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Legal Reform of the Division of Authority for Mining Affairs: Balance between Regional Autonomy and National Interests

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Abstract

This study aims to analyze and find the legal reform of the division of authority for mineral and coal mining affairs between the Central Government and Regional Governments, so that a regulatory model can balance the principle of regional autonomy and national interests. This research is a normative legal research with a statute, conceptual, and case approach. This study found that after Law No. 3 of 2020 and Law No. 6 of 2023, there was a centralization of mineral and coal mining affairs, which led to the creation of injustice and legal uncertainty for autonomous regions. These regulations, from the perspective of balancing the principle of regional autonomy and the principle of national interests, need to be reformed trough the division of mineral and mining affairs between the Central Government and the autonomous regions based on the principle of justice by using the principles of externality, accountability, and efficiency. Meanwhile, the Central Government can use the principle of national strategic interests for several mineral and coal mining sub-affairs. In Addition, the delegation authority model should be removed and Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia needs to be amended, so that the division of government affairs provides justice and legal certainty for autonomous regions.

Keywords
Autonomy, Centralization, Government Affairs, Mining, National Interests.

Introduction

The journey of Indonesian constitutional history peaked when the 1945 Constitution of the Republic of Indonesia was amended.[1] One of the amendment results is the change in regulations regarding regional government, which was originally only regulated in 1 (one) article to 3 (three) articles as regulated in Articles 18, 18A, and 18B of the 1945 Constitution of the Republic of Indonesia. Bagir Manan stated that the changes to Article 18 of the 1945 Constitution, both in structure and substance, were fundamental.[2] The amendment to Article 18 of the 1945 Constitution of the Republic of Indonesia has marked the end of the highly centralized unitary state system and the transition to a decentralized unitary state. Each region is given autonomy to regulate and manage government affairs and it is decentralized by central government. Even if referring to the provisions of Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, regions are given the broadest possible autonomy except for government affairs that, according to law are the authority of the Central Government. This aims to ensure that local communities can play a role or participate directly in determining the course of government, so that it can accelerate the realization of community welfare.

The broadest autonomy certainly remains within the framework of a unitary state. Whatever the form, the breadth and content of regional autonomy remain within the framework of the Unitary State of the Republic of Indonesia. This means that in the regional autonomy system, there is no freedom to run all affairs. However, in the regional autonomy system, the essence is that regional governments are handed over

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1 Syofina Dwi Putri Aritonang, Muchammad Ali Safa`at, dan Riana Susmayanti, "Human Rights and Democracy: Can the President's Constitutional Disobedience Be Used as Grounds for Impeachment?," *Human Rights in the Global South* 3, no. 1 (2024), https://doi.org/10.56784/hrgs.v3i1.80; Bisyariyadi et al., "Competing Concepts: Human Rights in Indonesia's Constitutional Setting," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 5 (2021).

2 Bagir Manan, *Menyongsong Fajar Otonomi Daerah* (Yogyakarta: Pusat Studi Hukum FH-UII, 2005).

government affairs by the central government in certain matters. This is related to the principle of a unitary state that only the central government is sovereign and is single (*eenheidstaat*).

The legal implication of recognizing regional autonomy is a relationship of authority and utilization of natural resources between the Central Government and the Regional Government as stipulated in Article 18A of the 1945 Constitution of the Republic of Indonesia.[3] This relationship manifests as the division of concurrent government affairs between the Central Government and the Regional Government as stipulated in Article 12 and the Attachment to Law Number 23 of 2014 on Regional Government (Law No. 23 of 2014). To ensure that the division of government affairs has legal certainty and justice under the mandate of Article 18A of the 1945 Constitution of the Republic of Indonesia, Article 13 of Law No. 23 of 2014 regulates several principles that are the criteria, namely the criteria of externality, accountability, efficiency, and national strategic interests.

One type of concurrent affairs in Law No. 23 of 2014 is mineral and coal mining. According to Article 12 paragraph (3) of Law No. 23 of 2014, this matter falls into the optional concurrent government affairs category, so it can only be regulated and managed by autonomous regions with mineral and coal mining potential. However, there are differences in the regulations regarding the division of government affairs in Law No. 23 of 2014 when compared to the regulations in Law Number 32 of 2004 on Regional Government (Law No. 32 of 2004) and Law Number 4 of 2009 on Mineral and Coal Mining (Law No. 4 of 2009). If according to Law No. 32 of 2004 and Law No. 4 of 2009, each government unit has authority in mineral and coal mining affairs, then according to Article 14 paragraph (1) of Law No. 23 of 2014, government affairs in the field of mineral and coal mining are only divided between the Central Government and the Provincial Government. Meanwhile, the Regency/City Regional Government is not given any authority.

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[3] Bimo Fajar Hantoro, "Compatibility of the Capital of Nusantara's Form of Government Against Article 18B Section (1) of the 1945 Constitution of the Republic of Indonesia," *SASI* 28, no. 3 (2022), https://doi.org/10.47268/sasi.v28i3.1029; Sri Wahyu Kridasakti et al., "Chronic Disease of State Corporatism in Indonesian Village Government," *Sriwijaya Law Review* 6, no. 2 (2022), https://doi.org/10.28946/slrev.Vol6.Iss2.403.pp304-318.

The regulation of the division of government affairs regulated in Article 14 of Law No. 23 of 2014 has given rise to public discourse and is considered unconstitutional with the 1945 Constitution of the Republic of Indonesia, especially with Article 18 and Article 18A, therefore several autonomous regions have tested it several times at the Constitutional Court. The Constitutional Court rejected these applications. In Decision Number 87/PUU-XIII/2015, the Constitutional Court stated that the division of government affairs is entirely the legislator`s policy and does not conflict with the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's decision was further strengthened by Decision Number 137/PUU-XIII/2015 and Decision No. 11/PUU-XIV/2016. This means that the Constitutional Court confirmed the discretion used by the legislators in implementing Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

The division of government affairs in the mining sector between the Central Government and Regional Governments has changed again since the enactment of Law Number 3 of 2020 on Amendments to Law Number 4 of 2009 on Mineral and Coal Mining (Law No. 3 of 2020) and Law Number 6 of 2023 on Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation into Law (Law No. 6 of 2023). Based on Law No. 3 of 2020, mineral and coal mining affairs are centralized, so they are only under the authority of the Central Government. Provincial and Regency/City regions no longer have authority. This centralization of government has brought injustice to autonomous regions.

The centralization also gave rise to discourse and protests because it was normatively considered contrary to the 1945 Constitution of the Republic of Indonesia which guarantees the broadest possible autonomy to the regions. For this reason, a request for judicial review was submitted to the Constitutional Court.[4] Through Decision Number 37/PUU-

[4] Bertus de Villiers, Saldi Isra, dan Pan Mohamad Faiz, *Courts and Diversity* (Leiden: Brill | Nijhoff, 2024), https://doi.org/10.1163/9789004691698; I Nyoman Suandika et al., "The Legal Power of the Constitutional Court Decisions Remains," *Journal of Social Research* 2, no. 12 (2023), https://doi.org/10.55324/josr.v2i12.1606; Dewa Gede Palguna dan Agung Wardana, "Pragmatic Monism: The Practice of the Indonesian Constitutional

XIX/2021, the judicial review of the article regulating the centralization of mining affairs was declared unacceptable. In addition, several autonomous regions, especially provinces, requested that the Central Government immediately implement the provisions of Article 35 paragraph (4) of Law No. 3 of 2020 by delegating part of the Central Government's authority to the Provincial Government. Based on this, Presidential Regulation Number 55 of 2022 on the Delegation of Business Licensing in the Mineral and Coal Mining Sector (Presidential Regulation No. 55 of 2022) has been stipulated. The Provincial Government can provide mineral and coal mining business permits based on this Presidential Regulation.

Philosophically, the dynamic changes in the regulation of the division of authority for mining affairs create injustice, legal uncertainty, and various legal implications for the implementation of regional government. Considering these normative and philosophical issues, this study aims to analyze and find legal reforms on the division of authority for mining affairs between the Central Government and Regional Governments, so that a regulatory model is found that can balance the principle of regional autonomy guaranteed by the 1945 Constitution of the Republic of Indonesia with the interests of the Central Government as the holder of sovereignty to create national policies in the field of mineral and coal mining that are just and harmonious.

This research has a fairly high originality value. Because, the model of division of mineral and coal mining affairs that balances the principle of regional autonomy and national interests has not been found in previous studies, the research that is similar to the theme of this research is first, the research conducted by Jailani Syamsudin with the title "Transfer of Authority for Mining Business Licensing in the Mineral and Coal Law from a Decentralization Perspective".[5] The study describes the transfer of authority for licensing mineral and coal mining businesses and its implications for implementing decentralization. In contrast, this study comprehensively analyzes the legal reform of the division of

Court in Engaging with International Law," *Asian Journal of International Law* 14, no. 2 (2024), https://doi.org/10.1017/S2044251323000723.

[5] Jailani Syamsudin, "Pengalihan Kewenangan Perizinan Usaha Pertambangan dalam Undang-Undang Mineral dan Batubara Perspektif Desentralisasi," *Jurnal Tana Mana* 4, no. 1 (2023), https://doi.org/10.33648/jtm.v4i1.273.

authority for mining affairs between the Central Government and Autonomous Regions by balancing the principles of regional autonomy and the principle of national interests. Second, by Novita Eka Utami with the title "Centralization of Regional Government Authority in Mining Licensing After the Enactment of the Mineral and Coal Law".[6] The study describes the authority of the regional government in mining licensing after the enactment of Law No. 3 of 2020 and the impact after the enactment of Law No. 3 of 2020 for the community, while this study comprehensively analyzes the legal reform of the division of authority for mining affairs between the Central Government and the Autonomous Regions by balancing the principles of regional autonomy and the principle of national interests. Third, by Shafwan Ahadi, et al. "Limitations of Regional Government Authority in the Utilization of Mining Natural Resources in Central Halmahera Regency in the Perspective of Legal Sociology".[7] The study describes the flexibility of the Regional Government in utilizing natural resources in the mining sector. In contrast, this study comprehensively analyzes the legal reform of the division of authority for mining affairs between the Central Government and the Autonomous Regions by balancing the principles of regional autonomy and the principle of national interests. Fourth, by Muhammad Farhan Tigor Lubis, et al., en-titled "Contradiction of Government Authority Regarding Mining Management After the Birth of Law No. 3 of 2020 on Minerals and Coal".[8] The study generally describes the shift in mining management authority and evaluates the importance of local government involvement in mining management. In

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[6] Novita Eka Utami, "Sentralisasi Terhadap Kewenangan Pemerintah Daerah Dalam Perizinan Tambang Pasca Pemberlakuan Undang-Undang Mineral Dan Batubara," *Jurnal Lex Renaissance* 8, no. 2 (1 Desember 2023): 360–78, https://doi.org/10.20885/JLR.vol8.iss2.art10.

[7] Shafwan Ahadi, Iwan Setiawan Rahman, dan Mustika Iklima Pora, "Keterbatasan Wewenang Pemerintah Daerah Dalam Pemanfaatan Sumber Daya Alam Pertambangan di Kabupaten Halmahera Tengah Dalam Perspektif Sosiologi Hukum," *de Jure: Jurnal Ilmiah Ilmu Hukum* 5, no. 2 (2024), https://doi.org/10.33387/dejure.v5i2.9479.

[8] Muhammad Farhan Tigor Lubis dan Khairil Afandi Lubis, "Kontradiksi Kewenangan Pemerintah Terhadap Pengelolaan Tambang Pasca Lahirnya UU No 3 Tahun 2020 tentang Minerba," *Grondwet* 3, no. 2 (31 Juli 2024): 18–30, https://doi.org/10.61863/gr.v3i2.41.

contrast, this study comprehensively analyzes the legal reform of the division of mining affairs authority between the Central Government and the Autonomous Regions by balancing the principles of regional autonomy and the principle of national interests. Fifth, by Akbar Prasetyo Sanduan with the title "Recentralization of Mineral Mining Business Licensing in Law Number 11 of 2020 on Job Creation".[9] The study describes the division of concurrent government affairs regarding mining and coal business licensing in its development. In contrast, this study comprehensively analyzes the legal reform of the division of authority for mining affairs between the Central Government and the Autonomous Regions by balancing the principles of regional autonomy and the principle of national interests. The description above shows that this study is fundamentally different from previous studies. The fundamental difference relates to using a balanced approach between regional autonomy and national interests. Thus, this study has a fairly high value of novelty and originality.

This is normative legal research with a statute, conceptual, and case approach.[10] The legal materials used are primary and secondary legal materials. Primary legal materials are collected using the inventory and categorization method, while secondary legal materials are collected using the literature study method. The collected primary and secondary legal materials are then identified, classified, and systematized according to their sources and hierarchies. After that, all legal materials are reviewed and analyzed using legal reasoning with the deductive method.

Result and Discussion

A. Types of Government Affairs and Principles of Their Division

A unitary state is a single-composed state, so there is only one state and no state within a state. C.F. Strong stated that the essence of a unitary

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[9] Akbar Prasetyo Sanduan, "Resentralisasi Perizinan Berusaha Pertambangan Mineral Dalam Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja," *Jurnal Hukum Bisnis Bonum Commune*, 2022, https://doi.org/10.30996/jhbbc.v5i1.6098.

[10] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2021).

state is a state whose sovereignty is not divided, or in other words, its central power is unlimited (unrestricted) because the constitution of a unitary state does not recognize the existence of a law-making body other than the central law-making body.[11] This is very different from the federal state system where the government is composed of multiple levels, namely the federal and state governments. So that its sovereignty is also divided between the two governments. The consequence of this is that, in essence, all affairs are the rights and authority of the central government. The regions only carry out what the central government has assigned to them. Therefore, the regions only become an extension of the center in the regions without being given the authority to take the initiative to run their households. This is not good, because the people in the regions cannot play a role in determining policies that concern them.

A centralized government characterized by top-down control tends to be repressive and absolute because of its enormous power. Such great power also causes the people to become objects of development, not subjects. Thus, there is no equality and economic justice, as the regions that are providers of natural resources cannot enjoy the results because all are transported to the center. This feels very unfair; it is a very rich region but its people are still poor and backward. This caused disintegration everywhere during the New Order, such as the Free Papua Movement in Papua or the Free Aceh Movement, as they felt the injustice caused by a centralized government. They only became spectators, even victims of development.

The emergence of the Free Papua Movement in Papua and the Free Aceh Movement in Aceh can be attributed to feelings of injustice stemming from the Indonesian government's centralized development policies. Both movements arose in response to their respective regions' perceived neglect and marginalization. In Papua, the Free Papua Movement was founded in the late 1960s, advocating for independence from Indonesia due to a lack of equitable development and outside

[11] Saldi Isra, Bertus de Villiers, dan Zainal Arifin Mochtar, "Asymmetry in a Decentralized, Unitary State: Lessons from the Special Regions of Indonesia," *Journal on Ethnopolitics and Minority Issues in Europe* 18, no. 2 (2019); Ngesti Dwi Prasetyo et al., "The Politics of Indonesias Decentralization Law Based on Regional Competency," *Brawijaya Law Journal* 8, no. 2 (31 Oktober 2021): 159–84, https://doi.org/10.21776/ub.blj.2021.008.02.01.

entities' exploitation of natural resources. Similarly, the Free Aceh Movement emerged in the late 1970s, driven by grievances over economic disparities and political exclusion, particularly concerning the central government's policies.

Centralized governance often led to uneven resource distribution, which exacerbated the sense of injustice among local populations. In both Papua and Aceh, residents felt the development benefits were not reaching their communities. Instead, they witnessed significant investments in infrastructure and services concentrated in Java and other major islands, while their regions remained underdeveloped. This neglect fueled resentment and a desire for greater autonomy, prompting both the Free Papua Movement and the Free Aceh Movement to demand recognition of their rights and a more equitable approach to development.

As a result, both movements have engaged in various forms of resistance, including armed struggle and political advocacy. The Free Papua Movement has sought international support for its cause. At the same time, the Free Aceh Movement has utilized negotiations to achieve its objectives, culminating in a peace agreement in 2005 that granted Aceh greater autonomy. These movements highlight the critical importance of addressing regional disparities and ensuring that development policies are inclusive and considerate of local needs. The experiences of Papua and Aceh serve as reminders of the need for a more balanced approach in Indonesia's governance, one that recognizes and respects the aspirations of all its diverse regions.

In response, in 1999, Law No. 22 of 1999 on Regional Government (Law No. 22 of 1999) was enacted to replace Law No. 5 of 1974 on the Principles of Regional Government. Law No. 22 of 1999 is the first law on regional government that gives regions the authority to manage their households. It provides broad autonomy to regions. Therefore, those regions are given the freedom and independence to manage and determine policies needed for their respective regions.

The amendment to Article 18 of the 1945 Constitution of the Republic of Indonesia increasingly guarantees recognition of regional

autonomy.[12] Bagir Manan stated that the amendment to Article 18 of the 1945 Constitution of the Republic of Indonesia, in terms of structure and substance, is fundamental. After the amendment, Article 18 of the 1945 Constitution of the Republic of Indonesia looks more detailed than Article 18 of the 1945 Constitution of the Republic of Indonesia before the amendment. In addition, the explanation of the 1945 Constitution of the Republic of Indonesia, which has also been part of the 1945 Constitution, has been removed. [13]

Amendments to Article 18 of the 1945 Constitution of the Republic of Indonesia provide the broadest possible autonomy to autonomous regions to regulate and manage their government affairs that are within their authority.[14] This aims to allow the people in the regions to play a role or participate directly in determining the course of government. However, whatever the form, the autonomy`s breadth and content remain within the framework of the Unitary State of the Republic of Indonesia. Thus, based on the provisions of Article 18 of the 1945 Constitution of the Republic of Indonesia above, Indonesia is a

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[12] Dede Suhendra et al., "Regional Autonomy Inconsistency in Indonesia Post Amendment to the 1945 Constitution," *Journal of Law and Sustainable Development* 11, no. 11 (2023), https://doi.org/10.55908/sdgs.v11i11.1693; Pham Thanh Huu, "Impact of employee digital competence on the relationship between digital autonomy and innovative work behavior: a systematic review," *Artificial Intelligence Review* 56, no. 12 (2023), https://doi.org/10.1007/s10462-023-10492-6; Yuliandri et al., "Beyond the tsunami effect: Towards an understanding of the special autonomy budget policy in reducing poverty in Aceh," in *IOP Conference Series: Earth and Environmental Science*, vol. 708, 2021, https://doi.org/10.1088/1755-1315/708/1/012084.

[13] Manan, *Menyongsong Fajar Otonomi Daerah*.

[14] Sarkawi, "Relations Between State Institutions in Indonesia after the Amendment to the 1945 Constitution," *International Journal of Scientific Research and Management* 11, no. 04 (2023), https://doi.org/10.18535/ijsrm/v11i04.lla1; Anis Musana, "The Legislative Power of the House of Representatives after the Amendment to the 1945 Constitution of the Republic of Indonesia," *Constitutionale* 1, no. 1 (2020), https://doi.org/10.25041/constitutionale.v1i1.2009; M. Wildan Humaidi dan Inna Soffika Rahmadanti, "Constitutional Design of State Policy as Guidelines on Indonesia's Presidential System Development Plan," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 6, no. 1 (2023), https://doi.org/10.24090/volksgeist.v6i1.7981.

unitary state with a decentralized system.[15] Regions are given the authority to manage and regulate all affairs except government affairs which, according to the law, are the authority of the central government (residual function). Regional autonomy, regulated in Article 18 of the Constitution of the Republic of Indonesia, contains freedom and independence (*vrijheid en zelfstandigheid*), not independence (*onafhankelijkheid*).[16]

To further regulate the provisions regarding regional government, Law No. 32 of 2004 on Regional Government (Law No. 32 of 2004) was enacted in 2004. This law further accommodated the principle of

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[15] Mansyur Achmad, Ratna Wati, dan Wahyu Tri Putranto, "The Dynamics of Regional Autonomy in Indonesia," *Saudi Journal of Humanities and Social Sciences* 7, no. 5 (2022), https://doi.org/10.36348/sjhss.2022.v07i05.004; Abdul Kadir Jaelani, Bambang Manumayoso, dan Lego Karjoko, "The Constitutional Relationships Mandate Regarding the Implementation of Oil and Gas Investments in Indonesia," *KnE Social Sciences*, 2024, https://doi.org/10.18502/kss.v8i21.14732; Suhardi, Husni, dan Cahyowati, "Financial Central and Regional Relations Within The Government Enforcement in Indonesia," *Journal of Liberty and International Affairs* 5, no. 2 (2019); Yudi Krisno Wicaksono, "Strengthening the Indonesia Archipelagic Vision: New Map of the Unitary State of the Republic of Indonesia," *PalArch's Journal of Archaeology of Egypt / Egyptology* 17, no. 9 (2020); Anom Wahyu Asmorojati, Suyadi, dan King Faisal Sulaiman, "Asymmetric Decentralization in A Unitary State: The Legitimization of The Sultan's Daughter as The Governor of the Special Region of Yogyakarta," *Jurnal Hukum Novelty* 13, no. 2 (2022), https://doi.org/10.26555/novelty.v13i2.a24079.

[16] Syofyan Hadi dan Tomy Michael, "Forming a Responsive Local Law in the National Legal Framework," *International Journal of Social Science Research and Review* 4, no. 5 (2021), https://doi.org/10.47814/ijssrr.v4i5.135; Prehantoro, Made Warka, dan Slamet Suhartono, "Filling the Governor's Position and the Governor's Representative Special Region of Yogyakarta," *Journal of Law, Policy and Globalization*, 2019, https://doi.org/10.7176/jlpg/85-20; Ariyanti Luhur Tri Setyarini, Benedictus Hestu Cipto Handoyo, dan Vicki Dwi Purnomo, "Legal Politics Legislative Law Number 13 of 2012 on Privileges of the Special Region of Yogyakarta," *International Journal of Scientific Multidisciplinary Research* 1, no. 5 (2023), https://doi.org/10.55927/ijsmr.v1i5.4591; Roberto Toniatti, "Constitutional Court's centralising policy: A systemic state-centred governance and the ongoing reduction of special autonomy," *Regioni* 50, no. 3 (2022), https://doi.org/10.1443/106517.

regional autonomy within the framework of a unitary state.[17] Then in 2014, Law No. 32 of 2004 was divided into 3 (three) laws, one of which was Law No. 23 of 2014 which was last amended by Law No. 6 of 2023. In principle, this law regulates and guarantees that each autonomous region exercises the broadest possible autonomy as mandated by Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

With constitutional guarantees of regional autonomy, there is a relationship of authority between government units. Article 18A of the 1945 Constitution of the Republic of Indonesia determines:

(1) The relationship of authority between the central government and the regional governments of provinces, districts and cities or between the provincial government and districts and cities is regulated by law, taking into account the specificities and diversity of the regions;

(2) Financial relations, public services, utilization of natural resources and other resources between central and regional governments are regulated and implemented fairly and harmoniously based on law.

The provisions of Article 18A of the 1945 Constitution of the Republic of Indonesia are the constitutional basis for regional autonomy which is not independence, but rather the freedom and independence of regions to regulate and manage some of the affairs that fall within their authority.[18] With a relationship of authority between government units

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[17] Michael Buehler, Ronnie Nataatmadja, dan Iqra Anugrah, "Limitations to subnational authoritarianism: Indonesian local government head elections in comparative perspective," *Regional and Federal Studies* 31, no. 3 (2021), https://doi.org/10.1080/13597566.2021.1918388; Luh Suryatni dan I Dewa Ketut Kerta Widana, "Perception and Appreciation of The Indonesian Plural Society Toward Cultural Diversity," *Technium Social Sciences Journal* 43 (2023), https://doi.org/10.47577/tssj.v43i1.8768; Suandi et al., "The Evaluation of Village Fund Policy in Penukal Abab Lematang Ilir Regency (PALI), South Sumatera, Indonesia," *Sustainability (Switzerland)* 14, no. 22 (2022), https://doi.org/10.3390/su142215244; Yuniarto Hadiwibowo et al., "Sustainable Regional Economic Development by Developing Villages," *European Journal of Development Studies* 3, no. 1 (2023), https://doi.org/10.24018/ejdevelop.2023.3.1.201.

[18] Chanif Nurcholis dan Sri Wahyu Kridasakti, "Reconstruction Of The Local Government Model Based On The Concept Of The Founding Fathers And The

and relationships between government units in other forms, it means that, in essence, only one government is sovereign, namely the central government (*eenheid*).

The relationship of authority will result in various government affairs. Based on Article 9, paragraph (1) of Law No. 23 of 2014, it is determined that there are 3 (three) types of affairs, namely absolute affairs, concurrent affairs, and general affairs. Concerning this, the central government can determine absolute government affairs. This means that as the holder of sovereignty, the central government can determine which matters can only be managed by itself and which can be delegated to autonomous regions.

Regarding these absolute matters, Article 9 paragraph (2) of Law No. 23 of 2014 stipulates that these matters are the central government's full (absolute) authority. This means that these matters can only be implemented by the central government. These matters cannot be decentralized to the government below it, either provincial or district/city. These absolute matters are carried out in a centralized manner. This is because these matters concern the survival of the nation and state as a whole. Furthermore, Article 10 paragraph (1) of Law No. 23 of 2014 stipulates that these absolute matters include foreign policy matters, defense matters, security matters, justice matters, national monetary and fiscal matters, and religious matters.

In addition to these absolute matters, all matters are divided between government units, both the central government and the district/city government. The divided matters are concurrent in Article 9, paragraph (2) of Law No. 23 of 2014. Concurrent matters that are the authority of autonomous regions based on Article 11 of Law No. 23 of 2014 are divided into 2, namely mandatory matters and optional matters. Mandatory matters must be regulated and managed by each region, both those related to basic services (basic needs) and those not related to basic services (non-basic needs). Meanwhile, optional matters are matters that autonomous regions can manage if the region has the potential. Each

1945 Constitution Juncto The 1945 Constitution Of The Republic Of Indonesia Towars Modern Local Government," *Yustisia Jurnal Hukum* 7, no. 3 (2018), https://doi.org/10.20961/yustisia.v7i3.24610.

government unit can regulate and manage concurrent matters according to its authority.

Based on Article 13, paragraph (1) of Law No. 23 of 2014, the government units' arrangement and management of concurrent affairs are divided based on externality, efficiency, and accountability principles of national strategic interests. Regarding these four principles, the explanation of Article 13 paragraph (1) of Law No. 23 of 2014 provides the following understanding:

1. The principle of accountability is that the person responsible for carrying out a Government Affair is determined based on his/her proximity to the breadth, magnitude and reach of the impact caused by carrying out a Government Affair.
2. The principle of efficiency states that the organization of a Government Affair is determined based on comparing the highest level of utility that can be obtained.
3. The principle of externality is that the organizer of a Government Affair is determined based on the breadth, magnitude, and reach of the impacts arising from the implementation of a Government Affair.
4. The principle of national strategic interests in this provision is that the organizer of a Government Affair is determined based on considerations to maintain the integrity and unity of the nation, maintain the sovereignty of the State, implement foreign relations, achieve national strategic programs, and other considerations regulated in the provisions of laws and regulations.

Based on these four principles, Article 13, paragraphs (2), (3), and (4) of Law No. 23 of 2014 have determined the criteria for government unit affairs. These criteria are as follows:

1. The criteria for Government Affairs, which are the authority of the Central Government, are:
    a. Government affairs, that are located across provincial or international regions.
    b. Government Affairs, whose users are cross-provincial or cross-country.
    c. Government Affairs, whose benefits or negative impacts are cross-provincial or cross-country.

d. Government Affairs, whose use of resources is more efficient if carried out by the Central Government; and/or,
e. Government Affairs, whose role is strategic for national interests.

2. The criteria for Government Affairs which are the authority of the Provincial Region, are:
   a. Government Affairs, whose location is across districts/cities.
   b. Government Affairs, whose users are across districts/cities.
   c. Government Affairs, whose benefits or negative impacts are across districts/cities; and/or,
   d. Government Affairs, whose use of resources is more efficient if carried out by the Provincial Region.
3. The criteria for Government Affairs, which are the authority of the district/city government, are:
   a. Government Affairs, located in the Regency/City Region.
   b. Government Affairs, whose users are in the Regency/City Region.
   c. Government Affairs, whose benefits or negative impacts are only in the Regency/City Region; and/or,
   d. Government Affairs, whose use of resources is more efficient if carried out by the Regency/City Region.

Although the division of authority in regulating and managing concurrent affairs, as referred to in Article 13 paragraph (1) of Law No. 23 of 2014, is determined based on the principles of externality, accountability, and efficiency, as well as national strategic interests, the provisions of Article 14 paragraph (1) determine exceptions. The affairs regulated in Article 14 (1) of Law No. 23 of 2014 do not become the authority of all government units. Furthermore, Article 14 paragraph (1) of Law No. 23 of 2014 determines that "The implementation of government affairs in the fields of forestry, maritime affairs, as well as energy and mineral resources is divided between the Central Government and the Provincial Government". This means that the affairs regulated in Article 14 paragraph (1) of Law No. 23 of 2014 are only regulated and managed by the central government and provincial government units. There are also exceptions to these affairs, namely:

1. The central government has authority over energy and mineral resources related to oil and natural gas management.

2. Forestry matters related to the management of district/city forest parks are the authority of the district/city region.
3. Energy and mineral resources related to the direct use of geothermal energy in the district/city region are the authority of the district/city.

The provisions of Article 14 paragraph (1) of Law No. 23 of 2014 above are special clauses of the provisions of Article 13 paragraph (2), paragraph (3), and paragraph (4) of Law No. 23 of 2014. In these provisions, several matters such as government affairs in forestry, maritime affairs, and energy and mineral resources, are not divided between existing government units but only between the Central Government and the Provincial Government.

Furthermore, Article 15 paragraph (1) of Law No. 23 of 2014 stipulates that "The division of concurrent government affairs between the Central Government and the Provincial Government and the Regency/City Government is listed in the Attachment which is an inseparable part of this Law". Government affairs that are not listed in the Attachment will be the authority of each level or structure of government, the determination of which uses the principles and criteria for the division of concurrent government affairs as referred to in Article 13 of Law No. 23 of 2014 (vide Article 15 paragraph (2) of Law No. 23 of 2014).

The division of concurrent affairs has changed since Law No. 6 of 2023 was enacted.[19] In other words, Law No. 6 of 2023 has changed the concurrent affairs that are the authority of each government unit. Article 402A of Law No. 23 of 2014 in Law No. 6 of 2023 *obligatorily* determines that:

> "*The division of concurrent government affairs between the Central Government and the Provincial Government and the Regency/City Government as stated in the Attachment to Law Number 23 of 2014 on Regional Government as last amended by Law Number 9 of 2015 on the Second Amendment to Law Number*

[19] Syofyan Hadi dan Tomy Michael, "Implikasi Hukum Resentralisasi Kewenangan Penyelenggaraan Urusan Konkuren terhadap Keberlakuan Produk Hukum Daerah," *Jurnal Wawasan Yuridika* 5, no. 2 (2021), https://doi.org/10.25072/jwy.v5i2.489.

23 of 2014 on Regional Government must be read and interpreted under the provisions stipulated in the Law on Job Creation".

Article 402A of Law No. 23 of 2014 in the Job Creation Law above contains the legal norm of 'order' to autonomous regions to read and interpret concurrent affairs under the division of affairs regulated in Law No. 6 of 2023. On the other hand, this legal norm has changed the Appendix to Law No. 23 of 2014. With the change in the Appendix, the concurrent affairs that are the authority of each government unit have also changed.

Meanwhile, general affairs, according to the provisions of Article 9 paragraph (5) of Law No. 23 of 2014, are Government Affairs, which are the authority of the President as head of government. The types of general affairs are regulated in Article 25 paragraph (1) of Law No. 23 of 2014, such as fostering national insight, national unity, and integrity. These general affairs are implemented by the Governor and Regent/Mayor in their respective regions and are assisted by vertical agencies in the regions. The Central Government funds the implementation of general government affairs.

Government affairs in the Unitary State of the Republic of Indonesia can be seen in the table below:

Table 1: Government Affairs

Government Affairs				
Absolute	**Concurrent**			**General**
	Must		**Choice**	
	Basic Services	**Non-Basic Services**		
1. Foreign policy 2. Defense 3. Security 4. Justice 5. National monetary and fiscal 6. Religion.	1. Education 2. Health 3. Public works and spatial planning 4. Public housing and residential areas 5. Public order, security and protection of the community 6. Social	1. Labor 2. Women's empowerment and child protection 3. Food 4. Land 5. Environment 6. Population administration and civil registration 7. Community and village empowerment 8. Population control and family planning	1. Marine and fisheries 2. Tourism 3. Agriculture 4. Forestry 5. Energy and mineral resources 6. Trade 7. Industry 8. Transmigration	1. Fostering national insight and national resilience 2. Fostering national unity and integrity 3. Fostering harmony between tribes and intra-tribes, religious communities, races, and other groups 4. Coordination of the implementation of tasks between government agencies in the

	9. Transportation 10. Communication and informatics 11. Cooperatives, small and medium enterprises 12. Investment 13. Youth and sports 14. Statistics 15. Code 16. Culture 17. Library 18. Archives	provincial and district/city areas 5. Development of democratic life based on Pancasila 6. Implementation of all Government Affairs that are not the authority of the Region and are not implemented by Vertical Agencies

Source: Law No. 23 of 2014 (edited by the author)

B. Division of Mining Affairs Authority Between the Central Government and Regional Governments

Since Law No. 22 of 1999 to Law No. 23 of 2014, mineral and coal mining affairs have always been government affairs divided between government units.[20] However, there are differences in the regulations regarding the division of authority of government units.

In Law No. 22 of 1999 and Government Regulation No. 25 of 2000 on Government Authority and Provincial Authority as Autonomous Regions, each government unit is given authority in mineral and coal mining matters.[21] Based on the principle of residual authority, Regencies/Cities are given authority in mining matters that are not the authority of the Central Government and Provinces, especially in

[20] Intam Kurnia, "Implementation of Mining Affairs in Palu City from a Political Economy Perspective," *International Journal of Multicultural and Multireligious Understanding* 7, no. 9 (2020), https://doi.org/10.18415/ijmmu.v7i9.1919.

[21] Aminuddin Kasim et al., "Mining Businees Licensing In Indonesia: Perspective Administrative Law After The Revision Of The Mineral And Coal Law," *Russian Law Journal* 11, no. 3 (2023), https://doi.org/10.52783/rlj.v11i3.1538; Qurrotul Umniyah, Maria Ulfa Tuzzitqiah, dan Isma Wardatus Sholehah, "Bargaining Position of The Government in the Mining Sector Regarding the Change to a Special Mining Business Permit," *International Journal Of Social Science And Education Research Studies* 03, no. 06 (14 Juni 2023), https://doi.org/10.55677/ijssers/V03I6Y2023-10.

regulating and managing mining in the district/city area.[22] Meanwhile, those that cross districts/cities become the authority of the Province, and those outside the province become the authority of the Central Government.

The division of authority in mineral and coal mining matters has increasingly gained legal certainty in Law No. 32 of 2004 and Government Regulation Number 38 of 2007 on the Division of Government Affairs Between the Government, Provincial Governments, and Regency/City Governments (Government Regulation No. 38 of 2007).[23] The division of government affairs is based on three principles, namely the principle of externality, the principle of accountability, and the principle of efficiency. Based on these three principles, all government units are given authority in mining matters. This can be viewed in the Appendix BB Government Regulation No. 38 of 2007. The division of authority in mining matters can be summarized in the table below:

Table 2: Division of Authority According to Government Regulation No. 38 of 2007

Indicator	Government	Provincial Government	District/City Regional Government
Authority to form laws and regulations	√	√	√
Authority to grant business permits	√	√	√
Authority to carry out coaching and supervision	√	√	√
Authority to enforce administrative law	√	√	√

Source: Government Regulation No. 38 of 2007 (processed by the author)

[22] Hamartoni Ahadis et al., "Mining regulation and it's impact on public welfare," *International Journal of GEOMATE* 19, no. 72 (2020), https://doi.org/10.21660/2020.72.9404.

[23] H Nuryahya et al., "E-governance as an Alternative Solution in Eliminating Conflict of Overlapping Coal Mining Areas," *Educational Research ...* 3, no. 3 (2021), https://www.ijmcer.com/wp-content/uploads/2023/07/IJMCER_K0330100106.pdf.

Based on the table above, each government unit has authority in mining affairs regarding regulation and management. The division is based on the following provisions:

1. If the mineral and coal mining area is in a cross-provincial area and outside 12 (twelve) nautical miles, then it becomes the authority of the Central Government.
2. If the mineral and coal mining area is in a cross-district/city area and is above 4 (four) miles to (twelve) nautical miles, then it becomes the authority of the Provincial Government.
3. If the mineral and coal mining area is in a district/city area and is up to 4 (four) miles, then it becomes the authority of the Regency/City Government.

The division of authority is further strengthened by enacting Law No. 4 of 2009. Article 4 paragraph (1) of Law No. 4 of 2009 stipulates that minerals and coal are natural resources controlled by the state. This article is derived from the provisions of Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which stipulates that "The land, water, and natural resources contained therein are controlled by the state and used to the greatest extent for the prosperity of the people". Based on this right to control, the Constitutional Court in Decision No. 36/PUU-X/2012 stated that the state has the authority to make policies (*bleid*), make arrangements (*regelendaad*), manage (*bestuursdaad*), administrare (*beheersdaad*), and supervise (*toezichthoudensdaad*) for the greatest prosperity of the people.[24]

In the context of a decentralized unitary state, state authority derived from the right to control the state is exercised by the Central Government and Regional Government with limits determined by law. This is regulated in Article 4, paragraph (2) of Law No. 4 of 2009, which reads "Control of minerals and coal by the state as referred to in paragraph (1) is carried out by the Government and/or regional governments. Based on Article 4 paragraph (2) of Law No. 4 of 2009 above, matters of mining minerals and new rocks are the authority of the Central Government, the Provincial Government, and the Regency/City Government. The division of authority is regulated in

[24] Cut Asmaul Husna, "Strengthened Strategy of Joint Management Oil and Gas in the Offshore: Power and Resources," *Jurnal Konstitusi* 15, no. 1 (2018).

Article 6, Article 7, and Article 8 of Law No. 4 of 2009, which can be viewed in the table below:

Table 3: Division of Authority According to Law No. 4 of 2009

Center	Province	Regency/City
a. The determination of national policies. b. Creation of laws and regulations. c. Determination of national standards, guidelines, and criteria; d. Determination of the national mineral and coal mining licensing system. e. The determination of WP was carried out after coordinating with the regional government and consulting with the People's Representative Council of the Republic of Indonesia. f. Granting of IUP, coaching, resolution of community conflicts, and supervision of mining businesses located across provincial areas and/or sea areas more than 12 (twelve) miles from the coastline. g. Granting of IUP, coaching, resolution of community conflicts, and supervision of mining businesses whose mining locations are located across provincial areas and/or sea areas more than 12 (twelve) miles from the coastline. h. Granting of IUP, coaching, resolution of community conflicts, and supervision of mining businesses with	a. Making regional laws and regulations. b. Granting of IUP, coaching, resolving community conflicts and supervising mining businesses across district/city areas and/or sea areas of 4 (four) miles to 12 (twelve) miles. c. Granting of IUP, coaching, resolving community conflicts, and supervising mining businesses of production operations located across district/city areas and/or sea areas of 4 (four) miles to 12 (twelve) miles. d. Granting of IUP, coaching, resolving community conflicts and supervising mining businesses with direct environmental impacts across districts/cities and/or sea areas of 4 (four) miles to 12 (twelve) miles. e. Inventory, investigation, and exploration to obtain data and information on minerals and coal in	a. Making regional laws and regulations. b. Granting of IUP and IPR, coaching, resolving community conflicts, and supervising of mining businesses in district/city areas and/or sea areas up to 4 (four) miles. c. Granting of IUP and IPR, coaching, resolving community conflicts and supervision of mining businesses in production operations whose activities are in district/city areas and/or sea areas up to 4 (four) miles. d. Inventory, investigation, research, and exploration in order to obtain data and information on minerals and coal. e. Management of geological information, information on mineral and coal

direct environmental impacts across provinces and/or in sea areas more than 12 (twelve) miles from the coastline. i. Granting of Exploration IUPK and Production Operation IUPK. j. Evaluation of Production Operation IUP, issued by the regional government, has caused environmental damage and does not implement good mining principles. k. Determination of production, marketing, utilization, and conservation policies. l. Determination of cooperation, partnership, and community empowerment policies. m. Formulation and determination of non-tax state revenues from the results of mineral and coal mining efforts. n. Guidance and supervision of the regional government's mineral and coal mining management implementation. o. Guidance and supervision of preparing regional regulations in the mining sector. p. Inventory, investigation, research, and exploration to obtain data and information on minerals and coal as material for preparing of WUP and WPN.	accordance with its authority. f. Management of geological information, information on potential mineral and coal resources, and mining information in provincial areas/regions. g. Preparation of mineral and coal resource balance sheets in provincial areas/regions. h. Development and increase in added value of mining business activities in the province. i. Development and improvement of community participation in mining efforts by considering environmental sustainability. j. Coordination of permits and supervision of the use of explosives in mining areas by the authority. k. Submission of information on the results of inventories, general investigations, and research and exploration to the Minister and regents/mayors. l. Submission of information on production results, domestic sales, and	potential, and mining information in district/city areas.; f. Preparation of mineral and coal resource balance sheets in district/city areas. g. Development and empowerment of local communities in mining businesses by considering environmental sustainability. h. Development and improvement of added value and benefits of mining business activities optimally. i. Submission of information on the results of inventories, general investigations, and research, as well as exploration and exploitation to the Minister and governor. j. Delivery of information on production results, domestic sales, and exports to the Minister and governor. k. Guidance and supervision of post-mining land reclamation.

q. Management of geological information, information on potential mineral and coal resources, and mining information at the national level. r. Guidance and supervision of post-mining land reclamation. s. Preparation of national-level mineral and coal resource balance sheets. t. Development and increase in added value of mining business activities. u. Improving the capabilities of government apparatus, provincial governments, and district/city governments in managing mining businesses.	exports to the Minister and regents/mayors. m. Guidance and supervision of post-mining land reclamation. n. Increasing the capacity of provincial government and district/city government apparatus in organizing the mining business management.	l. Increasing the capacity of district/city government apparatus in organizing mining business management.

Source: Law No. 4 of 2009 (processed by the author)

The division of authority between the Central Government and Regional Governments in mineral and coal mining affairs has changed since the enactment of Law No. 23 of 2014. Although mineral resource affairs remain an optional concurrent affair as regulated in Article 12 paragraph (3) of Law No. 23 of 2014, the principle of the division of concurrent government affairs was changed in Article 13 of Law No. 23 of 2014, namely the principle of externality, the principle of accountability, the principle of efficiency,[25] and the principle of national strategic interests. In addition, related to the division of government affairs, there are exceptions as stipulated in Article 14 paragraph (1) of Law No. 23 of 2014 which states that "The implementation of

[25] Abdul Rahim, "Governance and Good Governance-A Conceptual Perspective," *Journal of Public Administration and Governance* 9, no. 3 (2019), https://doi.org/10.5296/jpag.v9i3.15417; Ade Risna Sari, "The Impact of Good Governance on the Quality of Public Management Decision Making," *Journal of Contemporary Administration and Management (ADMAN)* 1, no. 2 (2023), https://doi.org/10.61100/adman.v1i2.21.

government affairs in the fields of forestry, maritime affairs, and energy and mineral resources is divided between the Central Government and the Provincial Government". Government affairs regulated in Article 14 (1) of Law No. 23 of 2014 do not become the authority of all government units, including mineral and coal mining. After Law No. 23 of 2014, mineral and coal mining affairs are no longer divided and have become the authority of the Central and Provincial governments. Related to the division of mineral and coal mining affairs, it can be seen in the Appendix CC of Law No. 23 of 2014 as can be viewed in the table below:

Table 4: Division of Authority According to Law No. 23 of 2014

Center	Province	Regency/City
a. Determination of mining areas as part of the national spatial plan, consisting of mining business areas, people's mining areas, state reserve areas and special mining business areas. b. Determination of mining business permit areas for metal and coal minerals and special mining business permit areas. c. Determination of mining business permit areas for non-metallic and rock minerals across provincial regions and sea areas of more than 12 miles. d. Issuance of mining business permits for metal minerals, coal, non-metallic and rock minerals in: 1) Mining business permit areas located in cross-provincial regions; 2) mining business permit areas directly bordering other countries; and 3) sea areas of more than 12 miles.	a. Determination of mining business permit areas for non-metallic minerals and rocks in 1 (one) provincial area and sea area up to 12 miles. b. Issuance of mining business permits for metal minerals and coal in the context of domestic investment in mining business permit areas in one provincial area, including sea areas up to 12 nautical miles. c. Issuance of mining business permits for non-metallic minerals and rocks in the context of domestic investment in mining business permit areas in one provincial area including sea areas up to 12 nautical miles. d. Issuance of people's mining permits for	-

e. Issuance of mining business permits in the context of foreign investment. f. Issuance of special mining business permits for minerals and coal. g. The issuance of mining business permit registration and determination of the amount of production in each provincial region for metal and coal mineral commodities. h. Issuance of mining business permits for special production operations for processing and refining whose mining commodities originate from other provincial areas outside the processing and refining facility location, or imports and in the context of foreign investment. i. Issuance of mining service business permits and registered certificates in the context of domestic and foreign investment whose business activities are throughout Indonesia. j. Determination of benchmark prices for metal minerals and coal. k. Management of mining inspectors and mining supervisory officers.	metal mineral commodities, coal, non-metallic minerals and rocks in people's mining areas. e. Issuance of mining business permits for special production operations for processing and refining in the context of domestic investment, whose mining commodities come from the same one provincial area. f. Issuance of mining service business permits and registered certificates in the context of domestic investment whose business activities are in one provincial area. g. Determination of benchmark prices for non-metallic minerals and rocks.

Source: Law No. 23 of 2014 (edited by the author)

The model of division of government affairs regulated in Article 14 paragraph (1) of Law No. 23 of 2014 has caused many protests, because it is considered inconsistent with the principle of autonomy

which is constitutionally guaranteed by the 1945 Constitution of the Republic of Indonesia and the principle of fair and harmonious relations of authority and relations of utilization of natural resources. For this reason, several regions, both districts/cities and provinces, have filed a judicial review with the Constitutional Court.[26] However, these applications were rejected by the Constitutional Court, so the division of government affairs is regulated in Article 14 paragraph (1) of Law No. 23 of 2014 by the 1945 Constitution of the Republic of Indonesia. In Decision Number 87/PUU-XIII/2015, the Constitutional Court stated that "...even though the final responsibility for implementing daily government in Indonesia lies with the President...Regional Governments also...have responsibility in the implementation of government as long as it is included in the scope of their autonomy in the system of government regulated by law...Therefore, if the Law, within certain limits, also gives the regions the authority to carry out affairs related to or connected with the people`s livelihoods, this does not conflict with the 1945 Constitution. This is entirely the policy of the legislator. Conversely, conversely, if the legislator believes such matters are more appropriate if handed over to the Central Government, this is entirely the legislator`s policy". In Decision Number 87/PUU-XIII/2015, the Constitutional Court stated that the division of government affairs is entirely the legislator`s policy and does not conflict with the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's decision was further

[26] Pan Mohamad Faiz, Saldi Isra, dan Oly Viana Agustine, "Strengthening Indonesia's Regional Representative Council Through Judicial Review by the Constitutional Court," *SAGE Open* 13, no. 4 (2023), https://doi.org/10.1177/21582440231204408; Tom Ginsburg, *Judicial Review in New Democracies* (Cambridge: Cambridge University Press, 2003); Ahmad Fauzan, Ayon Diniyanto, dan Abdul Hamid, "Regulation Arrangement through The Judicial Power: The Challenges of Adding the Authority of The Constitutional Court and The Supreme Court," *Journal of Law and Legal Reform* 3, no. 3 (2022), https://doi.org/10.15294/jllr.v3i3.58317; Petra Mahy, "Indonesia's Omnibus Law on Job Creation: Legal Hierarchy and Responses to Judicial Review in the Labour Cluster of Amendments," *Asian Journal of Comparative Law* 17, no. 1 (2022), https://doi.org/10.1017/asjcl.2022.7.

strengthened by Decision Number 137/PUU-XIII/2015 and Decision No. 11/PUU-XIV/2016.[27]

Then, the division of authority in mineral and coal mining affairs underwent a radical change by centralizing. This was done by changing Law No. 4 of 2009 with Law No. 3 of 2020. In Law No. 3 of 2020, mineral and coal mining affairs are the exclusive authority of the Central Government. This can be viewed in the amendment to Article 4, paragraph (2), an amendment to Article 6, the elimination of Article 7, the elimination of Article 8, and an amendment to Article 35 of Law No. 3 of 2020. This centralization is emphasized in Article 4, paragraph (2) of Law No. 3 of 2020, which reads "Control of Minerals and Coal by the state as referred to in paragraph (1) is carried out by the Central Government in accordance with the provisions of this Law". Control is carried out through policy, regulation, management, administration, and supervision functions. Consequently, issuing of mineral and coal mining business permits is the authority of the Central Government.[28] This means that the Regional Government, both provincial and district/city, has no authority at all in mineral and coal mining affairs. Unless the Central Government delegates its authority to the Provincial Government as regulated in Article 35 paragraph (4) of Law No. 3 of 2020.

The centralization of mining affairs is further strengthened by the enactment of Law Number 11 of 2020 on Job Creation which has been revoked by Law Number 6 of 2023. Article 402A of Law Number 23 of 2014 in Law Number 6 of 2023 obligatorily determines that:

> "*The division of concurrent government affairs between the Central Government and the Provincial Government and the Regency/City Government as stated in the Attachment to Law*

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[27] Nurul Aprianti, Muchamad Ali Safa'At, dan Indah Dwi Qurbani, "Dualism of Review Model on Regional Regulations Post Act Number 11 of 2020 on Job Creation," *Jurnal IUS Kajian Hukum dan Keadilan* 9, no. 2 (2021), https://doi.org/10.29303/ius.v9i2.919.

[28] Radina Hamza Hairun, Sultan Alwan, dan Nam Rumkel, "Legal Analysis of Regional Legislative Council Supervision of Regional Government Regarding Overlapping Mining Business Permits in North Maluku Province," *Journal of Social Science* 4, no. 2 (2023), https://doi.org/10.46799/jss.v4i2.548.

Number 23 of 2014 on Regional Government as last amended by Law Number 9 of 2015 on the Second Amendment to Law Number 23 of 2014 on Regional Government must be read and interpreted in accordance with the provisions stipulated in the Law concerning Job Creation".

Considering various inputs from related stakeholders, the President in 2022 has stipulated Presidential Regulation No. 55 of 2022. The Presidential Regulation contains the delegation of authority for mineral and coal mining to the Provincial Government which is based on the provisions of Article 35, paragraph (4) of Law No. 3 of 2020. The scope of the delegated authority is determined in Article 2 paragraph (1) of Presidential Regulation No. 55 of 2022, namely (1) granting standard certificates and permits; (2) coaching for the implementation of delegated Business Licensing; and (3) supervision of the implementation of delegated Business Licensing. Thus, after Law No. 3 of 2020 and Law No. 6 of 2023, mining affairs are only the attribution authority of the Central Government; the Provincial Government has authority if delegated by the Central Government, while the Regency/City Government has no authority. The division of authority in the governance of mineral and coal mining can be seen in the table below:

Table 5: Division of Authority According to Law No. 3 of 2020

Indicator	Government	Provincial Government	District/City Regional Government
Authority to form laws and regulations	√	-	-
Authority to grant business permits	√	√*	-
Authority to carry out coaching and supervision	√	√*	-
Authority to enforce administrative law	√	√*	-

√* = delegated authority

Source: Law No. 3 of 2009, Law No. 6 of 2023, & Presidential Regulation No. 55 of 2022

According to the author, although the Constitutional Court in several of its decisions stated that Article 14 paragraph (1) of Law No. 23 of 2014 does not conflict with the 1945 Constitution of the Republic of Indonesia, the model for dividing mineral and coal mining affairs, both those regulated in Law No. 23 of 2014 and Law No. 3 of 2020, is inappropriate and creates injustice for autonomous regions. Based on reasonable reasoning, it is contrary to Article 18 and Article 18 of the 1945 Constitution of the Republic of Indonesia which guarantees the broadest possible regional autonomy and a fair and harmonious relationship between authority and utilization of natural resources, and the model is inconsistent with several materials contained in Law No. 23 of 2014. This can be explained as follows:

1. Division of authority for mineral and coal mining from the perspective of Article 18 and Article 18A of the 1945 Constitution of the Republic of Indonesia

   The centralization of authority for mineral and coal mining does not reflect the spirit of Article 18 of the 1945 Constitution of the Republic of Indonesia which grants autonomy to autonomous regions. The birth of Article 18 of the 1945 Constitution of the Republic of Indonesia is the antithesis of the centralization system practiced before the reformation. The autonomy granted to autonomous regions is the broadest possible autonomy, so that autonomous regions can manage all affairs. Although in Article 18, paragraph (5) of the 1945 Constitution of the Republic of Indonesia, there is a clause "except for government affairs which are determined by law as affairs of the Central Government", it does not eliminate the principle of regional autonomy. This means that although the Central Government can determine its authority through law, it must still pay attention to the autonomy possessed by the regions. This exception does not provide very broad discretion to the Central Government to freely determine a decentralized government affair to become the authority of the Central Government. According to the author, this exception must be determined by law and is better known as an absolute affair which is the authority of the Central Government and cannot be managed by the Regional Government.

The centralization of authority for mineral and coal mining is also not based on the principle of justice and harmony, which is the spirit of Article 18A of the 1945 Constitution of the Republic of Indonesia. The principle of justice states that "something is said to be fair if it is received according to its rights, so that everyone must be treated equally if their conditions are the same, and must be treated differently if their conditions are different". The centralization regulated in Law No. 3 of 2020 has caused autonomous regions with minerals and coal not to have the authority to regulate and manage according to the interests of the community in the region.

In addition to violating of the principle of justice, the centralization regulated in Law No. 3 of 2020 also violates the harmony of relations between government units. The provisions of Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia only exclude the meaning of the broadest possible autonomy for absolute matters on state sovereignty, but do not touch on concurrent matters. Therefore, Law No. 3 of 2020 does not provide and implement relations for harmonizing geothermal natural resources between government units. All government units must manage geothermal utilization matters, so there is harmony between central, provincial, and district/city government units.

2. Division of authority for mineral and coal mining from the perspective of Law No. 23 of 2014

   Law No. 23 of 2014 should be a reference in regulating the division of authority for mineral and coal mining. However, the centralization of mining authority in Law No. 3 of 2020 is inconsistent with Law No. 23 of 2014. This inconsistency can be explained as follows:

   a. This centralization is not under concurrent affairs as regulated in Article 9 paragraph (3) of Law No. 23 of 2014. As concurrent affairs, these affairs should be divided between government units. The concept of centralization of government affairs is only used for absolute affairs as stipulated in Article 10 of Law No.

23 of 2014. Mineral and coal mining affairs are not absolute affairs, so autonomous regions should be decentralized.

b. The centralization of authority contradicts the division of government affairs principle in Article 13 paragraph (1) of Law No. 23 of 2014. As a concurrent matter, the division of authority for mineral and coal mining must pay attention to the principle of division of concurrent affairs as stipulated in Article 13 paragraph (1) of Law No. 23 of 2014 which stipulates that "The division of concurrent government affairs between the Central Government and the Provincial Government and Regency/City Government as referred to in Article 9 paragraph (3) is based on the principles of accountability, efficiency, and externalities, as well as national strategic interests. These four principles are cumulative, meaning that the division of authority for mineral and coal mining must consider accountability, efficiency, externalities, and national strategic interests. However, Law No. 3 of 2020 does not pay attention to these four cumulative principles, but only looks at national strategic interests. This can be seen in the considerations of Law No. 3 of 2020.

c. The concept of decentralization regulated in Article 35 paragraph (4) of Law No. 3 of 2020 is contrary to Article 19 paragraph (1) of Law No. 23 of 2014. This article stipulates that concurrent affairs that are the authority of the Central Government can only be carried out by the Central Government itself, delegated to the Governor as the Representative of the Central Government and vertical agencies in the regions based on the principle of deconcentration, and assigned to regions based on assistance tasks. If we refer to these provisions, there is no known delegation of authority to autonomous regions to carry out

concurrent affairs that are the authority of the Central Government.

C. Legal Reform of the Division of Authority for Mining Affairs from the Perspective of the Balance of Regional Autonomy and National Interests

The centralization of authority for mineral and coal mining affairs in Law No. 3 of 2020 and Law No. 6 of 2023, philosophically does not comply with the principle of a decentralized unitary state that provides independence for regions to regulate and manage themselves, so that it has caused injustice for autonomous regions and disharmony in the relationship between the Central Government and Regional Governments and legal certainty for regions in the implementation of regional government. Legally, the centralization of authority also contradicts Article 18 and Article 18A of the 1945 Constitution of the Republic of Indonesia. The centralization of authority is systematically inconsistent with the legal norms in Law No. 23 of 2014, especially with the principle of dividing government affairs and the concept of organizing concurrent affairs by the Central Government. Conceptually, the centralization of concurrent affairs also contradicts the definition of concurrent affairs itself which is determined normatively in Article 9 paragraph (3) of Law No. 23 of 2014, so that there has been a *contradictio in terminis* between centralization v. concurrent affairs or centralization v. autonomy itself. This centralization of authority also, practically and sociologically, has legal implications for the validity of regional legal products in the mineral and coal mining and the implementation of other regional governments, especially regarding existing organizations.

Based on these arguments, it is urgent to reform the regulation of the division of mineral and coal mining affairs. According to the author, the reform must be carried out by balancing the principle of regional autonomy and the principle of national interest. From the perspective of a unitary state, these two cannot be contradicted, but complement each other. Prioritizing the principle of regional autonomy over the principle

of national interest inappropriate because it is contrary to the character of a unitary state with a single structure. On the other hand, prioritizing the principle of national interest over the principle of regional autonomy is also inappropriate, considering that the form of the Indonesian state is a unitary state with a regional autonomy system. For this reason, it is necessary to regulate the division of authority for mineral and coal mining affairs that is proportional so that a balance is created between the principle of regional autonomy and the principle of national interest to realize a fair and harmonious division of authority and relationship in the management of natural resources between the Central Government and Regional Governments.

Based on the approach of balancing regional autonomy and national interests, the reform of the regulation of the division of authority for mineral and coal mining is in the form of:

1. Mineral and coal mining affairs are divided into Regional Governments, both Provincial Governments and Regency/City Governments. This must be done because mineral and coal mining affairs are concurrent, not absolute. These affairs must not be centralized to uphold the principles of regional autonomy guaranteed by Article 18 of the 1945 Constitution of the Republic of Indonesia.

   The division of mineral and coal mining affairs to autonomous regions has an important legal purpose. Legally, this division aims to ensure that mineral and coal mining management is carried out in accordance with the principles of regional autonomy as stipulated in the 1945 Constitution of the Republic of Indonesia. By making mining affairs a concurrent affair, autonomous regions are given the authority to participate in managing and regulating mineral and coal mining in their regions. This not only increases accountability and transparency in the management of mineral and coal mining, but also provides an opportunity for regions to formulate policies that follow local needs and characteristics, so that they can improve the welfare of local communities.

   On the philosophical side, this division of mining affairs reflects the principles of justice and sustainability in the utilization of mineral and coal mining. By giving authority to

autonomous regions, local communities have a say in decision-making that directly impacts their environment and lives. This also creates a sense of ownership and responsibility for existing mineral and coal mining, thus encouraging wiser and more sustainable management. In addition, involving autonomous regions is expected to create synergy between national and local interests, ultimately supporting more inclusive and equitable development goals.

2. The division of mineral and coal mining affairs between government units must pay attention to the principles of the division of government affairs, namely externality, accountability, efficiency, and national strategic interests as stipulated in Article 13 of Law No. 23 of 2014. The principles of externality, accountability, and efficiency are used as the main formula, so that:
    a. If the location, users, and benefits/negative impacts are cross-provincial/cross-country, and it is more efficient if carried out by the Central Government, then mineral and coal mining matters become the authority of the Central Government.
    b. If the location, users, and benefits/negative impacts are across districts/cities, and it is more efficient if carried out by the Provincial Government, then mineral and coal mining matters become the authority of the Provincial Government.
    c. If the location, users, and benefits/negative impacts are within the district/city area, it is more efficient if carried out by the district/city government. Mineral and coal mining matters become the authority of the district/city government.

    Meanwhile, the Central Government can use the principle of national strategic interests for several sub-affairs of mineral and coal mining, so that these sub-affairs become the authority of the Central Government. This can be an example of the model of division of affairs in the field of geothermal licensing regulated in Law Number 21 of 2014 on Geothermal and Article 14 paragraph (4) of Law No. 23 of 2014. These

provisions specifically stipulate that permits for indirect geothermal utilization for electricity are only the authority of the Central Government because they are considered strategic for national interests. Meanwhile, permits for direct geothermal utilization are divided evenly between government units using the principles of externality, accountability, and efficiency.

The Central Government can also, for reasons of national interest, determine certain mineral goods that are strategic for national interests, so that they become the authority of the Central Government. This can be an example of the model for organizing oil and gas affairs as regulated in Law Number 22 of 2021 on Oil and Gas and Article 14 paragraph (3) of Law Number 23 of 2014. Therefore, inappropriate if all mineral goods are categorized as national strategic goods.

3. Eliminate the delegation of authority model in Article 35 paragraph (4) of Law No. 3 of 2020. This contradicts Article 19, paragraph (1) of Law No. 23 of 2014, and the principles of decentralization and regional autonomy.

   In addition, the most fundamental thing to reform is Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia. The changing regulations regarding the division of government affairs authority (i.e. mineral and coal mining to the centralization of authority in Law No. 3 of 2020) are caused by the provisions of Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, which are open-textured broad. These provisions provide broad discretion to the Central Government to assess and decide whether mineral and coal mining affairs will be divided into autonomous regions. Therefore, these provisions allow the Central Government to centralize mineral and coal mining affairs based on national interests without considering regional autonomy. Constitutional Court has given this constitutional legitimacy through Decision Number 87/PUU-XIII/2015, Decision Number 137/PUU-XIII/2015 and Decision No. 11/PUU-XIV/2016 which states that granting authority and not granting authority to autonomous regions to manage

government affairs (i.e. mineral and coal mining affairs) is entirely the policy of the legislator because it is guaranteed by Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia.

The consideration of the Constitutional Court, according to the author, is not quite right, as gives a blank sheet of paper or very broad discretion to the Central Government in determining the government affairs that will be given to autonomous regions. In the future, this has the potential to cause centralization of other government affairs, besides mining affairs. The Constitutional Court should provide constitutional requirements or engineering that can be used as a guideline for the Central Government when it distributes government affairs to autonomous regions, by considering the principle of regional autonomy and the principle of national interest.

In the future, it is necessary to amend Article 18, paragraph (5) of the 1945 Constitution of the Republic of Indonesia to ensure a fair and harmonious division of authority between the Central Government and Regional Governments and prevent the emergence of centralization phenomena. In this amendment, it is necessary to regulate in detail government affairs that are only the authority of the Central Government (absolute). In addition to absolute affairs, concurrent affairs are divided evenly between government units by paying proportional attention to the principle of regional autonomy and the national interests. This is necessary to ensure legal certainty in the division of government affairs and the implementation of regional government.

Conclusion

After Law No. 3 of 2020 and Law No. 6 of 2023, there has been a centralization of mineral and coal mining affairs, so only the Central Government has the authority which can be delegated to the Provincial Government. This centralization is not based on the principle of the broadest possible regional autonomy and the principle of justice and

harmony in the authority and utilization of natural resources relationship guaranteed in Articles 18 and 18A of the 1945 Constitution of the Republic of Indonesia. This centralization is also inconsistent with the principle of division of concurrent affairs and the central government's mechanism for implementing concurrent affairs. This centralization creates injustice and legal uncertainty for autonomous regions. For this reason, the division of authority for mining affairs in Law No. 3 of 2020 and Law No. 6 of 2023 must be reformed by balancing the principle of regional autonomy and national interest. The legal reform is in the form of (1) as a concurrent affair, mineral and coal mining affairs must be divided to the Provincial Government and the Regency Government by the principle of autonomy, (2) the division of authority for mining affairs must be based on the principle of externality, accountability, and efficiency as the main formula by considering its location, users, and benefits/negative impacts as well as efficiency. The central government can use the principle of national strategic interests for several sub-affairs and determine certain mineral goods as national interests, (3) eliminating the delegation of authority model. In addition, it is necessary to reform Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia through amendments, so that it is not open and provides too broad discretion for the Central Government in dividing government affairs to autonomous regions.

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