



Effectiveness of regional government authority regarding mining business permits post presidential decree number 55 of 2022 concerning mineral and coal mining management

Melani Darman¹, Indah Riyanti²

¹Law Faculty of Esa Unggul University, Indonesia.

²Law Faculty of Jayabaya University, Indonesia

E-mail: melani.darman@esaunggul.ac.id

ARTICLE INFO

Keywords:

Coal;
Delegation Of Authority;
Local Government.

Article history:

Received May 30, 2024;
Revised Jun 05, 2024;
Accepted Jul 12, 2024;
Online Jul 30, 2024

ABSTRACT

The mining business is a business that has the most layers of regulations. This is because in addition to the various types of mining, it is also because the mining processing process is so complex. Judging from the legal review, the mining regime has experienced very significant changes. At that time, the mining regime used a contract of work model between mining companies and the government, both local and central government. In practice, contracts of work provide opportunities for mining companies to control mining areas for a certain period of time. At this time the mining regime is the licensing regime. This was marked by the issuance of Law No. 4 of 2009 concerning Minerba. Based on the law, the relationship between mining companies and the government is no longer a partner relationship, but rather a government administration relationship. In the process of perfecting the legal system, in 2022, the government will again issue a regulation regarding the delegation of authority from the central government to regional governments with regard to the management of mineral and coal mining. This Government Regulation is considered very appropriate and effective. Mining of non-metallic minerals and coal involves many small-scale mining companies or small-scale mining companies. So it is hoped that permit arrangements will be adjusted to the needs of small-scale mining.

This is an open access article under the [CC BY-NC](#) license.



Corresponding Author:

Melani Darman,
legal science study program, law faculty,
Esa Unggul University, Indonesia,
Jl. Arjuna Utara No.9, Duri Kepa, Special Capital Region of Jakarta,
11510, Indonesia
Email: melani.darman@esaunggul.ac.id

1. Introduction

Indonesia is a country with abundant wealth of natural resources, including a wealth of mining resources (Hajad et al., 2023). Mining materials include silver, gold, copper, coal, oil, natural gas and others. In Law No. 4 of 2009 concerning Mineral and Coal, mining is defined as part or all

of the stages of activity in the context of research, management and exploitation of minerals or coal which includes general investigations, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, as well as post-mining activities. Mining materials in Indonesia are found on land and at sea (Pelzl & Poelhekke, 2021). The process of obtaining and processing these minerals requires a lot of capital, expertise, and high technology. The government collects all of this from within and from abroad (Agus, 2020).

The results from mining are processed to meet daily needs, for example, copper is used as a conductor of electricity (Sovacool et al., 2020). Apart from being a good conductor of electricity, copper is also a good conductor of heat. Some household appliances are made from a mixture of iron and copper, which makes a good combination. The benefits of copper in everyday life are centered on heat and electricity because the benefits of copper are very large in this regard (Darman & Riyanti, 2023). The use of mining products must be carried out wisely, because as is known mining goods are classified as non-renewable natural resources. Excessive use or on a large scale can be very detrimental. The loss that is borne is not small, all elements can feel the impact, it can even have a negative effect, namely when these mining goods run out, it is certain that we will be at a loss or have difficulty finding replacements. to damage or leave the environment that has a bad effect on society (Manyiwa et al., 2021). In addition to the management of mining goods which must pay attention to the environment, in its use it must also be friendly to the environment (Jones et al., 2020).

Indonesia is a country with very high mineral reserve potential. In nickel minerals, for example, Indonesia occupies the top third position at the global level. In addition, Indonesia recorded a contribution of 39% for gold products, in second place after China (MICHEL, 2024). This makes Indonesia always included in the world's top 10 rankings. With its enormous potential, the mining sector also contributes to contributing to non-tax state revenue (PNBP). In its application, mining companies refer to the principles of sustainability in the utilization of natural resources for the greatest prosperity of the people and the achievement of Sustainable Development Goals (SDGs) (Camba et al., 2022). Even though the mining sector is also played by many private parties, both through domestic companies and foreign companies, the utilization of these mining products must be able to be felt by the Indonesian people in general. This is in accordance with Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which states that: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people (Dusukov, 2022).

The mining sector is a commodity with high economic value and has proven to have a major contribution in driving Indonesia's economic growth. During the 1975-1985 period, often called its golden age, this sector even contributed more than 20 percent to the national economy. Even though after this period the contribution of the mining sector in general had decreased, in non-oil and gas mining, especially coal, iron ore and copper, it has become more enthusiastic, especially since the 2000s. In the 2000-2010 period, non-oil and gas mining grew six percent, while in 2011-2019 it grew an average of 3.4 percent (YASHAR & Azer, 2019). This important contribution to the economy can also be seen in non-tax state revenue (PNBP), at the end of 2018, for example, the mineral and coal sector contributed Rp. 50 trillion or 155.8 percent of the initial target of Rp. 32.09. Historically, this sector has also proven to play an important role not only for generating electricity, but also as fuel in the production of steel, cement, alumina processing centers, paper mills, chemical industries, and pharmaceuticals (Branca et al., 2021).

Indonesia's mineral wealth, both those that have been identified as prospect areas and mines as well as unexplored potential, is a potential source of state revenue and some (for certain minerals) have the potential to be a driving force for the development of alternative energy which is urgently needed at this time. The government is tasked with managing these resources in order to provide optimal benefits for the welfare of the people (Teske et al., 2022). Meanwhile, the task of stakeholders is to encourage and strengthen so that natural resources can become strategic capital in building national resilience and sovereignty. Considering the importance of resource management and exploitation of mineral mining in Indonesia, several matters related to improving the management of national mineral and coal must be

implemented. One of them is a comprehensive inventory of mineral and coal resources. All data source authorities must be involved both from the government such as the Geology Agency, the Directorate General of Mineral and Coal, Research Institutes such as LIPI, and research institutions at the university level such as the Unconventional Geo-Resources Research Group (UGRG), as well as the private sector such as exploration and mining companies. The inventory must be carried out in accordance with scientific principles and applicable reporting codes (SNI and KCM Code) (Gross, 2021).

In addition, in order to maintain a positive balance of mineral and coal resources, exploration must be encouraged and maintained (Azubuike et al., 2023). Implementation of the phrase "exploration is the future" (exploration is the future) with the most essential objective of exploration as inventory, must always be encouraged so that the state can set strategies for its utilization in the future. Exploration results in the form of earth discoveries and technical data have many benefits, starting from compiling inventories of state assets and strategies for their utilization, conducting business or production, increasing state revenues, creating jobs and developing alternative energy (Jie et al., 2023). One way to promote suspended exploration is to accelerate and deregulate the opening of new exploration areas. It is time for the government to rely on minerals in addition to oil and natural gas resources. The government can plan the use of priority mineral resources for the benefit of the domestic industry so as to reduce the export of resources in the form of raw materials so as to create synergies with domestic needs and encourage industrial growth and the national economy. Technological developments for human life require an increasing supply of minerals (Asr et al., 2019).

2. Method

This research uses normative juridical research methods or also known as literature studies (Budianto, 2020). Using secondary data is supported by primary legal materials in the form of several laws and regulations, secondary legal materials in the form of law books and tertiary legal data in the form of scientific journals and freelance articles (Kesuma & Uwiyono, 2022). Data processing uses qualitative data processing.

3. Analysis and Results

3.1. History of Mining Regulations

The first legal regulation that regulates mining is Law Number 78 of 1958 concerning Foreign Investment. From the nomenclature, it can be seen that this law does not specifically regulate mining. However, there is a part of the content material which mentions and therefore also regulates the mining sector. Article 3 paragraph (1) of this Law, which elaborates further on the provisions on restrictions on business fields open to foreign investment, defines "mining of vital materials" as a company closed to foreign investment (Azis & Bariun, 2022). This provision is a sign that at the beginning of its development in national law, the mining sector was included in those that were not open to foreign investment. In the Explanatory Memorandum section of this Law it is emphasized that certain companies, including those in the mining fields for vital materials, must be owned by the government (central or regional). The second legal regulation that regulates mining is Law Number 10 of 1959 concerning Cancellation of Mining Rights. The background to the issuance of Law 10/1959 was the number of cancellation rights issued and spread in almost all parts of Indonesia during the Dutch East Indies Government based on Indische Mijnwet 1899 and its amendments. In the consideration section of this law, it is stated that there are four reasons for its formation (Taufiq, 2021). First, there are mining rights that were granted before 1949, which until now have not been or have not been exercised at all, so that in essence they are very detrimental to the country's development. Second, the omission of the non-existence of mining rights for longer cannot be justified and cannot be accounted for. Third, in order for these mining rights to be exercised in the shortest possible time in order to smooth development, these mining rights must be revoked in the shortest possible time. Fourth,

the method of canceling mining rights as in the current *Indische Mijnwet* is not used, so a special law is needed (Saroni, 2023).

In 1960, the government issued a policy that regulated mining, namely Government Regulation in Lieu of Law Number 37 of 1960 concerning Mining. In 1967, during the early days of the New Order government, Law No. 11 of 1967 concerning Mining was issued. Through this law, a system of contracts of work, work agreements for coal mining concessions, and mining concessions was introduced. Furthermore, until 1992, there were not many changes to mining policy regulations. The Central Government through PP No. 79 of 1992 gives the role to Regency and City governments to also have authority in mining management, with a balance of revenue from state levies in the form of fixed fees, exploration fees, and exploitation fees. This was developed within the framework of the spirit of regional autonomy.

At the beginning of the reform, the opportunity for local governments to have a greater role in mining management, this was marked by Government Regulation Number 75 of 2001 concerning the Second Amendment to PP Number 32 of 1969 concerning Implementation of Law No. 11 of 1967 giving authority to the governor, mayor or the regent to issue a Mining Authorization Decree. With the opening of the faucet for delegating some of the authority of the central government to regional governments, there has been overlapping decisions. Several decisions at the regional level are no longer in sync with decisions at the central level. This happened because the Mining Law of 1967 which adhered to a centralized contract system in the central government was still valid. In practice, the implementation of this shift in authority has caused many problems and friction in society. Such as communal land disputes at mining sites, horizontal and vertical licensing frictions (Hairun et al., 2023).

3.2. Authority of the Central Government and Regional Government in the field of Mining

At the time of enactment of Law Number 41 of 1999 concerning Regional Government, there was a wide deviation of authority to regional governments in regulating and managing mining based on the principle of autonomy. The purpose of this broad delegation of authority is for local governments to increase local revenue (PAD) from the mining sector because they can draw revenue from taxes, fees and other fees. Regional government authorities in Law Number 41 of 1999 concerning Regional Government include the implementation of the utilization of natural resources and other resources which become regional authorities, cooperation and profit sharing on the utilization of natural resources and other resources between regional governments, and management of permits together in the utilization of natural resources and other resources (Pujiastuti, 2023).

Furthermore, the authority of the local government was strengthened by the enactment of Law Number 4 of 2009 concerning Mineral and Coal Mining which gave regional governments both governors and regents/mayors wide-ranging authorities. This authority is in the form of permits that are determined based on regional boundaries. While the form of the term "Mining Authorization" was replaced with three forms of permits, namely Mining Business Permits (IUP), People's Mining Permits (IPR) and Special Mining Business Permits (IUPK).

In the end in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, all regional government authority was withdrawn to the central government starting from IUP, IPR, IUPK, SIPB, Assignment Permits, Transportation and Sales Permits, IUJP and IUP for sales. Even though all the authority of the regional government is completely withdrawn in mining permits, the regional government can still take care of mining permits if the central government delegates authority based on statutory provisions. Even with the enactment of Law Number 11 of 2020 concerning Job Creation, the energy and mineral resources sector is included in the simplification of business licensing with ease and investment requirements made by the central government (Pradana, 2022).

The tug-of-war of authority between the Central Government and Regional Governments in the field of Mining shows that the Central Government has not been fully able to find the right form of regulation in the management of the national mining sector. On the one hand, centralizing the granting of mining permits to the Central Government is seen as inefficient considering that mining areas are spread across all regions of Indonesia (Amijaya et al., 2022).

In addition, the tasks of the central government are getting heavier and more numerous. There are several problems that arise related to centralized mining permits such as controlling mining activities which is difficult to do (Camba et al., 2022). This is because the central government that gave the permits did not know the situation in the mining area itself which incidentally is its territory in the regions. Mining licenses that use the OSS (One Single Submission) system are good, but become ineffective for a very complex permit such as a mining business. Based on the explanation from the Ombudsman Commissioner of the Republic of Indonesia, Hery Susanto, reports in the mining sector increased by more than 100% after the issuance of the Letter of the Director General of Mineral and Coal of the Ministry of Energy and Mineral Resources Number 20004/30/DJB/2000 dated 26 August 2020 to the Head of the Provincial Office. The letter contains a confirmation regarding the submission of Non-C&C Mining Permits that mining permit issues can be submitted to court institutions and out-of-court dispute resolution institutions, such as the Ombudsman. The letter clearly opens up room for administrative abuse (Riyadi, 2023).

3.3. Presidential Regulation Number 55 of 2022 concerning Delegation of Authority in the Management of Mineral and Coal Mining

Based on several problems that occurred in the authority of the Central Government and Regional Governments, on April 11, 2022, through a Presidential Regulation, Presidential Decree No. 55 of 2022 concerning Delegation of Authority in the Management of Mineral and Coal Mining was stipulated. Based on Presidential Regulation Number 55 of 2022 Article 2 Delegation includes: Delegation includes, Issuance of standard certificates as referred to in paragraph (1) letter a number 1 includes consulting activities and Mining service business planning in the fields, The issuance of permits as referred to in paragraph (1) letter a number 2 consists, The development as referred to in paragraph (1) letter b consists, Supervision as referred to in paragraph (1) letter c consists, The implementation of supervision as referred to in paragraph (5) letter b is carried, In carrying out the supervision referred to in paragraph (5) letter b, the governor, Mining inspectors and Mining supervisory officials as referred to in paragraph (7) are required report the results of supervision to the governor, In the event that based on the report on the results of supervision as referred to in paragraph (8) there is violation of good Mining technical principles and Mining management as referred to in paragraph (7), the governor is obliged to follow up in the form Delegation of supervision over the implementation of the delegated Business Licensing as referred to in paragraph (1) letter c does not include the authority (Prasetya, 2023).

There are several influences caused by the issuance of this Presidential Decree Number 55 of 2022 on Regional Governments: The Central Government Delegation space is quite extensive, although it does not provide delegation of all permits, this can have an impact and contribute to increasing Regional Original Income (PAD) from the non-tax sector. Such as granting standard certificates and granting permits for non-metallic minerals, certain types of non-metallic minerals, assistance and People's Mining Permits or IPR; This Presidential Regulation also has an impact on several Regional Regulations (Perda) which later require adjustments, including regarding the Management of Mineral Mining in the regions, Implementation of Business Licensing and One-Stop Integrated Services, Preparation of Draft Regional Regulations concerning Guidance and Supervision of Mining Activities, Potential Regional Revenues in the form of levies and fees from mining activities; The potential for abuse of authority in delegation can still occur. This can raise legal issues (Nazarova et al., 2019). The

mining permit case that occurred in the Sangihe Archipelago basically proves that there is no guarantee that the transfer of mining licensing authority to the central government will solve the problem. Cases that have occurred such as mining permits in the Sahing Islands violated Law Number 1 of 2014 concerning Management of Coastal Zone and Small Islands, allegations of corruption in the process of issuing mining permits. Perhaps the public still remembers the corruption case in the approval of IUP Exploration and Production Operations conducted by Nur Alam, the Governor of Southeast Sulawesi, which cost the state 4.3 trillion Rupiah during his tenure as governor. Furthermore, there was the mining permit corruption case in Tanah Laut Regency which was committed by Adriansyah as a former Tanah Laut Regent and member of the Republic of Indonesia Parliament who accepted bribes for his assistance and influence in facilitating the processing of company mining permits even though basically he did not meet the procedural and administrative requirements to obtain mining permits. Licensing issues are very close to maladministration issues.

4. Conclusion

Regulation of mining activities is a very complex regulation. So that the state must really pay extra attention so that the benefits of the results of the mining business can be optimally used for welfare and prosperity. The mining regulatory regime has undergone many changes from time to time. Until now, the Central Government through Presidential Regulation Number 55 of 2022 has delegated several licensing authorities from the Central Government to Regional Governments. It is hoped that this can be done effectively and efficiently. Regional governments have effective authority regarding mining business permits. This indicates that regional governments have an important role in managing natural resources in their respective regions, especially in the mineral and coal mining sectors. With the authority given, regional governments are expected to be able to optimize the management and utilization of natural resources in accordance with local and national interests.

References

- Agus, C. (2020). Integrated bio-cycles system for sustainable and productive tropical natural resources management in Indonesia. *Bioeconomy for Sustainable Development*, 201–216.
- Amijaya, M., Samad, M. A., & Hairi, M. A. (2022). Governance mining licensing in Central Sulawesi post mining law reform and law job creation. *Indonesian Journal of Social and Environmental Issues (IJSEI)*, 3(2), 112–121.
- Asr, E. T., Kakaie, R., Ataei, M., & Mohammadi, M. R. T. (2019). A review of studies on sustainable development in mining life cycle. *Journal of Cleaner Production*, 229, 213–231.
- Azis, A., & Bariun, L. O. (2022). The Role of Local Government in Protecting the Management of Mineral Mining Companies and Controlling Environmental Impacts in East Kolaka Regency. *International Journal of Management and Education in Human Development*, 2(04), 626–642.
- Azubuikie, S. I., Nakanwagi, S., & Pinto, J. (2023). Mining Resource Corridor development in Nigeria: critical considerations and actions for a diversified and sustainable economic future. *Mineral Economics*, 36(1), 59–75.
- Branca, T. A., Fornai, B., Colla, V., Pistelli, M. I., Faraci, E. L., Cirilli, F., & Schröder, A. J. (2021). Industrial symbiosis and energy efficiency in European process Industries: A review. *Sustainability*, 13(16), 9159.
- Budianto, A. (2020). Legal research methodology reposition in research on social science. *International Journal of Criminology and Sociology*, 9(1), 1339–1346.
- Camba, A., Lim, G., & Gallagher, K. (2022). Leading sector and dual economy: how Indonesia and Malaysia mobilised Chinese capital in mineral processing. *Third World Quarterly*, 43(10), 2375–2395.
- Darman, M., & Riyanti, I. (2023). The Effectiveness of Regional Government Authority on Mining Business Permits Post Presidential Regulation Number 55 of 2022 Concerning Delegation of Authority in the Management of Mineral and Coal Mining. *International Conference on "Changing of Law: Business Law, Local Wisdom and Tourism Industry" (ICCLB 2023)*, 1027–1036.
- Dusukov, A. (2022). *Role of Minerals in Global Energy Transition*. Politecnico di Torino.
- Gross, S. (2021). *The challenge of decarbonizing heavy industry*.
- 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.
- Hajad, V., Ikhsan, I., Herizal, H., Latif, I. R., & Marefanda, N. (2023). Poverty and the curse of natural resources in Indonesia. *Journal of Contemporary Governance and Public Policy*, 4(1), 41–58.
- Jie, H., Khan, I., Alharthi, M., Zafar, M. W., & Saeed, A. (2023). Sustainable energy policy, socio-economic development, and ecological footprint: The economic significance of natural resources, population growth, and industrial development. *Utilities Policy*, 81, 101490.
- Jones, B., Elliott, R. J. R., & Nguyen-Tien, V. (2020). The EV revolution: The road ahead for critical raw materials demand. *Applied Energy*, 280, 115072.
- Kesuma, I., & Uwiyono, A. (2022). Outsourcing Workers Legal Protection Under The Post Validation Of Job Creation Law. *Unram Law Review*, 6(1).
- Manyiwa, T., Ultra, V. U., Rantong, G., Opaletswe, K. A., Gabankitse, G., Taupedi, S. B., & Gajaje, K. (2021). Heavy metals in soil, plants, and associated risk on grazing ruminants in the vicinity of Cu-Ni mine in Selebi-Phikwe, Botswana. *Environmental Geochemistry and Health*, 1–16.
- MICHEL, T. (2024). *The Prospects of Indonesia's Nickel Boom Amidst a Systemic Challenge from Coal*.
- Nazarova, Z. M., Roshchina, O. E., Zabaikin, Y. V., Lyutyagin, D. V., Kharlamov, M. F., Bogachev, M. Y., & Knyazeva, E. V. (2019). *Improving the management mechanisms of enterprises of the mineral resource complex*.
- Pelzl, P., & Poelhekke, S. (2021). Good mine, bad mine: Natural resource heterogeneity and Dutch disease in Indonesia. *Journal of International Economics*, 131, 103457.
- Prasetya, A. F. (2023). Lampung Provincial Government Policy on the Impact of Mineral and Coal Mining Based on Sustainable Development Principles. *International Journal of Multicultural and Multireligious Understanding*, 10(5), 174–189.
- Pujiastuti, L. (2023). The Lost Role of Local Government Post the Work Creation Law in the Mining Field Which Caused Environmental Damage. *International Journal of Multicultural and Multireligious Understanding*, 10(7), 744–754.
- Riyadi, B. S. (2023). *Culture of abuse of power in indonesia from the perspectiv of criminology and low*. PT. RajaGrafindo Persada-Rajawali Pers.
- Saroni, C. W. (2023). *Regulatory framework for mining in Kenya: between government's duty to protect foreign investments and its sovereign right to regulate*. Universität zu Köln.
- Sovacool, B. K., Ali, S. H., Bazilian, M., Radley, B., Nemery, B., Okatz, J., & Mulvaney, D. (2020). Sustainable minerals and metals for a low-carbon future. *Science*, 367(6473), 30–33.
- Taufiq, M. (2021). Constitutionality of State Control Meaning on Mineral and Coal Mining Field. *JL Pol'y & Globalization*, 111, 6.
- Teske, S., Niklas, S., Talwar, S., & Atherton, A. (2022). 1.5 C pathways for the Global Industry Classification (GICS) sectors chemicals, aluminium, and steel. *SN Applied Sciences*, 4(4), 125.
- YASHAR, A. S., & Azer, N. I. (2019). *MASTER DISSERTATION*.