

# Legal Problems Related to Mineral and Coal Mining Permits

Abdillah Dalimunte<sup>1</sup>, Mohammad Gufron AZ<sup>2</sup>, and Supriyadi<sup>3</sup>.

<sup>1,2,3</sup> Faculty of Law, University of Merdeka Malang, Indonesia.

## Article history:

Received 2023-01-19

Revised 2023-02-12

Accepted 2023-04-01

## Keywords:

Mining; Licensing; Authority.

## DOI:

[doi.org/10.26905/idjch.v14i1.9872](https://doi.org/10.26905/idjch.v14i1.9872)

## Corresponding Author:

Abdillah Dalimunte

Email: [adalimunte@gmail.com](mailto:adalimunte@gmail.com)

**Abstract:** The issues that will be discussed in this research include what are the legal implications of transferring the authority to issue mining permits after the latest publication and what are the regulations regarding mining permits after mining permits are issued. The purpose of this study is to provide a review of legal changes related to the Mineral and Coal Mining Law. This study uses normative legal research methods with several approaches, namely the statutory approach and the conceptual approach. As a result of the transfer of the issuance of mining permits to the central government, it appears that this is aimed at unraveling licensing issues which will later facilitate the investment climate in Indonesia so as to increase Indonesia's economic growth. The impact that occurs is the authority owned by the local government where currently the local government does not have attributive authority in terms of issuing mining permits. Harmonization of Mining Business Permit arrangements means seeking conformity or harmony between laws and regulations so that overlapping regulations do not occur and as a process of establishing laws and regulations to address conflicting matters among the legal norms that have been in effect.

## 1. Introduction

Management of natural resources is one way to help improve the welfare of people's lives. It can be seen that the management of natural resources is regulated in Article 3 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (after this referred to as the 1945 Constitution), which states that "Earth, water and natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people. It is also regulated in laws and regulations in various sectors.

The utilization of natural resources used for fostering social welfare in Indonesia is also implicitly stated in the objectives of the Indonesian State, which can be seen in the fourth paragraph of the 1945 Constitution, which says "to protect the entire Indonesian nation and all of Indonesia's bloodshed and to advance public welfare, educating the nation's life, and participating in a world order based on freedom, eternal peace, and social justice."<sup>1</sup>

<sup>1</sup> Rahmat Robuwan and Wirazilmustaan Wirazilmustaan, "Dimensi Desentralisasi Analisa Pola Hubungan Kewenangan Dalam Pengelolaan Pertambangan," *Progresif* 15, no. 2 (February 7, 2022): 197-212, <https://doi.org/10.33019/progresif.v16i2.2713>.

The process to be able to carry out or achieve state goals on the second point, where Indonesia is still struggling in terms of managing its natural resources even though now, especially after the reform, there is a view and enthusiasm that in order to be able to improve the quality of its human resources as well. This is understandable considering the potential of Indonesia, which has potential natural resources, especially in oil and gas, minerals, and coal. Where it is now noted that the potential for mineral and coal mining resources is scattered in various locations in Indonesia, both in the west and east, such as copper, gold in Papua, gold in Nusa Tenggara, Nickel in Sulawesi, and Bauxite, as well as coal in Kalimantan and other minerals in various locations in Indonesia.<sup>2</sup>

As in the laws related to natural resources, Article 33 paragraph (3) of the 1945 Constitution is the basis for regulating Law Number 4 of 2009 concerning Mineral and Coal Mining (Old Minerba Law). Article 33, paragraph (3) of the 1945 Constitution, authorizes the State to control natural resources in Indonesia. The concept of control in this Article was interpreted by the Constitutional Court in Decision Number 002/PUU-I/2003, which reads: the meaning of “controlled by the state” must be interpreted to include the meaning of control by the State in a broad sense which originates and is derived from the concept of sovereignty of the Indonesian people over all sources of earth and water resources and the natural resources contained therein, including the notion of public ownership by the people’s collectivity of the said sources of wealth. The people are collectively constructed by the 1945 Constitution, which gives a mandate to the State to carry out its functions in carrying out policies (*beleid*) and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) by the State.<sup>3</sup>

Through this decision, the phrase “controlled by the state” carries the consequence of having five obligations by the state, namely implementing policies (*beleid*) and management actions (*bestuursdaad*), regulation (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*). Apart from being carried out by the Central Government, the state’s authority to control mineral resources is carried out by the Regional Governments at the provincial and district/city levels. Even under certain conditions, the People’s Representative Council of the Republic of Indonesia (DPR RI) and the Regional People’s Representative Council (DPRD) are also involved in implementing state authority in the mineral resources sector. The spirit of decentralization is contained in the Old Minerba Law, where Article 3 letter c states that one of the objectives of mineral and coal management is to increase the income of local, regional, and state communities and create jobs for the most excellent welfare.<sup>4</sup>

Before Law Number 23 of 2014 was issued concerning Regional Government, the Provincial Government, and Regency/City Government had the authority to control activities over mineral and coal natural resources (after this, referred to as *minerba*).<sup>5</sup> This is in line with what is stated in

---

<sup>2</sup> Nabilla Desyalika Putri and Dian Agung Wicaksono, “IMPLIKASI LEGISLASI PENGAMBILALIHAN KEWENANGAN DI BIDANG PERTAMBANGAN MINERAL DAN BATUBARA OLEH PEMERINTAH PUSAT,” [41] *JURNAL LEGISLASI INDONESIA* 13, no. 1 (May 4, 2018): 19–32, <https://doi.org/10.54629/jli.v13i1.89>.

<sup>3</sup> Zainal Arifin Hosein, “Peran Negara Dalam Pengembangan Sistem Ekonomi Kerakyatan Menurut UUD 1945,” *Jurnal Hukum Ius Quia Iustum* 23, no. 3 (July 1, 2016): 503–28, <https://doi.org/10.20885/iustum.vol23.iss3.art8>.

<sup>4</sup> Muhammad Tanzil Aziz Rahimallah, Andi Dewi Pratiwi, and Achmad Fauzi Kusmin, “PENGELOLAAN MINERBA DALAM PERSEPEKTIF GOOD GOVERNANCE (TINJAUAN TEORITIK),” *Jurnal Arajang* 4, no. 1 (December 31, 2021): 34–52, <https://doi.org/10.31605/arajang.v4i1.2105>.

<sup>5</sup> Diyan Isnaeni, “IMPLIKASI YURIDIS KEWENANGAN PEMERINTAH DAERAH DALAM PEMBERIAN IJIN USAHA PERTAMBANGAN MENURUT UNDANG-UNDANG NOMOR 23 TAHUN 2014,” *Yurispruden* 1, no. 1 (January 24, 2018): 35, <https://doi.org/10.33474/yur.v1i1.734>.

Article 4, paragraph (2) of the Old Minerba Law, which states that the organizers of mineral and coal resource control activities are the central government or regional governments. This situation shows the spirit of decentralization and regional autonomy as envisioned by lawmakers in the context of mineral and coal control.<sup>6</sup>

The authority possessed by the Regional Government over issues regarding mining has been reaffirmed in the decision of the Constitutional Court Number 10/PUU-X/2012 concerning the Review of Law Number 4 of 2009 concerning Mineral and Coal Mining, wherein the decision of the Constitutional Court, the Constitutional Court protects that in the distribution of government affairs that are voluntary must be based on the spirit of the constitution which gives the broadest possible autonomy to the Regional Government.<sup>7</sup>

However, developments in the control of mineral and coal resources tend to ignore the mandate given by the Constitutional Court. Since the issuance of Law Number 23 of 2014 concerning Regional Government, Regency/Municipal Governments no longer have authority in the administration of forestry, marine affairs, and energy and mineral resources, including in the matter of issuing mining permits. This authority is transferred to the central government and provincial governments through the provisions of Article 14 paragraph (1) of Law Number 23 of 2014 concerning the Regional Government.<sup>8</sup> Further provisions regarding the authority possessed by the Central Government and the Provincial Government in the administration of mineral and coal affairs are then contained in the Appendix to Law Number 23 of 2014 concerning the Regional Government.

After the enactment of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (after this referred to as the New Minerba Law), another polemic emerged. Before the revision of the Old Minerba Law was passed, at almost the same time, the Government and the DPR were also discussing the legalization of Law Number 11 of 2020 concerning Job Creation which had been included in the priority National Legislation Program in 2020. As is well known, Law Number 11 of 2020 concerning Job Creation is constructed as a legal umbrella that will unravel problems in the ease of investment, one of which is related to permit issues, including permit activities in the mineral and coal mining sector. Problems arise when almost all of the substance contained in Law Number 11 of 2020 concerning Job Creation is the substance of the Minerba Law, which the DPR and the President are discussing. The discussion of the two laws, which tend to have the same substance, raises concerns among the public that there will be overlapping regulations that will impact mining business activities and the failure to guarantee legal certainty.

However, in the end, Law Number 11 of 2020 concerning Job Creation, ratified in October 2020, does not regulate the provisions contained in the revision of the Minerba Law as a form of harmonization between laws and regulations. Provisions regarding the transfer of authority to issue mining business licenses to the central Government remain in the New Minerba Law as set out in the substance of Article 35 paragraph (1). This implies the existence of Article 4 paragraph (2) of the New Minerba Law, which states that the Central Government fully exercises state control over

<sup>6</sup> Ahmad Redi and Luthfi Marfungah, "Perkembangan Kebijakan Hukum Pertambangan Mineral Dan Batubara Di Indonesia," *Undang: Jurnal Hukum* 4, no. 2 (November 21, 2021): 473–506, <https://doi.org/10.22437/ujh.4.2.473-506>.

<sup>7</sup> Ahmad Redi, "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam," *Jurnal Konstitusi* 12, no. 2 (May 20, 2016): 401, <https://doi.org/10.31078/jk12210>.

<sup>8</sup> Rizkyana Zafrrindra Putri and Lita Tyesta ALW, "KAJIAN POLITIK HUKUM TENTANG PERUBAHAN KEWENANGAN PEMBERIAN IZIN USAHA PERTAMBANGAN MINERAL DAN BATUBARA," *Law Reform*, (September 30, 2015), <https://doi.org/10.14710/lr.v11i2.15767>.

mineral and coal resources. The existence of Article 4 paragraph (2) of the New Minerba Law then abolished the authority of the Regional Government, which was previously regulated in Articles 7 and Article 8 of the Old Minerba Law.

This condition shows the centralization of authority in the Central Government, contrary to the spirit of regional autonomy regulated in the 1945 Constitution. Regional Autonomy is a natural form of democracy. It implements the areal division of power, understood as the division of state power vertically, which has implications for the distribution of authority for administering Government between the Central and Regional Governments. It becomes a question regarding the implementation of Jeremy Bentham's theory of utilitarianism about how the benefits of the law, which is one of the goals in a law formation, can be optimally provided to the community when in fact, the centralization of authority to issue mining permits to the Central Government has the opportunity to shrink the political economy relationship between the center and the regions.

Based on the description above, it is urgent and exciting to conduct research entitled a juridical study related to mining permits after the issuance of law no. 3 of 2020 concerning amendments to law no. 4 of 2009 concerning mineral and coal mining, given the research such as the research entitled "Effectiveness of Law Number 3 of 2020 in Granting Mineral Mining Business Permits in Indonesia".<sup>9</sup> The Effectiveness of Law Number 3 of 2020 in Granting Mineral Mining Business Licenses in Indonesia. *Lex Privatum*, 10(3), as well as research entitled "Permit for the Use of Smelter by Freeport Indonesia Limited Liability Company According to Law Number 3 of 2020 Concerning Mining".<sup>10</sup> Permit to Use Smelter by Freeport Indonesia Limited Liability Company According to Law Number 3 of 2020 Concerning Mining, by Melky Bujani in *Lex Administratum*, 10(2). Not yet explicitly reviewing and analyzing the legal implications of transferring authority to issue mining permits after the issuance of law number 3 of 2020 concerning amendments to law number 4 of 2009 concerning mineral and coal mining. as well as Mining Permit Arrangements After the Issuance of Law Number 3 of 2020 concerning Amendment to Law Number 4 of 2009 concerning Mineral and Coal Mining, so that understanding and input are obtained in the context of a better and ideal, harmonious and non-overlapping mining licensing process as desired.

## 2. Method

This research is juridical-normative law research. Data collection techniques in this study used literature and document or archive studies, namely by collecting data related to the research that needs to be studied, in addition to various books and other supporting legal materials. The analysis technique used descriptive-qualitative data.

## 3. Legal Implications of Transfer of Authority to Issuance of Mineral and Coal Mining Permits

The relationship between the Regional Government and the Central Government is based on Article 18 paragraph (5) of the 1945 Constitution, which states that the Regional Government shall

<sup>9</sup> Friskilia Darongke, "EFEKTIVITAS UNDANG-UNDANG NOMOR 3 TAHUN 2020 DALAM PEMBERIAN IZIN USAHA PERTAMBANGAN MINERAL DI INDONESIA" | *LEX PRIVATUM*, (June 27, 2022), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/41456>.

<sup>10</sup> Melky Bujani, "PERIZINAN PENGGUNAAN SMELTER OLEH PERSEROAN TERBATAS FREEPORT INDONESIA MENUJUT UNDANG-UNDANG NOMOR 3 TAHUN 2020 TENTANG PERTAMBANGAN," *LEX ADMINISTRATUM*, (April 19, 2022), <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/40423>.

exercise the broadest possible autonomy, except for government affairs determined by law as the affairs of the Central Government. This article is the paramount legitimacy for the drive to carry out regional autonomy in various fields, including mineral and coal mining. As the mineral and coal mining sector is one of the natural resource sectors, it has links to other environmental sectors as well as the authority of the Regional Government and the Central Government in managing the mining business. This can have implications for the obligation to be able to take action on the interpretation of “state control rights” not only on the “shoulders” of the Central Government but also the obligations of the Regional Government by the classification of mandatory and optional functions that will be imposed.

The decision of the Constitutional Court in its decision Number 002/PUU-I/2003 provides an interpretation of the right to control the state, which at the same time gives an obligation for the Government to carry out policies (*beleid*), management actions (*bestuursdaad*), regulations (*regelendaad*), management (*beheersdaad*), and supervision (*toezichthoudensdaad*) for the most significant possible purpose for the prosperity of the people. This is the interpretation of the legal and political objectives of the Constitutional Court Decision.<sup>11</sup> Legal politics in Dutch terms is called *rechtspolitiek*, which consists of 2 words: *rechts* and *politiek*. *Recht* has a meaning as law, while the word *politiek* or *belied* has a policy meaning where legal experts can also interpret it as a series of activities suggested in a particular environment by a person, group, or government in order to realize a goal by providing opportunities and challenges to implementing policy proposals. Legal politics is interpreted as an activity that establishes a pattern or method for forming law, oversees law implementation, and reforms law to achieve state goals.

In the mineral and coal mining field, legal politics serves as a guide in formulating policies relating to mineral and coal mining and can serve as a means to assess or criticize every mining law product issued, whether it is in line with state objectives or not. The implementation of a political law must be based on Pancasila values based on four basic things, namely first, paying attention to the ideological and territorial integration of the nation; second, ensuring social justice for the people of Indonesia; third, the implementation of a democratic and nomocratic state political system is reflected; and fourth, the creation of tolerance in people’s lives.

Amendment to Law Number 4 of 2009 through Law Number 3 of 2020, promulgated in the State Gazette of 2020 Number 147 Supplement to the State Gazette Number 6525, is the latest phase of mining law in Indonesia. The reason for making changes to Law Number 4 of 2009 is based on several things; first, as a follow-up to the decision of the Constitutional Court, which granted in part or as a whole the request for judicial review of several articles in the 2009 Minerba Law. Second, synchronizing the authority of the central government and regional governments in government affairs in the mineral and coal mining sector, third; there are cases of overlapping mining permits, fourth; as an effort to overcome various problems in the mineral and coal mining sector, such as in the fields of processing and refining, mining data and information, supervision, protection of affected communities, and sanctions.<sup>12</sup>

<sup>11</sup> Nina Amelia Novita Sari et al., “IMPLIKASI PENAFSIRAN HAK MENGUASAI NEGARA OLEH MAHKAMAH KONSTITUSI TERHADAP POLITIK HUKUM AGRARIA PADA PULAU-PULAU KECIL DI INDONESIA,” *Law Review*, (November 29, 2019), <https://doi.org/10.19166/lr.v0i2.1874>.

<sup>12</sup> Abdul Kadir, “Penyelesaian Sengketa Administrasi Izin Usaha Pertambangan Pasca Berlakunya Undang-Undang Nomor 3 Tahun 2020,” *Journal Sultra Research of Law* 3, no. 2 (September 26, 2021): 25–36, <https://doi.org/10.54297/surel.v3i2.26>.

The minerba mining sector has a central role in efforts to realize the welfare of the entire community equitably so that the reconstruction of mineral and coal mining law is oriented towards objectives that are in the constituent so that in the future, the implementation of the mineral and coal mining activities can run effectively. In addition, the law passed during the COVID-19 pandemic was also intended to increase the country's economic development. One of the main issues after the issuance of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (from now on referred to as the New Minerba Law) is the Government's efforts to improve the mining licensing system. The problem of mining permits is one of the problems that still occur today; there are at least two main issues that affect the difficulty of solving problems in the licensing sector, namely that there is a sectoral ego that remains adamant not to submit to efforts to simplify licensing and perspectives on permits that are still complicated so that licensing is not seen as a legal instrument but as a source of income.

Issuance of mining permits is an authority owned by the Government to permit holders to manage mining business activities in order to achieve concrete goals even if they violate the prohibited provisions.<sup>13</sup> Philosophically, the issuance of mining permits aims to improve the country's economy and achieve the people's welfare and prosperity. Issuing permits for business activity, including the mineral and coal mining business, serves as a means to exercise control which describes the legal relationship between the state and legal entities or individuals. This means that mining permits act as an instrument of legal prevention in controlling mineral and coal mining business activities.<sup>14</sup>

Significant changes in the New Minerba Law related to the issuance of permits are shown through the provisions of Article 4 paragraph (2) Jo. Article 35, paragraph (1) says, "Mining Business is carried out based on a Business Permit from the Central Government." This new Minerba Law also, at the same time, abolishes the provisions in the Concurrent Government Affairs Distribution Matrix, which divides government affairs in the energy and mineral resources sector, including government affairs in the minerba mining sector as referred to in the Appendix to Law Number 23 of 2014 resulting in synchronization between legal norms governing authority in the mineral and coal mining sector.

As previously explained, before the issuance of the New Minerba Law, there was a norm conflict between Law Number 4 of 2009 and Law Number 23 of 2014 regarding the authority possessed by the Central Government, Provincial Governments, and District/City Governments in the mineral and coal mining sector, including in terms of issuing permits. This means that through the New Minerba Law, Regional Governments, both Provincial Governments and Regency/City Governments, no longer have the attributive authority to issue mining permits. This condition is also a decentralization of the issuance of mining permits after, in the past, the nuances of issuing mining permits were based on the spirit of decentralization and regional autonomy.

However, in Article 35, paragraph (4) of the New Minerba Law, it is stated that "The Central Government may delegate the authority to grant Business Permits as referred to in paragraph (2)

---

<sup>13</sup> Oheo K. Haris, "GOOD GOVERNANCE (TATA KELOLA PEMERINTAHAN YANG BAIK) DALAM PEMBERIAN IZIN OLEH PEMERINTAH DAERAH DI BIDANG PERTAMBANGAN," *Yuridika*, (August 21, 2017), <https://doi.org/10.20473/ydk.v30i1.4879>.

<sup>14</sup> Kartono Kartowiyono, "ANALISA KONFLIK HUKUM WEWENANG PENGAWASAN KEGIATAN PERTAMBANGAN PASCA BERLAKUNYA UNDANG-UNDANG PEMERINTAHAN DAERAH TAHUN 2014," *Bina Hukum Lingkungan* 2, no. 1 (December 11, 2017): 30-39, <https://doi.org/10.24970/bhl.v2i1.29>.

to the Provincial Governments by the provisions of laws and regulations.” The provisions of this article suggest that there is an opportunity for regional or provincial government involvement in the matter of issuing mining permits. It will be an interesting discussion if the provisions of this article directly use the phrase “delegation.” In contrast, in general, the provisions in laws usually use the phrase “submitted” and so on.

Suppose one looks at the Elucidation of the New Minerba Law in the elucidation section of Article 35, paragraph (4). In that case, it can be seen that the intent of the provisions of the article is the delegation of business licensing authority by the Central Government to the Regional or Provincial Governments, which is carried out in the context of granting People’s Mining Permits (IPR) and SIPB (Rock Mining and Permit) which are implemented based on the principles of effectiveness, efficiency, accountability, and externality. This means that by looking at the characteristics of the delegated authority mentioned above, the Provincial Government still has the authority to issue mining permits, even though the permit form is limited.

On the one hand, the transfer of authority to issue permits was carried out to realize an efficient mining licensing system. However, it cannot be denied that the result of the wide range of mining areas and the lack of authority possessed by the Regional Government as the ‘host’ party to supervise mining activities mineral, it is not impossible that this will have an impact on the process of monitoring, fostering and supervising mineral mining activities is not intensive.

The minimal role of the Regional Government in mineral and coal mining activities can cause several problems because, basically, the relationship between the central government and the Regional Government, which is constructed in regional autonomy, aims to bring the decision-making process closer in the formation of public policy so that it can realize prosperity and justice in society and achieving effectiveness and efficiency in the context of providing services. The current mining law should move to create synergy between governments, not placing the Central Government and Regional Governments on different paths for the sake of sustainable development in the future.

#### **4. Arrangements for Mineral and Coal Mining Permits**

Mineral and coal mining business activities have an essential role in providing real added value for economic growth in Indonesia and sustainable regional development, where implementation is still constrained by the authority between the central Government and regional governments, licensing, protection of affected communities, data and information regarding mining, supervision in the field of mining and sanctions so that until now the community still views that the implementation of mineral and coal mining has not yet reached an optimal stage.

For this reason, the arrangements regarding mineral and coal mining that were previously regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining are considered to be still not able to answer developments, problems, and legal requirements in the implementation of mineral and coal mining, so it is necessary to make changes so that can become an effective, efficient and comprehensive legal basis in the implementation of mineral and coal mining. Therefore, the Government and the DPR-RI have issued Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining, promulgated on June 3, 2020.

Related to this, one of the provisions in Article 173C of Law Number 3 of 2020 is the temporary suspension of the authority of the Regional Government in the Mineral and Coal Mining Sector regarding the issuance of new permits for a maximum period of 6 (six) months from Law Number 3 the Year 2020 applies (effective June 10, 2020).

For the Regional Government, the temporary suspension of granting new permits can potentially increase mining activities without permits, especially rocks used to meet the needs of infrastructure development implementation. For this reason, the Governor asked the Regents and Mayors that in implementing infrastructure development activities in each Regency/City, project/work implementers must use material/rock originating from the holder of a Mining Business Permit (IUP) for Rock Production Operations.

The mining licensing authorities taken over by the Central Government are as follows; Mining Business Permit (IUP), People's Mining Permit (IPR), Temporary Permit for transportation and sales, Special Production Operation Mining Business Permit for processing or refining, Production Operation Mining Business Permit specifically for transportation and sales, Mining Service Business Permit (IUJP) and Production Operation Mining Business Permit for sales.

One of the reasons for the change in authority to issue mining business permits (IUP) from the regional Government to the Central Government is as a form of controlling sales and production, especially metal and coal as energy commodities and downstream supply of metal and investment certainty for investors. However, there is one exciting thing related to the authority to issue mining business permits (IUP) where the provisions in Article 35 paragraph (4) of the New Minerba Law state that "The Central Government can delegate the authority to issue Business Permits as referred to in paragraph (2) to Regional Government's province by the provisions of the legislation." The provisions of Article 35 indicate an opportunity to involve the Regional and Provincial Governments in issuing mining business permits (IUP). However, it becomes an interesting discussion when the provisions in the Article directly use the phrase delegate.

The latest Minerba Law has given logical consequences to a form of mining management permit in Indonesia because there are two systems in effect, namely, Contract of Work (KK) and Coal Mining Concession Work Agreement (PKP2B) and Mining Authorization (KP), then changed to permit system. Changes in the pattern of mining activities in Indonesia through Mining Business Permits (IUP) are a substitute for Mining Authorizations and Special Mining Business Permits (IUPK) as a substitute for the contract system, both in the form of Contracts of Work (KK) and Coal Mining Work Agreements (PKP2B). Law Number 3 of 2020 has also guaranteed the operation of converting KK and PKP2B to IUPK.

The latest Minerba Law also focuses on adjustments to regional autonomy and good mining practices. In the contract system, the Government has an equal position with investors. However, in the licensing system in Law Number 3 of 2020 concerning Mineral and Coal Mining, the position of the Government is higher than investors, where the Government has a position as a regulator. This change in the contract system makes the Government's position as a public legal entity and no longer a private legal entity, so from a constitutional aspect, this change is a good step.

The New Minerba Law changes mining permits to centralized permits or centralized permits where absolute licensing becomes the authority of the Central Government without the authority of the Regional Government. Higher rules override lower laws and regulations. This principle is also stated in the Explanation of Law Number 12 of 2011 concerning the Formation of Legislation.

## **5. Conclusion**

The implications after the issuance of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2020 is that there is a transfer of the issuance of mining permits to the Central Gov-



ernment. This aims to unravel licensing issues which will later facilitate the investment climate in Indonesia to increase Indonesian economic growth. The transfer of authority to issue permits also impacts the authority possessed by the Regional Government, where currently, the Regional Government needs to have attributive authority in issuing mining permits. There is still an opportunity to issue mining permits, but this is limited in the form of IPR and SIPB, which will later have implications for limited supervisory authority, provided that the Central Government has delegated this authority based on the provisions of Article 35 paragraph (4) of Law Number 3 of 2020 Legislators should pay more attention to the value of benefits which is one of the principles of mineral and coal mining in forming legal rules in the mining sector in order to realize the welfare and prosperity of the people and to maintain the sustainability of mining in the future. The transfer of authority to issue mining business permits (IUP) also impacts the authority the Regional Government possesses, where currently, the Regional Government only has limited authority. The transfer of authority to the Central Government also impacts the law that could be more harmonious.

## References

- Bujani, Melky. "PERIZINAN PENGGUNAAN SMELTER OLEH PERSEROAN TERBATAS FREEPORT INDONESIA MENURUT UNDANG-UNDANG NOMOR 3 TAHUN 2020 TENTANG PERTAMBANGAN." *LEX ADMINISTRATUM*, (April 19, 2022). <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/40423>.
- Darongke, Friskilia. "EFEKTIVITAS UNDANG-UNDANG NOMOR 3 TAHUN 2020 DALAM PEMBERIAN IZIN USAHA PERTAMBANGAN MINERAL DI INDONESIA." *LEX PRIVATUM*, (June 27, 2022). <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/41456>.
- Haris, Oheo K. "GOOD GOVERNANCE (TATA KELOLA PEMERINTAH YANG BAIK) DALAM PEMBERIAN IZIN OLEH PEMERINTAH DAERAH DI BIDANG PERTAMBANGAN." *Yuridika*, (August 21, 2017). <https://doi.org/10.20473/ydk.v30i1.4879>.
- Hosein, Zainal Arifin. "Peran Negara Dalam Pengembangan Sistem Ekonomi Kerakyatan Menurut UUD 1945." *Jurnal Hukum Ius Quia Iustum* 23, no. 3 (July 1, 2016): 503-528. <https://doi.org/10.20885/iustum.vol23.iss3.art8>.
- Isnaeni, Diyan. "IMPLIKASI YURIDIS KEWENANGAN PEMERINTAH DAERAH DALAM PEMBERIAN IJIN USAHA PERTAMBANGAN MENURUT UNDANG-UNDANG NOMOR 23 TAHUN 2014." *Yurispruden* 1, no. 1 (January 24, 2018): 35. <https://doi.org/10.33474/yur.v1i1.734>.
- Kadir, Abdul. "Penyelesaian Sengketa Administrasi Izin Usaha Pertambangan Pasca Berlakunya Undang-Undang Nomor 3 Tahun 2020." *Journal Sultra Research of Law* 3, no. 2 (September 26, 2021): 25-36. <https://doi.org/10.54297/surel.v3i2.26>.
- Kartowiyono, Kartono. "ANALISA KONFLIK HUKUM WEWENANG PENGAWASAN KEGIATAN PERTAMBANGAN PASCA BERLAKUNYA UNDANG-UNDANG PEMERINTAHAN DAERAH TAHUN 2014." *Bina Hukum Lingkungan* 2, no. 1 (December 11, 2017): 30-39. <https://doi.org/10.24970/bhl.v2i1.29>.
- Luhukay, Roni Sulistyanto, and Rachmasari Kusuma Dewi. "Sentralisasi Kewenangan Perizinan Usaha Oleh Pemerintah Pusat Dalam Rancangan Undang-Undang Mineral Dan Batubara." *Al-'Adl* 13, no. 2 (July 24, 2020): 265. <https://doi.org/10.31332/aladl.v13i2.1861>.
- Putri, Rizkyana Zaffrindra, and Lita Tyesta ALW. "KAJIAN POLITIK HUKUM TENTANG PERUBAHAN KEWENANGAN PEMBERIAN IZIN USAHA PERTAMBANGAN MINERAL DAN BATUBARA." *Law Reform*, (September 30, 2015). <https://doi.org/10.14710/lr.v11i2.15767>.

- Putri, Nabilla Desyalika, and Dian Agung Wicaksono. "IMPLIKASI LEGISLASI PENGAMBILALIHAN KEWENANGAN DI BIDANG PERTAMBANGAN MINERAL DAN BATUBARA OLEH PEMERINTAH PUSAT." *JURNAL LEGISLASI INDONESIA* 13, no. 1 (May 4, 2018): 19-32. <https://doi.org/10.54629/jli.v13i1.89>.
- Rahimallah, Muhammad Tanzil Aziz, Andi Dewi Pratiwi, and Achmad Fauzi Kusmin. "PENGELOLAAN MINERBA DALAM PERSEPEKTIF GOOD GOVERNANCE (TINJAUAN TEORITIK)." *Jurnal Arajang* 4, no. 1 (December 31, 2021): 34-52. <https://doi.org/10.31605/arajang.v4i1.2105>.
- Redi, Ahmad. "Dinamika Konsepsi Penguasaan Negara Atas Sumber Daya Alam." *Jurnal Konstitusi* 12, no. 2 (May 20, 2016): 401. <https://doi.org/10.31078/jk12210>.
- Redi, Ahmad, and Luthfi Marfungah. "Perkembangan Kebijakan Hukum Pertambangan Mineral Dan Batubara Di Indonesia." *Undang: Jurnal Hukum* 4, no. 2 (November 21, 2021): 473-506. <https://doi.org/10.22437/ujh.4.2.473-506>.
- Robuwan, Rahmat, and Wirazilmustaan Wirazilmustaan. "Dimensi Desentralisasi Analisa Pola Hubungan Kewenangan Dalam Pengelolaan Pertambangan." *Progresif* 15, no. 2 (February 7, 2022): 197-212. <https://doi.org/10.33019/progresif.v16i2.2713>.
- Sari, Nina Amelia Novita, Ezra Tambunan, Patricia Inge Felany, and Xavier Nugraha. "IMPLIKASI PENAFSIRAN HAK MENGUASAI NEGARA OLEH MAHKAMAH KONSTITUSI TERHADAP POLITIK HUKUM AGRARIA PADA PULAU-PULAU KECIL DI INDONESIA." *Law Review*, November (29, 2019). <https://doi.org/10.19166/lr.v0i2.1874>.
-