



COMPARISON OF MINERAL AND COAL REGULATION BASED ON MINING LAW 2009 & OMNIBUS LAW 2020

Rizki Mufatika¹, Nyimas R.Nabilla², Nabilla P.Edwin³, Kefin K. Purba⁴, Nadzwan F.Ramadhan⁵

¹Faculty of Law, Universitas Jambi, Indonesia. E-mail: rizkimufatika@gmail.com

²Faculty of Law, Universitas Jambi, Indonesia. E-mail: nyimasratri@gmail.com

³Faculty of Law, Universitas Jambi, Indonesia. E-mail: nabillaputriedwin@gmail.com

⁴Faculty of Law, Universitas Jambi, Indonesia. E-mail: kefinkurniawan123@gmail.com

⁵Faculty of Law, Universitas Jambi, Indonesia. E-mail: nadzwanf@gmail.com

Abstract: The purpose of this research is to criticize mining as discussed in this journal, which is still not under the Indonesian legal system and the aim of the law itself, namely to provide justice, certainty, and benefits for the community and the criticism given is based on measuring the two existing regulations in the form of similarities and differences created by these two regulations. This research also emphasizes several comparisons of previous policies with the latest policies from the government itself related to mining, as discussed in this journal, in terms of requirements, authority, and supervision. Regarding mining regulations as regulated in Law Number Four 2009, they are still unable to address developments, problems, and legal needs in mining operations discussed in this journal. Hence, a review is necessary to make this happen and provide increased added value. Or downstream. However, with the implementation of Law Number Three of 2020, many mines have also been allowed to operate without permits. The previous laws regarding the mining industry are considered valid, but in the case of the revision of the Mining Act, the implementation process of the Mining Act is also regarded as inadequate.

Keywords: Mining Law; Omnibus Law; Regulation

1. Introduction

Mining, as discussed in this journal, is a vital form of development and progress for Indonesian society. The mining business, which involves dredging or excavation activities to exploit natural resources in the form of minerals and coal, has the potential to bring significant benefits to the community. These benefits can be realized through the responsible and optimal use of these resources, leading to increased prosperity. Mining regions, which are land areas with mineral and coal potential, are an integral part of national regional planning. Mining Business Areas are granted to holders, including private companies, state-owned enterprises, regional enterprises, cooperatives, and private individuals, further highlighting the potential for widespread prosperity.

Government policies in mining are provided by the Minister, Governor, or Regent/Mayor based on their authority following requests submitted by each legal subject, such as business entities, cooperatives, or individuals. Specifically for mining, as discussed in this journal, there are several permits based on the current regulations. The process of obtaining them is quite complicated: Mining Business Permit, Special Mining Business Permit, People's Mining Business Permit, Special Mining Business Permit as a continuation of the work contract, Rock Mining Permit, Service Business Permit Mining, Transport and Sales Permits.



Currently, the government has the authority to determine mineral and coal policies, establish regulations, determine mining areas, determine mining business permit areas, issue permits, provide guidance and supervision of mining as discussed in this journal, determine production, marketing, utilization, cooperation, partnership policies, manage mining inspectors and managing mining supervisory officials, this is the authority of the central government and is enforced nationally as stated in the latest regulatory provisions coordinated by the central government together with the central legislative body.

The current legal framework during development was four mining, as discussed in this journal, and regulations were implemented in 2009. It still cannot solve the problems regarding mines and coal mining. Many cases were recorded, such as overlapping and the number of permits being too large and uncontrolled, synchronization of related legislation, environmental pollution, land use permits, criminalization, and complaints from communities around mining areas regarding mining company operations¹. From an ecological aspect, the law is starting to accommodate several environmental problems, although the environment is still being neglected. Based on this, the government considers it necessary to make improvements to Law Number Four of 2009 concerning Mineral and Coal Mining to regulate legal certainty in mining, as discussed in this journal, as well as management and exploitation activities for business actors in the mineral and coal sector².

In recent years, the Mining and Coal Production Law Number Four of 2009 has been improved by Law Number Three of 2020³. The changes include regulations on the concept of legal mining areas, regulation of mines and coal, and strengthening the role of state-owned companies in the mining sector and coal. In addition, there is an increase in environmental management in the mining industry, including reclamation and post-mining use. Comparing the two laws is essential in understanding the changes that have occurred, such as the new license concept and the strengthening of environmental law, as well as their similarities, such as the goals of benefiting the country and the strengthening of environmental law. Health. Peoples.

2. Research Method

The research method used in this research is normative law research, which focuses on **positive** legal norms and is in the form of a comparative study of mineral and coal regulations based on Law Number Four of 2009 and Law Number Three of 2020. The samples of this research are official documents and regulations related to Law Number Four of 2009 and Law Number Three of 2020. Data collection techniques consist of literature studies, namely analyzing official documents and related rules and then analyzing the content and structure of official associated

¹ Zaqiu Rahman, "Perubahan Undang-Undang Pertambangan Mineral Dan Batubara; Upaya Untuk Menata Kembali Pengelolaan Sumberdaya Alam Indonesia," *Jurnal RechtsVinding*, 2015, [http://rechtsvinding.bphn.go.id/jurnal_online/Urgensi Perubahan UU Minerba 22 Mei 2015 kirim.pdf](http://rechtsvinding.bphn.go.id/jurnal_online/Urgensi%20Perubahan%20UU%20Minerba%2022%20Mei%202015%20kirim.pdf).

² Dewi Anggraeni Sianipar N, "Implikasi UU No. 3 Tahun 2020 Mengenai Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara Terhadap Pertanggungjawaban Perusahaan Pertambangan Terhadap Kerusakan Lingkungan Hidup," 2020, 4–5, <https://e-journal.uajy.ac.id/23777/>.

³ *Undang-Undang Republik Indonesia Nomor 23 Tahun 2014 tentang Pertambangan Rakyat*. 2014

documents and regulations⁴. In this study, data analysis was carried out by analyzing the differences and similarities between Law Number Four of 2009 and Law Number Three of 2020 and the implications of changes in Law Number Three of 2020 for mineral and coal mining management.

3. Discussion

The Business Management Board issues the current mining license. This is according to the regulations of the Ministry of Energy and Mineral Resources (Ministry of Energy and Mineral Resources) regarding amendments to the Ministry of Energy and Mineral Resources Regulation No. 2501. Decision No. 25 of 2015 on licensing of energy and mineral resources. License. Coal industry in the context of providing one-stop services to people. The Central Government has established a license for mining operating license areas, particularly mining operating license areas and human mining zones—local Government Organization Small Scale Mining Permit Licensing. Industry Mining authority is divided into central government, state, and local/municipal government.

3.1 Policy Comparison After the Enactment of Law Number Three of 2020 Against Law Number Four of 2009

We compare the changes between Law Number Four of 2009, the previous policy on Mineral and Coal mining, and Law Number Three of 2020, a new policy on amendments to Law Number Four of 2009. The comparison comes from licensing, authority, and supervision factors.

Factor	Law Number Four of 2009 on Mineral and Coal Mining	Law Number Three of 2020 on Mineral and Coal Mining
Licensing	<ul style="list-style-type: none"> ▪ The central government organizes licensing for Mining Business License Areas, Special Mining Business License Areas, and People's Mining Areas. ▪ The local government organizes licensing for small-scale mining business licenses. 	<ul style="list-style-type: none"> ▪ The central government carries out all mining licenses through the Ministry of Energy and Mineral Resources. ▪ Local governments no longer have the authority to issue small-scale.
Authority	<ul style="list-style-type: none"> ▪ Mining authority is divided between the central, provincial, district, and city governments. ▪ Local governments have considerable authority in issuing mining business licenses, especially for mining in their area. 	<ul style="list-style-type: none"> ▪ Most of the authority previously held by local governments is centralized in the central government. ▪ The central government is responsible for issuing and

⁴ Nanda Dwi Rizkia, *METODE PENELITIAN HUKUM (Normatif Dan Empiris)*, ed. Elan Jaelani (Jawa Barat: Widiana Media Utama, 2018).

		<p>managing other special mining licenses.</p> <ul style="list-style-type: none"> Local governments only have a role in mining supervision and facilitation that is not directly related to permit issuance.
Surveillance	<ul style="list-style-type: none"> Local governments have significant responsibilities in managing and surveilling mining activities in their areas. Joint surveillance between the central and local governments. 	<ul style="list-style-type: none"> The central government has complete control over mining management and supervision. Local governments play a more significant role in supporting mining management by the central government, such as providing recommendations and field supervision.

The table shows that the government's authority has changed in terms of licensing and supervision. After the enactment of Law Number Three of 2020, the authority over government management and supervision is the central government's authority, namely the Minister of Energy and Mineral Resources. In this direction, local governments only have the authority to provide recommendations and field supervision.

3.2 Comparison of mining permits

Comparing mining licenses under Law Number Four of 2009 and Law Number Three of 2020 clarifies what is meant by "license type." The central government, specifically the Minister of Energy and Mineral Resources, is authorized to grant licenses to conduct mining. Law Number Four of 2009 stipulates that the central government, specifically the Minister of Energy and Mineral Resources, has the authority to grant permits for mining in provincial, municipal, and coastal areas within 12 miles of the coast. This area is also known as the Mining Business License Area.

Governors in one area, district, or city within a 4-to 12-mile maritime radius and regents or mayors from a town, city, or distinct region within a 4-mile maritime radius. Nevertheless, the state government's authority to grant mining permits was taken away on April 4, 2009, with the passing of Law Number Four Amendment to Law Number Three of 2020. As a result, only the federal government or the Minister of Energy and Mineral Resources can provide mining business permits.

As per Law Number Four of 2009, the mining business license is divided into two stages: the research level, which covers general surveys, feasibility studies, and exploration, and the second production level, which covers mining, building, processing, refining, transportation, and sales. However, Law Number Three of 2020, which dealt with the Production Operation and Exploration Mining Business License, was repealed.

A Special Mining Business License is a mining business license in the field of community mining business licenses. After this, it is referred to as the Special Mining Business License Area for Special Mining Business License or Special Mining Business License Area holders. A Special Mining Business License is issued by the Minister of Energy and Mineral Resources, mainly for regional interests. The Special Mining Business License holder can prioritize mining of other minerals within the Special Mining Business License Area, or if they are not interested, they can request protection for other minerals by submitting a new Special Mining Business License application to the Minister. Provisions regarding Special Mining Business License investigations and Production and Operation Special Mining Business License, two levels of Special Mining Business License, were also removed from Law Number Three of 2020⁵.

A people's mining permit is given to conduct mining business in people's mining areas with limited space and capital. Article 67 of the Mineral and Coal Mining Law concerning intellectual property licensing has been amended, but it is not on the right. Under Law Number Four of 2009, after the applicant applies the regent or mayor, the regent or mayor will ratify the property permit. Following the issuance of Law Number Three of 2020 concerning amendments to Law Number Four of 2020, Based on Law Number Four of 2009, at the request of the Minister of Energy and Mineral Resources, the Minister granted permits for licensing in the property sector. In the new mining and coal mining law regarding the procedures and conditions for inheritance permits previously stipulated in provincial and city regional regulations, these procedures and conditions have been replaced by government regulations. Several other laws regarding granting property rights have also changed legal status, previously being the decision of the city or municipal government and now being the decision of the central government, the Minister of Energy and Mineral Resources.

The issuance period of the People's Mining License is no longer limited to a maximum of 5 years, but the license is valid for ten years and can be extended twice for five years. As a result, intellectual property licensing has developed over a long period. However, the licensing side focuses on the ministry. The limited access to capital and knowledge of small-scale artisanal miners makes it difficult for communities to participate in mining in the areas where they live⁶.

In the new mining policy of Mineral and Coal, Article 1 is added to the license, namely Article 1(13b), which treats Special Mining Business License as a continuation of contract or agreement operations. A Special Mining Business License as a continuation of a contract or agreement is an activity license issued as a continuation after the implementation of the contract of work or coal mining concession work agreement. Holders of Contracts of Work and Coal Mining Concession Agreements of Work whose operating period has expired but who have not received a Special Mining Business License extension can continue to run business licenses without an auction system. License extensions are not only granted for the benefit of mining companies but are also used to strengthen state control over the mining sector.

⁵ Nur Fadilah Al Idrus, "Dampak Politik Hukum Dan Respon Masyarakat Atas Pembaharuan Undang-Undang Minerba," *Jurnal Penegakan Hukum Dan Keadilan* 3, no. 2 (2022): 114–27, <https://doi.org/10.18196/jphk.v3i2.14898>.

⁶ Friskilia Junisa et al., "EFEKTIVITAS UNDANG-UNDANG NOMOR 3 TAHUN 2020 DALAM PEMBERIAN IZIN USAHA PERTAMBANGAN MINERAL DI INDONESIA 1 Oleh," n.d., <https://www.kompas.com/properti/read/2022/01/>.

Granting a license extension will bring additional revenue to the region in the form of a portion of the natural resource fund, which is 6% of the mining company's net profit⁷.

A rock mining license is granted to conduct certain mining activities or for specific purposes. This rock mining license complements the new mining discussed in this journal business. The minister appoints rock mining licenses based on the application of regional entrepreneurs, private business entities engaged in domestic investment, cooperatives, or individual business entities that meet administrative, technical, environmental, and financial requirements. The rock mining license must also be completed with the coordinates and area of a particular type of rock.

In addition to a rock mining license, another mining license is an assignment license. The provisions of the assignment permit are only found in Article 35, paragraph 3, letter F, of Law Number Three of 2020. The following permit is the Transportation and Sales Permit. As discussed in this journal, a transportation and sales license is a business license granted to a company to buy, transport, and sell mining commodities⁸. The minister grants this transportation and sales permit based on an application submitted by a cooperative business entity or individual company. Another form of mining license, namely the Mining Service Business License, is a license to carry out main mining services activities related to various stages and parts of mining activities. Mining service business can be carried out by State-owned enterprises, regional business institutions, private business entities, cooperatives, or individuals according to the classification and qualifications determined by the Minister—form of Mining Business License for Sales.

Non-mining business units that sell minerals and coal require a Mining Business License to sell them. The minister grants this license for one sale. Business entities must submit reports to the minister regarding the results of sales of mineral and coal resources. They are required to pay production fees or local taxes under the provisions. Special Mining Business License As a continuation of contract or agreement operations, rock mining licenses, assignment permits, transportation and sales licenses, Mining Services Business Licenses, and Mining Business Licenses for Sales are additional licensing forms under Law Number Three of 2020. Before the changes, policies related to mining, as discussed in this journal, only had three forms of licenses.

3.2 Community Resistance to the Mineral and Coal Mining Law

The purpose of the Mineral and Coal Mining Law is to create a legal basis that will enable the renewal and structuring of mineral and coal mining management and exploitation activities while still paying strategic attention to the environment. As explained by the author earlier, this resulted in criticism from the public about the revision of the Mineral and Coal Mining Law. Looking closely at the policy, we find many articles benefiting business people.

⁷ Ika Febriana Kuswardani and Yensy Ika Anggraini, "Revisi UU Minerba Sebagai Tonggak Baru Pertumbuhan Ekonomi Bangsa," *Jurnal Teknologi Sumberdaya Mineral (JENERAL)* 2, no. 1 (2021): 1, <https://doi.org/10.19184/jeneral.v2i1.25880>.

⁸ *Undang-Undang Nomor 3 Tahun 2020 tentang Pengelolaan Minerba*. 2020.

The public debate on the new Mineral and Coal Mining norm stems from the disputes and many lawsuits arising from the new Mineral and Coal Mining norm. A significant concern is the impact of the new Mineral and Coal Mining norms on communities. This new norm shows that there is no ambiguity in the process of community rejection of mining projects. More specifically, these interventions include:

- a) Since all mining authority comes from the central government, communities cannot complain to local governments.
- b) Communities that resist mining companies can be prosecuted under Article 162. The first incident happened to Banyuwangi residents, who fought to protect the environment and refused to mine gold on Mount Tumpang Pitu for years, causing environmental damage. Later, an interested party reported the incident to the police because it violated Article 162 of the Mineral and Coal Mining Law.
- c) It can be easy to obtain investment licenses as the central government is now responsible for mining and coal mining. Communities that are in conflict with refusing to mine to protect the environment will actually be punished, and other adverse impacts may occur. This does not reflect justice for all Indonesians.

Therefore, revising the Mining Law is deemed necessary to remove the law from the judicial system because implementing rules established by the government, especially laws and regulations, is essential. The government is responsible for achieving the state's objectives, which were clearly stated by the founding fathers when regulating the land and its people. It is also essential to ensure environmental responsibility towards surrounding communities regarding the impact of the mining process to create sustainable development.

3.3 The impact of the issuance of the amendment to the Mineral and Coal Law

The issuance of Mineral and Coal Mining Law Number Three of 2020 in the mining sector. Based on Indonesian Environment Forum data, 52% of the 58 criminal convictions in 2021 occurred in the mining sector and included 21 people convicted under the Act. More than 11 million hectares of living space and territories under human control have been plundered by mining investments. This law generated many protests before it was passed, and many opposed it.

According to Law Number Three of 2020, this reduces the law's ability to be implemented effectively. The central government has full authority over coal mining and mineral water, according to Article 4(2), which contains some of these regulations. Such a basis is considered incompatible with regional independence and makes it possible to restrict the use of illegal mining. The following articles, 162 and 164, are considered to provide opportunities for criminal offenses for citizens who refuse to work in mining. The impacts and risks posed to communities by the enactment of Law Number Three of 2020 include the following:

Companies risk being punished by the police if they refuse to dig up mining companies, and communities cannot protest against local governments. It can destroy the environment endlessly despite the evidence, and mining companies can earn the highest possible profits, even with zero percent guarantees and additional sanctions for companies that do not carry

out reclamation. Once the new mining law is passed in 2020, coal companies can fire their workers, and workers will lose their jobs. This will affect coal industry workers.

4. Conclusion

One of the most prominent changes is the change in mining management authority from three authorities (central, provincial, and district/city governments) to two authorities (central and provincial governments) in the 2020 Mineral and Coal Mining Law. These changes will increase the efficiency and sustainability of mining management but may also lead to conflicts between the central and state governments over managing these natural resources. In addition, the Mineral and Coal Mining Law 2020 also does not provide space for people's veto rights or the right to say no to mining when it enters their living space, which can increase the potential for conflict between communities and mining companies. In terms of supervision, the Mineral and Coal Mining Law 2020 has also changed, with the Minister now having the authority to supervise the implementation of mining activities. This may increase transparency and accountability in mining management but also increase bureaucracy and obstacles in mining management.

Government Authority, Law Number Four of 2009, gives greater authority to regional governments in managing mineral and coal resources. Law Number Three of 2020, on the other hand, transfers much of this authority to the central government to increase efficiency and consistency in natural resource management. On Supervision and Control, Law Number Four of 2009 provides a significant supervisory role to regional governments; Law Number Three of 2020 strengthens supervision by the central government, including strengthening sanctions for violations. In conclusion, the changes in the Mineral and Coal Mining Law 2020 can improve the efficiency and sustainability of mining management. Still, they can also increase the potential for conflict between the government, communities, and mining companies. Therefore, there is a need for stricter oversight and greater transparency in mining management to prevent conflict and improve community welfare. Overall, these changes reflect the government's efforts to balance the efficient management of mineral and coal resources and environmental protection and the interests of local communities. The successful implementation of this new regulation will depend heavily on the central government's ability to exercise greater authority effectively and responsively to dynamics in the field.

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