



The Impact of Centralization on the Enactment of Law Number 4 of 2009 concerning Mineral and Coal Mining on the Development of Regional Autonomy

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Abstract

The condition of illegal coal mines has been going on for a long time in East Kalimantan Province at the same time when mining business permits (IUP) from district and city governments have been issued since the 2000s, as well as several small islands where there are explicit illegal mines. This unlicensed coal mining was originally carried out by traditional miners, but it has evolved due to factors such as poverty, lack of employment, and lack of opportunities. Based on the description above, it is to find out the centralization arrangement of the enactment of Law Number 4 of 2009 concerning Mineral and Coal Mining on the development of regional autonomy. This study uses an empirical juridical (sociological) approach which is research to describe and analyze existing problems and is included in the type of library research that will be presented descriptively. In the process of making policies, it is important for communities to participate and fulfill their aspirations so that the use of natural resources can improve the mineral and coal mining sector and improve the welfare of the community. Then, the government should consider strategic and potential matters, especially those related to the environment. One consequence of the centralization of mining is that local governments no longer have the authority to control mineral and coal mining. In addition, local governments face distortions of oversight of mining management and declining regional revenues.

Introduction

East Kalimantan Province is the capital of the archipelago which has a wealth of abundant natural resources. Natural resources, both minerals and coal, are one type of wealth, so that unwise and wise management can result in the depletion of these natural resources in the future. Participation in the management and utilization of natural resources is very important for sustainable development, regulation regarding the control and exploitation of energy and mineral resources. Based on the regulation regarding the control and exploitation of energy and mineral resources (natural resources), the goal is to maximize the prosperity of the people (Nassani et al., 2021; Aladejare, 2023; Erdoğan et al., 2021; Zhang et al., 2023; Najicha, 2021). Article 33 paragraph (3) of the Constitution of the Republic of Indonesia explains that "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest possible prosperity of the people". In addition, mining development must adapt to changes in the strategic, national, and international environment. The main challenges for mining and coal mining are the impact of the promotion of international democracy, regional autonomy, human rights, the environment, technological and communication developments, intellectual property rights and the importance of increasing employment for the private sector and society (Camacho-Garza et al., 2022; Bohoslavsky, 2020; Selmier & Newenham-Kahindi, 2021). Mining is a long-term business that involves high technology and capital. In addition,

the basic nature of the coal mining industry is to clear land and change the natural environment so that it has an environmental, social and economic impact on the community. Therefore, Law Number 4 of 2009 concerning Mineral and Coal Mining regulates the regulation of coal mining licensing, which discusses the form, regulation, and conditions of licensing (Hairun et al., 2023; Liu et al., 2021; Huizenga, 2019; Heffron et al., 2021).

Illegal coal mining is a mining activity carried out by individuals, groups of people, or companies that do not have an official permit from a government agency in accordance with applicable regulations or laws.

The condition of illegal coal mines has been going on for a long time in East Kalimantan Province at the same time when mining business permits (IUP) from district and city governments have been issued since the 2000s, as well as several small islands where there are explicit illegal mines (Toumbourou et al., 2020; Toumbourou et al., 2022; Susmiyati et al., 2023; Suwari Akhmaddhian, 2023). This unlicensed coal mining was originally carried out by traditional miners, but it has evolved due to factors such as poverty, lack of employment, and lack of opportunities. Based on the description above, it is to find out the centralization arrangement of the enactment of Law Number 4 of 2009 concerning Mineral and Coal Mining on the development of regional autonomy.

Methods

This study uses an empirical juridical (sociological) approach which is research to describe and analyze existing problems and is included in the type of library research that will be presented descriptively. Primary legal materials, namely laws and regulations, and secondary materials, namely books, journals, and literature, are examined objectively. This study uses qualitative analysis to analyze legal materials.

Results and Discussion

Development of Mineral and Coal Mining Management Regulations in East Kalimantan Province

The stipulation of Law Number 4 of 2009 concerning Mineral and Coal Mining against Mineral and Coal Mining, in article 8, namely the authority in the field of mineral and coal mining is divided equally between the central government, provincial regional governments and regency/city local governments.

In this case, the Regional Government that has a mining location is obliged to provide guidance, conflict resolution and supervision of mining businesses. Local governments can act as mediators in conflicts between mining companies and communities in mining areas.

If there is a report that a mining company has committed a violation, the local government has the authority to stop or even revoke the mining business license (IUP). Mining businesses in the country are generally more profitable for officials and entrepreneurs than for the local community. The community only receives the negative impact of mining activities. Therefore, companies are required to submit environmental impact assessments and prepare post-mining reclamation details and plans.

However, due to the large number of permits for mineral and coal mining businesses, supervision as a law enforcement tool has become less effective. In addition, many mining supervisors or inspectors in the field are inexperienced at the district and provincial levels. On the other hand, they risk being bribed or committing corruption, which causes mining areas not to be inspected as often as they should.

Thus, law enforcement is the process of making legal standards applicable and serving as a guideline for behavior in traffic and legal relations in society and the state. However, permits for mineral and coal mining activities often reduce oversight as an instrument of law enforcement. In addition, there are many inexperienced mining inspectors or field supervisors at the district level. With the enactment of Law No. 4 of 2009 concerning Mineral and Coal Mining (Law No. 4/2009), the closing provisions of Law No. 11 of 1967 concerning the Principal Provisions of Mining (Law No. 11/1967) are declared revoked and no longer valid. However, some provisions of Law No. 11/1967 are not explicitly revoked and are no longer valid. In the transitional provisions of Law No. 4/2009, it is stated that the Contract of Work (KK) and the Agreement Agreement.

Conceptually, the transformation from a contract regime to a licensing regime is an effort to adjust the mining management system to constitutional politics as stated in Article 33 Paragraph (3) of the 1945 Constitution. The contract system has two main drawbacks. First, the contract system regulated in the 1967 Mining Law allows the Indonesia government to suffer losses. In practice, the Contract of Work between the Indonesia government and mining between 1967 and 1991 provided only 1.5 to 3.5 percent royalties. This is well below the average of 6% royalties in other countries (Imron, 2013). Second, the state and the company act as partners in an equal relationship through a contractual system. This is not in line with the idea that the constitution establishes the state as the party in control of natural resources.

Thus, the article restricts and hinders local governments from controlling minerals and coal. This will indicate a centralized system, where licensing is carried out in an integrated manner by the central government. One of the government's actions to improve the investment climate is to cut licensing. However, this is not intended to reduce the authority of local governments in regulating matters related to licensing and investment supervision in the mining sector.

The increasing number of illegal mining and environmental damage is caused by the unpreparedness of local governments in managing people's mining authority (Mestanza-Ramón et al., 2022; Pereira et al., 2021; Nigrum & Suprayogi, 2022; Agyei-Okyere et al., 2019; Chugh, 2020). Although Law No. 4 of 2009 on Minerals and Coal has changed people's mining policies to mandatory supervision of IPR rather than free, this cannot be achieved.

After the authority of IPR is returned to the provincial government through Presidential Regulation 55 of 2022, optimal efforts are needed to ensure that IPR is implemented correctly and to prevent state losses due to illegal mining. The lack of consideration of environmental aspects and substantial changes related to reclamation and post-mining obligations contained by Law No. 4 of 2009 as described above, will not only leave a toxic legacy of mining pits, but further legalize corporate crime to destroy the lives of future generations. One of them is the authority to issue WIUP and IUP, carry out supervision and guidance of mining activities, and conduct an inventory of reserves and mining. It is very important to consider the role and participation of each region in supervising the mining process.

Conclusion

Based on the research and discussion mentioned above, it can be concluded that the authority of the local government has changed after Law Number 4 of 2009 was enacted. Articles that give authority to local governments are deleted and amended, so that local governments have the authority to grant mining permits. However, local governments have the authority to manage mineral and coal resources independently.

As a result, due to licensing issues, the centralization and decentralization of mineral policies are incompatible with regional autonomy and decentralization. The study emphasizes that local governments must remain authoritative in the field of mineral and coal mining, in addition to

increasing their decentralization and autonomy. In the process of making policies, it is important for communities to participate and full fill their aspirations so that the use of natural resources can improve the mineral and coal mining sector and improve the welfare of the community. Then, the government should consider strategic and potential matters, especially those related to the environment. One consequence of the centralization of mining is that local governments no longer have the authority to control mineral and coal mining. In addition, local governments face distortions of oversight of mining management and declining regional revenues.

References

- Agyei-Okyere, E., Opoku, M. P., & Nketsia, W. (2019). An assessment of the living conditions of disabled people in mining communities: A case study of Ghana. *The Extractive Industries and Society*, 6(4), 1215-1223. <https://doi.org/10.1016/j.exis.2019.07.004>
- Aladejare, S. A. (2023). Economic prosperity, asymmetric natural resource income, and ecological demands in resource-reliant economies. *Resources Policy*, 82, 103435. <https://doi.org/10.1016/j.resourpol.2023.103435>
- Bohoslavsky, J. P. (2020). Development and Human Rights in Bolivia: advances, contradictions, and challenges. *Latin American Policy*, 11(1), 126-147. <https://doi.org/10.1111/lamp.12181>
- Camacho-Garza, A., Acevedo-Sandoval, O. A., Otazo-Sánchez, E. M., Roman-Gutiérrez, A. D., & Prieto-García, F. (2022). Human rights and socio-environmental conflicts of mining in Mexico: a systematic review. *Sustainability*, 14(2), 769. <https://doi.org/10.3390/su14020769>
- Chugh, G. (2020). Land Mismanagement and Coastal Disasters. *Development in Coastal Zones and Disaster Management*, 87-99. https://doi.org/10.1007/978-981-15-4294-7_6
- Erdoğan, S., Çakar, N. D., Ulucak, R., Danish, & Kassouri, Y. (2021). The role of natural resources abundance and dependence in achieving environmental sustainability: evidence from resource-based economies. *Sustainable Development*, 29(1), 143-154. <https://doi.org/10.1002/sd.2137>
- Hairun, R. H., Alwan, S., & Rumkel, N. (2023). Legal Analysis of Regional Legislative Council Supervision of Regional Government Regarding Overlapping Mining Business Permits in North Maluku Province. *Journal of Social Science*, 4(2), 363-379. <https://doi.org/10.46799/jss.v4i2.548>
- Heffron, R. J., Downes, L., Rodriguez, O. M. R., & McCauley, D. (2021). The emergence of the 'social licence to operate' in the extractive industries?. *Resources Policy*, 74, 101272. <https://doi.org/10.1016/j.resourpol.2018.09.012>
- Huizenga, D. (2019). Governing territory in conditions of legal pluralism: Living law and free, prior, and informed consent (FPIC) in Xolobeni, South Africa. *The Extractive Industries and Society*, 6(3), 711-721. <https://doi.org/10.1016/j.exis.2019.01.003>
- Liu, Q., Li, X., & Hassall, M. (2021). Regulatory regime on coal Mine Safety in China and Australia: Comparative analysis and overall findings. *Resources Policy*, 74, 101454. <https://doi.org/10.1016/j.resourpol.2019.101454>
- Mestanza-Ramón, C., Ordonez-Alcivar, R., Arguello-Guadalupe, C., Carrera-Silva, K., D'Orío, G., & Straface, S. (2022). History, socioeconomic problems and environmental impacts of gold mining in the Andean Region of

- Ecuador. *International Journal of Environmental Research and Public Health*, 19(3), 1190. <https://doi.org/10.3390/ijerph19031190>
- Najicha, F. U. (2021). Oil and natural gas management policy in realizing equal energy in Indonesia. *Journal of Human Rights, Culture and Legal System*, 1(2). <https://doi.org/10.53955/jhcls.v1i2.8>
- Nassani, A. A., Aldakhil, A. M., & Zaman, K. (2021). Ecological footprints jeopardy for mineral resource extraction: efficient use of energy, financial development and insurance services to conserve natural resources. *Resources Policy*, 74, 102271. <https://doi.org/10.1016/j.resourpol.2021.102271>
- Nigrum, S., & Suprayogi, Y. (2022). THE IMPACT OF MINING BUSINESS LICENSE POLICY IN SOUTHEAST SULAWESI AFTER THE ENACTMENT OF LAW NUMBER 23 OF 2014. *Journal Publicuho*, 5(4), 1261-1276. <https://doi.org/10.35817/publicuho.v5i4.71>
- Pereira, V., Tuffour, J., Patnaik, S., Temouri, Y., Malik, A., & Singh, S. K. (2021). The quest for CSR: Mapping responsible and irresponsible practices in an intra-organizational context in Ghana's gold mining industry. *Journal of Business Research*, 135, 268-281. <https://doi.org/10.1016/j.jbusres.2021.06.024>
- Selmier II, W. T., & Newenham-Kahindi, A. (2021). Communities of place, mining multinationals and sustainable development in Africa. *Journal of cleaner production*, 292, 125709. <https://doi.org/10.1016/j.jclepro.2020.125709>
- Susmiyati, H. R., Harjanti, W., & Al Hidayah, R. (2023). Development of the Nusantara capital, sustainable extraction for East Kalimantan. In *Assembling Nusantara: Mimicry, friction, and resonance in the new capital development* (pp. 151-164). Singapore: Springer Nature Singapore. https://doi.org/10.1007/978-981-99-3533-8_11
- Suwari Akhmaddhian, S. (2023). The Strengthening Government Policies on Mineral and Coal Mining to Achieve Environmental Sustainability in Indonesia, Africa and Germany. *Bestuur*. <https://doi.org/10.20961/bestuur.v11i1.71279>
- Toumbourou, T. D., Dressler, W. H., & Werner, T. T. (2022). Plantations enabling mines: Incremental industrial extraction, social differentiation and livelihood change in East Kalimantan, Indonesia. *Land Use Policy*, 119, 106157. <https://doi.org/10.1016/j.landusepol.2022.106157>
- Toumbourou, T., Muhdar, M., Werner, T., & Bebbington, A. (2020). Political ecologies of the post-mining landscape: Activism, resistance, and legal struggles over Kalimantan's coal mines. *Energy Research & Social Science*, 65, 101476. <https://doi.org/10.1016/j.erss.2020.101476>
- Zhang, R., Aljumah, A. I., Ghardallou, W., Li, Z., Li, J., & Cifuentes-Faura, J. (2023). How economic development promotes the sustainability targets? Role of natural resources utilization. *Resources Policy*, 85, 103998. <https://doi.org/10.1016/j.resourpol.2023.103998>