**THE AUTHORITY OF CENTRAL GOVERNMENT IN THE MANAGEMENT OF MINERAL AND COAL MINING BASED ON THE DECENTRALIZATION AND REGIONAL AUTONOMY PERSPECTIVE**

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This research is a study of "The Central Government's Authority in the Management of Mineral and Coal Mining Based of Decentralization and Regional Autonomy Perspective". This research is motivated by the implementation of decentralization in a country that cannot be separated from mineral resources owned by each region. The arrangements of management of mining become an inseparable part in the editorial discussion of the policy directions and thw arrangements of regarding decentralization and autonomy. The Regions that have the potential for explorative natural resources are faced with a complicated situation and full of pros and cons when discussing about mining in their area. The revised of the act of regional government certainly contributes to the political of decentralized law and the arranggement of mining. The relationship between the central government and regional governments, especially the provinces in mining management based on the Act of Mineral and Coal must receive special attention, because it has a direct orientation towards the perspective of decentralization and regional autonomy after reform era. To discuss these issues, conducted by normative legal research method with the *statute* *approach*. This reseach prove, the authority of the central government in managing mineral and coal mining has a paradigm of decentralization that is felt to be getting stronger. Exceptions to government affairs which by acts are determined as central government affairs are the constitutional basis of legislators as the basis for decentralization policy direction.

Keywords: Authority, Mining, and Decentralization

1. **Intoduction**

Reform provides a new era in the dynamics of regional governance in Indonesia, as one of the mandates of reform, namely decentralization which now has a fitting place by displacing a highly centralized government in the new order. Not surprisingly, the act of regional government is one of the acts drafted in conjunction with the discussion of the Constitution 1945 amandements, so that in 1999 The Act Number 22 of 1999 years was born.

The philosophical basis in the formation of Act Number 22 of 1999 Years is that the government system of the Unitary State of the Republic of Indonesia according to the Constitution 1945 gives freedom to the regions to implement regional autonomy. In the implementation of regional autonomy, it is deemed necessary to put more emphasis on the principles of democracy, community participation, equity and justice, and pay attention to the potential and diversity of the region. Facing the development of the situation, both inside and outside the country, as well as the challenges of global competition, it is deemed necessary to carry out regional autonomy by giving broad, real and accountable authority to the regions proportionally realized by the regulation, distribution and utilization of national resources, and central and regional financial balance, in accordance with the principles of democracy, community participation, equity and justice, as well as regional potential and diversity, which is carried out within the framework of the Unitary Republic of Indonesia.[[1]](#footnote-1)

The Act Number 22 of 1999 of years has a main orientation, which is related to regional freedom to implement regional autonomy. However, a very dynamic political upheaval made changes in the direction of views so fast in the implementation of regional autonomy. In 2004, The Act of Regional Government was born, namely The Act Number 32 of 2004 of years which was later amended by the Act Number 23 of 2014 of Years, the Act Number 2 of 2015 of Years, and The Act Number 9 of 2015 of Years.

The implementation of decentralization in a country is inseparable from the mineral resources owned by each region. As is known, mineral resources as one of the natural wealth owned by the Indonesian people, if managed properly will contribute to the country's economic development. In this case, the government as the ruler of these resources in accordance with the mandate of the 1945 Constitution must regulate comprehensively from upstream to downstream, so as to optimize the revenue from exploitation of these resources, so as to obtain the maximum benefit for the prosperity of the people.

Mineral resources, in this case mining, have their own characteristics, where the location of distribution and size is limited, found in the earth, starting from the ground level to a certain depth, can only be mined once, because it is non-renewable resources, utilization time is limited (only a few years), investment risk is very high, capital intensive and technology, preparation before long mining (approximately 5 years). Because of the potential location of mineral resources in general in remote areas, the opening of a mine will be a trigger for regional development and floating and has a positive impact in multiplier effect.[[2]](#footnote-2)

The arranggement of mining management are an inseparable part in the editorial discussion of policy directions and arrangements regarding regional government. The Act Number 4 of 2009 of Years as an implementation of regional government regimes based on The Act Number 32 of 2004 of Years when it has adjusted. The birth of The Act Number 9 of 2015 of Years has a logical consequence of the birth of The Act Number 3 of 2020 of Years.

Regions, especially those that have the potential for explorative natural resources, are faced with a complicated situation and full of pros and cons when discussing about mining in their area. The amandement of the Act of Regional Government certainly has contributed to the legal political map of the decentralized law and regulations on mining, and vice versa. Therefore, the relationship between the central government and regional governments, especially the provinces in mining management based on the Mineral and Coal Law must receive special attention, because it has a direct orientation towards the perspective of decentralization and regional autonomy after reform.

1. **Research Methods**

Research is the application or application of a predetermined method with very strict requirements based on the maintained tradition of scientific knowledge so that the results of the research carried out have scientific value that is valued by the relevant (intersubjective) scientific community.[[3]](#footnote-3) As well as a way of acting so that research activities can be carried out rationally and directed in order to get maximum results. To facilitate the research process and collection of accurate and relevant data in order to answer emerging problems. This research method uses a legal normative approach, which is a method that reviews and discusses the object of research by reviewing from the theoretical perspective. This policy analysis uses a normative approach with the statutory approach and conceptual approach, with the method of collecting data through library research related to decentralization and government relations between the center and the regions, especially in the dimensions of mining management.

1. **Discussion**

Indonesia is the largest archipelago in the world that stretches from Sabang to Merouke and consists of various ethnic groups, certainly not an easy job to find an ideal format for political decentralization and regional autonomy. With a high degree of geographical and socio-cultural heterogeneity, regions tend to demand more space for power than is normally provided by the unitary state center. Then decentralization will always be a problem, if the foundation of the state structure is not addressed.[[4]](#footnote-4)

Regional autonomy is considered to have an impact on national disintegration and tension in central and regional relations. In addition, it is also considered to have caused social tensions or conflicts in society, widespread of corruption, collusion and nepotism (KKN) carried out by political elites, regional disparities, and deeper poverty gaps are just a few examples of the problems that are often experienced by Indonesia.[[5]](#footnote-5) In fact, behind the negative things there are substantial things that have a positive and significant impact that has been felt by the community and the regional government directly. Substantially, there has been a paradigm shift, in the apparatus of regional government and the community in implementing and encouraging transparent and accountable government systems that enable the functioning of a check and balance mechanism.

The discourse of strengthening the Unitary State of the Republic of Indonesia as the legitimacy of national integration cannot be confronted confrontingly with the conception and implementation of regional autonomy. The collapse of national integration was not due to a decentralized government system through the broadest regional autonomy.[[6]](#footnote-6) However, it is more caused by a unitary state that is ethatism-centralistic and also no less important is the country's weak political capacity to be able to reach and fulfill all the interests of the community, especially the people in the regions. As John Stuart Mill said, only a small part of a country's political affairs can be done well or trialed safely by the central authority (central government). This means that state capacity has a large role in managing and harmonizing the relationship between the central and regional authorities.[[7]](#footnote-7)

1. **Central Government Authority in the Management of Mineral and Coal Mining**

Minerals and coal as one of the natural resources contained in the earth are non-renewable natural resources, in accordance with the provisions of Article 33 paragraph (3) of the Constitution 1945 which is controlled by the state and used for the greatest prosperity of the people. The State through the central government is responsible for the use of minerals and coal in the jurisdiction of the Unitary State of the Republic of Indonesia through the management, utilization of minerals and coal in an optimal, effective and efficient manner so as to encourage and support the development and independence of the development of national industries based on mineral and/or coal energy resources.

After decades of natural resource management in the bowels of the earth, the Indonesian people are now beginning to realize that there needs to be improvements both normatively and in the implementation dimension. If only pursue how to optimize mining management for state revenue, there will be disparities with other sectors that are related. Mining management must pay attention to a number of basic elements of sustainable development practices, both economic, social and environmental. Indonesia must change the way of mining management by carrying out mining activities that refer to the principles of good mining, the optimal regional economy, and mining must become the driving force of development.[[8]](#footnote-8)

The rule of the mining in Indonesia was arranggement by The Act Number 4 of 2009 of Years, and its implementing regulations have not been able to answer the problems and actual conditions in the implementation of mineral and coal mining operations, including cross-sectoral issues between the mining sector and the non-mining sector. The birth of The Act Number 3 of 2020 of Years gives a relatively new nuance in the world of mining. The Article 4 of the Act of Mining in Indonesia, that minerals and coal as non-renewable natural resources are national assets controlled by the state for the greatest welfare of the people. The control of minerals and coal by the state is held by the central government in accordance with the provisions of the law. Mastery is carried out through the functions of policy, regulation, administration, management and supervision. The control of coal minerals by the state which is then held by the central government is a paradigmatic change in the conception of the relationship between the central and regional governments in mining management which is one of the central points in the Act of Mineral and Coal which was previously controlled by the state and regional government.

The indicator of Article 4 of the Act of Mineral and Coal is one of a series of cars from the legal political locomotive in designing the perspective of decentralization and regional autonomy in the country of Indonesia after the Act Number 23 of 2014 of Years. A description of the authority of the central government regarding mining management includes: a. determine the national mineral and coal management plan; b. stipulating national mineral and coal policies; c. stipulate laws and regulations; d. setting national standards, guidelines and criteria; e. conduct mining investigations and research in all mining legal areas; f. determine the mining area after being determined by the provincial government in accordance with its authority and in consultation with the Representatives of the Republic of Indonesia Assembly; g. determine the area of ​​metal mineral Mining Business Permit and Coal Mining Business Permit Area; h. determine the non-metallic Mineral Mining Business Permit Area and the Rock Mining Business Permit Area; i. determine the Special Mining Business Permit Area; j. carrying out the Special Mining Business Permit Area priority list; k. issue Business Licensing; l. provide guidance and supervision of the implementation of mineral and coal mining business activities carried out by business permit holders; m. Establish policies on production, marketing, utilization and conservation; n. Establish a policy of cooperation, partnerships, and community empowerment; o. Manage and determine non-tax state revenue from the results of mineral and coal mining businesses; p. Manage geological information, information on potential mineral and coal resources, and mining information; q. Conduct training and supervision of reclamation and post-mining; r. Preparing national-level mineral and coal resource balance; s. Developing and increasing the added value of mining business activities; t. Enhancing the capabilities of the central government apparatus and the provincial government in managing mining business. u. Setting a benchmark price for metal minerals, certain types of non-metal minerals, radioactive minerals, and coal; v. Manage mine inspectors; and w. Manage mining supervisors.

The arrangements of regarding authority, both provincial and district/city governments which in the Minerba Law previously regulated in Article 7 and Article 8 were deleted. This has indicated the existence of mining management decentralization. In connection with the granting of a mining business permit as the spirit of the mining management authority carried out based on Business Licensing from the Central Government. Business Licensing is implemented through the provision of: a. business registration number; b. standard certificate; and/or c. permission. Relating to permits, consisting of: a. IUP; b. IUPK; c. IUPK as a Continuation of Contract/ Agreement Operation; d. IPR; e. SIPB; f. Assignment Permit; g. Transportation and Sales Permit; h. Mining Service Business License; and i. Mining Business License for Sales. The Central Government can delegate the authority to grant Business Licensing to the provincial government in accordance with statutory provisions

Changes in the authority of the central government, provincial governments, and district/city governments in the management of natural resources, especially in the mining sector as regulated in the Act of Mineral and Coal, have consequences, especially on the division of authority matters between the central government, provincial governments and district governments /city. Therefore, the law also states that the provisions concerning the division of concurrent government affairs between the central government and provincial and district/city governments in Number I district/city letter CC Division of Government Affairs in the Field of Energy and Mineral Resources Number II Mineral and Coal Sub-Affairs contained in the Appendix which is an inseparable part of the Act Number 23 of 2014 of Years as amended several times, most recently amended by The Act Number 9 of 2015 of Years, Revoked and declared invalid.

1. **The Perspective of Decentralization and Regional Autonomy in the Constitution 1945**

In practice, the relationship between the center and the regional governments often leads to spanning of interests between the both of government units.[[9]](#footnote-9) Especially in a unitary state, the efforts of the central government to always be in control of various government affairs are very clear. The tendency of the state in the form of unity of authority is central, power rests at the center of government. The authority granted by the center to the regions is limited.

In the form of a unitary state, the center is responsible for ensuring the integrity of the unitary state, guaranteeing equal services for all citizens of the country (equal treatment principle), ensuring uniformity of actions and arrangements in certain fields (uniformity principle). Efforts to bring about justice and social welfare are greatly influenced by the fabric of society. In a plural society, efforts to realize justice and social welfare must pay attention to local patterns and composition. Attention to these differences and specificities requires further differences in services and ways of administering government. This demand for governance is only possible in a decentralized government.[[10]](#footnote-10)

The basic assumption of regional autonomy is to build a government system based on political will to hand over regional management to local or regional governments that better understand the issues, and the needs and character of the people who are in the area. Efforts to bring the service function closer to the community which thus results in policies for people. The purpose of autonomy is to achieve effectiveness and efficiency in service to the community.[[11]](#footnote-11)

Jimly Asshiddiqie,[[12]](#footnote-12) stated that the provisions of the Constitution 1945 resulting from the Second Amendment actually reinforced the principles of federalistic regulation in the formulation of regional authority. Article 18 paragraph (2) confirms, that "the provincial, regency and city regional governments regulate and manage their own governmental affairs according to the principle of autonomy and duty of assistance". In fact, in Article 18 paragraph (5), it is reiterated that "Regional governments exercise autonomy to the fullest extent possible, except for governmental affairs determined by act as Governmental affairs." Therefore, theoretically, the principle of such regulation can be called federalistic, because the concept of original or residual power seems to reside in the regional government. Such a principle is well known in the environment of federal states. This opinion is supported by Astim Riyanto as stated in his dissertation which confirms that the stipulation of Article 18 paragraph (5) of the Constitution 1945 means that it has changed the spirit and spirit of Article 18 of the Constitution 1945 prior to the change, which indicates the desires of actualizing the unitary state with proportional decentralization into the actualization of the state unitary with federalistic decentralization.[[13]](#footnote-13)

Against the two views above, the authors disagree. Basically, the conception of Article 18 paragraph (2) and Article 18 paragraph (5) of the Constitution 1945 at the beginning of the reform did have a tendency toward federalism, but the political political map that was intertwined over a period of 22 years had changed the orientation towards the direction of strengthening central influence towards area. This condition is inseparable from the description of government affairs in Article 18 paragraph (5), namely "... except government matters which are determined by law as Government affairs". In a sense, the legislator still has an important role in articulating the direction of Indonesia's decentralization policy by determining government affairs based on political will regimes that have legitimacy to power at the Center.

**Politik Hukum Perubahan Undang-Undang Pemerintahan Daerah Pasca Reformasi**

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| --- | --- | --- | --- |
| Undang-Undang tentang Pemerintahan Daerah | Kebijakan Politik | Mekanisme Pengawasan | Pertanggungjawaban |
| UU No 22 Tahun 1999 | Seluas-luasnya dengan desentralisasi murni | Sifatnya hanya melaporkan | Kepada DPRD |
| UU No 32 Tahun 2004 | Adanya pembahia antara wewenang pusat dan daerah namun belum sepenuhnya berkolaboratif | Sistem evaluasi | Hanya sebatas laporan |
| UU No 23 Tahun 2014 | Kolaboratif antara desentralisasi dan konsepsi Negara Kesatuan | Sistem evaluasi berjenjang di tiap tingkat Pemerintah Daerah hingga Pemerintah Pusat | Laporan kemudian menjadi tindakan dengan landasan vertikal hirarkis. |

Based on this table, it can be seen that the influence of the center on the region is built in stages starting from the center, the province, and the regency/ city by putting the province aside from being a form of regional autonomy but also becoming a representative of the central government in the region. The existence of distortion regarding decentralization which is poured from generation to generation each the act of Regional Government after the amendment is inseparable from the concepts in Article 18 paragraph (2) and Article 18 paragraph (5) of the Constitution 1945. But keep in mind, that the estuary of the provisions of the Regional Government Act is the same, namely is to bringing the government closer to the people, so that the government understands that it exists because it is needed by its people and it is part of the people.[[14]](#footnote-14)

The situation regarding the decentralization of the authority to manage mineral and coal mining is a practice of the administration of government affairs with decentralization and regional autonomy, which throughout the history of Indonesia has so far displayed varied conditions, which are generally understood to reflect a tug of centralized and decentralized nature. This means that there is a diverse understanding of regional autonomy itself. However, whatever the formulation or expression, regional autonomy is basically intended to bring government closer to the people.[[15]](#footnote-15) Theoretically, the relationship between the center and the regions can be interpreted as the relationship between the power of the central and regional governments which is a consequence of the adoption of the principle of decentralization in state government.

The theoretical relationship between the central and regional governments according to Clarke and Stewart can be divided into three,[[16]](#footnote-16) namely: *First*, *The Relative Autonomy Model*, that the pattern of relationships that gives relatively greater freedom to local governments while respecting the existence of the central government. The emphasis is on granting freedom of action to regional governments within the framework of powers and responsibilities that have been formulated by legislation. *Second*, *The Agency Model*, that a model in which the regional government does not have significant power, so that its existence is seen more as an agent of the central government whose job is to carry out the policies of the central government. Therefore, in this model various detailed instructions in the legislation as a control mechanism are very prominent. In this model, local revenue is not important and the regional financial system is dominated by assistance from the central government. *Third, The Interaction Model*, which is a form of model in which the existence and role of local government is determined by the interaction that occurs between the central government and local government.

Based on the theory above, it can be concluded that in the Constitution 1945 actually the pattern of central-regional relations has a tendency towards the Relative Autonomy Model theory. Article 18 paragraph (5) stipulates that "Regional governments exercise autonomy to the fullest extent possible, except for governmental affairs which the rules are determined as Governmental affairs." This is the basic reference that relatively large freedoms actually are in the hands of the regions.

However, as explained earlier, that the central-regional relations can be determined by the center as long as the authorities determined by the rules are the central authority, the regional authority must adjust accordingly. This also relates to mining management. The Agency Model Theory has a very crucial role in combining decentralization with decentralization in Indonesia, so that somehow the urgency of decentralization embedded in the Constitution 1945 at some point has a direction of continuity towards centralization.

In accordance with this, also reiterated by the description from Jimly, that in the unitary state the original power really is in the government, not in the region, what is given to the region is not the original power without attributes, but the power that has been legalized as usual referred to as authority. Therefore, the region only accepts what has been given by the government in carrying out government affairs.[[17]](#footnote-17)

This means that the main orientation rather than decentralization is the policy direction of the central government itself. This indicator is inseparable from the strong influence of the executive authority's authority in drafting a rule from the submission, discussion, to approval, and endorsement. So the executive can indirectly create a diorama of decentralization in Indonesia.

The desire of the executive to build a paradigm of legality of authority in mining management is actually still coherent with the basis of Article 33 paragraph (3) of the Constitution 1945. Article 33 paragraph (3) of the Constitution 1945 has also been mandated that "The earth, water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people". According to Suparto Wijoyo,[[18]](#footnote-18) that the meaning of the greatest prosperity of the people shows that the people must accept the use of natural resources in Indonesia. The authority of the regional government in developing the nuances of decentralization is able to be determined by the legislator, even though the editors contained in the Constitution are the regional governments exercising as much autonomy as possible. However, exceptions to governmental affairs which by law are determined as central government affairs are the constitutional basis of legislators as determinants of government affairs. Therefore, in this case the dimension of decentralization is an open legal policy.

1. **Closing**
2. **Conclusion**

The authority of the central government in managing mineral and coal mining has significant changes with the passing of Act Number 3 of 2020 of Years, where the paradigm of re-centralization is felt to be getting stronger. This is certainly not surprising when referring to the provisions in the Constitution 1945, which in Article 18 paragraph (5) of the Constitution 1945 actually has enough room to return to centralization or at least the presence of a semi-centralized nuance. This situation reflects the desire of the architects to form a rule which has been post-reform until now as if taken slowly.

1. **Recommendation**

As a rule of law, Indonesia needs clear direction for regulation. The process of forming legislation should not only bias itself into short-term interests. Therefore, the policy direction in the legal political dimension especially in the mining sector is coherent with a decentralized perspective and the task of assistance must be arranged wisely. Attributes of interest eventually gave birth to the practice of spanning of interest between the two central and regional government units should be avoided. Because it is clear, that the estuary of decentralization and regional autonomy is the same, namely to bring the government closer to the people.

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