

# PUBLIC POLICY ANALYSIS OF REGIONAL TAX regulation IN ENERGY AND MINERAL RESOURCES BASED ON LOCAL GOVERNMENT CONCURRENT AFFAIRS

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## 1 PUBLIC POLICY ANALYSIS OF REGIONAL TAX regulation IN ENERGY AND MINERAL RESOURCES BASED ON LOCAL GOVERNMENT CONCURRENT AFFAIRS

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### ABSTRACT

*This study aims to analyze changes in regional authority in the field of mineral resources and its relationship with tax collection in the field of non-metallic minerals and rocks from the aspect of public policy. This study conducted with the doctrinal method resulted in the following findings: There was disharmony and contradiction in public policy in regional tax regulation in the field of energy and mineral resources based on concurrent affairs of local government. Substitution of Law No. 32 of 2004 concerning Regional Government with Law No. 23 of 2014 concerning Regional Government, has changed the constellation of regional government authority in the field of energy and mineral resources to become the authority of the provincial government which is then not in line with regional tax regulation in Law No. 28 of 2009, which states that the Tax on Non-Metallic Minerals and Stone is a type of regional tax whose collection authority is submitted to the Regency/ City Government. As a suggestion from this paper, it is expected that regional tax policies in Law No. 28 of 2009 with Law No. 23 of 2014 recomposition and revision must be carried out immediately, especially on juridical aspects, in a comprehensive manner.*

Keywords: public policy, area, tax, concurrent.

### A. INTRODUCTION

The enactment of Law No. 23 of 2014 concerning Regional Government has the consequences of changing the authority possessed by the provincial government and district/city government. This change in authority raises the issue of harmonizing legislation horizontally. This happened because Law No. 23 of 2014 concerning Regional Government is not independent, but also relates to other laws and regulations. One of them is related to Law No. 28 of 2009 concerning Regional Taxes and Regional Levies.

For example, the enactment of Law No. 23 of 2014 concerning Regional Government has resulted in the regency/city regional government no longer having the authority over the granting of permits for mining non-metallic minerals and rocks, but the collection of non-metallic mineral and rock taxes is still the authority of the district/city government. This condition also occurs in several types of authority relating to other types of local taxes.

is unsynchronized condition can create a polemic between the provincial and district/city governments, bearing in mind that regional taxes are an important source of regional income to finance the implementation of regional government so that existing regional taxes or adjustments need to be adjusted according to Law No. 23 of 2014 concerning Regional Government. Based on these conditions, this paper will further elaborate on aspects of public policy on regional tax recomposition in the field of energy and mineral resources based on concurrent affairs of regional governments.

### 2 RESEARCH METHODS

This research is done 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 a statutory approach and a conceptual approach (Mahmud, 2005). 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 then concluded deductively.

### C. DISCUSSIONS AND RESULTS

Taxation policy is a redistributive policy. According to Anderson (1970), the substance of this type of policy lies in the regulation of the allocation of wealth, income, and ownership among various groups of citizens. (Agustino, 2008: 6). Redistributive policies seek to solve the problems of mastering resources between groups in the community such as the issue of income inequality, inequality of the poor and rich groups, and so on. Redistributive policies have the character of a present state and a strong country to force citizens to pay taxes in the interests of many people.

The substance of the policy that is so important makes the policy-making process to be carried out to the fullest, so that it has a great power of change in the community to realize justice and prosperity for the people. Strong public policy and not failed public policy. Strong public policy is a public policy that has comprehensive strength in resolving public problems. According to Suharto (2005: 136-137), social policy is free from failure when it includes several variables below.

1. The mechanism and process of policy formulation are carried out appropriately.
2. Integration of policy planning and implementation.
3. Policy orientation is in accordance with the problems and needs of the community, for example social policies that are too oriented to consumptive assistance, without regard to increasing the capacity and independence of the local community.
4. Policies are not too rigid and regulate all aspects of people's lives to the smallest.
5. "Bottom up" and "top down" policies that are not elitist in meaning only involve certain groups that are considered experts.

According to Widodo (2008: 32-33), public policy is good when it has the power of logic. Logical evaluation resembles content analysis, this evaluation examines or examines (examines) the contents of certain public policies in detail. Empirical public policies are expressed in various forms, one of which is stated in legislation such as laws, regional regulations, regional head regulations and so on. The pattern and character of public policy according to Ripley (2000) in Indiahono (2009: 23), is called the policy cycle. The policy cycle begins with the agenda setting, formulation, implementation, evaluation, change and revocation stages and then returns to the initial stage and so on.

All public policies produced by the state or government must go through the policy cycle as described above. An important step that must be passed is the evaluation stage of public policy to examine various aspects of policy such as inputs, outputs, outcomes, benefits and impacts. Policy evaluation is the final phase of a public policy cycle that will produce recommendations on whether the policy is continued, improved, changed or revoked.

According to Todaro and Smith (2006), public policies are prepared in a complementary, integrated and mutually supportive manner in order to overcome a public problem, such as market intervention, taxation and the economy. Complementary, integrated and mutually supportive public policies can be realized when fulfilling 3 (three) elements, namely the existence of a series of policies specifically designed to intervene in a public problem, public policies aimed at making structural changes more specifically in certain sectors, and policies intended to distribute values fairly to the community.

Taxation policy aims to influence national and regional economic activities which ultimately in order to increase state income. The higher the state's increase in the taxation sector, the better the quantity and quality of development, which ultimately affects the community itself. To optimize regional revenues from the taxation and levy sector, the government has issued this policy through Law No. 4 of 2009 concerning Mineral and Coal Mining, Law No. 28 of 2009 concerning Regional Taxes and Retributions. This policy replaces the old policy, namely Law No. 18 of 1997 and Law No. 34 of 2000 concerning Taxes and Retributions.

Law No. 28 of 2009 concerning Regional Taxes and Retributions has an important purpose in order to increase regional financial capacity from aspects of tax revenue and regional regulations, so that PAD will increase. The birth of the tax law at the same time provides legal certainty to the community for the actions of the regional government in collecting tax objects that are justified by law.

Through the new tax and retribution law, local governments are given great authority to manage various types of taxes, one of which is a tax on non-metallic minerals and rocks. This authority has been ongoing since 2009 until now. The new tax and retribution law after the issuance of the Regional Government Law No. 32 of 2004 concerning Regional Government, so that Law No. 28 of 2009 concerning Regional Taxes and Retributions is a follow up to the old regional government laws. This can be observed from the section weighing the regional tax and retribution law, namely: "that with the enactment of Law Number 32 Year 2004 concerning Regional Government as amended several times, the latest by Law Number 12 of 2008 concerning Second Amendment to Law - Law Number 32 of 2004 concerning Regional Government and Law Number 33 of 2004 concerning Financial Balance between the Central Government and Regional Government, but the implementation of regional government is carried out by giving the broadest possible authority, accompanied by the granting of rights and obligations to carry out regional autonomy in the unity of the state administration system". To be more clear, it can be seen in Article 158 paragraph (1) and (2) of Law Number 32 Year 2004 concerning Regional Government stating that regional taxes and regional levies are stipulated by laws which are further regulated by regional regulations.

Problems then arise after Law No. 32 of 2004 concerning Regional Government replaced by Law No. 23 of 2014 concerning Regional Government. The issuance of the new regional government law has changed some affairs which were originally the authority of the district/city now turned into provincial government affairs, one of which is mining affairs. In article 14 paragraph (1) of Law No. 23/2014 it is stated that "Implementation of Government Affairs in the fields of forestry, marine affairs, and energy and mineral resources is shared between the Central Government and the Provincial Region". This provision is not in line with the provisions of Law No. 28 of 2009, which states that the Tax on Non-Metallic Minerals and Stone is a type of regional tax whose collection authority is submitted to the Regency/City Government.

Regional tax policy in Law No. 28 of 2009 with Law No. 23 of 2014 recomposition and revision must be carried out immediately, especially on juridical aspects, in a comprehensive manner. Strengthening policy from the juridical aspect is at least

done by conducting a comprehensive study of the contents of Law No. 28 of 2009 with Law No. 23 of 2014. Then a comparison of the contents of various relevant laws and regulations is also carried out.

Regional taxation policies, especially non-metallurgical mining and rock, and regional government policies, should be harmonious and harmonious. The policy of the regional government in regulating the affairs that are under the authority of the district / city regional government and the provincial government as the representative of the central government in the region. One of the regulated authorities is taxation authority, in this case the mining tax is not metal and rocks. In fact, the two policies contradict each other in terms of regulating the mining authority of minerba, not metal and rocks.

In the perspective of a successful, logical and professional public policy, the two policies are: Law No. 28 of 2009 with Law No. 23 of 2014, both are not yet optimal as a policy for that category. If viewed from the perspective of a successful or unsuccessful policy according to Suharto (2005: 136-137), the new regional government law policy is not compiled in a comprehensive manner that covers complete and accurate information, especially paying attention to and referring to Law No. 28 of 2009 concerning Regional Taxes and Levies which regulates the authority of mineral and coal taxes not metals and rocks. The comprehensive process of policy formulation will surely create resilient policies from all sides, both the content and implementation. The contradiction in the regulation of non-metal mineral and coal mining authority in the regional tax law and the new regional government law is a portrait of the weakness of juridical studies.

The conflicting policy practices in the management of taxation, especially the mineral and coal taxes are not metals and rocks, which are regulated in Law No. 28 of 2009 with Law No. 23 of 2014, also illustrates the low degree of logic in the policy. According to the perspective of policy logic, good public policy according to Widodo (2008: 32-33), in it has the power of logic in the formulation of objectives clearly and arranged simultaneously. Then in addition to having a clear goal, public policy, in this case the mineral and coal tax management policy is not metal and rocks, the policy must not be contradictory at a certain level with a number of other policies.

#### D. CONCLUSIONS

There is disharmony and contradiction in public policy in regional tax regulation in the fields of energy and mineral resources based on concurrent affairs of regional governments. Substitution of Law No. 32 of 2004 concerning Regional Government with Law No. 23 of 2014 concerning Regional Government, has changed the constellation of regional government authority in the field of energy and mineral resources to become the authority of the provincial government which is then not in line with regional tax regulation in Law No. 28 of 2009, which states that the Tax on Non-Metallic Minerals and Stone is a type of regional tax whose collection authority is submitted to the Regency/City Government. As a suggestion from this paper, it is expected that regional tax policies in Law No. 28 of 2009 with Law No. 23 of 2014 recomposition and revision must be carried out immediately, especially on juridical aspects, in a comprehensive manner.

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