

Legal Political Configuration Of Law Number 3 Of 2020 Concerning The Transfer Of Licensing And Supervision Of Local Governments To The Central Government

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Abstract

The impact of Law No. 3/2020, which transferred mining licensing and supervision from local governments to the central government. This research examines the significant changes in the management of natural resources, particularly minerals and coal, previously regulated by Law No. 4/2009. Although the new law aims to improve investment efficiency and competitiveness, the removal of local government authority has the potential to generate conflict and community discontent. The results of this study show that this centralization of authority creates an authoritarian political configuration, where the aspirations of the community are not represented. In addition, the character of the resulting legal products is considered elite and unresponsive to local needs. This research emphasizes the need for community participation in the legislative process to ensure sustainability and environmental protection as well as the welfare of communities affected by mining activities. Although Law No. 3/2020 aims to simplify the licensing process, major challenges remain in terms of transparency, public participation and environmental protection.

Keywords: Licensing Transition, Law Number 3 of 2020, Mining Supervision

A. Introduction

Humans in living life need natural resources, natural resources that are most often used such as water, soil, air and others. Indonesia has abundant natural resources, one of which is in the field of mineral and coal mining (minerba) which is the largest income for the country. Currently, the wealth of natural resources, minerals and coal in Indonesia has been recorded as many as 437 locations.¹ Although some countries argue that investment in Indonesia is unstable, Indonesia has high and profitable mineral resource potential.²

¹ Gatot Supramono, *The Law of Mineral and Coal Mining in Indonesia* (Jakarta: Rineka Cipta, 2012), 1.

² Victor Imanuel Williamson Nalle, "The Right to State Control of Minerals and Coal after the Enactment of the Mineral and Coal Law," *Constitutional Journal* 9, no. 3 (2012): 474, <https://doi.org/10.31078/jk933>.

In line with the times and the standard of human life, human needs are increasing, so as to encourage humans to meet their needs in various ways, one of which is mining activities. Regarding the management of natural resources, it has been regulated that its ownership is controlled by the state as mentioned in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which is used as the prosperity of the Indonesian people.³ As the use of natural resources as an effort to encourage prosperity is also stated in the goals of the state.⁴

Based on the Constitutional Court decision Number 002/PUU-I/2003, the state has authority over natural resources in the form of policy procurement and actions for management, regulation, management, and supervision.⁵ The authority of control over natural resources is fully controlled by the government, this control is also divided into the provincial government and the regency/city government is part of the local government.⁶ This is stated in Law Number 32 of 2004 concerning licensing for mineral and coal mining business licenses.⁷

Regarding mining licensing, this became a polemic after the passage of Law Number 3 of 2020 which revised Law Number 4 of 2009 concerning Mineral and Coal Mining. Which in Article 4 paragraph (2) of Law Number 3 of 2020 states that the state's control over mineral and mineral natural resources is fully controlled by the central government. This clearly removes the authority of the local government in mining business licensing as stated in Article 7 and Article 8 of Law Number 4 of 2009.⁸

Licensing and supervision of mining that was previously carried out by the local government, mining supervision with reports from the community can be followed up like a mediator by the local government with temporary suspension and coaching.⁹ However, with the amendment to the Mineral and Mineral Law Number 3 of 2020, the community cannot protest directly to the local government due to the loss of the local government's authority over mining permits and supervision which is entirely delegated to the central government. In addition, local governments as an important actor in regional autonomy, reducing the role of local governments in the mining sector is tantamount to depriving the potential for regional natural resource development which is not in the sense of exploiting but as a process of regional development that can change the lives of local people for the better.¹⁰

³ Adrian Sutedi, *Mining Law* (Jakarta: Sinar Grafika, 2011), 24.

⁴ Mahfud MD, *Building Legal Politics to Enforce the Constitution* (Jakarta: Rajawali Pers, 2011), 17.

⁵ Nabilla Desyalika Putri and Dian Agung Wicaksono, "LEGISLATION IMPLICATION OF THE TAKEOVER AUTHORITY IN MINERAL AND COAL MINING BY THE CENTRAL GOVERNMENT," *Journal of Indonesian Legislation* 13, no. 01 (2016): 20.

⁶ Salim HS, *Indonesian Mining Law* (Jakarta: Rajawali Pers, 2012), 1.

⁷ Rizkyana Zaffrindra Putri and Lita Tyesta A.l.w, "LEGAL POLITICAL STUDIES ON CHANGES IN THE AUTHORITY TO GRANT MINERAL AND COAL MINING BUSINESS LICENSES," *LAW REFORM* 11, no. 2 (September 30, 2015): 200, <https://doi.org/10.14710/lr.v11i2.15767>.

⁸ Arif Gunawan, "This is the Contents of the Revision of the Mineral and Mineral Law: Enemies of the Regional Government, Businessmen - Page 2," accessed February 21, 2024, <https://www.cnbcindonesia.com/news/20200512113750-4-157843/ini-isi-revisi-uu-minerba-musuh-pemda-kawan-pengusaha/2>.

⁹ Yustafa Badrus Su'adah, "THE FUNCTION OF LOCAL GOVERNMENT IN MINING MANAGEMENT IN TRENGGALEK REGENCY IN 2015," *Journal of Mediasosian: Journal of Social Sciences and State Administration* 1, no. 2 (2017): 78–79, <https://doi.org/10.30737/mediasosian.v1i2.203>.

¹⁰ Team, *Autonomy of State Grants, A Critical Study of Regional Autonomy Policy* (Jakarta: Lapera Pustaka Utama, 2001), 154–55.

The role of local governments in granting mining business licenses is a legal umbrella that can protect mining activities owned by the community, individuals or corporations. We know that mining activities are activities with high destructive potential, namely damaging the environment that is used as a mining area.¹¹ The existence of permits through the local government will facilitate the acceleration of mining permits that will protect the layers in the area around mining in line with the regulations that have been regulated by the government on mineral mining.¹²

With this in mind, this paper aims to determine the character of the legal product produced in Law Number 3 of 2020 concerning mineral and coal mining, whether the character of the legal product is responsive or conservative legal product.

B. Research Methods

This research uses a type of normative juridical research where the focus of this research is the legal politics of significant changes in the management of natural resources, especially minerals and coal, which was previously regulated by Law Number 4 of 2009 concerning Mineral and Coal Mining.

C. Results and Discussion

1. Analysis of Changes to Law No. 4 of 2009 into Law No. 3 of 2020 concerning the Transfer of Mining Permits and Supervision

The government has passed Law Number 3 of 2020 in May 2020 as a new Law on minerals and coal replacing Law Number 4 of 2009. In this article, there are 135 Articles out of 217 Articles of Law No. 4 of 2009 that have been revised, with details of adding 73 Articles, 51 Articles being amended, and 11 Articles being abolished.¹³ This change in the law is considered by the government to be an effort to increase the value of products and strengthen competitiveness with other countries, but of course this change cannot be separated from the public spotlight and caused pros and cons when this law was passed.¹⁴

One of the changes highlighted is the removal of local government authority over the mining sector, due to significant changes in the role of local governments. In this table, there are several articles that were revised in Article Number 3 of 2020, as follows:

Tinjauan	LAW NO. 4 OF 2009	LAW NUMBER 3 OF 2020
Organizers	(Article 4 paragraph (2)) It is organized by the central	It is organized by the central government.

¹¹ Ni'matul Huda, *Local Government Law* (Bandung: Nusamedia, 2012), 1.

¹² Muhammad Saleh et al., "The Role of Local Governments in People's Mining Arrangements," *JATISWARA* 35, no. 3 (November 28, 2020): 356, <https://doi.org/10.29303/jtsw.v35i3.271>.

¹³ Muhammad Salman Al Farisi, "RECENTRALIZATION OF THE AUTHORITY OF MINERAL AND BATURA MINING MANAGEMENT" 2, no. 3 (2022): 1551.

¹⁴ Nur Fadilah Al Idrus, "The Impact of Legal Politics and Community Response to the Reform of the Mineral and Mineral Law," *Journal of Law Enforcement and Justice* 3, no. 2 (September 30, 2022): 116.

	government, provincial government, and city districts.	
Authority	(Articles 7 and 8) specific authority of provincial and district/city governments in the field of mineral and mineral.	(The article is deleted)
Research	(Article 11) Local governments participate in mineral and mineral mining research and research.	Absolute authority is given to the central government through the Minister of Energy and Mineral Resources (EMR).

2. Political Configuration of Law Number 3 of 2020 concerning the Transfer of Licensing and Supervision of Local Governments

If examined based on the academic text of Law Number 3 of 2020, the division of authority between the central government and local governments causes overlap and irregularities in the management of permits and supervision, community conflicts around natural resource utilization sites with legal entities over mining permit holders reflect the negative impact of the division of authority. The local government demands authority over the management of the regional mining to get profits as regional revenue.¹⁵

However, recalling that natural resources are the common property of the entire nation which can be used as much as possible for the prosperity of the people controlled by the state.¹⁶ It is intended that all natural resources are controlled by the nation to realize prosperity can be realized with the government that regulates the management of natural resources. Law Number 3 of 2020 which erodes the authority of local governments as the government authorized over mining management has quite reaped cons or debates.

As is known, mining locations in Indonesia are spread across several districts or cities that should be involved in the management of natural resources under the authority of the local government.¹⁷ This should be the role of the government as part of the government that supervises and licenses mining businesses controlled by the state. The government has changed the procedures for managing mining licenses by digitizing it to facilitate and accelerate the

¹⁵ "Manuscript-Academic-Bill-Amendment-Law-No.-4-Year-2009-Minerba-1.Pdf," 11, accessed March 1, 2024, <https://pushep.or.id/wp-content/uploads/2020/05/Naskah-Akademik-RUU-Perubahan-UU-No.-4-Tahun-2009-Minerba-1.pdf>.

¹⁶ Tri Hayati, *The New Era of Mining Law: Under the Regime of Law No. 4 of 2009* (Jakarta: Yayasan Pustaka Obor Indonesia, 2015), 77.

¹⁷ Diyan Isnaeni, "The Juridical Implications of Local Government Authority in the Granting of Mining Business Licenses According to Law Number 23 of 2014," *Yurispruden* 1, no. 1 (2018): 43.

licensing process, but still the government's efforts in Law Number 3 of 2020, especially regarding this licensing, have not been effective.¹⁸

Since the enactment of Law Number 3 of 2020 Article 7 and Article 8 concerning Mineral and Mineral Mining, which contains the authority of the provincial and regency/city governments, the article contains the authority of the local government over mining management. The centralization of mine management authority is good news for mining entrepreneurs which in mining business licensing will be easier and more flexible, because business licenses that were previously delegated by local governments who know the conditions and circumstances in the location of mining areas are now carried out by the central government which has minimal information about environmental and social aspects of the area that will become a mining business with the aim of investment progress.¹⁹ Because of this centralization, the community can protest to the local government that previously mining activities required local government permission and will be supervised by the local government as well as provide guidance and settlement if conflicts occur in the mining business.²⁰

Local governments have almost no authority over licensing and management, even though the most rational step in the management of mineral and coal mining is for local governments as direct observers and supervisors in mining areas to assist the central government in providing licensing decisions and management of the country's natural resource mining. In Law Number 4 of 2009, decentralization makes it easier to prevent overlap or coordination of licensing between the central government and local governments.²¹

If you review Article 35 paragraph 4 of law Number 3 of 2020 states that mining business licenses can be delegated to local governments, this could be interpreted that local governments still have authority over mining licensing but there needs to be a government regulation that clearly regulates the delegation of permits to local governments.

The political configuration in Law Number 3 of 2020 regarding the authority of local governments is an authoritarian political configuration, where the authoritarian political configuration is a configuration dominated by the government in determining and implementing policies so that the aspirations of the community are not accommodated and channeled.²² This political configuration also affects the resulting legal products, where the House of Representatives is known to hold a meeting to discuss the revision of the Mineral and Mineral Law behind closed doors with no information on the discussion process that can be accessed by the public.

¹⁸ Dientje Rumimpunu and Sarah D L Roeroe, "THE EFFECTIVENESS OF LAW NUMBER 3 OF 2020 IN THE GRANTING OF MINERAL MINING BUSINESS LICENSES IN INDONESIA" By: Friskilia Junisa Bastiana Darongke2," n.d., 4–5.

¹⁹ Zsazsa Dordia Arinandaa and Aminah Aminah, "Centralization of Management and Licensing Authority in the Revision of the Mineral and Coal Law," *Journal of Law* 10, no. 1 (February 28, 2021): 178, <https://doi.org/10.30652/jih.v10i1.8080>.

²⁰ Suyartono, *Good Mining Practice: Good and Correct Mining Management* (Nusa Study, 2003), 45.

²¹ Anton Freddy Susanto, *Law from Cosilence to a Transgressive Constructive Law Paradigm* (Jakarta: Refika Aditama, 2007), 63.

²² Mahfud MD, *Law and the Pillars of Democracy* (Yogyakarta: Gema Media, 1999), 8.

3. Karakter Produk Hukum

The character of the legal product of Law Number 3 of 2020 concerning Mineral and Mineral Mining is an elitist or orthodox legal product where the revision of the Mineral and Mineral Law to Law Number 3 of 2020 does not involve public opinion and does not contain the aspirations of the community. The centralization of licensing and management of mining businesses without involving local governments is a reflection of the government's power politics. Sociologically, the authority of the local government that is cut can have a negative impact, as it is known that the condition in the field is the local government if all permits are delegated by the central government without further review, it is feared that the mining business is not controlled and can damage the environment and cause losses to the surrounding community later.

D. Conclusion

Based on the description above, it is stated that the amendment of Law Number 3 of 2020 to Law Number 4 of 2009 concerning the authority of local governments that have shifted to the central government is the government's effort to prevent overlapping permits that cause irregularities in mining management and supervision, but this centralization raises public concerns because there is no protection for the environment and communities in mining areas aforementioned. The abolition of articles related to the authority of local governments such as Articles 7 and 8 and the change of organizers in mining management in Article 4 to be fully organized by the central government is proof that Law Number 3 of 2020 is an authoritarian political configuration and produces an elitist legal product, due to the absence of community participation and community aspirations included in the formation of the law.

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