


Implementation of Mineral and Coal Mining Licensing In Indonesia After Presidential Regulation of 2022

^{a,*} Kevin Aulia, ^{*} Budiman Ginting, Mahmul Siregar, Detania Sukarja.

^a Master of Law, Faculty of Law, University of North Sumatera.

^{*} corresponding author, email: kevinjib98@gmail.com

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<i>A B S T R A C T</i>	<i>A B S T R A K</i>
<p>This study examines the management of mining licenses, focusing on the impact and effectiveness of mineral and coal mining permits after Presidential Regulation No. 55/2022. Using a juridical normative approach with literature and field studies, it finds that Law No. 3/2020 shifted key licensing authority for non-metal mineral and rock mining from the Governor to the Central Government. The regulation then delegated permit issuance and oversight to the Provincial Government, changing regional authority from attributive to delegated. In practice, both the law and the regulation have not effectively resolved mining-related issues.</p> <p>Keywords: Effectiveness, Mining Licensing Arrangement, Licensing Authority.</p>	<p><i>Penelitian ini mengkaji pengelolaan izin pertambangan dengan fokus pada dampak dan efektivitas izin pertambangan mineral dan batubara setelah Perpres No. 55/2022. Dengan pendekatan normatif yuridis melalui studi literatur dan lapangan, penelitian menemukan bahwa UU No. 3/2020 mengalihkan kewenangan utama izin usaha pertambangan mineral bukan logam dan batuan dari Gubernur ke Pemerintah Pusat. Selanjutnya, Perpres tersebut mendelegasikan pemberian izin dan pengawasan kepada Pemerintah Provinsi, sehingga kewenangan daerah berubah dari atributif menjadi didelegasikan. Namun, penerapan kedua regulasi tersebut belum efektif menyelesaikan masalah di lapangan.</i></p> <p><i>Kata Kunci: Efektivitas, Penataan Izin Pertambangan, Otoritas Pemberian Izin.</i></p>
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1. Introduction

Indonesia has a very strategic geographical location and abundant and abundant natural resources, especially natural resources that fall into the category of mineral and coal mining natural wealth (minerba) which are spread across various provinces in Indonesia. The wealth from mineral and coal mining is included in the category of non-renewable natural wealth. The high exploration of mineral and coal mining products is inseparable from the high consumption of various types of mining products, especially in Indonesia. Although the trend is relatively decreasing, the level of use or consumption of various types of mining products is still relatively increasing from 1999, while the decline was caused by the Covid 19 Pandemic which caused human activity and production to also decline. But changes in human consumption will also affect the demand for a mining commodity, where an example is a change to reduce the consumption of fossil fuels to electricity will reduce the level of demand for fossil fuels but will increase the demand for nickel. (Ma'rifah, 2020)

Exploration of mineral and coal mining materials in Indonesia can only be carried out by companies that have Mining Business Permits (IUP), where with these permits companies can carry out mining activities in accordance with applicable regulations in Indonesia.

The level of active IUP companies from 2001 – 2021 tends to decrease from two types of resources (coal and metal minerals), while the increase actually occurs in non-metallic and rock commodities. As for several studies, it was found that the decline in the number of active IUPs at metal and coal mines was caused by factors: decreased demand for these mines, limited resources and an increase in illegal mining businesses in various regions. Problems related to mining permits are the most highlighted because there are still problems related to the licensing process and rights in granting permits for mining activities, where it is found that there are overlapping regulations, out of sync between the center and the regions, thus creating the vulnerability of corrupt activities to facilitate mining activity permits.^{Id.}

Furthermore, the existence of several characteristics of mineral and coal business activities requires the existence of operational legality of its activities to ensure legal certainty (Salim, 2006). The legal basis for licensing mineral and coal mining activities is clearly regulated in Law Number 3 of 2020 concerning amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (which later became Law 3/2020) which stipulates that the issue of granting mineral and coal permits is rights from the central government which include regulating up to the implementation of supervision and recognition of mining areas as mining legal areas. So with this, the Central Government has the authority in granting permits and determining Mining Business Permit Areas (WIUP), where these provisions clearly conflict with several Regional Regulations (PERDA), one of which is Bali Province Regional Regulation No. 4 of 2017 concerning non-tax mining management. metal and rock which stipulates that the determination of such authority lies with the provincial government.

Even though the authority to issue permits has shifted to the hands of the Central Government, in Article 35 Paragraph 4 of Law Number 3 of 2020 it is stated that the Central Government can carry out delegations to provincial Governments which will then be regulated through laws and regulations. These conditions create the necessity of statutory regulations in the form of Presidential Regulations and Government Regulations to regulate this matter. Furthermore, under these conditions, indications of the existence of conflict norms (*conlicten van normamen*) can be obtained in the implementation of granting permits for mining activities between the central government and the regions. The occurrence of this uncertainty can lead to problems which become an obstacle to the granting of permits to companies wishing to carry out mining activities in an area (Rahayu & Faisal, 2021).

The implementing regulation in question is a Government Regulation, where what has been issued is Government Regulation Number 96 of 2021 concerning Implementation of Mineral and Coal Mining Business Activities, where in article 6 paragraph (5) stipulates that the delegation of business permits to the Provincial Government is only granted through standard certificates and permits based on the principles of effectiveness, efficiency, accountability and externality.^{Id.}

So from here it can be observed that the delegation did not occur in the implementation of the NIB award. Then Article 8 explains that the arrangements regarding

the delegation are further regulated again through a Presidential Regulation. The Presidential Regulation is Presidential Regulation Number 55 of 2022 concerning Delegation of Granting Business Licensing in the Mineral and Coal Mining Sector which stipulates that delegation to the Provincial Government is carried out to realize the implementation of good and effective governance. So that the delegation does not only occur in the granting of standard certificates and permits, but also in the guidance and supervision related to the administration of permits, the granting and determination of WIUP for non-metallic minerals, certain types of non-metallic minerals, and rocks provided that they are located in 1 provincial area or sea area. up to 12 nautical miles, setting benchmark prices on non-metallic minerals, certain types of non-metallic minerals, and rocks as well as giving recommendations or approvals related to delegated authorities.

The existence of this regulation does not automatically eliminate violations committed by irresponsible elements, where in the records of WALHI (Indonesian Forum for the Environment) In 2021, 58% of criminalization cases were found, of which 52% were cases related to mining with a total of 11 million hectares of living space and people's management areas are destroyed and looted by companies that explore and exploit minerals. This condition raises considerable questions regarding the effectiveness of the regulations stipulated in resolving related problems, on this basis the researchers wish to carry out research and analysis of research results related to the Stipulation of Presidential Regulation Number 55 of 22 and the impact on the mineral and coal mining licensing process in Indonesia.

2. Method

The type of research used in this study is normative law, because it is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations. In addition, this research was also supported by interviews. The nature of the research in this thesis is analytical descriptive. Analytical descriptive, namely research that describes the applicable laws and regulations associated with legal theories and the practice of implementing positive law related to the problem. The reason for using analytical descriptive research in this research is because it only describes or gives an overview of the object under study through data or samples that have been collected as they are without conducting analysis and making conclusions that apply to the public.

3. Result & Discussion

A. Management Authority Arrangements and Mining Permits in Indonesia

The implementation of mining by IPR, IUP and IUPK holders requires guidance and supervision by the government and local governments that have issued permits. It is important to carry out guidance and supervision so that mining activities run according to good mining principles and do not damage the environment. Then the people who have the potential to be directly or indirectly affected by mining activities must be given protection, such as the provision of compensation or the right to take class action to court (Dwi Haryadi, 2018).

The Minister carries out guidance and supervision of the implementation of mining business management carried out by the provincial government and regency/city government in accordance with their authority. This authority can be delegated to governors for the implementation of mining business management carried out by district/city governments. Ministers, governors or regents/mayors in accordance with their authority are responsible for fostering and supervising the implementation of mining business activities carried out by holders of IUP, IPR/IUPK.

Supervision is an activity to ensure or maintain that plans can be realized effectively. Each organization has a plan to achieve the goals set. To ensure that the organization can achieve its goals absolutely necessary supervision.¹

In principle, supervision is carried out as a preventive measure whether activities are carried out according to existing regulations. In principle, supervision of the management of the mining business aims to make the IUP holders more focused in carrying out activities related to the mining business, so that they do not deviate from the orders and prohibitions set out in the permit. In theory George R. Terry argues that supervision is intended to determine what has been achieved, evaluate and apply corrective action if necessary, to be able to ensure results are in accordance with the plan (Hamidi & Lutfi, 2009).

Governors and regents/mayors are required to report the implementation of mining business in their respective areas at least once in 6 (six) months to the Minister. If the regional government in exercising its authority is not in accordance with the provisions of this Law and the provisions of other laws and regulations, the Government may issue a warning. Meanwhile, the guidance and supervision of community mining businesses is carried out by the Regent/Mayor whose arrangements are set out in a Regional Regulation.

In essence it is emphasized that the central government plays an important role in supervising and coordinating and this is the basis for legal certainty in the process of granting mining permits in Indonesia. This is because the Central Government is responsible for deciding the character and degree of decision-making authority to be distributed to its sub-national governments, especially to regional governments².

Along with the changing authority in the management of natural resources in Indonesia through various regulations from the New Order era to the reform era, this is none other than the existence of an aspiration to realize the use of natural resources that is just and has legal certainty by taking into account the convenience for investors, involvement and the existence of community participation, increased state revenue, supervision from the state. The misunderstanding by the regional government, especially in Law No. 4 of 2009, is to interpret decentralization which has led to the fact that the exploration and exploitation of natural resources, especially mining, is still heavily colored by the paradigm that values resources as a source of income rather than capital. The attitude of mutual need that should take place in order to create a balance of higher quality of life, in the end is more dominated by the human desire to dominate nature. With the return of the authority to grant mining business permits (IUP) to the central government through changes to Law No. 4 of 2009 through Law No. 3 of 2020 marks a transfer back to a centralized system. This of course has an impact on the lack of meaning of articles 18, 18

¹ T Hani Handoko, *Manajemen Edisi 2* (Yogyakarta: BPFE, 2022), p 78.

² *Id.*

A and Article 18 B in the management of Natural Resources, Participation of Local Communities, Socio-Cultural of Local Communities, Interests of Local Communities, Democratization of Policies and state supervision of the sustainability of Permits.

B. Implications for granting mineral and coal mining permits after the enactment of Presidential Regulation No. 55 of 2022 concerning the Delegation of Granting Business Permits in the Mineral and Coal Mining Sector

Mining is a sector that has received serious attention from the government, bearing in mind that mining business activities contribute quite a lot to the inflow of foreign exchange, this can be seen from the large number of permits for mining concessions in the regions. On the other hand, the increasing number of mining business activities, both involving foreign and national investment, has led to massive exploitation and resulted in pollution and environmental damage ([Muryati et al., 2017](#)).

Mineral mining business activities are carried out to obtain the maximum benefit from these minerals and generally do not make efforts to handle other minerals and associated minerals so as not to obtain added value from other minerals and associated minerals in the mining area. In order to encourage the application of conservation principles in mining areas including mining activities carried out by the people, it is necessary to optimize the benefits of other minerals and associated minerals contained in these mining areas in a wise and environmentally sound manner to support the welfare of the community as an effort to increase income and the economy regional and national.

Constitutionally, the right to control the state is regulated explicitly in Article 33 of the 1945 Constitution, so that this article becomes the constitutional basis for the justification of the state having the right to control natural resources contained in the bowels of the earth ([Yanis & Ahmad, 2009](#)). The existence of the state's control over the branches of production which are important to the state and which affect the livelihood of the general public is basically a logical consequence of the aims of the state to be realized. The goals of the state which are the basis of reference for achieving the will of the state require not only the completeness of the state, but also the use of the means of power which is no less important ([Ilmar, 2012](#)).

Control is a kind of ownership by the state, which means that the state through the government is the only authority holder to determine the right of authority over it, including the land, water and natural resources contained therein, to control or exploit something in accordance with the interests. Rights are interests that are protected by law, while interests are individual or group demands that are expected to be fulfilled, thus what is called a right is legal if it is protected by the legal system ([Shidarta, 2006](#)).

To give meaning or explanation regarding state control related to natural resources, especially mining, is indeed not easy, considering that mining activities on the one hand are related to investment interests which prioritize economic profit alone and on the other hand related to state control is to prioritize the interests and prosperity of the people. . However, what is more important here is that with the formulation of state control over

natural resources, especially mining, it should be used as a legal instrument that provides certainty that there is a factor of state control over management in the mining sector.³

Presidential Regulation No. 55 of 2022 delegates the authority of the Central Government to Provincial Governments regarding the granting of Mining Business Permits (IUP) for non-metallic minerals, certain types of non-metallic minerals, and rocks. Apart from the IUP, other permits are granted in the form of rock mining permits (SIPB), people's mining permits (IPR), mining service business permits (IUJP) for 1 province, transportation and sales permits and IUP for the sale of non-metallic minerals, non-metallic minerals, certain types, and rocks are also delegated. Delegation of Licensing is also accompanied by delegation of authority to grant and determine Mining Business Permit Areas (WIUP) for Non-Metallic Minerals, WIUP for Certain Types of Non-Metallic Minerals, and WIUP for Rock, setting benchmark prices for non-metallic minerals, certain types of non-metallic minerals and rocks, providing recommendations or approval related to the delegated authority.

The implications of transferring the authority to issue mining permits from the Central Government to the Provincial Government are based on this. First, "the implications of this transfer of authority change the procedure for obtaining the authority of the Provincial Government for granting mining permits. This content shows that the authority possessed by the Regional Government through the basis of broad autonomy can be given, but when it changes due to a link with the authority of the Central Government, this authority can be withdrawn in line with the direction of the policy lines that have been regulated by the government through the Law. In this condition, the regional government is obliged to comply with the principle of a unitary state, as well as in the hierarchy of legal regulations, there is no conflict between regional government legal products and central legal products. In fact, if one draws the red thread from the previous discussion, that in fact there is no removal of the authority of the Provincial Government in granting mining permits, but only a change in the procedure for obtaining authority which was originally obtained in an attributive manner to a delegation in the business licensing model which can be granted in the form of a certificate. Standards and Permits, of course, must be based on the principles of effectiveness, efficiency, accountability and externality with further provisions regulated through PP and Perpres. The disappearance occurs in the authority of the Regency/City Regional Government which is retained, the same as what has been inherited in Law 23/2014, where the confirmation that the absence of such authority is also explained in Presidential Decree 55/2022, in Article 2 Paragraph (11) which confirms that in delegating the authority to issue permits as well as supervision and guidance can no longer be sub-delegated to Regency/City Regional Governments. Therefore, in implementing this Presidential Decree, it is necessary to immediately coordinate between the Central Government and the Provincial Government, so that this transfer of authority can be carried out quickly and implemented smoothly according to the direction and nature of this Presidential Decree, namely to create good and effective governance.

Second, "the delegation of Law 3/2020 has raised debates on the meaning and application in the mining sector. This condition occurs because the new concept of delegation in Law 3/2020 when studied under the principle of regional autonomy creates differences in the meaning of delegation in Law Number 30 of 2014 concerning Government Administration (hereafter Law 30/2014) or the concepts of Decentralization

³ Dewi Tuti Muryati, *supra note*, p 28.

or Deconcentration in Law 23/2014 .²⁴ This opinion also came from Bisman Bhaktiar who is a mining expert as well as the Executive Director of the Center for Energy and Mining Law Studies (PUSHEP) who explained that if one looks at the definition of delegation as decentralization which refers to Law 23/2014, it means that responsibility and accountability including the responsibility for managing the budget is wholly on the party receiving the delegation. Whereas deconcentration in Law 23/2014 is also asymmetrical in the sense of delegation in Law 30/2014, where the deconcentration of responsibility and accountability remains on the giver, not the recipient”⁴.

Third, the assertion that delegating authority to issue permits as well as supervision and guidance can no longer be sub-delegated to the Regency/City Regional Government means removing the function of authority that exists within the jurisdiction of the Regency/City area. This arises due to the absence of trust from the Central Government in Regency/City Regional Governments which has been followed by low assurance of incoming investment. This condition has implications for the absence of direct supervision of licensing activities as the front guard which causes delays in regulation (Luhukay & Dewi, 2020).

C. Effectiveness of granting mineral and coal mining permits after the enactment of Presidential Regulation No. 55 of 2022 concerning the Delegation of Granting Business Permits in the Mineral and Coal Mining Sector

Every government action must be based on legal authority, which includes elements of accountability and the principle of legality. Authorities, procedures, and the substance of the government's actions are the contents of its legitimacy. These three aspects must be based on laws and regulations, because laws and regulations have explained the contents of the delegation of authority to government organs or bodies, including the procedural basis for achieving a goal and its substantive aspects.(Hadjon, 2011) The management of permits for mineral and coal mining business activities is currently undergoing a digitization transformation. This transformation is an effort to streamline the licensing process as well as take advantage of technological advances, indicating that mining governance is now more advanced than before. Submission of applications for business licenses or mining business permits can be done online by visiting the Ministry of Energy and Mineral Resources website or sending an email.

Although the Ministry of Energy and Mineral Resources has made it easier to obtain permits that take advantage of the digital era 4.0, a number of records have been found. Some of these observations include the lack of socialization and assistance with Law Number 3 of 2020 regarding the authority that was originally held by the Provincial Government to become the authority of the Central Government, so that there are still many entrepreneurs in the regions who do not understand the Central Government's management mechanisms. In addition, the existence of a Centralized Data System in the ESDM MINERBA MODI system has confused some entrepreneurs because several regional IUPs have not been registered in the MODI system database. Related to the readiness of the Central Government (Directorate General of Energy and Mineral

⁴ PUSHEP, “Pentingnya Pengaturan Pelibatan Daerah Provinsi Dalam Pengelolaan Minerba,” PUSHEP.or.id, 2020, Retrieved from <https://pushep.or.id/pushep-pentingnya-pengaturan-pelibatan-daerah-provinsi-dalam-pengelolaan-minerba-menurut-kerangka-pelaksanaan-uu-no-3-tahun-2020/>

Resources) who still have to maximize services considering that all controls such as the Approval of the Work Plan and Budget (RKAB) are in the Central Government. Improving or maximizing data system services (MODI MINERBA) is very important considering that licensing activities in the mining sector are often scrutinized as an important component of the concept of state control rights.

Another thing to be aware of is the license terms. Licensing elements must be interpreted because licensing is a legal instrument. Permits are legal instruments in the form of decrees used by the government to handle or determine certain events. Permits are statutory regulations in the licensing industry. Making and issuing permits is a legal act, and the authority to do so is granted by law. This permit is issued by the licensing department of a government agency or organization. Government organizations are those that carry out government affairs at the central and regional levels, from the highest to the lowest body with the authority to issue permits. There are concrete events in the permissions component. This concrete event refers to events that occur at a certain time, with certain people, in certain places, and with certain legal facts. In addition to these elements, there are procedures and requirements for permit applications that must follow certain procedures and are stipulated by the government as the permit provider in licensing.

The authority to manage mineral and coal mining has experienced a shift where if referring to Article 6, Article 7 and Article 8 of Law No. 4 of 2009, the management is divided into the authority of the central government, provincial regional governments, and district/city regional governments. The relationship between the central government and regional governments is based on the formulation of Article 18 paragraph (5) of the 1945 Constitution which states that; "Regional governments carry out the widest possible autonomy, except for government affairs which are determined by law as the affairs of the Central Government".

The takeover of the authority of the Regency/City Regional Government over the governmental affairs of the mineral and coal mining sector, of course has implications for obtaining funds from the sector. Because the principle of central-regional financial management in Indonesia is money follows functions, that is, money provided follows decentralized functions (Putri & Wicaksono, 2016). This regional autonomy affects various sectors of natural resource management, one of which is the management and licensing of the mineral and coal mining sector. The mining sector is one of the biggest drivers of the economy and national development for Indonesia. The transfer of authority to issue permits is carried out to realize an efficient mining licensing system. However, it cannot be denied that given the wide range of mining areas and the lack of authority possessed by the local government as the 'host' to supervise mining activities, this is not impossible. instead it will have an impact on the not intensive process of monitoring, coaching and supervision of mineral and coal mining activities. Other impacts such as the absence of the regional government's role in realizing regional autonomy in managing its own household affairs.

Mining permits previously owned by the regional government were then taken back by the central government. Regarding the regulation of authority affairs, it is intended to improve the mechanism for granting business permits for mineral and coal mining so that mining management will be better in the future. However, on the other hand, it raises various new problems related to the expansion of the authority of central government affairs and the elimination of regional government authority. When regional autonomy

matters are drawn to the center, it is tantamount to returning the position of government power to centralization.

Actions that put forward the concept of regional autonomy position the Regional Government as the government structure that is closest to the people, then as a mechanism that delegates it to the regions so that they can grow and develop, of course, according to the potential of the area. This means eliminating the involvement of the Regional Government in the field of mineral and coal affairs is the same as closing the opportunity to carry out natural resource management for the regions in an integrated manner. In addition, the issuance of permits related to mineral and coal mining business activities is intended as a facility to carry out supervision which represents the emergence of legal ties between the government and legal subjects. Therefore, it is necessary to understand a little that the concept of decentralization and regional autonomy is not only limited to licensing authority or adding revenue to the regions, but is much more complex regarding the participation of the community to participate in supervising, of course, as public accountability for the management carried out. A conceptual approach was taken to examine the authority between the Central and Regional Governments in the field of mineral mining permits, as a constitutional basis it cannot be separated from the connection between Article 33 paragraph (3) and Article 1 paragraph (1), Articles 18, 18A, 18B of the 1945 Constitution of the Republic of Indonesia in full. So that the licensing authority for non-metallic minerals and rocks returns to the constitution, which is the *grundnorm*. On the other hand, there are currents of globalization which are accelerating towards political democratization and regional autonomy, human rights, developments in technology and information as well as the environment. For this reason, it is necessary to regulate the authority of non-metal mineral and rock mining permits that are integrated between the Central Government, Provincial Governments and Regency/City Governments by building supervision, coordination and integration between sectors that are based on the general community or custom with a community-based management scheme. sector) and community development which is intended as community access to fulfill better social, environmental and economic conditions (Community development). Of course this needs to be reapplied to concurrent affairs. So that integrated licensing coupled with coordination of supervision can create a non-metal mineral and rock mining ecosystem based on legal certainty, legal benefit and legal justice without abandoning the principles of democracy and regional autonomy in realizing sustainable regional development with an environmental perspective.

Based on the author's opinion, in its application in the community, Law Number 3 of 2020 and Presidential Regulation Number 55 of 2022 have not been effective and efficient in resolving problems that occur in the field related to mining activities. Where there are several articles in Law Number 3 of 2020 which are considered to reduce the effectiveness of implementing the Law. Some of these articles are Article 4 paragraph 2, in which in this article all control of Mineral and Coal mining activities is held by the Central Government and in Presidential Decree Number 2022 there is still involvement of the central government so that it still creates a centralistic paradigm. This centralization is considered to be very contrary to regional autonomy. Not only that, this also has the potential to increase mining activities without a permit (Illegal). The next articles are Article 162 and Article 164 where these two articles are considered to open up opportunities for criminalization of residents who refuse to mine.

4. Conclusion

Based on the analysis of the regulatory changes introduced by Law 3/2020 and Presidential Decree 55/2022, several key conclusions and recommendations emerge. The transition of authority for non-metal mineral and rock mining permits from provincial to central government under Law 3/2020, while delegated to provincial governments by Perpres 55/2022, has created a shift towards centralization. This shift has led to procedural changes and challenges, including the central government's continued involvement and the associated bureaucratic inefficiencies. This centralization impedes regional autonomy and complicates the permit process, potentially fostering illegal mining and hampering effective local management.

In light of these findings, it is recommended that the regulation of mining permits be restructured to improve transparency, legal certainty, and efficiency. Specifically, regulatory processes should be made more transparent and accessible to all stakeholders, ensuring that requirements and procedures are clear. Additionally, mining regulations should prioritize sustainable resource management, considering both environmental and social impacts. Expediting the licensing process and enhancing legal certainty will support investment and competitiveness in the mineral and coal mining sector, addressing the current regulatory challenges and fostering better local management practices.

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