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Dynamics of the Development of Mineral and Coal Mining Legal Policy Management by Regional Governments

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ABSTRACT
This research aims to analyze the dynamics of mining policy in Indonesia from the colonial era to the modern era, focusing on regulatory changes, their impact on the national and regional economies, and the challenges in managing mining resources. The research method used is a normative juridical method with a legislative approach (*statute approach*) and a historical study involving an analysis of various legal regulations, from the *Indische Mijnwet* 1899 to the latest *Minerba* Law. The results show that Indonesia's mining policies have undergone significant changes, from colonial exploitation that benefited the Dutch East Indies government, to post-independence nationalization facing technological and capital limitations, and to openness to foreign investment during the *New Order* era, which accelerated the growth of the mining industry but led to regional economic imbalances and environmental degradation. Reform brought decentralization of authority to regional governments, which, on one hand, increased local revenues but also caused governance issues due to weak oversight. To address this, the government regained full control over the mining sector through the *Minerba* Law to ensure effective management and legal certainty for investors. However, the main challenge still faced is how to balance national interests, regional welfare, and environmental sustainability so that mining resources can be managed fairly and sustainably.

Introduction

In Indonesia, mineral and coal mining activities have been ongoing since the colonial era, when the Dutch East Indies government began exploiting natural resources for their own benefit (Redi, 2021). The mines in Sumatra and Borneo began operating in the 19th century under a concession-based system, where foreign or private companies were granted exclusive rights to establish mining operations in certain regions. This policy allowed the colonial government to gain significant profits, while the local population became laborers without rights to the exploited natural resources (Salma, 2023). During this period, mining was more oriented towards the interests of the colonial government, without regard for the welfare of the communities around the mines or the environmental impact caused by mining activities (Githiria & Onifade, 2020).

Changes in mining policy became significant after Indonesia gained independence, driven by nationalist sentiment that emphasized state control over natural resources (Wirazilmustaan, 2021). Mines previously controlled by foreign companies began to be taken over by the government through national policies. During this era, mining policies shifted towards management focused on national interests, with the state assuming the role of managing and controlling mining resources (Basundoro, 2017). However, policies that were overly restrictive towards foreign investment led to limitations in capital and technology, which in turn slowed the development of the mining sector.

In 1967, the Indonesian government began reopening opportunities for foreign investment through contracts of work and the *Coal Mining Business Agreement* (*PKP2B*) (Tapada, 2022). This system allowed foreign investors to invest with profit-sharing terms with the Indonesian government. Later, during the reform era, mining policies experienced decentralization with the implementation of regional autonomy, where local governments were given authority over mining management (Dahuri, 2001). However, over time, this management led to issues in supervision and coordination, and ultimately, the latest regulation brought this authority back to the central government. This change indicates that the mining sector has always been considered strategic and a subject of the tug-of-war between the central and regional governments (Al Farisi, 2023).

Law plays an important role in managing mineral and coal mining in Indonesia (Wahyuni, 2024). These regulations cover several aspects, including licensing, management, and supervision of mining activities. The mining regulations are outlined in Law Number 4 of 2009 on Mineral and Coal Mining, which was revised in Law Number 3 of 2020 (hereinafter referred to as the *Minerba* Law), serving as the primary basis for managing mining governance. This policy clearly states that the management of natural resources must be based on principles of sustainability, legal certainty, and optimal benefits for the people and the state (Satriawan, 2021). Law Number 6 of 2023 on Job Creation has changed mining regulations by simplifying licensing procedures and increasing investment.

From the colonial era until today, the role of mining law has been an instrument to support the government's interests in regulating the utilization of natural resources (Sari, 2021). As is well known, during the colonial period, mining regulations were solely oriented towards the interests of foreign companies. After independence, mining law underwent changes, affirming that state control over natural resources must consider national interests (Hido, 2022). Along with economic development and globalization, mining regulations have continued to evolve to balance the interests of the state, investors, and society. The development of these regulations has made them a tool to ensure that the utilization of natural resources proceeds according to sustainability principles, contributing optimally to national development.

Mining law policy is also related to environmental protection and the welfare of society. Mining that is not properly regulated will have negative impacts on the environment, such as deforestation, water pollution, and land degradation (Ansar, 2024)

. Therefore, regulations in the mining sector must require provisions on reclamation and post-mining activities to ensure that mining activities do not permanently damage ecosystems. The welfare of the community must also be considered in mining law, especially in providing rights and compensation to communities affected by mining activities (Hasibuan, 2023). Thus, mining law must be able to maintain a balance between the interests of the state, investors, and the communities surrounding mining operations.

During the colonial era, the authority over mining management was entirely in the hands of the Dutch East Indies government, which applied a concession system to foreign companies (Yanto, 2023)

. The policy during this period allowed foreign companies to exploit mineral and coal mining in Indonesia. This was certainly advantageous for the colonial government and foreign companies, as the mining products were largely exported abroad, while the local population had no control over their own natural resources. After Indonesia's independence, mining policies changed with the nationalization of foreign companies as a form of strengthening state sovereignty over natural resources.

Over time, the authority over mining management has undergone significant dynamics. The authority related to mining permits and management was in the hands of the central government, in line with the centralized economic policy of that time (Sianturi, 2023). However, during the reform era, authority shifted to decentralization, where regional governments played a major role in managing mining operations. Law Number 4 of 2009 on Mineral and Coal Mining regulates that regional governments have the authority to issue mining business permits (*IUP*) with the expectation that this authority will improve the welfare of mining-producing regions (Riqiey, 2022). Unfortunately, this policy faces several obstacles, such as the uncontrolled issuance of mining permits and weak environmental supervision due to the limited capacity of regional governments. Due to these various issues, the government has revised its policy, stating that mining activities will be managed by the central government through the Mineral and Coal Law (*UU Minerba*). This aims to ensure that mining governance is more centralized and controlled in terms of permitting, supervision, and post-mining reclamation (Widyaningrum, 2024). Although this policy change is expected to create more effective management of natural resources, there are still disputes between the central government and regional governments, particularly regarding the distribution of economic benefits and environmental protection (Setyadi, 2022) . Based on these issues, mining remains a strategic sector in economic, political, and environmental interests, thus requiring adaptive and sustainable legal policies.

Considering the above background, this study will examine the dynamics of authority in the management of mineral and coal mining in Indonesia, which has undergone continuous changes. The shift in authority from the central government to regional governments has led to problems between the central and regional governments, which have impacted environmental governance, investment, and community welfare. Therefore, with the new policy under the *UU Minerba*, there is a need for a review of its effectiveness in creating a balance between economic interests, environmental protection, and legal certainty for business actors. This research is crucial in providing recommendations to support a more sustainable mining governance system that favors national interests and the welfare of society.

In previous studies, mining law and policy in Indonesia have been analyzed in relation to their historical development, particularly in the context of state control over natural resources. For instance, Redi (2021) explored the transformation of mining policies from colonial times to post-independence, highlighting the shift from foreign exploitation to state sovereignty. Similarly, Sari (2021) examined the evolution of mining law, emphasizing the balance between economic growth and environmental sustainability. However, both studies primarily focused on the historical and regulatory evolution without a detailed analysis of the current challenges in the management of mineral and coal mining, especially regarding the relationship between the central and regional governments under the revised *UU Minerba*. The purpose of this research is to evaluate the effectiveness of the Mineral and Coal Law in balancing national interests, environmental sustainability, and community welfare.

Research methods

This study used a normative juridical method with a legislative and historical approach. The legislative approach was conducted by analyzing regulations such as the Mineral and Coal Law (*UU Minerba*) to understand the development of regulations and their implications on mining governance. A historical study was also used to trace the dynamics of policies in mining law from the colonial period under the Dutch East Indies government to the present. This aimed to observe the pattern of changes in authority in mining management and its impact on the legal system and policies in Indonesia. The combination of these research methods was expected to provide a comprehensive analysis of the dynamics of mining law and recommendations for more effective and sustainable policies.

Results and Discussion

Development of Mining Law Policies for Mineral and Coal Management in Indonesia

The Dutch East Indies government implemented policies for the exploitation of mining resources through the Indche Mijnwet 1899. This regulation laid the foundation for foreign companies to manage mining in Indonesia with full control from the Dutch East Indies government at the time. This allowed foreign companies to exploit mineral and coal mining, with the majority of the revenue going into the Dutch East Indies government's coffers. Of course, this policy did not consider the welfare of the native population, who at that time only served as workers earning low wages.

The concession and mining business licenses were the main mechanisms in managing mineral and coal mining. Under this concession policy, foreign companies were granted management rights through agreements with a specified duration, which were often very beneficial to the colonial government (Sutedi, 2022). These mining business licenses were selectively given to European investors, while the local people had no access to their own natural resources. The colonial government ensured that the mining sector remained an economic tool for the colonial government without regard to the welfare of the local communities or the environmental impact of mining activities.

After Indonesia gained independence, the government made efforts to take control of natural resources that had previously been controlled by foreign powers through national policies. One important step was the nationalization of Dutch and British-owned oil companies such as Bataafsche Petroleum Maatschappij (BPM) and Royal Dutch Shell, through Law Number 86 of 1958 on Nationalization. This regulation governed the takeover of assets for national interest purposes, aimed at the welfare of the people and national economic development. However, in practice, this process was faced with limitations in technology and human resources.

The government also limited foreign investment by relying more on management carried out by the state (Wulandari, 2024). This policy resulted in limited capital and technology, which ultimately slowed the development of the mining industry. To overcome these obstacles in mining management, the government implemented the contract of work and mining authority systems. The cooperation between the government and private companies was made possible under the contract of work system. Meanwhile, in the mining authority system, it was granted to state-owned enterprises or national private companies. This scheme aimed to attract foreign investors, although their influence remained limited due to the mining policies at the time, which still focused on national sovereignty and state management of resources.

During the New Order era, the government began to open up again for foreign investors to invest in mining businesses in Indonesia with the issuance of Law Number 11 of 1967 on Mining. This regulation aimed to invite foreign capital to develop the mining industry, which had previously faced obstacles due to the nationalization after independence. The contract of work used during this period provided legal certainty and guarantees to foreign companies investing in mining ventures in Indonesia. Under this regulation, foreign companies were allowed to operate mining businesses in Indonesia under more flexible terms, such as profit-sharing agreements that were more favorable to investors compared to previous regulations. This new policy attracted many large investors, including the multinational company Freeport-McMoran, which manages major mines in Indonesia.

Mining policy during the New Order era was also marked by the centralization of authority in the central government. Licensing, management, and regulation of mining were controlled by the central government with no involvement from local governments. Although this policy encouraged the development of the mining industry on a national level, the regions, in fact, experienced less favorable social and economic impacts. Local communities did not enjoy the benefits of the mining activities carried out in their areas, as all the proceeds from the mining were absorbed by the central government and large mining companies. The large-scale exploitation of natural resources often led to social conflicts, economic inequality between producing regions, and environmental degradation.

As a result, mining policy underwent changes with the implementation of decentralization of authority from the central government to local governments through Law Number 22 on Regional Government. Under this authority, local governments were empowered to manage natural resources within their regions, including issuing mining business licenses. This decentralization brought positive impacts in terms of increasing regional income and local economic growth. On the other hand, this policy also brought various challenges, such as overlapping licensing, uncontrolled exploitation of mining resources, and weak oversight of mining activities based on sustainability principles. Many local governments lacked the capacity to manage mining businesses effectively. Additionally, numerous mining permits were granted without considering environmental impacts and good governance.

In response to this, the government implemented a policy by changing the contract work system to Mining Business Licenses (IUP) through Law Number 4 of 2009 on Mineral and Coal Mining. Based on Article 36, mining licenses are divided into two stages: Exploration IUP and Production Operation IUP. The IUP system is expected to improve transparency in licensing and provide broader opportunities for national investors. However, in practice, this system still faces challenges, such as overlapping licenses and weak coordination between the central and local governments. Many IUP holders fail to meet environmental obligations or leave mining areas in a damaged state after exploitation is completed.

Aware of the various problems arising from the decentralization of authority, the central government eventually took back control over mining management through the Minerba Law. Articles 4 and 5 stipulate that the management of mineral and coal resources is entirely under the authority of the central government. This takeover aims to improve the effectiveness of supervision, ensure the utilization of resources for national interests, and create legal certainty for investors. While this policy improves mining governance in general, some mining-producing regions still feel they have lost control over their natural resources, which impacts regional revenue. Therefore, the challenge going forward is how the government can manage mining efficiently, without neglecting the welfare of the regions and environmental sustainability.

The Dynamics of Changes in Mining Management Authority Between the Central Government and Regional Governments

The transfer of authority to regional governments for managing mining resources was based on the decentralization policy after the reform era, realized through Law Number 22 of 1999 on Regional Government. The purpose of this policy was to strengthen the principle of regional autonomy, where regions were given greater rights and responsibilities in managing their natural resources to improve the welfare of local communities. Decentralization in the mining sector was expected to encourage regional government participation, expedite the mining licensing process that had previously been hindered by bureaucracy at the central level, and increase Regional Original Income (PAD) through taxes and levies from mining activities, which were expected to be used for regional development.

Decentralization in mining licensing had a significant positive impact on regional governments and local communities. The main benefit of decentralization was the increase in Regional Original Income (PAD) from the mining sector, obtained through taxes, levies, and revenue-sharing from natural resource exploitation activities. The authority granted to regions to manage mining resources created more economic opportunities for local communities, such as job opportunities in the mining sector and the development of supporting sectors like transportation, logistics, and trade. The licensing bureaucracy also became faster, as it no longer had to go through the long bureaucratic process at the central level, enabling investors to obtain business licenses more easily and speeding up mining exploration and exploitation activities.

There is a conflict of overlapping permits between regional governments and the central government due to weak coordination. Many cases involve mining business licenses (IUP) being issued by regional governments without considering regulations set by the central government, leading to legal conflicts and uncertainty for investors. Decentralization of authority also presents opportunities for illegal levies and corruption by local officials who abuse their power to sell mining permits in a non-transparent manner or demand bribes from mining entrepreneurs.

Environmental damage may also occur due to insufficient oversight of mining exploitation. Many regions focus more on increasing mining revenue without considering the sustainability of the ecosystem. This has led to uncontrolled mining exploitation, deforestation, water pollution, landslides, and the loss of productive land for surrounding communities. The low technical capacity and resources at the regional level have worsened the situation, as many regional governments do not have effective mechanisms to monitor company compliance with environmental standards.

The large number of mining permits issued without proper environmental impact assessments is also a significant weakness of the mining decentralization policy. Some regions issue a large number of permits to boost Regional Original Income (PAD) without considering the environmental carrying capacity and sustainability aspects. As a result, many areas face long-term environmental degradation, which ultimately harms the local communities themselves. Despite the benefits that decentralization brings to regions, in practice, it requires stricter regulations and stronger oversight to ensure that the economic benefits gained do not come at the expense of environmental preservation and the interests of local communities.

The shift in centralized authority is outlined in Law No. 23 of 2014 on Regional Government, where mining permit authority, which was previously held by regional governments, is now transferred back to the central government. This step is reinforced by the Mineral and Coal Law (UU Minerba), which emphasizes that the management of the mining sector is under the full control of the central government. The purpose of this change is to address various issues within the decentralization system, such as overlapping permits, weak environmental oversight, and rampant corruption and non-transparent permitting practices in the regions. With this centralization of authority, the central government has greater control to ensure more orderly and sustainable mining practices.

The legal instruments used in this policy include the elimination of mining permits previously issued by regional governments, with all mining permits now under the authority of the Ministry of Energy and Mineral Resources (ESDM). The Mining Business Permit (IUP) bureaucracy, applied as the standard in mining management, involves stricter procedures and is based on comprehensive evaluations in technical, environmental, and economic aspects. Strengthening oversight has also become a priority, with the implementation of more transparent monitoring mechanisms to ensure company compliance with existing regulations. The government's approach aims to create more professional mining governance, reduce environmental impacts, and increase economic benefits for the country as a whole.

Implications of Changes in Mining Policy on Mining Management

The aim of shifting authority from regional to central government in mining management is to improve the efficiency and effectiveness of this sector's governance. The main issue in the decentralization system is the occurrence of mistakes in granting permits, which often leads to overlapping mining business permits. A centralized permitting process can be more controlled and coordinated, resulting in reduced risks of abuse of power and increased legal certainty in the management of natural resources. The controlled exploitation of mining resources through uniform policies at the national level.

More centralized regulations also allow for the implementation of mining management standards that are more uniform and in line with national policies. The central government has a greater capacity to formulate policies based on national data and long-term considerations, thus creating more targeted and consistent policies. The existence of stricter standards in permitting by the central government ensures that mining activities are conducted with consideration for the principles of sustainability, in terms of economic, social, and environmental aspects.

The centralization of permits provides better legal certainty for investors. The previous lack of uniformity in regulations at the regional level often became an obstacle for investors in carrying out mining operations. With more transparent policies and clearer procedures at the central level, the risk of regulatory uncertainty can be minimized. Coordination between government agencies also becomes more effective, allowing decision-making in the mining sector to be made more quickly and accurately.

The implementation of a more stringent IUP system based on a comprehensive evaluation of technical, environmental, and economic aspects has increased investor confidence in the stability of the mining industry in Indonesia. With more transparent permitting standards and tighter supervision from the central government, investors feel safer in their investments because the regulations provide better legal protection. The monitoring system is also more integrated, allowing the government to more effectively prevent excessive resource exploitation and ensure that mining operations are in line with sustainability principles.

The centralization of authority in the mining sector has had a significant impact on regional governments, particularly in terms of natural resource management. Previously, local governments had the authority to grant mining permits, which was a source of regional revenue (PAD). The transfer of authority to the central government through the Minerba Law has resulted in the loss of local governments' control over the utilization of natural resources in their areas. As a result, the revenue that was previously derived from mining permit fees is no longer fully enjoyed by the region, affecting the budget and development programs that rely on the mining sector.

The reduction of regional authority in mining supervision has also impacted the involvement of local communities. Previously, local governments had a role in ensuring that mining activities benefited local communities, either in the form of job opportunities or corporate social responsibility (CSR) programs. With the centralization of authority, local communities are increasingly distant from the decision-making processes related to mining in their areas. This can lead to dissatisfaction, especially if the benefits received by the community are not proportional to the environmental and social impacts caused by mining activities.

Although the authority for granting permits is now in the hands of the central government, local governments still have responsibility for managing the environmental and social impacts of mining activities. However, due to limited authority, local governments often face difficulties in enforcing environmental policies and ensuring that mining companies comply with applicable regulations. Without sufficient authority for supervision, local governments can only act as intermediaries to convey the community’s aspirations to the central government, without being able to take the necessary actions directly.

Therefore, this policy change demands a better coordination mechanism between the central and local governments in mining management. Clearer regulations are needed regarding the role of local governments in monitoring and supervising mining activities to ensure that local interests are still taken into account. The implementation of a resource revenue-sharing system needs to be reevaluated to ensure that local governments continue to receive fair economic benefits from the exploitation of natural resources in their regions. If not, inequalities in the utilization of natural resources could lead to tensions between the central and local governments, as well as between mining companies and local communities.

Conclusion

Indonesia’s mining policy evolved from colonial exploitation to post-independence nationalization, facing challenges in technology and capital. The *New Order* era reopened foreign investment, but it increased central government control, exacerbating regional disparities and environmental damage. Decentralization in the reform era aimed to empower local governments but led to overlapping permits and poor environmental oversight. Despite improvements through Law Number 4 of 2009 and the *Minerba* Law, the central government took full control again to ensure legal certainty and more effective supervision. The key challenge was balancing national interests, regional welfare, and environmental sustainability. To improve governance, the government needed to address issues like overlapping permits and weak local supervision and enhance coordination between central and regional authorities. A more equitable resource-sharing scheme should also be established to ensure that the economic benefits of mining are shared fairly, with a stronger emphasis on environmental preservation and public welfare. Moreover, future policies should focus on improving collaboration between central and local governments, incorporating transparency, and ensuring sustainable mining practices that prioritize the long-term welfare of local communities and the environment.

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