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Autonomy Regional Authority in the Field of Mineral and Coal Mining in Indonesia

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ABSTRACT

Regional autonomy provides the flexibility, independence and freedom to the region to regulate and administer governmental affairs under its authority. With that, the areas given government affairs called concurrent affairs. One form of concurrent of choice affairs is a matter in the field of mineral and coal mining. To affairs in the field of mineral and coal, article 7 and article 8 of the Law No. 4 of 2009 provides authority to autonomous regions, the provincial and regency minicipality. The authorization comprises the authority of the inventory, investigation and research, regulation, licensing, supervision and controlling. However, pursuant to article 14 paragraph (1) of the Law No. 23 of 2014, the authority in the field of mineral and coal mining is only governed and administered by the center and the provinces, so there is no authority of regency / municipality, the provinces authority consists of the authority to regulate in the form of the formation of region legal product and authority to take care of licensing, supervision and controlling. The authority of the province can be implemented if the mines regions *(locus)* are within one (1) provincial and marine area up to 12 miles.
KEYWORDS: autonomous regions, authority, mineral, coal mining

INTRODUCTION

Indonesia is a unitary state, [1] [2] [3] in the form of republic as defined in article 1 paragraph (1) of the Constitution of Indonesian Republic State in 1945 *(pasal 1 ayat 1 UUD Negara Republik Indonesia)*. However, the unitary State Republic of Indonesia is a unitary state with autonomous system and decentralization. In line with this, Article 18 paragraph 1 of the Constitution Republic of Indonesia in 1945 specifies that "*the unitary State Republic of Indonesia is divided into regency and municipality*; *that each these provincial, regency and municipality has a local government regulated by law*". Furthermore, article 18 paragraph (2) of the Constitution of Indonesian Republic State in 1945 specifies that "*local governments organize and manage their own affairs in accordance with the principle of autonomy and duty of assistance*". With these provisions, the autonomous regions are given the autonomy to organize and manage their own affairs under its authority. Autonomy granted to region is the widest possible autonomy unless otherwise provided in the legislation as a central authority as referred to in article 18 paragraphs (5) of the Constitution of Indonesian Republic State in 1945. With these provisions, then all government affairs become authority of local, unless exempted in the Act to under the authority of the central government. Regional autonomy within the unitary state system focused on the freedom and autonomy (*vrijheid en zelfstandingheid*) region to manage and run the affairs under its authority. Regional autonomy does not mean independence. The nature of local autonomy derived from elements freedom (not independence: *independence* / *onafhankelijkheid*). Autonomy is a sub system of a unitary State, [4], thus giving the widest possible autonomy to local governments directed to accelerate the realization of public welfare through service improvement, empowerment and community participation. In line with this, through the widest possible autonomy, the region is expected to improve competitiveness with due regard to the principles of democracy, equality, justice, privilege and specificity as well as the potential of the region, [5].

As a holder of sovereignty in the unitary State, the central government in the system of regional autonomy may delegate its business partly to autonomous regions. That delegation is so-called decentralization. Decentralization implies that the authority to regulate and manage the administration not solely by the central government, but also carried out by government units lower, both in the form of territorial and functional, [6]. Government units lower and left handed regulate and manage the government's affairs. In line with the above opinion, decentralization is the devolution of government power by the central government to autonomous regions, [7]. The regional autonomy will give birth to authority affair, financial affair, public services, exploitation of natural resources and other resources by taking into account the specificity and diversity of the region and carried out fairly and equitably under the law as defined in article 18A of the Constitution of Indonesian Republic State in 1945. Article 18A of the Constitution of Indonesian Republic State in 1945 is a constitutional basis for local autonomy is not independence, but rather the freedom and autonomy of the region to manage and implement the authority's affairs. With the relationship of authority between government units and units of government relations in other forms such as this cause that in essence only a sovereign government,

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that is central government. In a relationship of authority, financial relations, public services, exploitation of natural resources and other resources are included in the government affairs division of article 13 of the Law No.23 of 2014 on Local Government based on the criteria of externality, accountability and efficiency as well as national strategic interests [8].

One form of relationship between units of government is the relationship authority in the field of mineral and coal mining. The provisions concerning the authority relationship is in essence been governed by the Law No.32 of 2004 on Local Government, the Law No. 4 of 2009 on mineral and coal mining and Government Regulation No. 38 of 2007 on the division of government affairs between the government central, provincial and local government regency / municipality. In these provisions explained that each unit of government, whether central, provincial, and regency/ municipality has the authority respectively in mineral and coal mining. However, since the enactment of the Law no.23 of 2014, there have been fundamental changes in the relationship of authority in the field of mineral and coal mining. One of the basic points of the enactment of the Law No.23 of 2014 is the provision of article 14 paragraph (1) of the Law No. 23 of 2014 which stipulates that "*The implementation of government affairs in forestry, marine, and energy and mineral resources are shared between central governments and local province*". The provision gives enormous authority to the provinces in the field of mineral and coal mining. The authorization can be seen from the revocation of the authority of the regency / municipality in the field of mineral and coal mining and the authority under the authority of the province.

MATERIALS AND METHOD

The division of government affairs after the Law No.23 of 2014

Changes in article 18 of the Constitution of Indonesian Republic State in 1945, it is giving broad autonomy to the autonomous regions to set up and manage their own affairs under its authority. In other words, the principle of local autonomy through decentralization give the rights, powers and obligations to the autonomous regions to set (*regelendaad*) and take care of (*bestuurdaad*) all matters under its authority. Regulate and manage those carried out by the autonomous regions (*self regelendaad en self bestuurdaad*). So in essence autonomy means "*the right of self-government or decentralize means to divide and distribute, as governmental administration, to withdraw from the center or concentration*", [9]. Regional autonomy is the decentralization of authority by the central government to local governments. Decentralization is a way in which governments regulate and administer most of the power of central government powers handed to subordinates, so the region has its own government, [10][11][12][13].

The main goal of regional autonomy is in order to improve public services by government administrators. In this context, the regional autonomy is an attempt to approach the region with people (bringing the state closer to the people). Regional autonomy is a means for public services. Region should wherever possible change of provider or facilitator to be servants of society. On the other hand, regional autonomy aims to make people in the region can participate or directly participate in determining the course of administration.

In a unitary State which gives autonomy, autonomous regions did not exercise its powers as an independent, but affairs are carried out based on the principle of unity of government affairs with regard to the coordination and supervision of higher government unit. So however shape, both broad and contents of autonomy, then remain within the framework of unitary republic of Indonesia. Autonomous regions are given the authority to manage and organize all administrative matters, except those already clearly the authority of the central government *(residual function)*. Regional autonomy set out in article 18 of the Constitution of Indonesian Republic State in 1945, is the autonomy that contains the freedom and autonomy (*vrijheid en zelfstandingheid*), not independence (independence / *onafhankelijkheid*). For that, there is a relationship of authority between government units to ensure that the implementation of these powers remain within the framework of unity, Article 18A of the Constitution of Indonesian Republic State in 1945 specify that:

1. *The relationship of authority between the central government and the provinces, regency and municipality or between provincial and regency and municipality governments governed by the laws with regard specificity and diversity of the area*;
2. *Financial relations, public services, users of natural resources and other resources between the central government and local authorities are organized and implemented fairly and equitably under the law.*

The relationship of authority will cause the affairs of government. According to Article 9 paragraph (1) of the law no.23 of 2014 determined that there are three types of affairs, namely: the absolute, concurrent affairs and general affairs. The matter of absolute, article 9 paragraph (1) of the Law No.23 of 2014 determined that the affair be fully authority (absolute) of central government. It means that the affair can only be carried out by the central government. The matter can not be decentralized to rule there under, provincial and regency/ municipality. Absolute affair is done by centralized. This is due to the various affairs concerning the survival of the nation and the country as a whole. In the division of government affairs, the central government can determine absolute governmental affairs, [14]. That is, that as a sovereign, central government can determine

which affair can be taken care of itself and of which one may be delegated to other autonomous regions. Furthermore, article 10 paragraphs (1) of the Law No. 23 of 2014, it determines that the absolute affairs include: (a) foreign policy affair; (b) defense affairs; (c) security affair; (d) judicial affairs; (e) national monetary and fiscal affairs; and (f) the religious affairs.

In addition to the absolute affairs, all matters exhausted divided between units of government, central government, provincial government and regency/ municipality governments. Affairs were all distributed mentioned in article 9 paragraph (2) of the Law No. 23 of 2014 called concurrent affairs. Concurrent affairs under the authority of an autonomous region under article 11 Law No.23 of 2014 are divided into two, namely: obligatory affair and affairs of choice. Obligatory affair is a matter that should be regulated and managed by each region, both with regard to basic services (basic need), and which is not related to basic services (non basic need). Based on article 12 paragraph (1) of the Law No. 23 of 2014 determined that included obligatory affair related to basic services is a matter of (a) education; (b) health; (c) public works and spatial planning; (d) public housing and residential areas; (e) peace, public order and the protection of the public; and (f) social. Furthermore, pursuant to article 12 paragraph (2) of the Law No. 23 of 2014, determined that included obligatory affair unrelated to basic services is a matter of (a) labor, (b) the empowerment of women and protection of children; (c) food, (d) land; (e) the environment; (f) administration of population and civil registration; (g) empowering communities and villages; (h) control of occupation and family planning; (i) transportation; (j) communication and informatics; (k) cooperatives, small and medium enterprises; (l) the investment; (m) youth and sport; (n) statistics; (o) coding; (p) culture; (q) the library; and (r) archives. Option affairs is a matter which is optional that can be managed and regulated by the autonomous regions where there is the potential of the region. According to article 12 paragraph (3) law no. 23 in 2014 which included the affairs of option is (a) the marine and fisheries; (b) tourism; (c) agriculture; (d) forestry; (e) energy and mineral resources; (f) trade; (g) industrial and (h) transmigration.

The provision above, then one option concurrent administration affairs is mineral resources. However, the mineral resource affairs have a special character in the determination of the government unit which conducts the regulation and arrangement. So that the provisions of article 13 paragraph (1) the law No. 23 of 2014 that divided government affairs based on the principle of externality, accountability, and efficiency as well as national strategic interests are not applied limitative. However, under the provisions of article 14 paragraph (1) of the Law No.23 of 2014, mineral resource affairs do not fall under the authority of all units of government. Article 14 paragraphs (1) of the Law No. 23 of 2014 stipulate that "The implementation of government affairs in forestry, marine and energy and mineral resources are divided between the central government and the provinces". It means that on the affair set out in article 14 paragraphs (1) of the Law No.23 of 2014 only regulated and managed by a unit of the central government and provincial governments, including the affair of mineral resources. Hence, government affairs in the field of mineral and coal mining arrangements and management is shared between the central government and provincial government.

Autonomous regional authority in the field of mineral and coal mining

In a state of law, the government is required to always act in accordance with the law (*rechtmatig van het bestuur*). One of the conditions that the government acts in accordance with the law is the authority that is part of the formal legality. In line with this, article 8, paragraph (1) of the Law No. 30 of 2014 on government administration / the Law No. 8 of 2014 specifies that "*every decision and / or action must be specified and / or carried out by the agency and / or authorized government officials*". Article 1 paragraph (6) of the Law No.30 of 2014 stipulates that "*the government's authority is hereinafter referred to as the authority is power bodies and / or government officials or organizers of other countries to act in the realm of public law*".

The authority is formalized power. that the State constitutional law, authority (*bevoegdheid*) is described as the rule of law (*rechtsmacht*). So the concept of public law, the authority associated with power, [15]. The authority is the ability to implement positive law, and thus created the legal relationship between the governments by citizens, [16]. In general, governmental authority is specified in the legislation as a government norm. Thus, the granting of authority to the occupation and / or the governing body is usually regulated and specified in the legislation in force. Thus, in the laws and regulations will be determined limits of authority held positions, both time (*bevoegd rtione tempory*), place (*bevoegd ratione loci*), and material authority (*bevoegd ratione materiae*). Therefore, alteration or replacement legislation affects the authority of the agency and / or government positions.

Theoretically, autonomous regional authority in affair of mineral and coal mining is the authority given by central government. The central authority is the authority that comes from the right to control the country. Right to control the country was birth of article 33 paragraph (3) of the Constitution of Indonesian Republic State in 1945, which stipulates that "*the earth, the water, the natural riches contained therein shall be controlled by the state and used for the greatest prosperity of the people*". Against the right to control the country, this concept is better known by the domain principle, implies ownership. The state is the owner of the rights to the land, because it has the authority to carry out actions that are ownership (*eigensdaad*), [17]. In line with these opinions, the right to master

the state or state concession rights is a concept that is based on the organizational power of the entire people. Right to control the country contains the authority to regulate and manage and supervise the management or exploitation of minerals, and contains an obligation to use it for the greatest prosperity of the people. The overall prosperity of the people is the goal of every management and natural resource use of national, [18]. Against the meaning of the right to control the country, the constitutional court in various decision *ratios decidendi* states that the right to control the state means that the state has the authority to make policy (*bleid*), make arrangements (*regelendaad*), perform maintenance (*bestuursdaad*), conduct management (*behersdaad*), and supervision (*toezichthoudensdaad*) for the purpose of the prosperity of the people, [19]. From the interpretation of the constitutional court decision, it is known that in the field of mineral and coal mining, Indonesia as a country have the authority to make policy, make rules, perform maintenance, managing and monitoring.

RESULTS AND DISCUSSION

In general, the autonomous regional authority in affair of mineral and coal mining can be seen from the provisions of article 6, article 7 and article 8 of the Law No. 4 of 2009. In the article has determined limitative authority of each government unit. The authorization can be seen in the table below. Table 1 The Authority of Central, Province and Local Government.

Table 1 The Authority of Central, Province and Local Government

Central Government	Province Government	Local Government
a. Deciding the national policy b. Making the regulation c. Setting the national standard, manual and criteria. d. Setting the national mining approval system of mineral and coral e. Setting the WP after coordinating with the local government and having consultation with the House of Representatives (DPR). f. Providing IUP, training, community conflict resolution and monitoring the mining activity across the provinces and/or the sea area of 12 miles from the beach g. Providing IUP, training, community conflict resolution and monitoring the mining activity across the provinces and/or the sea area of 12 miles from the beach h. Providing the IUP, training, community conflict resolution, and monitoring the production activity of mining that has direct impact on the environment across the provinces and/or the sea area of 12 miles from the beach i. Providing the IUPK of exploration and IUPK of production operation j. Evaluating the IUP of production operation, issued by the local government, that caused the environmental damage and didn't apply the good mining code k. Setting the policy of production, marketing, benefit and conservation l. Setting the policy of cooperation, partnership and community empowerment m. Devising and setting the non-tax governmental income from the mineral and coral mining production n. Training and monitoring the mineral and coral mining management carried out by the local government o. Training and monitoring the local regulation making process p. Listing, investigating and studying in order to gain the mineral and coral data and information as the source of making WIJP and WPN q. Managing the information of geology, mineral and coral resource, and the mining information in the national level r. Establishing and monitoring the reclamation area post-mining s. Setting the balance of mineral and coral resource in the national level t. Developing and improving the positive by-product of mining activity u. Improving the competence of central, province and local governmental apparatus in performing the administration of mining activity	a. Making the regional policy b. Providing IUP, training, community conflict resolution and, monitoring the mining activity across the city / district and the sea area of 4 (four) miles to 12 (twelve) miles. c. Providing IUP, training, community conflict resolution and, monitoring the mining activity across the city/ district and the sea area of 4 (four) miles to 12 (twelve) miles. d. Providing the IUP, training, community conflict resolution, and monitoring the production activity of mining that have direct impact on the environment across the provinces and/or the sea area of 4 to 12 miles. e. Listing, investigating and studying in order to gain mineral and coral data and information f. Managing the information of geology, mineral and coral potential, and mining activity in the region g. Making plan of the mineral and coral resource balance in the region h. Developing and improving the mining activity in the region i. Developing and improving the community roles on the environment conservation j. Coordinating the permission and monitoring the usage of explosive materials in the mining area according the authority k. Informing the information of listing, general investigation and research to the Ministry and the Major l. Informing the information of product, domestic selling and export to the Ministry and the Major m. Training and monitoring the reclamation area post-mining n. Improving the competence of province and local governmental apparatus in performing the administration of mining activity	a. Making the local policy b. Providing IUP and IPR, training, community conflict resolution, and monitoring the mining activity in the region and/or the sea area of 4 miles c. Providing IUP, training, community conflict resolution and, monitoring the mining activity across the city/ district and the sea area of 4 (four) miles to 12 (twelve) miles. d. Listing, investigating and studying in order to gain mineral and coral data and information e. Managing the information of geology, mineral and coral potential, and mining activity in the region f. Making plan of the mineral and coral resource balance in the region g. Developing and improving the community roles on the environment conservation h. Developing and improving the mining activity in the region i. Informing the information of listing, general investigation and research to the Ministry and the Governor j. Informing the information of product, domestic selling and export to the Ministry and the Governor k. Training and monitoring the reclamation area post-mining l. Improving the competence of province and local governmental apparatus in performing the administration of mining activity

From the Table 1, The Authority of Central, Province and Local Government above, in general, the authorities of local government in the mineral and coral mining are inventory, investigation and research, permission regulation, and monitoring the mining activity. The authorities in the mineral and coral mining are regulated and administered by the local government. It means that the local government has the authority of mineral and coral mining.

However, the authority of local government in the mineral and coral mining has changed since the Law No. 23 of 2015 was passed. It is based on article 14 paragraph (1) of the Law No 23 of 2014, clarifying that "*the administration of governmental affairs of forestry, nautical resources, and mineral resources are shared between the central government and provincial government.*" Based on the regulation, the authority of mineral resources is regulated and administered by the central and provincial government. It means that the local government doesn't have the authority of mineral and coral mining. Therefore, the authority of inventory, investigation and research, regulation and training and monitoring of mining activity is the authority of central government and provincial government, whereas the local government doesn't have the authority. From the point of view of the law enforcement, the regulation of article 14 paragraph (1) of the Law No 23 of 2014 could be perceived as the new law (*lex posteriry*) that set aside the regulation of Article 8 of the Law No 4 of 2009 (*lex priory*) regulating the mineral and coral mining and giving the authority to the local government. However, it could bring up the ambiguity, since the article 8 of the Law No 4 of 2009, could not canceled yet according to the principle of *contrarius actus*.

Regarding with the local government authority of mineral and coral mining, the authority could be seen on the Appendix the Law No 23 of 2014. The authorities are in the Table 2. The Authority of Central, Province and Local Government, below.

Table 2 The Authority of Central, Province and Local Government

Central Government	Province Government	Local Government
a. Setting the mining area as the part of national area planning consisting of mining area, people mining area and state reserve area, and special mining area. b. Setting the mining area permission of mineral and coral, and the special permission of mining area. c. Setting the mining business permission of non-metal and stones across the provincial region and ocean more than 12 miles. d. Setting the mining business permission of metal, coral, non metal mineral and stones in : 1) The mining business permission area across the provincial region 2) The mining business permission area in the state border; and 3) The sea area more than 12 miles e. Issuing the permission of mining business to gain the foreign investment f. Issuing the permission of special mining business of mineral and coral g. Issuing the permission registration of mining business and setting the metal mineral and coral production volume for each province h. Issuing the special mining business permission of processing and purifying the mining commodity that comes from the other province outside the location of processing and purifying facility, or import and in gaining the foreign investment. i. Issuing the operational permission of mining business and the licensed certificate that operates in Indonesia j. Setting the basic price of mineral and coral. k. Supervising the mining inspector and the mining supervisor	a. Setting the mining business area of non-metal mineral and stones in a province and sea of 12 miles. b. Issuing the mining business permission of metal mineral and coral to gain domestic investment in its authority of a province region and sea area of 12 miles. c. Issuing the mining business permission of non metal mineral and stones to gain the domestic investment in its authority of a province region including its sea area of 12 miles. d. Issuing the people mining for the commodity of metal mineral, coral, non metal mineral and stones in the people mining area. e. Issuing the special mining business permission of processing and purifying in order to gain the domestic investment which the commodity comes from the same region. f. Issuing the operational permission of mining business and the licensed certificate that operates in its region g. Setting the basic price of non metal mineral and stones	

From the Table 2, The Authority of Central, Province and Local Government, above, the authority in the mining sector of mineral and coral is managed by the central and provincial government, whereas the local government doesn't have any authority. The provincial government authority of mineral and coral mining sector as stated by the Appendix the Law No 23 of 2014 could be classified into 2 (two); the authority of management and the authority of supervision. The management authority is the authority of provincial government to set the local regulation of mineral and coral mining sector. And, the authority of supervision is the authority to issue the permission, to supervise and to organize the mineral and coral mining sector. The provincial authority could work when the mining area (*locus*) is in one region and the sea area of 12 miles.

CONCLUSION

According to article 18 of the Constitution of Indonesian Republic State in 1945, the province and the local government administer the governmental rule based on the autonomy principal. There is a relation between the authority and the natural resource management as stated in the article 18A of the Constitution of Indonesian Republic State in 1945. Therefore, the governmental affairs are consisting of absolute, congruent and general affairs. One of the congruent affairs is the mineral resource that could be the authority of local government. According to the article 6, article 7 and article 8, of the Law No 4 of 2009, the local government has the authority of inventory, investigation and research, management, permission issue and, supervision and training. However, based on the article 14 paragraph (1) of the Law No 23 of 2014, the authority of mineral and coral mining sector is ruled and managed by the central and provincial government. As stated by article 14 paragraph (1) of the Law No 23 of 2014, the provincial authority on mineral and coral mining sector could be arranged into two parts, they are the authority of administering the local regulation and the authority of administering the business permission, supervision and training. The provincial authority functions when the mining area (*locus*) is in one provincial area and sea area of 13 miles.

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