Legal Consequences of Takeover of Authority in Mineral and Coal Mining by the Ministry of Energy and Mineral Resources of the Republic of Indonesia

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Abstract. Naturally, when the Regency/City Regional Government takes over the governing functions of the mineral and coal mining sector, it has implications for obtaining funds from the State revenue sector. The Central Government has taken over authority in the field of mineral and coal mining from the district/city Regional Governments, which previously had the authority to grant mining business licenses in their territories, as a result of the enactment of Law Number 23 of 2014 concerning Regional Government. The dynamics of mineral and coal mining regulations in Indonesia, central and regional authority in the area of mining from the standpoint of state control rights, as well as the effects of legislation taking the control of mining authority from the district/city regions to the center are all research problems. This study is normative in nature and takes a conceptual and legislative approach. Several implications exist in the Law No. 4 of 2009 concerning Mineral and Coal Mining is considered to have not yet made progress in dealing with problems that occur in the mining sector in Indonesia. Renewal of the Minerba Law to become Law no. 3 of 2020 is expected to be able to improve mineral and coal mining so that it has real participation in the community, the authority between the center and the regions, the financial relationship between the center and the regions, and the supervisory relationship between the center and the regions. Results It should be noted that coal and mineral extraction are non-renewable natural resource types with high levels of devastation, so mining operations will have a very negative impact on the surrounding ecosystem and the residents of the mining area. There are (negative) externality criteria in this situation that demand attention. By eliminating the function of district/city regional governments, the severity of damage is increased.

Keywords: Takeover of Authority, Mining Norms, Regional Regulation Norms.

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1 Introduction

It is necessary to discuss the dynamics of mineral and coal mining policy development for at least three reasons. First, Indonesia is a country rich in geological resources, both in the form of radioactive minerals, metal minerals, non-metallic minerals, and rock and coal minerals [1]. Iron, primary gold, copper, nickel, bauxite and silver are types of metal mineral geological resources that are the mainstay of Indonesia. The 1945 Constitution of the Republic of Indonesia, which declares that "Earth, water, and the natural resources contained therein are controlled by the state and used for the maximum great prosperity of the people," as well as numerous cross-sector laws and regulations, can be seen as regulating the management of natural resources.

In essence, natural resources are categorized as consisting of 2 types, namely natural resources that are conserved and natural resources that cannot be conserved. Non-renewable natural resources, such as natural gas and oil, and coal) are also called fund resources or stock resources. Every time this natural resource is used by humans, its availability could potentially decrease. Because they can be used wisely to practically last forever, renewable natural resources are also known as flow resources.

The principle of regional autonomy in the scope of law is considered to have involved the community in law formation, for example in the formation of new legislation. The establishment of new laws is undoubtedly handled by the appropriate authorities, but it is important to consider the necessity of doing so and whether doing so will be feasible from every angle in the society. New laws and regulations must go through several stages of development before being approved. This is a legal phase because it is controlled by regulations that are currently in effect, specifically Article 1 Paragraph 1 of Law Number 15 of 2019 Concerning Amendments to Law Number 12 of 2011 Concerning Formation of Legislation.

If it is associated with urgency in making laws and public policies, it is desirable to use material sources. These material sources consist of two kinds, namely philosophically and sociologically. Philosophical means that every law is required to adjust justice for Indonesian citizens [4]. Meanwhile, sociologically, it means that every law and regulation is required to see and adjust the objective conditions of Indonesian citizens, both in the economic, anthropological and other fields. What is no less important and of particular concern is the participation of every Indonesian citizen. This will give rise to citizen freedom as well as a positive response because they are involved in the process of forming laws and public policies through active and open communication and the implementation of these laws and regulations.

Minerba mining has been practiced in Indonesia for a very long time, so numerous legal frameworks supporting it have undoubtedly developed. The Minerba Law aims to give the community a chance to manage local natural resources under the direction of the center in order to develop superior and environmentally sound human resources. It has been determined that it is necessary to amend Law Number 4 of 2009 Concerning Mineral and Coal Mining to Law Number 3 of 2020 Concerning Mineral and Coal Mining. In terms of the legal requirements necessary to address the difficulties and issues that exist in the mineral and coal mining industries, UU No. 4 of 2009

has not demonstrated any progress. This is considered to be an urgency for harmonizing laws and regulations so that they become efficient and effective.

The four foundations for formulating mineral and coal policies are in the form of philosophical, political, legal and strategic foundations. This foundation is clarified in the Decree of the Minister of Energy and Mineral Resources of the Republic of Indonesia Number 77.K/MB.01/MEM.B/2022 concerning the National Mineral and Coal Policy. This foundation is necessary because in view of the important role of production for the Indonesian state, it is through sustainable and responsible mining management. If this goes smoothly, it will provide added value for the prosperity and welfare of Indonesian citizens, which is one of the tasks of the government and the House of Representatives. Legislation or policies are usually formulated by bureaucrats. Bureaucrats should be independent of every Indonesian citizen in accommodating people's aspirations. In fact, as ordinary people there are many aspects that can influence bureaucrats in forming laws and regulations. This raises the opinion that laws and regulations are made only for the interests of some groups, not for the interests of all Indonesian citizens [5].

This is because the latest regulations related to mineral and coal mining are needed in order to increase the added value of products as an amplifier of competitiveness with other countries. The purpose of this strengthening is so that the Indonesian state can be free and become a producer of raw materials because so far Indonesia has suffered many losses due to unreporting transactions in giant mining whose value is quite large. The revision of this law was made to provide a deterrent effect and as a strict sanction for violators. In an ideal concept, the revision of this law is deemed necessary for the interests of the nation and state of Indonesia, which has a large number of mining areas. The existence of this regulation is considered to be able to help increase the downstream mining products which are the cornerstones of reindustrialization.

2 Methodology

The research methodology used in this study is a normative juridical research type that employs a conceptual approach (conceptual approach) and statutory approach (statute approach). The methods of approach used are the statutory approach and the case approach. Statutory regulations are a source of primary legal materials, while books, scholarly journals, and websites are a source of secondary legal materials. In the form of books, dissertations, academic papers, term papers, reports, journals, articles from print and electronic media, and research-related documents, secondary legal materials are those used by researchers to explain primary legal materials. Websites and social media were used to find non-legal research materials. The acquired research material is then descriptively analyzed.

3 Result and Discussion

Analysis of the Legal Consequences of the Takeover of Authority in the Mineral and Coal Mining Sector by the Ministry of Energy and Mineral Resources of the Republic of Indonesia

Changes in law become an urgency which results in a written form that guarantees, but in terms of adaptation it is always a problem. Two forms of legal changes that usually occur consist of two characteristics, namely ratification and proactivity [7]. Simple ratification of law changes means that they take into account what has already been practiced by the Indonesian people and adjust the law accordingly. These legal changes often occur or are implemented in Indonesia. Proactive legal changes are the opposite of ratification. Simply put, the community hasn't implemented the practice yet, but there has been an idea formed for change so that a change in law occurs first. This causes the law to act as a means of engineering society. An important step that must be taken as a solution is conceptually. [8] In the formation of legal policy, one of them is to arrange the Draft Law [9]. This draft may not conflict with the 1945 Constitution and various existing laws and regulations or do not overlap. In addition, another urgency in the formation of laws and regulations is to adjust social developments starting from economic, agricultural, cultural aspects, and so on. Therefore, in order to avoid harming particular parties, it is essential to be aware of how the Government and the DPR examine the forces involved in the process of formulating laws and regulations. The Minerba Law is a law that governs the use of materials used in coal and mineral mining as well as the actual mining process. The study of law in the area of mining law is advancing quickly. The establishment of various mining regulations provides evidence of this.

Government Legal Politics in Reforming the Minerba Law

The significance of legal politics in the creation of laws and regulations is closely related to legal politics in Indonesia. In the process of establishing, determining, establishing, and developing values in Indonesian national law, legal politics serves as a fundamental guideline. Political actions taken to establish the general rule of law in order to strengthen the creation of enduring laws and regulations are referred to as legal politics.

The legal politics in the Minerba Law leads to the development of practical law in which the government provides regulations that support practical matters in the mining sector which regulate the rights and obligations as well as the protection of mining entrepreneurs and so on. Because of the rise in demand for industrial raw materials, increased business activity by state-owned and private entities in the mining sector is becoming more and more obvious. The previous Minerba Law is still not a solution for legal requirements in issues relating to mining and the development of mineral and coal mining, as the author described above. There are advantages and disadvantages to the new Minerba Law's ratificationThose who support the Minerba Law revision believe that it is critical to reform regulations in order to make them clearer because the previous regulations were deemed inappropriate. Meanwhile,

those who are against think that the formation of new regulations regarding mineral and coal is only for the benefit of the main capital owners in mining investment. In addition, the process of forming this regulation was considered too fast from a formal point of view, especially because it was carried out during the Covid-19 pandemic. In addition, the reform of the Minerba Law is considered to have material defects in the substance of the a quo articles as well as other problems related to the environment and public health and has resulted in low regulation implementation in society [11].

In the management of mineral and coal mining, one of the legal politics that is clearly visible is regarding the provision of economic protection for the people and the State, even if there are losses incurred. Several points that have urgency in the revision or new Minerba Law are related to the following matters:

1. Management authority and licensing. Where regarding the control of mineral and coal mining, the Government and the DPR agree that the central government has the power in terms of functional policies, administration, management, supervision, amount of production, sales and prices. At present the political direction of mining law has changed where licensing authority is no longer a priority for local governments after the amendment to the new Minerba Law. However, it should be noted that there are licensing authorities delegated to regional governments, for example in small-scale assistance and people's mining permits. This authority is a very prominent legal policy in the revision of the Minerba Law. Even so, the direction of legal politics in the amendment of the Minerba Law is again running backwards, distorting the essence of regional autonomy by acquiring mining licensing authority as in this point.
2. Extension of operating license. In the old Minerba Law permits could be extended but in the new Law they are replaced with guarantees. Guarantees related to the operation of contracts of work and or work agreements for the exploitation of coal development, holders of mining business permits, as well as holders of special mining business permits that are sustainable as operations with considerations in terms of efforts to increase state revenues in Article 47, Article 83 and Article 169, Article 169 A and Article 169 B.
3. Downstreaming or increasing added value. Regulations related to downstream in the revision of the Minerba Law are contained through activities and domestic refining, which are specifically for mineral sub-sector license holders and are also required to build these purity facilities with a maximum time given of 2023. The time period is included in the intensive support for this downstream project, especially in licensing for mining business permits and special mining business permits that are closely related to the management and licensing of mining operations. Apart from that, there is also a relaxation of exports of metal mineral products that are still not refined with the time stipulations in the revision of the Minerba Law since it came into force. Related regulations can be seen in Article 102, Article 103, Article 47, Article 83 and Article 170 (A).
4. Investing. When in the production operation stage, holders of mining business permits and special mining business permits must sell 51 percent of their shares to the central government, regional governments, state-owned enterprises, and

regionally owned enterprises where the Government and the DPR have agreed to this regulation in Article. 112.

5. Not based on spatial basis. Content related to the legal substance in the revision of the Minerba Law was determined not on the basis of available spatial planning but through the determination of areas that have mineral and coal mining potential and have no ties to boundaries in government administration which are part of the national spatial layout. So this is feared can lead to the utilization and exploration of mining that is not in accordance with applicable procedures and there is no protection of the surrounding environment.
6. People's mining, reclamation and post-mining. The community mining area's size was previously limited by the old Minerba Law to 25 hectares with a maximum depth of 25 meters; it is now permitted to mine for a total of 100 hectares with a maximum depth of 100 meters. Holders of mining business permits and holders of special mining business permits must finish post-mining reclamation before entering the Mining Business Permit Area (WIUP) and Mining Business Permit Area (WIUPK) or those that have expired. This reclamation must be carried out until it reaches 100 percent success and place a post-mining guarantee fund.

Based on the above points, it can be said that most of the government's legal politics in the revision of the Minerba Law is in the first point regarding mining management permits. Even though the locus of mineral and coal mining is located in the region, so that the district or city should have authority in mineral and coal management. According to Berge, a permit figure is a sign of approval from the government given based on statutory regulations, but under certain circumstances it can deviate. By giving permission, the government allows the person who submits the application to perform certain actions that are actually prohibited [12].

Mining operation license holders who switched from the regional government to the central government had a negative impact. These impacts include that the community cannot report to the local government regarding the rejection of mining activities which are considered to cause environmental damage or conflict disputes. Even if the community's rejection of mining activities is considered to be disruptive to business activities, then the community can be reported and subject to punishment as discrimination in Article 162. The laws referred to in Article 33 paragraph (3) of the 1945 Constitution, Article 28H of the 1945 Constitution, and Article 5 paragraph 1 of Law No. 23 of 1997 concerning Environmental Management require all businesses that are involved in environmental activities and have the potential to alter, in this case damage or pollute, to adhere to certain principles and standards.

Article 165 of the Minerba Law previously contained criminal sanctions for officials who have the potential to be corrupt by issuing permits and abusing their authority, but in the latest Minerba Law this has been omitted. So it can be said that if there is "abuse of authority in mining permits" criminal sanctions will not be imposed and people who "disturb" the mining process will be subject to criminal sanctions. This clearly contradicts the explanation in the academic text of the new Minerba Law which explains that "mineral mining business often harms the interests of the local

community [14]. The community only accepts the negative impacts of mining, because local officials give permits without the knowledge or consent of the community" and also contradicts Article 27 paragraph (1) of the 1945 Constitution "equality before the law."

The Impact of Society on the Minerba Law

The Minerba Law was created to provide a legal foundation for the restructuring and reorganization of mineral and coal mining management and exploitation activities with strategic environmental adjustments. In the context of revising the Minerba Law, it presents criticism in the eyes of the public, as explained by the previous author. In short, because if the articles in the law are examined carefully, there is more than one article which is claimed to be in favor of entrepreneurs. The public polemic regarding the new Minerba Law is that there has been resistance and several lawsuits due to the enactment of the new Minerba Law. The main focus is on the impact experienced by the community as a result of the enactment of the new Minerba Law. This new law demonstrates a lack of clarity on the mechanism for community objections or objections to mining activities. In more detail, these impacts include [15]:

a) The community cannot complain to the local government because all mining authority and authority lies with the central government.
b) Communities who oppose mining companies can be policed as contained in article 162. Several Indonesian citizens have experienced this. The first incident was experienced by Banyuwangi residents who fought for their environment so that within a few years they refused gold mining activities on Mount Tumpang Pitu which resulted in environmental damage. One of the residents who struggled was then reported to the police on the assumption that he had violated Article 162 of the Minerba Law.
c) Mining activities that can operate even though they have an impact on activities that trigger environmental damage. Regarding the supervision of mineral and coal mining that currently exists with the central government, it raises the assumption that it is easy to issue investment permits. Communities who argue against mining in order to save the environment run the risk of being punished.

Furthermore, if it is clarified, according to the community, the new Minerba Law does not present an article that defends the interests of the community or can become a control for greed for personal gain without regard to environmental sustainability and other negative impacts that will arise. It is obvious that this does not represent the welfare of all Indonesians. Therefore, it is believed that the Minerba Law revision must be rejected with a Judicial Review in order to repeal the Law because the need for government policies, particularly those pertaining to law enforcement and implementing regulations, is urgent. This is because the state's founders explicitly stated that the government's role in managing the country's territory and citizens is to carry out those goals. Moreover, in order to achieve successful sustainable development, it is crucial to implement environmental responsibility for the neighborhood with regard to the effects of the mining process.

The mining procedure or the operation of mining activities must be done in accordance with the environmental, open-book, and community involvement principles in order to create sustainable development. According to the Republic of Indonesia's Minister of Energy and Mineral Resources' Decree No. 77.K/MB.01/MEM.B/2022 concerning the Environmental National Mineral and Coal Policy, the business of mining minerals and coal has a significant economic impact on the growth of the country. It is inevitable that planned mining and coal mining activities will have the potential to alter the environment [16]. The Minister of Energy and Mineral Resources declares in this Decree that it is essential to identify environmental components that may be impacted and put sustainable development principles into practice. Indonesia has embraced the idea of sustainable development, which is thought to be a balance between social, economic, and environmental development.

One of the principles of good governance is transparency. Transparency in drafting public policies, for example in terms of drafting laws and regulations, is very much needed because it concerns the rights of the general public as Indonesian citizens who have the right to obtain information as contained in Article 28 F of the 1945 Constitution. Transparency in making laws and regulations is needed starting from the initial to the final stage so that Indonesian citizens have the opportunity to give their opinion and participate in the formation of these regulations. The formation of the new Minerba Law does not provide for public participation which includes access to information, participation in decision making, and justice. In the academic text of the new Minerba Law, participation is made the principle as the basis for its changes. But participation here is only conceptual because the reality is contradictory. This is corroborated by discussions that took place during the COVID-19 pandemic regarding the creation of the Minerba Law, during which the community's right to participate was subpar because they had to fight the Covid-19 outbreak. By criticizing mining operations with non-violent actions, which is considered freedom of opinion, community resistance is included in participation; however, under the new Minerba Law, this type of participation may be subject to criminal threats if the community interferes with mining operations.

Community resistance can also be seen from the number of people who have filed a lawsuit against the Minerba Law. The revision of Law Number 3 of 2020, which President Joko Widodo ratified on June 10, 2020, is viewed by society as presenting injustice to all Indonesians. This then gave rise to a polemic, some people who were against the revision of the Minerba Law filed for a judicial review, in which the revision of this law was considered to have hidden interests that were not accommodated. Some of the plaintiffs pointed out the legal politics regarding the article of authority which underwent a transition from the local government to the central government which created obstacles regarding regional community relations around mining activities. This condition can be said to be a process of recentralizing permits for mining activities which in the past was based on the principles of decentralization and regional autonomy.

4 Conclusion

The outdated Minerba Law was thought to be ineffective in addressing legal requirements related to mining and the expansion of the mineral and coal mining industries. This is seen as a pressing need to harmonize the Minerba Law so that it is effective and efficient. The Minerba Law needs to be revised immediately in the areas of licensing authority, permit extension, regulation of people's mining permits, environmental aspects, downstream, and divestment. From this vantage point, it is evident that the government's use of legal politics in the revision of the Mining Law is primarily concentrated on the central government's power over mining management permits. Issuing a mining operation permit without the local community's approval may cause environmental harm.

The public's response to the new Minerba Law can be seen from two perspectives, namely the pros and cons. Those who are pro with the revision of the Minerba Law think that it is urgent to reform regulations that are clearer because the previous regulations were deemed inappropriate. Meanwhile, those who are against think that the formation of new regulations regarding mineral and coal is only for the benefit of certain parties. According to the community, the new Minerba Law does not present an article that defends the interests of the community or which can control greed for personal gain without regard to environmental sustainability and other negative impacts, so that it does not reflect the welfare of all Indonesian people.

Community resistance to mining activities as a form of rejection of mining because of the negative impacts it generates is still considered a nuisance to mining entrepreneurs and can be criminalized. In addition, the 2020 Minerba Law reform also removes criminal sanctions for officials who have the potential to be corrupt by issuing permits and abusing authority in issuing permits. This clearly contradicts the explanation in the academic text of the new Minerba Law and also contradicts Article 27 paragraph (1) of the 1945 Constitution.

5 Authors' Contributions

The government should be more careful in granting mining business permits. The process of obtaining these permits must be simplified while at the same time paying attention to matters that are strategic and potential in nature. For officials who are authorized to take care of this, try to be competent in their fields, otherwise there will be chaos everywhere.

6 Acknowledgements

It should be noted regarding the article which is considered to present the criminalization of residents who reject mining activities in their environment. The Constitutional Court's decision is final and legally binding after all lawsuits were received, heard, and ultimately rejected within 1.5 years of the revision of the Minerba Law's

ratification by the Constitutional Court. Even so, there are still people who still cannot fully accept the revised Minerba Law.

The government in issuing the decree should be transparent, so local residents can know about the process before and after the permit is issued. In issuing the decree, the government in this case must minimize the impact. If it is felt that the impact will be very detrimental, the government is obliged to consider this and seek solutions.

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