

The Connection of Authority between Central Government and Regional Government in Managing Mining and Forestry in Papua

Muslim Lobubun*, Abrar Saleng**, A. Suriyaman Mustari Pide***, Farida Patittingi****

*Phd Student at Postgraduate Program Hasanuddin University, Indonesia

**Professor on Legal Science, Faculty of Law Hasanuddin University- Indonesia

***Professor on Legal Science, Faculty of Law Hasanuddin University- Indonesia

****Professor on Legal Science, Faculty of Law Hasanuddin University- Indonesia

Abstract

Mining and forestry must be protected for the sake of benefit of the people. The protection of it can be seen in some regulation such as in Article 33 (3) of the 1945 Constitution of the Republic of Indonesia, the Law No. 11 Year 1967 concerning Basic Provisions of Mining has been replaced to the Law No. 4 Year 2009 concerning Mineral Mining and Coal, the Law No. 41 year 1999 concerning Forestry, the Law No 32 Year 2009 concerning Protection and Management Environment, the Law No. 23 Year 2014 concerning the Regional Government, and the Government Regulation No. 25 Year 2000 concerning Government and Province Authority as Autonomous Region. This research is categorized as empirical legal research or non-doctrinal legal research. It uses a juridical socio-cultural approach. It is conducted in the Province of Papua, primarily Jayapura, Kerom, Sarmi, Mimika, and Nabire Regency. Mineral mining and coals are non-renewable natural resources and they are national wealth that are controlled by the state for the greatest benefit of the people. Control upon mines by the state is conducted by the government and/or regional government. Government has the authority to determine the amount of production of every commodity per year in each province. The connection of authority between Central Government and Regional Government often overlaps jurisdiction in terms of their policies. To deal with such overlapping law including overlapping between the Law No. 21 Year 2001 concerning Special Autonomous of Papua and the Law No. 4 Year 2009 Governor of Papua has issued the Governor Regulation No. 41 Year 2011 concerning Mineral, Metals, and Coal Mining Business to counterbalance the licensing act and mineral natural resources management even though eventually such regulation is not admitted by the central government. In the context of forestry, Licensing issues and authorities related with forest are regulated by the central government. The central government has not provided a room to regional government, and only a particular group of people with sufficient capital that could obtain license. After reform era, there are not any Regional Office in the province because currently it is handled in Forestry Department directly or Governor.

Keywords: Connection of Authority, Central Government, Regional Governemnt, Mining and Forestry

1. Introduction

Article 33 (3) of the 1945 Constitution of the Republic of Indonesia is a constitutional basis that entrusted “the land, the waters, and the natural resources within shall be under the power of the state and shall be used to the greatest benefit of the people.” Therefore, article 33 (3) is an elaboration of the noble vision and mission that belongs to the founders of the nation that wishes for all natural resources management should be for the Indonesian people’s greatest benefit. Natural resources management are expected to provide benefits:¹ in elevating the people’s prosperity; in providing protection and guarantee towards the rights of the people; and in preventing actions from any parties that will cost the people’s chances or losing their rights to enjoy the natural resources.

Many regions believe that having natural resources can directly lead to people’s prosperity. Even though there are many instances in which a region considers to be rich in natural resources turns out to be impoverished. The natural resource curse happens when a country is gifted with an enormous amount of natural wealth but have a low level of prosperity for the people. This is also what happens in Indonesia as the country is very rich in terms of mining natural resources but is unable to provide prosperity for Indonesian people.

Since Indonesia obtained independence on August 17th 1945, Indonesian mining law is a product that is left behind by the Dutch government, called *Indische Mijwet*. It is still applied with several amendments and addition adjusted with the Indonesian independence period. It was only on the year of 1959 that the government of Indonesia started to have significant amendments for *Indische Mijwet* especially articles concerning the mining rights. The basic legal consideration of this law is that with the existence of private owned companies that have been spreading all over Indonesia in which this private owned companies is also granted mining rights by the *Indische Mijwet*.

¹See Article 33 The 1945 Constitution of the Republic of Indonesia.

In 1960 in the event of preparing the new mining law, Government Regulation in Lieu of Law (PERPPU) No. 37 years 1960 concerning mining activities was applied. The legal basis for PERPPU is that minerals in all over Indonesian sovereign territory shall be used for the greatest benefit of the people collectively and individually. Aside from that, the minerals have an important meaning as an element of development in various industrial sectors and as required raw materials. It is formed to replace *Indische Mijnwet* as it can no longer be used as a basis to achieve the dreams of Indonesia and national interest development viewed from political and strategic socio-economic perspective. Generally the core ideas of it are:

1. Control over minerals that is located under and above Indonesian territory or other minerals controlled by the government of Indonesia for national interest and prosperity and is a national wealth;
2. Division of minerals into several categories based on the value of the mineral, i.e. strategic group, vital group, and another that is not included within the previous two groups.;
3. The nature of mining companies which basically should be conducted by the country;
4. Definition of concessions (permission to open a mining land) is revoked, while the authority to conduct a mining business is given based on mining control; and
5. The existence of a transitioning rule in facing this regulation.

Mining law in the new order era is the Law No. 11 Year 1967 concerning Basic Provisions of Mining. In this Law, the authority of mining activities was dominated by foreign a company that was given in the form of working contract, with 35 years of contract and a 25 year contract extension. It means that the working contract would be 60 years of contract in total. If it is deeply studied further, the content of the Law is centralistic in nature. Therefore, it does not give authorities to the region for making their own decision. With the existence of reform demands in all sectors including mining sector, the Law No. 11 Year 1967 then was replaced with the Law No.4 year 2009 concerning Mineral Mining and Coal. The Law No.4 year 2009 is to face the challenge of strategic environment and globalization influence that pushes for democratization, regional autonomy, human rights, living environment, information technology development, intellectual property rights, and the demand of private and the people's role, especially in the context of granting permissions.¹

Leaving from the bad mining natural resources at the age of new order where the control of minerals was conducted by the state in accordance with article 1 the Law No. 11 Year 1967, it tends to ignore producing region including the community and is more capital-interest oriented. Currently, in the reform era, the existence of the Law No. 4 Year 2009 gives hoping for the control of minerals and coal by the state that is carried out by government and/or regional government in accordance with Article 4 the Law No. 4 Year.² However, the reality has not changed and even caused a new problem which is a conflict between companies and the community, and/or conflicts between customary law society and regional government. One of the examples can be seen in the case of PT. Citra Palu Mineral (CPM) in Paboya - Palu Timur, Palu City, Central Sulawesi.

The Law No. 4 Year 2009 is a consequence of changing environment dynamics including the implementation of regional autonomy as stipulated in the Law No. 23 Year 2014 concerning Regional Government where the Regional Government has been given a bigger role in conducting development in the region.³ The role of the Regional Government is then emphasized in the Government Regulation No. 25 Year 2000 concerning Government and Province Authority. The intention of the Government Regulation is to push democratization, regional autonomy, human rights, living environment, increasing private and society's role, and creating prosperity for the people.⁴

The implementation of The Law No. 4 Year 2009 signs that the regional government has been given a bigger portion to conduct regulation, management, and supervision function towards management and utilization of natural resources in its region, including economic, social, and living environment development aspects. The regulation function is also explained in Article 2 and 8 of the Law No. 5 Year 1960 concerning Agrarian Basic Provision.

¹See <http://www.gultomlawconsultants.com/sejarah-hukum-pertambangan-di-indonesia/#>

²See Article 4 the Law No. 4 Year 2009 concerning Mineral Mining and Coal.

³See the Law No 32 Year 2009 concerning Protection and Management Environment.

⁴See General Explanation of the Government Regulation No. 25 Year 2000 concerning Government and Province Authority as Autonomous Region.

Authority of allocation, utilization, supply, maintenance, people's connection with the land, water and space, as well as legal relations between the people is to achieve the greatest benefit for the people in the sense of happiness, prosperity, and independence, sovereign, fair, and prosperous.¹ Regulation for management and utilization of mining natural resources is required not only to keep the amount of natural resources available, but also to provide legal certainty guarantee in conducting mining business in accordance with the provisions under Article 3 (f) of The Law No. 4 Year 2009 and article 47-48 the Government Regulation No. 23 Year 2010 concerning Implementation of Mining Business Activities.²

Regulation concerning mining activities is a legal principle that regulates the state's authority in managing minerals and relationship between state and the people or legal body in managing and utilizing the minerals. The role of the government is not only to have the strategic authority function in regulating mining management including the regulations and managing mining business operated by State Owned Companies and Regional Government Owned Companies, but also is to conduct a supervisory function related with management, issuance of business permission, and living environment management to prevent pollution and environment damages.

On the other hand, in the event of achieving the state's idea and purpose as entrusted within Article 33 (3) of the 1945 Constitution of the Republic of Indonesia, mining companies are also required to conduct social and environmental responsibilities. Article 95, 106, 107, and 108 of the Law No. 4 Year 2009 stipulates companies' obligation (owner of mining companies) to conduct a development and empowerment of society.³ The obligation of a corporate social responsibility is viewed as a part of relationship configuration between the business world and the society. The social responsibility of a company is having a conceptual formulation that is ever-changing in accordance with the development of the world itself. At first and for a very long time, the business world has probably never thought about social responsibility. This is because the classic proportionate theory as formulated by Adam Smith in which the duty of a corporation is merely to generate profit. He states that "the only duty of the corporation is to make profit".⁴ The main motivation of every companies or industry or business is to increase profit. The ideology of "the only duty of the corporation is to make profit" held by corporations is starting to change slowly with the emerging collective awareness that the business world continuous existence will not happen without an appropriate support from stakeholders such as manager, consumers, labor, and society. The point of this perspective is that the business world will not prosper if the stakeholders are not prosperous as well.⁵ Companies does not only have economic responsibility towards the stakeholders, i.e. making profit and alleviating stock price or legal responsibility to the government, such as tax payment, qualifying Environmental Damages Analysis documents, and other provisions. Therefore, if the company wishes to exist and acceptable, a social responsibility must also be included.⁶

In the context of regulation, management, and supervision towards mining activities management for the sake of realizing people's prosperity, mining product is managed by business entity generally and sepecially Foreign Investment Company has generated more profit for the company instead of increasing prosperity for the people. For instance, in Papua region known for an enormous amount of gold mine but most of the locals are living in impoverished condition. Minerals products such as copper and gold are managed by PT. Freeport which most of the stocks approximately 90% are owned by American giant company, namely PT. Freeport Mc Moran Copper & Gold Inc., Meanwhile the stocks owned by Indonesian government is only 10%.⁷ Negotiation to extend the contract between Indonesian government and PT. Freeport Indonesia eventually arrived at the conclusion that Indonesian government will then own 51% of the companies' stock and that the contract will be extended until 2041.

¹See Regional Representative Council of the Republic of Indonesia and Faculty of Law Haluoleo University, 2010, *Analysis study of Connection Between Central and Regional Government on Sharing Results to Mining Natural Resources Management in Southeast Sulawesi*.

²See Article 3 (f) the Law Number 4 Year 2009 concerning Mineral Mining and Coal.

³Adjat Sudrajat, *The Importance of Corporate Social Responsibilities (CSR) in Mining Activities*, <http://www.bataviase.co.id/>, last accessed on September 7th 2011.

⁴Sofyan Djalil, *Theoretical and Practical Context of Corporate Social Responsibility*, Economic Reformation Journal Vol. 4 Number 1, January-December 2003, p. 4.

⁵Eddie Riyadi, *Business Responsibilities Towards Human Rights*, <http://www.elsam.or.id>, accessed on January 16th 2017.

⁶Yusuf Wibisono, 2007, *Dissecting the Concept and Application of CSR*, CV. Ashkaf Media Grafika, Surabaya, p. 23. See also, Daud Silalahi, 2003, *Sustainable Development In Management Context (Including Protection) of Natural Resources Based on Socio-Economic Development*, Paper, p. 3.

⁷See Bambang Setiawan, *Harian Kompas*, October 15th 2008, p.1.

The management of mining activities has always created an issue of environment dynamics and social conflicts including the implementation of regional autonomy to return the authority of managing resources to the state constitutionally as stipulated in article 4 the Law No. 4 Year 2009. The Law attempts to provide a new goal for mining policy to accommodate the national interest principle, benefits for the people, insurance of business, and good mining practice.¹

Decentralization and development based on local wisdom has become one of the main alternatives to replace centralization and uniformity in the past. Such issue has been stipulated in the amendment of 1945 Constitution of the Republic of Indonesia, Article 28 I (3) which ensures cultural identity and traditional people's right in accordance with development of ages and times. The article has two important elements; the first is to guarantee recognition and respect towards customary society and their traditional rights, and the second is to concern to delimitation issue. This means that such rights will continue to exist as long as the cultural society still lives and the values they held are consistent with the development of society in general and Republic of Indonesia principle, which will then be regulated in law. Both elements will become the foundation to determine criterions of customary society.

Customary society's rights are regulated in the Law No. 41 Year 1999 concerning Forestry. The Law recognizes the existence of customary law society as stipulated in article 4 point (6) of the law. The article stipulates that "Customary forest is a state's forest located in the territory of customary law society". Unfortunately, it has not given any recognition towards collective rights for customary law society upon the natural resources located in their territory. The existence of customary forest is still considered as state's forest as further more emphasized in Article 5 point (2) the Law No. 41 Year 1999. The article states that "State's forest as mentioned in sub-section 1 (a), may also be customary forest"; and that "State's forest is a forest that is located on a land that are not bound to any land rights" (article 1 point (4)). Unlike the previous law which emphasizes the rights of customary law society with their relations to natural resources management according to identity and cultural characteristic, the Law No. 32 Year 2004 concerning Regional Government focuses more on emphasizing the rights of customary law society in managing their own political and government system in accordance with local law provisions. Prosperity as mentioned previously is supported by natural resources i.e. forest resources.

Forest as one of the natural resources is a capital for national development which is supposed to be utilized realistically for the life of country, including ecological benefits, social, cultural, and economic in a balanced and dynamic manner. In its role as one of the determinant factor of life, forest has provided benefits for mankind, therefore the existence of natural resources that are valuable must be preserved, as forest has a strategic role as a balancing element for global environment. Therefore, forest management must be conducted carefully. It is not only standing for the interest of the people around the forest, but also for the interest of every human-beings. Forest as capital for national development has an actual benefit for life of the country, ecological benefits, social, cultural, and economic in a balanced and dynamic manner.

Forest utilization by the state until this point does presumably not provided to protect Papuan customary law society. Several land issue in Papua is strongly believed to happen because the lack of protection towards customary law society for a certain forest territory. Other issues are also contributed to the suspicions of lack of protection towards customary law concerning protection and training of customary law society towards forest.

In the context of protection, utilization, and preservation of forest referred to the existing laws, all forest resources must be used for the sake of economic development of customary law society. Therefore, forest utilization for national interest is divided into three classifications, which are conservative forest, production forest, and forestry crops.² From the three types of forest mentioned, conservative forest is the one that needs to be preserved. However, in reality, it shows that the damage towards such forest is significantly taking place either production forest and forestry crops or conservative forest.

In Article 12 of the Law No. 23 Year 2014, forestry sector is categorized as government affairs of concurrent choice. Spatial planning and environment are categorized as obligatory government affairs. Article 14 stipulates that the forestry is divided into central government and regional government with the exception of forest park management become the authority of Regency/Municipal government. In relations with forest and land spatial business, the Law No. 4 Year 2009 stipulates that mining activities could not be held in restricted places before

¹Robert Endi Jaweng, Decentralization and Regional Autonomy Review, Mineral Mining and Coal Law: Crucial changes, questions, Regional Autonomy Conduct Stabilization Committee, <http://www.kppod.org>, Accessed on January 25th 2017.

²See Porkas Sagala, *Managing Indonesian Forestry Land*, Indonesian Obor Foundation, Jakarta, 1994.

obtaining permissions from government institution in accordance with statutory provision. Article 134 (2) states that mining activities business can be done to restricted area to do mining activities business in accordance with the provision. In accordance with the applied provisions concerning the Regional Government, forest management affair in operational nature is handed over to Province level of Regional Government and Municipal/Regency level of Regional Government, while forest management in nature (macro) is regulated by the Central Government. Such principle is justified as a decentralization principle in forestry sector and is a manifestation of regional autonomy.

Regional Autonomy is a decentralization of authority that is more extensive towards regional government. Special autonomy itself is regional autonomy with special authority that is more extensive than an ordinary regional autonomy. Special autonomy for Papua as stipulated in the Law No. 21 Year 2001 basically is a more extensive autonomy to the province and the people of Papua to regulate them under the jurisdiction of Republic of Indonesia. More extensive authority means bigger responsibilities for the province and the people of Papua as well, in order for them to conduct governance system for the greatest benefit of the people in Papua as a part of Indonesian people in accordance with statutory provision. Authority in forestry sector is an attempt to position the region as a forest naturally resource management based on cultural and historical background of the people in that area. Therefore, decentralization of authority can not only be seen as a concept to equalize economic sectors, but also as an attempt to achieve people's prosperity in managing mining natural resources and forest in Papuan province. The focus of this paper is to see the connection of authority between the central and the regional government in managing mining and forest in Papua.

2. Research Method

This research is categorized as empirical legal research or non-doctrinal legal research. It uses a juridical socio-cultural approach. It is conducted in the Province of Papua, primarily Jayapura, Kerom, Sarmi, Mimika, and Nabire Regency. The consideration of choosing the locations is those research sites have mining natural resources potential and very productive forest. The population of this research is all relevant parties with management of mining natural resources and forest. The sample is a representative part of the population and is selected using "purposive sample"¹, as follows:

- a. Officials from Department of Mining and Forestry of Papua Province, respectively four people;
- b. Two officials from Department of Mining and Forestry, in Regency Level;
- c. 5 representative from NGO;
- d. 4 people of Customary Law Society; and
- e. 3 people of Business entities in mining and forestry sector.

Data is analysed to use *descriptive analysis techniques*. The analysis focuses on current issues that are actual in nature. The data will be arranged, explained, and analyzed.

3. Connection of Authority Between Central Government and Regional Government in Managing Mining and Forest in Papua Province Based on the Principle of Justice

Mining resources management and forestry in Indonesia has been done far before Indonesia's independence. Mining activities started from Indian and the Chinese. They mined gold and silver, especially around the island of Sumatera and Kalimantan. Former mining actives proof showed that mining activities had been going on since a very long time and even then had become the mining guidelines for the European hundreds of years later.² The presence of Dutch colonization caused the emerging of formal law for the country. The formal law used for the first time by Dutch was called *Indische Mijnwet* 1899. All activities from the European capital owner aims to control of mineral resources in Indonesia (at the time *Indische Mijnwet* was created) happened only ten years after. Therefore, the creation of *Mijnordinantie* (Mining Ordinance) was conducted in 1907 and 1918.³ Indonesian Mining Association Data on 1999 and Indonesian Mining Expert Union on 2005 showed that gold and tin are the minerals whose have a long history in Indonesia. Other minerals such as nickel, bauxite, and copper have just started to be capitalized several decades ago.⁴

¹Amirudin and Zainal Asikin, 2010, *Introduction to Legal Research Method*, Grafindo, Jakarta, p.196.

²Soetaryo Sigit, 1992, *History and Policy of Indonesian Mining Development*, Indonesian Mining Association, Jakarta, p. 66.

³Otong Rosadi, 2012, *Mining and Forestry from the perspective of Pancasila's Legal Dreams, Dialect of Law and Social Justice*, Thafa Media, Yogyakarta, p.28.

⁴*Ibid*

At the beginning of independence, mining regulation was still based on *Indische Mijnwet*, which during its development was then replaced by the Government Regulation in lieu of law No. 37 Year 1960 concerning Mining and the Government Regulation in Lieu of Law Concerning Oil and Gas Mining.¹ The regulation was born because there was a resistance from “Mr. Teuku Moh. Hassan motion” which urged the government to form a State Commission for Mining Business to address the issue of mining with the duty to:

- a. Prepare draft law for Indonesian mining activities that suits the current situation;
- b. Look for core ideas for the government concerning the mining status in Indonesia; and
- c. Make suggestions and recommendations concerning mining as the source of state’s revenue.²

With such motion present, state committee was able to issue Mining Law at the beginning of 1952, which was the Law No. 10 Year 1959 concerning the revocation of Mining Rights. The consequence of issuance of the law is several rights or mining permissions are annulled. The annulled mining rights are all rights were granted prior to 1949. Thus, a lot of mining companies owned by Dutch private entities were nationalized.³ To manage the nationalized companies, Indonesian government then formed “Mining Industry Supervisory Body” in accordance with the first Ministerial Decree Number 504/M.P/1060. The companies are then categorized into the Basic Industrial Department and Mines.⁴

The history of mining regulation as mentioned above indicates that State clearly dominates the regulation, management, and supervision towards the development of mineral potentials in Indonesian territory. At the beginning of independence, society does demands for more dominant role coming from the state through legal instruments (statutory provisions) made by the government. This is due to none other than the perspective of state officials that business run by the state is the right attempt to manifest the regulation consisted within Article 33 of the 1945 Constitution of the Republic of Indonesia. Aside from the dominating role of state for a newly independent state in the context of keeping the national unity takes place because mining activities intersects with vital and strategic issues for the continuity of the country and in the attempt of realizing dreams of independence.⁵ Article 33 of 1945 Constitution of the Republic of Indonesia entrusted the control of natural resources by the state for the prosperity of the people. Nevertheless, there are several ideas about how to implement the dream. Proponents of the dream supports the utilization of mining and coals sector to enhance domestic industrial sector has the argument that national industry still requires to obtain support of raw material availability in the proportionate amount and affordable price.⁶ When the government created the Government Regulation in Lieu of Law which then becomes the Law No. 37 Year 1960 concerning mining which at the same time ends the age of *Indische Mijnwet* 1899. *Indische Mijnwet* is no longer relevant with national interest.

During the transition of Old Order to New Order, the history of regulation and business activities and mining activities also undergone a transition. Such transition was initiated by MPRS Decree Number XXIII/MPRS/1966 concerning Renewal of Economic Based Policy, Monetary, and Development. After the mandate from the decree was given, the Law No. 11 Year 1967 was then created. In order to accelerate a national economic development while still holding the value of the 1945 Constitution of Republic of Indonesia, it was considered to be necessary to revoke the Government Regulation In Lieu of Law No. 37 Year 1960 concerning Mining Activities (government gazette year 1960 number 119) and then replaced it with the new Mining Law that is more suitable with the conditions as of that moment, which is the Law No. 11 Year 1967 concerning Basic Provisions of Mining that consist of 12 chapters and 37 articles remained into force until December 2nd 1967.

According to Salim HS⁷, the Law No. 11 Year 1967 concerning Basic Provisions of Mining does not contain any explicit mining legal principles. Observing the constant changes of environment that is ever-changing as political and legal development happens, including the implementation of regional autonomy, the Law No. 11 Year 1967 concerning Basic Provisions of Mining as a basic foundation for mining activities as it was violated practically and juridical. Considering that fact, according to Abrar Saleng, the Law No. 11 Year 1967 is considered to be no

¹*Ibid*, p. 34.

²Abrar Saleng, 2007, *Mining Law*, UII Press, Yogyakarta, p. 68.

³Otong Rosadi, *op cit*, p. 35.

⁴*Ibid*, p.36

⁵*Ibid*, p. 37.

⁶Rafki Rahmat, *Mineral Mining and Coal Law Development with the existence of Law Number 4 Year 2009 concerning Mineral Mining and Coal*. (http://www.academia.edu/7756513/PERKEMBANGAN_HUKUM_PERTAMBANGAN_MINERAL_DAN_BATUBARA_TERKAIT_DENGAN_LAHIRNYA_UNDANG_UNDANG_NOMOR_4_YEAR_2009_TENTANG_PERTAMBANGAN_MINERAL_DAN_BATUBARA_Oleh_Rafki_Rahmat).

⁷Salim HS, 2014, *Mining Law in Indonesia*, PT. Raja Grafindo Persada, Jakarta, 7th ed, p. 11.

longer relevant with the reform era and regional autonomy. Due to this issue, it is necessary to review the Law No. 11 Year 1967.¹

The perspective as stated above is in line with what has been expressed by Frits James Boray,² Secretary of Papua Province Mining Department. He states that the spirit of regional autonomy for Papua Province is a regulation to provide a new hope in terms of mining management that is centralized in nature. The centralized makes regional government as a mere spectator in mining management all this time. Therefore, the implementation of the Law No. 11 Year 1967 needs to be revoked. According to Otong Rosadi³, the long term policy of New Order economic development with this regulation will give impact towards the creation of economic disparity between regional economy, disparity between revenues among civilians, and even damages upon environments and other natural resources of Indonesia. The option to focus on economic development creates social injustices in the middle of the society. In this context then, the Law No. 11 Year 1967 needs to be replaced with a new mining law for the prosperity of Indonesian people.

In managing mining activities that is regulated in Article 4 the Law No. 4 Year 2009 stipulates that minerals and coals as non-renewable natural resources is national wealth that is controlled by the state for the greatest benefit of the people. Control upon mines by the state is conducted by the government and/or regional government. Prioritizing national interest could be done with controlling the production and export. Government has the authority to determine the amount of production of every commodity per year in each province. Therefore, for the sake of this interest, regional government must comply with the production amount determined by the central government.

Before the implementation of the Law No. 22 Year 1999 concerning Regional Government, the authority to manage mining natural resources is central government. This is due to the governmental system, prior to the implementation of the Law No. 22 Year 1999 is centralized in nature, which means that all business related with mining activities, contract, and agreement of ownership of coal mining activities and other mining activities. The only government official authorized to permit such act is the Minister of Energy and Mineral Resources. However, since the implementation of the Law No. 22 Year 1999, the authority has been given to regional government (province, Regency, and Municipal) and Central Government in accordance with their authority which is then replaced with the Law No. 32 Year 2004 concerning Regional Government. Implementation of this laws are viewed as unsuitable with reformation spirit and therefore needs to be replaced, as stated within the preamble, to the Law No. 23 Year 2014 concerning Regional Government. It is expected that the conduct of Regional Government can be arranged in such a way to accelerate the realization of the people's prosperity through development of services, trainings, and participation of the people, and also the development of regional competitiveness while considering the principle of democracy, equality, and local wisdom of a region within the Indonesian Republic system.

Marinex Bangalino⁴, the Head of Exploration Division of Mining Department of for Papua Province, explains that basically the essence of regional autonomy is to fix the prosperity of the people that is manifested by conducting an activity or making adjustment that are suitable with the will and interest of the people that becomes the part of authority based on the statutory provision. Articles within the Law No. 5 Year 1967, for instance, do not reflect the meaning within the preamble. The preamble states that "Forest is a gift from God as natural wealth that serves a multipurpose benefit that is absolute that is needed by mankind all the time and shall be utilized for the greatest benefit of the people in a preserving manner". If, looking at the consideration point (a) and (b), it will find two definitions of justice, which are justice for the future generation and social justice for the prosperity of the people.⁵

Statutory provisions as the derivative of the Law No. 5 Year 1967 pushes away the benefit of Indonesian forest management for the greatest benefit of the people. Locals around the forest does not prosper, instead they are cornered in conducting the forest development sector. Locals around the forest are referred to as forest encroachers. The conflict arising between forest encroachers and companies or the government (central, regional, and State Owned Enterprises) has always put the locals in a weaker position. This circumstance creates the disparity between local communities, business entities, and the government. The disparity in turns creates

¹Abrar Saleng, 2013, *Capita Selektta of Natural Resources*, Membumi Publishing, Makassar, p. 65.

²Interview with Frits James Boray (Secretary of Papuan Province Mining Department) on August 23rd 2017.

³Otong Rosadi, *op cit*, p. 41.

⁴Interview with Marinex Bangalino (Exploration Staf of Mining Department, Papua Province), August 23rd 2017.

⁵Otong Rosadi, *op cit*, p. 108.

social injustices.¹ According to Ade Irawan,² Head of Forestry Training Division for Forestry Department in Papua, the arise of vertical conflicts between customary law society as land owner of the forest or horizontal conflict with business entities is inevitable. This is because the Law No. 5 Year 1967 does not provide any benefits to the customary law society as the owner of the forest. The implementation of the regulation instead pushes further the customary law society from prosperity.

According Otong Rosadi,³ the Law No. 5 Year 1967 is viewed as not enough to provide legal basis for the development of forest building. Therefore, it becomes the legal basis for the replacement of it with a new law, which is the Law No. 41 Year 1999 concerning Forestry. Philosophically, the new Forestry Law is more specific to state the word “justice” or the phrase “social justice” which then makes the word and phrase of “social justice” in line with the meaning and the context and utilization of forest, i.e. “for the upcoming generation” to alleviate prosperity of the people. Article 2 of the Law No. 41 Year 1999 contains the provision that every forestry activities shall be based on the principle of benefits and preservation, citizenship, justice, collectiveness, transparency, and alignment. The citizenship and collectiveness principles in Article 2 of the Law No. 41 Year 1999 provides an explanation for each principle in conducting any forest-related activities:

- Forest-related activities based on citizenship and justice. It is meant in order to every conduct of activities in the forest must provide an opportunity that is equal for all people in the country in accordance with their capacity. Therefore, in giving authority of management or utilization, practice of monopoly, monopsony, oligopoly, and oligopsoni practices must be prevented.
- Forest-related activities shall be based on collectiveness. It is meant in order to every conduct of activities in the forest applies the business pattern that is collective in nature in order to create relevance and inter-dependence that is synergistic in nature, between the people and State Owned Enterprises or Regional Government Owned Enterprises, in the event of small business, intermediate, and union.

Such principles as stated above are coherent with Article 67 (1) of the Law No. 41 Year 1999. The article indicates that the customary law society as long as they exist and recognized, then has the right to:

- a. Harvest any forest products to fulfill their daily needs;
- b. Manage the forest in accordance with their customary law as long as it does not contradict the national law; and
- c. Access to training in attempt to increase their prosperity.

Article 67 (2) of the Law No. 41 Year 1999 further stipulates that inauguration related with the existence and the extinction of customary law society mentioned on sub-section (1) is ruled by regional law. Article 67 (1) of the Law No. 41 Year 1999 mentions that customary law society’s existence is recognized if according to the reality, they fulfill these criterions:⁴

- a. The people are still in the form of a whole community;
- b. There is an institution in the form of governance;
- c. There is a clear customary territory;
- d. There are legal instruments, especially customary trial procedures; and
- e. There is still a process of harvesting forest products to fulfill their daily needs

In relations to the permission for forestry resources management, according to Otong Rosadi⁵, the preambles in Government Rule In Lieu of Law No. 1 Year 2004 concerning Amandement of Law No. 41 Year 1999 does not regulate about the conduct of licensing or mining agreement that already existed prior to the implementation of the Law No. 41 Year 1999. Such condition according to the preambles creates legal uncertainty in mining business in the forest region for investors that already obtain their license or agreement before the implementation of said law, therefore it could place the government into a difficult position in developing the investment climate.

¹*Ibid.*

²Interviewed on August 23rd 2017.

³*Ibid.*

⁴Otong Rosadi, *op cit*, p.134.

⁵*Ibid.*

1. Mining Natural Resources Management in Papua

The 1945 Constitution of the Republic of Indonesia has entrusted a form of regional government¹ that has the duty to control and independently manage their own affairs in accordance with autonomy principle and the duty of assistance.² However, such mandate of regional government through decentralization policy within the practical implementation is not easy. The difference in geographical and demographical condition could cause many problems in the implementation of regional autonomy. As an example, the creation of the Law No. 21 Year 2001 which was then changed with the Law No. 35 Year 2008 concerning the Implementation of Government Rule in Lieu of Law No. 1 Year 2008 concerning Amendment of the Law No. 21 Year 2001 concerning Special Autonomy for Papua Province becomes a Law.³

Regional Autonomy is meant to provide authority and discretion that are more extensive for regional government leaders in regulating and conducting their regional government business including authority of managing natural resources in their respective region in order to alleviate the prosperity of the people. The Law No. 32 Year 2004 provides an extensive authority to regulate and manage their own affairs. Article 2 subsection (4) and (5) of The Law No. 32 Year 2004 explains that regional government in conducting their governmental affairs has a relationship with the central government and with the other regional government, and the relationship meant includes authority, monetary, general services, and utilization of natural resources and other resources. The Law No. 32 Year 2004 provides a bigger opportunity to the Regional Government Leaders to manage their own affairs for the sake of the people's prosperity and benefit. Therefore, it could be viewed that Indonesian central government have delegated authorities as meant in Article 33 of the 1945 Constitution of the Republic of Indonesia to the Regional Government which then allows the Regional Government to have autonomy upon their region, specifically in this instance is, to utilize their natural resources respectively.

According to Melmambessy Moses⁴, Former Head of Mining Department Papua Province, the Law No. 32 Year 2004 and Government Regulation No. 25 Year 2000 concerning Government Authority and Province Authority as Autonomous Region in managing mining resources provide a political confession through a transfer of authority from the Central Government to Regional Government to construct their own policies in managing their living environment. Nevertheless, between Central Government and Regional Government often happens an overlapping of jurisdiction in terms of environmental management policies and often happens a poor coordination. Some living environment management in the region during the autonomous region include:

- a. Sectorial and regional ego. The expected regional autonomy could provide a partial autonomy in managing living environment authority in region could not be executed properly. Regional ego still occurs often during the conduct of living environment management, and the same goes for sectorial ego. Living environment management that was conducted often overlaps with another sector.
- b. Overlapping plans between sectors. The reality has showed that in program planning (including living environment management) often occurs an overlapped planning between one sector and another.
- c. Insufficient funding for living environment sector. This sort of program and activities needs to be supported with a sufficient funding should we expect a maximum outcome. Even though everyone admits that living environment is an important element, in reality, funding allocated to living environment are still very insufficient and it is exacerbated by the fact that there are no funding specifically allocated from National Budgeting Plan directly to regional government for living environment.
- d. Limited Human Resources. It needs to be admitted that in terms of managing living environment, other than appropriate amount of funding, we also need a skillful individual as human resources. However in reality, human resources tend to be insufficient as well. The personnel that was supposed to conduct the

¹The 1945 Constitution of the Republic of Indonesia (amended) Article 18 (1) and (2): (1)The Unitary State of the Republic of Indonesia shall be divided into provinces and those provinces shall be divided into regencies and municipalities, each of which shall have regional authorities which shall be regulated by law; (2) The regional authorities of the provinces, regencies and municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance.

²This is forged to accelerate the realization of the people's prosperity through a development of services, training, and participation of the people, and also increasing regional competitiveness with adjusting to the democratic principle, equality, justice, and speciality of a certain region within the context of Indonesian Republic Union.

³Dwi Kherisna Payadnya I Wayan Suarbha, *The Authority of Regional Government in Managing Natural Resources Juridical Review of A Certain Region's Exclusiveness in the Union Republic of Indonesia system.*

⁴Interviewed with Melmambessy Moses on August 23rd 2017.

- duty of living environment management (including regional government personnel) have not comprehend the important meaning of living environment.
- e. Natural Resources exploitation is still too economic profit oriented. Natural resources are supposed to be utilized for development in order to achieve the prosperity of the people. However, this is not the case on a practical level as mineral exploitation is only beneficial for a certain group of people. The living environment aspect that was supposed to be fulfilled was ignored. Facts show that there is an imbalance between the economy and living environment. Living environment problem has not obtained a legitimate portion that it was supposed to get.
 - f. Weak implementation of the Law. Statutory provisions that are relevant with living environment are quite significant; however in the context of implementation they are still very weak. There are several parties that do not comply with the said law and statutory provision properly, and some even exploited the weakness of said regulations and use it for their own personal benefit.
 - g. Weak law enforcement especially in the context of supervision. In relation to the implementation of regulations is the supervisory part. There are many violations that was conducted (i.e. environmental pollution, environmental damages), however is very weak in providing legal sanctions.

Based on the explanation above related with mining license between the Central Government and Regional Government, it often happens an overlapping issue related with the policy of environmental management and is poorly coordination between them. The situation of it can be seen in the recapitulation data of licence mining, metal, and coal, as represented in table 1 below:

Table 1
Recapitulation of Licence Mining, Metal, and Coal in Papua Province

No.	Company Name	Province/ Regency/City	Number and Year of License	Total (Ha)	Are	Activity
1	2	3	4	5		6
1	PT. Sinar Indah Persada	Jayapura City & Jayapura Regency	149 Year 2010	10,090.00		Exploration
2	PT. Sinar indah persada	Jayapura City & Jayapura Regency	150 Year 2010	100,000.00		Exploration
3	PT. Sinar Indah Persada	Sarmi Regency & Jayapura Regency	151 Year 2010	96,180.00		Exploration
4	PT. Tri Unggul Anugrah	Dogiyai & Mimika	065-33 Year 2011	48,630.00		Exploration
5	PT. Papua Sinar Pelangi	Mimika	065-34 Year 2011	45,340.00		Exploration
6	PT. Papua Persada Coal	Jayapura	065-35 Year 2011	50,000.00		Exploration
7	PT. Papua Fajar Timur	Mimika	065-38 Year 2011	44,650.00		Exploration
8	PT. Papua Pusaka Nusantara	Mimika	065-31 Year 2011	44,960.00		Exploration
9	PT. Papua Permata Khatulistiwa	Sarmi	065-29 Year 2011	14,790.00		Exploration
10	PT. Pacific Mining Jaya	Nabire	065-42 Year 2011	26,040.00		Exploration
11	PT. Pacific Mining Jaya	Nabire	065-43 Year 2011	21,530.00		Exploration
12	PT. Pacific Mining Jaya	Keerom & Jayapura	065-40 Year 2011	56,050.00		Exploration

13	PT. Benliz Pacific	Intan Jaya, Paniyai, Nabire & Dogiyai	540/96/Year 2014	65,450.00	Exploration
14	PT. Benliz Pacific Mustika	Nabir	503/93/Year 2014	16,867.00	Exploration
15	PT. Benliz Pacific Makmur	NABIRE	503/94/Year 2014	10,566.00	Exploration
16	PT. Bahari Mega Nusantara	Jayapura Regency & Sarmi	206 Year 2012	49,600.00	Exploration
17	PT. Bahari Mega Nusantara	Jayapura Regency & Keerom	207 Year 2012	42,270.00	Exploration
18	PT. Bahari Mega Nusantara	Mimika, Panayai & Deiyai	065-32 Year 2011	85,330.00	Exploration
19	PT. Maxima Energi Utama	Mimika & Dogiyai	33 Year 2012	45,990.00	Exploration
20	PT. Trident Global Garmino	Nabire & Dogiyai	34 Year 2012	99,760.00	Exploration
21	PT. Lintas Indoenergi	Mimika & Dogiyai	35 Year 2012	49,080.00	Exploration
22	PT. Mitra Karya Bangun Prima	Sarmi & Mamberamo Raya	37 Year 2012	45,420.00	Exploration
23	PT. Mitra Karya Bangun Prima	Sarmi & Jayapura	36 Year 2012	10,610.00	Exploration
24	PT. Master Jasa Indonesia	Jayapura & Sarmi	52 Year 2012	41,650.00	Exploration
25	PT. Arton Jaya Energi Pranata Nusantara	Jayapura & Sarmi	57 Year 2012	49,820.00	Exploration
26	PT. Era Millenium Abadi	Mimika, Dogiyai & Nabire	188.4/348/Year 2015	24,480.00	Exploration

JAYAPURA REGENCY

No.	Company Name	Province/Regency/City	Number and Year of License	Total Area (Ha)	Activity
1	2	3	4	5	6
1	PT. Tablasufa Nicel Mining	Jayapura	245 Year 2011	5,000.00	Operating Production

MIMIKA REGENCY

No	Company Name	Province/ City	Regency/	Number and Year of License	Total Area (Ha)	Activity
1	2	3		4	5	6
1	Koperasi Wawia	Mimika		216 Year 2012	10,000.00	Operating Production
2	Warisan Pusaka Bangsa	Mimika		21 Year 2016	9,902.00	Exploration

Nabire Regency

No.	Company Name	Province/ City	Regency/	Number and Year of License	Total Area (Ha)	Activity
1	2	3		4	5	6
1	PT. Kristalen Eka Lestari (Blok Nifasi)	Nabire		543/175/SET	5,000.00	Exploration
2	PT. Kristalen Eka Lestari (Blok Makimi)	Nabire		543/174/SET	5,000.00	Exploration
3	PT. Octagon Universal	Nabire		540/1936/SET	24,930.00	Exploration
4	PT. Patia Raja Jaya	Nabire		543/1096/SET	35,420.00	Exploration
5	PT. Budewa Tane Mbai	Nabire		8 Year 2011	27,430.00	Exploration
6	PT. Mega Xing-Xing (Blok Tobo)	Nabire		543/1694/SET	5,000.00	Exploration
7	PT. Mega Xing-Xing (Blok Berarti)	Nabire		543/1695/SET	5,000.00	Exploration
8	PT. Surya Cleopatcin	Nabire		543/1019/SET	15,850.00	Exploration
9	PT. National Gold West Papua Indonesia	Nabire		543/1793/SET	199.00	Exploration
10	PT. Mamberamo Persada	Nabire		543/471/SET	12,352.00	Exploration
11	PT. Wira Emas Persada	Nabire		543/470/SET	22,278.00	Exploration
12	PT. Aurum Wira Persada	Nabire		543/469/SET	16,876.00	Exploration
13	PT. Insana Data Perkasa	Nabire		543/468/SET	16,478.00	Exploration
14	PT. Hamparan Mineral	Nabire		543/1772/SET	24,995.00	Production Operation
15	PT. Pasific Bina Mineral	Nabire		543/630/SET	3,500.00	Exploration
16	PT. Gunung Perkasa	Nabire		34 Year 2010	69,396.00	Exploration

17	PT. Mutiara Hitam	Nabire	543/1774/SET	24,998.00	Production Operation
18	PT. Sumber Rezeki Papua	Nabire	543/1773/SET	24,998.00	Production Operation
19	PT. Good Damai Sejahtera	Nabire	543/568/SET	158.00	Exploration
20	PT. Attila Jaya Perkasa	Nabire	543/569/SET	194.00	Exploration
21	PT. Pomdori Payaso Mineral	Nabire	540/588/SET	171.00	Exploration
22	PT. Nabire Bumi Kencana	Nabire	153 Year 2009	10,000.00	Exploration
23	PT. Asindo Setia Tama	Nabire	540/1257/SET	2,215,236.00	Exploration
24	PT. Hanjun I.C	Nabire	543/1808/SET	198.00	Production Operation
25	PT. Sentra Sukses Kencana	Nabire	543/1253/SET	21,160.00	Exploration

SARMI REGENCY

No.	Company Name	Province/ City	Regency/ Regency/	Number and Year of License	Total Area (Ha)	Activity
1	2	3	4	5	6	
1	PT. Papua Mining Resources	Sarmi		68.F Year 2010	17,043.00	Exploration
2	PT. Golden Era Sentosa	Sarmi		127 Year 2012	37,746.00	Exploration
3	PT. Naru Nuri Nikko	Sarmi		135 Year 2012	40,787.00	Exploration
4	PT. Elsatri Putrindo	Sarmi		126 Year 2012	32,750.00	Exploration
5	PT. Putra Marpan Ros Jaya	Sarmi		134 Year 2012	33,780.00	Exploration
6	PT. Pinggan Matio	Sarmi		128 Year 2012	35,538.00	Exploration
7	PT. Kejora Sinar Sakti	Sarmi		68.B Year 2010	78,665.00	Exploration

Source: Mining Department of Papua Province, 2017

Referring to the 62 license of mining production issued by Governor of Papua Province for mining business entities, only some of them actually are directed to production licensing. It depends on the leader of the region. According to Frits James Boray¹, the recapitulation of licensing of mineral, metal, and coal mining business in Papua Province has not implemented yet,. It is because there is something wrong with the authority granted by the Regency related with human resources. Another reason is the central government has not fully trusted the regional government in terms of authority that is regulated in the Law No. 21 Year 2001 concerning Special Autonomy For Papua Province, meanwhile the Law No. 32 Year 2014 concerning Regional Autonomy is a sectorial law that gives authority to the Province Government. However, between Special Autonomy Law and Sectorial Law have not synergied with the reason of human resources insufficiency.

¹Interviewed with Frits James Boray (Secretary of Mining Department, Papua Province) on August 23rd 2017.

Implementation of the Law No. 21 Year 2001 provides authority to the province government, while the Law No. 4 Year 2009 provides authority to Regency/Municipal Government. This has resulted into an overlap of jurisdiction on a practical level. Therefore, Governor has issued the Governor Regulation No. 41 Year 2011 concerning Mineral, Metals, and Coal Mining Business to counterbalance the licensing act and mineral natural resources management even though eventually such regulation is not admitted by the central government.

Mining Resources management in Papua must be based on the principle of justice. Injustice in terms of mining resources has happened all this time due to the wrongfully paradigm based on natural resources management system. Authority in terms of management, utilization, and distribution of natural resources by the province, district, or even municipal government will give implications towards the elevation of regional revenues, prosperity of the people, the creation of legal certainty, and justice in utilizing national natural resources and a harmony will be created in utilizing the regional potential throughout the regional spatial sector.

According to Abrar Saleng,¹ the authority to manage mining resources does not have to refer to the provisions within Article 4 of the Law No. 11 Year 1967.² This is because such idea has been regulated in Article 4 of the Law No. 4 Year 2009 which stipulates that minerals and coals as non-renewable resources is a national wealth that should be controlled by the state for the greatest benefit of the people. Control of the state over mineral mines and coal is conducted by the Government and/or Regional Government. Upon the production amount, government has the authority to determine the amount of production for each commodity per year for each province. For that interest, Regional Governments are obliged to comply with the amount that has been determined previously by Central Government. Abrar Saleng,³ further states that within the regional autonomy templates has already been given within Regional Government, the Law No. 22 Year 1999 or the Law No. 32 Year 2004 ensures the supply of natural resources from one region to another. Regional cooperation could maximize the efficiency of the usage of the available natural resources and has a bigger empowerment in comparison to an independent action conducted by one region only. Therefore, the conduct of state's control over natural resources especially minerals, including the ones that is under the authority of Central Government and Regional Government needs to be clear in terms of the substantiality and purposes. It is because the state control act has been misused all this time. It becomes one of the sources for management and utilization of minerals.

According to Malmambessy Moses,⁴ former Head of Mining Department Papua Province, the control of the state is an authority that includes policy making regarding distribution regulation, utilization, and supervision as well as guarantee of mineral utilization for the greatest benefit of the people behind such authority. Related to that idea, Abrar Saleng,⁵ stipulaes that state also have the duty with the purpose of: (a) any form of mineral utilization must be realistically alleviate prosperity of the people; (b) protect and ensure all rights of the people within or on the mineral material that could be directly enjoyed by the people; (c) prevent all acts from any parties that will cause the people from not having any chances or lose their rights in enjoying the product of mining management.

In the juridical perspective, the the Law No. 23 Year 2014 creation was definitely based on a particular juridical reasons as written within the preambles of the Law No. 32 Year 2004 concerning Regional Government in which it shows that the past law is no longer relevant with the development of current circumstances and therefore it needs to be replaced with a new one. With those considerations, Indonesian government finally implements the Law No. 23 Year 2014 concerning Regional Government which within its process of implementation will be an additional articles through the Government Regulation in Lieu of Law No. 2 Year 2014 concerning Regional Government. Special Autonomy for Papua Province itself is based on various considerations such as the natives of Papua are one of the Melanesia races, a part of traditional tribes in Indonesia that has multiple cultural diversity, history, traditions, and local languages. Therefore, Papua has different integrated history with other areas in Indonesia. Other consideration are development practices that are not yet equal and injustice matters, as well as law enforcement and appreciation towards human rights.

Another important consideration related to the management and utilization of natural resources in Papua is the natural resources have not be optimized to alleviate the living conditions in Papuan native. Therefore, it causes a

¹Abrar Saleng, *Ibid*, pp. 20-21.

²Article 25 *Mineral Mining and Coal Law*.

³Abrar Saleng, *Ibid*, pp. 20-21.

⁴Interviewed on August 23rd 2017.

⁵Abrar Saleng, 1999, *State's Right to Control Mines Based on the 1945 Constitution of the Republic of Indonesia*, Disertation, Pps-UNPAD, Bandung, p. 340.

disparity between Papua and other Provinces in Indonesia. Ignorance towards basic rights of Papuan native also contributed to the disparity. With all those considerations, Papuan people are granted special autonomy with the implementation of Law Number 21 Year 2001 concerning Special Autonomy for Papua Province.¹

In relations to natural resources management practice in Indonesia, the Law No 21 Year 2001 concerning Special Autonomy for Papua Province as *lex specialis*, Papua Province as an autonomous region should create a proportionate regulations with their natural potential. However in reality, since the implementation of the Law No 21 Year 2001, even with the addition of Special Regional Regulation No. 2 Year 2009 concerning the Protection and Management of Natural Resources for Customary Law Society in Papua, the Central Government has barely paid attention to such regulations. Interm of the authority, according to Ade Ridwan², all norms related with authority obtained through decentralization process as given by the Law No. 23 Year 2014 is related with the authority of Papua Province Government in licensing. It is because decentralization is deemed as an authority to manage their own region, including managing mining resources.

Frits James Bonay,³ Temporary Head of Mining Department Papua Province, asserts that the implementation of the Law No. 23 Year 2014 and the Government Regulation in Lieu of Law No. 2 Year 2014 concerning Regional Government revoke all authorities related with mining licensing by the regent. Meanwhile the Law No. 4 Year 2009 provides an extensive authority to Regency Government/ Municipal Government in granting mining license. Overlapping of authority has become the source of conflicts in region that are not only vertical (Central Government and Regional Government) but also horizontal conflict between the people around mining management with investors or with regional government. Marinex Pabolang,⁴ Head of Mining Management Section, further states that by seeing the current condition of Papua with its structural flaws, lack of access for province government and regency/municipal government in natural resources management (partial autonomy), such thing is marked with the revocation of Regency/Municipal government's authority in terms of granting license, which then implicated on the disappointment of most natives in Papua as the owner of customary law for the management of mining location. Therefore, inevitable conflict between customary law societies as the owner of land with investor often arises.

2. Forest Natural Resources in Papua Province

Based on the interview with Amsal (Head of Dispute Division of Forestry Department Papua Province), he mentions that⁵ The relationship between Central Government and Regional Government in terms of forestry is still centralized in nature. Licensing issues and authorities related with forest are regulated by the central government. The central government has not provided a room to regional government, and only a particular group of people with sufficient capital that could obtain license. After reform era, there are not any Regional Office in the province because currently it is handled in Forestry Department directly or Governor. Regional office in the name of the Minister means that the transfer of authority from Central Government to the regional office, but they do not responsible to the governor hierarchically, they do responsible to Central Government or in this instance, Ministry of Forestry. Post the Special Autonomy for Papua Province, finally there are 5 sectors that are not regulated by the region by exclusive autonomy; namely - international cooperation, monetary policy, religion, law and human rights, and security. One example of authority transfer from central government to regional government is forestry.”

In order to decentralization not cause any negative impact towards the sustainability of living environment and natural resources, as mentioned earlier, it is imperative to consider three aspectss. Firstly, sustainable forestry management must be based on an ecosystem management unit in the River Stream Areas and zoogeographical location which of course is not easy to be mapped into governmental administrative area.⁶ Therefore, mapping forestry management rigidly is conducted based on administrative delimitation of governmental body should not be done. Secondly, decentralization of forest resources must consider the concept of justice between region and neighboring province. A certain province might have certain areas of forestry that mostly classified as production forest. Province with production forest could seize economic benefit of forestry area inside their region, but on the other side the ecological benefit of the forest should also be enjoyed by the neighboring province that also has production forest. Thirdly, decentralization concept should not be interpreted as a mere

¹Supriyanto Hadi, *Ibid*, p. 315.

²Interviewed with Ade Ridwan (Secretary of Forestry Department Papua) August 23rd 2017.

³Interviewed with Frits James Boray (Secretary of Mining Department Papua Province) on August 23rd 2017.

⁴Interviewed with Marinex Pabolang (Conservative Section of Mining Department Papua Province) on August 23rd 2017.

⁵*Ibid*.

⁶Uuh Aliyuddin, 2000, *Forest Development and Farm in the event of Regional Autonomy*.Paper.

limit on the transfer of authority from central government to regional government, but it must also be translated with democratization principle. The real manifestation of democratization in forest management is the recognition of locals that is stronger and genuine in forest management.¹ Decentralization that is accompanied with democratization is one of the requirements in order for decentralization policy to be able to increase people's prosperity and keep the sustainability of living environment and natural resources. A democratic decentralization is marked with the strong supervisory function of Regional Representative Council of Indonesian Republic and the strong bonds of customary law that exercises the function of supervisor. The definition of civil society is that all stakeholders that are not a part of government institution. They are, none other than, NGOs, mass media, and professional groups in forestry business.

The participation of the society in the process of planning, forest management conduct, and participation in enjoying the benefit of forest resource is a tendency in several countries as of this moment.² In Indonesia, the local's society demand can directly enjoy the benefit of existing forest resources. It has been advocated many times with the basis of customary law forest principle. Centralized policy based on the Law No. 5 Year 1967 pushed for emerging of forestry industry that is one of the source for forest damages. Therefore, the centralized forest management policy has failed if assessed from three aspects. First, customary law society has historical and cultural connection from generations to generations but it does not get any economic benefit from forest resources located around them. They stay impoverished and under-developed. Second, regional government feels that the division of sectorial reception forest seems unfair as they also need to solve the conflicts related with forest utilization in their region. Third, industry such as HPH also becomes one of the causes, if not the primary reason, of forest degradation.

The presence of a push or demand of authority delegation expressed by governmental observers or regional government caused a further action from Minister of Forestry to gradually delegate a portion of its authority based on Law Number 5 Year 1967 in forestry sector to regional government as such thing is possible by the Law No. 5 Year 1967.³ According to Ade Ridwan (Head of Business Building Division of Forestry Department Papua Province), that:⁴

“This delegation is done through several government regulations. First, the Government Regulation No. 21 Year 1970 concerning Business Rights of Forest and Forest Product Collection that gives authority to Level One Regional Government and to issue HPPH. Second, the Government Regulation No. 28 Year 1985 concerning Forest Protection. Based on the regulation, first level forestry institution in the region are given the authority to conduct forest protection, however in reality such authority is only technical, meanwhile the policy remains in the hands of central government, especially in the context of funding. Therefore, the authority of First Level Regional Government in the context of forest protection as regulated in the Government Regulation No. 28 Year 1985 is more of an assistance duty in its nature. Third, the delegation is conducted through the Government Regulation No. 62 Year 1968 concerning Partial Delegation of Government Affairs in Forestry Sector to the Regional Government. Based on the regulation, First Level Regional Government are given the authority in two things, they are the management of forest park and arrangement of forest boundaries. Management of forest park includes construction, preservation, utilization, and development of forest park.⁵ Forest boundaries arrangement authority includes boundaries project activates, establishment of temporary boundaries, inventory of third parties' right, measurement and mapping, setting of a permanent boundaries mark, and Report of Boundaries document making.

Based on the Government Regulation No. 62 Year 1998, Regency Government is also mandated with authorities on other sectors such as: reforestation and land and water conservation, silk production incentives, product management (non-woods), traditional hunting of wild animals that are not protected on a hunting area, forest protection and boundaries establishment training, boundaries maintenance, keeping the total area and function, forest fire control, reforestation activities in attempt to rehabilitate critical lands on a protected area and utilization of environment services in forest sector.⁶ The fourth delegation of authority happens through the Government Regulation No. 6 Year 1999 concerning Forest Business and Forest Product Collection that revokes the Government Regulation No. 21 Year 1970. Based on the Government Regulation No. 6 Year 1999, the authority of giving HPH for a territory with total area below 10.000 hectare is delegated to the Governor, while

¹Interviewed with Amsal B Randalingsgi (Head of Utilization and Spatial Division of Forestry Department Papua Province) on August 23rd 2017.

²*Ibid.*

³Article 12 the Law No. 5 Year 1967.

⁴Interviewed on August 23rd 2017.

⁵Article 3 (1) the Government Regulation No. 62 Year 1998.

⁶Article 5 the Government Regulation No. 62 Year 1998.

the authority to give HPHH based on the Government Regulation No. 21 Year 1970 is an authority given by the Governor to the Regent or Mayor. Partial delegation of central government authority to regional government through the Government Regulation No. 6 Year 1999 seems like an attempt to fulfill the strong demand of decentralization.

As a conduct of authority exercise from Article 12 of the Law No. 22 Year 1999, the government have issued the Government Regulation No. 25 Year 2000 concerning Government Authority and Provincial Authority as Autonomous Region. Aside from the authority mentioned becomes the authority of central government and province government in the Government Regulation No. 25 Year 2000, other authorities automatically become the authority of regional government. However, if it is viewed from the substantive matter of the Government Regulation No. 25 Year 2000, it is apparent that the Central Government also still has authorities around the forestry sector. The authority includes:

1. Determination of criterions and standard of forest affairs, natural reservation area, nature preservation, and hunting park;
2. Determination of criterion and standard of inventory, inauguration and usage mapping of forest areas, natural reservation area, and hunting park;
3. Determination of forest areas, change of status, and its function;
4. Determination of criterions and standard of forest territorial areas management, natural reservation areas, and hunting park;
5. Performing natural reservation area management, natural reservation management, and hunting park management, including river stream areas;
6. Construction of macro forestry and national park, as well as the general pattern of land rehabilitation, land conservation, and primary farming industry;
7. Determination of criterion and standard tariff of forestry utilization business licensing, province of forest resources, reforestation funding, and investment funding for the forest preservation cost;
8. Determination of criterion and production standard, processing, quality insurance, and marketing and distribution of forest product and farming including germination, fertilizers and pesticides for forestry and farm plants.
9. Determination of criterion and standard for forest areas utilization business licensing, utilization and product collecting, environmental service utilization, business and natural tourism, hunting park business, hunting business, breeding of plants and animals, conservative body and farming business;
10. Performing hunting park business license, breeding of animals and plants business licensing (protected ones), and conservative body as well as performing natural preservation area management business, including river stream area in it;
11. Forest Product Utilization Business Licensing, and cross-province natural tourism;
12. Determination of criterions and management standards that includes forest spatial and management planning, utilization, preservation, rehabilitation, reclamation, recovery, supervision, and also control over the forest areas and farming areas.
13. Determination of criterions and conservation standard of natural resources and its ecosystem which includes preservation and utilization in forestry and farming sector;
14. Norms determination, procedures, and distribution standard of plants and wild animals including training of a long ranged wildlife habitat;
15. Performing utilization and distribution of animals and plants that are protected and is registered on appendix CITES;
16. Determination of criterions and standard of observance and disaster management on forest areas and farming areas.

In the previous Regional Government Law, most of the affairs are divided between Central Government and Regional Government (Regency/Municipal). However, province authority has not been regulated significantly. In the Law No. 23 Year 2014, most of the authority has divided between Central Government and the Provincial Government. Regency/Municipal government still have few authorities upon several things, but not as significant as the ones granted by the previous Regional Government Law. The previous Regional Government Law gives a certain authority to Regency/Municipal Government in forestry affairs; meanwhile the Law No. 23 Year 2014 decentralized the authority of forestry only to the Provincial Government.

In forestry sector, Central Government keeps the authority upon forest areas at the level of planning, licensing, forest management implementation, and supervision. Central Government has the authority to control the planning process and supervision of natural resources including inauguration of forest area. Even though inauguration planning of forest area is the authority of central government, the implementation will still be related with the task and duty of Province Government. In this context, there a lot of issues related with inauguration of forest area in which the implementation is heavily related with provincial responsibility, i.e. third party dispute settlement claim and forest area usage supervision.

In this context of licensing in forest sector, province has got two categories for licensing authority. First, forest utilization license that is non-exploitative in nature as it does not gives any significant impact towards changes or natural areas within the forest. Also within this category is the License for Area Utilization Business, Environmental Service Utilization License, except for storage and/or carbon absorption utilization which remains at the authority of central government along with License for Forest Product Collection for Non-Wood Product. Second, forest utilization license has implication to influence the forest. One of this category is Forest Product Collection for Wood Category License and Wood Utilization License on the converted production forest and forest area.

The authority at the level of implementation in the forestry sector specifically is heavily related with the authority relevant with Forest Management Unit. The previous authority is belongs to regency/municipal government or province, at this time it is taken completely by the province. This has caused an implication that Province is the entity that will execute the Unit's function i.e. designing forest layout and construction of forest management plan, forest utilization, and usage of forest area, rehabilitation of forest and reclamation, and protection of forest and conservation of nature in accordance with the context of provincial jurisdiction. Seeing the tendency of the Unit to become a forest management regime in the future, then several technical suggestions for utilization and distribution of forest area in the future must be done through the province. The role of central government is to control the planning suggested by the province and to supervise it in its practice. Therefore, the planning and supervising system of forest utilization on a macro scale remains on the Ministry of Living Environment, meanwhile the suggestion of utilization and management on the base scale becomes a part of the province authority.

The implementation of the Law No. 23 Year 2014 is definitely still waiting for several implementation regulations. One of them is the revision of the Government Regulation No. 41 Year 2007 concerning the organization of regional government that is guided by Ministry of Internal Affairs. This government regulation is very strategic because it will determine the posture of an organization on a region and even its basic tasks and functions. The Ministry of Internal Affairs plans to simplify the regional organizational structure in order to maximize the efficiency of coordination and to save funding. The possible scenario done by Ministry of Internal Affairs is to combine several authorities spread around several organizations into one unit of organization. Such suggestion of course will have a positive impact and negative impact as well for the working performance of the government. Therefore, an empirical analysis or even legal analysis should precede this suggestion so that the new Government Regulation could enhance the spirit of decentralization and also increasing the working performance of all regional governments.

Along with the protection effort of customary law society, government has tried to avoid things that cause service activities that could create loss for the people. The meaning of protection must be found within service activities towards customary law society as the object of the services. Customary Law Society's participation as stipulated within Article 30 of Special Regional Government Regulation No. 21 Year 2008 concerning Sustainable Forest Management emphasizes that:

1. Forest utilization is conducted to alleviate the people's prosperity of customary law society must always keep the preserved function of the forest.
2. Wood forest utilization by customary law society with functions and forest distribution principle as the basis
3. Forest utilization as mentioned on number (1) must fulfill the criteria and indicators of forest management, including the preserved aspect of production function, ecological function and socio-cultural function preservation.

Impact of a forest utilization process that ignores the rights of customary law society will cause damage to the forest. Forest damage could influence the people's prosperity especially customary law society, relevant with

various resources of revenues that have been supporting their life. The existence of a customary law society with the concept of pure acknowledgement is possible. However, in its development, this principle then changes into a multi-layered requirements acknowledgement that is reflected on the legal products related with customary law society and its rights along with the territory that is traditional in nature. It can be seen that the thinking ration that is developing in Indonesia is that state's interest remain supreme above all.

Article 18B (2) second amendment of the 1945 Constitution of the Republic of Indonesia holds the concept of multi-layered requirement acknowledgement would give impact to customary law society's loss of protection in the basic norms of a country and legal product that misinterpreted the concept of recognition in the constitution before the amendment, and it becomes a continuous justification. What's more empathizing is that the ratio of thinking for Indonesian which places the position of customary law society at the less developed position. Whereas, it is known by the public that the policy developed during the new order regime was meant to provide a formal legitimate foundation for every uniformity that exploited socio-cultural rights of the customary law society. As what the country did as of that moment is to exploit the socio-cultural rights of the customary law society and customary law society land with the argument of national interest meanwhile, in reality, there is a tendency of an individual economic benefit or high powered groups benefit at that moment. Such act is a violation of the customary law society's human right.

Within the preambles of the Special Government Regulation (b) stipulates that "the customary rights of customary law society upon the land that has boundaries and all this time the utilization has caused a degradation of environmental quality, imbalance in rulers structure, ownership and usage, lack of environmental support, rising conflicts and the negligence towards the interest of local communities and other vulnerable group of people". Letter C of the Special Regulation explains that "Acknowledgement of honor, empowerment, and development of traditional law society and/or individual rights of customary law society upon their land is a belief and it is viewed from the perspective of international, national, or even regional level."

The Law No. 41 Year 1999 revokes the implementation of the Law No. 5 Year 1967. However, several government regulation that was implemented based on the Law No. 5 Year 1967 is still in force such as the Government Regulation No. 62 Year 199, the Government Regulation No. 6 Year 1999, and the Law No. 41 Year 1999. It is apparent that it does not changes the basic division pattern of central government authority and regional government in forestry. Therefore, it is not surprising if a centralized spirit arises.¹ However, the Law No. 41 Year 1999 also explains that "In the event of forest management, government delegated a part of their authority to the regional government". Delegation of authority from central government to regional government is regulated with government regulation with the issuance of the Government Regulation No. 25 Year 2000 as a conduct and practice of the Law No. 22 Year 1999. It means that the government regulation within the Law No. 41 Year 1999 is relatively no longer needed to avoid contradiction and overlapping authority according to authority within the government regulation No. 25 year 2000.

According to Ade Ridwan, Head of Empowerment and Training Business Unit of Forestry Department in Papua Province,² from all 34 provinces in Indonesia, Papua is the poorest provinces. It is around 70% of the people in Papua lives in the forest. Therefore, the authority of central government must delegate forestry management to the regional government. Based on the Law No. 23 Year 2014 concerning Regional Government, the management of forest will be harmonised between the central and the regional government for the benefit of Papuan people. If closely examined, the Forestry affairs business at first is centralized in nature. Article 4 (2) letter (a) the Law No. 41 Year 1999 concerning Forestry stipulates that "Control of the forest by state provides authority to the central government to regulated and take care of everything that is related with forest, forest areas, and forest product". The phrase "government" in this terms is the central government (Article 1 (14)). It is clear that the entrusted dream of the constitution to regulate and take care of everything related with forest.

Exposition towards Forestry Law along with the Government Regulation and Laws as their derivative source provides a general portrayal that there are 543 governmental affairs in the forestry sector that is mentioned in the statutory provision norms and is distributed towards government institution with President's portion amounts to 8% of the affairs, Living Environment Minister 56% of the affair, Province Government has 19% of the affairs, and regency/municipal government has 17 of the affairs. Seeing the portrayal of the portion, it could be explained that Forestry Law regime is based on citizenship and justice, transparency and alignment but the biggest portion of forestry affair lies at the hand of central government, in which the centralized nature was

¹Interviewed on August 23rd 2017.

²*Ibid.*

marked with the amount of government body (Living Environment Ministry) that is distributed in the region (189 units).

The application of externality principle on the division of government affair in the forestry sector in its nature is grouped into two parts, they are:¹

1. Authoritarian affairs consisting of NPSK and administrative affairs; and
2. Operational business to conduct programs founded from the technical affairs and public service affair.

And then the two groups are separated into eight category, they are:²

1. Forestry affairs is conducted independently by the President and/or is delegated to the Minister, which was conducted through deconcentration which was founded based on:
 - a. Norms, Standard, Procedures and Criterion, that is the central government affair to determine all the things above by creating a ministry decree in the performing forestry affair (*bestuursbeleid*).
 - b. Technical affairs, that is the affairs of the government that is technical in nature as it requires special skills in the sector of forestry to conduct the act, and is independently done by the central government. (*bestuur*).
 - c. Administrative affairs that are the affair of administrative government outside the determination of NPSK and in it, there is a partial decision maker, proposing suggestions and recommendation that are not relevant with public service, coordination, monitoring and evaluation, as well as training and supervision.
 - d. Public service affair that is the government affair that is related with public affair and directly communicates with the society/request made by the people in it is the empowerment of the people, protection of the people, recommendation, principle approval and business license.
2. Forestry affairs will then be divided between central and regional government, delegation of authority as well as decentralization with externality principle that was conducted together that includes:
 - a. Line of NSPK externality that is the authority of the central government to determine NSPK that will be conducted together with regional government.
 - b. Technical externality affairs, that is the government affairs which is technical and is conducted competitively with the externality principle
 - c. Administrative affairs that is the government affair that was conducted competitively with externality principle.
 - d. Public service affair, which is the government affairs related with public service that is conducted competitively with the principle of externality.

The central government routinely through the Minister of Living Environment also delegated a part of government affair that becomes its authority towards the regional government using the principle of *medebewind* (duty of assistance). Referring to the attribution and delegation of authority that is given by the central government by the statutory provision, 67% of the forestry conduct is done by the president and/or the minister especially those who are stipulate in nature, and administrative act in the sense that the creator or the ruler of national policy that is *beschikkingen* and *besluit*. The conduct of such affairs related with technicalities and public service is conducted independently by central government with a small part of them was given through decentralization deconcentration, and *medebewind*. Next, the delegation of authority from central government to regional government in conducting authority area approach (national, cross-province, cross-regency/city), forest area function (conservative, protection, production), and also the product of forest (woods and non-woods) towards the affairs that is operational in nature in the sense of planning and program with the purpose of increasing effectiveness of forest management and is useful for exclusive autonomy development in Papua.

Based on the proportion of province government authority that is delegated, the affairs is delegated to province government to stress the conduct of a program technically and public service as much as 84% and the rest are to conduct an administrative affair and NSPK suggestion. Towards the regional government (regency/municipal), the amount of authority delegated stressed the conducted of a program technically and public service as much as

¹Steven Yohanes Kambey, tt, *Division of Governemnt Affairs in Forestry Sector (between central government and regional government)*, Post-Graduate Program of Universitas Tadulako, p. 14.

²*Ibid.*

78% and the rest are to conduct an administrative affair and NSPK suggestion. During the regime of the Law No. 32 Year 2004 concerning Regional Government, government affairs within it are the one that exist in the sector of forestry regulated within government regulation. This means that the authority given by province government and regency/municipal government is delegate in nature from the central government, in this instance the President, so that the responsibilities of the performer are the President.

The Law of Regional Government, through the Government Regulation No. 28 Year 2007 concerning Government Affair Division between Central and Regional Government regulates about the distribution of forestry affairs proportionately. Central government owns 36%, province 32%, and regency/city owns 32%. Next, the Regional Government Law experiences a change with the implementation of the Law No. 23 Year 2014 concerning Regional Government. Unlike the previous Law, the current regime of regional government attributed its authority of regional government into originally coming from Law and provides two forms of responsibilities towards the implementation that is the President as the ruler and the state through the law. It also provides rights to make policies in other affairs that are under its jurisdiction.

The current regional government regime places the government affairs in forestry sector into competitive affairs with classifications that means it's an obligation to conduct by a region in accordance with their regional potential. Forestry affairs are conducted with the externality principle with looking at the location, usage, and benefits or loss criterion. Probing the division of competitive affairs that is the attachment of Regional Government Law, sub affairs regulation has gone through harmonization process with including affairs as mentioned within forestry law and other relevant law. This is proven with the inclusion of Natural Resources Conservation, Stream River Areas that was regulated in another Law. Distribution of affairs among governments in forestry sector during the new Regional Government regime provides a portrayal that central government authority is only as much as 51%, provincial government as much as 46%, and regency/municipal government as much as 3%. The affair distribution portion emphasizes that the conduct of forestry affairs should be done through decocentration system with providing more rooms for central government and provincial government as the operator.

The Law No. 23 Year 2014 concerning Regional Government reduces a huge portion of authority from regency/municipal government and only provides one forestry affair to regency/municipal government, which leaves the impression of unconstitutionality which is a challenged to a higher norm such as Article 18 (2) of the 1945 Constitution of the Republic of Indonesia which stipulates that "The regional authorities of the provinces, regencies and municipalities shall administer and manage their own affairs according to the principles of regional autonomy and the duty of assistance" and comparing it with the 38 affairs determined that was identified within the attachment of Regional Government Law and 543 that was identified in the Forestry Law, therefore for all forestry affairs that has not been regulated yet within the attachment of Regional Government Law may be delegated to the Province Government and Regency/Municipal Government through the decocentration and duty of assistance principle. This is in accordance with Article 15 (2) of Regional Government Law which stipulates "The competitive government affairs that is not within this Law becomes the authority of every level or structures of government which use the determination method derived from division of competitive government principle and criterion as mentioned in article 13, which are: accountability, efficiency, externality, and strategic national interest."

4. Conclusion

It can be concluded that the connection of authority between the Central Government and the Regional Government in managing mining and forestry in Papua applies justice principle. It means that the management of mining and forestry must be connected to customary society as the owners of "Ulayat rights". Some regulations govern it such the 1945 Constitution of Indonesia, the Law, the Law No. 11 Year 1967 concerning Basic Provisions of Mining has been replaced to the Law No. 4 Year 2009 concerning Mineral Mining and Coal, the Law No. 41 year 1999 concerning Forestry, the Law No 32 Year 2009 concerning Protection and Management Environment, the Law No. 23 Year 2014 concerning the Regional Government, and the Government Regulation No. 25 Year 2000 concerning Government and Province Authority as Autonomous Region. Those laws in implementation do not applied in appropriate ways. Some of them are overlapping.

Bibliographies

Abrar Saleng, 2013, *Capita Selecta of Natural Resources*, Membumi Publishing, Makassar.
-----, 2007, *Mining Law*, UII Press, Yogyakarta.

- Abrar Saleng, 1999, *State's Right to Control Mines Based on the 1945 Constitution of the Republic of Indonesia*, Dissertation, Pps-UNPAD, Bandung.
- Adjat Sudrajat, *The Importance of Corporate Social Responsibilities (CSR) in Mining Activities*, <http://www.bataviase.co.id/>, last accessed on September 7th 2011.
- Amirudin and Zainal Asikin, 2010, *Introduction to Legal Research Method*, Grafindo, Jakarta.
- Bambang Setiawan, *Harian Kompas*, October 15th 2008.
- Daud Silalahi, 2003, *Sustainable Development In Management Context (Including Protection) of Natural Resources Based on Socio-Economic Development*, Paper.
- Dwi Kherisna Payadnya I Wayan Suarbha, *The Authority of Regional Government in Managing Natural Resources Juridical Review of A Certain Region's Exclusiveness in the Union Republic of Indonesia system*.
- Eddie Riyadi, *Business Responsibilities Towards Human Rights*, <http://www.elsam.or.id>, accessed on January 16th 2017.
- <http://www.gultomlawconsultants.com/sejarah-hukum-pertambangan-di-indonesia/#>
- Otong Rosadi, 2012, *Mining and Forestry from the perspective of Pancasila's Legal Dreams, Dialect of Law and Social Justice*, Thafa Media, Yogyakarta.
- Porkas Sagala, *Managing Indonesian Forestry Land*, Indonesian Obor Foundation, Jakarta, 1994.
- Rafki Rahmat, *Mineral Mining and Coal Law Development with the existence of Law Number 4 Year 2009 concerning Mineral Mining and Coal*. (http://www.academia.edu/7756513/PERKEMBANGAN_HUKUM_PERTAMBANGAN_MINERAL_DAN_BATUBARA_TERKAIT_DENGAN_LAHIRNYA_UNDANG_UNDANG_NOMOR_4_YEAR_2009_TENTAN_G_PERTAMBANGAN_MINERAL_DAN_BATUBARA_Oleh_Rafki_Rahmat).
- Robert Endi Jaweng, *Decentralization and Regional Autonomy Review, Mineral Mining and Coal Law: Crucial changes, questions, Regional Autonomy Conduct Stabilization Committe*, <http://www.kppod.org>, Accessed on January 25th 2017.
- Regional Representative Council of the Republic of Indonesia and Faculty of Law Haluoleo University, 2010, *Analysis study of Connection Between Central and Regional Government on Sharing Results to Mining Natural Resources Management in Southeast Sulawesi*.
- Salim HS, 2014, *Mining Law in Indonesia*, PT. Raja Grafindo Persada, Jakarta, 7th ed.
- Soetaryo Sigit, 1992, *History and Policy of Indonesian Mining Development*, Indonesian Mining Association, Jakarta.
- Sofyan Djalil, *Theoretical and Practical Context of Corporate Social Responsibility*, *Economic Reformation Journal* Vol. 4 Number 1, January-December 2003.
- Steven Yohanes Kambey, tt, *Division of Governemnt Affairs in Forestry Sector (between central government and regional government)*, Post-Graduate Program of Universitas Tadulako.
- Uuh Aliyuddin, 2000, *Forest Development and Farm in the event of Regional Autonomy*.Paper.
- Yusuf Wibisono, 2007, *Dissecting the Concept and Application of CSR*, CV. Ashkaf Media Grafika, Surabaya.