

## **Inter-Governmental Ideal Relationship in the Management of Mineral and Coal Resources**

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**Abstract:** The main purpose of the state is to improve the people welfare. Hence, all the existing resources should be pursued and exploited optimally. As it turns out in practice, however, authority overlapping includes permits issued by regents overlapping with other regent, as well the governors' permit overlaps with the permit issued by the regent. The outcomes of the research indicate that the inter-government ideal relationship and local governments on the management and exploitation of mineral and coal resources is to synergize the authority relation between the central and local government in carrying out the tasks that have been attributed by law and regulation both horizontally and vertically. In addition, it takes the utilization of natural resources as an effort to minimize conflict inter-sectors. Judging from the aspect of permitting, it is expected that the legality of permitting aspect will be the first step to minimize the overlapping of permitting authority management.

**Keywords:** Local Government, Mining, Mineral and Coal Resources

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### **I. INTRODUCTION**

Minerals and coal asun-renewable natural resources that in due time will be reduced and eliminated, its management must be managed wisely. Various environmental issues that arise and knock the nation and the people who continuously take place without this control, it cannot be conducted through a partial approach alone, but necessary an integral, comprehensive, and systematic approaches.<sup>1</sup>

The role of State c.q. Government, business and society in accordance with their roles and functions are essential to manage coal wisely for the benefit of future generations with the mandate of the 1945 Constitution, article 33 paragraph (3). In the explanation of the 1945 Constitution of the Republic of Indonesia, there is no explanation of the meaning of being controlled by the State. However, what is accepted that being controlled by the State is not equal as owned by State. It is very closely related to the concept of *domain* that often used by the Dutch-Indies colonialists.

In relation to State control, Act No. 4 of 2009 on Mineral and Coal Mining (hereinafter abbreviated as '*UU Minerba*') mandates that mineral and coal contained in the territory of mining law of Indonesia is un-renewable natural wealth as a gift of God almighty, hence its management must be controlled by State to adding value to the national interest in an effort to achieve prosperity of the people in justice.

According to the provision of consideration *a* and *c*,<sup>2</sup> there are 4 (four) principles of mining management are: (a) State control; (b) the arrangement of prosperity; (c) provide added value for the national economy; and (d) management independently, reliably, transparently, competitively, efficiently and environmentally, as well as the guarantee of sustainable development. Meaning controlled by the State means State not owner, but controlled in the form of granting permit to conduct mineral and coal mining concessions.<sup>3</sup>

Information obtained by author through the Offices of Minerals and Coal Mining, East Kalimantan in 2013, that there are many cases of overlapping in authority for permit by the local government c.q mayor. Authority overlapping includes permits issued by regents overlapping with other regent, as well the governors' permit overlaps with the permit issued by the regent. Overlapping in mining areas with mining sector is forestry, plantation, and agricultural sectors; conflict with customs and local cultural values.

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<sup>1</sup> Irwansyah, I. (2017). "Based Environmental Law: The Debate Between Ecology Versus Development". *Sriwijaya Law Review*, 1(1), 044-066.

<sup>2</sup> See the dictum considers Letter "a" and "c" of Act No. 4 of 2009 on Mineral and Coal Mining.

<sup>3</sup> Aminuddin Ilmar. (2012). *Hak Menguasai Negara Dalam Privatisasi BUMN*. Jakarta: Kencana Prenada Media Group, p. 59

As well in East Kalimantan is PT. MHU, engaged in coal mining located in Kutai Kartanegara regency has a permit that overlaps with oil palm that engaged in plantations sector owned by PT. Hasfran. PT. Kitadin Embalut is engaged in coal mining with agricultural land in the form of rice fields, oil palm located in Kutai Kartanegara regency. PT. Bharinto Ekatama is located in Kutai Barat regency, for 2 (two) months stopped by the community for violating the borders of the territory, because PT. Bharinto Ekatama is located in East Kalimantan and South Kalimantan.<sup>4</sup> Based on the provisions stipulated by the Mineral and Coal Acts, those mining permits granted by regents/mayors in the mining areas are within one regency/municipality. But that happens is arbitrariness in granting permit. The number of problems resulting from the mining permit makes the government conduct moratorium temporarily of permit for a new mine. The granting of mining permit will be implemented after the government determines the territory.

## II. METHOD OF THE RESEARCH

The type of research is a normative-legal research<sup>5</sup> with an analytic descriptive aimed at explaining the State control over the mineral and coal resources management. In this research to describing the variables contained therein indicators as part of scientific search effort that will be described and analyzed by using the following approaches: the philosophy approach is to know the nature of the State control on the management and exploitation of mineral and coal resources inter-government and local governments. The conceptual approach by describes the views and doctrines that developed in law science so that a new idea can be found and the principles relevant to the problem being studied and also using statute and conceptual approaches.

Even the legal substance used in this research includes primary, secondary and tertiary.<sup>6</sup> Primary legal materials are statutory relating to the management of coal mining and the national laws and regulations and its implementation. Secondary legal materials in the form of legal literature related to the management of coal mining, legal materials obtained from the internet, seminar results, research results, symposia and results of workshops related to the object of research. While tertiary legal materials are supporting documents, such as statistical data and monographs and other similar.

## III. REVIEWING THE IDEAL RELATION BETWEEN CENTRAL AND LOCAL GOVERNMENT

Governance in the broad sense means *regering* or *government* is the implementation of the duties of all agencies, institutions and officers who are entrusted authority to achieve the goals of the State. The meaning of this government includes the legislative, executive and judicial powers or other State fittings that also act for and on behalf of the State.

Government in the narrow sense (*Bertuурvoering*) includes the organization of functions that perform government duties. The emphasis of government in the narrow sense relates only to the power of executive function. Therefore, according to Van Vollenhoven interpret the government in a broad sense that includes: 1) making legislation (*legelgeven*); 2) government (*Bestuur*); 3) Judicial (*Rechtspraak*); and 4) Police (*Politie*).

Government in the narrow sense is the executing body (*Eksekutive, bestuur*), not including the legislation, judiciary and police bodies. In interpreting the government in the narrow sense, Van Vollemhoven argues that the police agency becomes a separate body from the executive function but if it is seen the duty and authority, the police also performs the function of government that is to maintain order (*sera en rust*) and to organize public interest. The political consensus of local autonomy based on Act No. 32 of 2004, the characteristic of central and local relations is decentralized, where the regions are given wide authority to regulate and manage the matters of governance that are of regional interest. In this era of local autonomy, the decentralization system, which runs and ends after the enactment of Act No. 23 of 2004, is considered to be very much a problem such as the exercise of authority, institution, finance, and supervision. This is due to the non-transparent central and local relations. The lack of coordination, supervision of licensing and sanctions.

The essence of the authority relationship between the central- and local government by synergizing the relationship and coordinating each other in making licensing stipulation so that there is no cross over permit which is set by the government apparatus. In addition to the decentralization policy of central and regional fiscal balance, as set forth in Act No. 33 of 2004, the regions are given the right to obtain financial resources such as

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<sup>4</sup> Source: Information from the Office of Energy and Mineral Resources, Province of East Kalimantan.

<sup>5</sup> According to Peter M. Marzuki, normative legal research is simply called legal research, because the term legal research or in Dutch called *rechtsonderzoek* is always normative. Similarly, the term of juridical-normative is also known in legal research, so the appropriate term is to use legal research. Peter Mahmud Marzuki. (2013). *Penelitian Hukum, Edisi Revisi*, Jakarta: Kencana Prenada Media Group, pg. 55-56.

<sup>6</sup> Roni Hanitijo Soemitro. (1998). *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta: Ghalia Indonesia, p. 125

collecting and utilizing local taxes and levies and the right to obtain revenue sharing from national resources in the region and other balance funds.

After the enactment of Act No. 23 of 2014, the characteristics of State power have shifted from decentralization back to centralization or called re-centralistic. It is not yet clear what the color of government or power configuration, because the technical guidelines of the legislation have not been established. Therefore, according to the authors in Act No. 23 of 2014 the role of regions still exist only placed in the Province, it means the decentralization system also still exist.

From the authors' descriptions, starting from harmonizing legislation to analyzing the relation of authority between the central and local, as an effort to know the extent of central and local relation causing problems in the practice of management and exploitation of mineral and coal resources. In this case the author wants to study based on the theory of State power developed by Van Vollenhoven, known as "*Caturpraja*" that there are 4 (four) functions of State power.

*First*, the function of governance (*Berstuur*), the government has a wider task in exercising power. Its nature as a ruler or government runs the peoples mandate morally with the intention to goodness and truth. So that the wheels of power are getting away from the problems and between the good relationships vertically and horizontally, applying the principles of good governance is a system of mutual coordination, transparent, effective, and efficient toward good governance. One of the principles of good governance is effectiveness.

In this case, there should be an effort to always assess the level of effectiveness and efficiency of utilization of available resources. The non-implementation of the principles of efficiency and effectiveness will lead to financial wastage and other state resources. The minimal indicators of effectiveness and efficiency are: 1) implementation of State administration is quality and on target with optimal use of resources; 2) monitoring and evaluation for improvement; 3) reduced overlap of organizational functions/work units.<sup>7</sup>

From various problems in the implementation of local government law, especially the granting of mining concession permits, finally the government set up by making "*one stop service*". One Stop Integrated Service Pattern is held in one place that includes various types of services that are linked to the process and served through a single door. Through this regulation, a one-stop service guideline is set up to deliver a fast, cheap, easy, transparent, secure and affordable public service.

*Second*, the judicial function (*Rechtspraak*), in the exercise of power between the government and inter-government and the people or inter-people themselves if there is a problem then the State has a container to resolve the case through the court. *Third*, the regulating function (*Regeling*), the State has the duty to make regulations to be the standard and reference in acting within a state law. Against the management and exploitation of mineral and coal resources must be clear along with strict sanctions, given that mining activities are sensitive; and *Fourth*, the function of State in maintaining order and security (*Politie*), through the *politie* function, it is intended that the State can create a safe and orderly state.

Study on the management and exploitation of mineral and coal resources conducted by the central- and local government. Where, the State in performing its functions as proposed by Van Vollenhoven, as an effort to realize the national goal that is the prosperity of the people. In line with the main mission of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which leads to the greatest prosperity of the people. This can be accomplished if the government that performs the task of government has a firm commitment to carry out governmental duties on behalf of the people.

Implementation of the ideal authority relationship between the central- and local government can be identified as follows:

- 1) The synergy of authority relations between the central- and local government in carrying out the duties that have been attributed by law and regulation, both horizontal and vertical regulatory regulations.
- 2) The synergy of authority relation between central- and local government in the utilization of natural resources. In an effort to minimize conflict inter-sectors.
- 3) The synergy of authority relation between central- and local government in giving permit, in an effort to minimize the overlapping of authority to grant management permit.
- 4) The synergy of authority relations between central- and local government in terms of production sharing.
- 5) The synergy of authority relations between central- and local government in terms of stabilization of spatial arrangement with the principle of harmonization of national interest and regional needs and harmony between regions for the realization of national spatial arrangement that is harmonious between national interests, regional needs and harmony among regions.

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<sup>7</sup> The Indonesian Ministry of National Development Planning/National Development Planning Agency (Bappenas), *Indikator Good Public Governance*, Jakarta: Sekretariat Tim Pengembangan Kebijakan Nasional, 2007, p.19

Through a harmonious relationship between the central- and local government is successful, it will contribute positively to the achievement of national goals. The existence of a clear division of authority as outlined in a policy of legislation will give a clear direction for good governance, both at the center and in the regions in order to concentrate more on their duties and authorities effectively and efficiently. The regulatory policy will provide a space for mutual coordination, harmonious cooperation, mutual support and complementary strata of central- and local government which is a form of concurrent governmental affairs. Congruent government affairs can be done by each government on the basis of consideration of externalization, accountability and efficiency.

#### **IV. HARMONIZATION OF REGULATIONS ON MINERAL AND COAL RESOURCE MANAGEMENT**

One of the real efforts in realizing the ideal inter-governmental relationship in the management of mineral and coal resources is the creation of harmonization between the laws and regulations. Need to immediately harmonizes the legislation, synchronize authority relations between the central- and local government either vertically or horizontally, and synergize the work program of central- and local government.

Normatively, according to Rahardjo,<sup>8</sup> there are eight principles of legality that must be fulfilled in making the law, includes:

- 1) There must be a rule first;
- 2) The regulation shall be declared properly;
- 3) The rules should not be retroactive
- 4) Formulation of clear and detailed legislation regulations, it must be understood by the people;
- 5) The law should not ask on the run of things that are impossible;
- 6) Among the rules may not be in conflict with each other;
- 7) The rules must be fixed, should not be changed frequently; and
- 8) There shall be conformity between the actions of the officials of law and the regulations which have been made.

Failure to realize any of these values can lead to results that do not match what is expected of the contents of the rule. So, to implement the ideal authority relationship between the central- and local government when viewed from the material aspects of legislation is more difficult. Just a well-implemented legislation will bring about a sense of justice. Justice is manifested in the form of equality and usability that leads to an atmosphere of happiness as Rowls and Benthan theories want in a country.<sup>9</sup>

The enactment of Act No. 23 of 2014 on Regional Government has changed the map of regional authority over the management of mineral and coal resources. The nature of decentralization that has been undertaken in the management of mineral and coal resources does not indicate an improved management by the government and local governments.

In the context of Local Autonomy, although it has laid the basis for granting authority to the regions, but not necessarily the authority and matters of mining may be left entirely to the local government. Should the affairs provided by the region is a local affair, which means having a value that is regional, in accordance with the conditions of the region does not concern national interests. Indeed, for certain areas, the authority remains to be given to regions with consideration of central government control. The central government is still able to monitor and supervise the implementation of such management, so that a synergic partnership between the central and regional governments is established. Need to be studied about the basic framework of regional positions in the Republic of Indonesia, Article 18 of the 1945 Constitution of the Republic of Indonesia, determines that Indonesia is a unity which means no country within the country. Such a form of decentralization and regional autonomy shall be deemed to have no authority and autonomy to the same region as the State. Thus, J. Kaloh states that the role of the central government in elaborating the 1945 Constitution remains to be maintained, given the state of Indonesia as a geographical-sociological environment that has certain limits and in the geographical context the territory should be maintained, as all potentials and resources Including potential (demographic), socioeconomic, socio-cultural, socio-political and security as well as religious should be in an inseparable entity.

Given all these potentials is considered as a dynamic of a region (geographic-sociological) that is integrated with the static aspects that include the potential of natural resources and geographical space as its boundaries. The boundaries of regional authority over the management of mineral and coal mining, of course need to be harmonized with the interests of the region itself. This means that the regions can be authorized as

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<sup>8</sup> Satjipto Rahardjo. (2007). *Membeda Hukum Progresif*. (Ed. I Gede A.B. Wiranata, Joni Emirzon, Firman Muntaqo), Jakarta: Kompas.

<sup>9</sup> Felix A. Nogro and Lyold G. Nigro. (1980). *Modern Public Administration*, New York; Harper & Row Publishers, pg. 34-35.

long as the regions are able to carry out and the transfer of authority to those fields will not lead to the disintegration of the Unitary of the Republic of Indonesia. Thus, the overwhelming authority of the central government should also be distributed, since the historical experience shows that too much central authority in the management of mineral and coal mining and regarded the small role of the region, will lead to demands from regions wanting to escape from the Unitary of the Republic of Indonesia.

To create central- and local relations are equitable, the role of regions in the management of mineral and coal mining needs to be improved. Profitable cooperation between the central- and local government and access to local governments and local communities in the management of large mineral and coal mining is a reflection of justice itself as John Rawls,<sup>10</sup> that justice contains two key principles: First, everyone has the right of freedom as widely as the freedom of others; Second, all social and economic imbalances must be regulated so as to benefit everyone and all positions openly accessible to all.

The enactment of Act No. 23 of 2014, the authority of district/municipal governments is abolished, does not mean that the districts are underestimated, but vertically the provincial government assumes responsibilities to districts as a form of decentralization. According to the authors in terms of revenue sharing district/municipal remains a top priority, with reference to the law of financial balance. The reason is that the first district/municipality experienced the consequences of mining operations. Mineral and coal resources are classified as non-renewable natural resources controlled by the State. Thus, the management must add value to the national economy in order to achieve prosperity of the people.

The concept of justice in Islam as the forerunner of mankind in Qur'an Surah Al-Maidah verse (45) is explained that we have established for them in it (Torah) that soul by soul, eyes by eyes, by nose, ear by ear, teeth by teeth, and injuries also have the same replies. Whoso does not judge things according to what Allah hath revealed, they are the unjust. The meaning of the above verse reminds the government as the holder of the authority should perform synergies either vertically or horizontally so that in carrying out government duties can achieve the concept of Good Governance. Good governance will influence the power configuration responsively both in relation to the government itself and the government with its citizens. Assessment of the central- and local authority relationship aimed at realizing justice, in theory should refer to the process of determining the policy of planning, implementation and good supervision.

## V. CONCLUSION

The inter-government ideal relationship and local governments on the management and exploitation of mineral and coal resources is to synergize the authority relation between the central and local government in carrying out the tasks that have been attributed by law and regulation both horizontally and vertically. In addition, it takes the utilization of natural resources as an effort to minimize conflict inter-sectors. Judging from the aspect of permitting, it is expected that the legality of permitting aspect will be the first step to minimize the overlapping of permitting authority management. On the other hand, it is necessary to consolidate spatial structuring with the principle of harmonization of national interest and regional needs as well as harmony inter-regions. Thus, this effort can realize the creation of a national spatial arrangement that is harmonious between national interests, regional needs and inter-regions.

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<sup>10</sup> John Rawl, (1972). *Theory of Justice*. Cambridge Mas: Harvard, University Press.