

THE IMPLICATIONS OF MINING PERMIT AUTHORITY IN THE CONTEXT OF LAW NO. 9 OF 2015: A LEGAL ANALYSIS AND CHALLENGES IN REGIONAL AUTONOMY

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ABSTRACT

This study examines the implications of transferring mining permit authority from district to provincial governments under Indonesia's Law No. 9 of 2015, which amended the Regional Governance Law. The legislative change aimed to streamline administrative processes and align regional governance with national objectives. However, it has raised concerns about the erosion of local autonomy, administrative inefficiencies, and socio-environmental impacts. The study seeks to analyze these challenges, identify gaps in the legal framework, and propose actionable solutions to reconcile decentralized governance principles with effective resource management. Using a normative juridical approach, the research relies on legal analysis of relevant laws and regulations, case studies from Gorontalo Province, and a critical review of legal principles such as *lex specialis derogat legi generalis*. Data were drawn from legal documents, academic literature, and stakeholder inputs to ensure a comprehensive understanding of the issues. The findings reveal significant challenges stemming from the centralization of authority, including diminished local government involvement, inefficiencies in permit issuance, and weakened enforcement of environmental standards. The normative conflict between the Minerba Law and the Regional Governance Law exacerbates these issues, leading to legal ambiguities and implementation delays. Socio-environmental impacts, such as increased deforestation, pollution, and marginalization of local communities, highlight the need for a more inclusive governance approach. The study recommends resolving the normative conflict by prioritizing the specific provisions of the Minerba Law, enhancing provincial government capacities, fostering intergovernmental coordination, and adopting participatory governance mechanisms to empower local stakeholders. These measures aim to balance regional autonomy with centralized oversight, ensuring sustainable and equitable mining governance. This research underscores the importance of aligning legal frameworks with decentralized governance principles to achieve effective resource management. The findings contribute to the discourse on resource governance in developing countries and provide actionable insights for policy reforms.

Keyword : Decentralized Governance, Mining Permit Authority, Regional Autonomy in Resource Management

INTRODUCTION

Indonesia, as a unitary state operating under a republican government, adopts a decentralized governance system in alignment with Article 18, Paragraph 1 of the 1945 Constitution. This framework segments the country into provinces, which are further divided into regencies and municipalities, each vested with local government authority regulated by legislation. Decentralization,

however, does not imply the abandonment of centralization. Instead, these principles exist in a continuum, as decentralization without centralization may lead to fragmentation. Consequently, regional autonomy, emphasizing freedom and initiative, necessitates supervision and guidance from the central government to prevent it from becoming an avenue for sovereignty .

The essence of regional autonomy lies in enabling local governments to regulate local interests and optimize resource management. Provinces like Gorontalo, endowed with significant mineral resources, exemplify this potential. However, the enactment of Law No. 9 of 2015, which amended Law No. 23 of 2014 on Regional Governance, has introduced a shift in the authority to issue mining permits, transferring it from district governments to provincial authorities. This reallocation poses challenges in balancing local autonomy with centralized oversight. While decentralization aims to enhance efficiency and accountability, it has also raised concerns regarding the loss of direct involvement by district governments, particularly in regions where they are more attuned to the local socio-environmental dynamics of mining activities.

The key research problem revolves around the implications of the legislative amendments for mining permit governance. Central to this is the observed misalignment between the principles of autonomy, as enshrined in the Constitution, and the operationalization of authority under Law No. 9 of 2015. Local governments, especially at the district level, argue that their proximity and contextual understanding position them better to manage permits, monitor compliance, and mitigate environmental impacts. Conversely, provincial authorities, citing the broader scope of their jurisdiction, assert their capability to administer mining permits within a unified legal and administrative framework. This conflict has significant implications for the management of mineral resources, the well-being of local communities, and the sustainability of mining practices.

In addressing these challenges, earlier studies have proposed frameworks to reconcile these conflicting dynamics. Research by Supriatin and Akhmaddhian (2017) highlights the principle of *lex specialis derogat legi*

generalis, arguing that specific laws such as the 2009 Mineral and Coal Mining Law (Minerba Law) should override the general provisions of the Regional Governance Law. This principle ensures that district governments retain the authority to issue permits for mining operations within their jurisdictions, leveraging their localized expertise for effective resource management. Similarly, Huda (2017) emphasizes the need for collaborative governance models that align regional autonomy with the principles of sustainable development, suggesting that decentralization policies should prioritize environmental and socio-economic considerations.

Despite these insights, gaps remain in integrating these solutions into a cohesive policy framework. The literature reveals a lack of consensus on how to operationalize decentralized mining governance without undermining either local autonomy or provincial authority. Additionally, discrepancies in the implementation of regulatory frameworks have exacerbated conflicts between different levels of government. For example, conflicting interpretations of mining laws have led to administrative delays, legal disputes, and inefficiencies in resource management.

This study builds on previous research by providing an in-depth analysis of the legal and administrative implications of Law No. 9 of 2015 on mining governance in Gorontalo Province. Specifically, it examines how the shift in permit issuance authority affects the operational dynamics between provincial and district governments, the enforcement of environmental standards, and the equitable distribution of benefits from mining activities. Unlike earlier works, this study adopts a multi-stakeholder perspective, incorporating views from government officials, mining companies, and local communities to identify gaps in the existing framework and propose actionable solutions.

By addressing these gaps, this research contributes to the broader discourse on decentralized governance in resource management. It argues that achieving harmony between autonomy and centralized oversight requires a nuanced approach that respects local contexts while ensuring adherence to national and international legal standards. The findings of this study are expected to provide empirical evidence to inform policy reforms and enhance the efficiency and equity of mining governance in Indonesia .

The objectives of this study are threefold. First, it aims to analyze the implications of the legislative shift for the governance of mining permits in Gorontalo Province, focusing on its alignment with the principles of autonomy and accountability. Second, it seeks to identify the challenges faced by local governments in adapting to this legislative framework, particularly in terms of compliance monitoring and stakeholder engagement. Third, it explores potential pathways for reconciling the conflicting provisions of the Minerba Law and the Regional Governance Law through legal and administrative reforms. By addressing these objectives, the study offers novel insights into the complexities of decentralized governance in resource-rich regions, highlighting the critical role of collaboration and contextual adaptation in achieving sustainable outcomes.

METHODOLOGY

This study employs a normative juridical approach, focusing on the legal norms and principles governing mining permit issuance and regional governance under Indonesian law. The research emphasizes doctrinal legal studies, analyzing statutory provisions, regulatory frameworks, and legal interpretations to understand the implications of Law No. 9 of 2015 for mining governance. By leveraging legal theories and principles, the study aims to identify inconsistencies,

evaluate their impact, and propose actionable reforms. This approach ensures a systematic analysis of laws within the broader framework of constitutional principles and regional autonomy .

Data for this study were obtained from two primary sources: legal documents and scholarly literature. Legal documents include laws, regulations, government decrees, and official reports relevant to mining permits and regional governance, such as Law No. 4 of 2009 on Mineral and Coal Mining and Law No. 23 of 2014 on Regional Governance. Academic sources include journal articles, theses, and dissertations that provide theoretical and empirical insights into the legal and administrative dimensions of mining governance . Additionally, case studies from Gorontalo Province were analyzed to ground the research in practical contexts.

The analysis was conducted using a combination of qualitative and normative legal research methods. The qualitative aspect involves interpreting legal texts and exploring their practical application in mining governance. The normative method focuses on evaluating legal provisions against established principles, such as *lex specialis derogat legi generalis* (special law overrides general law) and the doctrine of decentralization . By synthesizing these approaches, the study examines the alignment of legislative changes with constitutional mandates and their practical implications for local governance.

Gorontalo Province was selected as the focus area due to its significant mining activities and the observable impact of the legislative shift on local governance. Data from provincial and district-level governments were analyzed to understand the challenges faced by local authorities in adapting to the new regulatory framework. Specific cases involving mining companies in Gorontalo were used to illustrate the practical

implications of the law and its enforcement challenges .

The study includes a critical review of the conflicts between Law No. 4 of 2009 on Mineral and Coal Mining and Law No. 9 of 2015. This conflict is analyzed through the lens of legal theory to evaluate its impact on local governance, the regulatory environment, and stakeholder relations. The principle of *lex specialis* is applied to resolve normative conflicts, assessing whether mining governance should remain under the purview of district governments or be fully centralized at the provincial level .

To ensure reliability, the study incorporates triangulation by comparing findings from legal analyses, government reports, and academic literature. Stakeholder feedback, including interviews with government officials and representatives from mining companies, was considered to validate the practical relevance of the findings. This multi-dimensional approach strengthens the robustness of the conclusions and ensures the applicability of proposed reforms .

The scope of the study is confined to legal and administrative aspects of mining governance in Gorontalo Province under Indonesian law. While the focus is on mining permits, broader issues such as environmental impacts and socio-economic consequences are discussed where relevant to highlight the interconnected nature of mining governance. The primary limitation lies in the reliance on existing legal frameworks, which may not fully capture the socio-political dynamics influencing regional governance.

This structured methodology provides a comprehensive framework for analyzing the complexities of mining governance under Law No. 9 of 2015, offering insights into its implications for regional autonomy and legal coherence.

RESULTS AND DISCUSSION

The enactment of Law No. 9 of 2015 significantly altered the governance of mining permits in Indonesia by shifting authority from district governments to provincial governments. This legislative amendment was intended to streamline regulatory processes and align regional governance with national objectives. However, its implementation has revealed complex implications for local autonomy, administrative efficiency, and environmental management .

One notable consequence is the diminished role of district governments in managing mining permits. Historically, district authorities were more attuned to local contexts, enabling them to enforce regulations effectively and address community concerns. The transfer of authority to provincial governments has created a disconnect, as provincial offices are often geographically and administratively distant from mining sites. This distance hinders their ability to conduct regular inspections, respond to community grievances, and enforce compliance with environmental and safety standards .

Furthermore, the shift has exacerbated administrative bottlenecks. Provincial governments, now burdened with increased responsibilities, often lack the capacity and resources to manage the surge in permit applications and regulatory oversight. This inefficiency undermines the objectives of decentralization, which aims to enhance governance by bringing decision-making closer to the people .

A critical issue arising from the legislative change is the normative conflict between Law No. 4 of 2009 on Mineral and Coal Mining (Minerba Law) and Law No. 9 of 2015. The Minerba Law grants district governments the authority to issue mining permits within their jurisdictions, recognizing their proximity and expertise in local matters. In contrast, Law No. 9 of 2015

centralizes this authority at the provincial level, undermining the principles of autonomy and local governance .

The conflicting provisions have led to ambiguities in the regulatory framework, complicating enforcement and decision-making. For instance, stakeholders often face uncertainty regarding which level of government holds the final authority over mining permits. This ambiguity has resulted in legal disputes, delays in permit issuance, and inconsistent application of environmental and operational standards .

To address this conflict, legal scholars advocate for the application of the principle of *lex specialis derogat legi generalis* (special law overrides general law). According to this principle, the specific provisions of the Minerba Law should take precedence over the general stipulations of the Regional Governance Law. This approach would restore district governments' authority over mining permits, aligning legal practice with the principles of decentralization and regional autonomy .

The transfer of authority has also introduced significant challenges in monitoring and enforcement. Provincial governments face logistical and operational difficulties in overseeing mining activities across vast and often remote territories. This issue is particularly pronounced in Gorontalo Province, where the mining sites are dispersed across multiple districts .

District governments, despite being better positioned to monitor local mining activities, now lack the legal authority to intervene. This disempowerment limits their ability to address illegal mining, enforce environmental safeguards, and ensure compliance with safety regulations. The result is a regulatory gap that enables non-compliance and exacerbates the environmental and social costs of mining .

Moreover, the lack of coordination between provincial and district governments has

further weakened enforcement mechanisms. While provincial authorities hold the formal authority, they often rely on district governments for local intelligence and operational support. However, the absence of a clear framework for collaboration has led to inefficiencies and overlapping responsibilities .

The legislative shift has had profound socio-environmental implications, particularly for communities living near mining sites. The centralization of authority at the provincial level has marginalized local voices in decision-making processes. Communities often find it challenging to access provincial offices to raise concerns about mining activities, resulting in a lack of accountability and responsiveness .

Environmental degradation is another critical issue. Weak enforcement of environmental standards has allowed mining companies to operate with minimal oversight, leading to deforestation, water pollution, and habitat destruction. These impacts not only threaten biodiversity but also undermine the livelihoods of local communities that depend on natural resources .

The social costs of mining, including displacement, loss of land rights, and conflicts between communities and mining companies, have also escalated. The inability of provincial governments to effectively mediate these conflicts highlights the need for a more inclusive and participatory governance framework .

To mitigate these challenges, several policy recommendations have been proposed. First, there is a need to revisit the legislative framework to resolve the conflict between the Minerba Law and the Regional Governance Law. Adopting the principle of *lex specialis* would clarify the division of authority and enhance the coherence of mining governance .

Second, capacity-building initiatives should be implemented to strengthen the

administrative capabilities of provincial governments. This includes providing additional resources, training programs, and technological tools to enable effective permit management and regulatory oversight.

Third, mechanisms for intergovernmental coordination should be established to facilitate collaboration between provincial and district governments. Such mechanisms could include joint task forces, shared databases, and regular consultations to ensure alignment in policy implementation and enforcement.

Finally, a participatory approach to mining governance should be adopted to empower local communities and stakeholders. This includes creating platforms for community engagement, enhancing transparency in permit issuance processes, and ensuring that mining operations comply with environmental and social standards.

The findings of this study have significant implications for policy and practice in decentralized governance. By highlighting the challenges and consequences of the legislative shift, this research underscores the importance of aligning legal frameworks with the principles of autonomy, efficiency, and sustainability. The study also contributes to the broader discourse on resource management in developing countries, where conflicts between local and centralized governance are prevalent.

Future research could explore the long-term impacts of the legislative changes on mining governance, particularly in terms of environmental sustainability and community welfare. Comparative studies examining similar legislative frameworks in other regions could also provide valuable insights into best practices and lessons learned.

CONCLUSION

This study highlights the critical implications of the transfer of mining permit authority from district to provincial governments as

mandated by Indonesia's Law No. 9 of 2015. The findings emphasize the challenges posed by this shift, including diminished local government autonomy, inefficiencies in permit administration, and weakened enforcement of environmental and safety standards. The normative conflict between the Minerba Law and the Regional Governance Law further complicates governance, leading to ambiguities in jurisdiction and the uneven application of legal frameworks.

The socio-environmental impacts of this change are significant, as centralizing authority has marginalized local voices in decision-making and contributed to environmental degradation in mining areas. Weak enforcement mechanisms and inadequate provincial resources exacerbate these challenges, emphasizing the need for a more coordinated and participatory governance model.

This study contributes to the body of knowledge by integrating legal analysis with empirical observations from Gorontalo Province, providing actionable insights for policymakers. The application of legal principles, such as *lex specialis*, and the emphasis on collaborative governance models are recommended to address these challenges. Future research should explore long-term socio-environmental impacts and comparative governance frameworks to enhance sustainable resource management in decentralized systems.

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