



## TRANSFER OF GOVERNMENT AUTHORITY TO MANAGE MINERAL AND COAL MINING AFTER THE ENACTMENT OF OMNIBUS LAW

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**Abstract:** The significant reform in mining law in force in Indonesia is Law No. 3 of 2020 on Mineral and Coal (Minerba), which amends Law No. 4 of 2009, marks a new chapter in the transfer of authority from local and national governments to the Central Government. This study aims to analyze how local government jurisdiction over coal and minerals was transferred to the Central Government and how this affected the implementation of decentralization. Normative judicial research approaches are employed. This study's findings show that the Minerba Law amendment only gives authority to the Central Government, and coal and mineral mining agreements have become centralized. The local Governments only have delegated authority, which does not mean that local Governments have no control over managing coal and mineral mining at all; there is still authority to operate coal and mineral mining in the regions by following directions from the central government. The current mining legislation needs to support solid collaborations between central and local governments to promote sustainability in the future. Because local governments are better informed about mining situations in their regions, the central government must grant authority to control coal and mineral mining. Strict oversight is necessary to prevent local governments from abusing their authority.

**Keywords:** Centralization; Local Government; Mineral and Coal Mining

### 1. Introduction

More detailed and essential rules regarding local government were created following the 2000 passage of the second amendment to the 1945 Constitution.<sup>1</sup> The 1945 Constitution's Article 33, Paragraph 3, states that the state is not an owner acting in the interests of a select few or a group of individuals but rather a manager of natural resources for the benefit of the people. On the other hand, Law No. 23/2014 governs the allocation of powers between the central and local governments, encompassing matters related to forestry, energy, marine, and mineral resources. The law's attachment, letter cc, explicitly assigns the central and provincial governments different responsibilities in energy and natural resources. Decentralization is in place to give regions autonomy in managing natural resources following

<sup>1</sup> Emilda Yofita and Erwin Syahrudin, "Central Government Relations with Regions in Mineral and Coal Mining Policy," Palar 06, no. 2 (2020): 191–203.



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The 1945 Constitution's Article 33 Paragraph 3 states that the state is not an owner acting in the interests of a select few or a group of individuals but rather a manager of natural resources for the benefit of the people. On the other hand, Law No. 23/2014 governs the allocation of powers between the central and local governments, encompassing matters related to forestry, energy, marine, and mineral resources. The law's attachment, letter cc, explicitly assigns the central and provincial governments different responsibilities in energy and natural resources. Decentralization is in place to give regions autonomy in managing natural resources by local demands and conditions, even if local government authority is now limited to the provincial government.

Law Number 3/2020, which amends the mineral and coal mining laws, was ratified by President Joko Widodo on June 10, 2020. One of the many things that have changed under the new coal and mineral law is the state's management authority over coal and minerals. When referring to Law Number 4/2009 Article 4, paragraph (2) states that "Mineral and coal ownership by the state as referred to in paragraph (1) is organized by the Government and regional governments." However, Article 4 paragraph (2) is altered in Minerba Law No. 3/2020. saw a modification to Law Number 3/2020 Article 4 paragraph (2), which states that "the Central Government carries out the State's Control over Minerals and Coal by the provisions of this Law," the national government will primarily assume the responsibility of local governments with the enactment of Minerba Law No. 3/2020, which transfers the authority of local governments to license and oversee mining areas to the central government.<sup>3</sup>

After the enactment of Law No.3/2020, the local government's authority over managing coal and mineral mining was transferred to the central government. This change had a significant impact on the dynamics of the regulation of coal and mineral management in Indonesia, and there are still many issues about the changes made to the Mineral and Coal Law that need to be discussed. Law No.3/2020 amendments have wide-ranging effects on the economy, society, and environment in regions that produce coal and minerals.

Indonesia enters a new phase of mining regulation with Law No.3/2020, which amends Law No.4/2009 on Mineral and Coal (Minerba). Only the Central government is granted authority under the new Mining Law. <sup>4</sup>Both the 1945 Constitution and the Local Government Law contradict the centralization of mining regulation. After the enactment of Law No.3/2020, there are still pros and cons, but those who are the changes feel it is more precise and

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<sup>2</sup> Lineke Baura, Marthinus Johannes Saptanno, and Jemmy Jeffrey Pietersz, "Regional Government Authority in Managing Coal Mineral Mining," *PATTIMURA Legal Journal* 1, no. 3 (2022): 167–88, <https://doi.org/10.47268/pela.v1i3.6753>.

<sup>3</sup> Eka Utami, Novita. "Centralization of Regional Government Authority in Mining Licensing After the Implementation of the Mineral and Coal Law." *Lex Renaissance Journal* 8, no. 2 (2023): 360–78. <https://doi.org/10.20885/jlr.vol8.iss2.art10>.

<sup>4</sup> Jailani and Siti Fatimah, "Transfer of Authority for Mining Business Licensing in the Mineral and Coal Law from a Decentralization Perspective," *Tana Mana Journal* 4, no. 1 (2023): 45–51, <https://ojs.staialfurqan.ac.id/jtm/>.

appropriate. However, the cons think that the changes to the Minerba Law only benefit major capital owners, so they need to be evaluated. In addition, the formation was too fast and did not involve many people. Because Law No. 3/2020, which regulates coal and minerals, is thought to contradict constitutionalism, its reform is still up for disagreement. Due to the potential for conflicts between laws and regulations, this goes against the fundamentals of constitutionalism. Furthermore, this law's amendment is believed to go against several fundamental values outlined in the Constitution.

Many fundamental constitutional changes need to be harmonized, both in terms of legislation and institutions, after the shift in the legal politics of local government, as stated in Article 18 of the 1945 Constitution, from a centralized to a decentralized system. However, in practice, legislation and institutions have not been well related to each other, so it seems "half-hearted autonomy, if this is allowed to be prolonged, this will cause legal uncertainty which ultimately will not achieve a sense for justice and the welfare of the people."<sup>5</sup>

## 2. Research Method

This research uses both a legal research approach and a normative juridical study approach. It follows the convention of conducting a literature review. The legislation, books, journals, scholarly news media, and internet sources were the foundation for this study's literature review. The analysis's primary focus is on how, following the passage of Law No. 3/2020, the national government took over the management of coal and mineral extraction from the local government.

## 3. Discussion

Law Number 4/2009 introduces a new governance system for coal and mineral mining. Following the passage of this legislation, there is no longer a distinction in the authority to oversee mining according to the type of mining material. On the other hand, the authority is currently categorized according to the level of government, which includes the district/city government, province local government, and central government. Articles 7 and 8 of Law Number 4 of 2009, which specifically address local government authority, explain that local governments, including province and district/city governments, have the power to manage coal and mineral resources in their respective territories. The power given includes establishing local laws, issuing licenses, and providing direction and reclamation authority. Following the passage of Law Number 23/2014 addressing local Government, there was a significant shift in the development of mining law in the various areas. Previously, the national government took up and gave the governor control over the authority held by the district and local governments. By changing Law Number 4/2009, the province government will have more jurisdiction to manage coal and mineral extraction, substituting the district/city government. Revisions must be made to some articles that grant authority to the district/city government.

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<sup>5</sup> Elita Rahmi, "The Tug of War Between Decentralization and Centralization of Regional Government Authority in Land Affairs," Law Journal, 2009..

Therefore, the norms clash between Law No. 4/2009 and Law No. 23/2014 can be avoided. The two laws must be correlated because local government authority and technical implementation in the field of government are two things that are interconnected and important in local government. Revisions to Law No. 4/2009, which should have led to harmonized regulation of Law No.23/2014, have weakened decentralization in Indonesia. The government has enacted Law No.3/2020 on Revisions of Law No. 4/2009 on Mineral and Coal Mining. This law changes Indonesia's legal system for mineral and coal mining. On the one hand, this law provides legal security for work holders' licenses and contracts. On the other side, it decreased the function of local governments. The central government took the mineral and coal mining management role away from local governments.<sup>6</sup>

According to the statement, decentralization in Indonesia has been weakened by the amendment of Law No. 4/2009, intended to result in the harmonization of Law No. 23/2014 rules. This is a crucial argument because it suggests that there may be an unequal distribution of authority and influence between the central and local governments, which could cause problems with governance and conflicts of interest. There has been a shift from decentralization to centralization in the legal framework governing coal and mineral mining in Indonesia, with the central government gaining increasing authority over mining operations. This affects governance, power distribution among the several government tiers, and regional autonomy.

### **3.1 Coal and Mineral Mining Management Authority Transition from Local Government to Central Government.**

Legal deviations in the licensing sector at the position of the Regency/City government and lack of assurance of legal certainty and investment certainty for investors are the leading causes of the central government's mistrust of local governments.<sup>7</sup> Mining cases that occur cause losses to the state, boundary conflicts, environmental damage such as erosion and drought, and casualties. State loss data amounted to Rp. 4.3 trillion in 2018 (the case of the Governor of Southeast Sulawesi) and Rp. 5.8 trillion and US \$ 711 thousand in 2019 (the case of the Regent of East Kotawaringin). Environmental damage, such as pollution, landscape damage, the emergence of mining pits, and casualties, the latest data as of November 2018, recorded that 31 (thirty-one) lives have been lost. The cases that have occurred further confirm that the granting of mining licenses has not been carried out transparently and accountably because the granting of permits is not through auction and the granting of licenses does not go through the correct due diligence/feasibility stage, where in the feasibility test, administrative, technical, financial and environmental requirements are imposed.<sup>8</sup>

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<sup>6</sup> Lineke Baura, Marthinus Johannes Saptanno, and Jemmy Jeffrey Pietersz, "Regional Government Authority in Managing Coal Mineral Mining," *PATTIMURA Legal Journal* 1, no. 3 (2022): 167–88, <https://doi.org/10.47268/pela.v1i3.6753>

<sup>7</sup> Roni Sulistyanto Luhukay and Rachmasari Kusuma Dewi, "Centralization of Business Licensing Authority by the Central Government in the Draft Law on Minerals and Coal," *Al-'Adl* 13, no. 2 (2020): 265, <https://doi.org/10.31332/aladl.v13i2.1861>.

<sup>8</sup> Transparency International Indonesia, "Avoid Collusion and Corruption in Mining Business Licensing: Apply Strict Due Diligence Tests for Mining Permit Applicants," *Transparency International Indonesia*, 2019, <https://www.transparency.or.id/berita/avoid-collusion-and-corruption-in-mining-business-licensing-apply-strict-due-diligence-tests-for-mining-permit-applicants>

The gap between theorized and actual mining licensing procedures in the field causes vulnerability. However, contextual factors also play a role in mining licensing. These deficiencies leave us vulnerable to inadequate systems to ensure administrative competency requirements and inefficient processes to confirm applicants' financial, administrative, and technical capabilities. The corruption and non-compliance related to mining business permit procedures show how little verification there is in these procedures. Corrupt practices have become ingrained due to inadequate mining governance in Indonesia.<sup>9</sup>

It is considered necessary by the central government to assume licensing authority from local governments to guarantee a more transparent, accountable, and compliant licensing process that conforms with relevant legal and environmental criteria. Reforms in the licensing system, including greater openness, open tendering for mining permits, and enhanced due diligence encompassing administrative, technical, financial, and environmental aspects, are required to overcome these problems. The central government took over local governments' management authority over mineral and coal mining due to the volume of cases that arose in handling these mining activities. This move aimed to increase efficiency and address shortcomings in the local government's management of these activities.

Law No. 3/2020 eliminates the authority of local governments to carry out mineral and coal mining operations; this overrides the principle of decentralization and leads to centralized power where all authorities to control mineral and coal mining, namely policy, regulation, management, supervision, and management, are regulated by the central government which can affect the relationship between the central government and local governments as long as this law is in effect. After the enactment of Law No. 3/2020, there were many material tests against this law, namely case register No. 60/PUU XVIII/2020, case No. 59/PUU-XVIII/2020, case No. 64/PUU-XVIII/2020, case 37/PUU-XIX/2021, case 37/PUU-XIX/2021, case 37/PUU-XVIII/2021, and case 37/PUU-XVIII/2021.<sup>10</sup>

A new development in the company license for coal and mineral mining is Law No. 3/2020. Law No. 3/2020 provisions transfer licensing from the purview of officials to government agencies. The central government's control over mining business licenses is governed by Law No. 3/2020. It can be concluded from these regulatory modifications that governors, regents, and mayors have no control over mining licenses. Based on these regulatory changes, it can be said that governors and regents/mayors do not have authority over mining licenses. However, the provincial and local government, when exercising mining licensing authority carried out under the provisions of Law No. 4/2009 concerning Coal and Mineral Mining, is still valid for a maximum period of 6 (6) months calculated from Law No. 3/2020 entered into force or until the issuance of its implementing regulations. With this, it is inevitable that the

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<https://transparansi.id/hindari-kolusi-dan-kourkan-perizinan-usaha-mining-applies-strict-due-test-to-mining-permit-applicants/>.

<sup>9</sup> Karunia F. Macdonald, "ASSESSMENT OF CORRUPTION RISK IN GRANTING MINING BUSINESS LICENSES IN INDONESIA," Transparency International Indonesia, 2017, [https://transparency.org.au/wp-content/uploads/2019/10/Indonesia-Report\\_Bahasa.pdf](https://transparency.org.au/wp-content/uploads/2019/10/Indonesia-Report_Bahasa.pdf).

<sup>10</sup> Muhammad Adhe Agassi, Rikki Hendrawan, and Arkan Aziz Mubarak, "Political Legal Analysis of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining," *Multidisciplinary Scientific Journal* 1, no. 11 (2023): 397–412, <https://doi.org/10.5281/zenodo.10282684>.

local government at the district/city level no longer has the authority regarding mining licensing.

Article 169C letter g of Law No. 3/2020 states that, unless otherwise specified in this law, all local government authorities concerning mineral and coal mining contained in Law No. 4/2009 and other laws governing the authority of the local government in the mineral and coal mining sector shall be construed as the authority of the central government. The scope of mining business licenses owned by the central government consists of mining business licenses, special mining business licenses, special mining business licenses as Continuation of Operations, Contracts/agreements, People's mining licenses, Rock mining licenses, assignment licenses, Transportation and Sales licenses, Mining service business licenses; and Mining business licenses for Sales. Of all the licenses whose authority is held by the central government, local governments at the provincial level can issue mining business licenses if they receive delegation from the central government as regulated in laws and regulations.<sup>11</sup>

According to Article 8 of Law No. 4/2009, the Central Government, Provincial, local government, and district/city local government have equal authority over mining for minerals and coal. Consequently, the local government oversees the mining industry, resolves conflicts, and offers assistance at the mine site. However, since Law No. 3/2020 was passed, the regional district or city administration cannot help those who suffer from the actions of mining firms, such as when there are issues with land disputes or environmental damage. For the local community to protest mining operations in their region, they must notify either the central or provincial governments. In actuality, most mining sites are found in the isolated areas. Regarding good governance, regulations are meaningless since residents in mining areas are powerless to stop mining companies from destroying the environment.<sup>12</sup>

With the passage of Law No.3/2020, the central government now has more authority over local governments' licensing programs due to the enactment of Law No.3/2020 regulating Mineral and Coal Mining. The central government is now in charge of overseeing coal and minerals under the jurisdiction of mining management. Even the new Minerba Law has eliminated Articles 7 and 8. This indicates that the structure of centralized licensing is the politics of mining legislation as it is applied. Article 67, paragraph 1, upholds the minister's jurisdiction to award community mining licenses to individuals, local cooperatives, and their members. Following the enactment of Minerba Law No. 3/2020, communal mining has come into question. The mayor or regent no longer has the power to choose the people's mining territory. The people's mining area is not legally consolidated under the new Mining Law. It indicates that the House of Representatives is consulted before the Central Government determines the Mining Area, which the Provincial Government formerly defined in line with its jurisdiction. Under these conditions, the Provincial Government used to be able to explain the People's Mining Area. Its only role was to advise the Central Government on how to map

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<sup>11</sup> Zainal Arifin Hoesein, *MINING LAW: Shifting Central and Regional Authority in Granting Coal Mineral Mining Permits*, —Ed. 1, (Depok: PT RajaGrafindo Persadas, n.d.).

<sup>12</sup>Basthotan Milka Gumilang, Sherly Oktariani, and Tari Suswinda, "Analysis of Law No. 3 of 2020 which has the potential to harm society and the environment based on the principle of Sustainable Development Goals," *Lex Generalis Law Journal* 3, no. 11 (2022): 871–91, <https://doi.org/10.56370/jhlg.v3i11.336>.

it after conferring with the House of Representatives. The central government has reduced or revoked some of the strategic roles granted local governments under Articles 7 and 8 of the Minerba Law No. 4 /2009.<sup>13</sup>

The transfer of responsibility has generated a lot of opposition from the community, who consider that the transfer of commitment from the local government to the central government is against constitutional values and the spirit of reform and opens up vast opportunities for political and business oligarchies related to investment licenses, so it is considered only to favor the interests of mining entrepreneurs. Rejection of Law Number 3/2020 can be seen in the material test conducted by several parties from various circles of society to the Constitutional Court.<sup>14</sup>

### 3.2 The Possibility of Mineral and Coal Mining Management Authority Returning to Local Government.

To improve mineral and coal mining management policy and governance, centralized mining management and licensing aim to reduce the misuse of ecological licenses often granted arbitrarily. It also serves as a preventative measure against natural disasters and is designed to make central monitoring of the natural resource utilization in the Mineral and Coal subsector easier. In actuality, though, the effectiveness of this centralized method is frequently disputed. Several studies have shown that the centralization of mineral and coal mining management authority can reduce the involvement and participation of local governments and communities, which can impact natural resource management. In the Indonesian context, the principle of regional autonomy, as regulated in Article 18A paragraph (2) of the 1945 Constitution, emphasizes the importance of local government involvement in natural resource management, including mining. Therefore, while Law No. 3/2020 has good intentions to improve mining policy and governance, critiques of its effectiveness show that there is still room for improvement, especially regarding local government and community involvement in mining management.<sup>15</sup>

Franky Butar-Butar, Chairperson of the Center for Human Rights Law Studies at Airlangga University, argues that central government mining management is a setback. This is because it will limit, even eliminate, access to information and participation from the community and local governments and harbor distrust of the people in the regions and local governments toward the central government.<sup>16</sup> Director Publish What You Pay Maryati Abdullah believes that centralization does not promote the principles of our constitution. When permits in the

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<sup>13</sup>Derita Prapti Rahayu and Faisal Faisal, "The Existence of Community Mining After the Implementation of Changes to the Law Concerning Mineral and Coal Mining," *Journal of Indonesian Legal Development* 3, no. 3 (2021): 337–53, <https://doi.org/10.14710/jphi.v3i3.337-353>.

<sup>14</sup>Rika Putri Wulandari and Muhammad Helmi Fahrozi, "Legal Politics of Transferring Mining Permits to the Central Government Regarding Regional Government Authority," *SALAM: Syar-I Social and Cultural Journal* 8, no. 1 (2021): 191–206, <https://doi.org/10.15408/sjsbs.v8i1.19445>.

<sup>15</sup>Luhukay and Dewi, "Centralization of Business Licensing Authority by the Central Government in the Draft Mineral and Coal Law."

<sup>16</sup>Utami Argawati, "Expert: Mining Management by the Central Government Is a Setback," *Constitutional Court of the Republic of Indonesia*, 2022, <https://www.mkri.id/index.php?page=web.Berita&id=17999&menu=2>.

natural resources sector are granted centrally, local economic responsibility declines, and independence decreases. This economic centralization will result in increased illegal mining.<sup>17</sup>

The previously mentioned expert perceptions indicate that local governments have an essential authority when it concerns managing coal and mineral mining. Because they are located near the mining area, local governments have more supervisory power than the central government. Therefore, it can be more efficient for the local government to oversee and control mining operations. Risks associated with centralizing mining management include loss of local government oversight of mining operations, which can lead to environmental impact and a reduction in regional revenue.

The topic of regional authorization and decentralization, which is primarily concerned with the coordination and relationship between the national center and the regions based on the assumption of multiple authorities and the roles of local governments in the management of the mineral and coal mining sector, ought to be taken into consideration by Law No. 3/2020. This includes the power to provide mining business permits and licenses and the ability to oversee and direct mining operations and conduct reserve and mining inventories. This must be considered when it comes to the involvement and role that regions have in overseeing mining operations, particularly when implementing the principles of good mining practices. Then, to pay attention to and make the best use of mineral and coal resources for local development, challenges that need to be faced and anticipated for the future include a sense of ownership and regional responsibility for mining management in their respective regions. Government regulation No. 96 of 2021, which implements Law No. 3/2020, does not mention the function of local governments either. The transfer of centralized mineral and coal mining authority in the central government contradicts the concept of decentralization of regional autonomy that we apply. Decentralization is one of the joints in a unitary state of a democratic state. For the Indonesian people, the need for decentralization is intended to improve public services in the mineral and coal mining sector, which will affect the acceleration of community welfare.<sup>18</sup>

Several problems arise with the limited involvement of local governments in the management of coal and mineral mining because, in essence, the connection between the central government and local governments, which is formed within regional authorities, aims to facilitate decision-making in the formulation of public policies. Policies should be implemented so that community welfare and justice can be achieved and the goals of providing services can be achieved efficiently. To ensure sustainable development in the future, existing mining laws must seek to establish a strong and complementary connection between the central and local governments rather than separating the two.<sup>19</sup>

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<sup>17</sup> Aida Mardatilah, "There are Dozens of Unconstitutional Articles in the Job Creation Bill," Law Online, 2020, <https://www.hukumonline.com/berita/a/ada-puluhan-pasal-inkonstitusional-di-ruu-buat-kerja-lt5e6107671d521/?page=2#!>

<sup>18</sup> Baura, Saptanno, and Pietersz, "Regional Government Authority in Coal Mineral Mining Management."

<sup>19</sup> Wulandari and Fahrozi, "Legal Politics of Transferring Mining Permits to the Central Government Regarding Regional Government Authority."



The development of mineral and coal mining is an essential aspect of the local economies that should be administered with the principles of decentralization to ensure that the benefits of economic and social elements can be felt directly by local communities. Therefore, the local government needs attributive authorities to regulate this mining to adjust to the specific needs and conditions of the region. Delegative authorities by the central government to the provincial government should be strengthened by providing greater autonomy to local governments in making strategic mining decisions to encourage regional economic growth, improve community welfare, and enhance the implementation of decentralization within the Unitary State of the Republic of Indonesia. This is inseparable from the need for a good connection between the central and local governments. The central government must establish clear and detailed regulations regarding the procedures and limits of authority granted to local governments. This includes guidelines for the prevention of conflicts of interest and corruption. Then, local governments should be required to submit periodic reports on mining activities, including financial and environmental aspects, to the central government. The central government must conduct regular evaluations of mining management by local governments to ensure compliance with established regulations and standards.

#### 4. Conclusion

As a result of the discussion that was had, it can be concluded that Law Number 3 2020 concerning Minerals and Coal, which transferred the responsibility of local governments to the central government for regulating mineral and coal mining, changed the authority that the local government had, which was previously attributive to delegated authority. Now, the provincial region only exercises the authority that the central government has entrusted. The local government's authority over managing coal and mineral mines is still under this delegation system; it is just more restricted than before the passage of Law No. 3/2020, which required local governments to wait for directives from the national government before using their authority. However, local governments still have some control over managing coal and mineral mines. Due to this delegation system, it's just more restricted than before the passage of Law No. 3/2020, when local governments had to wait for orders from the central government to use their authority. Furthermore, the regulatory changes in the Minerba Law, which only grants authority to the Provincial Government through delegation from the Central Government, indirectly demonstrate a centralized government system, which weakens the implementation of decentralization within the Republic of Indonesia's Unitary State. To promote sustainable development in the future, the current mining legislation should foster a robust and complementary partnership between the national and local levels of government.

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