

# Mining Sector Under New Law of Decentralization: A Lesson from some Districts in Central Java Province

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## **Abstract**

*Under the new law of decentralization, namely Law No. 14/2014 on Local Governance, the national government shifts the governance of three main sectors related to natural resources from being city or regency's authority to be the provincial government's domain. This paper discusses possible advantages and drawbacks of the law in local level in the mining sector. This paper compares cases in Kebumen, Pati and Rembang in Central Java province to see the complexities of mining policy prior and after the issuance of the new law based on document analysis and interviews with local government apparatus and people concerned with mining issue in the local areas. While Law No. 4/2009 on non-oil mining strongly asserts the role of the district government, Law No. 14/2014 asserts that mining sector together with marine/fisheries and forest policy no longer become regency's policy domain. They are withdrawn to be the provincial government's authority. The former law was issued to respond to the strengthening demand of decentralization from the local regions but then was proven to merely result in the rising of new oligarchs in local mining governance. The later was meant to be a revision for the past. Yet, after about four years implemented, it is not free from other potentials of problems and complexities. Learning from the stagnancy of the mining problems in Central Java, it is clear that clarifying each government institution's roles, and strengthening inclusion from the people are crucial.*

## **Keywords:**

*Decentralization; Mining Conflict; Mining Governance; Public Inclusion*

## **INTRODUCTION**

Law No. 23/2014 on Local Governance has shifted the governance of

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The author would like to express her appreciation to the Faculty of Social and Political Science for providing research grant for this project through DIPA 2018, to Ashari Cahyo Edi for his assistance in proofreading the article, to Kushandajani and Hendra Try Ardianto as a team member of this research project for providing valuable discussion on mining policy and decentralization. The author would also like to extend her gratitude to all informants both in Kebumen, Pati and Rembang from government offices and communities for their willingness to share their views and experience on the issue. Author also thanks to anonymous reviewer for their comments.

three main sectors related to natural resources from being city or regency's authority to be the provincial government's domain. The law was meant to respond to the disproportionate impacts of the previous mining policy that gave broad authority to local governments to govern based on Law No. 4/2009 on non-oil mining. Law No. 4/2009 was issued to accommodate the strengthening demand of decentralization from the local regions regarding mining governance but then was proven to merely result in the

rising of new oligarchs in local areas. The birth of new Law No. 23/2014 was meant to strengthen the provincial government's role, as well as to reduce drawbacks of the former law in mining policy. Nevertheless, after about four years implemented, based on literature research and in-depth interviews with government officers and local people having dealt with mining issues in Pati and Rembang Central Java Province, the new law was found not free from other potentials of problems and complexities. Learning from the stagnancy of the mining problems in the areas, it is clear that clarifying each government institution's role, and strengthening inclusion from the people are crucial.

Since firstly officially launched in 2014 in Rembang, problems related to the establishment of PT Semen Indonesia (previously was PT Semen Gresik), a state company producing cement, continue to arise. Some people in Tegaldowo and Timbrangan villages refuse the policy for various reasons, i.e. degrading environment, unfairness in land buying, being harmful to farming, creating problems of water supply and so forth. Meanwhile, the regency government argues that investment in cement industry is a shortcut to tackle problems of poverty

existing for decades in the region and to increase local government's income (further discussion on natural resources and welfare discourse see (Tapiheru et al, (2017). The two parties never agree with one another, and public dialogues have been not effectively conducted.

The similar problem is found in Pati. After the failure of PT Semen Gresik establishment planning in Sukolilo sub-district, Pati, people face similar problems in another location with PT Sahabat Mulia Sakti, part of PT Indocement. To date, supporters and protesters of cement industry establishment remain in opposing views.

After the implementation of the law, things are not getting better, not only for the people but even also for regency government. For the regency government, the shifting of authority in mining industry governance to the provincial government may lift their burden. Nonetheless, people are not always aware of this, and they remain to put pressure on them to respond their refusal. No matter what, for the local people, the regency government is the nearest representation of the state. Meanwhile, there are no clear incentives the regency government would gain by getting involved in dealing with the issue.

Also, for regency government, although the law has mandated the governance of the mining sector in the provincial domain, it does not automatically delete the tasks they have to tackle. Mining business stands from the upstream to downstream. However, what the provincial government could do is mostly in the upstream, namely administering permission, income, taxes and feasibility assessment. In the downstream, as regarding managing mining pollution and the other mining excesses, it is the regency governments that would automatically bear the workloads, because they are the nearest to the location, and they have the resources to do so, as compared to the provincial government. Doing things without real authority is something that everybody does not like to do.

On the other hand, from the perspective of the local people, shifting the governance of the mining sector under the authority of the provincial government sounds more political than solving the existing problems. First, this puts more constraints to deliver their aspiration. The capital city of the province must be further than the capital city of the Regency. It means more time and higher cost. Secondly, the provincial government is

more often not more knowledgeable than the regency government concerning understanding local complexities and social and cultural context. For the people, the shifting of authority may only be beneficial for the national government and the corporations for control and access to information. Nevertheless, the local people do not yet see the advantages for them.

These problems lead us to identify further policy gaps in mining: how can the government unit that is geographically closer to society and able to handle daily governing practices is not given clear authority, especially in terms issuing the license and collecting income? To what extent the supporting function of the regency government can be practical, while pressure from local people remains the same? To what extent is the authority shifting able to make sure that the mining policy and environmental assessment will be participative, inclusive and counting the voice of the local people? Based on article 15 point 1 and article 18 point 1 Law No. 32/2009 on Protection and Governance of Environment (Perlindungan dan Pengelolaan Lingkungan Hidup), people are counted as an inherent part of mining governance.

This means public participation remains essential.

In this point, we can see that there is an issue of responsibility distribution in mining governance under the implementation of Law No. 23/2014. In this sense, there is a need for clarity between the task of the province and the regency. Secondly, although the authority to govern the mining sector is shifted, the point on people's inclusion remains asserted. In fact, in implementation, there is no much difference between before and after the issuance of the new law. This paper tries to figure out reflections from some mining conflict cases in Central Java Province to identify some possible ways for improvement. Field research was conducted during 2017 and 2018 by direct observation and in-depth interviews with government officers, local legislature members, nongovernmental organizations activists, academicians, provincial government and local people both who support and against the mining.

### **Mining Decentralization: Concepts and Regulations**

Mining is a contentious issue. Not only becoming a blessing, but it is also mentioned to trigger a conflict that it is

called as being a curse<sup>1</sup>. Based on Lederman and Maloney (2006), (Ross, 1999), Tornell & Lane (1999), Murshed (2004) and Sachs & Warner (1995), empirical evidence shows us that countries with abundant natural resources are prone to weak governance and rent seeking (Rahmawati, 2017). Even, economic growth in these countries is not higher than countries that are not rich with natural resources.

The same problem is found in Indonesia. Mining issue is never free from tension, competition, conflict, and even violence (Welker, 2014). It ranges from land release (Bachriadi & Suryana, 2016), income distribution (between the national and local governments), waste management, and CSR fund distribution (Edi, et.al., 2018) (Hanif, et.al., 2017). Two provinces in the west (Nanggro Aceh Darussalam) and the east (Papua) even were noted to be in separation movement, known to be caused by uneven welfare distribution from mining, in addition to the issue ethnic politics (Aspinall, 2007) (Kirsch, 2010).

Mining sector decentralization is one of the responses to the complexities of

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<sup>1</sup> Political scientists also have been working on studies to produce findings that oil and mining have resulted in positive development impacts. See for instance Arif (2018).

centralized mining governance since the New Order, as one of the decentralizations of natural resource governance (Nomura, 2008: 168). Uniformization in village governance based on Javanese model for the smallest unit of the government body (Antlov et al, 2016), replacing indigenous model of governance including in natural resource governance, like ulayat model in Sumatra, Kalimantan and Papua, military repression in natural resource controlling in local areas, profit accumulation in Jakarta, and labelling of mining policy protesters as communist and separatist are questioned and pointed out to be the cause of exclusion and marginalization of local and indigenous people (Afiff & Lowe, 2007).

However, in practice mining sector decentralization is seen to expand elite domination merely, not only from Jakarta but also from local areas, either coming from public officials or private businessmen (Choi, 2014) (Choi, 2014; Rachmawati, 2017). Devi and Prayogo (2013) call this as localism to refer the tendency of local people to dominate access to natural resources in the name of the locality. By turning decentralization into local elite bias, in practice

decentralization has lost its essence, namely the community's inclusion.

Consequently, decentralization is not featured with participation. Nomura (2008) sees the same thing in mining and natural resource governance, in which participation practices are often fake. As in forest sector governance in a village in Java, Nomura (2008) sees that the local government did not seriously involve the people but involved the names of the people in the list reported to the national government to fulfill forest decentralization requirement. As a result, although authority for governing mining sector for regency government widened, tension remains existing, even it created triangle conflict, namely between the local community, local government, and corporations (Burban & Alfirdaus, 2013).

In Indonesian context, regulations related to local government's authority that preceded mining sector decentralization were issued through Law No. 22/1999 on decentralization and Law No. 25/1999 on local government finance balance (Dana Perimbangan Keuangan Daerah), which then was revised to be Law No. 32/2004. Mining sector decentralization firstly formalized through government Decree No. 75/2001. However, as Devi and Prayogo

(2013: 22), although the Decree asserted the more extensive authority of local government in the mining sector, there were still many crucial centralized in Jakarta, leading to uncertainty in mining governance.

The next regulation is manifested in Law No. 4/2009 on mineral and coal mining, replacing Law No. 11/1967 that asserted the state's monopoly through HPN (Hak Penguasaan Negara, the state's authorization right) on natural resources in the name of nationalism (Devi & Prayogo, 2013: 18). Two main points in non-oil mining in Law No. 4/2009 included local government' authority expansion in mineral and coal mining and equal treatment for both domestic and foreign investor (Devi & Prayogo, 2013: 26). Another essential legislation product is Law No. 32/2009 on Protection and Governance of the Environment.

Article 4, 5, 6, 7 and 8 Law No. 4/2009 article 2, 15, 16 and 18 Law No. 32/2009 asserted decentralization in mining and emphasized community and other stakeholders' inclusion in the environment and land use in mining. Areas beyond 12 miles of the coastal line across provinces are supposed to be the national government's authority. Areas

between 4 to 12 miles of the coastal line across regencies are supposed to be provincial government' authority. Up to 4 miles counted from the coastal line is the regency/city government's authority. Areas of regulations include a regulation-making related to mining, License issuance (IUP; Ijin Usaha Pertambangan), conflict resolution, mining business monitoring, mining information management, and reclamation guiding and monitoring.

Lately, Law No. 23/2014 was issued to shift the authorization of three areas related to natural resources in local areas including marine/fisheries, forestry, and mining to be the national and provincial government's domain. This is to respond ineffectiveness of natural resource governance in the hand of regency/city government that is seen to often end up in the domination of local politicians. Consequently, regency/city governments do not have the authority to regulate or govern the sectors anymore.

Indeed, intention to repair the local mining governance is appreciated. However, it is not without problems. The effectiveness of the law is still questioned because in practice it is the regency/city government that directly deal with the local people concerning natural resource governance. Instead of being resolved,

authority shifting in mining is expected to merely a strategy of recentralization, which is also prone to regency/city government's resistance. In this point, mining governance strengthening, and stronger assertion of community's inclusion are crucial.

### **From Local to Provincial Government: More Complexities in Mining Governance**

What we experience so far in local mining governance is, there are always challenges. The challenges range from the free riding-politicians, difficult dialogues between the local government and the people, weak inclusion, repression to corruption. In the case of Kebumen we studied in 2011 (Alfirdaus, 2014) prior the similar studies in Pati and Rembang in 2017 and 2018, for instance, we identified there were always difficulties in building dialogues between the community that did not support mining and the local government. The same problem happened in Pati and Rembang, that deliberation can be said to never exists. In Kebumen, village people in Mirit we interviewed asserted that it was challenging to meet regent and local legislature body when they finally could sit together with them, the topic of conversation was always changed to the

others but mining. Therefore, it is difficult to gain clarification (Alfirdaus, 2011). The same was with bureaucracy.

Bumi Roma, a local NGO in Kebumen, noted that when they asked about the mining issue to the regent, he then pointed out SKPD (Satuan Kerja Pemerintah Daerah, Working Unit of Local government) as the one responsible for the policy, and legislature body than merely collecting people's aspiration without clear follow up to policymaking. Regent asked farmers to meet BPN BPN (Badan Pertanahan Nasional, national Land Administration Body), and Kodim (Komando Distrik Militer, Military Office in Regency) relied upon its answer to Mabes (Markas Besar, Central Office), yet Mabes never released its view on the case. The point on stakeholder inclusion asserted in article 18 point 1 Law No. 32/200y was useless.

In Rembang, the situation becomes more complicated after the legislation of Law No. 23/2014. Reviewing the study behind, at first, the planning of cement industry establishment was meant to be conducted in Sukolilo, Pati. PT Semen Gresik is the company supposed to execute the planning. Since the early 2000s resistance arose, involving Central Java governor at the moment, namely

Bibit Waluyo and Sedulur Sikep. Bibit Waluyo was known to be ambitious with the project because he believed it would help the government to solve the problem of poverty. However, Sedulur Sikep, who has its construction on nature and conservation (Putri, 2017) won court decision, and the planning was ceased to execute.

Instead of discontinuing its planning, PT Semen Gresik then moved its business location in Rembang, a regency next to the east of Pati. Unfortunately, it was not well-governed since the initial process of land release. Some people felt land buying was not transparent. Ex-regent is known to be the one that buys the land most. An informant remembered, when an ex-regent visited the village and offered money to buy farmers' land, he was welcomed. He did not tell that the land was going to be used as the location for cement company establishment. The ex-regent just said to villagers that he wanted to grow jatropha and told the villagers that for about the first two years the villagers are allowed to plant and harvest the jatropha and take the money for them. Later, the villagers knew that the land was then used for cement industry location and was sold to the company with a much higher price. They felt

manipulated and get mad to the ex-regent. This is not to mention land buying case involving Perhutani (the state's forest corporation) that was later known to be equally problematic. Resistance from of the community members in Tegaldowo and Timbrangan started to arise.

The situation got more complicated with the issuance of Law No. 23/2014. Ganjar Pranowo, the elected governor of Central Java province based on governor election in 2013, took over the case and showed his full support to the planning. When people sued the provincial government for a license, they issued to cement establishment planning and won in the supreme court, Ganjar Pranowo chose not to obey the court's decision. The (deliberate) changing of the name of the company from PT Semen Gresik to PT Semen Indonesia and the coverage area of the company were used as justification to claim that the decision was no longer applicable. The governor asserted, what the cement company needed to do was just by revising its license. Community members protesting mining then not only had to face regency government and the company. They also had to deal with the provincial government.

Regency government, on the other hand, felt that they have interest with the

cement company. Having been dealing with poverty for decades, the regency government believes that the presence of the cement industry would bring new hopes. The company is believed will help the government to improve local revenue, absorb employment, and make the local economy better than in previous times. PT Semen Indonesia's company establishment is an opportunity to smoothen local development. Further, when succeeds, this will bring back Rembang people's trust to regency government, which for so long is identical with low performance and corruption. Meanwhile, communication with community protesting the policy never runs smoothly.

In Pati, the same complexity happens. After the failure of the establishment of PT Semen Gresik's company, currently, the regency government is dealing with PT Sahabat Mulia Sakti, another private cement company. Local people do not stop giving pressure to regency government to stop the planning. Although mining has been the domain of provincial government, an informant in the Environment Office in Pati admitted, people still come to his office and express their protest. He realizes, it is impossible for him to avoid

meeting with the people, although he knew the Pati government no longer has authority in that case. Another informant in a government official said, with the authority shifting in the province, regency could not do many things. Things become more complicated, for sure. Moreover, what incentives the regency government will get is still not clear. Therefore, it gets more complex lately for the regency government in administering the mining sector.

Thus, we can see that based on Law No. 23/2014 the extent to which the regency government can take part in mining governance is still unclear, although social pressure will remain unavoidable. Secondly, apart from the fact that the mining issue is shifted to be the domain of provincial government, public inclusion remains underlined. However, the implication of the shifting on public inclusion and how it would be administered in provincial government level is still unclear. Further, while Law No. 4/2009 has explicitly mentioned that the government's role in mining governance including conflict resolution, Law 23/2014 does not clarify how intra-government institution govern once conflict happens. Regency government may be placed as a facilitator to help the

provincial government build conflict resolution.

Nevertheless, this is also questionable because the local government more often is also part of conflict instead of being the mediator between the local people and the company. There is often tendency from local government to be pro-corporation than to the local people that protest the policy. Moreover, if the company is state-owned. Expecting the active role from the local government to facilitate conflict resolution becomes more difficult.

As our field research in Kebumen prior the implementation of Law No. 23/2014 and in Pati and Rembang after the implementation of the Law, the regency government have a keen interest with the company because they believe it could raise local income. Further, the company is also expected to encourage the growth of the local economy. Therefore, it is challenging to put local government as a facilitator for resolution mining conflict. This is not to mention the personal interest of local politicians in the business. With the shifting of the authority, tension might arise and involve a triangle between the provincial government, the regency government, and the local people.

### **Improvement for the Future: Strengthening Regency Government and Local Community's Inclusion**

Learning from mining governance complexities prior and post-the implementation of Law No. 23/2014 it becomes essential to identify some possible ways for improvement. As mentioned earlier, first of all, there is a need to clarify the role of the regency government. As Boulan-Smit (2002, h. 58) Boulan-Smit, (2002) argues, to firmly decide the role and authority between the national, provincial and local government is essential. Mentioning regency governments role becomes vital because like it or not they are closer to local people than the provincial government. To clarify the authority of the regency government, once problems in mining governance happen, will be more helpful. Consequently, clarifying incentives, the regency government becomes the next important thing to do.

Secondly, apart from the fact that regency government still has a limitation in capabilities, it does not mean that taking over all the governance of the mining sector and put it to the provincial government will automatically solve the problem. More often, the provincial government also has limitation. They have

limited resources either in number and quality as the regency government. Therefore, instead of moving the responsibility to the provincial government, making a cooperative mechanism might be more helpful.

Finally, institutional strengthening in the regency level would not have any meaning if it is not equipped with citizen's right recognition. Therefore, making mining governance inclusive to people is crucial. Based on field experience in Kebumen, Pati and Rembang, it is more often difficult than easy to make local government, corporation and local people to sit together to find agreement, or at least, understanding towards environmental, employment, and water supply issues. Indeed, there is a need for differentiation between mining already operating and mining that is still in the planning phase. The forms of inclusion would be different. For mining that is still in planning phase, making sure that the people are counted in decision making and well-informed towards both the risks and benefits (not only the benefit as the local government usually does) are crucial. Information transparency, thus, is also a crucial part of public inclusion.

Meanwhile, for mining already operating, accommodating people's

complaints towards the pollution of the mining industry and the distribution CSR usually are the main issue. McGuire (2003) suggested the formation of stakeholder that consists of regency government, the provincial government, companies, NGOs, universities, and representation of the local people. Based on his study in East Kalimantan, the stakeholder forum functions to be a communication forum between the interrelated parties. Apart from the technical constraints that may appear during the communication process, the forum is beneficial to strengthen the link between the parties having concerns on the mining industry.

## CONCLUSION

What we can see from the discussion above that improvement in mining governance is continuing. There is always learning taken from the experience as a lesson for future improvement, including both the governance and institutionalization of the mining sector. However, the improvement the national government is advocating often still leaves a hole for and therefore becomes the area for criticisms. The shifting of the authority of mining together with marine/fisheries and forestry to provincial government

deserves appreciation for the great intention to fix the weaknesses in putting the governance these sectors in regency government's authority as prior law asserted. However, this is not free from critique because provincial government is also not free from human resource problems, capability issues, and free riding actions from politicians.

From the government side, like it or not, the regency government is the one directed related to people in local areas. Geographically, they are closer to the local people and the location for cement factory building, so they have closer access to the leading figure of the community and the mining location. Although nowadays authority is put on the provincial government's domain, based on Law 23/2014, it is crucial to identify correctly the role the regency government could play in mining governance. Partnership approach that involves both the provincial and the regency government might be an alternate choice to deal with mining issues in local areas. There is also a need for clarifying incentives the regency government would gain by involving in mining administration and conflict resolution related to mining issues.

Finally, from the side of the community, mining governance needs to

be designed more deliberative in the sense that it is open for being the topic of public discussion. The community has to get information about the risk and benefit of mining transparently, as well as what is the government uses the profit from mining. The community has to get consensus towards their willingness to lose their asset and resources to be the location for mining business. The repressive and intimidating approach is not allowed to be the strategy to deal with a public protest against mining. The government has to make sure that decision towards mining, whether it will mine or not, has to represent the choice of the whole community. If the decision to mine is only based on the view of academicians or businessmen, mining would always be a curse.

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