

# The Essence Of State-Control Over Management And Utilization Of Mineral And Coal Resources

Suryaningsi, Abrar Saleng, Marthen Arie, Irwansyah

**Abstract:** This research reviews the essence of the essence of state-control over the management and utilization of coal mining between the central and local Government. The type of research is a normative-legal research and descriptive-analytic to explain the essence of joint-management of mineral and coal resources between the central and local government. Legal materials used in this study consisted of; primary, secondary and tertiary. The outcomes of the research indicate that the essence of state-control over the management and utilization of coal mining is the responsibility by people to the state or governments to make arrangements, management, maintenance, administering, policy-making and supervising and guidance to the mineral and coal mining activities which has a goal to prosperity of the people. The government should be able to implement the functions and role of the state in realizing the prosperity and welfare of the people, by regulating the coal mining, in the sense of not only controlled partially or a group of people. In addition, immediately set Act as substitution of Mineral and Coal Act in accordance with the Act No. 23 of 2014 concerning the Local Government.

**Index Terms:** Mineral and Coal Resources, State Liability, State-Control

## 1 INTRODUCTION

Indonesia was known for its natural wealth, so-called a rich-country in natural resources, both living and non-living. Almost the whole of Indonesia has natural resources. The mine natural resources has economic value and many bring in foreign exchange, is also an important element for a country to be able to boost the economy and development, so that the control and utilization of natural resources wisely as an essential requirement for the existence of natural resources which have optimal benefits for welfare and prosperity of a country. Mineral and coal mining is one of the many natural resources, which until now as a mainstay of state revenues in order to realize the welfare of the Indonesian people, as the executor of Article 33 paragraph (3), the Constitution of the Republic of Indonesia 1945, establishes the earth and water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. The implementation of management and utilization policies of coal mining in Indonesia, the Directorate General of Mineral and Coal elaborate revenues from 2011 until 2014. In 2011, the plan is 387.97 and realized 324.34 trillion; in 2012 the plan is 404.68 trillion, and realized 427.83; in 2013, the plan is 413.50 trillion but can be realized up to 446.92 trillion, or about 26% of the total national revenue. Planned revenues in 2014 for mineral resources sector, could reach Rp. 445.00 trillion depending its realization. The details of state revenue and its realization if manage well, conduct development and economic improvement, the acceleration of development and prosperity can be realized. During 2010 - 2025 the Indonesia's coal production is expected to remain high, namely:

**Table 1. Prediction of Indonesian Energy (MBOE)**

Energy	2010	2015	2020	2025
Coal	276	902	1.084	1.316

**MBOE = Million Barrels of Oil Equivalent**

Table 1 shows an indication of the potential of Indonesia's coal is still very potential. Given that coal is un-renewable resources which overtime will decrease and deplete, then management must be managed wisely. This is a state's role or Government, business and society, in accordance with the role and function is very important to manage the coal wisely and for the benefit of generations to come in line with the mandate of the Constitution 1945, Article 33 Paragraph (3). The explanation of constitution 1945 was not found an explanation of the meaning of state-control. However, agreed that it is controlled by state is not same as state-owned. It is very concerned with the concept of domains as a term often used by the Dutch colonial. The concept of domain is *ownership*; the state is the owner of land, because it has all the authority to act with ownership (*eigensdaad*). Further, it is mentioned that authority to control used to achieve the maximum welfare of the people and its implementation can be delegated to local and indigenous peoples. But what is often forgotten is the purpose of a controlled state, both in the Constitution 1945 and UUPA confirmed that the rights of control by the state is for the greatest prosperity of the people. Based on these objectives, at least there are prohibitions that should not be violated, as follows:

- a. If good conviction the lands have been controlled and used by the people, it is a reality that must be respected and protected. The existence of people in those lands as an embodiment of the people's welfare purposes. The people must have the first right over the new occupant who abuse law formalities applicable;
- b. Land controlled by the state but has been utilized by the people with good conviction (*ter goede trouw*) can only be removed or sequestered from them, solely in the public interest, namely to social or state interests;

State obligations cannot be separated from the state's functions and assignments; as stabilizer to maintaining public order; as stimulator to advancing the people development in

- *Suryaningsi, is a Lecturer at Faculty of Law, Mulawarman University, East Kalimantan, Indonesia. PH-+6281350226190. E-mail: suryaningsi.um@gmail.com*
- *Abrar Saleng, Marthen Arie, Irwansyah, is a Lecturer at Department of Law, Hasanuddin University, Makassar, Indonesia.*

many ways; as coordinator, to combine the various activities and as distributors to refer and divide the material and non-material objects. The role of state is expected to really be able to provide a balance between the need to manage natural resources in Indonesia with the prosperity and welfare of peoples without causing or at least manipulating natural or environmental damage as a result of the implementation of exploration and exploitation. The mine excavated materials are one of wealth contained in the earth and in the water. In the earth is defined as the surface and under the earth. In the water is defined under the water that is above or under the watery earth (river, lake, sea, marsh). In part, the mine excavated materials are found in the earth's surface or the surface of earth that is under water. The definition of excavated materials should be interpreted either obtained by digging or by means taking on the earth's surface including the surface of earth that is under water. In the context of the implementation of state-control, hereinafter referred as excavated material, does not mean the state as an owner. But when viewed from the exclusive rights attached to the state, then the state-control should be viewed in the context of the rights and obligations of state which implies that the state was given full authority (*voldige bevoegheid*) to determine policy. This is the linkage with the establishment of policies concerning cooperation to utilize in the field of mining where the paradigm has changed sharply. But, should still view the character of region locality that receives the authority of mining affair. Therefore, the holders of property rights over natural resources in the form of a variety of excavated material contained in the earth and water in the jurisdiction area of Indonesia (*mining*) is the property right of Indonesia (*mineral rights*). Indonesia as the owner of the excavated materials provides authority to the state to regulate and manage and utilize such natural wealth as well as possible for the prosperity of the people. This means the state also given the authority right over the Indonesia's natural resources, to be used for the welfare of the people. Currently, reform era of local government is given a greater role in carrying out development. Partial-transfer of power from central- to local government, it is conducted in order to facilitate the government to respond the needs of people at local level. But occurs the local governments utilize this authority by issuing so many mining business license (IUP). Although, it is not their authority. An example occurred in East Kalimantan especially Samarinda and Kutai Kartanegara. The information obtained by researcher through the Offices of Mineral and Coal East Kalimantan, that there are many cases of deviation in the form of overlapping authority in licensing by the local government c.q regent/mayor. The deviation of authority is found to license issued by the regent and overlapping with other regent; as well as the governor overlaps with a license issued by the regent. Mining area overlaps with the mining sector and inter-sectoral such as forestry, plantation and agricultural sectors. Conflict with local customs and cultural values. An example in East Kalimantan is PT. MHU, engaged in coal mining located in Kutai Kartanegara have licenses that overlap with palm land engaged in the plantation sector owned by PT. Hasfran. PT. Kitadin Embalut engaged in coal mining with agricultural land such as paddy, oil palm located in Kukar district. PT. Bharinto Ekatama located in West Kutai, for two months stopped by the community for violating the boundary of region. Because PT. Bharinto Ekatama located in East and South Kalimantan. Based on the regulation set by the Mining Law, that the

license of mining granted by the regent/mayor if the mine is located within one district/city. But apparently was an act of arbitrariness in granting a license. The cause of overlapping authority is ego so that each authority-giver has a map of mining differently. This condition is very urgent in the government, so that when the president Mr. Joko Widodo debate on the nomination of President in 2014, the most important of his proposal is the need for the government to have a map. Based on the identification of problems mentioned above raises an issue how the interpretation of state-control in the management and utilization of mineral and coal resources can be controlled by the state. To answer the questions that have been described above, it is necessary division of central-local authorities in the management of such excavated materials, as an attempt to maintain the integrity of the unitary of the Republic of Indonesia.

## 2 IDENTIFICATION OF THE ISSUE

Having observed the developments as described in the above, then the object of problem in this writing, how the essence of state-control over the management and utilization of coal mining between the central and local Government?

## 3 METHOD OF RESEARCH

The type of research is a normative-legal research and descriptive-analytic to explain the essence of joint-management of mineral and coal resources between the central and local government. Legal materials used in this study consisted of; primary, secondary and tertiary. The type of research in this writing uses juridical-normative, or library study, so the library is used as a means to obtain legal materials primary, secondary, and tertiary. Having collected these materials as the legal issues faced, and then the legal materials are processed and analyzed to obtain a precise answer to the problems. Similarly, the writer will analyze the object and examined is the essence of state control over the management and utilization of mineral and coal resources between the central and local government. Legal materials that have been described as the main subject further systematically, explained and subsequently given the arguments that form an integral whole interconnected logically.

## 4 RESULTS AND DISCUSSION

### 4.1 Relationship of Central and Local Governments in the Management and Utilization of Coal Mining

The essence of state-control over mineral and coal resources cannot be separated from the essence of state, that the state as an embodiment of the characteristics of state. In the state there are humans are social creatures that cannot live alone, needs inter-individual shape a society. In the scope of community there are a lot of interests of individuals who are related to each other and not infrequently contradict one another. Why the state is needed? Because the state is a means to achieves a goal. This means is a form of authoritative-organization action as adhered to by the people. The essence of state is a social-bonding or in the statutes of life together as a political community in which the rights of citizens to get assurances from the authorities at given time. Legally, the essence of state is owner or ruler over the land, the party that controls or govern through a reciprocal agreement between the two parties, as a protector of the human rights, state as the executor of public-desire and the

incarnation of national legal order because the existence of state looks on the building, legal system in force in organizing community life of the nation. For natural wealth including mineral and coal through responsible mining activity is the state. The state has a very important role for the management and utilization of mineral and coal but still consider the purpose of the state that is to create a sense of security, justice and prosperity. That is why so-called *two-faced* that is outside and inside. Inside, the state must pay attention to all the needs of people. While, outside the state must protect its people and also can do good cooperation relations with other countries. The author can concludes that the essence of state-control is the role and function of state to regulate, to administer, to manage, to develop and to supervise and to conduct policy rules to what is contained in the earth and beyond the earth, and all the needs of people guaranteed by the state. The essence of state-control over mineral and coal resources between the central and local government are studied philosophy as an effort utilization of mineral and coal resources as a gift of God Almighty, accompanied by preservation. The mean of utilization is used for the greater prosperity of all the Indonesian people, because it is the right of the Indonesian people. Through the utilization should be based on the provisions of the legislation that should not be contrary to the philosophy of Pancasila as the legal ideal of Indonesian (*rechtsidee*). Thus, it is clear that the owners of this natural wealth is the entire people of Indonesia, which gives responsibility to the state to arrangement (*regelendaad*), to managing (*beheersdaad*), to make policy (*beleid*), to administer (*bestuursdaad*) and to supervise (*toezichthoudensdaad*) to the great prosperity of the people. This is in line with the decision of the Constitutional Court which has been described by author above. The relationship of Central and Local Governments can be traced from the third and fourth paragraph of the Preamble to the Constitution of the Republic of Indonesia 1945. The third paragraph contains a statement of independence of Indonesia. While the fourth paragraph contains a statement that after declaring independence, the first was established is the government of Indonesia, as the national government is responsible to regulate and to manage the nation of Indonesia. Further, it is stated that the duty of the state Government of Indonesia is to protect all nation of Indonesia, promote the general welfare and educating the nation and to help maintain a world order based on freedom, lasting peace and social justice. In essence, local autonomy given to the people as a whole legal community that authorized to regulate and to manage their own affairs given by the central to local governments and its implementation is done by the Regional Head and Parliament and with the assistance of local apparatus. Government affairs submitted to the local comes from the power of government in the hands of the President. The consequence of unitary state is the ultimate responsibility of government in the hands of the President. In order for the implementation of government affairs submitted to the local in accordance with the national policy, the President is obliged to carry out supervision of the implementation of local government. Local administration in order to improve the efficiency and effectiveness of the implementation of local autonomy, need to pay attention to the relationship between levels of government and between local government, the potential and diversity of regions. The aspect of authority relations pays attention to the specificity and diversity of areas in the Unitary State of the Republic of

Indonesia. The aspect of financial relations, public services, utilization of natural resources and other resources was implemented fairly and equitably. Furthermore, the authors will describe the relationship of central and local governments in two indicators: the authority and revenue-sharing arrangements. The delivery of government affairs from the central to local is a part of the central and local relations. This relationship is stipulated in Article 2 paragraph (5) the Local Government Act includes authority, finance, public services, the utilization of natural resources and other resources. Management and utilization of Mineral and Coal Resources is the central and local relations in terms of management authority and financial relations. The relationship between the central and local governments related to the government authority, local governments run various matters under its authority, contained therein concerning the affairs of the management of mineral and coal resources is regulated in Article 10 the Local Government Act. The local government is authorized to conduct government affairs, except foreign politic, defense, security, justice, monetary and national fiscal and religion. In these fields, the government may delegate or assign to local governments as the principle of co-administration. In Article 13 the Local Government Act regulates the implementation of government affairs between the central and local government, based on the principle:

- a. Accountability is care taker in organizing a Government Affairs and determined by its proximity to the magnitude, scale, and scope of impact caused by the implementation of a Government Affairs.
- b. Efficiency is the organizer of government affair and determined by comparing the level of the highest efficiency can be obtained.
- c. Externalization is the organizer of government affair and determined by the magnitude, scale and scope of impact arising from the implementation of a government affairs.
- d. The interest of national strategic is the organizer of government affairs and determined based on the consideration in order to maintain the integrity and unity of the nation, safeguard the sovereignty of the state, implementation of foreign relations, the achievement of a national strategy program and other considerations set forth in the provisions of the legislation.

In addition, the affairs of choice for district/city governments, including government affairs which obviously exist and have the potential to improve the welfare of the people in accordance with the conditions, peculiarities and potential in the regions concerned. So that the local capable to operate a role, it is given the authority by granting the rights and obligations to organize local autonomy in the unitary of state system. Local government has authorities to regulate and manage their own affairs according to the principle of autonomy and government assistance and granted broad autonomy. The purpose of granting autonomy to the local is directed to accelerate the realization of public welfare. By improve a service, empowerment and community participation. It should also be noticed and directed to the local for the ability to improve competitiveness with pay attention to the principles of democracy, equality, justice and specificity and the potential and local diversity. The Act of Mineral and Coal Article 4 Paragraph (2) regulate the management authority of non-



renewable natural resources as national assets exist in the state. Things that define the authority of mineral and coal management can be found in Chapter IV Article 6 to 8 in Act of Mining and Coal. The comparison of government authority, the Provincial and District/City governments in Management of Mineral and Coal Mining based on the Act of Mineral and Coal Sub Affairs. The meaning of state-control over mining management for the greatest prosperity of the people can be interpreted as people's involvement in the unitization and enjoy the utilization of all mine materials particularly in its surrounding area. The involvement of this community is not only in the formulation of law underlying the regulation of management and supervisory activities. Mechanism of implementation of this right by the local government, because the local governments regulate, administer, manage and supervise the relationship between individuals and the government. The description of the essence of mining management in Indonesia is regulated in Article 33 the Constitution the Republic of Indonesia 1945, the purpose of arrangement in any legal product set by the government and local governments related to the management of mineral and coal resources in Indonesia. Surely, it is cannot be separated from general purpose, namely the welfare of all the Indonesian people and all policies and legal provisions should be disseminated widely to the people. After entered the local autonomy, every purpose of natural resources management in the local must also consider the interests of people who are in the area, because the meaning of words contained in the Constitution of the Republic of Indonesia 1945, show all the people that are in all parts of Indonesia. The meaning of Article 18 the Constitution of the Republic of Indonesia 1945 which regulates the local government can be termed as the recognition of the existence of community; both named the local as well as small communities such as villages, hamlets or clan. This article is very important in supporting the development of local communities in relation to the democratization of coal mining in which one of its main objectives is sustainable human development in the mining sector, as the development of local community or the community in its surrounding. The achievement of prosperity and well-being aimed at the creation of social change process at a certain degree towards a better life. Momentum of coal mining management that exists today can be used as a means of social change or social transformation, because the character of coal mining is very limited or depending on the number of potential, then the rate of social transformation is highly dependent on the acceleration of mineral rate of depletion, the smaller of mineral rate of depletion it more time for ongoing social transformation. Therefore, the factors that influence the mineral rate of depletion cannot be determined only by economic and investment considerations, but the condition of population in an area must be taken into account as a major factor, so that the potential of mining to create social transformation can be performed successfully. The concept of *welfare state* or *social service states* that country whose governments are fully responsible to meet the basic needs in both social and economic for every citizen in order to achieve a minimum standard of living. This concept is the antithesis of the concept of state as a night guard (which means that the night guard state or country in the narrow sense, the government is only defend and protect the social and economic order. State forbidden to interfere with the economy and other areas of social life. This understanding is

growing and developing in the 18<sup>th</sup> to the mid-19<sup>th</sup> centuries. The goals to be achieved are every state provides welfare and prosperity for citizens. So these goals can be achieved, then governance needed organ or device in accordance with the functions and authority of each.

## 5 CONCLUSION

The essence of state-control over the management and utilization of coal mining is the responsibility by people to the state or governments to make arrangements, management, maintenance, administering, policy-making and supervising and guidance to the mineral and coal mining activities which has a goal to prosperity of the people. The government should be able to implement the functions and role of the state in realizing the prosperity and welfare of the people, by regulating the coal mining, in the sense of not only controlled partially or a group of people. In addition, immediately set Act as substitution of Mineral and Coal Act in accordance with the Act No. 23 of 2014 concerning the Local Government.

## REFERENCES

- [1] Abrar Saleng, 2013. Kapita Selekta Hukum Sumberdaya Alam., Membumi Publishing. Makassar.
- [2] Ahmad Redi, 2014, Hukum Pertambangan Indonesia, (Perambangan untuk Kemakmuran Rakyat), Penerbit Gramata Publisng, Jakarta.
- [3] Bambang Irian Djajaatmadja, 2007., Harmonisasi Hukum Pengelolaan Sumberdaya Kelautan dalam Rangka desentralisasi, Badan Pembinaan Hukum Nasional Departemen Hukum dan Hak Asasi Manusia, Jakarta.
- [4] Brian A Garner, 1983., Black Law Dictionoary, seventd Edition, St. Paul, Minn: West Group,
- [5] Darmawan Tribowo dan Sugeng Bahagijo., 2006., Mimpi Negara Kesejahteraan, Jakarta-Pustaka LP3ES Indonesia.
- [6] Eugene P. Odum, Basic Ecology (USA: Soubder College Publishing, 1983), Hal 1 dst. St Munadjat Danusaputro, Hukum Lingkungan (Jakarta: Binacipta, 1985) Jilid II Cet. Ke-2,
- [7] Felix A. Nogro and Iyold G. Nigro. Modern Publik Administration, New York; Harper & Row, Publishers, 1980,
- [8] Frans magnis Suseno, 1991., Etika Politik Prinsip-prinsip Moral dasar Ke Negara Modern. Gramedia. Jakarta
- [9] Irwansyah.. Aspek Hukum Audit Lingkungan., Penerbit YAPMA, 2013., Jakarta
- [10] Irawan Soejito, Hubungan Pemerintah Pusat dan Daerah, Rineka Cipta., Bandung, 1990
- [11] Irwansyah, 2013, Aspek Hukum Audit Lingkungan, Penbit YAPMA, Jakarta Pusat

- [12] John Rawl, 1972., *Teory of Justice.*, Cambridge Mas: Harvard, University Press
- [13] Moh. Mahmud. MD., 2011, *Membangun Politik Hukum, Menegakkan Konstitusi*, Jakarta, Rajawali Pers.
- [14] Nonet & Zelznick, 1978,*Law and Society in Transisition; Toward Responsive Law.* New York New York and Row,
- [15] Pramudya, 2007.,*Hukum itu Kepentingan*, Penerbit Sanggar Mitra Sabda, Jakarta,
- [16] Peter Mahmud Marzuki, April 2013, *Penelitian Hukum*, Edisi Revisi, Penerbit: Kencana Prenada Media Group, Cet; ke-8, Jakarta
- [17] Satjipto Rahardjo, 2007, *Membeda Hukum Progresif.*, Editor I Gede A.B. Wiranata, Joni Emirzon, Firman Muntaqo, Penerbit buku Kompas, Jakarta.
- [18] Yudi Lattif, 2011., *Negara Paripurna (Historisasi, Rasionalitas, dan Aktualisasi Pancasila)*. Penerbit PT. Gramedia Pustaka Utama, Jakarta.