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Governance Mining Licensing in Central Sulawesi Post Mining Law Reform and Law Job Creation

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ABSTRACT

This article aims to explain the governance of mining permits after the reform of the mining law and the issuance of the law on job creation. The research design used descriptive qualitative. The results of the study found: First, the Ministry of energy and mineral resources is the leading sector in the management of the mining sector at the national level. Meanwhile, at the local government level, the provincial and district/city offices of energy and mineral resources are played. Second, in Central Sulawesi Province mining business permits are issued by the One Stop Service Investment Office. Before the omnibus law, there are at least five stages that are passed in the licensing process, namely the application for a mining business area permit, an application for an exploration mining business permit, an application for a principle permit for the use of national strategic area space, and an application for an Environmental Feasibility Decree and Environmental Permit, as well as an application for a production mining business permit. Third, the issuance of law number 11 of 2020 concerning job creation (omnibus law) reduces the authority of local governments in managing mining permits in Central Sulawesi. In addition, the omnibus law provides convenience in environmental management, where environmental permits are replaced with environmental approvals that are integrated with business permits.

INTRODUCTION

In Central Sulawesi, the mining sector contributes greatly to regional income. Over the last five years, the GDP of the mining sector has increased (BPS-Statistics of Sulawesi Tengah Province, 2020). This increase in the GRDP of the mining sector is in line with the development of mining business permits which grew after regional autonomy and the operation of the mining industry in Central Sulawesi. According to data from the Ministry of Energy and Mineral Resources as of June 2017, the number of Mining Business Permits (*Izin Usaha Pertambangan/IUP*) in Central Sulawesi reached 337. However, almost half of these IUP have problems, namely overlapping permits, overlapping authorities, and administrative problems (Abdullah, 2017). Another problem with

mining operations in Central Sulawesi is that although it can increase GDP, it does not necessarily increase welfare and equity for local communities. This can be seen in the high poverty rate (14.4%) and the Gini ratio (0.36) in Central Sulawesi.

Mining activities are also the cause of environmental damage in Central Sulawesi (Kadir, Suaib, and Zuada, 2020). The government's perspective on the use of natural resources that prioritizes business and ignores sustainability aspects has an impact on environmental damage and pollution (Bherwani, et al., 2020; Hemakumara & Dissanayake, 2020; Nugroho, 2022). A study stated that extractive industry activities in Indonesia trigger environmental damage and marginalization of local communities (Setyawati, 2022). This

phenomenon seems to confirm what Ross (2001) said about the resource curse. This view assumes that the abundance of natural resources is not entirely a blessing, on the contrary, it can become a curse that gives rise to conflict, political chaos, corruption, authoritarianism, poverty, and other problems.

Weaknesses in regulation are thought to be one of the triggers for the emergence of various mining problems. Various recommendations for improvement are proposed starting from licensing, increasing added value, downstream, and supervision (Mindarti, et al., 2021). To improve the mining sector, the government since 2015 has begun to draft amendments to Law No. 4 of 2009 concerning Minerals and Coal, and subsequently, in May 2020, the new Law No. 3 of 2020 was successfully passed (Riyadi, 2021). The content of this new mineral and coal law is considered by some to weaken the role of the state in terms of ownership, on the contrary, it provides flexibility for foreign parties in managing natural resources in Indonesia, especially in the ownership of special mining business permits (Amatullah, et al., 2020). The ease of mining business permit activities is also supported by the issuance of the omnibus law which provides leeway in the environmental permit process (Greenberg, et al., 2019; Widyarningsih & Sembiring, 2021).

This article aims to describe the institutional structure of the local government and the licensing mechanism for the mining sector after the amendment to the mineral and coal law and the issuance of the omnibus law in Central Sulawesi.

MATERIALS AND METHODS

This study uses a qualitative-descriptive approach through the study of documentation, observations, and interviews (Ningi, 2022). secondary data is obtained from research reports, journals, and documents related to the flow of mining business licensing mechanisms. The observations were made by observing the practice of mining activities. The interviews were conducted with related informants including government officials at the energy and mineral resources office of Central Sulawesi Province, the ombudsman, Walhi NGO, and the Mining Community Network.

Data were collected through document collection and structured interviews with informants

consisting of 3 people from the government element, 2 people from the community element, and 2 people from the NGO element. The data collected is then tested for validity of the data with construct validation techniques and internal validation. Construct validation is done by collecting as much evidence as possible and verifying with key informants, while internal validation is done by matching, explaining, and analyzing the time of the incident. Furthermore, the data that has been validated is analyzed using qualitative data analysis techniques.

RESULTS AND DISCUSSION

Mining includes cross-sectoral and cross-regional interests that require integration between government agencies in their management. Mining management is carried out through coordination by integrating the interests of various sectors, regions, and stakeholders in the fields of mining resources, land resources, and other resources. However, in the management of the mining sector, the leading sector at the national level is the Ministry of Energy and Mineral Resources. Meanwhile, at the local government level, it is charged to the Provincial and Regency/City levels of the Department of Energy and Mineral Resources.

Mining affairs generally refer to two laws. First, the law on minerals and coal (*Minerba*). The Minerba Law is a tool to regulate mineral and coal mining from upstream to downstream and its various permits. With the aim that the state obtains large profits from mining results and can be used for the welfare of the people. The Minerba Law was recorded in the state gazette in 2009, namely Law Number 2009 concerning Mineral and Coal. Furthermore, this Law changed in 2020, namely Law no. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining.

Second, local government laws. The Regional Government Law has been amended several times starting from Law 22 of 1999, Law 32 of 2004, Law 23 of 2014, Law Number 2 of 2015, and Law Number 9 of 2015. Law This regional government law divides the affairs and authorities of the regional government, including mining affairs. Through Law No. 23 of 2014, mining management is included in the realm of energy and mineral resources affairs, where the government is

congruent and optional. Congruent affairs are government affairs that are divided between the Central and Regional Governments of provinces and regencies/municipalities. Furthermore, the choice of affairs means government affairs that must be carried out by the region in accordance with the potential of the region. Based on local government law, mining affairs are the domain of three levels of government, namely the central government, provincial government, and district/city governments.

The Department of Energy and Mineral Resources of Central Sulawesi in carrying out its duties refers to the regulations that have been issued by the government, as told by the Head of the Mineral and Coal Division of the Department of Energy and Mineral Resources of Central Sulawesi Province, Muh. Naek, namely: "So the authority of Department of Energy and Mineral Resources itself in mining management refers to several laws, starting from the Regional Government Law, namely Law 32 of 2004, which was then changed to Law 23 of 2014. Then there was Law 4 of 2009 concerning Minerba which was later changed to Law 3 of 2004. 2020. The authority of the province in Law no. 4 only issues mining permits in cross-district areas. However, since the issuance of Law no. 3 of 2020, the provincial authority has almost ceased to exist and been taken over by the central government. With the existence of Law Number 3 2020, our authority in the Province has expired,

starting from the Governor's authority, there is none at all, from publishing anything related to the increase, we don't have it anymore".

Based on the interview above, shows that the authority of local governments in issuing mining business permits since the issuance of Law 3 of 2020 has shifted from local governments to the central government. The enactment of the law to reduce the authority of local governments in environmental management. The potential for reduced local government authority is also given space by-law number 11 of 2020 concerning job creation which provides options for granting environmental permits to the central government or to local governments (Indrastuti & Saputra, 2022). This regulation indirectly opens up opportunities for investors to bypass local governments, which have often been considered difficult for investors to invest in with the various regulations they made.

Mining business permits as stated in the Regional Government Law are under the authority of local governments. In Central Sulawesi Province, mining business permits are divided into two types of mining, namely: first, non-metallic mineral and rock mining, such as limestone, bentonite, dolomite, feldspar, granite, kaolin, marble, quartz sand, and zeolite (Lanini, et al., 2021; Haryadi 2010). These mining permits are spread across 13 districts/cities in Central Sulawesi covering 85 exploration IUP and 234 production IUP (see table 1).

Table 1. Number of Non-Metal and Rock Mineral Mining Business Permits In Central Sulawesi Province in 2021

No.	Regency/City	IUP Eksplorasi	IUP Production Operation
1	City of Palu	6	34
2	Regency of Donggala	25	54
3	Regency of Parigi Moutong	3	8
4	Regency of Sigi	0	0
5	Regency of Morowali	13	34
6	Regency of Morowali Utara	20	32
7	Regency of Poso	0	12
8	Regency of Tojo Unauna	0	13
9	Regency of Banggai	8	28
10	Regency of Banggai Laut	0	0
11	Regency of Banggai Kepulauan	2	1
12	Regency of Toli-Toli	6	12
13	Regency of Buol	2	6
Total		85	234

Source: Central Sulawesi Energy and Mineral Resources Office, 2021.

Metal mineral mines include iron, gold, silver, tin, copper, bauxite, nickel, and manganese. Spread over 9 districts with coverage of 5 exploration IUP and 122 production IUP (see table 2).

Table 2. Number of Metal Mineral Mining Business Permits In Central Sulawesi Province in 2021

No.	Regency/City	IUP Exploration	IUP Production Operation
1	City of Palu	0	0
2	Regency of Donggala	0	4
3	Regency of Parigi Moutong	0	2
4	Regency of Sigi	0	0
5	Regency of Morowali	1	46
6	Regency of Morowali Utara	0	33
7	Regency of Poso	1	0
8	Regency of Tojo Unauna	0	5
9	Regency of Banggai	0	17
10	Regency of Banggai Laut	0	0
11	Regency of Banggai Kepulauan	0	0
12	Regency of Toli-Toli	0	13
13	Regency of Buol	3	1
Total		5	121

Source: Central Sulawesi Energy and Mineral Resources Office, 2021.

In Central Sulawesi Province mining business permits are issued by the One Stop Service Investment Service (*Penanaman Modal Pelayanan Terpadu Satu Pintu/PMPTSP*). The Central Sulawesi PMPTSP Service is an agency that provides public services in the licensing sector. PMPTSP is a government agency that assists the Governor in serving licensing and non-licensing activities covering the area of Central Sulawesi Province with the PMPTSP system. One-Stop Integrated Service Investment Office, hereinafter abbreviated as PMPTSP, is a licensing service provider that has been delegated authority from the Governor, starting from the management process from the application stage to the issuance of documents carried out in one place.

The purpose of implementing PMPTSP is to improve the quality of services to the community to obtain services in the field of licensing and non-licensing. The main task of the PMPTSP is to assist

the Governor in carrying out government affairs in the investment sector which is the authority of the Region and the Co-Administration Tasks assigned to the Region.

The energy and mineral resources sector is one type of licensing service at the Central Sulawesi PMPTSP Service. Mining activities in Indonesia must have a permit that has been regulated by the Government in this case the Ministry of Energy and Mineral Resources. Mining business permits/IUP can be granted by the Governor, or the Regent/Mayor according to their authority. Mining Business Permits/IUP and Special Mining Business Permits (*Izin Usaha Pertambangan Khusus/IUPK*) can be obtained through an application and through an auction mechanism, except for a People's Mining Business Permit (*Izin Pertambangan Rakyat/IPR*) which can be obtained through an application. Mining has stages from upstream to downstream or from beginning to end.

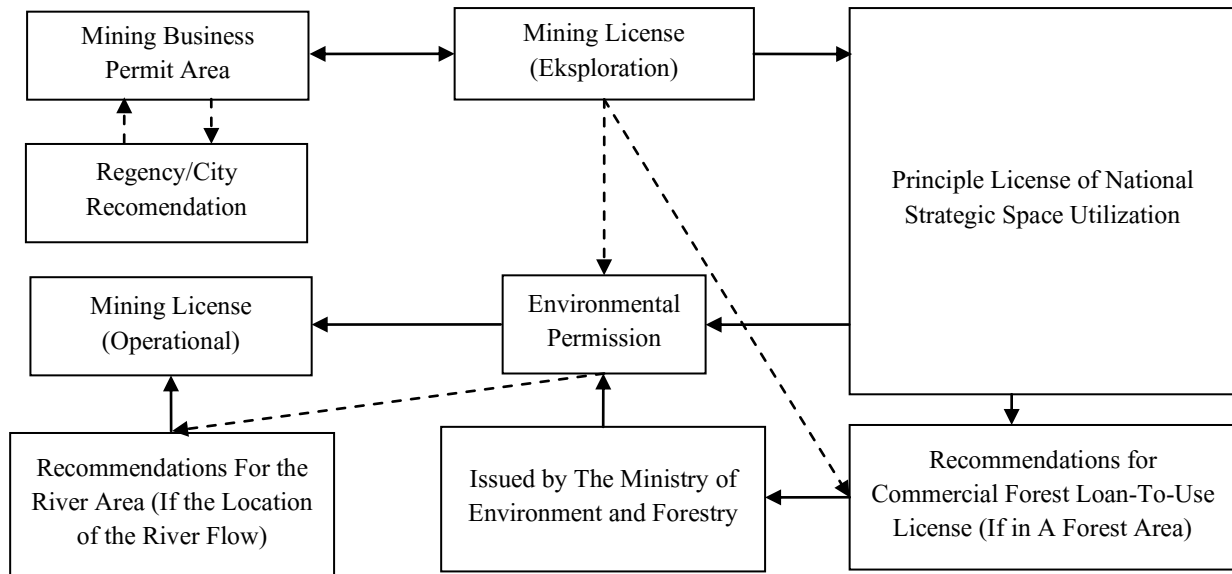


Figure 1. Stages of Mining Business Permits Before Omnibus Law
Source: processed from the Central Sulawesi PMPTSP Service, 2021.

The display above shows that the mining permit process in Central Sulawesi involves many government agencies, where before the One Stop Service Investment Office issues a permit, it must first obtain recommendations from other government agencies starting from the district/city government, the Energy and Mineral Resources Office, the Environment and Forestry Service, to the River Basin Office. This shows that the mining permit process in Central Sulawesi requires a process that is not simple.

The mining stages start from the general investigation, exploration, feasibility study, construction, mining, processing and refining, transportation and sales, and post-mining. From these stages, only a few activities can be carried out, this depends on the type of mining permit owned. The types of mining permits and the scope of their activities are as follows:

1. An exploration mining business license is a business license granted to carry out the stages of General Investigation, Exploration, and Feasibility Study activities. This permit will be obtained after the mining company obtains a Mining Business Permit Area (*Wilayah Izin Usaha Pertambangan/WIUP*) from the Regional/Provincial/Governor Government (Department of Energy and Mineral Resources Office) in accordance with its authority. This WIUP can be granted to Business Entities, Cooperatives, and individuals through auctions

or applications according to the type of commodity. The term of the Exploration IUP is granted for a maximum of 8 years for metallic minerals; 7 years for Coal, certain types of non-metallic minerals; and 3 years for non-metallic minerals, and rocks.

2. Special Exploration Mining Business Permit/IUPK is a business permit granted for a special mining business permit, where the period for granting a permit is the same as that of an Exploration IUP, the difference being that special exploration is granted by the Minister.
3. Production Operation Mining Business Permit is a business license granted after completion of exploration to carry out the stages of production operation activities which include construction; mining; processing and/or purification; and transportation and sales. The term of the production operation permit is granted for a maximum of 20 years and can be extended twice for 10 years each for certain types of metallic minerals, coal, and non-metallic minerals; 10 years and can be extended 2 times for 5 years each for non-metallic minerals, and 5 years and can be extended 2 times for 5 years each for rocks.
4. A mining business license specifically for production operations is a business license granted after the completion of special exploration activities to carry out the stages of production operation activities. The period for

granting permits is the same as for production operations, the difference being that special mining permits for production operations are granted by the Minister.

5. A mining business license for special production operations for processing and/or refining is a business license granted to purchase, transport, process, and purify including selling mineral or coal mining commodities resulting from their processing. The term of a special production operation permit is granted for a maximum of 30 years and is extended for 20 years. The authority for special production operations for processing and/or refining is given by the Minister if a). mining commodities to be processed come from other provincial areas outside the location of the processing and/or refining facilities; b). mining commodities to be processed come from abroad; and/or c). if the location of the processing and refining facilities is in a cross-provincial area. The authority for special production operation permits for processing and/or refining is granted by the Governor if a). the mining commodity to be processed comes from the same provincial area as the location of the processing and/or refining facility; and/or b). if the location of the processing and/or refining facilities is in the same province.
6. Mining business licenses for special production operations for transportation and sales are business permits granted to companies to buy, transport, and sell mineral or coal mining commodities. The term of the permit is granted for a maximum of 5 years and can be extended within 5 years. Transportation and sales activities carried out across provinces or across countries are issued by the Minister. Meanwhile, if the transportation and sales activities are carried out in one province, the permit is issued by the Governor.
7. A mining service business license is a permit granted to carry out core mining services business activities related to the stages and/or parts of mining business activities. The term of the permit is granted for a maximum of 5 years and can be extended for 5 years. The authority for a mining service business license is granted by the Minister if the mining service business activity is carried out throughout the territory of

Indonesia, and is given by the governor if the transportation and sales activities are carried out in one province.

In addition to the mining permits described above, there are still two types of mining permits that existed before Law Number 4 of 2009 namely Contracts of Work and Coal Mining Concession Work Agreements. A contract of Work is an agreement between the Government of the Republic of Indonesia and a company incorporated as an Indonesian legal entity to carry out mineral mining business activities. While the Coal Mining Concession Work Agreement is an agreement between the Government of the Republic of Indonesia and a company incorporated as an Indonesian legal entity to conduct coal mining business activities. These two types of mining permits ceased to exist after 2009, since the Minerba Law was enacted. Changes in the mineral and coal law from law number 4 of 2009 to law number 3 of 2020 contain new material in mining management, including an arrangement of mineral and coal concession permits which in law number 4 of 2009 are based on the province (local government), now in law number 3 of 2020 turn to the central government. Meanwhile, the delegation of authority from the Central Government to local governments is only related to licensing for smallholder mining.

Through law number 3 of 2020, the central government in carrying out mining businesses issues business permits, including business registration numbers, standard certificates, and permits. The permits in question include mining business permits/IUP, special mining business permits (IUPK), community mining permits/IPR, Rock Mining Permits (*Surat Izin Pertambangan Batuan/SIPB*), assignment permits, lifting and selling permits for Mining Services Business Permits, IUP for sales. The form of permits in law number 3 of 2020 has more items than law number 4 of 2009 which is only divided into three forms of permits. In Law 3 of 2020 and Law 4 of 2009, there are also differences in the environmental permit process. Law number 4 of 2009 requires an analysis of environmental impacts to be changed to the phrase the obligation to prepare environmental documents in law number 3 of 2020. This new law is considered to make the process of environmental permits easier, especially since the enactment of

Law Number 11 of 2020 concerning Job Creation, where the environmental permit which used to be a prerequisite for obtaining a business license, in the job creation law the environmental permit has changed to an environmental agreement, that is integrated with a business permit. Changes in environmental permits to environmental agreements can not only reduce the effectiveness of law enforcement, and increase the workload for the central government, but also reduce absolute responsibility in Law Number 32 of 2009 concerning Environmental Protection and Management (Sembiring, et al., 2020).

The process of issuing mining business permits requires caution, this is because mining activities have both positive and negative impacts. Positive mining activities encourage economic growth, absorb employment, and provide income for the region (Mobtaker & Osaaanloo, 2015; Cuartero-Enteria, 2018; Nazir, et al., 2020). But on the other hand, mining activities tend to damage the environment and are not sustainable. Therefore, mining affairs are very complex. It needs the involvement of many institutions and appropriate regulations to maximize benefits (improve the economy) and minimize risks (Upe, et al, 2019). In many countries, such as Sweden, Finland, and Russia, in issuing mining permits, there are restrictions on issuing environmental permits to prevent damage (Maria, et al. 2015). This situation is somewhat different from in Indonesia after the issuance of the Job Creation Law which tends to provide leeway in the management of environmental permits, where communities affected by business activities are no longer involved in the preparation of environmental impact analysis (Saputra & Dhianty, 2022).

There are at least four things that are considered by the government in designing the Omnibus Law on Job Creation, namely improving the investment ecosystem and business activities; increased protection and welfare of workers; facilities, empowerment, and protection of MSMEs and cooperatives; and increasing government investment and accelerating national strategic projects (Samawati & Sari, 2020), but on the other hand, this opens up opportunities for massive environmental destruction (Mabey, et al., 2020; Magidi & Hlungwani, 2022), social conflict (Upe, et al., 2020; Hajad, 2021), and the potential for

corruption in the environmental sector (Hamidi, 2015; Tegan, et al., 2021). The omnibus law has the potential to eliminate citizens' civil rights and weaken law enforcement for environmental destroyers (Prakasa, 2021). The results of the study found that the Omnibus Law weakens environmental protection and is not in accordance with the theory of sustainability/principles of environmental management (Nasikhin & Ihsan 2022). The Omnibus Law provides more stringent measures for some issues but is more lenient in others (especially environmental issues) and has the potential of maintaining rent-seeking behavior, which has been prevailing in business activities in Indonesia for decades (Pramono, et al., 2021).

Another critical note on the Job Creation Law is meeting the needs of capital owners, threatening the agrarian sector and the environment, and shifting the spirit of agrarian reform (PWYP Knowledge Forum, 2019). It is also considered that the Job Creation Law does not contain a good arrangement of authority in central-regional relations over the licensing and supervision system in the environment and forestry sector, as well as provisions on government administration. The implication then is to weaken local governments in carrying out some of their authorities as stated in Law Number 23 of 2014 concerning Regional Government. The Job Creation Law is also seen as anthropocentrism to the environment and forests, on the contrary, it strengthens the position of corporations (Bissett, et al., 2020).

Another issue, the lack of public involvement in the preparation of the Job Creation Law is very dangerous for Indonesian democracy and directs democracy in an illiberal direction (Arifin, 2021). The omnibus law legislative process that is so short that it overrides public participation and displays solid executive and legislative cooperation is evidence of the malfunctioning of checks and balances as one of the principles of democracy (Mahy, 2022). In such a situation, the judiciary as the third branch of power is the only one that can maintain democratic values, however, the judiciary becomes difficult to hope for, where after Suharto's reform there was the institutionalization of authoritarian political power through law and courts (Wiratraman, 2022).

CONCLUSION

The Ministry of Energy and Mineral Resources is the leading sector in the management of the mining sector at the national level. Meanwhile, at the regional government level, the Provincial and Regency/City levels of the Energy and Mineral Resources Office are played. Mining affairs generally refer to two laws. First, the law on minerals and coal (Minerba), namely Law no. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. Second, local government laws, namely Law 23 of 2014 junto Law No. 2 of 2015 junto Law No. 9 of 2015. In the Local Government Law, mining management is included in the realm of energy and mineral resources affairs which the government is congruent and choice.

The Mining activities in Indonesia through permits regulated by the government, especially the Ministry of Energy and Mineral Resources. At the local government level, a mining business permit (IUP) can be granted by the Governor, or the Regent/Mayor according to their authority. In Central Sulawesi Province mining business permits are issued by the One Stop Service Investment Service (PMPTSP). Before changes to the mineral and coal law and omnibus law, there are at least five stages that are passed in the licensing process, namely the application for a mining business permit area (WIUP), an application for an exploration mining business permit (IUP - E), an application for a principle permit for the use of a national strategic area space (if the mining location is in a national strategic area location), applications for Environmental Feasibility Decree (SKKL) and Environmental Permits, and applications for production mining business permits.

Since the enactment of Law Number 3 of 2020 concerning Minerals and Coal and the issuance of the law on job creation, the governance of mining permits has undergone significant changes, such as the strengthening of the central government's authority and the ease of licensing processes, especially in the case of environmental approvals that are integrated with permits effort.

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