Authority Dynamic Law of Central and Regional Governments in Managing Natural Resources

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Abstract--The dialectic of central and regional authority has been going on for a long time, even before this state was formed, the debate between the form of a unitary state and the federalism colored the discussion of constitutional formulation. Soekarna represents unitary ideology while Moh Hatta is Federalist. But then, it narrowed to a compromise by choosing to become a unified state (article 1 paragraph 1 UUD 1945) on the principle of decentralization (article 18 paragraph 2 UUD 1945). The principle of decentralization in its implementation has experienced ups and downs. In the reformation era, this principle was very visible but not felt because nowadays the government was busy with political matters, then in the old era, it was weak, the government tended to be centralized. Since the reformation, the new face of decentralization has been very visible and clear. Regional governments have found a bright spot by having several powers, with the division of governmental affairs between the central and regional governments. However, this did not last long, after a long journey, in 2014 the authority of the regional government was slowly returned to the central government, where the regional government did not have the authority to manage natural resources related to the livelihoods of many people, the authority to manage natural resources was given to the province as a representative of the central government in regional and central government itself. Even worse after the existence of Law number 3 of 2020 concerning Mineral and Coal Mining, this Law adds the dark spot of the principle of decentralization as a mandate of reformation and Constitution.

Keywords- Authority; Central Government; Regional Government; Mineral and Coal.

I. INTRODUCTION

Indonesia is a unitary state, see in article 1 paragraph 1 of the 1945 Constitution, historically at the beginning of the formulation of the constitution there were two major currents related to the form of the state, first the form of a unitary state and the second the form of a Federation state. However, a unitary state was chosen which ontologically was very compatible with the Indonesian state. With its geographical and sociological conditions, Indonesia as a unitary state feels very difficult to run the government if it is only led by the central government, so then a unitary state is chosen on the basis of decentralization, this principle gives part of the central authority to the regions.

Based on the construction in the 1945 Constitution of the Republic of Indonesia, especially articles 18, 18 A and 18 B, the administration of government in the unitary state of the Republic of Indonesia is divided into provincial areas, and provinces are divided into city and regency areas. Each province, district and city is a regional government which is given the authority to regulate and manage its own government affairs based on the principles of decentralization, de-concentration and assistance tasks as well as the widest possible autonomy.[1]

Jimly Asshiddiqie emphasized that the new provisions, Articles 18, 18A, and 18B of the 1945 Constitution have changed the form of our country from a rigid unitary state to a dynamic unitary state. That is, first, it is possible to make federalist arrangements in the relationship between the central government and regional governments. Second, in the dynamics of the relationship between the central and the regional, it is also possible to develop a pluralist autonomy policy in the sense that for each region, a different pattern of autonomy can be applied.[2] So that various regional government laws are regulated, starting from Law number 1 of 1945 concerning Regional Government, Law number 22 of 1948 concerning Regional Government, Law number 1 of 1957 concerning the principles of Regional Government, Law number 18

of 1965 concerning Regional Government, Law number 5 of 1974 concerning Regional Government, Law number 22 of 1999 concerning Regional Government, Law number 32 of 2004 concerning Regional Government, Law number 23 of 2014 concerning Regional Government.

The development of the legal politics of regional government has experienced ups and downs, starting from the broadest possible autonomy, pseudo autonomy to real autonomy. In law number 32 of 2014 the regional government is given the authority to manage coal mines, it can be seen in the attachment to Law 23 2014. However, in the latest mineral and coal Law, law number 3 of 2020, this authority is withdrawn to the central government, as seen in article 4 mineral and coal Law.

The division of concurrent governmental affairs, one of which is government affairs in the field of energy and mineral resources, is one of the selected affairs. Based on the division of regional government affairs in the field of energy and mineral resources of sub- mineral and coal affairs based on law No. 23 of 2014 concerning Regional Government, the issuance of metal mineral and coal mining business permits is the authority of the provincial government. District/city governments are completely denied authority in the field of mineral and coal management. The content of the division of government affairs in the field of mineral and coal management raises legal problems because the provisions on the division of functions are contrary to regional authority in the field of mineral and coal management as regulated in Law No. 4 of 2009 concerning Mineral and Coal Mining.[3]

II. PROBLEM

From the above description, the researcher wants to discuss the authority of regional governments in managing natural resources, especially regarding minerals and coal.

III. RESEARCH METHODS

This type of research is a descriptive analysis, using a statute approach and a conceptual approach. The statute approach is the rule of law that become the focus of research, while the meaning of the relevant concept in this case is the abstraction element in a field study and is universal, its function is to bring up something interesting to be reviewed.[4]

IV. DISCUSSION

POLITICAL DYNAMICS OF LAW OF LOCAL GOVERNMENT

The law regulating regional governance is the first law that was drafted after the proclamation of independence, namely Law Number 1 of 1945 concerning Regulations Regarding to the Position of the Regional National Committee, the Law at that time was deemed not sufficiently regulating regional government and then it was deemed insufficient satisfactory to implement the provisions of Article 18 of 1945 Constitution. So that, in 1948 published Law Number 22 of 1948 concerning Stipulation of Basic Rules Regarding Self-Government in Regions That Have the Right to Regulate and Manage Their Own Household, this Law regulates autonomous regions, and do not regulate administrative areas, what is meant by autonomous regions in this law are provinces, districts/cities, and villages. So autonomous regions have three levels of government including villages. Article 1 of this Law emphasizes that regions that can regulate and manage their own households can be divided into two types, namely: autonomous regions and special regions.

Then, continued in 1957 the issuance of Law number 1 of 1957 concerning the main point of regional government. In this law, the concept of regional government is regulated in more detail, especially in relation to the implementation of the decentralization principle and the task of assistance. Then continued in 1965, Law Number 18 of 1965 Concerning the Principles of Regional Government, this law tends to be centralized, furthermore Law Number 5 of 1974 Concerning the Principles of Government in Regions, in it begins to appear pseudo autonomy, and the meaning of unity in mind is more real than the meaning of humility. In this law, what is meant by regional autonomy is the right, authority and obligation of the region to regulate and

manage its own household in accordance with the prevailing laws and regulations. From this last sentence, it can be seen that the way of dividing or determining regional household management in this law is by means of a material autonomy system. Regional Government Duties determined in detail/one by one, beyond that it is the duty of the central government. This system has shortcomings, namely it is less flexible because every change in the duties and authorities of the region must go through a long and complicated procedure.

After that, the regime changed, in the reform regime, the regional government law was born, namely Law number 22 of 1999. That law regulates the authority of local governments where the meaning of diversity is more real than the meaning of unity. In Law No. 22 of 1999 on regional governance, it has been determined that "regional authority includes authority in all areas of government, except those in the fields of foreign policy, defense and security, justice, monetary and fiscal, religion and authority in other fields.

Then continued by Law Number 32 of 2004 Regional Government (here in after referred to as Law 32.2014) and the last is Law Number 23 of 2014 Regional Government (hereinafter referred to as Law No. 23.2014). Law Number 23 of 2014 concerning Regional Government (hereinafter referred to as Law 23.2014) which was legal on September 30, 2014 has undergone a shift in authority in terms of issuing public mining permits for metal mineral, coal, non-metal minerals and rock commodities in people's mining areas which are now under the authority of the provincial government. The formation of Law 23.2014 was due to the issuance of many permits in a relatively short period of time, causing many problems, both administrative problems and problems in the field, in contrast to Law 32.2014, this authority was given to the provincial and district/city governments. Nevertheles, based on Article 8 of Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as the *Minerba* Law), the authority to grant community mining permits for metal mineral, coal, non-metal minerals and rock commodities within the community mining area is the authority of the district government/city.

The dynamics of regional governance in legal politics in Indonesia is a certainty considering that the form of the state adopted in Indonesia is a form of a unitary state where full sovereignty rests with the central government, meanwhile the regional government only gets part of the handover and delegation of government affairs so it is natural when the authority given to the regions is then taken or withdrawn by the central government. However, this fairness will set a bad precedent for obstinacy because the existence of the principle of decentralization as a mandate in article 18 of the 1945 Constitution is increasingly weakened.

STATE UNITY WITH THE PRINCIPLE OF DECENTRALIZATION

The rules regarding the concept of regional government are contained in Article 18B of the 1945 Constitution, including the existence of decentralization which will give birth to regional autonomy in the administration of regional government, the implementation of regional government units must pay attention to the basis of deliberation in the state government system, regional government units are organized by paying attention to the rights of origin in special areas.[5]

The debate regarding the form of the state had been going on before this country was formed, this can be seen between the debate between Soekarno and Moh. Hatta, Soekarto, with the understanding of its utility, believed that this Indonesian state was more in line with the form of a unitary state, this was based on history and the resistance of the Indonesian nation to colonialism. Meanwhile, Moh Hatta, with his federalist understanding, believed that Indonesia would become a large country when the form of the state used the federal state, the union. This is based on the event at that time, the great state of the US and the Soviet Union was federal. However, the two opinions were compromised, namely the form of a unitary state with the principle of decentralization.

The principle of decentralization in the Indonesian state is very important in this case to strengthen national integration even though in legal politics the principle of decentralization has experienced ups and downs. After the basic law was legalized by *PPKI*, then Law number 1 of 1945 was

born, this law regulates the authority of regional governments. The principle of decentralization in the context of the Unitary State of Romli in Didik G Suharto distinguishes between decentralization from an administrative perspective and a political perspective.[6] Meanwhile, the perspective of political decentralization is based on or oriented towards the main objective of decentralization, namely to realize democracy at the local level as well as improving people's welfare. Meanwhile, the administrative decentralization perspective is oriented towards the efficiency of regional government administration and regional scale development management. Departing from the above definition, the two goals/perspectives of decentralization must go hand in hand, lest there be disparities, if the government only prioritizes democratic values, it is alleged that it will ignore aspects of effectiveness and efficiency, and vice versa.

Miriam Budiardjo writes that what is the essence of a unitary state is that its sovereignty is not divided and is not limited, which is guaranteed in the constitution. Even though regions are given the authority to govern their own territories, this does not mean that regional governments are sovereign, because the highest supervision and power remains in the hands of the central government. The central government actually regulates the life of every resident of the region. The advantage of a unitary state is the uniformity of laws, because regulations concerning the 'fate' of the region as a whole are only made by the central parliament. However, the unitary state could suffer a heavy burden due to the extra attention of the central government on problems that arise in the regions.[7]

In the context of the Republic or a unitary state conceptually, centralized authority is in the central government, regional governments are only given partial authority to take care of a certain area which is then known as the concept of decentralization. Jimly Assiddiqie, argues that a unitary state in which State power is divided between the central and regional governments. However, original power rests with the central government.[8] The great authority of the Republic of Indonesia is the central government. So this is the basis that in a unitary state (Republic) regional authority (decentralization) is given by the central government, while the form of a unitary state is classified into two main level structures, namely the central government and regional governments (provinces, districts/municipalities.[8]

Logemann argues, decentralization means the existence of the power to act independently (*vrije beweging*) which is given to state units that govern their own regions, namely power based on their own initiative called autonomy, which Van Vollenhoven called *eigenmeesterschap*. While according to Joeniarto's view, decentralization is intended to give authority from the state government to regional governments to regulate and manage certain affairs as their own domestic affairs. Another case with Irawan Sujito14, stated that decentralization is the delegation of government authority to other parties to be implemented.[7] As for RDH's. Koesoemahatmadja (1979) opinion, decentralization is a way or system to realize the principles of democracy, which provides opportunities for people to participate in government.[9]

Regional autonomy means a form of authority to regulate regional government households. In terms of authority, basically regional autonomy contains a load of authority that is independent.[10] Autonomy is not a process of regional independence which in the sense of independence (separate sovereignty) or autonomy cannot be interpreted as the existence of absolute complete freedom from a region because autonomy is a process to provide opportunities for regions to develop according to their potential.[7]

In the context of the Republic or a unitary state conceptually, centralized authority is in the central government, regional governments are only given partial authority to take care of a certain area which is then known as the concept of decentralization. Jimly Assiddiqie, argues that a unitary state in which State power is divided between the central and regional governments. However, original power rests with the central government.[8] The great authority of the Republic of Indonesia is the central government. So this is the basis that in a unitary state (Republic) regional authority (decentralization) is given by the central government, while the form of a unitary state is classified into two main level structures, namely the

central government and regional governments (provinces, regencies/municipalities).[5]

It can be interpreted that the unitary state is an independent and sovereign state and its center is held by the (central) government. Basically, the essence of sovereignty in a unitary state that carries out governmental tasks lies with the central government. However, in the context of the Indonesian state, whose territory is large and clear, the form of a unitary state is adopted with the principle of decentralization, with the principle of decentralization causing certain government affairs to be delegated to the regions, with once the delegation of government affairs can run well if implemented optimally, this decentralization principle causes a relationship of authority and supervision between the central and regional governments. The rules regarding the concept of regional government are contained in Article 18B of the 1945 Constitution, including the existence of decentralization which will give birth to regional autonomy in the administration of regional government, the implementation of regional government units must pay attention to the basis of deliberation in the state government system, regional government units are organized by paying attention to the rights of origin in special areas.[5]

Regional autonomy means a form of authority to regulate local government households. In terms of authority, basically regional autonomy contains a load of authority that is independent.[10] However, in the context of a unitary state, as regional autonomy which is explained in Law No. 23 of 2014 is a given autonomy, or a central obligation, regional autonomy is not a regional right, so the existence of regional expansion is a central obligation after analyzing that the region is truly it is true that expansion is needed. It is different with the concept of Village autonomy, if regional autonomy is a right which is a gift, because authority is a gift, it must be monitored and accountable to the central government. However, the village government has autonomy as an inheritance, this autonomy grows and develops. The right to autonomy brought about by the Village is called the original arrangement of the territory, this autonomy can be found in the context of customary land rights, customary law, and the mechanism of making rules.[5] This strengthens the existence of the village from a historical perspective, as explained above, that the village existed before the existence of the state, so that the existence of the village preceded the existence of the state.

Apart from decentralization in the regional government system, the principle of de-concentration is also known. The difference between decentralization and de-concentration lies in whether the authority is exercised by formal legislators, kings, and ministers or exercised by bodies that are in a hierarchical relationship with kings or ministers. In this case there is an exercise of authority by the central government.[11]

DYNAMICS OF CENTRAL AND REGIONAL AUTHORITIES IN MINERAL AND COAL MANAGEMENT

As mandated by the 1945 Constitution of the Republic of Indonesia, there are Government Affairs which fully fall under the authority of the Central Government, known as absolute government affairs and there are concurrent government affairs. Concurrent government affairs consist of Mandatory Government Affairs and Optional Government Affairs which are divided between the Central Government, Provincial and Regency/City Regions. Mandatory Government Affairs are divided into Compulsory Government Affairs related to Basic Services and Compulsory Government Affairs that are not related to Basic Services.

Concurrent division of governmental affairs between provincial and regency/city regions even though the Government Affairs are the same, the difference will be seen from the scale or scope of the Government Affairs. Although the provincial and district/city regions have their respective Government Affairs which are not hierarchical in nature, there will still be a relationship between the Central Government, the Provincial and the Regency/City in its implementation with reference to the Norms, Standards, Procedures and Criteria (NSPC) made by the Central Government.[3]

According to Bagir Manan, authority in the language of law is not the same as power (*macht*). Power only describes the right to do or not to act. In law, authority also means rights and obligations

(*rechten en plichten*). Philipus M. Hadjon argued that authority is obtained through three sources, namely: attribution, delegation, and mandate. The authority of attribution is usually outlined through the division of state power by the Constitution, the authority of delegation and mandate is the authority that comes from the delegation.[3]

According to Phillipus M. Hadjon, if it is scrutinized, there is a slight difference between the authority and the "*bevoegheid*" terms. The difference lies in its legal character. The term "*bevoegheid*" is used in the concept of public law as well as in private law. The term authority should be used in the concept of public law.[12] Authority and power which in government can be manifested in the form of statutory regulations. In addition, it can be defined as institutionalized power, the ability to do legal action, it also contains the freedom to take the action or not. Thus the relationship between power and authority is related to the relationship in the sense that "there is one party who rules and another party is ruled" (the rule and the ruled).[13]

Meanwhile, according to Bagir Manan in Abdul Rokhim, authority in legal language is different from power (*macht*). Power is the right to do or not. Meanwhile, authority means rights and obligations (*rechten en plichten*). From this, it can be understood that rights contain the meaning of the power to self-regulate (*zelfregelen*) and self-manage (*zelfbesturen*), while horizontal obligation means the power to organize a government. The term "government" according to Fachruddin is often interchanged with the term administration. Even the two terms are still an endless debate.[14] In short, within the authority there are powers (*rechtsbe voegdheden*).[15]

Based on the division of regional government affairs in the sector of energy and mineral resources, the sub-affairs of mineral and coal based on Law no. 23 of 2014 concerning Regional Government, the authority to issue community mining permits for metal mineral commodities, coal, non-metal minerals and rocks in community mining areas is the authority of the provincial government. The details of the authority are as follows:

a) Determination of non-metal mineral and rock mining business license areas within 1 (one) provincial area and a sea area is up to 12 miles.

b) Issuance of metal mineral and coal mining business licenses in the context of domestic investment in regional mining business licenses located within 1 (one) provincial area including the sea area is up to 12 nautical miles.

c) Issuance of non-metal mineral and rock mining business licenses in the context of domestic investment in mining business license areas located within 1 (one) provincial area including the sea area is up to 12 nautical miles.

d) Issuance of community mining permits for metal mineral, coal, non-metallic minerals and rocks in community mining areas.

e) Issuance of mining business licenses for special production operations for processing and refining in the context of domestic investment which mining commodities originate from (one) the same province.

f) Issuance of mining service business licenses and registered certificates for domestic investment which business activities are in 1 (one) provincial region.

g) Determination of standard prices for non-metal minerals and rocks. However, based on Article 8 of Law no. 4 of 2009 concerning Mineral and Coal Mining, the authority to grant community mining licenses for metal mineral, coal, non-metal mineral and rock commodities within the community mining area is the authority of the district/city government. The elaboration of these powers is as follows:

a) Making regional laws and regulations;

b) Granting mining business licenses (*IUP*) and community mining licenses (*IPR*), fostering, resolving community conflicts, and supervising mining businesses in regencies/municipalities and/or sea areas is up to 4 (four) miles;

c) granting mining business licenses (*IUP)* and community mining licenses (*IPR*), fostering, resolving community conflicts and supervising production operations mining businesses whose

activities are in district/city areas and/or sea areas is up to 4 (four) miles;

d) Inventory, investigation and research, as well as exploration in the framework of obtaining data and information on minerals and coal;

e) Management of geological information, information on mineral and coal potential, as well as mining information in regencies/municipalities;

f) Compilation of mineral and coal resources balance in regency/municipal areas;

g) Development and empowerment of local communities in mining businesses by paying attention to environmental sustainability;

h) Development and increase of added value and benefits of mining business activities optimally;

i) Delivery of information on the results of inventories, general investigations and research, as well as exploration and exploitation to the Minister and the governor;

j) Delivery of information on products, domestic sales, and exports to the Minister and governors;

k) Guidance and supervision of post-mining land reclamation; and

l) Increasing the capacity of district/city government officials in the implementation of mining business management (Referring to Article 409 of Law No. 23 of 2014)

Prior to the enactment of Law Number 22 of 1999 concerning Regional Government (hereinafter referred to as Law 22.1999), in the context of a unitary state, the authority to manage mining natural resources was held by the central government. This is because the government system, prior to the enactment of Law 22.1999, was centralistic.[1]

The enactment of Law 22.1999, concerning Regional Government, the authority in granting licenses is delegated to the regional government (province, district/city) and the central government, according to their authority. This was the case after the regional government Law was replaced by Law 32,2004 and subsequently became Law 23,2014.

Philosophically, Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia states "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". This means that with the control of the earth, water, and natural resources by the state, equitable distribution of the management results of the earth, water and natural resources will be achieved.[1]

The right to control the State according to the 1945 Constitution of the Republic of Indonesia must be seen in the context of the rights and obligations of the State as the owner (*domain*) which is *publiekrechtelijk*, not as *eigenaar* which is *privaaterechtelijk*. The right to control the State over natural resources as stated in Article 33 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia is further regulated in Article 2 Paragraph 2 Number 5 of 1960 concerning Basic Agrarian Law Act (hereinafter referred to as *UUPA*) which is the legal basis for the birth of government authority in granting licenses related to utilization and natural resource management. One of the activities to utilize natural resources, in this case mining materials, is mining. The State's authority to control Indonesia's natural resources is an attributive authority granted by the Constitution.[1]

Political dynamics, a changing environment, state administration, and demands for local government administration are the background aspects for the birth of Law 23.2014, when compared to Law 32.2004, Law 23.2014 has regulated several quite fundamental changes, namely the elimination of most government affairs in the energy and minerals resources sector including the granting of mining business licenses which are now submitted by the provincial government as regulated in Article 14 Paragraph (1) and (3) of Law 23.2014.

Article 14 of Law 23.2014 regulates the implementation of government affairs in the fields of forestry, maritime affairs and energy as well as mineral resources divided between the Central Government and Provincial Regions. There is no mention of the district/city government in the clause of this article, which results in indirectly participating in abolishing the authority of the Regency/City Government in carrying out

government affairs in the field of natural resource management.

Based on Article 143 of Law No. 9 of 2009 concerning Coal Mining and Mineral, the Regent/Mayor shall provide guidance and supervision to community mining businesses in accordance with statutory regulations which are regulated by Regional Regulations. This is where the region is able to exercise its existing powers based on the prevailing laws and regulations. In the context of regional autonomy it does not necessarily become the authority of the regional government, in the mining sector, one of them is that management tasks in the mining sector are not regional in nature, so they cannot be left to the regional government. It should be underlined that the functions assigned to the regions are local in nature, meaning they have value which is regional in nature, is in accordance with regional conditions and does not concern the national interest.

Urusan	**PP 38 Thn. 2007**			**UU 23 Thn. 2014**			**UU 3 Thn. 2020**		
	Pusat	**Prov.**	**Ka/Kot**	**Pusat**	**Prov.**	**Ka/Kot**	**Pusat**	**Prov.**	**Ka/Kot**
Minerba	√	√	√	√	√	-	√	-	-

From the table above it can be seen that the dynamics of regional authority in managing mineral and coal natural resources have ebbed and flowed, in government regulation (*PP*) 38 of 2007 as an implementing regulation of Law number 32 of 2004, both provincial and regional regions are given authority in mineral and coal management. Then in Law 23 of 2014 the authority to manage minerals is withdrawn from the provincial government. District/city governments no longer have the authority to manage mineral and coal, this can be seen in the attachment to Law 23 of 2014. Furthermore, in Law number 3 of 2020 concerning practical mineral and coal, regional governments, both provincial and district/city, are no longer given the authority to manage mineral and coal as contained in Article 4 paragraph 2 of the new mineral and coal Law.

V. CONCLUSION

Regional authority in the management of natural resources is constitutional, this can be seen in the 1945 Constitution, Article 1 paragraph 1, this country adheres to a unitary state, where power is only in the central government, but after reformation, the constitution has undergone amendments, which is contained in article 18. Article 18 paragraph 1; The Unitary State of the Republic of Indonesia is divided into provincial areas and provincial areas are divided into regencies and cities. This means that the state recognizes regional governments as an inseparable part of the unitary state. However, in the management of regional mineral and coal authority is not given. As stated in article 4 paragraph 2 of Law number 3 of 2020. This article is contrary to the unitary state which adheres to the principle of decentralization.

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