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PROBLEMATICS OF CHANGES IN MINING AND BANK PROVISIONS IN MINING LICENSING AUTHORITY

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Abstract: Problems with changing the policy of the Coal Mineral Law, regarding changes to permits, have resulted in some disharmony between the regional government and the central government. This writing was carried out with a focus on writing regarding mining licensing authority with reference to the Minerba Law with Law Number 3 of 2020. The purpose of this research is to evaluate the disharmony of minerba mining licensing policies by the central government towards regional governments. The method used in this research is normative juridical. In conducting research, the author obtains information by digging, finding out and finding a legal principle, rule of law, and legal doctrine which will be used in the future to answer several existing legal issues. The problem with changing policies regarding mining permits is because there are several substantive articles in the law which have logical consequences for the regional autonomy management sector. The takeover of mining licensing affairs by the central government "Centralization" has consequences, namely the reduced function of the state's right to control over the mineral and coal mining sector in regional governments, both provincial and district/city. The centralization carried out by the government is a way of simplifying mining business licensing, so that in this case the central government aims to make policies regarding management and licensing easier.
Keywords: Minerba , licensing authority , mining , regional autonomy

INTRODUCTION

Natural resources are one way to meet human needs. Indonesia is a country that is rich in natural resources, there are lots of natural resources such as gold, coal, oil and many others. With the rich natural resources that exist in Indonesia, it can be a way to improve our country's economy and can be used for prosperity and welfare of society. Mining in Indonesia is one of the natural resources in Indonesia, therefore there is a need for regulations governing mining to carry out and regulate these mining activities. The laws and regulations that regulate mining activities are Law No. 3 of 2020 concerning mining. The purpose of this regulation is to regulate the course of mining activities from licensing to after mining or it could also be said to be post-mining. and is not responsible for what is done, especially if it can harm the people in the mining area.

Local government in terms of mining management is a bridge to the central government in the form of decentralization and deconcentration. Local governments have the authority to manage mining in their territory. Regional governments also have great authority in terms of regulating and managing mining activities carried out by the people themselves. Over time and the development of the era, the management of mining activities in the area has become managed by the private sector (regional community) and there are also BUMD (regional-owned enterprises), this has actually had a positive impact on the people in the area. The existence of a private party that regulates mining in the area, makes changes especially in terms of the economy in the area and also provides jobs for all people in the area, an increase in the economy also makes the community prosperous and prosperous. The government's authority in forming laws should involve community participation so that there are no very one-sided elements in making decisions.

The goal in involving the community is to create fairness for both parties, community participation is what is needed in establishing authority so that when this authority is exercised, there will be no interference with that authority and it can run well. With community involvement, various policies will be achieved represents the interests of the wider community, so the community is also needed so that they can participate in monitoring the implementation of government policies.

The Mineral and Coal Law contains articles that are controversial and create fear among the public because there can be criminalization and discrimination against those who refuse mining businesses and there are biased permits in these articles. In this article of the Law it actually provides a smooth path for mining companies, there is a sentence stated that anyone who disturbs mining can be punished and fined, in this article it can disturb people who reject mining businesses in the area and get criminalization.

MAIN PROBLEM

From the introductory description, the author formulates the main problem, namely how the problems of changing mineral and coal regulations within the authority of mining permits.

METHOD OF RESEARCH

In this research, the author uses normative legal research. Normative

legal research is a stage or process for exploring, finding out and discovering legal principles, legal rules and legal doctrine which in the future can be used to answer several existing legal issues.

This research uses secondary data consisting of primary legal material through observations of various provisions in Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009. Meanwhile, the secondary legal material uses data sourced from journals, books, articles, and other relevant literature. The data is then analyzed normatively.

RESEARCH RESULT AND DISCUSSION

Mineral and coal mining has been going on for a long time, developments in the management of mineral and coal mining have currently taken regional authority by the central government. After the new regulations were adopted by the central government, there were many challenges to this authority because the mineral and coal laws emerged which contained controversial articles that created injustice between local communities and mining entrepreneurs. The local community believes that the central government's authority actually gives mining entrepreneurs a red light for mining businesses and does not think about the local community.

Mineral and coal mining is regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining, currently part of this Law has been amended by Law Number 3 of 2020.

The development of mineral and coal mining management regulations existed during the colonial era, Indonesia is a country that is rich in natural resources, including gold, metal, iron, copper, nickel and many others. Not only that, Indonesia is also the country that is richest in natural resources in the world. In the colonial era mining activities could not be separated from the goal they themselves are dredging and taking all the natural resources that we have for their own interests and they take everything easily without any difficulty in taking the natural resources that exist in Indonesia, including mineral and coal. During the Dutch colonial era, mining activities became part of the monopoly through the VOC or in Indonesian the Dutch East Indies Trade Union. They formed it because they wanted to control trade in Asia. At that time they created a mining service called Dienst van het Mijnwezen in Batavia, their aim was to make mining activities optimal and more focused.

At that time, the Dutch's efforts to carry out mining activities brought about policies that were in force in their country of origin, namely the Netherlands, the regulations regarding mining, namely the Mijn Reglement which was made in 1850. This policy became the legal basis for the Dutch government in taking mining in Indonesia, including taking mining activities. At that time, this rule was often used on the island of Java, where the natural resources that existed at that time were on land, namely agriculture and plantations. As time went by there was also a development, namely the Indische Mijnwet Staatblad regulation in 1899 number 214. Initially this regulation was the Mining Law of 1810 which replaced the previous Law in 1791. The Indische Mijnwet itself regulated the classification of minerals and mining operations. . Not long after, the

Dutch government issued another regulation related to mining, namely Mijnordonnantic in 1907 which regulated work safety supervision. At that time, the Indische Mijnwet also collaborated with private entrepreneurs for quite a long time, after the implementation of these rights, as time went by, these regulations began to appear to bother private entrepreneurs, therefore the Indische Mijnwet was amended in 1910.

As time went on, until the end of the Dutch colonial period and turning to the Japanese colonialists, the regulations for mining activities did not change at all, so during the Japanese colonial era there were no new regulations regarding mining activities and even continued to carry out the rules left by the Dutch. The description above is about the regulations for mining management at the time when there were colonialists in Indonesia before independence, from the description above we come to know that mining activities were part of the colonial goals along with the spices they were looking for first. Not only did they take all the spices, they also dredged up as many mines as possible with the aim of avoiding national competition other. This policy left concessions, permits and contracts. It can be seen from here that the mineral and coal mining arrangements during the colonial era were concessions, permits and contracts.

When Indonesia announced that Indonesia was independent on August 17, 1945, there were many changes, one of which was the management of mineral and coal mining. After Indonesia became independent, the 1945 Constitution of the Republic of Indonesia became the highest law in Indonesia. The law contains rules regarding the management of natural resources in Indonesia, including mineral and coal mining. In Article 33 paragraph 2 which reads Production branches which are important for the state and which affect the livelihood of the people at large are controlled by the state, and paragraph 3 Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people . This means that all mining activities that exploit natural resources must be controlled by the state and used as much as possible for the prosperity of the people. In fact, the word controlled is very sacred in the management of natural resources, but the government still uses this word incorrectly.

After independence, the first legal regulations governing mining were Law Number 78 of 1958 concerning Foreign Investment (UU PMA). When viewed from the nomenclature, at first glance it does not regulate mining, but there is a section of material whose content mentions and regulates mining, in article 3 paragraph 1 of the Foreign Investment Law. The existence of this legislation is a development in national law from a mining perspective. The second regulates mining is Law Number 10 of 1959 concerning Cancellation of Mining Rights, this regulation exists because many cancellations have been issued, when the Law is in force it is hoped that the government will make new regulations to regulate the granting of new rights and after a motion pressing the government. Then in 1960 the government issued a new policy, namely Government Regulation in

Lieu of Law Number 37 of 1960 concerning Mining. This Perpu is the third regulation on mining, this Perpu shifts the validity of Indishe Mijnwet to end. The 1960 mining regulation allowed the government to attract foreign capital to develop exploitation activities in the mining business.

In 1967 the government decided to make a new rule, namely regarding Foreign Investment (UU PMA 1967), this law became the fourth mining regulation. the content of the mining regulation is in contrast to the previous Foreign Investment Law in 1958, this law provides broad opportunities for foreign parties to invest in Indonesia from various aspects. In the same year as the new PMA Law, Law Number 11 of 1967 concerning Basic Provisions was also issued Mining (Mining Act 1967).

This law can be said to be the fifth regulation in mining matters. This new law contains opportunities for foreign investors to invest in mining management in Indonesia and gives mining management authority to the central government. The description of mining policy so far shows that there has been a fundamental change in mining management.

1.In 2020, there was another change in mining policy, namely Law Number 3 of 2020 concerning amendments to the 2009 Minerba Law. In this new policy, the authority held by regional governments shifted again to the central government. The Minerba Law was updated with the aim of providing updated regulations in the management of mineral and coal mining, however many problems arose in the community because of the changes to the Minerba Law. With the return of authority to the center, it creates a problem with the principle of regional autonomy, some people living in mining areas strongly disagree with the revision of the Minerba Law. Many people do not agree because many people are criminalized because they do not have the power to fight against the government and mining authorities because if people fight back, they can be punished because it is regulated in the revised Minerba Law. It is also proven that mining entrepreneurs do not close down after mining, in fact this also endangers the local community because it can cause a disaster or accident because there are still many mining products that are not reclaimed or post-mined. Many of the controversial articles on the revision of the Mining and Coal Law require amendments to these controversial articles.

The relationship between the regional government and the central government is the main legitimacy for carrying out regional autonomy in various fields, one of which is Mineral and Coal mining. According to the formulation of article 118 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, which states that "regional governments exercise the broadest possible autonomy, with the exception of government affairs which are determined by law to be the domain of the central government." Natural wealth in the form of minerals and coal is one of the natural resources (SDA) which has a relationship with the environment and a link between central and regional government authorities in managing mining businesses. The Constitutional Court (MK) in Decision Number 002/PUU-I/2003 provides several interpretations of the right to control the state which also regulates the

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In Law Number 32 of 2004 it is explained that regional governments do not have the right to make government policies both to regulate, manage, supervise, and carry out management actions. The provisions in Law Number 32 of 2004 show that the central government wants an efficiency or reduction in both performance and problems in the field of mineral and coal mining.

This disharmony or dispute exists in the 2009 Minerba Law which provides licensing authority to regents and mayors, while Law Number 3 of 2020 concerning mineral and coal mining brings several major changes, especially regarding regulation of the authority to control a mining business permit (IUP).) which was transferred all to the central government. This disharmony has also caused controversy with Law Number 23 of 2014 concerning Regional Government "Pemda" which explains that there is no role at all for local governments in issuing mining business permits (IUP). The withdrawal or takeover of this authority by the central government could result in conflict with regional autonomy. Why is that because, the change in authority can affect the change in decentralization in the scope of regional autonomy which is contrary to the mandate of the 1945 Constitution of the Republic of Indonesia itself.

It is feared that the withdrawal of authority by the central government over regional governments regarding the issuance of mining business permits as stipulated in the Minerba Law will have an impact on a pattern where there is freedom to make one's own decision in a situation that will be faced or often called "Discretion" .

Looking at the table above regarding changes regarding the takeover of regional government authority by the central government, in reality, this provision means that state sovereignty only belongs to the central government. Why is that, because the regional government also has sovereignty that is inseparable from a government system. This is also considered to be contrary to the 1945 Constitution of the Republic of Indonesia, Article 33, which states that the national economy is organized on the principles of economic democracy with the principles of togetherness, justice, sustainability, efficiency, independence, environmental insight

and maintaining balance and regional economic progress.

Apart from these various problems, regional governments feel many impacts, such as the loss of the spirit of regional autonomy and environmental damage. In this case, it can be interpreted that the loss of regional government authority regarding mining business permits has resulted in regional dependence on the order of norms and standards created by the central government even though it contains a goal, namely resolving the disharmonization of regional government and central government regulations. The absence of regional government authority also results in an increase in illegal mining, in which case the regional government cannot intervene in controlling the prevention of damage to natural resources (SDA) in mining areas in the region. We can see the sound of Article 162 of Law Number 3 of 2020 which states "that people who try to interfere with mining activities in any form can be punished, even with quite large fines". According to the author, this is unfair because it is a form of criminalization carried out or carried out by legal entities/corporations against people in the mining sector. Communities directly affected will be punished (Criminal Sanctions), especially for those who refuse to exploit their territory. Article 128A of the Job Creation Law Number 11 of 2020 which replaces the Minerba Law also explains the form of rewards/royalties and incentives of 0% for economic actors who are able to increase the added value of coal. With the addition of rewards/royalties, mining entrepreneurs are enthusiastic about carrying out large-scale exploitation of local natural resources without thinking about disasters caused by human involvement in the destruction of nature.

In the author's opinion, both government policy and authority in the field of Minerba mining have a strategic role in solving problems that occur in the Minerba mining sector. Therefore, the government is expected not to be too oriented towards mining business issues only but must look at environmental conditions and the community in making every decision regarding mining policy so that harmony and justice emerge from both the community, business actors and the government. The government as the body responsible for supervising mining in the area must make directed and systematic improvements for all parties with an interest in mining. The simplification of permits granted by the central government to regional governments in handling management in the mining licensing sector is carried out centrally. This is done to improve the regulation and governance of mineral and coal mining which has been issued or issued arbitrarily. The method issued by the central government is expected to facilitate monitoring of natural resources in various sectors, especially mineral and coal mining by the central government to predict natural damage resulting from mining. The centralization imposed by the government is a form of simplification regarding licensing for mining companies, so that the enactment of this method aims to make obtaining permits simpler. The principle of expediency is the principle by which the management of mineral and coal resources can provide benefits and uses for the welfare of society at large. Thus, the responsibility and role of the

government are needed in order to be able to provide a sense of justice, certainty, and benefits in accordance with the situation and conditions that exist in society.

In addition to supporting sustainable development, the intervention of the central and regional governments in mining activities is also very much needed. Why is this necessary? Because it is a form of fairness for the state, especially the Indonesian government, which is basically in accordance with the mandate in the 1945 Constitution, is the ruler over the natural resources contained therein, and on the other hand, must be utilized for the welfare and prosperity of its people.

CONCLUSION

The relationship between the regional government and the central government is the main legitimacy for carrying out regional autonomy in various fields, one of which is Mineral and Coal mining. The author concludes that the process of withdrawing authority by the central government to regional governments regarding the issuance of mining business licenses contained in the Minerba Law can be feared to have an impact on a pattern where there is a freedom to make an own decision in a situation that will be faced or often referred to as " Discretion". This can be interpreted that the authority of the local government is lost regarding business licenses Mining causes regional dependence on the norms and standards set by the central government even though it contains a goal, namely to resolve the disharmony of regional government regulations and the central government. The absence of regional government authority also results in an increase in illegal mining, in which case the regional government cannot intervene in controlling the prevention of damage to natural resources (SDA) in mining areas in the region.

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