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Jurisdictional Disputes between Central and Local Governments in the Management of Coal Mining

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Article	Abstract
<p>Keywords: Authority; Coal Mining; Local Autonomy; Local Government.</p> <p>Article History Received: Jun 9, 2023; Reviewed: Jul 15, 2024; Accepted: Jul 30, 2024; Published: Jul 31, 2024.</p> <p>DOI: 10.28946/slrev.Vol8.Iss2. 3003.pp269-285</p>	<p>On June 10, 2020, President Joko Widodo ratified the amendment of Law Number 4 of 2009 to Law Number 3 of 2020 concerning Minerals and Coal, one of the substances that changed the rules of authority in granting licenses from initially located in the local government to the central government. Therefore, this study aims to analyse the issue of authority between the central government and local governments in coal mining management after the issuance of the Minerba Law in 2020. This research uses a qualitative approach using institutional data surveys as a data collection method. The collected data is analysed using descriptive analysis: data reduction, data presentation, and conclusion drawing. The findings in this study explain that in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, the authority of local governments is withdrawn to the central government, starting from Mining Business License (IUP), People's Mining License (IPR) and Special Mining Business License (IUPK), Special Mining Business License (IUPK), Rock Mining License (SIPB), Transfer Permit, Transportation and Sales Permit, Mining Service Business License (IUJP), and Sales IUP. Although all local government authorities are fully withdrawn from mining licensing, local governments can still carry out mining licensing if the central government delegates authority based on statutory provisions. This latest regulation emerged through the idea of the government together with the House of Representatives on the grounds of simplifying licensing by easing requirements to increase investment obtained by the state. However, this change makes it seem as if the government wants to return to the era of centralisation. It is contrary to the spirit of decentralisation and regional autonomy that is being embraced in Indonesia.</p>

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INTRODUCTION

The management of natural resources in Indonesia is based on the main foundation in Article 33 Paragraph (3) of the 1945 Republic of Indonesia Constitution. This guideline provides direction and guidance in the utilisation of natural resources, namely, "The land, the waters,

and the natural resources within shall be under the powers of the state and shall be used to the greatest prosperity of the people¹. Law Number 2 of 2009 on Mineral and Coal Mining, as a law that regulates mineral and coal mining activities, also emphasises control and responsibility in the management of mineral and coal mining. In Article 4, Paragraph (1), it is stated, "Minerals and coal as non-renewable natural resources are national assets controlled by the state for the greatest public welfare", and in Paragraph (2), it is also explained, "Control of minerals and coal by the state as referred to in paragraph (1) is held by the central government and/or local government"².

On June 10, 2020, President Joko Widodo ratified the amendment of Law Number 4 of 2009 into Law Number 3 of 2020 concerning Minerals and Coal (hereinafter referred to as the Minerba Law), one of the substances that regulates the Mining Business License (IUP). In the Minerba Law, there are changes, one of which is about the authority of the state to control minerals and coal. The arrangements in Article 4 paragraph (2) of Law Number 4 of 2009 states that "The control of minerals and coal by the state as referred to in paragraph (1) is carried out by the Government and/or regional governments", then in the new Minerba Law it is changed in Article 4 paragraph (2) of Law Number 3 of 2020 that "Mineral and Coal Control by the state as referred to in paragraph (1) is carried out by the Central Government by the provisions of this Law", 2 with the formation of the new Minerba Law, revoking the authority of local governments to license and supervise mining areas so that with this new Minerba Law, the authority previously owned by local governments will mostly be taken over by the central government³.

If we look at the 1945 Constitution, Indonesia, in running its government, holds the principle of decentralisation. Decentralisation in the provisions of Law Number 23 of 2014 concerning Regional Government is a transfer of government affairs from the central government to autonomous regional governments based on the principle of autonomy. Mineral and coal mining policy is also one part of the principle of decentralisation. Related to that, the tug of mineral and coal mining licensing authority from the centralised local government to the central government resulted in a lack of involvement of local governments. It distanced the mining authority from community participation, causing controversy in the community. One criticism is regarding the mining licensing authority through the Minerba Law. A policy that is too centralised is feared to change the state system that adheres to the principle of decentralisation into centralisation⁴.

Furthermore, the discussion of the Minerba Law has received rejection from various audiences, ranging from communities around mining areas to farmers, fishermen, and various NGOs. The reason is that they consider that the contents of the articles in the Minerba Law are

¹ Jimly Asshiddiqie, *Konstitusi Ekonomi* (Penerbit Buku Kompas, 2010).

² Basthotan Milka Gumilang, Sherly Oktariani, and Tari Suswinda, "Analisis Undang-Undang No.3 Tahun 2020 Yang Berpotensi Merugikan Masyarakat Dan Lingkungan Berdasarkan Prinsip Sustainable Development Goals," *Jurnal Hukum Lex Generalis* 3, no. 11 (2022): 871–91, <https://doi.org/10.56370/jhlg.v3i11.336>.

³ Novita Eka Utami, "Sentralisasi Terhadap Kewenangan Pemerintah Daerah Dalam Perizinan Tambang Pasca Pemberlakuan Undang-Undang Mineral Dan Batubara," *Jurnal Lex Renaissance* 8, no. 2 (2023): 360–78, <https://doi.org/10.20885/jlr.vol8.iss2.art10>.

⁴ Septi Nur Wijayanti, "Hubungan Antara Pusat Dan Daerah Dalam Negara Kesatuan Republik Indonesia Berdasarkan Undang-Undang Nomor 23 Tahun 2014," *Jurnal Media Hukum* 23, no. 2 (2017): 186–99, <https://doi.org/10.18196/jmh.2016.0079.186-199>.

very controversial and even ignore the side of environmental preservation and are far from the aim to prosper the wider community⁵. Maryati Abdullah (PWYP Indonesia National Coordinator) is concerned about centralising all licensing in the natural resource sector to the central level. This is seen as different from the values of reform and is feared to reduce the political economy cohesion between the centre and the regions. This view is based on the importance of regions being given discretion in managing their economic potential as a form of respect for local communities' right to ownership over their resources. So far there are problems such as overlapping, long procedures, or the existence of extortion or conflict of interest (local political relations- natural resource licensing), then the discretion should be accompanied by strict terms and conditions, not by revoking it entirely⁶. Therefore, it is interesting to analyse the issue of authority between the central and local governments in coal mining management after the Mineral and Coal Law issuance in 2020. This relates to the background and reasons for the law's issuance and how it affects local governments and communities.

RESEARCH METHODS

This research is qualitative as an approach that provides an opportunity for researchers to be able to carry out detailed descriptions and interpretations to gain a holistic understanding⁷The type of research is literature research, reviewing data related to local government authority in the management of mineral and coal mining in Indonesia. Data collection is implemented through survey activities in the field by tracing institutional data, collecting and/or recording data from official sources that issue data related to local government authority in managing coal mining in Indonesia.

Qualitative data analysis techniques are used to analyse the data that has been obtained and collected. These are carried out in three ways: reducing, displaying, and drawing conclusions. Data reduction is the process of selecting, focusing on simplifying, abstracting, and transforming rough data that emerges from written records in the field. Furthermore, the presentation of data is a collection of structured information that allows for drawing conclusions and actions. The final method used is drawing conclusions or verification, namely interpretation or interpretation of the entire collected data so that adequate conclusions can be obtained.⁸

The authority of local governments, including in the management of mineral and coal mining, is largely determined by the ongoing pattern of relations between the central government and local governments. On this basis, the research examines local government authority in government affairs. It is also necessary to examine the issue of the relationship

⁵ Steven Paulus Hamonangan Tampubolon, "Problematisasi Perubahan Undang-Undang Tentang Mineral Dan Batu Bara (Dikuasai Negara Tidak Sama Dengan Dimiliki Negara)," *Jurnal Hukum Dan Sosial Politik* 2, no. 3 (2024): 1–16, <https://doi.org/10.59581/jhsp-widyakarya.v2i3>.

⁶ Pwypindonesia.org, "Polemik RUU Cipta Kerja Di Sektor Minerba," [pwypindonesia.org](https://pwypindonesia.org/id/polemik-ruu-cipta-kerja-di-sektor-minerba/), 2020, <https://pwypindonesia.org/id/polemik-ruu-cipta-kerja-di-sektor-minerba/>.

⁷ Patrik Aspers and Ugo Corte, "What Is Qualitative in Qualitative Research," *Qualitative Sociology* 42, no. 2 (2019): 139–60, <https://doi.org/10.1007/s11133-019-9413-7>.

⁸ Matthew B. Miles and A. Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (Sage, 1994).

between the central government and the local government⁹. The existence of local governments and their relationship with the central government can be explained by explaining the principles of democracy. Democracy must be implemented through the division of power, both vertically and horizontally, because power that is not dispersed is unacceptable in a democratic country. It is in this division of power that the existence of local governments or autonomous local can be understood as the result of a vertical division of power, while the division of power horizontally gave birth to branches of executive, legislative, and judicial power¹⁰.

Government institutions at the local level also indicate that an independent government is built with the spirit of people's sovereignty as a prominent characteristic of a democratic country. According to Tocqueville and Rienow, as quoted by Moh. Maffud MD, at least has two meanings: *firstly*, so that there is a habit for the people to decide various interests that are directly related, and *secondly*, so that there is an opportunity to make their own rules and programs for every community that has diverse demands¹¹. The division of government units into central and local is also a characteristic of modern countries. Both are understood to have an important meaning in state government administration. Although this important role varies according to the variations in central-local relations, each has a basic role. In the external context, the centre becomes important in relations with the international fora. In contrast, in the internal context, the centre plays a role in setting comprehensive standards for the entire country. Meanwhile, the locals play a very important role in managing local resources and interests, which require higher detail sensitivity that the central government cannot carry out¹².

Generally, the relationship between the central and local governments is divided into two types. The first is a centralised relationship where the point of power is completely at the centre. Usually, this is based on the idea that progress at the national level will only occur if the central government is in full control so that all efforts to achieve efficiency and effectiveness are centrally regulated. *Second* is a decentralised relationship, in which the locals are given broad authority in managing their local government affairs. However, the central government can still manage comprehensive and external governance. This choice of decentralisation usually refers to the fact that the automatic concentration of power only benefits the centre, while the locals are far from this and are increasingly marginalised¹³.

In Indonesia's governance history, the two characteristics of this relationship, centralised and decentralised, were applied interchangeably, although the most recent development was a decentralised system. According to Syaekani, Afan Gaffar and Ryaas Rasyid, the choice of decentralisation for Indonesia is a very strategic choice in order to maintain a nation-state that has long been built and maintained. Decentralisation through local autonomy will restore the dignity and self-respect of the local people because, for decades, they have experienced a

⁹ Samuel J Spiegel, "Governance Institutions, Resource Rights Regimes, and the Informal Mining Sector: Regulatory Complexities in Indonesia," *World Development* 40, no. 1 (2012): 189–205, <https://doi.org/https://doi.org/10.1016/j.worlddev.2011.05.015>.

¹⁰ Ni'matul Huda, *Hukum Pemerintahan Daerah* (Nusa Media, 2019).

¹¹ Moh Mahfud, *Pergulatan Politik Dan Hukum Di Indonesia* (Gama Media, 1999).

¹² Ade Fartini, "Politik Hukum: Otonomi Daerah Pasca Amandemen UUD 1945 Upaya Menjaga Keseimbangan Antara Prinsip Unity Dan Diversity," *PLEDOI (Jurnal Hukum Dan Keadilan)* 1, no. 1 (2022): 1–11, <https://doi.org/10.56721/pledoi.v1i1.26>.

¹³ Agussalim Andi Gadjong, *Pemerintahan Daerah: Kajian Politik Dan Hukum* (Bogor: Galia Indonesia, 2007).

process of marginalisation, even alienation, in all forms of public policymaking¹⁴. The decentralisation policy, on the one hand, will free the central government from unnecessary burdens in handling domestic affairs so that it will have the opportunity to study, understand, and respond to various global trends, take advantage, and be better able to concentrate on the formulation of strategic national macro policies. On the other hand, the locals will also experience a significant empowerment process. If, in a centralised system, local government cannot do much to overcome various problems, in this autonomous system, local government will be challenged to find creative solutions to the various problems¹⁵.

The aim of choosing a decentralisation system is certainly not just to be different from the steps taken by the New Order government that was replaced. Decentralisation was chosen because it was based on rational considerations carried out by this nation's leaders. Decentralisation is an effective solution to overcome various problems that arose when Indonesia was in a period of centralisation. There are several reasons behind choosing decentralisation as a system of government in post-reform Indonesia namely: *First*, the decentralisation policy that forms the basis for post-reform local management promises economic efficiency, program cost-effectiveness, accountability, increased resource mobilisation, reduced levels of inequality (*disparity*), increased political participation, and strengthened democracy and political stability. *Second*, through decentralisation, local governments are considered to have better knowledge about the needs and preferences of their citizens, so the development process in the decentralisation policy model should be more efficient than the centralised policy model in the framework of improving the welfare of local communities.¹⁶

The pattern of decentralisation relations carried out through local autonomy is not only related to the agenda of transferring authority from the central government to local governments.¹⁷ Furthermore, autonomy and decentralisation also involve the transfer of authority from the government to citizens. Thus, the decentralisation policy will also create a platform for local communities to participate in determining ways to improve their standard of living through opportunities and challenges¹⁸. According to Nikmatul Huda,¹⁹ only in this way can development for all Indonesian people throughout the country be carried out.

ANALYSIS AND DISCUSSION

Background and Impact of Law Number 3 Of 2020 on Mineral and Coal Mining

¹⁴ Anggi Kartika et al., "Pengimplementasian Kebijakan Desentralisasi Dan Otonomi Daerah Terhadap Keuangan Daerah Pusat Dan Daerah," *INNOVATIVE: Journal Of Social Science Research* 3 (2023): 8522–31.

¹⁵ Benjamin Smith, "The Origins of Regional Autonomy in Indonesia: Experts and the Marketing of Political Interests," *Journal of East Asian Studies* 8, no. 2 (2008): 211–34, <https://doi.org/DOI:10.1017/S1598240800005300>.

¹⁶ H. M. Pahrudin and Citra Darminto, "The Impact of Local Government Policies on People's Welfare in the Regional Autonomy Era: A Case Study of Jambi City, Indonesia," *Kasetsart Journal of Social Sciences* 42, no. 4 (2021): 732–37, <https://doi.org/10.34044/j.kjss.2021.42.4.04>.

¹⁷ Hari Sabarno, "Memandu Otonomi Daerah Menjaga Kesatuan Bangsa" (Jakarta: Sinar Grafika, 2007), 28.

¹⁸ Coen J G Holtzappel and Martin Ramstedt, *Decentralization and Regional Autonomy in Indonesia: Implementation and Challenges* (Institute of Southeast Asian Studies, 2009).

¹⁹ Nikmatul Huda, *Otonomi Daerah: Filosofi, Sejarah Perkembangan Dan Problematika* (Yogyakarta: Pustaka Pelajar, 2005).

In managing and granting mining business licenses in Indonesia, the authority was initially handed over to each region with natural resource potential, as stated in Chapter VI of the 1945 Constitution of the Republic of Indonesia after the amendment regarding the Regional Government. Article 18 paragraph (5) states, "Regional Governments exercise the widest possible autonomy, except for Government affairs which are determined by law to be the affairs of the Central Government". Regional Autonomy is autonomous regions' right, authority, and obligation to regulate and manage their government affairs and local interests by the laws and regulations. However, Mineral and Coal mining management in Indonesia is entering a new phase. The authority to manage mineral and coal mining in the regions will be taken over by the Central Government and applied nationally. This is by Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Many significant changes in the Minerba Law have also been synchronised with the Job Creation Law.²⁰

New content materials have been added to the Minerba Law: First, arrangements related to the Mining Law Area. Second, changes in the authority of Mineral and Coal management. Third, there is an obligation to prepare a Mineral and Coal Management Plan and conduct investigation and research in the context of preparing a Mining Business License Area (WIUP). Fourth, the role of SOEs must be strengthened. Fifth, the re-regulation of licensing in mineral and coal exploitation, including the concept of new licenses related to the exploitation of assistance for certain types or purposes and licenses for community mining. Sixth, policies related to environmental management in mining business activities should be strengthened, including the implementation of reclamation and post-mining. Seventh, Re-regulation of policies related to increasing the added value of Minerals and Coal, Divestment of shares, guidance and supervision, land use, data and information, and community empowerment.²¹

One of the issues that is so serious that it has become the current government's focus is related to licensing. The government, through the President's direction, is aggressively encouraging investment. One of the obstacles is the problem of licensing, which often overlaps, needs to be synchronised between the centre and the regions, and is very prone to levies and bribes. Licensing also sometimes takes a long time, and the costs are very high. This also occurs in the mining sector licensing. The existence of government policies in the mining sector has always been in the spotlight of many parties. This is because the mineral and coal mining sector is considered very important because this sector has the potential to attract new investment²².

Many obstacles are faced to optimise the economy from the mineral and coal sector, not only from the downstream side but also from the upstream side. For investors to be interested in investing and developing the mining business in Indonesia, the government must provide

²⁰ Azmi Fendri, "Pengaturan Kewenangan Pemerintah Dan Pemerintah Daerah Dalam Pemanfaatan Sumber Daya Mineral Dan Batubara" (Universitas Brawijaya, 2011).

²¹ Derita Prapti Rahayu and Faisal Faisal, "Politik Hukum Kewenangan Perizinan Pertambangan Pasca Perubahan Undang-Undang Minerba," *Pandecta* 16, no. 1 (2021): 164–72, <http://journal.unnes.ac.id/nju/index.php/pandecta%0APolitik>.

²² Derita Prapti Rahayu and Faisal Faisal, "Eksistensi Pertambangan Rakyat Pasca Pemberlakuan Perubahan Undang-Undang Tentang Pertambangan Mineral Dan Batubara," *Jurnal Pembangunan Hukum Indonesia* 3, no. 3 (2021): 337–53, <https://doi.org/10.14710/jphi.v3i3.337-353>.

various facilities and reorganise the sector. On the upstream side, a licensing policy is needed that is not complicated, does not overlap, and uses clear procedures, measurable time, and low costs, but mining operations and activities must comply with social and environmental standards and fulfil obligations to the state as good mining and corporate governance practices. On the downstream side, the government invites mining actors to be downstream or increase the added value of mining products by processing mining goods into semi-finished or finished goods so that the state and society get added value and have a large multiplier effect, including job creation, increasing income and welfare. Law Number 3 of 2020, concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, has mandated the downstream of the industry or increasing added value. This is in line with the National Medium-term Development Plan IV Year 2020-2024, namely achieving macroeconomic targets by increasing quality economic growth, one of which is by increasing the added value of mining by encouraging downstream mining.²³

The Indonesian government has encouraged downstream development in the mining industry in recent years. To carry out downstream development, it is recommended that Indonesia make national policies or regulations related to compliance with WTO provisions. A cautious approach in regulating downstream can prevent potentially costly disputes from occurring²⁴. The government and the House of Representatives (DPR) consider amendments to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Law) important. This is an effort to improve the mineral and coal mining sector and improve people's welfare. It was conveyed by Ridwan Jamaludin, who serves as Director General of Mineral and Coal of the Ministry of Energy and Mineral Resources (ESDM), in the material testing session of the Minerba Law and Law Number 11 of 2020 concerning Job Creation (Job Creation Law).²⁵

Law Number 3 of 2020 concerning Mineral and Coal Mining has caused many pros and cons for the community and workers in the mineral and coal sector, as well as providing losses in Natural Resources (SDA). This is due to the benefits that arise for the government and the ease of a mining company in extending and providing convenience in terms of the separation of authority between the Central Government and the Regional Government. However, this is considered odd because the decision hurts several parties, such as the ease for mining companies to extend contracts that allow them to cheat.²⁶

Civil society groups submitted a Judicial Review (JR) of the Minerba Law to the Constitutional Court. Lasma Natalia Hillo Panjaitan, the legal team for the JR of the Minerba Law, said that the rejection effort had emerged since 2020. The rejection was given to the process of forming the law and the substance of the Minerba Law itself. Some of the problems

²³ Friskilia Darongke, Dientje Rumimpunu, and Sarah Roeroe, "Efektivitas Undang-Undang Nomor 3 Tahun 2020 Dalam Pemberian Izin Usaha Pertambangan Mineral Di Indonesia," *Lex Privatum* 10, no. 3 (2022).

²⁴ Atik Krustiyati and Gita Venolita Valentina Gea, "The Paradox of Downstream Mining Industry Development in Indonesia: Analysis and Challenges," *Sriwijaya Law Review* 7, no. 2 (2023): 335-49, <https://doi.org/10.28946/slrev.Vol7.Iss2.2734.pp335-349>.

²⁵ Utami Argawati, "Pemerintah: Perubahan UU Minerba Untuk Perbaiki Sektor Pertambangan," *mkri.id*, 2022, <https://www.mkri.id/index.php?page=web.Berita&id=17910>.

²⁶ Nurhadi Sucahyo, "Dampak Buruk UU Minerba Dan UU Cipta Kerja Kian Terasa," *voaindonesia.com*, 2022, <https://www.voaindonesia.com/a/dampak-buruk-uu-minerba-dan-uu-cipta-kerja-kian-terasa/6512236.html>.

in the Minerba Law include the change in regional authority to central authority. Thus, rejecting residents becomes difficult because the authorities are in Jakarta. This law also guarantees no change in spatial utilisation. With this provision, mining areas that are not environmentally sensitive will certainly remain. Security forces also use the article on the criminalisation of mining-resisting communities to frighten and create insecurity for residents. According to Lasma, the Minerba Law creates at least three conditions, namely the absence of fulfilment of human rights. The second condition is the loss of democracy because the hallmark of a democratic state is community participation. The third condition is the weakening of the rule of law²⁷. Likewise, Fanny Tri Jambore, Manager of Campaigning for Mining and Energy Issues, Walhi noted three things that impacted the birth of the two laws. First is the liberalisation of licensing, which is an effort to commodify the entire system of human life. Second is the disappearance of people's participation and control over their lives. Third is the provision of policy space that is highly centred on the central government.²⁸

Then, the Indonesian Forum for Living Environment (Walhi) found the risks experienced by the community due to the Mineral and Coal Law. First, Communities Can No Longer Protest Local Governments. With the passing of the Minerba Law No. 3 of 2020, from now on, if there are people who are harmed by the actions of mining companies, be it in the form of environmental destruction or land dispute conflicts, the local government can no longer take any action. Because the central government regulates all mining authorities, the local regency or city government is no longer there. So, at this time, people who want to protest regarding mining activities in their area must report to the central government or at least the province. So far, most mining locations are remote areas, even outside Java. This rule is very far from the logic of good governance because people who live in mining areas cannot do much when mining companies damage their environment.²⁹

Second, there is a Risk of Being Policed If Resisting Mining Companies. Local communities who are harmed by the activities of mining companies that destroy their living space can no longer report to the local government. Even worse, it can be seen from Article 162 of the Minerba Law No. 3 of 2020 that people who try to interfere with mining activities in any form can be reported back by the company and sentenced to punishment, even a fine of up to 100 million rupiah. This very absurd rule actually waltzed and was appreciated by the President amid the rampant injustice and criminalisation carried out by many companies against mining communities. This new mining law will deprive local communities of their natural resources by a handful of mining conglomerates and criminalise those who try to reject their areas for exploitation. Third, mining companies can still operate despite evidence of environmental damage. Companies that are proven not to have carried out reclamation or post-mining activities can still extend their contracts for 1 time 10 years. Fourth, mining companies can make as much profit as possible, even receiving 0% royalty guarantee.³⁰

²⁷ Sucahyo.

²⁸ Sucahyo.

²⁹ Walhi.or.id, "Menyoal 4 Masalah UU Minerba Yang Merugikan Masyarakat Luas," walhi.or.id, 2021, <https://www.walhi.or.id/menyoal-4-masalah-uu-minerba-yang-merugikan-masyarakat-luas>.

³⁰ Walhi.or.id.

Local Government Authority in Coal Mining Management

One of the characteristics of a modern government, as Gwendolen M. Carter and John H. Herz called it, is the recognition and acceptance of the role of government as an active force in shaping economic, social, and environmental conditions. Government participation in social activities, including economic activities, is thus a necessity in the life of the nation and state³¹.

According to Emil Salim, the government needs to intervene in mining activities. *Firstly*, mining natural resources is "non-renewable", so the depletion of mining natural resources hampers sustainable development. In this case, the government plays a role in regulating the use of revenue obtained from mining products, which should be used for renewed diversification of activities. Thus, if the mining material is depleted, other development engines based on "renewed natural resources" will already be available. *Second*, government intervention is necessary to correct pollution by the mining industry by considering the costs of pollution in mining costs.³²

Thus, in addition to supporting sustainable development, government intervention in mining activities is also needed to reduce the possibility of pollution. Therefore, it is natural and even necessary for the government to intervene in mining activities. Especially for the Indonesian government, which, according to the mandate in the 1945 constitution, is the ruler over the natural resources of the archipelago and then must use these resources for the prosperity and welfare of society.³³

In the field of mineral and coal mining, by Law Number 4 of 2009 on Mineral and Coal Mining, the government authorities in executed interference in the management of mineral and coal mining are not limited to the central government, but also local governments, both provincial and regency or city governments. Consequently, the central government has a monopoly on management in the form of establishing national policies; stipulation of national standards as well as guidelines and criteria; determination of mining areas; granting mining business permits in reserved mining areas; stipulation of production, marketing, utilisation and conservation policies; stipulation of cooperation, partnership and community empowerment policies; as well as formulation and stipulation of non-tax state revenue from mineral and coal mining business results.

Beyond that, the management of geological information and the granting of mining business permits are the authority of the central government and local government. The difference lies only in the jurisdiction of the government. If the management covers the entire national territory, or at least cross-provinces, or if the sea area is more than 12 miles from the coastline, then it becomes the authority of the central government, but if the area covers a province, or at least cross-regencies/cities in one province, or if in the sea area how many from 4 million to 12 million, then it becomes the authority of the provincial government. If the regency/city area covers it, or if it is within the sea area and is up to a limit of four miles, then it becomes the authority of the regency/city government to manage it. Moreover, a form of

³¹ Gwendolen M Carter and John H Herz, "Government and Politics in The Twentieth Century. New York: Frederick A" (Praeger, 1965).

³² Salim Emil, *Pertambangan Dalam Keberlanjutan Pembangunan. Perpustakaan. Bappenas. Go. Id, Kompas*, vol. 8 (Jakarta, 2005).

³³ Fernando P Carvalho, "Mining Industry and Sustainable Development: Time for Change," *Food and Energy Security* 6, no. 2 (2017): 61–77, <https://doi.org/https://doi.org/10.1002/fes3.109>.

management is monopolised by the regency/city government, namely the granting of People's Mining Permits (IPR).

The existence of part of the authority to manage mineral and coal mining in the local government is largely a response to the spirit of post-1999 decentralisation and wide-ranging autonomy. This is illustrated by the General Explanation of Law Number 4 of 2009 on Mineral and Coal Mining, which states: "In the context of implementing decentralisation and local autonomy, the management of mineral and coal mining is carried out with the principles of externality, accountability, and efficiency involving the central government and local government."

Thus, implementing decentralisation and local autonomy is also a goal that can be achieved by giving local governments the authority to manage mineral and coal mining. If the implementation of decentralisation and local autonomy is aimed at accelerating the realisation of social welfare through improving services, empowering and participating in the community, and increasing local competitiveness, the aim is to give the local government the authority to manage mining³⁴. The Republic of Indonesia's 1945 Constitution states in Article 18, paragraph 5, that regional governments have the greatest degree of autonomy, except matters about government that are legally designated as the Central Government's purview 6. Likewise, General Elucidation Number 1 of Law No. 23 of 2014 concerning the Regional Government stipulates that As an entity in the administration of government, the Regional Government is given the authority to regulate and manage government affairs that the Central Government has submitted to the region by the mechanism of legislation.³⁵

Meanwhile, if we examine the historical side, there is no role for the local government in mineral and coal management, except for minerals that are not classified as strategic and vital then the granting of authority to the local government is a form of giving up freedom to the local government – According to Syauckani, Afan Gaffar and Ryaas Rasyid, marginalisation and alienation in all forms of public policy-making so far. After decades of being in a period of marginalisation and alienation, now it is as if the regional government has received its freedom so that it has become an active part of this management.³⁶

The emergence of the authority to manage mineral and coal mining activities is an income (national and regional income), so local governments, especially regencies/cities, which have mineral and coal potential, are increasingly benefiting. Regarding revenue generation, the local government concerned will receive additional revenue. If the central government gets a 20% share of the revenue from mining activities, the local government gets 80%. Furthermore, the local revenue-sharing funds are further divided into 16% for the province concerned and 64% for the producing regencies/cities. Meanwhile, local revenue-sharing funds originating from

³⁴ Maty Konte and Rose Camille Vincent, "Mining and Quality of Public Services: The Role of Local Governance and Decentralization," *World Development* 140 (2021): 105350, <https://doi.org/10.1016/j.worlddev.2020.105350>.

³⁵ Muhammad Fauzan, Dwiyanto Indiahono, and Riris Ardhhanariswari, "Problematics of Inter-Regional Cooperation in Indonesia," *Sriwijaya Law Review* 8, no. 1 (2024): 99–114, <https://doi.org/10.28946/slrev.Vol8.Iss1.2049.pp99-114>.

³⁶ H R Syauckani, Afan Gaffar, and M Ryaas Rasyid, *Otonomi Daerah Dalam Negara Kesatuan, Pustaka Pelajar* (Yogyakarta: Pustaka Pelajar, 2002).

exploration and exploitation fees are divided into 16% for the relevant province, 32% for producing districts/cities, and 32% for other regencies/cities within the province concerned.

The large portion is what the local government can receive. Currently, the locals that have potential mineral and coal resources are becoming increasingly active in encouraging their mining activities³⁷. However, as mentioned in the first part of this article, the current problem is that the local government's involvement in managing the mining has increased damage to environmental functions. Whether the tendency for damage to environmental functions because of the mining that has occurred is related to the authority to manage mining activities at the local government is still a question today.

If the normative provisions in the Act are used as material for analysis, then the current environmental function damage should not have occurred. This is because every mining business must be accompanied by a permit, part of which is issued by the local government. Referring to the Law on Environmental Management, because mining activities are included as activities that are likely to have a large and significant impact on the environment, the activity plan also needs to be accompanied by an analysis of environmental impacts. Apart from that, a national standard has also been established, which should be a guide in every mining activity.

Based on these normative provisions, damage to environmental functions due to mining must be avoided unless the mining is illegal and without a permit. If the issuance of mining permits goes through the correct processes and stages and the entrepreneur also runs his business in accordance with the permits and applicable laws and regulations, of course, damage to environmental functions can be avoided.

However, there are still misperceptions about decentralisation and regional autonomy, which then encourage the need for some authority in the management of mineral and coal mining to be in the hands of the local government. For example, the perception of the potential availability of natural resources is often recognised as "belonging to the local community". As a result, the exploitation of natural resources in the region, including mineral and coal resources, is increasing, which can cause damage to environmental functions.³⁸

This situation is exacerbated by the fact that the exploration and exploitation of natural resources, especially mining, is still characterised by a paradigm that values natural resources as a source of income rather than capital. The attitude of mutual need that should take place in order to create a balance of higher quality of life, in the end, is more dominated by the human desire to dominate nature.³⁹ This is exacerbated by the existence of political economy transactions in making decisions about permitting activities so that the analysis process regarding environmental impacts and activity permits is only a formality and is not used as part of an objective basis in decision making.⁴⁰

³⁷ Adisa Azapagic, "Developing a Framework for Sustainable Development Indicators for the Mining and Minerals Industry," *Journal of Cleaner Production* 12, no. 6 (2004): 639–62, [https://doi.org/https://doi.org/10.1016/S0959-6526\(03\)00075-1](https://doi.org/https://doi.org/10.1016/S0959-6526(03)00075-1).

³⁸ Tri Ratnawati, Alfitra Salamm, and Lili Romli, "Hubungan Kewenangan Antara Pemerintah Pusat Dan Daerah Dalam Otonomi Daerah Di Indonesia: Peluang, Kendala, Dan Implikasi," *Jakarta: Pusat Penelitian Politik LIPI*, 2003.

³⁹ Abrar Saleng, "Risiko-Risiko Dalam Eksplorasi Dan Eksploitasi Pertambangan Serta Perlindungan Hukum Terhadap Para Pihak Dari Prespektif Hukum Pertambangan," *Jurnal Hukum Bisnis* 26, no. 2 (2007).

⁴⁰ Eko Prasajo, "Reformasi Kedua: Melanjutkan Estafet Reformasi" (Jakarta: Salemba Humanika, 2009), 138.

In addition, there is also a "bias" in the current local autonomy, in which the autonomy policies tend to be oriented towards the economy, matters of wealth distribution, income distribution, percentage of central-local profit sharing, and others⁴¹. With this perspective, the problem of central-local relations will be resolved if the local rights to the products of their natural resources have been granted and the money has been distributed. As a result, the urgency of public participation, community oversight, and the importance of institutionalising public accountability at the local level tends to be ignored in the policy package.⁴²

Orientation of economic policy simultaneously shows that the reforms to decentralisation and local autonomy that have taken place so far are more characterised by state institutional reform than state capacity building. The implication is that the decentralisation and local autonomy that have emerged in the last decade are seen as real in terms of institutions but "subtle" in terms of function.⁴³ In other words, the implementation of decentralisation has been present at the level of symbols. However, it is related to the goal of community welfare, which is the underlying reason for implementing decentralisation. Democratisation is still far from being successful.⁴⁴

In the field of mineral and coal mining management, the implementation of decentralisation and local autonomy is more visible in the existence of the authority possessed by the local government and the income that will be obtained from this manager. Consequently, the management of mineral and coal mining is more oriented towards exploiting the potential of mineral and coal resources in the area to generate additional income for the local government. The issue of community participation being involved in activities and supervision and the government's public accountability to the community is another problem that tends to be ignored. Therefore, to maintain the continuity of environmental functions and realise the constitutional directive that 'use natural resources for the greatest possible prosperity of the people', the government, especially regional governments, needs to change its perspective and orientation towards the implementation of regional autonomy. Previously, the perspective and orientation focused on the authority possessed by the local government and the income that would be obtained. This also requires societal involvement, transparency of activities, and public accountability to the society. In addition, the local government's implementation of mineral and coal mining management must still be coordinated with the central government. The absence of information at the central government regarding mining permits that occur locally, as stated at the beginning of this article, is the implication of the regional government's arrogance, which seems as if the scope of mining activities is local, so it only becomes the authority of the local government.

⁴¹ Nikmatul Huda, "Hubungan Pengawasan Produk Hukum Daerah Antara Pemerintah Dengan Pemerintah Daerah Dalam Negara Kesatuan Republik Indonesia," *Jurnal Hukum Fakultas Hukum Universitas Islam Indonesia* 16 (2009): 72–94.

⁴² M Zulfa; Najemi Hartati; Aulia Andi, "Reform Policy of Mineral and Coal Mining Management in the Era of Regional Autonomy," *JL Pol'y & Globalization* 59 (2017): 203.

⁴³ Syarif Hidayat, "Mengurai Peristiwa Merentas Karsa: Refleksi Satu Dasawarsa Reformasi Desentralisasi Dan Otonomi Daerah," *Prisma* 29, no. 3 (2010): 4–22.

⁴⁴ Aisling Lyon, "Political Decentralisation and the Strengthening of Consensual, Participatory Local Democracy in the Republic of Macedonia," *Democratisation* 22, no. 1 (January 2, 2015): 157–78, <https://doi.org/10.1080/13510347.2013.834331>.

Moreover, the central government is seen as necessary in the management of mineral and coal mining because the involvement of the central government will increase the trust and security of investors. In the mining opening stage, the central government is considered more experienced and knowledgeable in technology. Apart from that, several foreign investments are not only risking the reputation of the locals but also the image of Indonesia as a whole.⁴⁵

At entry into force of Law Number 41 of 1999 concerning Local Government, local governments had a wide deviation of authority in regulating and managing mining based on the principle of autonomy. This broad delegation of authority aims for local governments to increase local revenue from the mining sector because local governments can draw revenue from taxes, fees, and other fees. Local government authorities in Law Number 41 of 1999 on Local Government include implementing the utilisation of natural resources and other resources which become local authorities, cooperation, and profit sharing on the utilisation of natural resources and other resources between local governments, and management of joint permits in the utilisation of natural resources and other resources.

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

In the end, in Law Number 3 of 2020 on Amendments to Law Number 4 of 2009 on Mineral and Coal Mining, all local government authority was withdrawn to the central government starting from IUP, IPR, IUPK, Rock Mining Permit (SIPB), Assignment Permits, Transportation Permits and Sales, Mining Service Business License, (IUJP) and IUP for sales. Even though the local government's authority is completely withdrawn in mining permits, the local government can still take care of mining permits if the central government delegates authority based on statutory provisions. Even with Law Number 11 of 2020 *juncto* Law Number 6 of 2023 concerning Job Creation, the energy and mineral resources sector is included in simplifying business licensing with ease and investment requirements made by the central government.

As an example, Jambi Province, which is involved in managing coal in the country, has issued several local regulations. *First*, Jambi Province Local Regulation Number 13 of 2012 on Coal Transportation in Jambi Province. *Second*, Jambi Provincial Regulation Number 18 of 2013 on Coal Transportation Implementation Procedures. *Third*, Jambi Provincial Regulation Number 11 of 2019 on Mineral and Coal Mining Management.

The Jambi Provincial Government needs to adopt the above policies so that the large potential of coal in this region has a positive impact on local development. According to data from the Indonesian Ministry of Energy and Mineral Resources, Jambi Province has a coal potential of 1.9 billion metric tons and is spread across seven regencies/cities, namely Batanghari, Muaro Jambi, West Tanjungjabung, Tebo, Bungo, Merangin and Sarolangun

⁴⁵ Ibnu Mardiyanto, "Implikasi Hukum Perjanjian Internasional Terhadap Implementasi Otonomi Daerah: Studi Tentang Kompetensi Pemerintah Daerah," *Utī Possidetis: Journal of International Law* 4, no. 3 (2023): 406–38, <https://doi.org/10.22437/up.v4i3.26601>.

Regencies as largest landlord⁴⁶. Based on the total existing coal resources, only 90 million metric tons have been produced, so coal resources or reserves in Jambi are still abundant and have potential. Of course, the existence of this coal must be managed properly through policies owned by the Jambi Provincial Government so that it has a positive impact on local development and society in general.

Coal mining is realising the prosperity of the people in Indonesia based on the principle of sustainable development. First, in legal matters, the Indonesian government must comply with Article 33 of the 1945 Constitution as an economic system that aims to realise people's sovereignty in the economic field. Secondly, several regulations related to coal mining still need to fill some gaps. Therefore, an evaluation is needed in the field of legal structure to uphold the rule of law by the values that live in society as a reflection of Pancasila and the 1945 Constitution. Third, there is a need for state control in coal utilisation and a new balance in the management of national policies based on sustainable development, where the purpose of coal exploitation in the mining sector is not only to pursue economic benefits but also has the same responsibility for social and environmental.⁴⁷

CONCLUSION

This research concludes that regulations related to mining management have been changed by the government and the House of Representatives in Law Number 3 of 2020 concerning Mineral and Coal Mining. In the latest regulation, the term “Mining Authorization” is replaced with three forms of licensing, namely Mining Business License, People's Mining License, and Special Mining Business License. Through the regulation, the authority of local governments is withdrawn to the central government, starting from Mining Business License, People's Mining License and Special Mining License, Special Mining Business License, Rock Mining Permit, Assignment Permit, Transportation and Sales Permit, Mining Service Business Permit, and Sales IUP. Although all local government authorities are fully withdrawn from mining licensing, local governments can still administer mining licenses if the central government delegates authority based on statutory provisions. With the enactment of Law Number 11 of 2020 in conjunction with Law Number 6 of 2023 on Job Creation, the energy and mineral resources sector is included in simplifying business licensing with ease and investment requirements made by the central government. This latest regulation came about through the government and the House of Representatives on the grounds of simplifying licensing by easing requirements to increase investment obtained by the country. However, this regulation needs to be revised. The most dominant defect relates to the issue of the authority to manage mining licenses, which originally lay with the local government but now lies with the central government's authority. This policy betrays the spirit of decentralisation and regional autonomy that is being embraced by the Indonesian state.

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- ⁴⁷ Irsan Irsan and Meria Utama, “The Political Law on Coal Mining in the Fulfilment of People’s Welfare in Indonesia,” *Sriwijaya Law Review* 3, no. 1 (2019): 11, <https://doi.org/10.28946/slrev.vol3.iss1.202.pp11-25>.

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