Relationship Patterns of Central and Local Governments in The Utilization of Mining Space and Area Post the Decision of The Constitutional Court No. 37/Puu-Xix/2021

Herawan Sauni
Faculty of Law, Universitas Bengkuli, Indonesia
E-mail: herawansauni1963@gmail.com

ABSTRACT

Law No.3 of 2020 concerning Mineral and Coal has serious problems because it stipulates that the management of mineral and coal resources is under the control of the central government. In the Mineral and Coal Law there is also a division of mining business areas. However, changes in the use of space and mining areas in the Mineral and Coal Law are not explicitly guaranteed. Therefore, the articles governing the use of space and mining areas were subject to material review by the Constitutional Court and in Decision No.37/PUU-XIX/2021 it was stated that the application was partially granted. This research answers 1). How is the dynamics of mining management arrangements in the three laws, and 2). What are the implications of Decision No.37/PUU-XIX/2021 on the dynamics of relations between the central and regional governments. This research is normative research. The results of this study state that there is a provision regarding the guarantee of no utilization of mining space and area from the Central and Regional Governments because the utilization of mining space and area can only be carried out as long as it does not conflict with the laws and regulations. This is guaranteed by the Constitutional Court in its Decision No.37/PUU-XIX/2021.

Keywords*: Central Government; Local Government; Mining*

Introduction

Article 18 of the 1945 Constitution of the Republic of Indonesia (UUD 1945) provides the basis for the position of Regional Government (Pemda), and among other things is the administration of government affairs by the Regional Government according to the principle of regional autonomy. One of the principles of regional autonomy (Otda) is decentralization, which aims: first, to accommodate diversity within the nation and state. Second, utilization of regional potential management. Third, educate and empower people in all aspects of life. Fourth, there is equalization of regional capabilities within the framework of the Unitary State of the Republic of Indonesia (NKRI) and Bhinneka Tunggal Ika.[1]

In order to support the spirit of regional autonomy, the provincial government (Pemprov) and district/city government (Pemkab/Pemkot) have the authority to carry out control activities over mineral and coal resources (Minerba) in their respective regions. This is

[1] S.H. Sarundajang, Birokrasi Dalam Otonomi Daerah, Upaya Mengatasi Kegagalannya (Jakarta: Pustaka Sinar Harapan, 2003), 67.

what underlies Law No. 23 of 2014 concerning Regional Government, the Regency/Municipal Government no longer has the authority to administer forestry, maritime affairs, as well as energy and mineral resources, which includes regulating the issuance of mining business permits (IUP). This authority is transferred to the central government and provincial governments through the provisions in Article 14 paragraph (1) of the Regional Government Law. Further provisions regarding the authority to administer Mineral and Coal resources are contained in the Attachment to the Regional Government Law.[2]

Another problem regarding mining has emerged again since the enactment of Law Number 3 of 2020 concerning Minerals and Coal. The provisions of the Minerba Law stipulate that mineral and coal resources are National Wealth therefore their management is under the control of the central government, which is then regulated in Article 35 of the Minerba Law which reads: "Mining Business is carried out based on Business Licensing from the Central Government." The centralization of mining licensing authority through the Mineral and Coal Law is a critical note on the journey of the regional autonomy. The broad autonomy authority includes regional authority in various aspects of government, except for authority in the fields of foreign policy, defense and security, justice, monetary and fiscal matters, and religion.[3] Real authority includes the administration of government in certain fields that are real, exist and are needed, grow and develop in the region. All of this is done with the aim and purpose of carrying out responsible regional autonomy in the form of improving services and community welfare evenly for the sake of realizing justice. By not forgetting the aspects of autonomy, namely; division of power, income, and independence of local government administration.[4]

The tug-of-war over mining licensing authority from the regional government, which has become completely centralized to the central government, has given rise to speculation about political and legal policies that are carried out solely for the sake of permits being granted to be more selective and revenue from mining does not leak. This policy may have been taken in order to more effectively carry out its environmental protection function. The

[2] Chintya Ainun Khasanah dan Tamsil, "Harmonisasi Peraturan Perundang-Undangan Terkait Izin Usaha Pertambangan (IUP) Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja."
[3] Putra Perdana Ahmad Saifulloh, "Urgensi Penataan Regulasi Desentralisasi Ketenagalistrikan Untuk Mewujudkan Pemenuhan Hak Ekonomi, Sosial Dan Budaya Masyarakat Daerah."
[4] Derita Prapti Rahayu dan Faisal, "Politik Hukum Kewenangan Perizinan Pertambangan Pasca Perubahan Undang-Undang Minerba."

logic developed by the government, by creating a centralized licensing mechanism, is expected to suppress mining activities that ignore forest and environmental sustainability.[5]

The regulations in the Minerba Law leave quite serious problems. One of them is that regional governments no longer have authority regarding environmental management policies from regulation and licensing to supervision, so that it has the potential to worsen environmental damage and pollution due to mining business activities for which permits are obtained from the central government. The function of licensing regulation is returned to the authority of the central government. Then, the question arises as to whether this is the right legal political step. Bearing in mind that regulatory legal politics must guarantee the goals of the state both in terms of welfare and social justice.[6]

Likewise with Mining Legal Areas (WHP) as the basis for determining mining business activities. In this case, the Mining Area is determined by the central government after being determined by the regional government in accordance with its authority. The Mining Law establishes Mining Areas as part of the national spatial planning as a basis for determining mining activities. The Mining Law no longer regulates mining areas based on national spatial planning as the basis for determining mining activities. The Mining Area in the new Law is also expanded by adding a Mining Area.[7]

In the Minerba Law, there are regional divisions in mining businesses, some of these areas have previously been explained in the Minerba Law. These areas include WHP, Mining Areas (WP), Mining Business Areas (WUP), Mining Business Permit Areas (WIUP), People's Mining Areas (WPR), State Reserve Areas (WPN), Special Mining Business Areas (WUPK) and Areas Special Mining Business Permit (WUPK).[8] However, changes in the use of space and areas in the Minerba Law are not guaranteed, therefore, several articles regulating the use of space and areas in the Minerba Law were tested in the Constitutional Court and the Constitutional Court through MK Decision No.37/PUU-XIX/2021 stating that the Petition was partially granted constitutionally. conditional, namely that the articles being reviewed are declared constitutional as long as they follow the Constitutional Court's interpretation.[9]

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[5] *Ibid*.
[6] *Ibid*, 166-167.
[7] Dida Rachma Wandayati dan Nur Rahmadayana Siregar, "Wilayah Pertambangan Pasca UU No. 3 Tahun 2020 Tentang Pertambangan Mineral Dan Batubara Di Masa Yang Akan Datang."
[8] *Ibid*.
[9] Putra Perdana Ahmad Saifulloh, "Penafsiran Pembentuk Undang-Undang Membentuk Kebijakan Hukum Terbuka Presidential Threshold Dalam Undang-Undang Pemilihan Umum Yang Bersumber Dari Putusan Mahkamah Konstitusi."

The articles in the Mineral and Coal Law being reviewed are four articles, namely: first, Article 17A Paragraph (2): "The Central Government and Regional Government guarantee that there will be no changes in the use of space and areas as intended in paragraph (1) in metallic mineral WIUPs and WIUPs. Determined coal." Second, Article 22A: "The Central Government and Regional Governments guarantee that there will be no changes in the use of space and areas in the WPR that has been determined." Third, Article 31A Paragraph (2): "The Central Government and Regional Government guarantee that there will be no changes in the use of space and areas in WIUPK that have been determined as intended in paragraph (1)." Fourth, Article 172B Paragraph (2): "The Central Government and Regional Governments guarantee that there will be no changes in the use of space and areas as intended in paragraph (1) in WIUPs, WIUPKs or WPRs for which permits have been granted." For this reason, the author is interested in researching Relationship Patterns of Central and Local Governments In The Utilization Of Mining Space And Area Post The Decision Of The Constitutional Court No. 37/PUU-XIX/2021. This research aims to reveal Relationship Patterns of Central and Local Governments in The Utilization of Mining Space and Area Post The Decision Of The Constitutional Court No. 37/PUU-XIX/2021

Method

This research uses a normative legal research method, which analyzes the principles and norms of legislation regarding the Pattern of Relations between the Central and Regional Governments in the Use of Space and Mining Areas Post Constitutional Court Decision No.37/PUU-XIX/2021. This research uses three approaches used in this research, namely: statutory regulation approach, case approach, and conceptual approach. The primary legal materials in this research are: (1) the 1945 Constitution; (2) Mineral and Coal Law; 3). Regional Government Law; 4). Law No.11 of 2020 concerning Job Creation (UU Ciptaker); (5). Constitutional Court Decision No.37/PUU-XIX/2021. Meanwhile, secondary legal materials in this research: journals, books and other scientific works.[10]

In terms of its characteristic, this research is descriptive research. Descriptive research describes something in a certain time and space. In legal research, descriptive research is very important to present existing legal materials correctly, where according to these materials legal prescriptions are prepared. Meanwhile, from a form perspective, this type of research is

[10] Putra Perdana Ahmad Saifulloh, "Gagasan Konstitusi Pangan: Urgensi Pengaturan Hak Atas Pangan Warga Negara Dalam Amandemen Kelima UUD 1945."

prescriptive research, research that aims to provide an overview or formulate a problem according to existing circumstances/facts. This prescriptive nature will be used to analyze and test the values contained in the law. It is not only limited to values in the area of positive law, but also the values that underlie and encourage the birth of this law.

Results and Analysis

1. Dynamics of Regulatory Relations between Central and Regional Governments in Mining Management Based on Legislative Regulations

a. Relations between Central and Regional Governments in Mineral and Coal Mining Management in the Regional Government Law

The Regional Government Law (UU Pemda) provides for the handover of all affairs, both the regulation in making laws and regulations, as well as the administration of government from the central government to the regional government to then become its own domestic affairs. Thus, regions need to be given the authority to carry out various government affairs as domestic affairs, and at the same time have regional income.[11]

According to Jimly Asshiddiqie, the implementation of regional autonomy emphasizes the importance of democratic principles and equal distribution of justice by taking into account the potential and diversity between regions.[12] With the existence of regional autonomy, there are benefits for regional governments, including: Improving the quality of public services in achieving community welfare, Empowering and creating space for communities to participate in the development process and creating efficiency and effectiveness in regional resource management.[13]

Government affairs handed over to the regions become regional household affairs. Regarding government affairs that are handed over, regions have the freedom to regulate and manage themselves with supervision from the central government or a government unit at a higher level than the region concerned. By continuing to have supervision, freedom does not imply independence.[14]

[11] Inu Kencana Syafei, Sistem Pemerintahan Indonesia (Jakarta: Rineka Cipta, 2002), 85.
[12] Jimly Asshiddiqie, Konstitusi Dan Konstitusionalisme Indonesia (Jakarta: Sinar Grafika, 2010), 224.
[13] Deddy Supriady Bratakusumah dan Dadang Solihin, Otonomi Penyelenggaraan Pemerintahan Daerah (Jakarta: Gramedia Pustaka Utama, 2002), 1.
[14] Philipus M. Hadjon et.al, Pengantar Hukum Adminsitrasi Indonesia (Yogyakarta: Gajah Mada University Press, 2005), 79.

Through the Regional Government Law (UU Pemda), several government affairs in the natural resources sector, which were originally the authority of the district/city government, were "withdrawn" and "transferred" to the authority of the provincial government. Districts/cities are no longer given the authority to issue mining permits. The issuance of mining permits, which was originally the authority of districts/cities, is now the province's authority according to this law. Article 14 of the Regional Government Law (UU Pemda) states that the administration of government affairs in the fields of forestry, maritime affairs, and energy and mineral resources is shared between the central government and the provincial government.[15] Further regulations regarding the provincial government's Minerba authority are regulated in the Attachment to the Regional Government Law at point cc. In this attachment it can be seen that districts/cities have no authority at all in terms of issuing mineral and coal permits.[16] The implications of the absence of district/city government authority in mining permits in districts/cities in the Regional Government Law include the absence of direct control by the district/city government over mining areas, especially mineral and coal, the district/city government tends to be passive in coordinating mining activities, making it difficult to involve the district/city government in eradicating illegal mining activities.[17]

b. Relations between Central and Regional Governments in Mineral and Coal Mining Management in the Minerba Law

Article 33 Paragraph (3) of the 1945 Constitution provides direction and guidance in the utilization of natural resources, namely "earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people".[18] This means that the state controls the natural resources found throughout the archipelago, including those that are still buried in the earth. Mined or excavated materials, whether in the form of oil and gas, or minerals and coal, as part of the natural wealth contained in the earth, are thus controlled by the state and must be aimed at

[15] Roni Sulistyanto Luhukay dan Rachmasari Kusuma Dewi, "Sentralisasi Kewenangan Perizinan Usaha Oleh Pemerintah Pusat Dalam Rancangan Undang-Undang Mineral Dan Batubara."
[16] Rizkyana Zaffrindra Putri dan Lita Tyesta A.L.W, "Kajian Politik Hukum Tentang Perubahan Kewenangan Pemberian Izin Usaha Pertambangan Mineral Dan Batubara."
[17] Alva Viere Niwele et.al, "Penanggulangan Penambangan Emas Illegal."
[18] Ahmad Redi, "Dilema Penegakan Hukum Penambangan Mineral Dan Batubara Tanpa Izin Pada Pertambangan Skala Kecil."

creating a prosperous and just society.[19] Therefore, control of the implementation of mining activities rests with the government as the party responsible for mining management (including mineral and coal) in Indonesia.[20]

In the history of mineral and coal regulations which have undergone several changes in the regulation of the authority to grant mining permits,[21] Existing regulations so far open up opportunities for foreigners to invest through work contracts with centralized licensing, but on the other hand, limit people's access to minerals.[22]

In essence, it is emphasized that the central government plays an important role in carrying out supervision and coordination. This is because the Central Government is responsible for deciding the character and degree of decision-making authority that will be distributed to regional governments.[23] However, disharmony in the management of Natural Resources (SDA) is unavoidable between the central government and regional governments. More operationally, this conflict is in turn interpreted as a conflict over the struggle for authority between the center and the regions in the forestry and environmental sectors.[24]

In the Mineral and Coal Law, regional government authority is limited. Then the authority for mining investigations and research becomes absolutely the authority of the central government through the Minister of Energy and Mineral Resources (ESDM). In determining WUP, local government involvement is also limited. At least the Minerba Law has reduced the authority of regional governments. The reduction in authority was then transferred to the central government, even regulations regarding the authority of the district/city government in the mining sector were abolished, which means that the district/city government no longer had authority in the mining sector. This is in line with the Regional Government Law which regulates that mining authority is a concurrent matter, which is only given to the central government and provincial governments. The reduction of authority in the mining sector also occurs in provincial regional governments. However, in Article 35 paragraph (4) of the Mining and Coal Law, there

[19] Mubyarto dan Revrisond Baswir, Pelaku Dan Politik Ekonoml Indonesia (Yogyakarta: Liberty, 1989), 76.
[20] Afif Syarif, "Pengelolaan Pertambangan Batu Bara Dalam Penegakan Hukum Lingkungan Pasca Otonomi Daerah Di Provinsi Jambi."
[21] Otong Rosadi, Pertambangan Dan Kehutanan Dalam Perspektif Cita Hukum Pancasila (Yogyakarta: Thafa Media, 2012), 28.
[22] Nandang Sudrajat, Teori Dan Praktik Pertambangan Indonesia Menurut Hukum (Yogyakarta: Pustaka Yustisia, 2010), 38.
[23] Indra Perwira, "Konstitusionalitas Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Daerah."
[24] Iskandar Zulkarnain et.al, Konflik Di Daerah Pertambangan, Menuju Penyusunan Konsep Solusi Awal Dengan Kasus Pada Pertambangan Emas Dan Batubara (Jakarta: LIPI, 2004), 262.

is still room for delegation of mining business licensing authority from the Central Government to the provincial government, namely for the issuance of IPR (People's Mining Permit) and SIPB (Rock Mining Permit).[25]

c. Relations between Central and Regional Governments regarding Mineral and Coal Mining Management in the Ciptaker (Job Creation Law) Law

Mineral and coal mine management regulations in the Ciptaker Law were formed using the Omnibus Law Regulation Simplification Method,[26] strengthen the presence of the Minerba Law. The Ciptaker Law no longer regulates the provisions contained in the revision of the Minerba Law as a form of harmonization between laws and regulations. The provisions for the transfer of authority to issue IUP business permits by the central government remain in Article 35 of the Minerba Law. This is an implication of the existence of Article 4 paragraph (2) of the Mineral and Coal Law which states that state control over mineral and coal resources is carried out entirely by the central government and eliminates the authority of regional governments.[27]

In Article 128A of the Ciptaker Law, it is explained that business actors who can increase the added value of coal will receive preferential treatment in the form of a royalty charge of 0%. In fact, even though, all this time, the royalties determined by the government for mining entrepreneurs are part of state income and are included as regional income through the Profit-Sharing Fund mechanism.[28]

After the enactment of the Job Creation Law, mining businesses themselves were carried out based on business permits from the central government, where business permits were implemented through the provision of business identification numbers, standard certificates and permits. Regarding mining business permits, it consists of two stages of activities, namely, exploration which includes general investigation activities, exploration and feasibility studies. As well as production operations which include Construction, Mining, Processing, Refining, Development or Utilization activities, as

[25] Muhammad Salman Al-Faris, "Desentralisasi Kewenangan Pada Urusan Pertambangan Mineral Dan Batubara Dalam Undang-Undang Nomor 3 Tahun 2020."
[26] Antoni Putra, "Penerapan Omnibus Law Dalam Upaya Reformasi Regulasi."
[27] Chintya Ainun Khasanah dan Tamsil, *Op.Cit*., 48.
[28] Friskilia Junisa Bastiana Darongke et.al, "Efektivitas Undang-Undang Nomor 3 Tahun 2020 Dalam Pemberian Izin Usaha Pertambangan Mineral Di Indonesia."

well as Transportation and Sales. In managing mining businesses, mining business permits are given to Business Entities, Cooperatives and Individual Companies.[29]

2. Relationship Patterns of Central and Local Governments in The Utilization of Mining Space and Area Post the Decision Of The Constitutional Court No. 37/PUU-XIX/2021

In the Constitutional Court Decision No.37/PUU-XIX/2021, where the decision was partially granted, the Petitioner questioned the constitutionality of the norms of Article 4 paragraph (2) and the phrase "policy, management, management and supervision" in the norms of Article 4 paragraph (3) of the Mineral and Coal Law. with Article 28D paragraph (1), Article 28H paragraph (1), Article 28C paragraph (2), and Article 33 paragraph (4) of the 1945 Constitution. In questioning this conflict, the Petitioners argued that the loss of regional government authority in controlling mineral and coal resulted in difficulties or ineffectiveness. and efficiency for the community and the Petitioners to participate in fighting for a good and healthy living environment as determined by the Central Government, including the difficulty of accessing mineral and coal policy information to the Central Government. In addition, the Petitioners argue that the absence of a regional role in supervision, administration, management and conflicting policies with the regional autonomy concept in terms of bringing government closer to the communities it serves and is contrary to the principle of fair efficiency which is detrimental to the interests of local communities.

The essence of the norms of Article 4 of the Mineral and Coal Law has been a shift in the regulation of mineral and coal control which was originally held by the Central Government and/or regional government to be held by the Central Government. Such changes certainly have conceptual and practical impacts. Moreover, in reality the essence regulated in the Minerba Law has so far been implemented, which means that the regional government has actually carried out mineral and coal mining management affairs. First of all, it is important for the author to emphasize that in administering government affairs in a unitary state system, centralization and decentralization cannot be implemented. dichotomy, but both are continuum. Moreover, if we look at its history since Indonesia's independence until now, both the concepts of centralization and decentralization in the administration of government affairs have been practiced in Indonesia. Likewise, in relation to the implementation of mining management affairs. By looking at the practice of

[29] Desman Diri Satriawan, "Pengelolaan Usaha Pertambangan Mineral Dan Batubara Pasca Berlakunya Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja."

administering these affairs it cannot be said that one model is superior to the other. An assessment of the advantages of centralization and decentralization in mining management is an assessment that includes many factors, including continuity of planning, effectiveness of business actors, state financial benefits, environmental carrying capacity, community welfare, reliability of supervision, and so on. Therefore, assessing the effectiveness of mining management must always be based on the perspective of the State's interests without ignoring the interests of affected communities, the interests of business actors and the regional government. This is none other than the mandate of the 1945 Constitution which places the interests of the State and nation above personal and/or group interests; then the interests of citizens are specifically protected in special articles regarding Human Rights (HAM). Included in such human rights are actually the economic rights of citizens, both rights as people who make a living in mining areas, as well as rights as business actors who run the mining business themselves.

What is striking about this decision is that the implementation of mining management affairs leads to an uncontrolled decline in environmental quality when mining management policies are taken and/or implemented without involving the community. The absence of community involvement in the formation and implementation of mining policies ultimately marginalizes community participation in managing the environment in which they live; eliminating people's sources of livelihood; reducing the quality of the environment where local people live; even separating society from the environment that has sheltered it. In this regard, the Constitutional Court emphasized that Article 28H paragraph (1) of the 1945 Constitution actually states that there is a guarantee of collective rights, namely the right to a good and healthy living environment. Therefore, activities in the mining sector, whatever the form/type, must still be able to provide guarantees of improving the quality of a good and healthy environment.

The decision shows that the Indonesian community or people, in relation to the environment and mining business, have the right to at least have a good and healthy living environment, develop society, and obtain benefits from the economic activities they carry out. So, even if there is a connection between the basis for such testing and issues regarding the division of affairs in the administration of mining management. This means that, in systematic reasoning, the provisions in the 1945 Constitution guaranteeing the constitutional rights of citizens, especially in relation to the quality and carrying capacity of the environment, are constitutional provisions that must be implemented, including in

the context of the division of mining management affairs between the center and the regions.

Based on the series of provisions above, it shows that the 1945 Constitution adheres to the principle of provincial and district/city based regional autonomy. Regional governments at the provincial and district/city levels have the authority to administer government affairs according to the principles of autonomy and assistance duties.[30] Here the regional government carries out two functions at once, namely the function of regulating/managing itself as well as the function of acting as an extension of the Central Government in the context of assistance tasks as regulated in Article 18 paragraph (2) and Article 18 paragraph (5) of the 1945 Constitution.[31]

Based on the provisions of the 1945 Constitution, authority in the management or operation of mining can be carried out by the Central Government and/or Regional Government, as long as the State remains the supreme authority. However, even though both levels of government have the authority to manage mining, and therefore both may be selected to be given management authority, the determination must be based on a study of the principles mentioned above so that it can be determined which level of government has the best capabilities in terms of mining management, especially minerals and coal, so as not to cause the right to a good and healthy environment to be fulfilled as guaranteed by the 1945 Constitution. In this regard, the Mineral and Coal Law determines that control of mineral and coal is carried out by the Central Government, which is implemented through the functions of policy, regulation, management, management and supervision. However, if we look comprehensively at the substance of the Mineral and Coal Law, implementation by the Central Government does not mean eliminating the rights/authority of Regional Governments in administering mineral and coal mining affairs. For example, regulations regarding the designation of Mining Areas as part of Mining Legal Areas by the Central Government are carried out after being determined by the Provincial Government in accordance with its authority and in consultation with the DPR (Indonesian People's Representative Council); Regulations regarding the area and boundaries of metal mineral and coal WIUPs are determined by the Minister after being determined by the Governor (Article 17 paragraph (1) of the Minerba Law); Likewise, regulations relating to Business Entities holding IUP or IUPK whose shares are owned by foreigners are required to divest

[30] Dian Agung Wicaksono dan Faiz Rahman, "Penafsiran Terhadap Kewenangan Mengatur Pemerintahan Daerah Dalam Melaksanakan Urusan Pemerintahan Melalui Pembentukan Peraturan Daerah."
[31] Sherlock Halmes Lekipiouw, "Konstruksi Penataan Daerah Dan Model Pembagian Urusan Pemerintahan."

shares in stages and prioritize them in stages to the Central Government and then the Regional Government (Article 112 of the Minerba Law). Apart from that, Article 35 paragraph (4) of the Minerba Law also regulates that regional governments can still receive authority in the form of delegation to issue a number of business permits (Article 35 paragraph (2) of the Minerba Law). This confirms that in a unitary state system there is no concurrent authority which is only exercised by the Central Government without dividing it among regional governments in accordance with statutory regulations.

With regard to the functions of policy, regulation, administration, management and supervision in Article 4 paragraph (3) of the Minerba Law, in general it is in accordance with the widely accepted doctrine of natural resource control. In fact, the Constitutional Court in other cases related to natural resources, has outlined various functions/activities which are conditio sine qua non for a concept and/or action of controlling natural resources by the state. In Decision No.058-059-060-063/PUU-II/2004 and Decision No.008/PUU-III/2005, the Constitutional Court explained that the concept of State control over water includes the activities of formulating policies, carrying out management actions, carrying out regulations, carrying out management, and carrying out supervision and Constitutional Court Decision Number 008/PUU-III/2005. According to the MK, the five series of functions/activities for state control also apply generally to state control over other natural resources. Especially if these resources are strategic resources or have a big influence on the welfare of the community, nation and state, such as mineral and coal resources. Minerba is a strategic resource and natural wealth that controls the lives of many people, especially because it cannot be renewed, so control over it must truly be aimed at the benefit or prosperity of the Indonesian people. In this case, Article 33 paragraph (3) of the 1945 Constitution expressly regulates, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The prosperity of the people, which is the aim of controlling natural wealth by the State, can be normatively achieved if natural wealth, by placing the interests of the people, nation and state as the main priority, regardless of whether such mining management is carried out by the Central Government or the Regional Government as long as such management does not neglect the role of each level of government.

Norms of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of the Mineral and Coal Law, especially related to guarantees that there will be no changes in the use of space and areas in WIUP, WIUPK, or WPR are

in conflict with Article 28H paragraph (1), Article 28C paragraph (2), and Article 28D paragraph (1) of the 1945 Constitution, because it results in an area continuing to be used as an area for mining activities even though the carrying capacity and capacity of the environment in that area has been exceeded. According to the applicant, with the word "guarantee" it is as if the Central Government and Regional Government are giving a guarantee that they will not make changes to the use of space and areas in areas that already have WIUP, WPR and WIUPK status.

Based on Article 1 number 29 of the Minerba Law, WP is essentially part of the national spatial planning. Therefore, it certainly cannot be separated from regional spatial planning and/or zoning plans. It is in this context that the regulations for determining the review period once every five years in the National Regional Spatial Planning (RTRW), Provinces and Regency/Cities have been set for a period of 20 years in Law No. 26 of 2007 concerning Correlated Spatial Planning. with the National Mineral and Coal Management Plan considering that one of the things that must be considered in preparing the Plan is the regional spatial plan and/or zoning plan. Because, WP is part of the national spatial planning. Moreover, the Spatial Planning Law has emphasized that Regional Spatial Planning is one of the guidelines for national long-term development planning and national medium-term development as well as guidelines for determining the location and function of space for investment based on Article 20 paragraph (2) letters a, b, and letter e of the Spatial Planning Law.

This also applies to long-term provincial and district/city spatial planning which guides regional development planning including determining the location and function of space for investment as regulated in Article 23 paragraph (2) letters a, b and e, Article 26 paragraph (2) letters a, b and e of the Spatial Planning Law. Therefore, in the event that a WP is designated as a mining business activity, it cannot be separated from the Spatial Planning (RTR) as an instrument that regulates the allocation of resources in a space where the spatial arrangements in the RTR are realized in the designated zones, for example for mining. As this has also been confirmed in the National Mineral and Coal Management Plan.

Based on the Constitutional Court's Decision, the guarantee arrangement does not involve changes in the use of space and areas in WIUPs that have been determined based on Article 17A paragraph (2) of the Minerba Law, in WPRs that have been determined [vide Article 22A of the Minerba Law), in WIUPKs that have been determined based on

Article 31A paragraph (2) The Minerba Law, and the WIUP, WPR and WIUPK for which permits have been granted based on Article 172B paragraph (2) of the Minerba Law, cannot be understood partially because the essence of the regulation is closely related to the norms of other articles.

In this case, the determination of WIUP for metallic minerals and coal based on Article 17A paragraph (2) of the Minerba Law can be carried out if a number of requirements have been fulfilled, namely: (1) the area and boundaries of WIUP for metallic minerals and WIUP for Coal have been determined by the Minister after being determined by the governor or If it is in a marine area, the area and boundaries of the WIUP are determined by the Minister after coordinating with the relevant agencies, where in determining the area and boundaries the following are also taken into account: a. National Mineral and Coal Management Plan; b. availability of data on mineral or coal resources and/or reserves originating from the results of investigation and research activities, results of WIUP evaluations returned or reduced by IUP holders or results of WIUP evaluations that have expired or been revoked; and c. area status; (2) To determine the area and boundaries of metallic mineral WIUPs and Coal WIUPs, including those in marine areas, they must meet the following criteria: a. there is data on metallic mineral or coal resources; and/or b. there is data on metallic mineral or coal reserves; (3) also consider: a. reserve resilience; b. national production capabilities; and/or c. meeting domestic needs; and (4) fulfill the criteria for utilizing natural resource potential for mining business activities based on Article 17 and Article 18 of the Minerba Law.

To provide a guarantee that there will be no change in the use of space and areas in the WPR as stipulated in Article 22A of the Mining and Coal Law, in principle it is not immediate or automatic because to be designated as a WPR a number of requirements or criteria must first be met, namely: (1) has secondary mineral reserves found in rivers and/or between riverbanks and banks; (2) has primary reserves of metallic minerals with a maximum depth of 100 (one hundred) meters; (3) terrace deposits, flood plains, and ancient river deposits; (4) the maximum area of the WPR is 100 (one hundred) hectares; (5) there is a clear mention of the type of commodity to be mined; and/or fulfill the criteria for space and area utilization for Mining Business activities in accordance with the provisions of laws and regulations based on Article 22 of the Minerba Law.

In this regard, in line with the determination of WP which is carried out in a transparent, participatory and responsible manner [vide Article 10 paragraph (2) of the

Minerba Law, then in the case of determining a WPR the regent/mayor is obliged to first announce the WPR plan to the public openly. The announcement is made at the village/sub-district office and related offices/agencies which are equipped with a situation map describing the location, area and boundaries as well as a list of coordinates; and accompanied by a list of holders of land rights in the WPR based on Article 23 and the Explanation of the Minerba Law. In this way, the public can provide input on the process of determining the WPR.

Likewise, to provide a guarantee that there will be no change in the use of space and areas in a WIUPK as stipulated in Article 31A paragraph (2) of the Minerba Law, in principle it is not immediate or automatic because in order to be designated as a WIUPK, a number of requirements or criteria must first be met. namely: (1) in accordance with the provisions of laws and regulations, the use of space and areas is for Mining Business activities; (2) reserve resilience; (3) national production capabilities; and/or (4) meeting domestic needs. This means that the guarantee that there will be no changes in the use of space and areas in the designated WIUPK must be based first on the fulfillment of the requirements to be designated as a WIUPK. Meanwhile, with regard to the Petitioners' argument which questions the constitutionality of the norms of Article 172B paragraph (2) of the Minerba Law which stipulates that there is a guarantee that there will be no changes in the use of space and areas in WIUPs, WIUPKs or WPRs for which permits have been granted because they are deemed to eliminate the aspect of periodic review as intended in the Spatial Planning Law and is also inconsistent with fulfilling the substantive aspects of the right to a good and healthy living environment.

In connection with this argument, it is important to emphasize that the provisions of Article 172B paragraph (2) of the Minerba Law are not read as stand-alone but are an inseparable part of the provisions of the norms of paragraph (1) which determine in essence the WIUP, WIUPK or WPR whose permits have been granted in The form of IUP, IUPK, or IPR must be delineated according to the use of space and areas for mining business activities in accordance with the provisions of statutory regulations. Therefore, it is impossible for the Central Government and Regional Government to provide guarantees that there will be no changes in the use of space and areas in WIUP, WIUPK, or WPR if the requirements in paragraph (1) have not been met. Moreover, the normative provisions of Article 172B of Law 3/2020 are part of the "Transitional Provisions" which confirm the status and position of permit holders in the form of IUP, IUPK or IPR after the enactment

of the a quo Law. This is because the provisions of the Law have changed regarding mining business permits, including changes to processes, procedures, activities, obligations, time periods for IUP, IUPK or IPR holders. In order to adapt to the new norms in the Minerba Law, it is in accordance with the purpose of the "Transitional Provisions" function based on Law No. 12 of 2011 concerning the Formation of Legislative Regulations (UU P3), among which is to guarantee legal certainty; provide legal protection for parties affected by changes to the provisions of the Legislative Regulations; and regulate matters of a transitional or temporary nature based on Number 127 of Appendix II of the P3 Law, then Article 172B of the Minerba Law is intended to carry out the function of the transitional provisions in question. Because, before the Minerba Law was implemented there were areas that had already received mining permits in the form of IUP, IUPK, or IPR.

In order to adapt to the new norms of the Mining and Coal Law, mining business activities that have previously obtained permits in the form of IUP, IUPK, or IPR must be delineated according to the use of space and area, because there is a possibility, for example, of a reduction or expansion of the permits that have been granted so that they do not in accordance with the use of space and area. Based on Article 172B paragraph (1) of the Minerba Law, this is done in accordance with the provisions of statutory regulations. The Mineral and Coal Law does not state what statutory regulations are meant, but by looking at the essence of mining business permits, the provisions referred to include statutory regulations relating to spatial planning.

The issue of the constitutionality of the regulation of guarantees that there will be no change in the use of space and areas causes the substantive aspects of the right to a good and healthy environment to be fulfilled because it is feared that the area will continue to be used as an area for mining activities while the carrying capacity and capacity of the environment in the area will no longer be able to accommodate development activities. In this regard, it is important to understand that one of the uses of space that can be accommodated in the Spatial Planning (RTR) zoning is activities that have received permits. This permit can only be issued if it has fulfilled the specified requirements and has anticipated controlling the impacts that will arise. This is in line with the licensing legal doctrine that a permit is a preventive and repressive juridical instrument that functions as a control so that a permit can only be issued if all the specified requirements have been fulfilled. For this reason, activities that already have permits need to have their business

continuity guaranteed by the RTR through appropriate zoning. If activities that already have permits later disturb the environmental and social balance, then there needs to be a mechanism for evaluating the permits that have been granted, but not evaluating the RTR zoning. This is because the zoning designations in the RTR have been prepared by considering various factors including needs, carrying capacity, suitability of space and aspirations of stakeholders.

The desire for a review or re-evaluation of the RTR to see the suitability of the RTR with development needs and space utilization, the Court can understand this desire because WIUP, WIUPK, and WPR are essentially areas to accommodate mining activities that have received permits which are part of the WP which is none other than part of the national spatial plan, the RTR can automatically be reviewed in accordance with applicable laws and regulations. In the event that the results of the review recommend a revision of the RTR, this can be done, however, if in the process of revising the RTR there are mining business activities that already have a permit, the review is carried out on the permit evaluation or monitoring mechanism, for example if it is proven that there was an error on the part of the permit implementer. then the permit can be revoked in accordance with the provisions of laws and regulations and the zone in the RTR in the area can be adjusted to the new designation or permit. In connection with the revocation of this permit, the Minerba Law has stipulated administrative sanctions for IUP, IUPK, or IPR holders for sales if there is a violation of the provisions of statutory regulations, including in the Minerba Law.

Thus, the provisions regarding guaranteed use of space and areas in Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of the Mining and Coal Law can only be implemented as long as they do not conflict with statutory regulations. including those who regulate spatial planning. Even though to obtain certainty of doing business in areas that have been determined and for which permits have been issued, all processes and procedures have been completed, however, to provide certainty for the Central Government and Regional Governments in providing guarantees that there will be no changes in the use of spaces and areas for which permits have been granted, evaluation can still be carried out. and as long as the implementation does not conflict with statutory regulations. Therefore, in order not to give rise to constitutional problems in the application of the norms of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of the Minerba Law, the Constitutional

Court considers it necessary to emphasize in its decision the obligation to always there is consistency in not violating the fulfillment of the requirements determined by statutory regulations in ensuring the use of space and areas so that this provides clarity in the meaning of the word "guarantee" in Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of the Minerba Law.

Based on legal considerations, the Constitutional Court is of the opinion that the Petitioner's petition regarding the unconstitutionality of the norms of Article 17A paragraph (2), Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of the Minerba Law is legally grounded in part. This means the norm of Article 17A paragraph (2). Article 22A, Article 31A paragraph (2), and Article 172B paragraph (2) of Law 3/2020 are contrary to the 1945 Constitution if these norms do not have the meaning "as long as they do not conflict with the provisions of statutory regulations".

The Minerba Law stipulates that IUPK is an implementation of part of the WP. WP or mining areas are divided into WUP, WPR, WPN and WUPK. This means that WP is a regional unit which consists of or includes WUP, WPR, WPN and WUPK. In other words, the determination of WUPK and IUPK must be preceded by the determination of WP. By referring to Article 10 of the Mining and Coal Law, it is clear that the determination of WP is carried out in an integrated manner by referring to the opinions of relevant government agencies, affected communities, and taking into account ecological, economic, human rights and socio-cultural aspects, as well as having an environmental perspective.

According to the Constitutional Court, because the determination of WP is the parent or basis for the determination of WUP, WPR, WPN and WUPK, which then determines this area as the basis/foundation for the granting of mining business permits, it can be said that the community, especially those affected by mining, both potential and actual, is legally already has the right to be involved in the process of determining the WP. Moreover, as explained by the President/Government in the hearing at the Constitutional Court, as an implementation of the Mineral and Coal Law the relevant ministries have provided communication channels or channels for the public who wish to monitor and/or report mining-related activities in the hope of assisting the Central Government in supervising mining activities. Therefore, if the implementation of the community's right to participate does not go well so that the quality of participation is not perfect as argued by the Petitioners, according to the Constitutional Court, it is important to pay attention to the Central Government as the party mandated by the State to improve the process of

implementing the community's right to participate so that management of mineral and coal mining remains in line with the community's right to a good and healthy environment to be used as much as possible for the prosperity of the people.

The description of the development of mineral and coal mining policy after the 1998 reform shows the mining issue as part of the issue of decentralization and regional autonomy. This can be clearly seen from the push and pull of mining management as a matter of who gets what. Initially, with the spirit of reform in the form of government decentralization, mining was included as part of the affairs under the authority of regional governments, both provincial, district and city, which were adjusted to the existence and size of mining areas. Later, this authority was taken back by the central government. After the 1998 reform, mineral and coal mining policy was also characterized by the introduction and implementation of a permit regime as a mining instrument, which replaced contracts. Replacing mining legal instruments is actually important in efforts to reform mining management in line with the mandate of the Constitution, because permits are in the public law dimension while contracts are in the private law dimension.[32]

Conclusion

There have been fundamental changes felt in the management of mineral and coal mining in the three legal regimes. Finally, through the law, all authority in managing mineral and coal mining was withdrawn by the central government. This rule, which leaves a centralized impression, has drawn criticism from various parties. The wave of criticism is increasingly visible from various parties to the point of conducting tests with the Constitutional Court. The Constitutional Court's decision partially granted the Petitioner's Petition by stating: first, Article 17A paragraph (2) of the Mineral and Coal Law is contrary to the 1945 Constitution and does not have binding legal force, as long as it is not interpreted as "the Central Government and Regional Government guarantee that there will be no change in the use of space and areas as intended in paragraph (1) in Metal Mineral WIUPs and Coal WIUPs which have been determined as long as they do not conflict with the provisions of statutory regulations". Second, Declare Article 22A of the Mining and Coal Law is contrary to the 1945 Constitution and does not have binding legal force, as long as it is not interpreted as "the Central Government and Regional Government guarantee that there will be no change

[32] Ahmad Redi dan Luthfi Marfungah, "Perkembangan Kebijakan Hukum Pertambangan Mineral Dan Batubara Di Indonesia."

in the use of space and areas in the WPR that has been determined as long as it does not conflict with the provisions of statutory regulations". Thrid, Declare Article 31A paragraph (2) of the 2020 Minerba Amendment Law is contrary to the 1945 Constitution and has no binding legal force, as long as it is not interpreted as "The Central Government and Regional Government guarantee that there will be no change in the use of space and areas in the WIUPK that has been determined as intended in paragraph (1) as long as does not conflict with the provisions of laws and regulations". Fourth, Declare Article 172B paragraph (2) of the Mining and Coal Law is contrary to the 1945 Constitution and does not have binding legal force, as long as it is not interpreted as "the Central Government and Regional Government guarantee that there will be no change in the use of space and areas as intended in paragraph (1) in the existing WIUP, WIUPK or WPR permission has been granted as long as it does not conflict with the provisions of the laws and regulations."

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