

ROADMAP OF LOCAL GOVERNMENT AUTHORITY IN MANAGING PEOPLE MINING BASED ON CONCURRENT AFFAIRS

Ahmad Saleh¹, Malicia Evendia², Yulia Neta³, and Martha Riananda⁴

Faculty of Law, University of Lampung, Indonesia

ABSTRACT: This study aims to analyze and describe the roadmap of regional government authority in terms of managing people mining. The replacement of Law No. 32 of 2004 became Law No. 23 of 2014 concerning Regional Government, has deconstructed various government affairs in the administration of regional government, one of which is in the field of energy and mineral resources. People mining is the scope of the sub affairs of energy and mineral resources. The deconstruction of this authority has resulted in the shifting of authority in the management of community mining from the district/city government to the authority of the provincial government.

Keywords: regional authority, people mining, concurrent government affairs.

1. INTRODUCTION

The policy of decentralization by giving the broadest autonomy to the regions to regulate and manage government affairs within the framework of the unitary state of the Republic of Indonesia is one of the reform events that has been formulated in the second amendment to the 1945 Constitution (hereinafter abbreviated as the 1945 Constitution). Since the amendments to the 1945 Constitution, the laws governing regional government have changed several times. Post-law reform that regulates regional government is regulated in Law No. 22 of 1999, then changed to Law No. 32 of 2004, to change again to Law No. 23 of 2014 concerning Regional Government.

The replacement of Law No. 32 of 2004 concerning Regional Government becomes Law No. 23 of 2014, resulting in major changes in the distribution of authority functions of the regional government. This change has become a mecca for regional government entities in carrying out government affairs which are their authority. Changes that occur include also in the fields of energy and mineral resources.

One of the mineral and coal mining activities is community mining activities. Community mining is included in small-scale mining. Basically mining activities carried out by people or communities or legal entities, can be classified into two types, namely illegal mining and legal mining. Illegal mining is an activity carried out by people or communities without permission from the authorities. Whereas legal mining is a mining activity carried out by a business entity or legal entity based on a permit made by an authorized official (Senduk: 2017, 104).

Every person or company that does business in any field must have permission from the competent authority, namely the government. In this case, residents who carry out community mining business must apply for community mining permits. The existence of community mining permits is very important in order to minimize all the negative impacts caused by the people's mining process, and also in order to optimize the potential of people's mining. Thus, the government, especially the regional government, in this case plays an important role in the management of community mining.

To find out who has the authority in granting community mining permits, it is necessary to look at and review them based on the applicable laws and regulations, specifically the regional government laws that have undergone a change and deconstructed government affairs. This is important because all government actions must be based on authority. Based on the description stated above, the authors are interested in examining the roadmap of regional government authority in managing community mining on the basis of concurrent affairs through the provisions of laws governing regional governance.

2. LITERATURE REVIEW AND HYPOTHESIS DEVELOPMENT

Philip M. Hadjon argues that authority is obtained through three sources, namely: attribution, delegation, and mandate. The authority for attribution is usually outlined through the distribution of state power by constitution, the authority of delegates and mandates is the authority that comes from delegation (Hadjon: 1994, 4). The authority of the regional government in the framework of implementing regional autonomy, including in the case of community mining, is the authority granted by the legislation.

According to Bagir Manan, autonomy is the freedom and independence of lower government units to regulate and manage some government affairs. Government affairs that may be regulated and managed freely and independently, become the household affairs of the lower government units. But even though freedom and independence are the essence of the content of autonomy, but not independence, freedom and independence are freedom and independence in a greater union (Bagir Manan and Kuntara Magnar: 1997, 279). As stipulated in Article 9 paragraph (1) Law No. 23 of 2014, government affairs consist of absolute government affairs, concurrent government affairs, and general government affairs. Concurrent Government Affairs is Government Affairs which is divided between the central government and the provincial and district / city regions. Concurrent government affairs submitted to the regions are the basis for the implementation of regional autonomy. Concurrent government affairs which are the authority of the region consist of Mandatory Government Affairs and Preferred Government Affairs. This is as stated in Article 11 paragraph (1) of Law No. 23 of 2014.

One of the affairs that is a concurrent government affair is the matter in the field of energy and mineral resources including the affairs of community mining management. Mining arrangements on a national scale are regulated in Law No. 4 of 2009 concerning Mineral and Coal Mining. The people's mining activities are broadly classified into mineral mining and coal mining. The types of coal mining commodities include: solid bitumen, coal and young coal. Whereas mineral mining includes:

1. Metal mineral mining commodities consist of: Magnesium / Monasite, Potassium, Calcium, Gold, Copper, Silver, Platinum, Magnetite, Pyrite, Zirconium, Galena, Iron, and other metal minerals.

2. Nonmetallic mineral mining commodities consist of: Quartz, Asbestos, Talc, Mica, Ball Clay, Fire Clay, Zeolite, Marble, Zircon, Kaolin, Feldspar, Gypsum, Dolomite, Calcite, Onix, Rijang, and other non-metallic minerals.
3. Rock mining commodities consist of: Tras, Gabro, Peridotite, Basalt, Marble, landfill, garnet, jade, mountain rock, large quarry, gravel excavated from hills, river gravel, river stones, river gravel sieves without sand, urug sand, natural sand gravel (sirtu), selected embankment material (soil), local soil deposit, red soil (laterite), limestone, clay, sand and other stones insofar as they do not contain metallic mineral elements, non-metallic mineral elements in amounts means in terms of the mining economy.

So basically government affairs that are delegated or delegated to regional governments certainly require an authority or power to implement them.

3. RESEARCH METHODS

This research is conducted by corridor of doctrinal research which only use secondary data. The legal research model is a comprehensive and analytical study of primary legal materials and secondary legal materials. The problem approach uses statute approach and conceptual approach. The data were analyzed qualitatively by describing the data generated from the research into the form of explanation systematically so as to obtain a clear picture of the problem under study, the results of data analysis deductive concluded.

4. DISCUSSIONS AND ANALYSIS OF RESULTS

Authority is the power of a certain group of people or power over a sector of government. While what is meant by authority is the power to do something public law (Anggriani: 2012, 88). Conceptually, the granting of autonomy to the regions in carrying out various governmental affairs aims to improve efficiency, foster democracy, equity, and justice in the implementation of various government affairs which are the authority of the regions. Therefore, it is hoped that through regional autonomy the conditions in the regions will improve. This expectation is not excessive, because the regions are very familiar with the potential and uniqueness of the region. Jesse C Ribbot, stated that decentralization is a way to increase efficiency and justice in natural resource management. Through efficiency and fairness, regional autonomy will have an impact on the welfare of the region (Ribot: 2004).

The regional government functions to regulate and carry out the administration of government in the region. The function of the Regional Government according to Law No. 23 of 2014 are:

1. Implementation of regional government by regional governments to regulate and manage government affairs based on the principle of autonomy and co-administration
2. Carrying out government based on the principle of autonomy to the greatest extent possible in the system and principles of the Unitary State of the Republic of Indonesia, except for the affairs of the absolute government and the chosen government.
3. In terms of carrying out concurrent government affairs, the central government and regional government have authority, financial, public services, natural resources and other resources.

Then, in developing the characteristics of decentralization and regional autonomy, there are at least two prerequisites that must be considered. First, it is given the authority to make decisions on matters relating to its area. Second, given the freedom to control and transfer the various

potential sources of the region concerned (Huda: 2013, 92). In Article 9 of Law No. 23 of 2014 has been stipulated that:

- (1) Government Affairs consists of absolute government affairs, concurrent government affairs, and general government affairs.
- (2) Absolute government affairs as referred to in paragraph (1) are Government Affairs which are fully the authority of the Central Government.
- (3) Concurrent government affairs as referred to in paragraph (1) are Government Affairs which are divided between the Central Government and the Provincial and District Regions
- (4) Concurrent government affairs submitted to the regions are the basis for the implementation of Regional Autonomy.
- (5) General government affairs as referred to in paragraph (1) are Government Affairs which are under the authority of the President as head of government.

Based on these provisions, it can be seen that the regional government in the implementation of regional autonomy is based on concurrent affairs.

Concurrent government affairs are divided into compulsory government affairs and elected government affairs. In Article 12 paragraph (3) Law No. 23 of 2014, Preferred Government Affairs includes:

- a. marine and fisheries;
- b. tourism;
- c. agriculture;
- d. forestry;
- e. energy and Mineral Resources;
- f. trading;
- g. industry; and
- h. transmigration.

People's mining affairs are included in the field of energy and mineral resources affairs. In looking at the roadmap of regional government authority in community mining affairs, it will be presented in the form of a comparison table of regional authorities according to Law No. 32 of 2004 (as detailed in PP No. 38 of 2007) with Law No. 23 of 2014. This is aimed at making it clear that significant changes have occurred in the authority of the regional government in community mining.

The regional government is divided into provincial and regional governments. The following is a comparison table of the authority of the provincial government in the sub-sector of energy and mineral resources affairs based on Law No. 32 of 2004 and Law No. 23 of 2014, and a comparison table of the authority of the district government:

Table 1. Table comparison of provincial government authority sub-sector of energy and mineral resources affairs

Law No. 32 of 2004	Law No. 23 of 2014
- Making legislation in provincial areas in the fields of minerals, coal, geothermal and ground water.	- Determination of areas for business licenses for mining non-metallic minerals and rocks in 1 (one) province and sea area up to 12 miles.

<ul style="list-style-type: none">- Compilation of data and information on mineral and coal and geothermal mining business across districts.- Compilation of data and information on groundwater basins across districts.- Provision of technical recommendations for drilling permits, excavation permits and permits for plastering springs in groundwater basins across districts.- Granting of mineral, coal and geothermal mining business licenses in cross-regency / city areas and at the most 12 (twelve) nautical miles measured from the coastline towards the open sea and / or towards the islands waters.- Provision of mineral and coal mining business licenses for production operations, which have direct environmental impacts across districts / cities and at the most 12 (twelve) nautical miles measured from the coastline towards the open sea and / or towards the islands waters.- Fostering and supervising the implementation of mineral, coal and geothermal mining business licenses in areas across districts / cities and at the most 12 (twelve) nautical miles measured from the coastline towards the open sea and / or towards the islands.- Granting permits for mineral, coal and geothermal mining business entities in the context of Foreign Investment (PMA) and Domestic Investment (PMDN) across districts / cities.- Management, guidance and supervision of the implementation of business licenses for mineral, coal and geothermal mining services in the context of investment across districts / cities.- Fostering and supervising occupational safety and health, mining environment including post-mining land reclamation, conservation and increasing added value for mineral, coal and	<ul style="list-style-type: none">- Issuance of metal and coal mineral mining business licenses in the framework of domestic investment in regional mining business permit areas within 1 (one) provincial area including sea areas up to 12 nautical miles.- Issuance of business licenses for non-metallic minerals and rocks in the context of domestic investment in mining business permit areas within 1 (one) provincial area including sea areas up to 12 nautical miles.- Issuance of community mining permits for metal mineral commodities, coal, non-metallic minerals and rocks in the community mining area.- Issuance of mining business licenses for special production operations for processing and refining in the context of domestic investments whose mining commodities originate from the same 1 (one) province.- Issuance of mining services business licenses and registered certificates in the context of domestic investment in the business activities in 1 (one) province.- Determination of benchmark prices for non-metallic minerals and rocks.
--	--

<p>geothermal mining businesses, in areas across districts / cities or that have regional impacts.</p> <ul style="list-style-type: none"> - Fostering and supervising the exploitation of KPs across districts / cities. - Fostering and supervising occupational safety and health, mining environment including post-mining land reclamation, conservation and increasing value added to KP across districts / cities. - Determination of groundwater conservation areas across districts / cities. - Fostering and supervising the implementation of mineral and coal mining business licenses for production operations, as well as geothermal energy which has direct environmental impacts across districts / cities. - Determination of the value of groundwater acquisition in groundwater basins across districts / cities. - Management of data and information on minerals, coal, geothermal and ground water as well as exploitation and GIS of mining work areas in the province. - Determination of geothermal and ground water potential and balance of resources and reserves of minerals and coal in the province. - Appointment and guidance of mine inspectors and fostering provincial functional positions. 	
--	--

Source: data processed

Table 2. Table of comparison of authority of district/city regional governments sub-sector of energy and mineral resources affairs

Law No. 32 of 2004	Law No. 23 of 2014
<ul style="list-style-type: none"> - Making legislation in regency/city areas in the fields of minerals, coal, geothermal and ground water. - Compilation of data and information on the working area of mineral and coal mining and geothermal regency/city scale. 	

- | | |
|--|--|
| <ul style="list-style-type: none">- Preparation of data and information on groundwater basin district scale- Provision of technical recommendations for drilling permits, excavation permits and sprinkling permits for groundwater basins in regency/city areas.- Provision of mineral, coal and geothermal mining business licenses in the regency/city area and 1/3 (one third) of the provincial authority.- Provision of mineral mining and coal mining permits for production operations, which have direct environmental impacts on the regency/city area and 1/3 (one third) of the provincial authority.- Fostering and supervising the implementation of mineral, coal and geothermal mining business licenses in the regency/city area and 1/3 (one third) of the provincial authority.- Granting permits for business entities in mineral, coal and geothermal mining services in the framework of PMA and PMDN in the regency/city area.- Management, guidance and supervision of the implementation of business licenses for mineral, coal and geothermal mining services in the context of investment in the regency/city area.- Fostering and supervising occupational safety and health, mining environment including post-mining land reclamation, conservation and increasing added value to mineral, coal and geothermal mining businesses in the district/city area.- Fostering and supervising KP concessions in the district / city area.- Guidance and supervision of Occupational Safety and Health, mining environment including post-mining land reclamation, conservation and increase in added value to KP within the district/city area.- Determination of groundwater conservation areas within the district/city area. | |
|--|--|

<ul style="list-style-type: none"> - Fostering and supervising the implementation of mineral and coal mining business licenses for production operations, as well as geothermal energy which directly impacts the environment in the district/city area. - Determination of the value of groundwater acquisition in groundwater basins within the district/city area. - Management of data and information on minerals, coal, geothermal and ground water and exploitation and SIG of mining work areas in the district/city area. - Determination of geothermal and ground water potential and balance of resources and reserves of minerals and coal in the regency/city area. - Appointment and development of mine inspectors and fostering district/city functional positions. 	
--	--

Source: data processed

Based on the table above, it can be seen that the replacement of Law No. 32 of 2004 becomes Law No. 23 of 2014 has deconstructed concurrent government affairs in the sub-sectors of energy and minerals, especially community mining. The position of the regional government in the management of community mining can be seen from the lack of authority of the regional government to determine whether or not the issuance of a permit for community mining. Government uses permits as a juridical tool for driving citizens' behavior (Berge: 1992, 2).

Different from Law No. 32 of 2004, in Law No. 23 of 2014 the regency/city government does not have any authority in the sub-affairs of energy and mineral resources including community mining. With the enactment of Law No. 23 of 2014, the regulation of the authority of community mining at the level of the district/city government is taken over by the provincial government which is the representative of the central government.

Legislation is a source of authority for local governments in carrying out regional government affairs. Government actions must be based on norms of authority which form the basis of the legitimacy of government actions. The authority obtained from the legislation is formal legality, meaning that it legitimizes government actions in this case the management of community mining.

5. CONCLUSIONS

Based on the previous section, it can be concluded that the replacement of Law No. 32 of 2004 becomes Law No. 23 of 2014 has changed the authority of community mining which originally existed in the district/city government to become the authority of the provincial government.

6. ACKNOWLEDGEMENTS

This research can be done well thanks to the funds provided by the government of the Republic of Indonesia through a superiority research grant scheme at the University of Lampung. We would like to thank for the financial support of this research.

7. REFERENCES

- Bagir Manan and Kuntara Magnar, *Beberapa Masalah Hukum Tata Negara Indonesia*. Bandung. Alumni, 1997. p. 279.
- Jesse C. Ribot, *Waiting for Democracy: The Politics of Choice in Natural Resource Decentralization*, Washington D.C. World Resources Institute, 2004. In: Rudy, *Hukum Pemerintahan Daerah Perspektif Konstitusionalisme*. Lampung. Indepth Publishing, 2012. p. 23.
- Jum Anggriani, *Hukum Administrasi Negara*. Yogyakarta. Graha Ilmu, 2012. p. 88.
- Michele F. Senduk, *Diskresi Kewenangan Pemerintah Daerah dalam Penataan Hukum Perizinan di Bidang Pertambangan Mineral dan Batubara*, in book: *Hukum dan Dinamika Pembangunan*. Malang. Nuswantara Publising, 2017. p. 104.
- Ni'matul Huda, *Hukum Tata Negara Indonesia*. Jakarta. PT Raja Grafindo Persada, 2013. p. 92.
- Peter Mahmud, *Penelitian Hukum*. Jakarta. Kencana Prenada, 2005.
- Philipus M. Hadjon, delivered at the inaugural address of the Professor at Airlangga University on October 10, 1994. p. 4.
- Ten Berge, *Pengantar Hukum Perizinan*. Surabaya. Universitas Airlangga, 1992. p. 2.