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Research Article

Reconstruction of Regional Government Authority in Mining Management Post Law No. 23 of 2014: Legal Review Based on Hans Kelsen's Theory

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Abstract: This article examines the shift in local government authority over mineral and coal mining management following the enactment of Law Number 23 of 2014 on Regional Government. The transfer of authority from regency/city governments to provincial and central governments has created normative disharmony between the Regional Government Law and the Mining Law, resulting in legal uncertainty at the implementation level. Using a normative juridical approach and Hans Kelsen's theory of the hierarchy of norms, this article analyzes the legal validity of the transfer and identifies structural conflicts within the legal system. The findings indicate that the current regulation lacks both hierarchical consistency and functional clarity. Therefore, a reconstruction of the legal framework for mining governance is required to balance the principle of legality with the concept of regional autonomy. A model of limited delegation, sectoral regulatory harmonization, and the application of multilevel governance are proposed as key recommendations to ensure a fair, effective, and constitutional relationship between central and local governments

Keywords: Authority; Hans Kelsen; Local government; Mining; Regional autonomy

1. Introduction

Indonesia with its abundant natural resources in the fields of agriculture, fisheries, and even mining is a priceless gift from God Almighty. So that the management and attention of the government is very necessary, as stated in the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. "The land, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people". The context of being controlled by the state has the meaning that the state's right to control natural wealth assets, in this case the state has absolute sovereignty over natural resource wealth, which is used for the greatest prosperity of the people, and the legal ownership rights to natural wealth belong to the Indonesian people. Based on this spirit, it indicates that the management of natural resources is carried out by the state and used for the prosperity of the people.

Constitutionally, the administration that deals with the government has been regulated through the system of division of affairs of the central government and local governments so that there are concerns that there will be no concentration of power. In other words, the implementation of constitutional local government is to use a government system based on the principle of regional autonomy. This has been affirmed in article 18 paragraphs (2) and (5) of the Constitution of the Republic of Indonesia in 1945, as follows:

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a. Paragraph (2) "The local governments of provinces, districts, and municipalities regulate and manage their own government affairs according to the principles of autonomy and assistance"
b. Paragraph (5) "The local government exercises the widest possible autonomy, except for administrative matters that are determined by law to be the affairs of the central government"

In connection with the orientation of the goals of the concept of regional autonomy, namely by empowering the potentials owned by the regions, as a form of effort to prosper the people in their regions through various local government policies. So that the existence of regional autonomy positions the government to have flexibility in regulating its potential and the needs of the community in its area.

Supposedly, the granting of broad autonomy to the regions is directed to accelerate the realization of community welfare by improving services, empowerment and the role of the community. Based on broad autonomy, regions are expected to be able to increase competitiveness by paying attention to the principles of democracy, equity, justice, privilege and specificity as well as the potential and diversity of regions in the system of the Unitary State of the Republic of Indonesia.

Natural resource management, especially the mineral and coal mining sector, is one of the strategic sectors in national and regional development. This sector not only contributes significant income to the country, but also plays a role in opening up employment opportunities, developing infrastructure, and encouraging economic growth in producing regions. Therefore, the regulation of authority in mining management is an important issue within the framework of central and regional relations.

In the Indonesian government system that adheres to the principle of a unitary state with regional autonomy, the authority of regional governments reflects the implementation of the principle of decentralization as stipulated in Article 18 of the 1945 Constitution of the Republic of Indonesia. However, since the enactment of Law Number 23 of 2014 concerning Regional Government, there have been significant changes in the structure of authority, especially in the mining sector. The authority that previously lay with the district/city government to issue Mining Business Permits (IUP), was transferred to the provincial government and partly to the central government. This change raises legal questions related to the validity and normative consistency of the transfer policy.

The problem becomes more complex when the provisions in Law No. 23 of 2014 are not always in sync with sectoral regulations, such as Law No. 4 of 2009 concerning Mineral and Coal Mining (which was later amended by Law No. 3 of 2020). There is disharmony between the provisions of authority in sectoral laws and regional government laws, which results in legal uncertainty in the implementation of policies at the regional level. This

disharmony has implications for the effectiveness of mining governance and blurs the boundaries of authority between the central, provincial, and district/city governments.

To answer these problems, this article uses the legal theory framework of Hans Kelsen, especially the concept of Stufenbau des Recht (levels of legal norms), which emphasizes that every legal norm must be hierarchically valid and obtain legitimacy from higher norms. With this approach, it can be analyzed whether the transfer of regional government authority in the mining sector has been carried out legally, in accordance with the national legal system, and does not conflict with the principle of decentralization guaranteed by the constitution.

This article aims to examine and analyze the transfer of regional government authority arrangements in the mining sector after Law No. 23 of 2014 from the perspective of Hans Kelsen's theory. And, it will offer an ideal authority reconstruction model within the framework of regional autonomy. Thus, this article is expected to provide normative contributions to the formation and harmonization of legal policies in the mining sector that are more effective, fair, and constitutional.

2. Methods

This research is normative legal research that aims to analyze the laws and regulations related to the authority of local governments in the mining sector. The approaches used include the legislative approach and the conceptual approach. The legislative approach is used to examine the norms in the 1945 Constitution, Law No. 23 of 2014, the Minerba Law, and its derivative regulations. Meanwhile, the conceptual approach is used to examine Hans Kelsen's theory regarding the level of legal norms (Stufenbau). Sources of legal materials consist of Primary legal materials such as statutory regulations. Secondary legal materials such as books, journals, and legal literature. and tertiary legal materials such as legal dictionaries and encyclopedias. The analysis is carried out qualitatively and normatively, by interpreting and connecting legal norms in the legislative hierarchy system.

3. Results and Discussion

3.1 Analysis of the Transfer of Authority of Regional Governments in the Field of Mining After Law No. 23 of 2014 In the Perspective of Hans Kelsen's Theory

The order of laws and regulations is associated with the teachings of Hans Kelsen regarding the theory of Stufenbau des Recht which views that the law is valid or valid if it is made by an institution or authority that has the authority to form it and is based on higher norms so that in this case the lower norm (inferior) can be formed by a higher norm (superior)). Law is basically tiered and layered to form a hierarchy, where a lower norm applies, is sourced, and based on a higher norm, a higher norm applies, is sourced and based on a higher norm, and so on until a norm that cannot be traced further and is hypothetical and fictitious, namely the basic norm (grundnorm).

Based on this research which focuses on the transfer of authority arrangements, local governments in managing the mining sector after the enactment of Law Number 23 of 2014 concerning Regional Government include several main provisions related to the authority of the mining sector. Like article 14 of Law Number 23 of 2014 concerning Regional Government which has given legitimacy, this article reads:

"The implementation of Government Affairs in the fields of forestry, marine, and energy and mineral resources is divided between the Central Government and the provincial regions"

This provides an affirmation that the Regency/City Government is no longer authorized in mining management, including issuing Mining Business Permits (IUP). The authority to issue permits and supervision is handed over to the provincial government for mines located within one provincial area on the authority in the form of assistance or delegation duties from the central government.

If reflecting on the Regional Government Law No. 32 of 2004, this Law provides broad authority to the regions, including to the Regency/City in managing mines in accordance with the mandate of the concept of regional autonomy which is fully decentralized providing flexibility in managing mines in accordance with local needs optimally so as to bring economic benefits closer to the local community, as well as encouraging regional economic growth directly through local original revenue (PAD) from mining sector. This law is more about strong decentralization, where districts/cities have broad authority in the management of mines in their areas, including the granting of mining business licenses (IUP) in their areas in accordance with Article 7 of the Mineral and Mineral Law (Law No. 4 of 2009).

Law Number 4 of 2009 concerning Mineral and Coal Mining is a law that regulates the implementation of more specific in the management of the mining sector. Although this Law has been in effect before Law Number 23 of 2014 concerning Regional Government, but after the enactment of this Law, there has been a harmonization of regulations that make the authority that was previously in the district/city shift to the province.

Article 7 Paragraph (2) of Law Number 4 of 2009 concerning Mineral and Coal Mining has regulated the division of authority between the central, provincial and regency/city governments in the management of the mining sector. This article also regulates the authority of Regencies/Cities to issue mining permits in administrative areas. After Law No. 23 of 2014 concerning Regional Government came into effect, the authority of districts/cities was revoked and handed over to the provinces in accordance with the mandate of article 14 of the Regional Government Law.

The regulation of the authority in the mining sector after Law No. 23 of 2014 concerning Regional Government in an effort to emphasize the transfer of authority, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining was issued. This Law emphasizes in several articles, namely:

Article 4 paragraph (2) reads, "The control of Minerals and Coal by the State as intended in paragraph (1) is organized by the central government in accordance with the provisions of this Law". This paragraph is a form of affirmation that the management of minerals and coal is carried out by the Central Government as a mining power.

In addition, articles 35 and 36 of the 2020 Mineral and Mineral Law also affirm that the central government has the authority to be responsible for granting mining permits in provincial and cross-provincial areas. This has implications for the loss of regency/city authority in the governance of mining permits.

Conflict of norms is important in this issue, where the existence of Law No. 3 of 2020 concerning Mineral and Mineral Resources which was born from the existence of Regional Government Law No. 23 of 2014 contradicts each other where the Mineral and Mineral Law emphasizes more on centralization while the Regional Government Law adheres to the principle of decentralization in the regional autonomy system according to the mandate of the constitution. This intersects with the principle of Lex specialis derogate lex generalis. This principle emphasizes that if there is a conflict of norms between general laws and special laws, general laws are set aside (not applicable) and special laws are used. Another thing that happens is that there is a conflict between derivative regulations and the legal hierarchy.

In addition, it can be seen that the regulatory implications that occurred after this Law applied to the Regional Government made him lose his authority in mining management so that he could no longer regulate the exploitation of natural resources in his area. This also hinders the implementation of regional decentralization and autonomy, which has the potential to reduce flexibility in natural resource-based regional development, because regional policies, especially in the mining sector, must be adjusted to central regulations. This will be a potential trigger for authority disputes between the central and regional governments.

The relevance of this theory in analyzing the change of authority is the incompatibility of the change of authority with the legal hierarchy because it is considered not in accordance with higher legal norms, especially article 18 and article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and the 2014 Regional Government Law. The birth of the 2020 Mineral and Mineral Law even though it is a lex specialis that has specificity in mining regulation, must not contradict higher legal norms.

Next is the disharmony between the Mineral and Mineral Law and the Local Government Law, namely the Conflict between the Lex Specialis and the Lex Generalis. The 2014 Local Government Law affirms the principle of regional autonomy in the management of natural resources, while the 2020 Mineral and Mineral Law withdraws its authority to the central government, this indicates that the 2020 Mineral and Mineral Law is contrary to the principle of decentralization in the 2014 Regional Government Law. Another thing is the potential for conflict between derivative regulations and legal hierarchies.

In addition, if examined in the principle of lex superior derogate legi inferiori, the rules in the Regional Government Law of 2014 as a general law with a wider scope (regarding local government) should remain in force and cannot be overridden by the Mineral and Coal Law. However, what happened until the latest changes to the Mineral and Mineral Law were enacted on February 18, 2025, remained in a position to transfer the authority of mining management from the local government to the central government, especially in terms of mining management of mining permits and mining supervision. This step aims to improve efficiency and consistency in the management of mineral and mineral resources in Indonesia.

However, this form of centralization raises concerns regarding environmental oversight and management at the local level. Local governments are critical in ensuring sustainable and responsible mining practices, given that they are closer to mine sites and affected communities.

Hans Kelsen's theory provides a methodological framework for understanding the legal system as a hierarchical structure of norms (Stufenbau des Recht), where each legal norm derives its validity from a higher norm. The validity of a norm is not determined by a particular moral value or social goal, but rather by formal legality supported by its relationship to a higher norm, ultimately leading to the Grundnorm as the basic norm of the legal system.

In the context of the transfer of regional government authority in the mining sector, Hans Kelsen's theoretical approach is relevant to assess the normative validity of the shift in authority regulated in Law Number 23 of 2014 concerning Regional Government, especially when compared to Law Number 4 of 2009 concerning Mineral and Coal Mining and its amendments. Law No. 23 of 2014 transfers the authority of district/city governments in terms of granting Mining Business Permits (IUP) to the provincial government. Meanwhile, several provisions in the Minerba Law (before and after the revision) still include the role of the regent/mayor in the licensing and supervision process for community mines.

Based on Kelsen's theory, lower legal norms must not conflict with higher legal norms. If there is a conflict, then the lower norm must be declared invalid. In the hierarchical structure of laws and regulations in Indonesia as regulated in Law Number 12 of 2011 concerning the Formation of Legislation, laws have an equal position to each other. However, in normative practice, if there are two laws that regulate the same thing differently, the principle of lex specialis derogat legi generali or lex posterior derogat legi priori is used, depending on the context.

In this case, Law No. 23 of 2014 can be considered as a law that generally regulates the division of government affairs, while the Minerba Law regulates the mining sector more specifically. However, chronologically, Law No. 23/2014 is more recent than the initial version of the Minerba Law (2009), although the Minerba Law was later revised through Law No. 3 of 2020. This is where the conflict of horizontal norms becomes important to be

studied normatively. If using the Kelsen approach, the main question is: Was the shift in authority carried out legally within the framework of legal norms that apply systemically?

Further analysis shows that the transfer of authority in Law No. 23 of 2014 has not been fully followed by a revision or harmonization of sectoral regulations (such as the Minerba Law and its implementing regulations). This indicates disharmony in the legal system, which contradicts Kelsen's idea that law is a coherent and logically structured normative system. This inconsistency creates legal uncertainty, especially for local governments that experience ambiguity in carrying out government functions in the mining sector.

In addition, it should be noted that Kelsen's theory assumes the existence of a closed and hierarchical legal system, where each norm serves as the basis for the formation of other norms. However, in the Indonesian context, the regulation of authority does not only rely on a linear system, but is also influenced by social, political, and economic realities. In this case, although the norm of transfer of authority in Law No. 23 of 2014 is formally valid, its inconsistent application with sectoral regulations and the principle of regional autonomy in the 1945 Constitution illustrates a deviation from the ideal principle of a hierarchical legal system according to Kelsen.

Thus, the analysis based on Hans Kelsen's theory shows that the transfer of regional government authority in the mining sector through Law No. 23 of 2014 needs to be followed by the reconstruction of the sectoral norm system, in order to create consistency and legal hierarchical validity. Without it, disharmony between norms will continue and weaken the effectiveness of the law and the basic principles of decentralization guaranteed by the constitution.

3.2 Reconstruction of the Concept of Ideal Authority in Regional Mining Management

The results of the analysis of the transfer of regional government authority in the mining sector show that the policy contained in Law No. 23 of 2014, although formally valid, leaves serious problems in terms of normative conformity and effectiveness of implementation. Within the framework of a democratic state of law, the division of authority between the center and the regions must not only be in accordance with the applicable legal structure, but must also reflect the principles of justice, government efficiency, and local participation in resource management.

In the perspective of Hans Kelsen's theory, an ideal legal system must demonstrate integration between norms and harmony in the level of legal validity. Therefore, the reconstruction of the concept of authority in regional mining management must pay attention to two main aspects: (1) consistency in the structure of legal norms, and (2) the functionality of decentralization in government practice.

First, from the structural-normative aspect, it is necessary to harmonize Law No. 23 of 2014 and the Minerba Law and its derivative regulations, so that there is no conflict of norms

that weaken legality and legal certainty. This harmonization can be done through revision of sectoral norms or the issuance of implementing regulations that explicitly synchronize the authority between levels of government. In the Kelsenian framework, this step is a form of restructuring the legal structure to comply with the principle of Stufenbau des Recht, namely a system of legal norms that is arranged hierarchically and consistently.

Second, from the government substance side, it is necessary to formulate an ideal authority model that accommodates the concept of functional decentralization. This concept is based on the views of Osborne and Gaebler, who emphasize that decentralization is not only intended to divide affairs, but also to increase the efficiency, accountability, and responsiveness of government to local needs. In the context of mining, regions have the advantage in understanding local geographic, social, and environmental characteristics, so that their involvement in the licensing process, supervision, and utilization of mining products becomes important.

Ideal authority can be formulated in the form of limited delegation of authority (administrative delegation) from the provincial government to the district/city government, especially for small-scale mining activities or people's mining. The delegation must be based on valid legal norms and accompanied by a strong monitoring mechanism to prevent abuse of authority. This model can be a solution between the need for control by the center and the principle of regional empowerment based on the spirit of autonomy.

In addition, it is necessary to develop an approach based on multi-level governance, where the authority to manage mining is not merely viewed as administrative authority, but also as an instrument of sustainable development involving the participation of all levels of government and society. This is in line with the constitutional spirit in Article 33 of the 1945 Constitution which states that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

Thus, the reconstruction of regional government authority in mining management must be directed at:

a. Reorganizing legal norms hierarchically and systematically to be in line with Kelsen's theory.
b. Providing functional space for regions, especially districts/cities, to be involved in mining governance selectively and accountably.
c. Strengthening the regulatory and supervisory framework between levels of government to ensure synergy in efficient, equitable and sustainable resource management.

4. Conclusions

The transfer of regional government authority in mining management after the enactment of Law Number 23 of 2014 shows a fundamental change in the structure of

relations between the central, provincial, and district/city governments, especially in the field of energy and mineral resources. The authority previously held by the district/city government to grant Mining Business Permits (IUP) was transferred to the provincial and central governments, for reasons of efficiency and consolidation of governance.

However, normative analysis shows that the transfer creates inconsistencies between legal norms, especially between Law No. 23 of 2014 and Law No. 4 of 2009 concerning Mineral and Coal Mining and its amendments. This disharmony creates legal uncertainty and confusion in the implementation of authority in the field, especially at the district/city level as actors who previously played an active role in mining management.

Using Hans Kelsen's theory as a theoretical basis, it can be concluded that the transfer of authority is only legitimate and acceptable in the legal system if it is carried out consistently with a hierarchical normative structure. Every legal norm must be subject to a higher norm and must not cause normative contradictions. In this context, Law No. 23 of 2014 needs to be reviewed and harmonized with sectoral regulations so that the Indonesian legal system remains intact, logical, and functions in accordance with the principle of legality.

For this reason, it is necessary to reconstruct the concept of mining management authority that is not only oriented towards administrative efficiency, but also ensures substantive regional involvement in the management of natural resources in its territory. This can be realized through a limited delegation of authority model, harmonization of regulations, and the application of responsive, participatory, and sustainable governance principles. With this reconstruction, it is hoped that the relationship between norms, authority, and government effectiveness can be created in a balanced manner, within the framework of a state of law that upholds the principles of decentralization, legal certainty, and people's prosperity as mandated in the 1945 Constitution.

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