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Arrangement on Authority Permits Issuance of Mineral and Coal Mining in The Era of Entry of The Act No. 23 Year 2014 on Local Government

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Abstract
The authority of mineral and coal mining permit had been a take-and-reject among the central government, local government, and districts/ cities. With the promulgation of the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 about local governance, the authority of districts/ cities on mineral and coal mining permit was removed.
The discussed issues are (1) Why does the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on local government authorize the mineral and coal mining to the central government and the provincial government? (2) What are the implications of law that can emerge without districts/ cities authority in mineral and coal mining permit? (3) How is the arrangement of the authority mineral and coal mining permit consistent with the principles of autonomy?
This study employed the normative research with statute and conceptual approaches.
The results of this study are, first, the mineral and coal mining authority, based on the Act No. 23 Year 2014 on local governance, is in the central and provincial government because of the tendency on centralized government system. In concrete terms, this can be seen in the Discussion of the Draft Academic Paper which is now become the Act No. 23 Year 2014 on Regional Governments of which did not include a discussion about mining but in Session Minutes of the Special Committee to discuss the authority to issue mining permit. Thus, the authority setting for issuance of mineral and coal mining licenses in the era of the enactment of the Act No. 23 Year 2014 on Regional Government does not seem democratic.
Second, implications of law that can be emerged out of no districts/ cities authority in mineral and coal mining permit are:
Third, the arrangement on authority permits issuance of the mineral and coal mining should be consistent with the autonomy principle.
Keyword: Authority, Autonomy, Permit

Introduction

Each country has a system to run itself. That system is running in order to achieve the objectives of the country. The system is so-called the country's administration system. Likewise, Indonesia has administration system. In accordance with the constitution of Indonesia, Indonesia is a Unitary State Republican Form.[1]

The Republic of Indonesia is led by a president as the head of country and the head of government, as stipulated in Article 4 paragraph (1) of the Constitution of the Republic of Indonesia Year 1945.[2] The president is assisted by ministers to run the administration system.[3] Every minister is in charge of certain affairs in the government.

The State Unitary Republic of Indonesia is divided into provinces. These provincial regions are divided into districts and municipalities/ cities, have the local government based on the principle of decentralization. Thus, the central government and local governments are given the authority and the authority to determine every decision and policy. The relationship between the central government and local government is set out in Chapter IV of the Administrative Affairs Section 9-26 of the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on Regional Government.

Indonesia is a big country with abundant natural resources, human resources, even has a very favorable geostrategic position which is valued in international competition. Pursuant to Article 28A of the Constitution guarantees NRI 1945, every person has the right to life and the right to defend life and livelihood. Not only the right to life, but also the right to a good and healthy environment as well as the right to health services, in accordance with Section 28H of the Constitution of the Republic of Indonesia Year 1945.

Government, both central and local governments have the authority to administer and manage natural resources. Each mining activity causes negative impacts on the environment. The environment is not merely the responsibility of central and local governments but also the companies and communities.

Public policy plays an important role in determining the results that is the law which forcing and binding. In order to create fairness, certainty and effectiveness, profuse natural resources are controlled by the state for the citizens' welfare.

Principally, the authority to grant a mining permit is in the ministry of energy and mineral resources.[4] In certain cases, the ministry of energy and natural resources could delegate some authorities. This is in line with the decentralization principle, the central government delegates the authority to local governments.

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[1] Pasal 1 ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

[2] Pasal 4 ayat (1) UUD NRI Tahun 1945 "Presiden Republik Indonesia memegang kekuasaan pemerintahan menurut Undanag-Undang Dasar."

[3] Pasal 17 ayat (1) UUD NRI TAhun 1945 "Presiden dibantu oleh Menteri-menteri negara"

[4] Pasal 11 ayat (1) UU No. 23 Tahun 2014 tentang pemerintahan daerah, berbunyi: Urusan pemerintahan konkuren sebagaimana di maksud dalam Pasal 9 ayat (3) yang menjadi kewenangan Daerah terdiri atas Urusan Pemerintahan Wajib dan Urusan Pemerintahan Pilihan.

Pasal 12 ayat (3) UU No. 23 Tahun 2014 tentang pemerintahan daerah, berbunyi: Urusan Pemerintahan Pilihan

The establishment of legislation can occur for two reasons, namely for their attribution authority or delegation of authority.[1]

The authority of attribution in the formation of legislation (*attributie van wetgevingsbevoegdheid*) is the granting authority, or the creation to form legislation is given *Grondwet* (Constitution) or by wet (law) to a state institution or government agency.

The delegation of authority in the formation of legislation (*delegatie van wetgevingsbevoegdheid*) is delegated authority to form the legislation done by the higher legislation to the lower legislation.

This delegation of authority in the formation of legislation is actually an order from a legislation from the higher to the lower legislation, in accordance with the hierarchy of legislation.

This delegation of authority is commonly done due to there are things that cannot be directly formulated in the legislation that is higher because it is easy to change, or is more technical.

The structure of the central-level state organizations reflects the overall branches of government, and the function of the country in general, yet it does not happen to the organizational structure of the regional level. The organizational structure of the country on regional level bounded on the structure of the governance administration (executive) and the elements of the setting (*regelen*) in order to govern.

As a consequence of the decentralization system, it is not all of government affairs is run by the central government. Various government affairs can be organized or implemented with the assistance units of lower levels in the form of autonomy or a duty of assistance (*medebewind*). The structure of the central government is stipulated in the Constitution NRI 1945 and in various legislations (such as MPR decrees, laws, or the government's decision to the local level as a unit of lower levels held as the government affairs submitted central government or help conduct certain affairs of the central government). The government affairs that are delegated to the regions become the domestic affairs area, and to those government affairs which have been given, the regions have the freedom (*verijheid*) to organize and manage their own with control from the central government or higher governmental levels than the concerned region. By keeping their supervision, freedom does not mean independence (*onafhankelijk*).

In the regions, in addition to government units that have the right to regulate and manage the household (autonomous regions), it is possible to form the units as the central government apparat in the regions. [2]

The Act No. 4 Year 2009 on Mineral and Coal Mining, authorizing is not only for the provincial governments, but also for the district/ city.[3] This is in contrast to the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on local government. In this act, it does not regulate the local government authority districts/ cities in the granting of a mining

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sebagaimana dimaksud dalam Pasal 11 ayat (1) meliputi: a. kelautan dan perikanan; b. pariwisata; c. pertanian; d. kehutanan; e. energi dan sumber daya mineral; f. perdagangan; g. perindustrian; dan h. transmigrasi.

[1] Maria Farida, Ilmu Perundang-undangan II, Proses dan Teknik pembentukannya, (Yogyakarta: PT Kanisius, 2007), Hlm.167

[2] Philipus M. Hadjon,dll, Pengantar Hukum Administrasi Indonesia (introduction to the Indonesia administration law), (Yogyakarta: Gajah Mada University Press, 2011), Hlm. 79-80

[3] Bunyi Pasal 8 ayat 1 UU No. 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara:

Kewenangan pemerintah kabupaten/kota dalam pengelolaan pertambangan mineral dan batubara, antara lain, adalah:

a. pembuatan peraturan perundang-undangan daerah;

b. pemberian IUP dan IPR, pembinaan, penyelesaian konflik masyarakat, dan pengawasan usaha pertambangan di wilayah kabupaten/kota dan/atau wilayah laut sampai dengan 4 (empat) mil;

c. pemberian IUP dan IPR, pembinaan, penyelesaian konflik masyarakat dan pengawasan usaha pertambangan operasi produksi yang kegiatannya berada di wilayah kabupaten/kota dan/atau wilayah laut sampai dengan 4 (empat) mil;

d. penginventarisasian, penyelidikan dan penelitian, serta eksplorasi dalam rangka memperoleh data dan informasi mineral dan batubara;

e. pengelolaan informasi geologi, informasi potensi mineral dan batubara, serta informasi pertambangan pada wilayah kabupaten/kota;

f. penyusunan neraca sumber daya mineral dan batubara pada wilayah kabupaten/kota;

g. pengembangan dan pemberdayaan masyarakat setempat dalam usaha pertambangan dengan memperhatikan kelestarian lingkungan;

h. pengembangan dan peningkatan nilai tambah dan manfaat kegiatan usaha pertambangan secara optimal;

i. penyampaian informasi hasil inventarisasi, penyelidikan umum, dan penelitian, serta eksplorasi dan eksploitasi kepada Menteri dan gubernur;

j. penyampaian informasi hasil produksi, penjualan dalam negeri, serta ekspor kepada Menteri dan gubernur;

k. pembinaan dan pengawasan terhadap reklamasi lahan pascatambang; dan

l. peningkatan kemampuan aparatur pemerintah kabupaten/kota dalam penyelenggaraan pengelolaan usaha pertambangan.

business license (IUP) and artisanal mining license (IPR). It can clearly be seen from the matrix of concurrent affairs division between the central government and provincial and local government district/ city.

Each of the management utilization of the natural resources can not be separated from the impact that could have happened to environment and communities that feel most of the impact. Regarding the benefits or negative impacts that may arise as a result of government affairs selection including on energy and mineral resources, the local government district/ city is given the authority to resolve the conflict, both social conflict and environmental (respresif) not as an authority prefentif (as prevention negative impact). Thus, there were inconsistencies on governing authority granting mineral and coal mining in the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on local government.

To the authors' best knowledge, with the promulgation of the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 about local government, the mineral and coal mining uthority should still have been be given to the district/ city. Thus, the district/ city government remain on the supervisory function, guidance and control of the negative impacts post-mining activities such as mining and destruction of ecosystems can increase the value of the tax revenue of the district/ city as well, and increased social welfare.

In regard to the description, the arising theoretical problem is that the legislation does not protect the local authorities and recognize the existence of local government in the absence of authority in the management of mineral and coal mining permit at the district/ city. Then, on the juricidal problem, there occurs disharmony legislation. Meanswile, on problem of the sociological, there are communities around the mine area harmed by the damage and/ or environmental pollution.

Based on the background of this study, the research problems are formulated as follows:

a. Why does the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on Regional Government authorize the issuance of Mineral and Coal Mining Permits in the central government and provincial governments?

b. What are the legal implications that could arise from the lack of authority of the district/ city in the issuing of licenses for mineral and coal mining in the district/ city?

c. How is the licensing authority for issuance of mineral and coal mining which is consistent with the autonomy principle?

Capturing the occurred problems, the authors examine the issue under a study entitled arrangement on authority permits issuance of mineral and coal mining in the era of entry of the Act No. 23 Year 2014 on local government. This study is a normative research (statute approach) and conceptual approach by using the theory of the State of Law, Government Systems Theory, Theory of Authority, and Autonomy Theory.

Discussion

A. Consideration on Licensing Authority of Mineral and Coal Mining According to the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on Local Government

The functions of local governments are to regulate and run local governance. The Local Government functions according to the Act No. 23 Year 2014 on Regional Government are:[1]

1. Implementing local government by local government to regulate and administer the affairs of government based on the autonomy principle and duty of assistance

2. Running the government based on the broad autonomy principle within the system and the principle of the Unitary Republic of Indonesia, except absolute and chosen government affairs.

3. In the case of running concurrent government affairs, the central government and local governments have the authority relations, finance, public services of natural resources, and other resources.

In conducting the local government affairs, the Act No. 23 Year 2014 on Regional Government recognize the principles in local government. According to Article 1 Verses (8), (9) and (11) of the Act No. 23 Year 2014 on Regional Government, those principles are as follows:[2]

[1] Pasal 1 ayat (2) UU No 23 Tahun 2014 tentang Pemerintahan Daerah menyatakan: "Pemerintahan Daerah adalah penyelenggaraan urusan pemerintahan oleh pemerintah daerah dan dewan perwakilan rakyat daerah menurut asas otonomi dan tugas pembantuan dengan prinsip otonomi seluas-luasnya dalam sistem dan prinsip Negara Kesatuan Republik Indonesia sebagaimana dimaksud dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945."

[2] Pasal 1 ayat (8) UU No. 23 Tahun 2014 tentang Pemerintahan Daerah menyatakan: "Desentralisasi adalah penyerahan Urusan Pemerintahan oleh Pemerintah Pusat kepada daerah otonom berdasarkan Asas Otonomi". Pasal 1 ayat (9), UU No. 23 Tahun 2014 tentang Pemerintahan Daerah menyatakan: "Dekonsentrasi adalah pelimpahan sebagian Urusan Pemerintahan yang menjadi kewenangan Pemerintah Pusat kepada gubernur sebagai wakil Pemerintah Pusat, kepada instansi vertikal di wilayah tertentu, dan/atau kepada gubernur dan bupati/wali kota sebagai penanggung jawab urusan pemerintahan umum". Pasal 1 ayat (11) UU No. 23 Tahun 2014 tentang Pemerintahan Daerah menyatakan "Tugas Pembantuan adalah penugasan dari Pemerintah Pusat kepada daerah otonom untuk melaksanakan sebagian Urusan Pemerintahan yang menjadi kewenangan Pemerintah Pusat atau dari Pemerintah Daerah provinsi kepada Daerah kabupaten/kota untuk melaksanakan sebagian Urusan Pemerintahan yang menjadi kewenangan Daerah provinsi".

1. The centralization principle is centralizing the government system, where all administrative matters centered on the central government.

2. The decentralization principle is delegating of government affairs by the central government to local governments to remain on the system of the Republic of Indonesia.

3. The devolution principle is deconcentration of partly government affairs under the authority of the central government to the governors as representatives of the central government to the vertical institutions in a particular region.

4. Duty of assistance means orders from the central government to regions to carry out part of the government affairs under the authority of the central government, and/or from the provincial government to districts/ cities.

The consideration of authority on mineral and coal mining licenses to central and local governments and not to the provincial local government districts/ cities is due to there are non-producing mineral and coal resources regions and these regions do not have income and regional income, this legislation is, then, expected to equalize the fund, General Allocation Fund (DAU) and Special Allocation Fund (DAK).[1] As a result, the mining license is emphasized on the central government, so that these regions do not feel left behind or disadvantaged, but also under the context of the Unitary State of Indonesia are expected to grow throughout the regions. Thus, the economy is also expected to grow nationally, not regionally.

The authority license delegation on mineral and coal mining has the potential to throw their responsibility when problems occur, between the central and local governments, governments and among regions. This occurs because of the inability to run autonomous region as it is seen from the number of regions that fail in running the local governance. With a lack of competence skill or ability in accordance with the potential earnings, the mining region is not comparable to the welfare of society,[2] which also resulted in the destruction of the environment and the tendency of officials into small kings, which leads to corruption.

This deficiency should be advantages for local governments to take care/ precept the authority and responsibility, raise the standards organization, and raise the power financially and technically by performing its functions.

The authority to issue permits for mineral and coal mining according to the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on Regional Government is on the central government and the provincial government because of the tendency to centralize the government system. In concrete terms, this can be seen in the Discussion of the Draft Academic Paper which is now become the Act No. 23 Year 2014 on Regional Governments of which did not include a discussion about mining but in Session Minutes of the Special Committee to discuss the authority to issue mining permit. Thus, the authority setting for issuance of mineral and coal mining licenses in the era of the enactment of the Act No. 23 Year 2014 on Regional Government does not seem democratic.

B. Legal Implications that Can Occur due to the Absence of Authority of the Government of Disctricts/ Cities in Publishing Permit Mineral and Coal Mining

The Act No. 23 Year 2014 on Regional Government focuses more on the organization of local government. As a consequence, the act regulates various matters related to the activities of the local government in carrying out the duty as a government organization at the local level and has a close relationship with the community. The Act No. 23 Year 2014 on local government affair adopts this division. Between the division of authority and the functional divisions, there is clearly an underlying division. Legally, authority is defined by the right and power of the government to determine or take this policy in order to run the government while the meaning of government affair is the content of the authority itself. This act also reaffirms the position of the autonomous region as an integral part of the Unitary State of Indonesia. Even though the autonomous region is a legal entity that has independent rights and obligations, as well as the state as a
legal entity, but the position (government) autonomous region is implementing various government authorities that have been devolved from the central government, and the possession of such authority remains in the hands of central government. So, theoretically juridical, local government is a sub-system of the state government system as a whole.

The government's actions must be based on the norms of authority that become the basis of the legitimacy for acts of government. The authority is derived from the legislation as a formal legal basis, meaning that the one who gives legitimacy to the acts of the government, it is said that the substance of the legality principle is the authority, the authority derived from legislation. This is in accordance with the principles of the law that put the law as a source of authority therefore the basics are relevant and can not be separated with the legality principle.

This legality principle (legaliteit beginsel) is one of the key principles that is made in the base of governance and the country, especially in state law. The legality principle is within the meaning of administrative law, the government is subject to the laws, and all the provisions that bind the citizen must be based on the Act therefore the legality principle is as a cornerstone of the government's authority.

The legal consequences that could arise from disharmony authority of local government districts/ cities on Article 8 the Act No. 4 Year 2009 on Mineral and Coal Mining with Matrix affairs division of mineral and coal fields on the Act No. 23 of 2014 as amended by the Act No. 9 Year 2015 on Regional Government, triggering the throwing of responsibility, and unlicensed mining (PETI), as well as the destruction and environmental pollution.

[1] Risalah Sidang RUU tentang Pemerintahan Daerah, 12 April 2012
[2]Robert Endi Jaweng (KPPOD):Risalah Sidang RUU tentang Pemerintahan Daerah, 21 Juni 2012

The absence consequences of the authority of districts/ cities governments in mineral and coal mining permits in the area of the municipal district, according to the Act No. 23 Year 2014 concerning the Local Government legal implication that could arise from the lack of authority of districts/ cities governments in mineral and coal mining permit as follows.

1. The legal implications of the Local Government: There is imposition to the local government/ districts in tackling the negative effects of mineral and coal mining without being given the authority in determining the permit issued.
2. Implications for Local Governance: Regional districts/ cities tend to be passive in running the government for not complying with the principle of decentralization.
3. Implications of the Unitary Republic of Indonesia: There is a decreased income of districts/ cities due to rampant illegal mining with the consequences of the resilience of the districts/ cities that become weakened and can occur merger of the districts/ cities for the failure of local acts as the support of the Unitary State of the Republic of Indonesia.

4. Implications for the environment: In the absence of authority, it is resulting in increased illegal mining and it is difficult for the districts/ cities to participate in the prevention of damage to the ecosystem and to control the mining areas.

In general, problems due to the illegal mining are always related to three important aspects, namely:

1. Adverse State, in the form of lost income from the taxation sector;
2. Destructive and pollute the environment, among others by the shape of deforestation, erosion, and pollution of river water: and
3. Harassment law, as a reflection of the status of those who operate without licenses.

C. Arrangement on Authority Permits Issuance of Mineral and Coal Mining with the decentralization principle

According to Moh. Mahfud MD [1] autonomy covers the following principles:

(1) The formal autonomy principle

In the duties division autonomy principle, powers and responsibilities between the center and the regions to manage their own matters are not detailed in the legislation. The view used in this principle is that there is no difference between the nature of the business conducted by the center and the regions. The division of duties, powers and responsibilities are solely based on the belief that government affairs will prosper, if taken care of and are governed by specific government unit, and vice versa. Thus, the formal autonomy principle gives comprehensive power to provide flexibility for districts to manage and run the government affairs as its own domestic affairs, as claimed by Tresna:

"...., the area should not regulate what is already regulated by law c.q. Local Regulation of higher dignity. If the high other party then set what had been arranged by regions, the local regulations are in question since it is no longer valid."[2]

Therefore, the point of the approximate formal autonomy principle is is a consideration of usefulness of the results for the division of duties, authority, and responsibility.[3] However, there are some weaknesses in the formal autonomy principle:

1. The performance and efficiency of regional autonomy depends on the regions' creativity and activity, so it is in fact that there are regions which are not able to take advantage of opportunities will depend largely on the central or higher regional level. These regions will always be waiting for the "guidance" of the affairs of government that should be regulated and abandonment.
2. Latitude areas not necessarily put to good use because of possible resistance from a financial standpoint.[4] This means that if it is not supported by adequate financial resources, the formal autonomy will not be effective.

Technically, regions can not easily find out the affairs that have not been addressed by the central and higher local governments. [5]

Thus, even though this formal autonomy principle slightly seems to encourage flexibility and strengthening decentralization, in reality it is often be the opposite, that is to encourage the centralizing tendencies. Bagir Manan wrote about this:

"The uncertainty of the housekeeping area, there is no tradition of autonomous, regional initiative will embody the lace-paced area of waiting and depending on the center." [6]

(2) The material autonomy principle

On contrary to the formal autonomy principle, the material autonomy principle includes in details (in the legislation) division of authority, duties and responsibilities between the center and regions which are all set and clear so that the regions have clear guidelines. The starting point of substantive autonomy of thought is the fundamental difference between the affairs of the central government and local governments. Government affairs can be sorted in a variety of environments governmental unit.

But the material autonomy principle has a weakness, because it stems from the mistaken idea that the notion that the government affairs can be detailed and sorted. In fact, although there are things that can be seen in nature clearly, a lot of things that have a dual nature as well as the possibility that any government affairs contained many dimensions or parts that need to be regulated and managed differently, such as agricultural affairs. So, it is very difficult to determine in detail the affairs of each individual governmental unit.

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[1] Moh. Mahfud MD, *Op.Cit.,* hlm 97

[2] R. Tresna, *Bertamasya ke Taman Ketatanegaraan*, (Bandung: Dibya,tt.,)hlm 32-36

[3] RDH Koesoemahatmadja, *Pengantar ke Arah Sistem Pemerintahan Daerah di Indonesia, (*Bandung: Binacipta, 1978),hlm. 15.

[4] Bandingkan dengan Amrah M., *Aspek-aspek Hukum Otonomi Daerah,1903-1976, (Bandung: Alumni,1978),* hlm 15

[5] Lihat dalan the Liang Gie, *Pertumbuhan Pemerintah Dareah di Negara Republik Indonesia*, Jilid 111, (Jakarta: Gunung Agung, 1968) hlm 62

[6] Bagir Manan*,op.cit*.,hlm.28.

Another disadvantage of this principle was the regions only have a smaller chance to adjust to change in circumstances that may require removal of the handling of affairs that has been shared. Therefore, the material autonomy principle deemed unsatisfactory and is considered an objective can not be relied on to create harmonious relations between the center and regions.

(3) The real autonomous principle

The real autonomous principle is a middle way[1] between the formal and material principles. In this principle, the affairs handing to the autonomous regions i based on real factors. The problem that arises is that what is more dominant between the formal principle and the material principle in the real principle. According to Bagir Manan from Tresna's description, there is impression that the real autonomous principle prefers the formal principle. It is because the formal autonomy principle implies the idea to realize the principle of freedom of independence for the autonomous regions while the principle of the material will stimulate the emergence of regional discontent and the "spanning" the relationship between the center and the regions. "[2]

In the real principle, the material principle plays the role to give certainty in advance of the regional affairs. Through the material principle, the base is given and developed with the formal principle to liberalize the utonomy principle and independence aspect of material in the form of delivery of base business, in addition to the formal aspects of household systems, becoming one of the characteristics that distinguish the real autonomy principle of the other autonomy principles.[3] Principally, with the regional administration, it is directed to accelerate the realization of public welfare through the improvement of service, empowerment, and community participation, as well as increased competitiveness of the region with regard to principles of democracy, equity, justice, and the peculiarities of an area within the Unitary State of the Republic of Indonesia. The efficiency and effectiveness of local governance needs to be improved with more attention to the aspects of the relationship between the central government and regional and inter-regional, potential and diversity of the region, as well as the opportunities and challenges of global competition in the unified system of state governance.

With the enactment of the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on Regional Government, it is overriding the authority of districts/ cities government under Article 8 of the Act No. 4 Year 2009 on mineral and coal mining, then arranging authority permit on mineral and coal mining at the level of local government districts/ cities to be taken over by the provincial government which is representative of the central government.[4]

As it is seen from the Indonesian constitution, namely Article 18[22], 18A[23] and 18B[24] of the Constitution of the Republic of Indonesia Year 1945, the country recognizes and respects the autonomy of regions. This resulted in governing authority that is inconsistent with the principle of decentralization, and not in accordance with established objectives and recognition of local government by Constitution of the Republic of Indonesia Year 1945.

The arrangement authority permit for issuance of mineral and coal mining permits should be consistent with the autonomy principle. Therefore, it can accelerate the realization of people's welfare through the improvement of service, empowerment, community participation, and the local government system that is independent, effective and efficient and to

[1]Lihat dalam Tresna,*op.cit*.,hlm.34

[2]Bahir Manan,*op.cit*.,hlm.33

[3]Seperti dikutip The Liang Gie,op.cit.,hlm.58. Boedisoesetyo mempersoalkan tentang adanya urusan pangkal yang dikatakannya bahwa dengan adanya urusan pangkal itu maka asas otonomi nyata menjadi tanpa sistem.jadi ada urusan pangkal yang ditetapkan sejak awal, menggapa urusan berikutnya tidak ditetapkan? Demikian Boedisooesetyo, tetapi justru urusan pangkal inilah yang membedakan asas riil dan lainya.

[4]Pasal 4 ayat (1) UU NO. 23 Tahun 2014 tentang Pemerintah Daerah, menyebutkan: "Daerah provinsi selain berstatus sebagai Daerah juga merupakan Wilayah Administratif yang menjadi wilayah kerja bagi gubernur sebagai wakil Pemerintah Pusat dan wilayah kerja bagi gubernur dalam menyelenggarakan urusan pemerintahan umum di wilayah Daerah provinsi".

[22] Pasal 18 UUD Negara Republik Indonesia Tahun 1945, berbunyi: Ayat (1) Negara Kesatuan Republik Indonesia dibagi atas daerah-daerah propinsi dan daerah propinsi itu dibagi atas kabupaten dan kota, yang tiap-tiap propinsi, kabupaten, dan kota itu mempunyai pemerintahan daerah, yang diatur dengan undang-undang. Ayat (2) Pemerintahan daerah propinsi, daerah kabupaten, dan kota mengatur dan mengurus sendiri urusan pemerintahan menurut asas otonomi dan tugas pembantuan. Ayat (3) Pemerintahan daerah propinsi, daerah kabupaten, dan kota memiliki Dewan Perwakilan Rakyat Daerah yang anggota-anggotanya dipilih melalui pemilihan umum. Ayat (4) Gubernur, Bupati, dan Walikota masing-masing sebagai kepala pemerintahan daerah propinsi, kabupaten, dan kota dipilih secara demokratis. Ayat (5) Pemerintahan daerah menjalankan otonomi seluas-luasnya, kecuali urusan pemerintahan yang oleh undang-undang ditentukan sebagai urusan Pemerintah. Ayat (6) Pemerintahan daerah berhak menetapkan peraturan daerah dan peraturanperaturan lain untuk melaksanakan otonomi dan tugas pembantuan. Ayat (7) Susunan dan tata cara penyelenggaraan pemerintahan daerah diatur dalam undang-undang.

[23] Pasal 18A UUD Negara Republik Indonesia Tahun 1945, berbunyi: Ayat (1) Hubungan wewenang antara pemerintahan pusat dan pemerintahan daerah propinsi, kabupaten, kota, atau antara propinsi dan kabupaten dan kota, diatur dengan undang-undang dengan memperhatikan kekhususan dan keragaman daerah. Ayat (2) Hubungan keuangan, pelayanan umum, pemanfaatan sumber daya alam dan sumber daya lainnya antara pemerintahan pusat dan pemerintahan daerah diatur dan dilaksanakan secara adil dan selaras berdasarkan undang-undang.

[24] Pasal 18B UUD Negara Republik Indonesia Tahun 1945, berbunyi: Ayat (1) Negara mengakui dan menghormati satuan-satuan pemerintahan daerah yang bersifat khusus atau bersifat istimewa yang diatur dengan undang-undang. Ayat (2) Negara mengakui dan menghormati kesatuan-kesatuan masyarakat hukum adat beserta hak-hak tradisionalnya sepanjang masih hidup dan sesuai dengan perkembangan masyarakat dan prinsip Negara Kesatuan Republik Indonesia, yang diatur dalam undang-undang.

increase regional competitiveness with regard to principles of democracy, justice, and the peculiarities of an area within the Unitary State of the Republic of Indonesia.

Conclusion

1. The authority in issuing of licenses for mineral and coal, according to the Act No. 23 Year 2014 as amended by the Act No. 9 Year 2015 on Regional Government is on the central government and the provincial government because of the tendency of centralized government system. In concrete terms, this can be seen in the Discussion of the Draft Academic Paper which is now become the Act No. 23 Year 2014 on Regional Governments of which did not include a discussion about mining but in Session Minutes of the Special Committee to discuss the authority to issue mining permit. Thus, the authority setting for issuance of mineral and coal mining licenses in the era of the enactment of the Act No. 23 Year 2014 on Regional Government does not seem democratic.
2. The legal implications that could arise from the lack of authority of districts/ cities government on mineral and coal mining licenses in the districts of the city are, namely:
   a. The legal implications of the Local Government: There is imposition to the local government/ districts in tackling the negative effects of mineral and coal mining without being given the authority in determining the permit issued.

   b. Implications for Local Governance: Regional districts/ cities tend to be passive in running the government for not complying with the principle of decentralization.

   c. Implications of the Unitary Republic of Indonesia: There is a decreased income of districts/ cities due to rampant illegal mining with the consequences of the resilience of the districts/ cities that become weakened and can occur merger of the districts/ cities for the failure of local acts as the support of the Unitary State of the Republic of Indonesia.

   d. Implications for the environment: In the absence of authority, it is resulting in increased illegal mining and it is difficult for the districts/ cities to participate in the prevention of damage to the ecosystem and to control the mining areas.

3. The arrangement on authority permits issuance on mineral and coal mining should be consistent with the autonomy principle. Therefore, there is acceleratation in the realization of people's welfare through the improvement of service, empowerment, community participation, and the local government system which is independent, effective and efficient and to increase regional competitiveness with regard to principles of democracy, justice, and the peculiarities of the regions within the Unitary State of the Republic of Indonesia.

Suggestion

It is suggested to the legislators Act (House of Representatives and the President), to revise the Act No. 23 Year 2014 on Regional Government in which the authority of the licensing of mineral and coal mining should be given to the districts/ cities. This effort is in order to minimize the negative impacts on the districts/ cities due to lack of authority for issuance of mineral and coal mining permits and to create independence and effectiveness of local government districts/ cities in order to expedite the welfare and prosperity of the people as much as possible in the context of the Unitary Republic of Indonesia. The arrangement on authority permit issuance on mineral and coal mining by the districts/ cities generates the arrangement that does not have a conflict with the Act No. 4 Year 2009 on Mineral and Coal Mining.

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