

CHAPTER I

INTRODUCTION

A. Background

Indonesia is a country that has an abundance of natural resources, it can be seen with various types of commodities that can be exploited ranging from commodities in mining, plantations, to marine. The biggest state income is of course from natural resource wealth through effective, efficient, economical, and environmentally friendly management. Indonesia has an abundance of natural resources, on land, in the water, in the bowels of the earth, at sea and on land. In the bowels of the earth, Indonesia has natural gas, oil, tin, bauxite, nickel, gold, marble, and others. Especially in the gold commodity itself, Indonesia has the largest gold reserves in the world on the island of Papua.

Looking at how abundant Indonesia's natural wealth is, the government must be careful and responsible in its management, considering that Indonesia is a state of law in the management of natural resources, the government that has the authority to manage this management should be able to manage fairly.¹ Considering state of law that has been regulated and mandated in the constitution regarding managing the wealth that comes from nature. Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that “the land and water and the wealth derived

¹ Bernhard Limbong, 2014, *Opini Kebijakan Agraria*, Jakarta: Margaretha Pustaka, p 302.

from the nature contained within are controlled by the state and used for the greatest prosperity of the citizens”.²

However, the wealth from the bowels of the earth or can be called mining activities in the State of Indonesia has not been managed properly and optimally, for the example, against known as one of the bauxite producing countries as raw material to be processed into Smelter Grade Alumina (SGA) which can then be processed into aluminium ingots, but in the process some of our aluminium producers still imported Smelter Grade Alumina (SGA) from other countries.³ Indonesia is also a country that exports copper concentrate, but copper derivative products such as pipes, cable wire, tubing, and household appliances are still imported.

In this case it can be said that the management of our mining products has not been maximized in conducting mining, it should not be completely forgotten that the purpose of management is as much as possible for the welfare of the people according to the 1945 Constitution, which explains that the Republic of Indonesia is based on the law that applies in accordance with the fundamental rules of the 1945 Constitution, not based on the power of the authorities themselves. So that there is a conclusion that the Republic of Indonesia is a state of law that upholds democratic principles based on constitution in the guidelines for the life of the nation and state, as well as upholding the dignity of humanity, and ensuring that every citizen has the

² The 1945 Constitution of the Republic of Indonesia.

³ Bernard Limbong, *Op. Cit*, p. 302.

same position in law and government and regardless of this in terms of interests.⁴

On the other side, there is a mandate contained in the values of the 1945 Constitution, namely that the people and the government need to take action to manage and protect natural resources, especially in terms of the environment when carrying out sustainable development so that natural resources and the environment can remain the main support for life for the people and the creatures living in it.⁵

The mining aspect, one of which is coal, becomes an example of gold mining, coal which is a strategic excavation material which is a source of energy contained in the Indonesian mining jurisdiction as a gift from God Almighty, has an important role in fulfilling the livelihood needs of many people. For this reason, the management of mineral and coal mining must be controlled by the state in order to provide real added value to the national economy in an effort to achieve prosperity and welfare of the people in an equitable manner.⁶ Therefore, natural resource management activities must maintain other natural resources around it, such as gold mining business activities which should not be damaging to the surrounding environment

⁴ Suparman Marzuki, 2011, *Tragedi Politik Hukum HAM*, Yogyakarta: Pustaka Pelajar, p 103

⁵ Lilis Supriatin, Suwari Akhmaddhian, "Kewenangan Perizinan Usaha Pertambangan Pasca Berlakunya Undang-Undang Pemerintah Daerah (Studi di Kabupaten Kuningan Provinsi Jawa Barat)", *Jurnal Ilmu Hukum*, Vol 4, No 2 (2017), p 64.

⁶ Diana Yusyanti, "Aspek Perizinan Di Bidang Hukum Pertambangan Mineral dan Batubara pada Era Otonomi Daerah", *Jurnal Penelitian Hukum*, Vol 16, No 3 (2016), p 309–21.

(forest), because if there is damage to the surrounding environment it will destroy the diversity of other natural resources around it.

In this regard, if coal and gold mines are exploited on a large scale, it will cause deforestation, deforested forests, land with potholes like giant puddles, ecologically very worrying because it has an impact that is threatening the preservation of environmental functions. To provide protection for the environment, the policy to support the adherence to administrative law norms is one policy that needs attention, because at the level of implementation it is highly dependent on administrative law.⁷ The broad discretion possessed by administrative officials and a narrow understanding of the function of law in combating forest destruction and protecting protected customary land, considering that one of the gold mines is located in an autonomous region, the Province of Papua. As a result, after the rolling of the regional autonomy era, the unsynchronization of various laws and regulations caused by overlapping interests between sectors affects various policies in the field of mining and environmental management between central and regional authorities.

After the era of regional autonomy in implementing the authority balance policy between the Central Government and Local Governments, which was initially centralized then changed to decentralized after the issuance of Law Number 22 of 1999 concerning Local Government

⁷ *Ibid.*

(*Pemda*) and replaced by Law Number 32 of 2004 concerning *Pemda* has given a larger portion of authority to local governments in managing natural resources in their territory. However, the impact is that the forest utilization orientation owned by the Regional Government doesn't prioritize the elements of conservation and ecosystem sustainability.⁸

The legal history of mining licensing in Indonesia continues to change based on the Law of the Republic of Indonesia Number 3 of 2020 concerning Amendments to the Law of the Republic of Indonesia Number 4 of 2009 concerning Coal and Mineral Mining has clearly reduced the authority of the Regional Government in terms of control of Coal and Minerals. Because it is clearly stated in Article 4 paragraph (3) of Law Number 4 of 2009 that the control of Coal and Minerals by the State is organized by the Central Government. This article means that the Local Government no longer has the authority to control the wealth that comes from nature. The abolishment of Article 8 of Law Number 4 of 2009 on Coal and Mineral Mining has a major impact on the authority of the Regional Government. Because actually Article 8 of Law Number 4 of 2009 provides space for Regional Governments to carry out licensing functions and also includes supervision.

Meanwhile, on the other side, Regional Autonomy has been regulated and organized in the administration of the Indonesian state. Article 1 point

⁸ Rianto Nugroho D, 2000, *Otonomi Daerah (Desentralisasi Tanpa Revolusi)*, Jakarta: Elexmedia Komputindo Kelompok Gramedia, p 217-226.

(6) of Law of the Republic of Indonesia Number 23 of 2014 concerning Regional Government states that Regional Autonomy is the obligation, rights, and authority of autonomous regions to manage and regulate their own community interests and regional government affairs within the Republic of Indonesia.⁹ Furthermore, the law also clearly separates the needs of government into concurrent government affairs, general government and absolute government.

Concurrent government affairs are the needs of government matters that are shared between Regency/City Governments, Provincial Regional Governments, and the Central Government. Then the concurrent government matters submitted to the regional government become the basis of autonomous regional activities. Meanwhile, energy and mineral resources are included in selected government affairs which are classified as concurrent government affairs. Therefore, this needs to be analyzed further. Considering that mining is included in concurrent authority, which makes it possible for collaboration between the Regional Government and the Central Government in its implementation.¹⁰ However, today the Local Government space in the mining sector, especially in granting licenses, is not in accordance with the enactment of Law Number 3 of 2020 concerning

⁹ L Supriatin, S Akhmaddhian, “Kewenangan Perizinan Usaha Pertambangan Pasca Berlakunya Undang-Undang Pemerintah Daerah (Studi Di Kabupaten Kuningan Provinsi Jawa Barat)”, *Jurnal Ilmu Hukum*, Vol 4, No 2 (2017), p 103

¹⁰ Roni Sulistyanto Dewi, Luhukay, Rachmasari Kusuma, “Sentralisasi Kewenangan Perizinan Usaha Oleh Pemerintah Pusat Dalam Rancangan Undang-Undang Mineral Dan Batubara,” *Al-’Adl*, Vol 13, No 2 (2020), p 265.

Amendments to Law Number 4 of 2009, this is what the author will describe and analyze with a statutory and conceptual approach with the title, “Finding the Ideal Scheme Policy between Centralization and Decentralization in Mining Management: A case study in Papua.”

In this research, the author will examine more deeply the authority related to mining management by the central government to local governments from the perspective of autonomous regions, as it is known that local governments do not fully obtain full authority. Based on the researcher's search, this research has a different analytical review with several previous studies that also examine mining, including, first, Devi Triady Bachruddin with the title Coal Mine Management in East Kalimantan: Public Policy Review; Ledyawati with the title Regional Government Authority in the Management of Mineral and Coal Mining Natural Resources in the Era of Regional Autonomy; third, Mayer Hayrani DS with the title Central Supervision Arrangements for Mineral and Coal Mining Business Licenses in the Era of Regional Autonomy; fourth Elok Nurtria Anggraeni Olivia Mikheli Ketan with the title Legal Analysis of Mining Management Authority by the Central Government to the Regional Government in the Perspective of Autonomous Region.

B. Problem of Research

Based on what has been explained by the researcher in the background earlier, the problem formulation in the researcher's writing is as follows:

1. What is the urgency of re-implementing decentralization in mining management?
2. What is the ideal scheme that can be used in mining management?

C. Objective of Research

1. To analyze that centralized mining licensing authority is a value that contradicts the concept of autonomous regions.
2. To find out how the mining management process is appropriate if carried out by the central government and provide an ideal scheme in determining regional mining management.

D. Benefits of Research

Each of us who seeks knowledge in any field of science expects an impact that can be given after studying theories and implementing them in society to a study, the following benefits are expected in this study by the author:

1. Theoretical Aspect
 - a. In theoretical terms, this research is intended by the author to add insight into the author's knowledge as further study material regarding the overlapping regulations in the Indonesian state, especially how regulations run at the Central Government level to the autonomous Regional Government so that it can analyze how the regulations run and determine the ideal way of implementing mining management.

- b. To find out whether the Indonesian state government has made all regulations in accordance with the values mandated in the Constitution and to find out the course of mining management in autonomous regions.
- c. To find out the ideal scheme for implementing mining management policies.
- d. Developing the knowledge learned during my study at the Law Study Program, Faculty of Law, University of Muhammadiyah, Yogyakarta.

This research can provide an understanding of how the mining license is granted, especially for researchers in the field of government in the aspect of bureaucracy in order to find out the existence of overlapping regulations that are not in accordance with constitutional values and to know the ideal scheme that can be applied in implementing policies related to mining management.