

Authority Regulation of Mining Business Permit Based on Law No. 23 Of 2014

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Abstract

Act No. 23 of 2014 concerns about the local regional government which was ratified on 2 October 2014 shows that the Regent / Mayor no longer has the authority to issue and give permits for mining management. The purpose of this study is to analyze the authority of mining business permit which is submitted to the Provincial Government or local government and to find solutions for the Legislature in formulating the legislation related to the authority of mining permit. The authority regulation of mining business permit (IUP) within the framework of regional autonomy based on Act No. 23 of 2014 is not in accordance with the mandate of the constitution (Constitution of the Republic of Indonesia 1945), even though in the Constitutional Court decision, it has been stated that there is no juridical aspect (Act Number 23 of 2014 concerns about the Regional Government) which is contrary to the constitution. The transfer of authority for handling or managing natural resources to the province can be categorized as the takeover of authority that should be carried out by the government in the region

Keywords: government authority, mining business permit, regional autonomy

I. Introduction

Article 1 paragraph (3) of the 1945 Constitution of The Indonesia Republic. Explained that the state of Indonesia is a state of law, consequently the law must be the basis for every act of the ruler and the people, and the law has the highest sovereignty in the country. The essence of the rule of law basically relates to ideas about the rule of law which are juxtaposed with the idea of the people sovereignty which gave birth to the concept of democracy¹. However, with the officially of Act No. 23 of 2014 concerning the Regional Government, the Regent/Mayor no longer has the authority to issue and give permits for mining management. Because of those authorities, now it has been fully delegated to the provincial government. Then automatically the district/city government does not have the authority to issue mining management permit.

Based on Article 14 paragraph (1) and (3) of Act No. 23 of 2014 there is a lack of synchronization with Act Number 4 Year 2009 concerning Mineral and Coal Mining where the authority is given to the Regent / Mayor in giving mining permit. The mining management has a lot of relations with the authority which is granted to the provincial government or district / city government, especially the aspects of mining permit. In this case the people is called appropriately and fairly organized, when the main institutions are regulated in such a way as to achieve a balance of net satisfaction which is the average result of the satisfaction of all individual members of the community concerned². In the absence of synchronization, there is the impact of unpermitted miners, who has the authority to issue sanctions, supervision, guidance, while the regional or municipal governments are not authorized to give permit so that they do not have the authority to take action.

Closely examined, the provisions of Article 14 of Law No. 23 of 2014, regulate the strengthening of the full authority of the Governor and the Provincial Government concerning management and mining permit, forest management, marine and fisheries then the regulations in the form of Regional Regulations or Regent and Mayor Regulations which regulate the mining permit do not applied or fall automatically. The aforementioned matter was confirmed by the issuance of East Java Governor's Letter Number: 545/1541 / 119.2 / 2014 dated 19 December 2014 concerning the follow-up of Law No. 23 of 2014 that the Regency / City Government as of October 2, 2014 had not been permitted to issue related the permit of energy and mineral resource issues both new permit, changes and extension permits. The main problems faced after the enactment of Law No. 23 of 2014 concerning energy and mineral resources is the division of concurrent government functions between the central and provincial governments, district / city areas (the division of government affairs in the energy and mineral resources sector), indirectly impacts in the structure of the regional apparatus working unit in the Regency / City Government; such as the energy and mineral mining office will be removed or changed the function of the

¹ Jimly Assidique, *Konsitusi Sebagai Landasan Indonesia Baru yang Demokratis, (Pokok Pokok Pikiran tentang Perimbangan Kekuasaan Eksekutif dan Legislatif Dalam Rangka Perubahan Undang-Undang Dasar 1945*, Makalah, disampaikan dalam Seminar Hukum Nasional VII, Badan Pembinaan Hukum Nasional, Departemen Kehakiman RI, Jakarta, 1999. h. 146-147

² Helmut Schock, *Envy : A Theory of Social Behavior*, Terjemahan Michael Glenny dan Batty, London, Ross, 1969. h 169

technical implementation unit. This can also affect the district or city, which it will not own the mining office as it does not function as before.

If we compare the authority of the regional government based on Law No.32 of 2009 concerning the Regional Government and Law No. 23 of 2014, the difference is that regional autonomy seems to shift to the province. However, the academic review of Law No. 23 of 2014 improves the weaknesses of Law No. 32 of 2004 concerning the concept of decentralized policy in a unitary state, unclear arrangements in various aspects of regional administration and relations between government, citizens and civil society groups.

The research aims to analyze the authority of mining business permit which is submitted to the Provincial Government or regional government and to find solutions for the Legislature in formulating the legislation related to the authority of mining permit.

II. Research methods

The type of research used is normative law research¹, the research focuses on the object of research legislation². Normative law research refers to the review or study of positive law and / or law which is conceptualized as a norm which focuses on human behavior deemed appropriate (propriety). This research is also a type of law research that analyzes and examines the way of law works in the community. The work of law in the community can be assessed from the level of legal effectiveness, compliance with the law, the role of legal institutions or institutions in law enforcement, the application of legal rules, the influence of legal rules on certain social problems or vice versa, the influence of social problems on the rule of law.

According to Peter Mahmud Marzuki, the approaches used in normative law research can use: (1) statute approach, (2) conceptual approach, (3) historical approach.³

The technique of collecting and processing legal materials was done by using a research card (card system), and the research card was used to record legal material, both primary legal material obtained from the search results and review of laws, as well as primary legal material obtained from studies library materials, as well as other relevant legal sources. The legal materials were then classified by selecting and sorting out the same and relevant legal material and non-similar and irrelevant legal material. The relevant legal materials were used as analysis tools for the problems objects.

The analysis of legal material was done in stages according to the problems grouping. The analysis used is explanatory analysis which is an analysis that explains the answers to the problems formulated, and perspective analysis, containing the intention that the analysis is directed to search the certainty in obtaining the truth. J.J.H. Bruggink stated that: "in certain cases it is not possible to use descriptive analysis, which includes activities that describe, examine, systematize, interpret and evaluate."⁴

III Results and Discussion

Based on Law No. 23 of 2014 about Regional Government

On October 2, 2014, Law No. 23 of 2014 concerning the Regional Government was promulgated as a substitute for Law No. 32 of 2004. Provisions regarding filling in the positions of regional heads and deputy regional heads through direct elections were not stipulated in this law. Rather it is regulated through separate laws. This is the fundamental difference between Law No. 32 of 2004 and Law No, 23 of 2014. In addition to this, the division of government affairs according to Law No 23.of 2014 is divided into 3 types of functions, namely absolute government affairs, concurrent government affairs that are divided into compulsory affairs and optional affairs, as well as general government affairs.

Law NO. 23 of 2014 Article 1 paragraph (6) that is the regional autonomy is the right, authority and obligation of autonomous regions to regulate and manage their own government affairs and the interests of the local community in the system of the Unitary State of the Republic of Indonesia. In relation to politics and government, the regional autonomy is self-government. So, the regional autonomy is an area that has a legal selfsufficiency which is self-government that is regulated and managed by the own law. Therefore, the regional autonomy is more focuses on aspirations than conditions⁵. The process of transition from a centralized system to a decentralized system is called the autonomy system; it is the surrender of government affairs to regional government that is operationally in the framework of the government bureaucratic system. The purpose is to grow the regional development in various fields, improve community service and foster competitiveness in the growth process⁶

¹ Amirudin dan Zainal Abidin, *Penggunaan Metode Penelitian Hukum*, Cetakan Ke V, PT. Raja Grafindo Persada, Jakarta, 2012. h. 118

² Peter Mahmud Marzuki, *Penelitian Hukum*, Cet. 6, Kencana Prenada Media Group, Jakarta, 2010, h. 35

³ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Persada Media Grup, Jakarta, 2006, h. 93-95

⁴ J.H. Bruggink, *Rechtsreflecties*, Alih Bahasa Arief Sidharta, Citra Aditya Bakti, Bandung, 1996. h. 219. Dalam penelitian hukum, teori hukum yang dihasilkan akan dijelaskan secara konsisten sistematis dan estetis (jernih dan cermat).

⁵ Sarundjang, *Arus Balik Kekuasaan Pusat ke Daerah*, Pustaka Sinar Harapan, Jakarta, 2001, h. 33

⁶ R.M.A.B. Kusuma, *Lahirnya UUD 1945*, Pusat Studi HTN FH UI, Jakarta, 2000, p. 2

If it is viewed from regional management, at least the essence of government in the region is related to the authority possessed in regulate and manage the household. The authority of the regional government is related to the division of power in the administration of government patterned in a federal or unitary state government system. The federal state system is patterned in three main level structures, namely the federal (central) government, state (provincial) government, and autonomous regional government. While the unitary states system is patterned in two main level structures, namely the central government and local governments (provinces, districts and cities).

The 1945 Constitution principally adheres to two basic values, namely the value of unity and the value of autonomy. The value of unity gives an indication that Indonesia does not have other government units in the magnitude wag. It means that the national government is the only holder of the people sovereignty, nation and state. Therefore, the regional autonomy must be distinguished from sovereignty, as sovereignty concerns as the highest power in a country. While the autonomy only covers certain areas in a country. Bagir Manan also stated that the notion of autonomy is to enable the implementation of freedom and at the same time reflects autonomy as a democratization that requires independence or freedom. It is not even excessive if it is associated that the essence of autonomy is independence, even though it is not a form of freedom of an independent unit.¹

The basic value of autonomy is manifested in the form of a regional government that has the authority to hold regional autonomy within the bounds of state sovereignty. In this context the implementation of decentralization in Indonesia is related to the distribution of central and regional authority. There are two important elements that accompany the implementation of decentralization in Indonesia, namely the establishment of autonomous regions and the surrender of authority legally from the central government to local governments to regulate and manage the government affairs.

The consequences of Article 18 of the 1945 Constitution require the implementation of regional autonomy, so that the government is obliged to implement the principle of decentralization and deconcentration in the administration of government in the regions. So that the follow-up of Article 18 of the 1945 Constitution issued Law No. 23 of 2014 in Article 5 paragraph (4) that the administration of government affairs as referred to Article 5 paragraph (2) in the regions is carried out based on the principle of decentralization, deconcentration and co-administration. Effectiveness and the efficiency of the implementation of regional government needs to be improved by more concerning to the aspects of relations between the government structures with local governments, the potential regional diversity, global opportunities and challenges by giving the broadest authority to the regions accompanied by delegating rights and obligations to carry out the regional autonomy in a unified system state government.

The obligation of regional autonomy will evoke pluralism of legal material arrangements and decentralization in fostering national law in the future. Decentralization and the diversity of national legal systems will develop according to recognized principles so that the legal principle of *lex specialis* is generalist logical degree. To establish a national legal system by taking into the diversity of legal traditions that grow in community relations, it is important to conduct harmonization, with the aim of building and organizing forms of law agreed democratically

B. Granting of Authority for Mining Business Permit (IUP)

The regulation of authority delegation can be done by 3 alternative conditions: (a) There is a strict order regarding the subject of the implementing agency delegated by authority and the form of implementing regulations to the delegated regulatory material; (b) There is a strict order regarding the form of implementing regulations to the delegated regulatory material; or (c) There is strict order regarding the delegation of authority from the law or the law-making institution to the institution that receive the delegation of authority, without mentioning the form of delegated regulation.²

The Regional Government Law No. 23 of 2014 concerning Regional Government defines the decentralization as the surrender of governmental authority by the Government to autonomous regions to regulate and manage government affairs in the Unitary State system of the Republic of Indonesia. In Article 1 point 8 of Law No. 23 of 2014 concerning Regional Government, it is emphasized that deconcentration is the surrender of government affairs by the central government to autonomous regions based on the principle of autonomy.

Based on the description above, it is known that the basic authority for granting mining business licenses to local governments is the existence of a decentralized system based on the principles of regional autonomy and assistance tasks (*medebewind*). Therefore, the regions are given full authority to regulate (*regelendaad*) and take care (*bestuurdaad*) of their own affairs, especially in the fields of mineral and coal management.

In addition to this, the authority to grant mining business licenses by regional governments is a

¹ Bagir Manan, *Menyongsong fajar Otonomi Daerah*, PSH-FH UII, Yogyakarta, 2002, h.26

² *Ibid.* h. 266

manifestation of participatory governance, in which the state engages all stakeholders (stakeholders) to implement democratic governance and in accordance with the principles of good governance. Thus, the authority to exercise control through licensing instruments by the regional government will make the administration of government affairs effective and efficient.

Furthermore, one of the consequences of regional autonomy is the submission of financial affairs to the regions. On that basis, one that underlies the granting of authority for mining business permits to the regions is in the context of increasing regional income derived from the results of mining management as the potential of regional natural resources that are included in the concurrent affairs of choice. Thus, a balance in financial affairs is created which has an impact on the distribution of financial management functions that are fair to the interests of national development that are fast, precise and equitable.

However, after the enactment of Law Number 23 of 2014 concerning Regional Government, the authority to grant mining business licenses is no longer the authority of the district / city government. Thus, the regent / mayor no longer has the authority to issue mining business licenses in the management of minerals and coal. In fact, the authority is still inherent if it is based on Law Number 4 of 2009 concerning Minerals and Coal, because every level of government from the center to the regional government is given the division of each authority in the granting of mining business licenses based on area and position of natural resources want to be used. However, since the removal of the authority through Law Number 23 of 2014 concerning Regional Government, mining business licenses issued by the Regent / Mayor do not have legality and do not also have juridical legitimacy, thus implicating the invalidity of mining permits obtained by the parties third.

Based on this explanation, it should be studied in depth about the basis or reasons given by the authority to grant mining business permits to provincial governments based on concurrent governmental affairs and completely eliminate the authority of the district / city government in granting mining business permit. Therefore, to find out the reasons that form the rationale for the establishment of Law Number 23 Year 2014 concerning Regional Government, specifically the distribution of government affairs, it is necessary to cite the description in the Academic Paper for the formation of Law Number 23 Year 2014 concerning Regional Government as follows:

In the distribution of governmental affairs between the Central Government and regional government, as determined in the Constitution 1945, there is a government affair that must be fully in the hands of the Central Government, namely the government affairs concerning the existence of the nation and State which if given to the regions, it has the potential to cause dis-integration of the nation and state. Affairs that are not decentralized to the regions are defense, security, foreign policy, national monetary and fiscal affairs, justice and religion. The six government affairs are national affairs which as a whole are under the authority of the Central Government.

Other government affairs apart from the six government affairs are basically can be shared between the Central Government and regional government. In the broadest context of regional autonomy, the logical consequence is that all government affairs apart from the six absolute government affairs are under the authority of the Central Government, basically decentralized to the regions. However, in the context of a unitary state there is no single business that can be fully submitted to the regions. There will always be a part of government affairs that still remains under the authority of the Central Government, and there is a part of government affairs that becomes the authority of the provincial government and the regency / city administration.

There are concurrency principles adopted in the implementation of every decentralized government affair. The difference is on the scale of the region where the government affairs are done. The Central Government has the authority to carry out the government affairs on a national and international scale; The Provincial government on a provincial or cross-regency / city scale within the relevant province. While the regency / city government has the authority to carry out the government affairs on the scale of the relevant regency / city area.

The Central Government has responsibility for the establishment of national policies to maintain harmonization, synchronization and synergy between the Central Government and regional governments and between the provincial government and the regency / city government as a unit within the governance of the Unitary State system of the Republic of Indonesia. In addition to establish the national policies, in decentralized government affairs, the Central Government is also still has the authority to carry out the government affairs that have an impact or national (cross-province) and international (cross-country) externalities.

There are three criterias that are used as guidelines in the distribution of government affairs between the Central Government and regional governments: externality, accountability and efficiency. The definition of externalities related to the impact caused by implementing a government affair. It means that the level of government affected by the government affairs is in charge of the matter. While the criteria of accountability are intended to determine that the level of government which has the closest impact is the authority for the government affairs. The accountability criteria are intended to answer the demands of democracy, which is to bring the government closer to the people so as to increase the accountability of the government to the people. The efficiency criteria are intended to accommodate the demands of globalization to encourage efficiently and competitively. The criteria of externality and accountability are intended to accommodate the demands of

democracy while the criteria of efficiency are to meet the economic demands of creating an efficient and competitive government.

During a decade of regional autonomy, the division of government affairs with an ecological impact was difficult to share, especially between provincial and district / city areas. The Government affairs such as forestry and maritime affairs are often divided into practice based on government administrative boundaries, while those affairs will be more effectively and efficiently managed based on an ecological approach that is often not in line with the government administrative boundaries. Likewise in marine management based on 4 miles for districts / cities and 4 miles to 12 miles for the province, in reality it often cause problems so that it disrupts the effectiveness of the implementation of regional governance in the marine sector. For the smooth running of regional government, the authority to manage government affairs with an ecological impact will be more effectively submitted to the provincial level. However, to guarantee justice, the regency / city gets a share of revenue from the revenue generated from the affairs operation.¹

George Jellinek said that the state is a party that has a duty and obligation (*deuty bearer*) to respect, to protect, and fulfill human rights of individuals who live in their region as rights holders.² Another opinion expressed by Hestu CiptoHandoyo stated that the enforcement of human rights is an unbroken link to the principles of democracy, people sovereignty and the rule of law.³ This opinion is an affirmation of the relationship between state obligations and people's rights. The state is obliged to carry out politics "to intervene" in regulating the lives of its people

The description shows that respect, protection and fulfillment of human rights are the duties and responsibilities of the state, in this case the government as the state administrator. To uphold and protect the human rights in accordance with the principles of a democratic law state, the implementation of human rights is guaranteed, regulated and set forth in laws and regulations (Article 28I paragraph 5 of the Constitution 1945).

In the implementation of a state or government affair and its division between the central government and the regional government, there are 3 criteria which are the basis or guidelines that are referred to determine the distribution of government functions between the central government and the regional government. These criteria include accountability criteria, effectiveness criteria and externality criteria. Therefore, in relation to natural resource management, especially in the use of minerals and coal, effectiveness criteria are used because the management and utilization of minerals and coal has an ecological impact, so it would be more effective if the affairs were given to the provincial government or managed by the central government itself as the holder of government affairs in the UnitaryState of the Republic of Indonesia.

To strengthen the reasons and know the basis comprehensively that lies behind the granting of mining business permits based on concurrent government affairs to provincial governments, it is necessary to cite further explanation in detail to complement the previous description in the Academic Manuscript for the establishment of Law Number 23 Year 2014 concerning Regional Government .

Although the old Law (Law No.32 of 2004) has determined the government affairs exclusively become the center authority and the functions that are decentralized to the regions and determine the criteria for dividing decentralized functions into regions. The massive and simultaneous submission of government affairs to the regions, which has never been done by other countries, has made it difficult for Indonesia to learn from the experiences of other countries in decentralizing affairs. Lessons learned are difficult to obtain from other countries so the examples of the function division between governmental structures which can be a consideration for doing the same thing in Indonesia become nonexistent.

At the central level the problem arises because of the lack of the Law synchronization that governing the Regional Government with sectorial laws. Even though the Law which regulates the Regional Government has ordered the transfer of mandatory and optional affairs to the regions, in reality some ministries and agencies are still reluctant to do so. Many sectorial laws have not been in line with the spirit of the decentralization policy. The desire to maintain the status quo arises because of the short-term interests of officials in ministries and institutions related to the risk of organizational downsizing and reduced access to the budget when the affairs are decentralized to the regions.

On the other hand, difficulties arise from the widespread of stakeholders' misconception in the regions regarding decentralization and relations between government structures. The implementation of Law No. 22 of 1999 (before Law No. 32 of 2004) has formed the perception of stakeholders in the regions that all the other affairs than exclusive affairs are regional affairs and the government no longer has the authority to regulate the conduct of affairs outside of exclusive affairs. Regions are often regarding every regulation made by the Central Government on decentralized affairs as central interference in regional affairs. Whereas in a unitary state, there is no business become fully regional affairs. The Central Government at least has the authority to formulate

¹ Kementerian Dalam Negeri, *Naskah Akademik Rancangan Undang-Undang Tentang Pemerintahan Daerah*, Direktorat Jenderal Otonomi Daerah pada Sekretariat Kementerian Dalam Negeri, Jakarta, 2011. h. 79-82

² Manfred Nowak, *Introduction to Human Rights Regime*, MarthinusNojhoff Publisher, Laiden/Boston, 2002, p. 48-49.

³ Hestu Cipto Handoyo. *Constitutional Law, Citizenship and Human Rights*. Universitas Atmajaya, Yogyakarta, 2003. p. 263.

NSPK, which should be the basis for the regions in carrying out the decentralized affairs.

The other misconceptions arise related to the relationship between provinces and districts / cities in the affairs that have been decentralized. Districts / cities tend to consider all decentralized affairs to be their business and ignore interdependence and interrelation in the implementation of affairs between districts / cities where provinces can take the role of regulating and managing affairs which due to externality, efficiency and accountability should be carried out at the provincial level. The absence of a clear regulation on the distribution of functions between provinces and districts / cities in obligatory matters and choices for duplication and conflict in the implementation of affairs between provinces and districts / cities is often unavoidable.

Conflicts of interest between ministries / institutions, provinces, and districts / cities are one of the factors that complicate the efforts to clarify the division of functions between government structures. The division of functions becomes the arena of competing for authority, access to the budget, and the resources of power between government structures. The efforts to clarify the division of functions between government structures are unavoidable, always giving pros and cons of different stakeholders. Therefore, the division of functions must be done appropriately using clear criteria, rational, and proportional criteria in accordance with the competencies and resources which are available to each government structure.

III Proposing the Solution of Improvement

When a juridical norm product contains weaknesses, it should be changed and updated, including the need for regulation restructure regarding the division of government affairs in improving Law No. 23 of 2014. Restructuring is done by rearranging the architecture of the distribution of government functions between government levels. First, the concept used to divide the government affairs into exclusive or absolute affairs and concurrent affairs (can be decentralized). Exclusive or absolute affairs are affairs that are entirely under the authority of the Central Government, while concurrent affairs are affairs that can be regulated by the government or regions, which determined with certain criteria. Second, clarify the way of central affairs implementation which is managed by determining the affairs that should be done directly by the Central Government itself, using decocentration, and co-administration tasks. Decocentration needs to be limited to exclusive affairs and concurrent affairs because of certain criteria are implemented by the Central Government as Central Government affairs. By clarifying the ways of government affairs implementation, the relations between levels and the structure of government in administering government affairs will be better managed.

Clear arrangements are needed regarding the affair of mandatory and choice. Mandatory affairs are divided into two groups, affairs related to basic services of citizens which must be minimally fulfilled by the regions and obligatory affairs related to national policies, such as statistics, culture, spatial planning and others. Mandatory affairs which are related to basic services must be carried out by the regions based on SPM made by the government, while obligatory affair related to government interests are held based on the other standards which are stipulated in NSPK made by the government. Because the implementation of mandatory affairs is very important for the welfare of the community, the law needs to regulate the sanctions for regions that fail to carry out the mandatory affairs in accordance with the MSS or NSPK made by the government.

Clearer arrangements need to be made regarding the administration of optional affairs. The region organizes optional affairs to develop regional excellence in order to improve people's welfare. Decision-making about the optional affairs that will be managed by the regions can be based on the structure of the GRDP, the livelihoods of the people, and the use of local resources which are available in the area. The implementation of the optional affairs made by the regions must be synergic and integrated with national policies to improve national competitiveness. In order to focus on the implementation mandatory and optional affairs that are in accordance with the priorities and superior potential of the regions, mapping is done by the central and regional governments on each of these government affairs. With this mapping, each region will know the choice of affairs that will be carried out and the mandatory affairs that become priorities. Ministries and institutions also know the regions of main stakeholders, so they focus on achieving national targets in the affairs of their respective sectors.

The affairs that have an ecological impact, especially forestry and marine affairs, it will be more optimal if the management is handed over to the provincial region, given its externalities which in many things cross the boundaries of government administration. The other advantages are easier in controlling aspects of the forest and the environmental aspects than if compared through the mechanism in Law No. 23 Year 2014. To prevent resistance from the district / city, it is needed a "trade off" in the aspect of profit sharing. Districts / cities get profit sharing from sea and forest management carried out by the province. Through these arrangements, control can be done more effectively without harming districts / cities in terms of profit sharing.

To run the functions of monitoring, supervision and facilitation of the administration of affairs, the government assigns the governor as the representative of the Central Government to carry out guidance and supervision of the district / city. While the guidance and supervision of the administration of affairs by the province is carried out by the government. Carrying out its role as a representative of the Central Government, the governor is assisted by a device in the form of a secretariat and in order to create synergy with the regional

apparatus, use and results are led by the regional secretary and the funding from the State Budget.

The granting of authority for issuing the mining business permits to the provincial government is based on three things. First, because of the effectiveness criteria of implementing ecological government affairs are more optimal if handed over to the provincial government. Secondly, the externalities criteria cross the boundaries of the district / city administration in many ways. Third, the environmental protection aspect will be easier if implemented by the provincial government. Based on these three reasons, the authority to delegating mining business permits whose territory is in one district / city with an area of less than 4 (four) miles which was originally the authority of the district / city government turned into the authority of the provincial government based on the division of concurrent government affairs.

These reasons do not seem to be the right reasons to annul the authority of the district / city government in granting mining business permits especially in the field of mineral and coal utilization. Because of the authority theory perspective as described in the previous discussion, the authority of the district / city government in the management and utilization of natural resources, especially minerals and coal, is the attribution authority given directly by Article 18A paragraph (2) of the Constitution Indonesia 1945 Republic of Indonesia which stipulates, "The relations of financial, public services, utilization of natural resources and other resources between the central government and regional governments are regulated and carried out fairly and in accordance with the law". From these provisions, it is clear that every level of government has the right to use natural resources fairly and in accordance. The phrase "fair and accordance" in the provision is important to underline, considering that the phrase is a basic principle / principle in terms of the distribution of authority in the use of natural resources.

The reasons of managing natural resources with an ecological impact, it will be more optimal if it is managed by the provincial government is wrong, then the ideal and fact, indeed the regencies / cities that are close to the mining location or area and intersect directly with mining sites so that they feel the ecological impact should be given more rights to manage. Even though the central government in setting Norms, Standards, Procedures and Criteria (NSPK) stated that there must be a "trade off" in the aspect of profit sharing values to district / city governments whose administrative areas include mining locations so that mining activities continue without harming the district government / city. However, the fundamental problem is not only about financial (economic) benefits, but also direct supervision and control in order to preserve the environment in the mining area, especially the district / city government as an area that intersects more mining locations understand about the calculation between profits and losses / impacts caused by mining activities. Thus, it is more rational and accountable if the district / city government is given more authority in the management and utilization of minerals and coal, including in providing mining business permits (IUP) to other parties.

IV Conclusion

Since the authority of the district / city government in utilizing natural resources is given attribution by the Constitution 1945 of the Republic of Indonesia, this authority cannot be eliminated by anyone including the central government. The authority to delegate mining business permits is eliminated only by using laws that are hierarchical according to Article 7 paragraph (1) of Law No. 12 of 2011 concerning the Establishment of Legislation Regulations have a lower position than the Constitution 1945 of the Republic of Indonesia. This is in line with Hans Kelsen and Han Nawiasky's explanation that legal norms in the system of legislation in a country are arranged hierarchically and in groups, so that lower legislation must in accordance to and be guided by higher legislation. It means that the lower regulations may not conflict with higher legislation.

Based on this, the existence of Law Number 23 Year 2014 concerning Regional Government should not eliminate the authority of regional governments, especially district / city governments in utilizing natural resources located within the administrative regions of the relevant regencies / cities. Because the transfer of authority is not only contrary to the constitution (Article 18A paragraph (2) of the 1945 Constitution of the Republic of Indonesia), it also indirectly eliminates the credibility in regional authorities to manage strategic resources which have a great benefit to the development of their regions.

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