

# ANALYSIS OF REGIONAL REGULATION ON GENERAL MINING SECTOR (MINERAL AND COAL)

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## **ABSTRACT**

*As Law No. 22 Year 1999 on Regional Government was implemented and then renewed by Law No. 32 Year 2004 on the same subject, all autonomous areas have issued various regional regulations, including that on general mining (mineral and coal). This is in line with the requirement of all autonomous areas for authority in managing their own regions based on the autonomy principles.*

*After one decade since the regulation was applied, evaluation conducted by the government revealed that regional regulation in the general mining sector oriented mostly on increasing regional revenue without taking into consideration the existing legal principles. Surveys on 8 provinces showed similar facts, and the condition led to an uncondusive business climate that could hinder the economic growth and the regions' investment opportunity.*

*Keywords: regional autonomy, regional regulation, general mining, regulation*

## **INTRODUCTION**

Since the adoption of the regional autonomy in 2000, provincial and regency/city government has been improving and adjusting their administrative bureaucracy. One of the proactive efforts is the issuance of regional regulation for increasing regional revenues. However, facts show that lots of regional regulations are not in line with the principles of regional autonomy which is to speed up the people's welfare (Saad, 2003).

Generally, those regulations are not harmonious with the higher-level regulations, overlapping to each other, and merely target on increasing revenue. It happens to all business sectors including mining. Regulation on general mining (mineral and coal) that refers to Law No 11 Year 1967 on Guidelines in Mining (currently replaced by Law No 4 Year 2009 on Mineral and Coal Mining) and global economic crisis worsen the mining business condition, especially of mineral mining.

Based on the identified problems, a study was conducted to the implementation of regional autonomy in various regions, relating to the issuance of regional regulation on mining activities.

This article aims at identifying problems raised during the regional autonomy era due to the issuance of regional regulations in general mining sector. The objective is to provide solution for improving business climate of mineral and coal mining activities in the regions.

## **METHODOLOGY**

This study adopts multidiscipline methodological approach. Data collection applies several techniques, such as: observation, guided interview, documentary, and questionnaire. There are two types of gathered data; primary and secondary data. Data processing and analysis use descriptive technique, compilation, and explanatory supported by analysis model of shift share and SWOT (Strength, Weakness, Opportunity, and Threat).

## REGIONAL AUTONOMY REGULATION IN GENERAL MINING SECTOR

### Regulation at National Level

The general policy in mining sector is Law No 11 Year 1967 on the main guidelines of mining. Although the law is centralistic, Article 4 Point (3) accommodates transfer of authority to regional government to manage Type C mineral. It is further regulated in the Government Decree No 37 Year 1986 on the transfer of mining management authority from Central Government to Regional Government (Anonymity<sup>1</sup>, 2004). However, the implementation of the government decree has not yet met the expectation as it has not resulted in maximum benefit.

Since the implementation of regional autonomy regulation at early 2000, the Ministry of Energy and Mineral Resource has issued a Ministerial Decree No. 1453.K/29/MEM/2000 on Technical Guidelines of Government Task Implementation on General Mining. Prior to that, since Law No. 11 Year 1967 has not been relevant to the spirit of regional autonomy, the government issued a Government Decree No. 75 Year 2001 on Second Revision of Government Decree No. 32 Year 1969 on the Implementation of Law No. 11 Year 1967 (containing the main guidelines on mining). This Government Decree provides authority for regional heads in conducting mining activities as stated in the existing regulation.

With those regulations, the central government (i.e. the Ministry of Energy and Mineral Resource) only takes role in formulating the guidelines, criteria, procedure, standard, and ethics in mining sector that will be references for regions in exercising their regional autonomy.

### Regulations at Regional Level

Referring to Article 7, Point (1) of Law No. 10 Year 2004 on Formulation of Legal Regulations, the legal hierarchy in Indonesia is as the followings:

- a. The 1945 Constitution;
- b. Law/Government Decree of Substitution of Law (Perppu);
- c. Government Decree (PP);
- d. Presidential Decree (Perpres);
- e. Regional Regulation (Perda).

By this, any regional regulations that are in contradictory to Presidential Decree, Government Decree,

Law/Government Decree of Substitution of Law, and the 1945 Constitution are illegal and can be cancelled. Regional regulations that are in contradictory to public interest and/or higher-level laws can be cancelled referring to Article 136, Point (4) of Law No. 10 Year 2004. "Contradictory to public interest" means any regulations that give impact to disturbance of peace among community, in public service, and public order, including any regulations that impose discrimination. Contradictory regional regulations can be cancelled by the government through Ministerial Decree of Home Affairs and Presidential Decree. If the related province/district/city is opposed to the cancellation, regional heads can appeal to the Supreme Court. Problematic local regulations principally means any regulation that could hinder the growth of business activities of the region; that would lead to increased economic cost and declined competitive capacity of the local products (Pambudhi, 2007). Regional regulations can be categorized as problematic by principle, substance, and judiciary (KPPOD, 2006) (see attachment).

### EXISTING REGIONAL REGULATIONS IN STUDY AREA

Mineral resources found in 8 regions of study area (Central Java, East Java, South Kalimantan, East Kalimantan, North Sulawesi, South Sulawesi, North Sumatera, and West Sumatera) are abundant and varied. Generally, Type C mineral always exists in any area, while metallic mineral and energy can only be found in several areas. Different from coal and oil, Type C mineral has less contribution to the regional economic growth.

The existence of minerals in each region becomes one of the push factors for regional government to make and issue a local regulation. Ironically, this mineral is usually perceived as the only way to increase local revenue.

### Condition of Regional Regulation

Almost all regions (provinces) and areas (regencies) targeted as survey locations have already had regional regulations on general mining activity (mineral and coal). Although they appear in different titles, the substance of those regulations tends to be benefit-oriented and overlook the management issue. It has negatively implied to declining environmental quality and increasing investment cost that will eventually hinder the achievement of the

regional autonomy goal.

Result of the local regulation compilation shows that there are 242 regulations collected from 147 regencies (Figure 1). Out of the number, most of the regulations (183 regulations, or 75%) are about taxation (tax, retribution, donation from 3<sup>rd</sup> parties). There are only 39 regulations related to mining activities; 52% of which has conformed to other related regulations on mining management. The rest has not.

Result of evaluation on regional regulations on mining management shows that they do not refer to the Ministerial Decree of Energy and Mineral Resource No 1453 Year 2000 on Technical Guidelines of Government Task Implementation on General Mining. It proves that those regional regulations have not been in line with the technical guidelines, in terms of either the mining procedure or concept.

## DISCUSSION

### Problem

The common problem in all study areas is that regional regulation on mining refers to contradictory laws, namely, Law No. 11 Year 1967 and Law No. 22 Year 1999 that had been revised by Law No. 32 Year 2004. Both laws have contradictory principles; Law No. 11 Year 1967 is centralistic,

while Law No. 32 Year 2004 is decentralistic (Anonymity2, 2004). Principally, old law will automatically be expired or inactive by the issuance of revised/new law. The problem lies in the fact that both laws regulate different activities: general mining sector is managed by the Minister of Energy and Mineral Resource, while regional decentralization lies under management of the Minister of Home Affairs. Although there is a problematic condition, it does not affect the decrease of interest of regional and national investors in general mining sector. Lots of regions provide national-private companies with Mining Permit that is actually under the authority of Minister of Energy and Mineral Resource, according to Law No. 11 Year 1967.

Besides the above problem, there are some other problems relating to the issuance of local regulations, namely:

- There are still some pending bills (draft of regional regulation) waiting for the approval of Law on Mineral and Coal as substitution to Law No. 11 Year 1967.
- New mining permits awarded by local government are frequently overlapping with old mining authorizations issued by the central government. Incomplete data and tax-oriented objective justify the issuance of those mining permits.
- Regional regulations that merely target revenue (taxes and retributions) reflect a direct impact of regional autonomy euphoria in exploiting

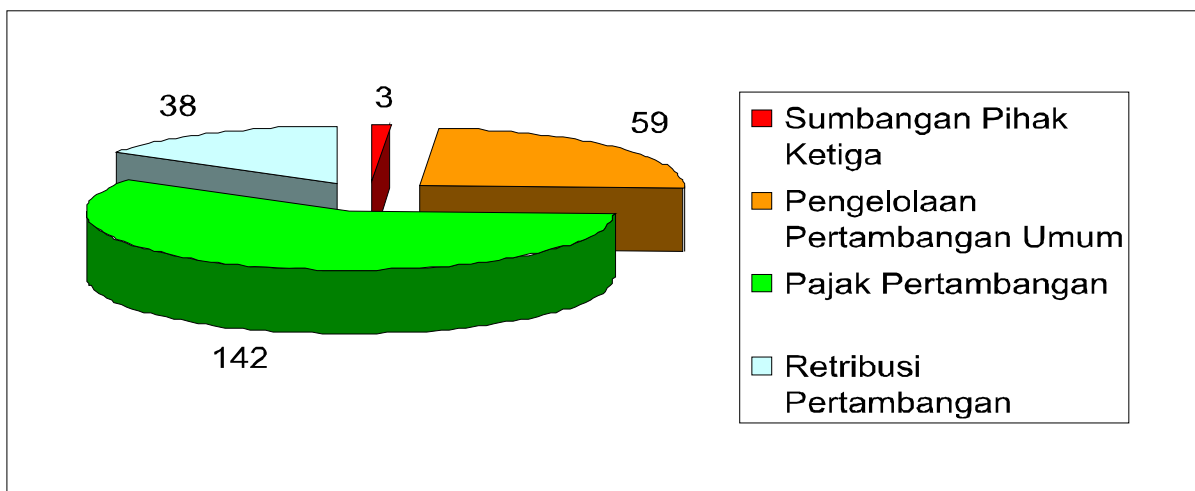


Figure 1. Regional Regulations on Mining in Study Areas

- their potentials for revenue to maintain the autonomy. It usually triggers contradictory to the higher-level regulations due to doubled taxes, such as land rent with land and building tax.
- d. Regional regulations are not properly inventoried at the provincial level as there is no prior consultation with the provincial government on the regulation making (however, the condition has changed since the issuance of Law No. 32 Year 2004, as it states about the obligation for district/city government to consult the bills to the provincial government).
  - e. In several regions, the relation between provincial government and regency/city government is not harmonious. There has been effort of waving the role of provincial government in the process of permit making in cross regencies.
  - f. There are some regions with minimum mineral resource. These regions do not issue mining regulation; they give authority to the Regional Secretariat of Regency/City to regulate the mining activity.

### Problem Solving

From the geological point of view, Indonesia has abundant mineral and coal resources. That is why the government must put more attention on the regulation in the sector. Especially since mineral and coal are non-renewable resources, the utilization has to be effective and efficient for the people welfare. Bad governance in regulation formulation and issuance is unfortunately a negative example of how regions manage their mineral and coal resources in their areas.

There are lots of problematic regional regulations that are basically caused by the following factors:

- a. The philosophy of mining business has not yet been properly comprehended by the regional regulators, especially the Regional Office of Mining and Energy. Mining industry exploits non-renewable mineral constituting high risk activity, big investment, long-term breakeven point, and potentially causes damage to the environment if it is not properly managed.
- b. Almost all regions perceive mining business as merely a revenue resource to increase regional income;
- c. There is no legal insurance for mining activity in regions due to problematic condition with the higher-level regulations;
- d. There is no common perception in interpreting the regional autonomy policy. Autonomy has

usually been justified to apply taxes and retributions without paying attention to the management process;

- e. The quality of capacity of government officials and quantity of infrastructure of the Regional Office of Mining and Energy is still limited;
  - f. No region is reserved as mining zone.
- Considering the above factors, mining implementation in regions needs to be evaluated so that mineral and energy can be optimally utilized with reference to the existing mining principles. The principles have to be reflected in any regional regulations issued by the regions. Several parameters as references are:
- a. It is urgent to issue more detailed Government Decree, Presidential Decree, or Ministerial Decree that can be references for local governments in drafting, formulating, and issuing local regulation on mining;
  - b. It is a need to improve the understanding and common perception of government officials, especially at regional level, to perceive that mining activity needs special treatment and is not supposed to be solely treated as the tool to increase regional income.
  - c. It is a need to improve the capacity of officials of Mining and Energy Office through professional training and education, so that the process of drafting, formulation, issuance, and implementation of local regulations can be properly conducted.

### Strategy of Mining Development in Regions

Based on the identification of regional autonomy policy on mineral and coal sector, it can be concluded that there are some issues need to be paid attention in developing this sector. This part will describe about the strength, weakness, opportunity, and threat – SWOT analysis (Rangkuti, 1999) – and the main factors that influence mining development at the regional autonomy era (Table 1).

The identification result is then correlated with existing parameters, so that it can be identifies the impact of regional autonomy on mining development (Table 2).

Referring to the SWOT analysis (Table 1) and cross-parameter correlation (Table 2), it is a must that any local regulations on mining pay attention to various existing internal factors (in terms of strength and weakness) and external factors (in terms of opportunity and threat).

Table 1. Identification of Strength, Weakness, Opportunity, and Threat (SWOT) Mining Development in Region

No	Subject	Strength	Weakness	Opportunity	Threat
1	Mining Policy	Existing general policy on mining activity	Legal products from Central have not yet been socialized in regions	Development of mineral and coal resources can be more optimum	False interpretation on regional autonomy
2	Regional Regulation on Mining	Existing legal umbrella of mining activities in regions	a. Still lots of regional regulations that are not in line with higher-level regulations b. Investment is costly, making up uncondusive condition c. Overlapping regulations	a. Legalization of mining sector in regions b. Attraction to mining investment in regions	a. Obstacle for investment in mining sector b. Increasing environmental disaster
3	Mineral and coal potentials	a. Huge resource and mostly has not yet been developed b. Varied mineral quality	Minimum access to resource locations	Increasing need for mineral due to various factors	a. Costly transportation cost leading to high selling price b. There is imported mineral of the same kind
4	Business Permit/ Authorization	Authority to award permit in regions	Most regions have not yet owned basic map (in digital format) of mineral potentials and granted permit.	Simple process of obtaining permit as it is conducted at regional level.	Overlapping land use
5	Regional Revenue	Mining development contributes to regional revenue	Mining is perceived as the object of income source	Can be used to develop mineral and coal mining	a. No potential investor coming to region b. Worse environmental disaster
6	Government Officials	a. Simplify monitoring and assisting aspects b. Problems are quickly solved	a. Number and capacity of government official is limited b. Existing rotation system among officials	Improvement of officials' capacity	Difficulty in conducting periodical monitoring on mining activity

Source: Identification and analysis result, 2007

Table 2. Correlation of Mining Development Cross-parameter at Regional Autonomy Era

External Internal	Opportunity	Threat
Strength	<ol style="list-style-type: none"> <li>1. Mining Policy <ol style="list-style-type: none"> <li>a. Increased investment in mining sector</li> <li>b. Provision of clear legal products</li> </ol> </li> <li>2. Mineral and coal resource potentials Increasing trend of demand on minerals</li> <li>3. Permit One-roof service</li> <li>4. Regional Income Increased regional revenue</li> <li>5. Government Officials Improving capacity of human resource</li> </ol>	<ol style="list-style-type: none"> <li>1. Mining Policy <ol style="list-style-type: none"> <li>a. Socialization of mining policy</li> <li>b. Improved understanding on regional autonomy</li> </ol> </li> <li>2. Mineral and coal resource potential Optimal utilization based on good and right mining procedure</li> <li>3. Permit Simplified process for applying permit and attract investment</li> <li>4. Regional Income Monitoring of mining activity and production result</li> <li>5. Government Officials Participate in mining technical training</li> </ol>
Weakness	<ol style="list-style-type: none"> <li>1. Mining Policy Conduct socialization to obtain common perception on local government and mining regulation</li> <li>2. Mineral and coal resource potentials Increasing trend of need for mineral</li> <li>3. Permit Formulate mining database in digital format to develop and provide business license</li> <li>4. Regional Income Continuing recording of production result to optimally utilize mineral resource for local revenue</li> <li>5. Government Officials Improved capacity of government officials and required infrastructure</li> </ol>	<ol style="list-style-type: none"> <li>1. Mining Policy <ol style="list-style-type: none"> <li>a. Socialization of mining policy</li> <li>b. improved understanding on regional autonomy</li> </ol> </li> <li>2. Mineral and coal resource potentials Optimal utilization referring to good and right mining procedure</li> <li>3. Permit Considering other sector in land-use</li> <li>4. Regional Income Monitoring and controlling mining activity and production result</li> <li>5. Government Officials Participate in mining technical training</li> </ol>

Source: Analysis Result, 2007.

## CONCLUSION AND RECOMMENDATION

### Conclusion

Based on the discussion, some conclusions can be derived as the followings:

- a. Reformation euphoria becomes one of the main causes of the unaccountable of local regulation making, with the reason for self-sufficient income.
- b. The fact that lots of regional regulations that need to be cancelled or revised, including regional regulation on mining, is due to contradictory principles with higher-level regulations, espe-

cially the one relating to tax and retribution.

- c. The existing revenue-oriented local regulation causes uncondusive business climate that can hinder maximal utilization of mineral and coal for public welfare.
- d. The pending of law on mineral and coal as substitution of Law No. 11 Year 1967 is frequently perceived as an obstacle to the development of mining activity in regions. Regions have not yet been provided with proper guidelines from the central government. That is why the existence of new law on mining that is in line with the regional autonomy is very strategic.



- e. Besides the substance of regional regulation that is contradictory to the higher-level regulations, the executives (officials of Mining and Energy Office) becomes the main obstacle of mining activity from developing in regions, and tends to decline.

### Recommendation

Based on the discussion and conclusion, recommendation can be made:

- a. Regional regulations issued before Law No. 32 Year 2004 have to be completely evaluated. It is aimed at enforcing legal assurance for mineral mining development in regions.
- b. In the framework of mining development in the regional autonomy era, improvement of human resource capacity and quality is a must, especially in mining and environment sectors.
- c. There is a need for government cross-department coordination in regions in providing mining permit. It is to ensure that the permit making process is proper, safe, and in line with existing regulations.
- d. There is a need to formulate mining zone at both provincial and district levels and integrate it to the spatial planning. It is to avoid or minimize overlapping land-use by business sectors.

### Final Note:

When this study was conducted (2007), Law No. 4 Year 2009 on Mineral and Coal Mining as substitution for Law No. 11 Year 1967 on the Main Guidelines of Mining has not been issued. This study is still relevant based on some considerations:

1. What have been done by regions (provincial, regency, and city governments) to their regional regulation on mining have now been in line with the policy as stated in Law No. 4 Year 2009. Those regional regulations are decentralistic and refer to the existing legal procedure, especially the Government Decree No. 75 Year 2001 on the Second Revision of the Government Decree No. 32 Year 1969 on the Implementation of Law No. 11 Year 1967 on the Main Guideline of Mining.

2. The substance of this study is an evaluation to the material violation by regional regulations in various regions towards several higher-level regulations. The existence of Law No. 4 Year 2009 surely brings different condition, and potentially results in opportunity for different kind of violation by regional regulations made by provincial, regency, and city governments. This condition must be observed and analyzed for prevention. It has to be realized that any violation to local regulation on mining will bring consequences to the development of mineral and coal mining business in the future.

### ACKNOWLEDGEMENT

I would like to thank Mr. Umar Dani, engineering functional staff at the R&D Centre for Mineral and Coal Technology (Puslitbang *tekMIRA*) for his contribution of writing materials, to me to finish this study.

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