-metal mineral commodities;

k. IUP for the sale of certain types of non-metallic mineral commodities; And l. IUP for the sale of rock commodities.

(4) The progress, as mentioned in paragraph (1) letter b, encompasses:

a. provision of norms, standards, guidelines and criteria for the implementation of mining business; b. providing technical guidance, consultation, mediation, and/or facilitation; And c. competency development of mining workforce.

(5) The term "supervision" mentioned in paragraph (1) letter c encompasses the following components: a. planning of supervision; b. implementation of supervision; And c. monitoring and evaluation of supervision.

(6) The execution of supervision, as mentioned in paragraph (5) letter b, is conducted on: a. good mining engineering principles; And b. Mining business governance.

(7) When conducting the oversight mentioned in paragraph (5) letter b, the governor delegates the task of assigning: a. mining inspector for supervision of good Mining technical principles; And b. Mining supervisory officer for supervision of Mining business governance.

(8) Mining inspectors and Mining supervisory officials as referred to in paragraph (7) are required report the results of supervision to the governor.

(9) If, according to the report on the outcomes of supervision mentioned in paragraph (8), there is a breach of the standards of good Mining technical practises and Mining management as stated in paragraph (7), it is the responsibility of the governor to take appropriate action, which may include:

- a. coaching; or
- b. imposition of administrative sanctions.

(10) The delegation of supervisory responsibilities for the implementation of the delegated Business Licencing, as mentioned in paragraph (1) letter c, does not encompass the power to:

- a. budget management;
- b. facilities and infrastructure; And
- c. operations, mine inspectors and Mining supervisory officials.

(11) The delegation mentioned in paragraph (1) is not permissible to be further delegated to the regional administration of the district or city.

(12) The provision of guidance, as mentioned in paragraph (4), and supervision, as mentioned in paragraph (6), is conducted in adherence to the stipulations outlined in relevant laws and regulations.

According to the analysis of Article 2 of Presidential Decree Number 55 of 2022, it is evident that the transfer of power from the Central Government to Regional Governments encompasses three distinct aspects. These aspects consist of the issuance of standardised certificates, the granting of permissions, as well as the provision of coaching and supervision. This Presidential Regulation is in direct contact with many regional regulations that have been enacted in each region related to mining business activities, even though the scope of regulation of the Presidential Decree is limited to mineral and coal mining. Meanwhile, for other types of mining, such as metals, permits are still under the control of the Central Government.

There are several influences caused by the issuance of this Presidential Decree Number 55 of 2022 on Regional Governments:

1. The Central Government Delegation space is quite extensive, although it does not provide delegation of all permits, this can have an impact and contribute to increasing Regional Original Income (PAD) from the non-tax sector. For instance, the government may issue standardised certifications and permissions for the extraction of non-metallic minerals, specifically targeting certain types of non-metallic minerals. Additionally, they may provide support and issue People's Mining permissions or Individual Production Rights (IPR) for this purpose;
2. This Presidential Regulation also has an impact on several Regional Regulations (Perda) which later require adjustments, including regarding the Management of Mineral Mining in the regions, Implementation of Business Licensing and One-Stop Integrated Services, Preparation of Draft Regional Regulations concerning Guidance and Supervision of Mining Activities, Potential Regional Revenues in the form of levies and fees from mining activities;
3. The potential for abuse of authority in delegation can still occur. This can raise legal issues. The mining permit issue that transpired in the Sangihe Archipelago serves as evidence that the transfer of mining licencing authority to the central government does not necessarily guarantee the resolution of the problem. Cases that have occurred such as mining permits in the Sahinge Islands violated Law Number 1 of 2014 concerning Management of Coastal Zone and Small Islands, allegations of corruption in the process of issuing mining permits. Perhaps the public still remembers the corruption case in the approval of IUP Exploration

and Production Operations conducted by Nur Alam, the Governor of Southeast Sulawesi, which cost the state 4.3 trillion Rupiah during his tenure as governor. Furthermore, there was the mining permit corruption case in Tanah Laut Regency which was committed by Adriansyah as a former Tanah Laut Regent and member of the Republic of Indonesia Parliament who accepted bribes for his assistance and influence in facilitating the processing of company mining permits even though basically he did not meet the procedural and administrative requirements to obtain mining permits. Licensing issues are very close to maladministration issues.

4 Conclusion

Regulation of mining activities is a very complex regulation. So that the state must really pay extra attention so that the benefits of the results of the mining business can be optimally used for welfare and prosperity. The mining regulatory regime has undergone many changes from time to time. Until now, the Central Government through Presidential Regulation Number 55 of 2022 has delegated several licensing authorities from the Central Government to Regional Governments. It is hoped that this can be done effectively and efficiently.

References

1. Ahmad Redi, L. M. (2021). Perkembangan Kebijakan Hukum Pertambangan Mineral dan Batubara di Indonesia. *Undang: Jurnal Hukum*, 476.
2. Aswir, D. (2019, oktober 22). Kompasiana. Retrieved from <https://www.kompasiana.com/danyaswir6993/5dadc008c0cfa131326fab93/pentingnya-industri-pertambangan>
3. Dunia, B. (2010). Ringkasan Eksekutif Perkembangan, Pemicu dan Dampak Harga Komoditas: Implikasinya terhadap Perekonomian Indonesia. 2010, p. 2.
4. IMANDAKARTIKA. (2021, november 20). Retrieved from <https://ombudsman.go.id/kewenangan-dari-daerah-ke-pusat-akibatkan-kompleksitas-tata-kelola-izin-usaha-pertambangan-Indonesia>, K. E. (2019). Laporan Kinerja Tahun 2018. pp. 88-90.
5. Pradana, R. (2022, maret 14). Retrieved from <https://kejadi-pulangpisau.kejaksaan.go.id/https://kejadi-pulangpisau.kejaksaan.go.id/2022/03/14/wewenang-pemerintah-pusat-dan-daerah-dalam-perizinan-pertambangan-serta-permasalahannya>
6. Prihatmoko, S. (2020, november 20). Retrieved from <https://ugrg.ft.ugm.ac.id/https://ugrg.ft.ugm.ac.id/perspektif/arah-dan-perkembangan-industri-pertambangan-mineral-di-indonesia>
7. S., A. A. (2021). Batubara sebagai Sumber Energi: Asal, Jenis, dan Kegunaannya. Retrieved from <https://ugrg.ft.ugm.ac.id/artikel/batubara-sebagai-sum-ber-energi-asal-jenis-dan-kegunaannya/>
8. Sony. (2019, Oktober 18). Retrieved from <https://feb.ugm.ac.id/https://feb.ugm.ac.id/id/berita/2877-indonesia-salah-satu-penghasil-tambang-terbesar-di-dunia>

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