

The Effectiveness in the Implementation of Mining License Business in Indonesia (Based on Law Number 23 of 2014 Regarding Region Government)

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The Effectiveness in the Implementation of Mining License Business in Indonesia (Based on Law Number 23 of 2014 Regarding Region Government)

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Abstract— Mining has gained strong popularity in recent years due to the increase in global demand for metals and other industrial raw material derived from the ground. Therefore, mining is the part of natural resources based on humanity, proved in Article 33 Paragraph (3) Constitution of Republic Indonesia[1]. In this case, mining problems suffered a decline-pull between the management authority of the central government and provincial government. According to Law No. 23 Year 2014[2] on Regional Government, the central government determines the areas that can be mined and then provincial government have the authority to grant mining business licences within these predetermined areas. This impact to negate the rights and responsibilities of the regional government as an autonomous region, that according to Law No. 4 Year 2009[3] on Mineral and Coal Mining gives authority not only to the central or provincial government, but also to the regional government. The problems of this article are to analyze the reason of changes the authority to grant mining business licences in Indonesia and find the impact of amendment that gives provincial government to grant mining business licences. This research uses normative legal research, with statute Approach and

Conceptual Approach that aims to create a management of mineral and coal mines based on the principles of good governance in Indonesia.

1. INTRODUCTION

The management of natural resources is one of the way to reach the welfare of society. It can be reviewed that the natural resources management is in accordance with the mandate of the Constitution[1] of the Republic of Indonesia, in particular in article 33 paragraph (3) stating that,

"The land, the waters, and the natural riches contained therein shall be controlled by the state and exploited to the greatest benefit of the people".[1]

Constitution of Republic Indonesia is intended to mandate all Indonesian natural resources for the sake of people's prosperity. So, in order to realize the welfare of the people about natural resources itself, regional autonomy is considered an important effort, especially for areas that are rich in natural resources. The provision of widespread autonomy to the region is directed to accelerate community welfare through improved service, empowerment and community participation. The effort is done to

bring the function closer to the community, which is expected to produce policies that benefit the community itself, so that it will be sustainable with the purpose of autonomy to achieving effectiveness and efficiency in the service to the community. Therefore, the utilization of natural resources based on the principle of regional autonomy, regarded as a regional effort to manage its wealth independently, as well as on the other side is intended to obtain a source of regional income.

The implementation of Law Number 23 of 2014 on local government that published in October 2014 brought consequences on changes in government authority related to the management of natural resources, including the implementation of business in the field of forestry, marine and also the energy and mineral resources are shared between the central government and the provincial government. Therefore, after the validity of the law, the district/city administration has no longer authority, forming the structure of the Regional Device Work Unit (Department of Mines and Energy Mineral resources), drafting Regulations relating to mining, and issuance of mining business licenses. According to Law Number 4 year 2009 on Minerals and Coal, and all of other related regulations must conform to Law Number 23 year 2014 on local governments.

Article 37 alphabet (a) and (b) Law Number 4 year 2009 on Minerals and Coal:[3]

- a. Mining business license is given by the regent and mayor when WIUP (Mining business license area) is within one district
- b. IUP is given by the governor when the WIUP is in the Regency/city cross after receiving the recommendation of local regencies and mayors

Thus, in the outline of Law Number 23 year 2014 on Local Government is now merely classifying the authority of mineral and coal mastery in the central government and provincial government only, while taking over the authority of mineral and coal mining in the district government. However, the

management of mineral and coal mining the district/city, in accordance with the laws of the previous regional government in Law Number 32 year 2004[4], more focused on the principle of decentralization, which focuses on the externality principle that the area most affected by the affairs of the matter is the reason why the area has the authority to government. But on the one hand, the authority also raises problems at the district/city level. Like the regent/mayor who freely publishes mining business licences, but not accompanied by good mining practices, so that in the journey caused many problems over the mining governance and makes the negative impacts on the environment and surrounding communities. In addition, the mechanism of granting permits that have been conducted by the local government does not refer to the Regional Regulations, called RTRW (Rencana Tata Ruang dan Wilayah) of Province / District / City, so that makes the violations of the basic good licensing governance, with a large number of overlapping licensing, rather land function and environmental damage is high enough in some areas, so that the transitional authority of mining mining from the district/city government to the province government is expected to be answer to the problem of mining business permit in Indonesia. Therefore, the implications of the acquisition of authority of mineral and coal mining by the central government of the district/city government is interesting to be researched because minerals and coal are the one of the natural resources that very important for the sustainability of the development, as well as the accuracy of the mastery authority that is in the central government and/or local government.

II. DATA AND METHOD

A. Data

As a normative legal research, data used in this research are secondary data, that are collected through literature review. The main data are primary legal sources, that consisted

of law and other prevailing governmental regulations and secondary legal sources that consisted of text books. The main regulations used in this research are Constitution of Republic Indonesia, Law Number 23 Year 2014 and Law Number 32 Year 2004 on Regional Government, Law Number 4 Year 2009 on Mineral and Coal Mining, and also the problems in the authority to grant mining business licences in Indonesia.

B. Method

Data obtained are analysed using qualitative method. Discussions are made to understand the conception the aim of the researchers to analyze the reason of changes in the authority to grant mining business licences in Indonesia and find the impact of amendment that gives provincial government to grant mining business licence. Further the researchers discussed the impacts of amendment regional government law to create a management of mineral and coal mines based on the principles of good governance in Indonesia.

III. RESULTS AND DISCUSSION

Aspects of regional autonomy are not be able to achieve at a concrete level of community participation, as previously ruled in Law Number 32 year 2004 on Local Government.[5]. Related to mining affairs, which divides the authority to grant mining business permits between the district, city, provincial, and central governments. However, based on its implementation, the mining sector policy has ignored the principles of democracy and community involvement that should be an important target of implementing regional autonomy. The issues occurred since the issuance of mining area, which is pursuant to article 9 paragraph (2) of Law No. 4 of 2009[3] on Minerals and Coal implemented in:

- i. *Transparent, participatory, and responsible;*
- ii. *Integrated with attention to opinions from institutions, related governments, communities, and by considering the*

ecological, economic, and social cultural aspects, and environmental insight, with regard to regional aspirations.

Further in Law No. 10 of 2009, the granting of authorization for mining business by the central government, provincial government, and district/city governments is governed as follows:

- a. *The central government (article 6) governs the provision of mining business permits, coaching, community conflict resolution, and the supervision of mining business residing in the provincial and/or marine regions of more than 12 (twelve) miles from The coastline (on letter F).*
- b. *District/city government (article 8) governs the provision of mining business licenses, development, community conflict resolution, and the supervision of mining business whose activities are in the district/city and/or sea territory until 4 (four) miles.*

Mining business licence is the most important category in the process of mineral and coal mining business activities[6]. If the granting of permits for mining business activities is not through the procedures in accordance with the rules, the mining business activities can be harmful, such as forest damage and environment failure. As according to Jaja Ahmad Jayus[7], with licensing there is something to do, namely the desire to redirect activity something in preventing the danger that may arise. However, the mining permits issued by district/city governments are often subjected to overlap, which is a huge risk to environmental damage and detrimental to people. [8]

As example, real events occurred in 2012, which the Director of Minerals and Coal Ministry of Energy and Mineral Resources issued a Policy Rules Number 08. E/30/DJB/2012 concerning the termination of the issuance of new mining business license until designated mining area. However, the fact

of the field shows a large number of mining permits that remain issued without the process of establishing a mining area which suggests the opinion of the community in the concerned area, which raises to 4,485 permits and overlapping mining[9].

It has a more severe impact because if accumulated, from 8,263 mining land throughout in Indonesia, only 3,778 land that fulfill the principle of Clear and Clean (CnC). With the overlap of the mining licensing, it is also related with the miscoordination between each regent or mayor in the area, as happened in the mining area of North Sulawesi province, precisely around Buyat Bay, Senunu Bay, and Kao Bay, which results in environmental pollution and damage to marine ecosystems [10]. It is based on the report of the Civil Society Against Mining Corruption which shows that 90% of mining business licenses are not equipped with reclamation and post-mining documents, as well as overlapping with protected forest areas and forests Conservation in Sulawesi mining area, such as 247 mining business licenses operating in protected forest areas, which are most located in central Sulawesi, namely 105 mining business licenses. In addition to overlapping with certain areas, overlap can also occur between the mining business license with business license in other areas. As happened in East Kalimantan province, there are many overlapping areas in East Kalimantan for 3 (three) fields, namely plantation, forestry, and mining. For example, there are cases in Tenggarong, where the location that has been used for plantations is carried out by mining activities, so that the mining business permits to be issued by the district/city government in the location. The overlap of this business will not occur if all parties, without exception obey the rules of RT/RW. With the guidance on the RT/RW, if a location for example has been allocated for plantations then it should not be used for the other things although the location is quite potential, and if it will change the allocation of these locations then the RT/RW rules need to be

changed first.

In addition to these issues, there were also findings from the Ministry of Energy and Mineral resources at the beginning of 2012 before the revision of the local government law, which showed about 10,000 permits issued by The local government, which the total is estimated to have 5,000 problematic mining permits[9]. it does not include any false mining permit, licensing overlap and unlicensed mining practice, called PETI in Indonesia, because the new regent issued a permit without seeing the permits issued by the Regent Before the mining permits that were too easily issued by the local government caused a number of mafia permits mining in other words to sell the license for coal mining business activities other issues also arise on mineral and coal mining areas that often intersect with local indigenous peoples ' areas and even experience overlapping forest areas. In 2012, for example, there are 1,337 mining cases that have been detrimental to the country of trillions of rupiah, which most of the cases occurred due to the issuance of mining business license above the area Forest. A significant case occurred during the Digug's President Soesilo Bambang Yudhoyono by the Churchill Mining company. PLC in the arbitral tribunal, Washington DC, USA. The lawsuit arose due to revocation of IUP Churchill Mining. PLC conducted by the Regent Isran Noor, the latest regent of East Kutai District while Churchill Mining. PLC has obtained mining business license through the previous regent. Upon revocation of the mining business license, Churchill Mining. PLC sued the Indonesian government that was represented by President Susilo Bambang Yudhoyono of USD

2 billion. These shows that each area has a similar and massive problem that occurs continuously, so it takes an improvement to the mining licensing system in order to maintain the welfare of the community and the legal certainty.

According to Ni'matul Huda, in the concept of unitary State, it is necessary that the relationship between the center and the

district, which although in practice is found to attract interest, can still seek that the central government is in control of various Government affairs[11] as a consequence as a state of unity, the party holding authority rests on the central government. It is worth remembering that the authority given to the area is very limited, even in practice, can be given and reacquired, in accordance with the original intent of article 18 paragraph (5) Constitution of Republic Indonesia, that:[1]

"The local government is running its vast autonomy, except that government affairs by law is determined as the business of the central government".

According to Hikmahanto Juwana, the authority of the district/mayor in issuing mining business licenses must be revisited due to the frequent sale of mining business licenses in the mine company, when it is real harm to the country, Even the area itself, and certainly the greatest impact on the local environment. The assessment of the authority of the regent/mayor in the issuance of mining business license is also in line with the president's policy, especially in the energy limited cabinet session dated August 7, 2012. Therefore, the takeover of the mining business permit issuance authority to be the authority of the central government is nothing but not to create performance efficiency as well as minimize the problems in the field of mineral and coal mining. It can be acknowledged that the policy can be justified because the central government has the authority to evaluate the permits issued by local governments that have caused environmental damage and that do not apply the good mining principle.

The issuance of mining business license which now becomes the authority of the provincial government according to the Directorate of Regional Autonomy, Djohermansyah Djohan is to facilitate the supervision of the centre for the utilization of natural resources of the regional quantity. By doing so, the enforcement of mining business permits by the provincial government began by revoking some regional

regulations governing mineral and coal management. The revocation of regulation of this area is set forth in the Policy Rules of ESDM Number 43. E/30/DJB/2015[12] and also stipulates the government of ESDM Number 43 year 2015[13] which governs further assessment procedures for issuance of Mining business licenses. Before the decree of the Constitutional Court Number 56/PUU-XIV/2016 [14] regarding the cancellation of local regulations by the Governor or the minister, the local regulations governing the management of minerals and coal were revoked by the Ministry of Interior. There are a number of 3,143 regulations, both local regulations, local head regulations, and domestic ministerial regulations that were cancelled or revoked by the Minister of the Interior in 2016, which in accordance with the Instruction of the Minister of State Number 582/476/SJ on the revocation or amendment of local regulations, local head regulation, and decree of the regional head that impede bureaucracy and investment licensing as stipulated in February 2016.

In this case, the policy rules confirms that the district/city government remains obliged to assist the provincial government and central government to coordinate on the granting of mining business permits, even though its authority has been diverted to the fairness of the district/city government based on the principles of the pemaia assignment given by the provincial government or the central government.

In addition, Law Number 23 of year 2014 also has a major influence on the management of mines in the region, which is the authority of the management of mines from the district government to the provincial government to make an institution Mine management has quite significant changes, such as in the availability of human resources, affordability of public service access, community involvement, technical skills and managerial officers, coordination, and range of controls. [15]

Availability of Human Resources

Based on the fact, the availability of existing human resources is still not enough need to implement the management of mines, for example in the province of Central Java, which is related to handling the problem of construction and administration Minerals that include licensing and supervision. In terms of licensing, the fields of minerals and coal have only 3 (three) staff. With this amount, mineral and coal sector is still having difficulties to arbitrating licensing problems. Lack of availability of human resources addressing licensing issues in the ESDM office of Central Java province raises several problems. The most noticeable problem due to the lack of availability of human resources is the administration of files and database of licenses used as one of the instruments to control mining activities that are still chaotic. The licensing file that came in since 2016 was not included into the mining licensing database, so that it causes the local community to apply for permits to enter and remanage the missing mining licensing file, whereas negligence is in the department of ESDM.

Affordability of Public Service Access

The validity of Law Number 23 of 2014 on Local Government also impacts the management of mines switching from the district government to the provincial government. This has a significant impact on public services relating to the management of the mines that should now be through the provincial government. In the case of licensing, for example, the previous permit of the mine through the office of ESDM district/city should be taken care to the provincial government through the integrated one door provincial investment and licensing system, called PTSP, which has subsequently forwarded to the ESDM office provinces to receive the letter technical recommendation of mining business licenses. Centralized licensing in this province is a bit of an objection, especially for the district/city area that is located quite far from the provincial

government. The result of licensing that must be managed directly to the province is quite a lot of complaints from people who want to apply for mining permits, especially for small-scale mines, which limited capital and with a location far from the place. The permissions, plus when there are incorrect or less file or licensing requirements, resulting in them must later return to complement the administrative file. A real example takes place in the Kebumen area, which has clay mines that are also the most excavated non-metallic mineral commodities because of their utilization as the main raw material of tile-making and bricks that are widely available in Kebumen District. Most of these are small-scale mines with limited capital, so since the implementation of Law Number 23 year 2014, there are a lot of mining activities that do not have permission with the excuses of the mine carried out in land owned by the residents itself, and resulted in surveillance activities by local governments, the community used the pretext to fight [16].

In general, until August 2016, there were still many regents or mayors who have not submitted the mining permit data on the governor thus resulted in the process of evaluation of mining business license running less effective. It can not be denied because there are some regional heads that refer to [3] Law No. 4 of 2009 which governs the authority to grant mining business license is still at the authority of the district/city government, and It is also one of the reasons why the district government has not yet to submit personnel, equipment, financing, and documents to the provincial government [17]. and in this case the local government law provides a period of at least 2 (two) years for the handover of personnel, equipment, financing, and documents counted since the regional government law enacted.

The evaluation of Law Number 23 year 2014 shows data on mining business license that has been declared to pass evaluation or Clear and Clean (CnC) status of only 6,335 IUP

from a total of 9,721 mining business licenses, and It is estimated that there are still thousands of other mining business licenses that are Non Clear and Clean.[18]. Thus, it carries on a bright spot that the mining business permit problem will never be completed when the focus of attention is only in the institution which is authorized to grant permission, but also required Mining licensing Setup. This is because everything that causes the revocation of hundreds of business licenses of problematic mining is also due to lack of supervision, especially the supervision of coordinating supervision by the KPK institutions, which has a duty to Implementing action plans for a number of issues, such as the arrangement of mining business permits, 7) implementation of financial obligations 24) mineral and coal mining business, the implementation of the surveillance of mineral and coal mining production, implementation of Processing obligations of mineral and coal mines, and also the conduct of the Sales and transportation supervision of mineral and coal mines[19].

Thus, based on the analysis and the facts that occur shows the advantages and disadvantages of the acquisition of mining business license authority in some areas of Indonesia. On one side, there are a lot of violations and overlapping licensing when the authority to grant mining business licenses is at the Regent/mayor, but on the other hand, the fact shows that it will be very inefficient when the Regent/mayor is not involved at all. This is because the reach of the governor's work area is extensive and can not intensively monitor, nurture, and supervise in case of problems in the field, while such problems will not be encountered in district/city governments. Then, by adapting the Law number 23 year 2014, the supervisory mechanism will also remain an important thing to do by the state, in which case the government is in order to supervise and control that the implementation of By the state of the important production branch and/or who mastered the life of the widely intended people

6) are actually done for the maximum prosperity of the people. It is the obligation of the local government, either the governor or Regent and/or mayor. Thus, it is not precisely when the District government/city is not authorized at all in the process of supervision, development and empowerment of local communities in the mining business, and will only result in this process is precisely will never be effective. Thus, it takes the involvement between all parties, with proper consideration and portion and well balanced in order to conduct mining affairs in Indonesia to be better ahead.

IV. CONCLUSIONS

Based on the analysis, government policy on the aspect of licensing in mining in its implementation experienced many problems, especially many permits issued without following the methods of protection of forests and sustainability Environmental causes overlap, which is largely due to miscoordination between each regent and/or mayor in the area so that the Transitional 26) al authority of mineral mining and coal from the district/city government To the provincial government is expected to be the answer to the problem of mining business license in Indonesia. It is in line with the president's policy, especially in the energy limited cabinet session in August 7, 2012.

The issuance of mining business license which is now a authority of the provincial government has a glorious goal to facilitate the supervision of the center over the utilization of natural resources with the review of the local quantity. By doing so, the enforcement of mining business permits by the provincial government began by revoking some regional regulations governing mineral and coal management. With the takeover of the Mining business license Issuance authority which is the authority of the central government can create performance 4) efficiency as well as minimize problems in the field of mineral and coal mining, so that the policy can evaluate

the Provisions issued by local governments that have caused environmental damage as well as those that do not apply good mining rules.

This indicates that Law Number 23 year 2014 has been appropriately placed to put the mining business license into a central government authority. However, it is necessary to not only focus on the institution that gives mining business license, but also need to increase performance, efficiency, and supervision as it has been the task of the country to supervise and control Implementation of the mastery by the state of the important production branch and who mastered the life of the crowd was actually implemented and done for the greatest prosperity of the people. It is the obligation of the local government, either the governor or Regent and/or mayor. In addition, with the coordination of supervision by the KPK institutions, which has the duty to implement the action plan for a number of issues, such as the arrangement of mining business licenses, the implementation of financial obligations of mineral mining business actors, and the implementation supervision of mineral and coal mining, also to improve of the obligations process in mineral and coal mines, and also the implementation of the supervision of the sale and transport of mineral and coal mines when certainly can be the key to improving the effectiveness of the implementation of mining business licenses in Indonesia for the implementation of regional autonomy that remains synergized both in the concept of Indonesian unitary state.

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