



Synchronization of Central-Regional Authority in Integrated Mining Licensing Management

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Abstract

This study aims to juridically analyze the synchronization of central and regional authorities in the management of integrated mining licenses through the Online Single Submission Risk Based Approach (OSS-RBA) system. The problems studied focus on the overlapping authority between the Ministry of Energy and Mineral Resources and the Ministry of Environment and Forestry in the practice of mining licensing, even though an integrated licensing system has been normatively implemented after the enactment of the Job Creation Law. This research uses normative legal research methods with a legislative approach and a conceptual approach. Primary legal materials include Law Number 3 of 2020 concerning Mineral and Coal Mining, Law Number 41 of 1999 concerning Forestry, and Government Regulation Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing, which are analyzed together with secondary legal materials in the form of doctrine and scientific journals. The results of the study show that OSS-RBA has integrated licensing procedures administratively, but has not fully realized substantive synchronization of authority between sectoral agencies, thus potentially causing legal uncertainty. Therefore, it is necessary to harmonize regulations and strengthen the integration of authorities so that the integrated mining licensing system can run effectively and fairly.

Keywords: Synchronization of Authority; Mining Licensing; OSS-RBA; The Authority of The Regions; Legal Certainty.

INTRODUCTION

The management of natural resources, especially minerals and coal, is a manifestation of state control as mandated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The constitutional norm emphasizes that the earth, water, and natural resources contained in it are controlled by the state and used as much as possible for the prosperity of the people.¹ State control in the context of coal mining is not solely interpreted as *ownership*, but as the authority to regulate (*regelendaad*), manage (*bestuursdaad*), manage (*beheersdaad*), and supervise (*toezichthoudensdaad*) its use in order to be in line with the principles of social justice, environmental sustainability, and legal certainty.²

Although the energy transition agenda continues to be promoted, coal is still the main source of national energy. Dependence on coal is not only related to the need for power generation, but also supports the mineral downstream industry that requires a stable energy supply. This condition makes the coal mining sector a strategic sector that contributes significantly to state revenue, job creation, and regional development. However, the intensity of mining activities also poses a risk of environmental damage and space utilization

¹ Barik Muhammad Kurniawan Ardy. "Pembinaan Dan Pengawasan Penyelenggaraan Pemerintahan Daerah Otonomi Khusus Di Papua." *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 1, no. 2 (2021): 124-139. <https://doi.org/10.53754/iscs.v1i2.24>

² Iriantini M J Takalapeta, Jimmy Pello, and Saryono Yohanes. "Pengaturan Perizinan Pengelolaan Tambang Dalam Mendukung Pembangunan Berkelanjutan." *JATISWARA* 34, no. 3 (2019): 268-282. <https://doi.org/10.29303/jtsw.v34i3.220>

conflicts, especially when these activities take place in forest areas.³ Forest areas, especially forestry cultivation areas (production forests), are areas that are juridically designated and maintained as permanent forests. Law Number 41 of 1999 concerning Forestry stipulates that the use of forest areas for purposes outside forestry activities can only be carried out on a limited and conditional basis, one of which is through the Forest Area Use Approval mechanism which was previously known as the Forest Area Loan and Use Permit.⁴ The existence of forestry permits in mining practices is an additional prerequisite in addition to the Mining Business License, thus placing the company in a dual licensing regime under the authority of the central government and local governments.⁵

Changes in licensing policies after the revision of the Mineral and Mineral Law and the birth of the Job Creation Law have implications for the division of central and regional authorities. On the one hand, the central government seeks to centralize licensing to increase legal certainty and investment efficiency. On the other hand, local governments still have an interest in regional management and regional revenue.⁶ This condition often gives rise to disharmonised authority, especially when mining business licenses are issued by local governments while forest area use approvals are under the authority of the central government. This inconsistency has the potential to cause legal problems, both for the government and for business actors.⁷ This phenomenon is reflected in the practice of managing coal mining licenses in various regions, including in West Kutai Regency, East Kalimantan Province. This area is one of the areas with high coal mining activity and most of the concession area is in the production forest area. A case study of licensing practices in this area shows that there are challenges in policy synchronization between the central and regional governments, especially related to the fulfillment of forestry licensing obligations by companies that have obtained Mining Business Licenses.

Based on these conditions, this study aims to analyze juridically the synchronization of central and regional authorities in the integrated management of coal mining licenses, with an emphasis on the relationship between Mining Business Licenses and Forest Area Use Permits / Forest Area Borrowing Permits. This research is expected to make an academic contribution to the development of mining and forestry law, as well as practical recommendations for improving the governance of mining licensing that is fair, sustainable, and in line with the mandate of the constitution.

METHODS OF THE RESEARCH

This study uses normative legal research methods with a legislative approach and a conceptual approach to analyze the synchronization of central and regional authorities in the management of integrated mining licensing through the OSS-RBA system. The legislative approach is used to examine the provisions of Law Number 3 of 2020 concerning Mineral and Coal Mining, Law Number 41 of 1999 concerning Forestry, and Government Regulation

³ Rasjuddin. "Perlindungan Hukum Pidana Lingkungan Terhadap Kegiatan Perusahaan Pertambangan Dalam Prnanggulangan Dampak Lingkungan." *Jurnal Hukum* 36, no. 1 (2020): 1-11. <https://doi.org/10.26532/jh.v36i1.11180>

⁴ Rika Putri Wulandari, and Muhammad Helmi Fahrozi. "Politik Hukum Pengalihan Izin Pertambangan Pada Pemerintah Pusat Terhadap Kewenangan Pemerintah Daerah." *SALAM: Jurnal Sosial Dan Budaya Syar-I8*, no. 1 (2021): 191-206. <https://doi.org/10.15408/sjsbs.v8i1.19445>

⁵ Wulandari dan Fahrozi, *Ibid*.

⁶ Muh Melfin Zainul Fanani, Hartono, Winda, and Yasmina Amalia. "Rancangan Sistem Penyaliran Tambang Di Pit Section 2 PT Andalan Artha Primanusa Pada Wilayah Izin Pertambangan Pt Budi Gema Gempita Kabupaten Lahat, Provinsi Sumatera Selatan." *Jurnal Teknologi Pertambangan* 8, no. 1 (2022): 1-9.

⁷ Rasjuddin, *Op. Cit*.

Number 5 of 2021 concerning the Implementation of Risk-Based Business Licensing. The conceptual approach is used to examine the doctrine of integrated authority, central-regional authority relations, and regulatory harmonization. The legal materials used consist of primary and secondary legal materials that are analyzed in a qualitative descriptive manner to assess the consistency of norms and their implications for the legal certainty of mining licensing.

RESULTS AND DISCUSSION

The regulation of authority in the coal mining sector has experienced significant dynamics along with regulatory changes. Law Number 4 of 2009 concerning Mineral and Coal Mining, as amended by Law Number 3 of 2020, affirms the role of the central government in setting national policies, coaching, and supervising. In principle, local governments play a role in the implementation of these policies, especially in the context of regional management and operational supervision in the regions.⁸ The issuance of Mining Business Licenses, in practice, became the main instrument of local governments (before full centralization) to regulate mining activities in their areas. A Mining Business License gives a company the right to conduct mining activities in certain areas, but this right is conditional and must be subject to the provisions of other laws and regulations, including forestry law and environmental law.⁹ The government's approach in law enforcement practices tends to prioritize administrative sanctions and corrective efforts first, then proceed to criminal law enforcement if necessary. This can be seen from the implementation of the Forest Area Control Task Force and the implementation of Article 110A/110B. The case study of PT B can provide a concrete picture.¹⁰

With the establishment of the Forest Area Control Task Force and the enactment of the Job Creation Law, cases of companies without Forest Area Borrowing Permits began to be ordered. The Ministry of Environment and Forestry, the Ministry of Energy and Mineral Resources, and the Forest Area Management Task Force are working together on this law enforcement. The Ministry of Environment and Forestry through inventory data identified hundreds of companies in various provinces that run businesses in forest areas without forestry permits. For example, the Ministry of Environment and Forestry issued the Decree of the Minister of Environment and Forestry Number: SK.196/MENLHK/SETJEN/KUM.1/3/2023 which contains data on 36 mining corporations (in 38 locations) in South Kalimantan that operate in forests without forestry permits.¹¹ The Forest Area Use Permit / Forest Area Loan Permit serves as a legal instrument to control the use of forest areas for non-forestry activities, including coal mining. This permit does not change the status of the forest area, but only provides temporary use rights with the obligation of restoration and rehabilitation, so that the approval of the use of the Forest Area is a concrete form of the application of the precautionary principle and the principle of sustainable development in environmental law.¹² The obligation to obtain Forest Area Use Approval places mining companies on a dual compliance regime. In addition to meeting technical mining requirements, the company is also required to comply with forest protection standards, watershed rehabilitation, and non-tax state revenue payments in the

⁸ Helmi, *Hukum Perizinan Lingkungan Hidup* (Jakarta: Sinar Grafika, 2012).

⁹ Adrian Sutedi. *Hukum Pertambangan*. (Jakarta: Sinar Grafika, 2022).

¹⁰ Wulandari dan Fahrozi, *Op. Cit.*

¹¹ Muh Melfin Zainul Fanani, Hartono, Winda, and Yasmina Amalia. *Op. Cit.*

¹² Wulandari and Fahrozi, *Op. Cit.*

forestry sector. Failure to fulfill these obligations can have implications for administrative to criminal sanctions.¹³ The results of the study show that in practice in the regions, the synchronization between the Mining Business License and the Forest Area Use Approval has not been fully effective. There are cases where companies have obtained a Mining Business License and started certain stages of mining activities, but have not completed their forestry licensing obligations. This condition creates legal uncertainty, both for the company and for the supervisory apparatus.¹⁴ The disharmonization is caused by several factors, including differences in the authority regime between technical ministries, the complexity of licensing procedures, and weak coordination between agencies.¹⁵ At the regional level, limited supervisory capacity also affects the effectiveness of law enforcement against licensing violations.

Non-compliance with integrated licensing obligations has far-reaching legal implications. From the administrative aspect, the government is authorized to impose sanctions in the form of warnings, temporary suspension of activities, and revocation of mining business licenses. From the civil aspect, companies can be held accountable for environmental losses caused. Meanwhile, from the criminal aspect, mining activities in forest areas without Forest Area Use Approval can be qualified as a forestry crime. Strict enforcement of sanctions is essential to ensure the effectiveness of the law and prevent illegal mining practices.¹⁶ However, law enforcement must also be balanced with the improvement of the licensing system so as not to create excessive administrative burdens for business actors in good faith. Based on the findings of the study, the synchronization of central and regional authorities in integrated mining licensing requires strengthening institutional coordination, integration of electronic licensing systems, and clarity in the division of supervisory roles. An integrated licensing model that links Mining Business Licenses and Forest Area Use Approvals in one integrated service system can be a solution to reduce overlapping authorities and increase legal certainty.¹⁷ So that the synchronization of central and regional authorities is not only a normative issue, but also an implementation issue that requires a joint commitment between the central government, local governments, and business actors. Integrated and sustainability-oriented licensing governance is the main prerequisite for realizing fair, sustainable, and constitutional coal mining management.

From the perspective of state administrative law, licensing is an instrument of government control over the activities of the community and the business world. Permits function as a concrete form of state administrative decisions that are constitutive in nature, namely creating new rights and obligations for permit holders. Therefore, the issuance of mining permits must comply with the General Principles of Good Governance, such as the principle of legal certainty, the principle of openness, the principle of prudence, and the principle of non-abuse of authority.¹⁸ The inconsistency between the Mining Business License and the Forest Area Use Agreement shows a potential violation of the principles of legal certainty and the principle of prudence. When local governments issue mining business licenses without first ensuring the availability and approval of the use of forest areas from the central government, then administratively the permit is in a legally vulnerable condition. This can

¹³ Rasjuddin. *Op. Cit.*

¹⁴ Tri Hayati. *Perizinan Pertambangan di Indonesia: Tinjauan Hukum Administrasi Negara*. (Jakarta: Sinar Grafika, 2019).

¹⁵ Iriantini M J Takalapeta, Jimmy Pello, and Saryono Yohanes. *Op. Cit.*

¹⁶ Trias Nugraha. "Penegakan Hukum dalam Penanggulangan Pertambangan Batubara Illegal." *Savana: Indonesian Journal of Natural Resources and Environmental Law* 1, no. 1 (2024): 1-8. <https://doi.org/10.25134/savana.v1i01.33>.

¹⁷ Barik Muhammad Kurniawan Ardy. *Op. Cit.*

¹⁸ Adrian Sutedi. *Hukum Pertambangan. Op.Cit.*

cause state administrative disputes and harm companies that have good faith in carrying out their administrative obligations.¹⁹

The synchronization of central and regional authorities in integrated mining licensing has direct implications for legal certainty and investment climate. Legal certainty is one of the main factors considered by investors in investing in the mining sector. Overlapping and uncoordinated licensing systems have the potential to increase transaction costs, extend the time for obtaining permits, and pose legal risks in the future. On the other hand, an integrated licensing system that links Mining Business Licenses and Forest Area Use Approvals in one integrated service framework can provide stronger legal certainty for business actors. This certainty not only protects the interests of investors, but also strengthens the government's position in supervising and enforcing the law against licensing violations.²⁰ Although mining licensing authority tends to be centralized in the central government, local governments still have a strategic role in supervising and controlling mining activities in their areas. Local governments are in the closest position to the location of mining activities, so they have direct access to field information related to environmental and social impacts. Strengthening the supervisory role of local governments needs to be supported by clarity of legal basis, capacity building of apparatus, and effective coordination mechanisms with the central government. Thus, the centralization of licensing does not negate the principle of regional autonomy, but rather places the region as a strategic partner in realizing sustainable mining governance.

The development of an integrated electronic licensing system, such as through Online Single Submission (OSS), is a concrete step by the government in overcoming the problem of disharmonization of licensing. The integration of mining and forestry licensing data in one system allows for automatic *cross-checking* between the Mining Business License and the Forest Area Use Approval before the operational permit is issued. However, the effectiveness of the electronic licensing system is highly dependent on the consistency of sectoral regulations and the quality of data entered by each agency. Therefore, system integration must be accompanied by harmonization of laws and regulations and institutional commitment to share data in a transparent and accountable manner.

The reform of the integrated mining licensing law needs to be directed at strengthening the principles of sustainability, inter-regional justice, and environmental protection. Future regulations need to strictly regulate the hierarchical and functional relationship between mining permits and forestry permits, so that they no longer create a space for interpretation that has the potential to cause conflicts of authority.²¹ So that the synchronization of central and regional authorities in the management of integrated mining licensing is not only an administrative need, but also part of the national legal reform agenda in realizing sovereign, just, and sustainable natural resource management.

CONCLUSION

The management of integrated mining licensing through the OSS-RBA system is normatively intended to simplify licensing procedures and eliminate overlapping central and regional authorities. However, in its implementation, the synchronization of authority

¹⁹ Helmi, *Hukum Perizinan Lingkungan Hidup*. Op. Cit.

²⁰ *Ibid.*

²¹ Paulus Bundong, Heria Mariaty, and Thea Farina. "Disharmonisasi Pengaturan Penetapan Wilayah Pertambangan Rakyat Pada Kawasan Hutan." *Palangka Law Review* 2, no. 2 (2022): 111-122. <https://doi.org/10.52850/palarev.v2i2.4896>.

between agencies, especially between the Ministry of Energy and Mineral Resources and the Ministry of Environment and Forestry, has not been fully realized because there is still a sectoral division of substantive authority. This condition causes the integration of licensing to be more administrative than the normative integration of authority, so that it has the potential to cause legal uncertainty for mining business actors. Therefore, it is necessary to harmonize laws and regulations and affirm the division of authority between agencies so that an integrated mining licensing system is truly able to ensure legal certainty, governance effectiveness, and protection of public interests.

REFERENCES

- Barik Muhammad Kurniawan Ardy. "Pembinaan Dan Pengawasan Penyelenggaraan Pemerintahan Daerah Otonomi Khusus Di Papua." *Ascarya: Journal of Islamic Science, Culture, and Social Studies* 1, no. 2 (2021): 124-139. <https://doi.org/10.53754/iscs.v1i2.24>.
- Iriantini M J Takalapeta, Jimmy Pello, and Saryono Yohanes. "Pengaturan Perizinan Pengelolaan Tambang Dalam Mendukung Pembangunan Berkelanjutan." *JATISWARA* 34, no. 3 (2019): 268-282. <https://doi.org/10.29303/jtsw.v34i3.220>.
- Muh Melfin Zainul Fanani, Hartono, Winda, and Yasmina Amalia. "Rancangan Sistem Penyaliran Tambang Di Pit Section 2 PT Andalan Artha Primanusa Pada Wilayah Izin Pertambangan Pt Budi Gema Gempita Kabupaten Lahat, Provinsi Sumatera Selatan." *Jurnal Teknologi Pertambangan* 8, no. 1 (2022): 1-9.
- Paulus Bundong, Heria Mariaty, and Thea Farina. "Disharmonisasi Pengaturan Penetapan Wilayah Pertambangan Rakyat Pada Kawasan Hutan." *Palangka Law Review* 2, no. 2 (2022): 111-122. <https://doi.org/10.52850/palarev.v2i2.4896>.
- Rasjuddin. "Perlindungan Hukum Pidana Lingkungan Terhadap Kegiatan Perusahaan Pertambangan Dalam Prnanggulungan Dampak Lingkungan." *Jurnal Hukum* 36, no. 1 (2020): 1-11. <https://doi.org/10.26532/jh.v36i1.11180>.
- Rika Putri Wulandari, and Muhammad Helmi Fahrozi. "Politik Hukum Pengalihan Izin Pertambangan Pada Pemerintah Pusat Terhadap Kewenangan Pemerintah Daerah." *SALAM: Jurnal Sosial Dan Budaya Syar-I* 8, no. 1 (2021): 191-206. <https://doi.org/10.15408/sjsbs.v8i1.19445>.
- Tri Hayati. *Perizinan Pertambangan di Indonesia: Tinjauan Hukum Administrasi Negara*. Jakarta: Sinar Grafika, 2019.
- Trias Nugraha. "Penegakan Hukum dalam Penanggulungan Pertambangan Batubara Illegal." *Savana: Indonesian Journal of Natural Resources and Environmental Law* 1, no. 1 (2024): 1-8. <https://doi.org/10.25134/savana.v1i01.33>.