

Legal Analysis of Regional Legislative Council Supervision of Regional Government Regarding Overlapping Mining Business Permits

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ABSTRACT

This study aims to assess the authority of provincial governments related to mining business permits. Moreover, DPRD supervision of local governments related to overlapping of overlapping mining business permits in North Maluku Province. The research method used in this study is the type of research used in the research is normative legal research as a process to find the rule of law, legal principles, and legal doctrines to answer the legal issues faced. The scientific logic that in normative legal research is built on scientific discipline and the ways in which normative legal science works, legal science whose object is law itself. The results of this study show that the authority of provincial governments related to mining business permits is explicitly regulated in the provisions of Article 14 paragraph (1) Law Number 23 of 2014 concerning Regional Government which reads "the implementation of government affairs in the fields of forestry, marine, as well as energy and mineral resources becomes a concurrent affair which is a division of authority between the central and provincial governments", The provisions of Article 14 paragraph (1) regulate mining business permits (IUP) which are no longer the authority of the regency government anymore, but become the authority of the provincial and central governments. The transfer of authority to issue mining business licenses (IUP), has a juridical impact on the provisions related to this matter will certainly change, but in its implementation the old provisions are used until there are new provisions that adapt to these rules.

INTRODUCTION

The existence of mining management is one of the many forms of activity for the management of natural wealth in this country, which has been going on for a long time since the Dutch colonial era to post-independence and until now, it should be noted that the benefits of mining are felt because the aspect of state revenue is the largest. One of them comes from the mining sector. Until now the mining sector is still the biggest prima donna to add to the coffers of the state treasury, one of the biggest tax revenues comes from the mining sector.

Environmental issues are currently a hot topic and are often discussed along with the rise of Mining Business Permits issued by the Government. Study of the 1945 Constitution in Article (33) paragraph (3) (Ruslina, 2012) states "Earth and water and the natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people". This provision is always buzzing and used as the basis for mining management in Indonesia. In fact, this is an obsolete issue and is motivated more by economic justice than ecological justice. As we can see together, environmental aspects are often neglected either in aspects related to permits or based on the use of land or natural resources which can cause harm to communities around mining areas.

Mining Law is a special provision that regulates the right to mine (part of the land containing valuable metals in the soil or rock) according to the rules set out in the Blacklaw Dictionary. The right to mine is the right to carry out investigative activities and the right to carry out exploitation activities (mining right shall be regarded as a prospecting right and an exploitation right (Rusuniardi, 2020). Included in business and/or activities in the Mining sector to obtain a Mining Business Permit (IUP).

An environmental permit is a permit granted to anyone who carries out a business and/or activity that is required to have an Environmental Impact Analysis (AMDAL) or Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL) in the framework of environmental protection and management as prerequisites for obtaining business and/or activity licenses (Noble, Budiono, & Damayanti, 2021). Mining Business Permit is the legality of managing and exploiting minerals that are intended for business entities, both national private companies, as well as foreign business entities, cooperatives, and individuals. Furthermore, according to Article 36 Paragraph (1) of Law Number 3 of 2020 concerning Minerals and Coal, Mining Business Permits (IUP) consist of two stages, namely: Exploration IUP and Production Operation IUP (Supriyanto, 2017).

The background to the obligation to grant environmental permits in the mining sector is because the state or government wants every mining company or activity to seriously pay attention to the environment so that environmental damage caused by mining can be prevented or minimized. Meanwhile, the presence of strengthening regional autonomy is expected to provide an opportunity for the regions to play a role in the management of natural resources in the regions, which is a real form of decentralization and the delegation of some tasks from the government to regional governments with the aim of creating good regional governance in accordance with the principles autonomy.

However, since the promulgation of Law Number 23 of 2014 concerning Regional Government, there has been some disharmony between the two, especially regarding the authority of local governments in managing mining business activities. Previously, through Law Number 32 of 2004 concerning Regional Government (2004 Regional Government Law) and the Minerba Law, the authority to control mineral and coal mining rested with the Central Government, provincial regional governments, and district/city regional governments.

Provisions regarding the authority to grant mining business permits (IUP) in the latest Minerba Law 2020 have experienced disharmony with the Regional Government Law. Provisions in the Regional Government Law, emphasize the authority of the provincial regional government in issuing mining business permits (IUP). This led to debates and controversies within the community and ended in regulatory confusion that occurred due to disharmony of norms, which was then followed by the enactment of Republic of Indonesia Law Number 11 of 2020 concerning Job Creation.

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The Job Creation Law which was passed by the DPR and the President in early October 2020 no longer regulates the provisions contained in the revised Minerba Law as a form of harmonization between laws and regulations. Provisions for the transfer of authority to issue mining business permits (IUP) by the central government remain in Law Number 3 of 2020 as stipulated in the substance of Article 35 paragraph (1) but are only further clarified in the Job Creation Law. This is an implication of the existence of Article 4 paragraph (2) of Law Number 3 of 2020 which states that State control over mineral and coal resources is fully exercised by the central government.

Withdrawal of authority by the central government has the potential to conflict with regional autonomy and is not in harmony with Law Number 23 of 2014 concerning Regional Government which regulates regional government authority in issuing mining business permits (IUP). Because of this, the regulation of Law Number 23 of 2014 concerning Regional Government only classifies the authority to control Minerba to the Central Government and the Provincial Regional Government, as well as taking over the authority to control Minerba mining in the regency/city regional government. Thus, the enactment of the Law on Regional Government means that the authority previously owned by the district/city regions has now become the authority of the provincial regions.

The change in Mining management authority in the Regional Government Law is the basis for changing the regulation in Law No. 3 of 2020 concerning Minerba to be precise in Article 4 Paragraph (2) and Article 35 Paragraph 1 shows that control of minerals and coal is again held by the central government (centralized). Previously, in Law no. 4 of 2009 mineral and coal control is located in the province, district/city where the mining minerals are located (decentralized).

Furthermore, in the provisions in article 173C of Law Number 3 of 2020 it states that there is a temporary suspension of the authority of the Regional Government in the Mineral and Coal Mining Sector regarding the issuance of new permits for a maximum period of 6 (six) months after Law Number 3 of 2020 comes into force On June 10, 2020. The return of control to the central government over mineral and coal mining certainly has an impact, for example disharmony with existing regulations.

The Regional People's Legislative Council (DPRD) as an element of Regional Government, has a position corresponding to or at the same level as the Regional Head. Position and Duties and Functions of the Regional People's Legislative Assembly is a regional people's representative institution which is domiciled as an element of the Regional Government institution. Therefore, elements of Regional Government institutions. DPRD has equal responsibility with the Regional Government in the context of running the wheels of Government in the Regions.

The strategic role of the Regional People's Representative Council (DPRD) is also contained in Law No. 23 of 2014 concerning Regional Government to be precise in Article 149 Paragraph (1), which states that the Regency/ City DPRD has three main functions: namely 1) Function Formation of Regional Regulations; 2) Budget function; and 3) Oversight Function.

Supervision is one of the main functions attached to the DPRD in addition to the legislative and budgetary functions. Ideally, the aspirations of the people in the field of supervision should be institutionally represented in the DPRD. This oversight function is expected to run effectively according to the expectations of society, regulations and laws that apply. DPRD oversight aims to ensure that regional governments carry out their programs in accordance with the plans and provisions of the applicable laws (Aminuddin, 2015).

Oversight should be one of the most intensive functions a DPRD institution can perform. The supervisory function carried out by the DPRD in the context of being a political institution is

a form of political supervision that is more strategic in nature and not technical administrative supervision. This shows that the supervisory function carried out by the DPRD is at the level of policy control in order to create checks and balances. For this reason, the DPRD is equipped with several rights as stipulated in Article 371 of Law Number 13 of 2019 on the Third Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council., among others right of interpellation, right of inquiry and right of expression (Furcony et al., 2020).

The interpellation right is intended so that the DPRD can request information from regional heads about policies that are troubling and have a broad impact on people's lives. Meanwhile, the right of inquiry is carried out to investigate certain policies from regional heads that are important and strategic and have a broad impact on people's lives and are suspected of contravening laws and regulations. Meanwhile, the right to express an opinion is the right of the DPRD to express an opinion on the Governor's policies or regarding extraordinary events that have occurred in the region accompanied by recommendations for resolution or as a follow-up to the implementation of the right of interpellation and the right of inquiry.

Correlations related to interpellation rights, inquiry rights, and the DPRD's right to express opinions should be a strengthening of the DPRD's supervisory function, where the DPRD has the main function of overseeing and also monitoring the implementation of regional regulations that have been mutually agreed upon with regional leaders, as well as overseeing the use of budgets that have been approved. earlier in the budget. However, since the authority to manage oil and natural gas has become the authority of the center as confirmed in Law Number 9 of 2015 Second Amendment to Law Number 23 of 2014 concerning Regional Government (HSB, 2019). becomes the basis that the supervisory function often becomes a particular political tool and does not become a means of improving democratic and accountable political performance in aspects of mining management in the Regions.

One of them is what happened in North Maluku Province, this area has a fairly good wealth of Natural Resources (SDA), the presence of mining in this area is enough to say so much, the arrival of investors coming to North Maluku Province to manage the natural wealth contained and spread across several districts in North Maluku Province such as East Halmahera, North Halmahera and South Halmahera seem to illustrate that this area has the potential for natural wealth in the mining sector.

Mining issues in North Maluku Province have created legal issues that have had an adverse impact on the economic and investment climate. Mining problems include forest destruction, environmental pollution, land grabbing, illegal mining, permits that are not in accordance with the designation, to problems with land clearing with miners, which then lead to conflicts of interest with the state and local communities.

Based on these reasons, efforts to strengthen the function of the legislature should be carried out consistently and programmed, so that it can be expected that there will be an increase in DPRD performance. Therefore, the authors want to conduct in-depth research and analyze related to the research title: "Legal Analysis of DPRD Supervision of Regional Governments Related to Overlapping Mining Business Permits in North Maluku Province".

METHODS

The type of research used in this research is normative legal research. The normative legal research that the researcher intends is to approach the positive law inventory as a very basic preliminary activity. Before finding in-concreto legal norms, it must be known in advance what positive laws apply. In this case, it is different from the legist-positivistic conception which emphasizes that law is synonymous with written norms, which are made and promulgated by authorized institutions or officials and are autonomous, closed, and detached from public life. Thus, the concept that researchers use is to construct law as a reflection of the life of the community itself (Amiruddin & Asikin, 2004).

The researcher conducts an investigation of some of the actual problems that are currently raging and expresses the form of symptoms or social processes to see firsthand the application of legislation or legal rules relating to enforcement of civil law on environmental impacts due to mining of non-metallic minerals and rocks in the Kalumata Village, as well as conducted interviews with several respondents Head of the North Maluku Province Environmental Service, Head of the Mining Office of North Maluku Province and DPRD members who were considered able to provide information regarding the implementation of the law enforcement.

RESULTS AND DISCUSSION

Provincial Government Authorities Related to Mining Business Permits

Law Number 3 of 2020 concerning Mineral and Coal Mining starts a new chapter in the development of mining law in Indonesia. The latest Minerba Law has brought a number of major changes, one of which is regarding the regulation of the authority to issue mining business licenses (IUP) which were entirely transferred to the central government (Wulandari and Fahrozi 2021). The factors or reasons behind the amendment of the Minerba Law from Law Number 4 of 2009 to Law Number 3 of 2020 concerning Mineral and Coal Mining are clearly based on several things, namely: (i) as a follow-up to the decision of the Constitutional Court which granted either in part or as a whole the request for a judicial review of several articles in the 2009 Minerba Law,

In the amendment to Law Number 3 of 2020 concerning Mineral and Coal Mining, the authority related to Mining Business Permits (IUP) is regulated in Article 4 paragraph (2) which in the Article explains that the authority related to Mining Business Permits (IUP) is withdrawn to the central government . The latest Minerba Law also at the same time abolishes the provisions in the matrix for the distribution of concurrent government affairs in the energy and mineral resources sector including government affairs in the mineral and coal mining sector, as referred to in Law Number 23 of 2014 concerning Regional Government.

Thus, there is disharmony of legal norms regarding the authority to issue mining business permits (IUP). As previously explained, prior to the issuance of Law Number 3 of 2020, there was a norm conflict between Law Number 4 of 2009 and Law Number 23 of 2014 regarding the authority possessed by the central government, provincial government, and district government / city in terms of issuance of mining business license (IUP). This means that through the revision of Law Number 3 of 2020, local governments, both provincial and district/city governments, no longer have the attributive authority to issue mining business permits (IUP). Mining licensing authorities taken over by the central government are related to; (1) Mining Business Permit (IUP); (2) People's Mining Permit (IPR); (3) Temporary permit to carry out transportation and sales; (4) Special Production Operation Mining Business Permit for processing and/or refining; (5) Production Operation Mining Business Permit specifically for transportation and sales; (6) Mining Service Business License (IUJP); and (7) Production Operation Mining Business Permit for sales.

One of the reasons for the change in authority to issue mining business permits (IUP) from the local government to the central government is as a form of controlling sales and production, especially metal and coal as energy commodities and downstream supply of metal and investment certainty for investors (Liza 2018). However, there is one interesting thing related to the authority to issue mining business permits (IUP) where the provisions in Article 35 paragraph (4) of Law Number 3 of 2020 state that "The Central Government can delegate the authority to issue Business Permits as referred to in paragraph (2)) to the provincial Regional Government in accordance with the provisions of laws and regulations. " The provisions of Article 35 indicate that there is an opportunity to involve the provincial government in issuing mining business permits (IUP). However, it becomes an interesting discussion when the provisions in the Article directly use the phrase delegate (Pushep 2020b).

As is well known, the meaning of delegation itself is the delegation of governmental authority from one government organ to another (Salsabila 2020). This shows that delegation authority is not given in the context of the relationship between superiors and subordinates (hierarchy) which distinguishes it from mandate authority. The distinctive characteristic of the authority obtained by delegation is that the responsibility and accountability owned by the delegates is transferred to the delegates so that the delegates cannot use that authority again unless there is revocation by adhering to the principle of *contarius actus* (Ridwan HR 2016). If seen in the explanation of Law Number 3 of 2020 Article 35 paragraph (4),

Seeing the characteristics of the delegates described in Article 35 paragraph (4), of course the provincial government still has the authority to issue mining business permits (IUP) even though the forms of permits issued are limited. The limited authority possessed by local governments in issuing mining permits is a consequence of the concept of a unitary state adopted by Indonesia, but where the authority remains with the central government (Nabilla 2016).

The latest Minerba Law has given logical consequences to a form of mining management permit in Indonesia, because there are two systems in effect, namely, Contract of Work (KK) and Coal Mining Concession Work Agreement (PKP2B) and Mining Authorization (KP), then changed to licensing system (Rusyuniardi 2013). Changes in the pattern of mining activities in Indonesia through Mining Business Permits (IUP) are a substitute for Mining Authorizations and Special Mining Business Permits (IUPK) as a substitute for the contract system, both in the form of Contracts of Work (KK) and Coal Mining Work Agreements (PKP2B). Law Number 3 of 2020 has also guaranteed the operation of converting KK and PKP2B into IUPK.

The latest mining law also focuses on adjustments to regional autonomy and good mining practices (Risano 2020). In the contract system, the government has an equal position with investors, but in the licensing system in Law Number 3 of 2020 concerning Mineral and Coal Mining, the government's position is higher than investors, where the government has a position as a regulator. This change in the contract system makes the government's position as a public legal entity and no longer a private legal entity, so that from a constitutional aspect this change is a good step (Rusyuniardi 2013).

The Minerba Law regarding the Capital Investment Law provides investment guarantees and grants authority to the central government to carry out the licensing process for the delegation of authority which is intended to break the convoluted bureaucratic chain. Minerba Law Number 3 of 2020 also regulates permits for mining areas and special mining areas, changes to the form of mining business and eliminates differences in treatment between domestic business entities and business entities with foreign capital.

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Minerba Law No. 3 of 2020 changes minerba permits to centralized permits or centralized permits where absolute licensing is the authority of the central government without the authority of local governments. -higher legislation overrides lower legislation. This principle is also stated in the Explanation of Law Number 12 of 2011 concerning the Formation of Legislation.

The provision of this centralized authority raises orders or problems that must be resolved related to the issue of regional autonomy mandated in the constitution to regional governments (Wicaksono 2012). Starting from the spirit of bureaucracy which was later built by the mineral and coal law, it has the potential to create a superior government (central government) by placing an inferior government (local government) which then inferior institutions do not have authority in regional development and this creates distrust central government to regional governments in the development of a decentralized system that has been mandated by the 1945 Constitution of the Republic of Indonesia.

In addition to this, the authority to issue mining business permits (IUP) has been disharmony with Law Number 23 of 2014 concerning Regional Government which is based on decentralization and regional autonomy. The division of authority based on decentralization is better for the management of permits for business activities, especially mining business activities in direct contact with the local government. This is because the formulation of policies and decisions related to environmental impact issues should involve the participation of the local government, because with the control and permits from the regional government it will run efficiently and directly.

Regulations related to Mining Business Permits (IUP) are reviewed from Law Number 23 of 2014 concerning Regional Government.

The provisions of Article 14 paragraph (1) of Law Number 23 of 2014 concerning Regional Government which reads "the administration of governmental affairs in the forestry, marine, and energy and mineral resources sectors becomes a concurrent affair which is the division of authority between the central government and the provincial regions", provisions Article 14 paragraph (1) stipulates that mining business permits (IUP) are no longer under the authority of district/city governments, but are under the authority of provincial and central government. The transfer of authority to issue mining business permits (IUP), has a juridical impact on the provisions related to this matter, of course it will change, but in practice the old provisions are used until new provisions are made to conform with these regulations.

After the enactment of the Minerba Law Number 3 of 2020, the regulation regarding the authority of Mining Business Permits (IUP) became the authority of the central government, therefore the authority of the regional government in the mining sector has changed, from which initially involved the authority of the provincial regional government and then changed only to the authority of Central government. The abolition of authority from the regional government to the central government can be seen by the abolition of Article 7 which explains the authority of the provincial regional government in the management of minerba mining, the regulation regarding the authority of the regional government in the management of minerba mining is also abolished in Article 8 of Law Number 3 of 2020 and Article 37 The Minerba Law 2020 provides for the abolition of the granting of IUP authority by; (1) the mayor if the IUP Area (WIUP) is in one regency/city area; (2) the governor if the WIUP is located across districts/cities within one province after obtaining a recommendation from the local Regent/Mayor; and (3) minister, if the WIUP is located across provincial areas after obtaining a recommendation from the local governor and regent/mayor.

The enactment of the latest Minerba Law Number 3 of 2020 has had a juridical impact on regional authorities, especially regarding the issuance of mining business permits (IUP). In the second substance, there is a change in the authority of government affairs which raises problems related to Law Number 23 of 2014 due to the disharmony of norms in the two laws regarding the existence of regional government authority, especially in the management of mining business in the Province.

It is feared that the centralized design of business licensing will impact new legal issues, especially changes in the mineral and coal sector. There was an immediate inconsistency between the Regional Government Law and the Mineral and Coal Law, the inconsistency of the two laws gave rise to a conflict of norms, namely regulations that hierarchically have an equal position but have one regulatory substance that is more general than the substance of other regulations.

Then there is the principle of *lex specialist derogat lex generali*, namely the provisions in the Minerba Law that should be applied. In practice, local governments are not given the authority to issue Mining Business Permits (IUP). This is contradictory because the role of local government in optimizing regional potential actually eliminates the authority of local government which has been regulated in Law Number 23 of 2014 concerning Regional Government.

Absolute licensing is the authority of the central government, this is not in line with the principle of *Lex Superior derogat Legi Inferior*, that higher laws and regulations override lower laws and regulations. This principle is in the category of rule of recognition which regulates which rules apply, and is a legal principle in application policy because the division of government authority regulated in the 2020 Minerba Law is more specific than Law Number 23 of 2014 concerning Regional Government (Luhukay & Dewi, 2020). If the principle of *lex specialis derogate legi generalis* can be fulfilled, then its application can resolve the legal conflict that occurred with the two laws regarding the division of government authority in issuing Mining Business Permits (IUP). Regarding the mining business license (IUP) that was issued by the provincial government prior to the issuance of the 2020 Minerba Law, the permit is still valid until the permit period expires. The reasons for not devolving licensing authority from the central government to district/ city regional governments are: (1) There have been many legal irregularities in the licensing sector at the Regency/City Regional Government level, and (2) The low guarantee of legal certainty and investment certainty for investors (Rizkyana Zaffrindra 2015).

In the Constitution of the Republic of Indonesia Article 18 paragraph (5) states that: "Regional governments carry out the widest possible autonomy, except for government affairs which by law are determined as the affairs of the Central Government". Based on regional autonomy, the principle aims to bring the decision-making process closer to the community. The Regional Government Law regulates mining business permits (IUP) which give central government authority to provincial regional governments, but in the Minerba Law, authority is withdrawn to the central government under the President's authority with the aim of cutting the bureaucratic system.

The Mining Business Permit (IUP) arrangement in terms of Law no. 11 of 2020 concerning Job Creation

The Job Creation Law which was passed by the DPR and the President in early October 2020 no longer regulates the provisions contained in the revised Minerba Law as a form of harmonization between laws and regulations. Provisions for the transfer of authority to issue mining business permits (IUP) by the central government remain in Law Number 3 of 2020 as stipulated in the substance of Article 35 paragraph (1) but are only further clarified in the Job

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Creation Law. This is an implication of the existence of Article 4 paragraph (2) of Law Number 3 of 2020 which states that State control over mineral and coal resources is fully exercised by the central government.

Withdrawal of authority by the central government has the potential to conflict with regional autonomy and is not in harmony with Law Number 23 of 2014 concerning Regional Government which regulates regional government authority in issuing mining business permits (IUP). Changes to decentralization in the era of regional autonomy contradicted the mandate of the 1945 Constitution of the Republic of Indonesia itself. The readiness of the central government in terms of licensing authority, guidance and supervision from the HR side, occurs as a result of the enactment of the Omnibus Law method,

It is feared that the withdrawal of authority by the central government as stipulated in the Minerba Law regarding the issuance of mining business permits (IUP) is feared to have an impact on discretionary patterns. The disharmony related to the issuance of mining business permits (IUP) that occurred in Law Number 23 of 2014 concerning Regional Government and Law Number 3 of 2020 concerning Mineral and Coal Mining has horizontal inconsistencies, namely regulations that are hierarchically equal but there are regulations that more specific. In addition, the revocation of the role of local governments that are not in line with the provisions in the Law on Regional Government can eliminate legal certainty in society. Although the process of issuing mining business permits (IUP) is considered more effective,

In granting Mining Business Permits (IUP) the government also needs to pay attention to the risks and the need for a description or geographical conditions directly in the field and the need for an understanding of the various conditions and potentials in the region, this should be balanced with the granting of authority in management and supervision which should be assisted by the local government . Withdrawal of regional government authority can actually be a risk to monitoring the impact of mining business because the central government actually does not really understand in detail the geographical conditions that exist in each region.

The takeover of regional government authority by the central government is also considered to be contrary to the provisions of the 1945 Constitution of the Republic of Indonesia Article 33, namely that the national economy is organized based on the principles of economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental insight, independence, maintaining a balance of progress and national economic unity. But in fact, these provisions make state sovereignty only owned by the central government. In fact, local governments also have sovereignty which is an integral part of the government system. Another impact can also be seen in people's participation in decision-making, because it is increasingly distant and inefficient because all authority lies with the central government.

Harmonization of Mining Business License Arrangements (IUP)

Etymologically, the word harmony comes from the Greek word harmonia, which means to be bound harmoniously and in accordance. The definition of harmonization in the formation of statutory regulations can be interpreted as an effort or an activity to align (make aligned), and adjust (make appropriate) between a statutory regulation and other statutory regulations, both of which are parallel (Sogod, 2011). Legal harmonization aims to show that in the world of law, government policies or arrangements vary so that they can lead to or result in legal disharmony.

Legal harmonization is also used to seek conformity or harmony between laws and regulations so that there is no duplication of existing arrangements (Soegiyono, 2020). Harmonization of Mining Business Permits (IUP) arrangements means seeking harmony between

laws and regulations so that there is no overlap so that national laws and regulations are formed that are harmonious and balanced.

In the context of mineral and coal mining, harmonization of law is used as a guideline for seeking conformity or alignment between the applicable laws and regulations so that there is no duplication of existing regulations in the formation of policies or substances relating to the regulation of mining business permits (IUP). Issuance of mining business permits (IUP) is the authority of the government to permit holders to manage mining business activities. Philosophically, the issuance of permits is intended to improve the country's economy and achieve the welfare and prosperity of the community (Wulandari & Fahrozi, 2021).

Major changes in regulations related to mining business permits (IUP) are shown in the provisions of Article 35 paragraph (1) of Law Number 3 of 2020 concerning Mineral and Coal Mining which states that "Mining business is carried out based on a Business Permit from the Central Government." This latest Minerba Law indicates the takeover of Minerba management authority by the central government and removes the provisions in the matrix of division of concurrent government affairs which divide government affairs in the energy and mineral resources sector including government affairs in the mining sector as referred to in the Appendix to Law No. 23 of 2014 concerning Regional Government.

As previously explained, prior to the ratification of the latest Minerba Law, there was already a norm conflict between Law Number 4 of 2009 and Law Number 23 of 2014 regarding the authority possessed by the central government, provincial governments, and district/city governments in the issuance of mining business permits (IUP). This means that through the provisions of Law Number 3 of 2020, regional governments, both provincial and district/city governments, no longer have the authority to issue mining business permits (IUP). Another polemic regarding the issuance of a mining business permit (IUP) resurfaced when the government and the DPR were discussing the draft Job Creation Bill (RUU). As is well known, the Job Creation Law was constructed as a legal umbrella that would unravel problems in terms of ease of investment, one of which is related to licensing issues. Problems arise when almost all of the substance contained in the Job Creation Law is the substance of the Minerba Law. But in the end, the Job Creation Law which was passed last October did not regulate the provisions contained in the revision of the Minerba Law as a form of harmonization between laws and regulations. Problems arise when almost all of the substance contained in the Job Creation Law is the substance of the Minerba Law. But in the end, the Job Creation Law which was passed last October did not regulate the provisions contained in the revision of the Minerba Law as a form of harmonization between laws and regulations. Problems arise when almost all of the substance contained in the Job Creation Law is the substance of the Minerba Law. But in the end, the Job Creation Law which was passed last October did not regulate the provisions contained in the revision of the Minerba Law as a form of harmonization between laws and regulations.

Based on the description above, the disharmony that occurs is horizontal disharmony where there is inconsistency in the arrangements between laws and regulations governing the authority to issue mining business permits (IUP). The settlement of horizontal disharmony is using the principle. The principle used is the principle of *Lex Specialist Derogat Lex Generali*, which means that specific laws and regulations will override general laws and regulations.

The principle of Lex Specialis Derogat Legi Generali means a law (norm/legal rule) that specifically negates the validity of general law (norm/rule of law), then the provisions used in resolving disharmony related to the issuance of mining business permits (IUP) are by applying the principle of *Lex Specialis Derogat Legi The generalis* and regulations used are the Mineral and

Coal Law. If the *lex specialis derogate legi generalis* principle can be fulfilled, then its application can resolve legal conflicts that occur related to the issuance of Mining Business Permits (IUP).

Takeover of Authority to Issuance of Mining Business Permits by the Central Government

The passage of Law Number 3 of 2020 concerning Mineral and Coal Mining has brought about major changes in the regulation of mineral and coal mining. As is well known, Law Number 3 of 2020 concerning Mineral and Coal Mining indicates a shift in the paradigm of implementing State control over mineral and coal mining by concentrating all authority on the central government, including the authority to issue mining business permits (IUP). Changes related to the issuance of mining business permits (IUP) are shown through the provisions of Article 4 paragraph (2) Jo. Article 35 paragraph (1) of Law Number 3 of 2020 concerning Mineral and Coal Mining which states that "Mining business is carried out based on a Business Permit from the Central Government.

As was known before the passing of the latest Minerba Law, there was a norm conflict or disharmony of legal norms between Law Number 4 of 2009 and Law Number 23 of 2014 regarding the issuance of mining business permits (IUP). This means that through Law Number 3 of 2020, local governments, both provincial and district/city governments, no longer have the authority to issue mining permits (IUP) because in the latest Minerba Law the authority in mining management is only exercised by the central government (Wulandari & Fahrozi, 2021).

However, as for the provisions in Article 35 paragraph (4) of Law Number 3 of 2020 which states that "The Central Government can delegate the authority to grant Business Permits as referred to in paragraph (2) to Provincial Governments in accordance with the provisions of laws and regulations." The provisions of Article 35 indicate the involvement of the local government in issuing mining permits (IUP). It becomes an interesting discussion when the provisions of Article 35 directly use the phrase delegation where in general the provisions in the Act usually use the phrase handed over or so on.

If one looks at the depth of the explanation of Article 35 paragraph (4), it can be seen that the intent of the provisions of the Article is that the delegation of authority for business licensing by the central government to regional governments is carried out in the context of granting People's Mining Permits (IPR) and SIPB (Rock Mining Permits). This means that the provincial government still has the authority to issue mining permits, although the form of permits is limited, namely only issuing People's Mining Permits (IPR) and SIPB (Rock Mining Permits).

Seeing the limitations of local government space in Law Number 3 of 2020 certainly raises questions about how legal benefits are for changing these arrangements. Benefit itself is one of the legal principles of mineral and coal mining as stipulated in Article 2 of Law Number 4 of 2009. The transfer of authority to issue mining business permits (IUP) was carried out to create an efficient mining licensing system, but it cannot be denied that the consequences from the lack of authority possessed by regional governments it can actually give rise to a number of new problems, because basically the relationship between the central government and regional governments which is constructed in regional autonomy aims to bring the decision-making process closer in the formation of public policy (Widjaja, 2009).

After the promulgation of the latest Minerba Law, the provincial government's authority over the issuance of mining business permits (IUP) was removed and transferred to the central government. The change lies in the authority to grant permits, which was originally the authority of the central government and regional governments, now only the authority of the central

government. In connection with the enactment of the Job Creation Law as harmonization of existing laws and regulations regarding the authority to issue mining business permits (IUP), the juridical impact that is felt is that the provisions relating to this matter will of course change, but in practice the provisions used namely the provisions in Law Number 3 of 2020 concerning Mineral and Coal Mining.

Apart from that, there must be legal consequences if there are differences in the authority to issue mining business permits (IUP) in the Minerba Law, the Regional Government Law and the Job Creation Law, including the lack of legal certainty in determining the authority to issue mining business permits (IUP) and ambiguous regulations related to mining business permits among the community. The implications of the legal consequences arising from changes in authority related to Mining Business Permits (IUP) can be seen, among others:

Implications of the negative impact of mineral and coal mining on the region

The impacts arising from mining business activities are certainly felt directly by the regions, but in fact the Regional Government cannot even regulate these mining business activities. If each region is given participation, it will have implications for the impact on the management of business licenses that is more reliable because there is direct control from the local government (Luhukay 2016). This is a logical consequence of not granting authority to the Regional Government in issuing mining business permits (IUP).

Implications for Local Governance

The regional government in carrying out its administration is not in accordance with the principle of decentralization, because the abolition of the regional government's authority regarding the issuance of mining business permits (IUP) will have implications for aspects of regional administration. Regional government powers that do not exist and are eliminated in the Minerba Law cause the regions to depend on the norms and standards set by the central government through government regulatory instruments. Even though the original purpose of passing the regulation was to resolve regulatory disharmony between the central government and regional governments, this actually diminished the spirit of regional autonomy.

Implications for the Environment

The absence of regional government authority has resulted in an increase in illegal mining and it is difficult for local governments to intervene in preventing ecosystem damage and controlling regional mining areas. Enforcement of environmental law is the final link in the regulatory cycle of environmental policy planning, the sequence of which is as follows (Akhmaddhian, 2016): (1) Legislation, (2) standard setting, (3) granting of permission, (4) Application, and (5) Law enforcement.

Of the five cycles, if what matters is benefit, then legal certainty and justice are sacrificed. Therefore, in enforcing environmental law, the three elements, namely certainty, benefit, and justice, must be compromised (Fazari, 2020). This means that all three must receive proportionally balanced attention in handling it. So there is a need for collaboration between the central government and local governments to prevent and mitigate the environmental impacts arising from mining activities (Akhmaddhian, 2016).

From a negative perspective in the political realm

From a political point of view, it also has an impact on the decline in local government performance, because it only continues to depend on decisions made by the central government. This is in addition to producing a decision or policy that takes a long time, it can also be caused by delays in the realization of the decision.

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Based on the explanation above, it can be concluded that it is necessary to have legal certainty related to mining permits in the province as well as harmonization of the regulatory substance of the applicable law in order to provide more comprehensive regulations related to mining management in Indonesia.

DPRD Supervision of Regional Government Related to Overlapping of mining business permits in North Maluku Province.

Licensing is an instrument of administrative law. One of the government authorities in the context of good mining management is to apply mining permits. Permits are only the authority and monopoly of the authorities or the government. There is no other institution outside the government that can grant mining management permits, and this is related to the principle of state power over all natural resources for the benefit of the people's livelihood (Independent, 2022)

Permits are government tools that are preventive juridical in nature and are used as administrative legal instruments to control people's behavior. Because of this, the nature of the function of a permit is preventive, because in the permit instrument it cannot be separated from the orders and obligations that must be obeyed by the permit holder. But permission also functions repressively. Permits can function as instruments to address environmental problems caused by human activities that are inherent in the basis of permits (Independent, 2022).

Mining management, especially in terms of licensing policies in the North Maluku Province area, is carried out by the regional government, the existence of authority in the licensing sector is an attributional authority. For this reason, supervision is one of the main functions attached to the DPRD in addition to the legislative and budgetary functions. Ideally, the aspirations of the people in the field of supervision should be institutionally represented in the DPRD. This oversight function is expected to run effectively according to the expectations of society, regulations and laws that apply. DPRD oversight aims to ensure that regional governments carry out their programs in accordance with the plans and provisions of the applicable laws (Aminuddin, 2015).

Oversight should be one of the most intensive functions a DPRD institution can perform. The supervisory function carried out by the DPRD in the context of being a political institution is a form of political supervision that is more strategic in nature and not technical administrative supervision. This shows that the supervisory function carried out by the DPRD is at the level of policy control in order to create checks and balances. For this reason, the DPRD is equipped with several rights as stipulated in Article 371 of Law Number 13 of 2019 on the Third Amendment to Law Number 17 of 2014 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representative Council and the Regional People's Representative Council., among others right of interpellation, right of inquiry and right of expression (Hasibuan, 2022).

The interpellation right is intended so that the DPRD can request information from regional heads about policies that are troubling and have a broad impact on people's lives. Meanwhile, the right of inquiry is carried out to investigate certain policies from regional heads that are important and strategic and have a broad impact on people's lives and are suspected of contravening laws and regulations. Meanwhile, the right to express an opinion is the right of the DPRD to express an opinion on the Governor's policies or regarding extraordinary events that have occurred in the region accompanied by recommendations for resolution or as a follow-up to the implementation of the right of interpellation and the right of inquiry.

Correlations related to interpellation rights, inquiry rights, and the DPRD's right to express opinions should be a strengthening of the DPRD's supervisory function, where the DPRD has the main function of overseeing and also monitoring the implementation of regional regulations that have been mutually agreed upon with regional leaders, as well as overseeing the use of budgets that have been approved. earlier in the budget. However, since the authority to manage oil and natural gas has become the authority of the center as confirmed in Law Number 9 of 2015 Second Amendment to Law Number 23 of 2014 concerning Regional Government (Hasibuan, 2022). becomes the basis that the supervisory function often becomes a particular political tool and does not become a means of improving democratic and accountable political performance in aspects of mining management in the Regions.

One of them is what happened in North Maluku Province, this area has a fairly good wealth of Natural Resources (SDA), the presence of mining in this area is enough to say so much, the arrival of investors coming to North Maluku Province to manage the natural wealth contained and spread across several districts in North Maluku Province such as East Halmahera, North Halmahera and South Halmahera seem to illustrate that this area has the potential for natural wealth in the mining sector.

Mining issues in North Maluku Province have created legal issues that have had an adverse impact on the economic and investment climate. Mining problems include forest destruction, environmental pollution, land grabbing, illegal mining, permits that are not in accordance with the designation, to problems with land clearing with miners, which then lead to conflicts of interest with the state and local communities.

The fundamental problem lies in the overlapping of Mining Business Permits, namely a situation in which permits are issued by the Regional Government which reaps various kinds of conflict, as data released from the Records of the North Maluku Mining Advocacy Consortium (Katam), namely that there are two companies that are important for problem solved concretely. First, PT Kasih Makmur Abadi (KMA), where there are several Mining Business Permits (IUP) included in the company's territory, namely 13 IUPs proposed by the Governor of North Maluku to be cancelled.

There are two important issues with the issuance of several Production Mining Business Permits (IUP), namely the first overlapping of land with other companies' IUPs. And secondly, procedural issues. This matter is important to be resolved by the North Maluku provincial government. Among them, Block 1 IUP, with permit number 188.45/150.a-545/2010, is land owned by PT Prosperity Pertiwi Mine. Block 2, with permit number 188.45/151.a-545/2010. The land belongs to PT Haltim Mining. And Block 3, with permit number 188.45/153.a-545/2010. Land owned by PT Aminy Brasindo Odhayos and Block 4 with permit number 188.45/152.a-545/2010, land owned by PT Animus Dharma Nusantara. In addition, there is Block II PT Harum Cendana Abadi, which operates in East Halmahera Regency. Where there are still objections from the company PT Diva Mega Sakti.

Apart from these two companies, it is certain that they will no longer have problems, such as PT Arumba Jaya Perkasa, PT. Aneka Niaga Prima, and PT. Smart Marsindo. This is of course based on the results of studies related to overlapping land and the procedures for issuing Production Mining Permits which are proven by ownership of complete documents. The thirteen (13) production IUPs that are currently being debated need to be terminated immediately. This is certainly an important record in order to maintain the good name of the North Maluku Provincial Government in the eyes of investors who invest. Ironically, these permits ignore the existence of

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indigenous peoples. This makes half of the province's land area that becomes mining partly in the territory of indigenous peoples.

In law enforcement efforts in mining management, the supervision aspect of DPRD North Maluku Province is an important control function that contains dimensions of supervision and control over management in the mining sector. According to Versteden, supervision is shown as a means to oversee that lower organs carry out their duties properly and within certain limits in accordance with the policies of the unitary state government, which are needed to ensure the existence of a decentralized unitary state (*gedecentraliseerde eenheidsstaat*). In addition, supervision is also used to provide protection for citizens. Legislation that contradicts the law usually goes hand in hand with violating the rights and interests of citizens (Putra, 2017).

In relation to mining management, the aspect of supervision is very important. The purpose of this supervision is: First, supervision of the government can be seen as a means to supervise lower government organs in carrying out their duties properly and within certain limits in accordance with government policies in mining management.

In line with the views of Paulus Effendi Lotulung (Lotung, 1919). DPRD's control over the government is an effort to avoid mistakes, whether intentional or unintentional, as a preventive effort, or also to correct them if an error has occurred, as a repressive effort. Second, supervision carried out by the government on people, or legal entities, who already have permits to carry out mining activities with the aim of preventing abuse of permits, or actions that exceed the provisions given by the government based on statutory provisions.

CONCLUSION

The authority of the provincial regional government related to mining business licenses is explicitly regulated in the provisions of Article 14 paragraph (1) of Law Number 23 of 2014 concerning Regional Government which reads "the implementation of government affairs in the fields of forestry, maritime affairs, and energy and mineral resources becomes a concurrent matter which is the division of authority between the central government and the provincial regions", the provisions of Article 14 paragraph (1) regulate mining business permits (IUP) which are no longer under the authority of district/city governments, but are under the authority of provincial and central government. The transfer of authority to issue mining business permits (IUP), has a juridical impact on the provisions relating to this matter, of course it will change, but in practice the old provisions are used until there are new provisions that conform to these rules. This is because Law Number 23 of 2014 concerning Regional Government is the technical guideline for drafting regulations regarding changes to the authority to issue mining business permits (IUP). The enactment of the latest Minerba Law Number 3 of 2020 has had a juridical impact on regional authorities, especially regarding the issuance of mining business permits (IUP). In the second substance, there is a change in the authority of government affairs which raises problems related to Law Number 23 of 2014 due to the disharmony of norms in the two laws regarding the existence of regional government authority, especially in the management of mining business in the Province.

The transfer of authority to issue mining business permits (IUP) also has an impact on the authority held by the local government where currently the regional government only has limited authority. The transfer of authority to the central government also has an impact on the rule of law that is not harmonious. As for the legal consequences that are felt by the community as legal subjects against a legal rule that is not harmonious or uncertain, that is, it creates confusion in the community. Legislation makers should pay more attention to the values and principles of

expediency in forming legal rules in the mining sector so that overlapping regulations do not occur, so that there are no more legal consequences for the community if there is disharmony in the mining business permit (IUP) arrangement. On that basis, Oversight should be one of the most intensive functions a DPRD institution can perform. The supervisory function carried out by the DPRD in the context of being a political institution is a form of political supervision that is more strategic in nature and not technical administrative supervision. This shows that the supervisory function carried out by the DPRD is at the level of policy control in order to create checks and balances.

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