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Constitutional Framework for Mining Regulation: Regional Autonomy and State Authority

Article	Abstract
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INTRODUCTION

The regulation of mining business licenses in Indonesia, as outlined in Article 6, paragraph (1) of Law Number 3 of 2020, illustrated a centralized approach where the Central Government holds the main responsibility for overseeing national mineral and coal policies within Mining Business Permit Areas (WIUP). However, this centralized structure contrasts sharply with the principles of regional autonomy established in Article 18, paragraph (2) of the 1945 Constitution,

which empowers Provincial, Regency, and Municipal Governments to manage their own affairs. Further support for regional autonomy is found in Law Number 23 of 2014, which emphasizes decentralization, deconcentration, and co-administration.

Before the newer regulations, mining licenses were primarily governed by Law Number 4 of 2009, specifically Articles 7 and 8, which granted authority to provincial and regency/municipal governments to manage and issue licenses for mineral and coal mining. Unfortunately, the shift towards centralization has led to at least three critical challenges: 1) Limited Oversight: Regional Governments often struggle to monitor mining activities within their jurisdictions effectively; 2) Exploitation of Resources: Natural resources are frequently exploited without legal certainty, equitable distribution, or sufficient benefits for local governments; 3) Reduced Tax Revenue: Local governments are primarily receiving profit-sharing funds (DBH) from the Central Government instead of generating tax revenue from local sources. As we examine the post-2020 licensing framework (Das Sein), it becomes clear that the centralization under the Central Government within WIUP has diminished regional oversight, legal clarity, equity, and local revenues. Thus, the constitutional framework (Das Sollen) calls for a licensing model that genuinely embodies regional autonomy through decentralization, and co-administration, allowing regional governments to actively engage in planning, issuing, supervising, and enforcing mining operations.

Previous research reveals that Regional Governments often face significant limitations in their capacity to manage natural resources, reflecting a troubling centralization of power over mining licenses. In this structure, the Central Government primarily sets policy, while Regional Governments often play a merely technical role in implementing these policies. For instance, a study by Dolot Alhasni Bakung, *“Unraveling the Authority of Coal Mining Management by the Regional Government and Its Implications for Regional Autonomy,”* discusses the duality of authority in local mining management, highlighting inconsistencies between central and regional regulatory practices. This dualism complicates established relations and muddles supervisory responsibilities between the central and regional governments.¹

In his study titled *“The Authority Relationship between Central and Regional Governments Based on the Unitary State of the Republic of Indonesia,”* Hariyanto explores the intricate dynamics of authority in the context of regional autonomy.² Diana Yusyanti builds on this by examining *“Permit Aspects in the Legal Field of Mineral and Coal Mining in the Era of Regional Autonomy,”* highlighting how mining licenses are issued, spotlighting the changes brought by regional autonomy.³ Meanwhile, Badri Hasan Sulaiman and Muslim Abdullah take a closer look at regional levies in their paper, *“Regional Levies in Special Autonomy Province: A Case Study of Executive Reviews on Regional Regulations.”* They discuss ways to improve these levies, which are crucial for local governments to fund their initiatives.⁴ Lies Ariany and Risni Ristiawati's

¹ Dolot Alhasni Bakung, *Unraveling the Authority of Coal Mining Management by the Regional Government and Its Implications for Regional Autonomy*, 1, no. 2 (2020): 223–42, <https://doi.org/10.15294/ijals.v1i2.3606>.

² Hariyanto, “Hubungan Kewenangan Antara Pemerintah Pusat Dan Pemerintah Daerah Berdasarkan Negara Kesatuan Republik Indonesia,” *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020): 99–115, <https://doi.org/10.24090/volkgeist.v3i2.4184>.

³ Diana Yusyanti, “Permit Aspects of in the Legal Field of Mineral and Coal Mining in the Era of Regional Autonomy,” *Jurnal Penelitian Hukum De Jure* 16, no. 3 (2016): 309–21, <https://doi.org/10.30641/dejure.2016.v16.309-321>.

⁴ Badri Hasan Sulaiman and Muslim Abdullah, “Regional Levies in Special Autonomy Province: A Case Study of Executive Reviews on Regional Regulations,” *PETITA: Jurnal Kajian Ilmu Hukum Dan Syariah* 6, no. 2 (2021): 166–74, <https://doi.org/10.22373/petita.v6ii2.121>.

article, “*The Urgency of Creating Regional Regulations for Supporting the Implementation of Regional Autonomy*”, emphasize the importance of strong regional regulations for effective local development, reinforcing the principles behind regional autonomy.⁵ Mihammad Ridwansyah, in his work “*Efforts to Find the Ideal Concept of Central-Local Relations Based on the 1945 Constitution of the Republic of Indonesia*,” seeks to find the best way for the central and local governments to interact. He examines how both centralization and decentralization can work harmoniously within rule-of-law framework.⁶ Irfan Maksum contributes to this dialogue by analyzing functional decentralization practices in several countries, including the Netherlands, Japan, the United States, and Germany. In the Netherlands, a dual function model allows regional executives to act on behalf of the central government. Japan employs a dual supervision system, where both central and regional authorities keep an eye on functional bodies. The United States follows the ultra vires doctrine, where functional institutions can only operate within the boundaries set by the U.S. Constitution; any actions beyond this are considered invalid. Germany adheres to the principle of subsidiarity, which empowers Regional Governments to manage their own affairs as part of a shared administrative responsibility.⁷ This body of research aims to fill a gap by investigating how Regional Governments can shape mining business license policies in light of regional autonomy. The goal is to ensure these governments can exercise their constitutional rights, as outlined in the 1945 Constitution, and effectively govern their regions within the framework of Indonesia’s Unitary State.

The observed concentration of authority in mining business license regulations under the Ministry of Energy and Mineral Resources (ESDM) suggests a form of “autocratic legalism” in how policies are formalized. This centralization undermines the principle of regional autonomy, which supports significant local government involvement in implementing their powers through decentralization and co-administration. Kim Lane Scheppele has explored the core aspects of autocratic legalism within constitutional democracies, describing it as a type of democratic regression where legal frameworks are used to support political ambitions.⁸ Similarly, Mahfud MD points out that the political landscape heavily influences legal frameworks, indicating a relationship where politics can shape law in both democratic and authoritarian contexts. Thus, understanding the interplay between political and legal structures is crucial for analyzing the current state of mining legislation. Within a unitary state framework, the constitution grants Regional Governments authority over their areas, including issuing mining business licenses.⁹ Therefore, it is essential to include Regional Governments in the regulatory framework rather than centralize authority exclusively at the national level. Such an approach respects the constitutional rights of these local bodies to utilize and manage natural resources through their governments.¹⁰

⁵ Lies Ariany and Risni Ristiawati, “The Urgency of Creating Regional Regulations For Supporting the Implementation of Regional Autonomy,” *Syariah: Jurnal Hukum Dan Pemikiran* 19, no. 1 (n.d.): 75–88, <https://doi.org/10.18592/sjhp.v19i1.2652>.

⁶ Muhammad Ridwansyah, “Efforts to Find the Ideal Concept of Central-Local Relations Based on the 1945 Constitution of the Republic of Indonesia,” *Jurnal Konstitusi* 14, no. 4 (n.d.): 838–58, <https://doi.org/10.31078/jk1447>.

⁷ Irfan Maksum, “Memahami Desentralisasi Fungsional (Perbandingan Praktik Di Belanda, Jepang, Amerika (USA), Dan Jerman,” *Indonesian Journal of International Law* 4, no. 3 (n.d.): 498–525, <https://doi.org/10.17304/ijil.vol4.3.156>.

⁸ Kim Lane Scheppele, “Autocratic Legalism,” *University of Chicago Law Review* 85, no. 2 (2018): 545, <https://chicagounbound.uchicago.edu/uclrev/vol85/iss2/2/>.

⁹ Moh. Mahfud MD, *Politik Hukum Di Indonesia*, 4th ed. (Jakarta: Rajawali Press, 2011).

¹⁰ Fajlurrahman Jurdi, *Logika Hukum*, 1st ed. (Jakarta: Kencana, 2017).

This seeks to clarify the relationship between theoretical frameworks and real-world application concerning the protection of Regional Governments' constitutional rights, particularly in relation to Article 18's emphasis on regional autonomy and mining license regulations. We will also evaluate the legal substance and cultural practices surrounding mining licensing v as expressions of these rights.¹¹

The primary aim of this study is to analyze the constitutional protections available to Regional Governments under Indonesia's Constitution, especially as they pertain to issuing mining license regulations. We will focus on a few critical areas, including the absence of a phased operational approach, ambiguity in functional responsibilities, unclear oversight processes among governing bodies, and insufficient links between authority distribution and outcomes affecting legal certainty, equity, local revenue, and community welfare. Additionally, we will assess the legal culture associated with these rights. The findings from this research will offer valuable recommendations for bolstering the legal safeguards that allow Regional Governments to govern their regions and create mining business regulations under the central government's supervision. This study aims to facilitate practical application and close the knowledge gap between community stakeholders and governmental bodies concerning regional autonomy.

RESEARCH METHODS

This study employs a normative legal research methodology to explore the legal foundations and legislation relevant to Regional Government.¹² By examining the hierarchy of laws and regulations, the research aims to clarify the authority Regional Governments have in managing their autonomous regions within Indonesia's unitary state framework. This analysis is guided by Satjipto Rahardjo's concept of progressive law, which emerged as a response to traditional positivist approaches that often treat law merely as a tool for profit generation and commercialization. Rahardjo critiques this viewpoint, arguing that law should prioritize human interests instead of being reduced to a mere instrument for financial gain. Through this lens, progressive legal theory emphasizes that law is a dynamic tool that should evolve alongside society to promote social justice. The ultimate goal of this approach is to enable a flexible legal system that is empathetic, responsive, and aligned with the challenging needs of the community, fostering substantive justice.¹³

Our research delves into legal data derived from relevant laws and regulations that outline the constitutional rights of Regional Governments to establish mining business licenses, all within the context of regional autonomy framework. Additionally, the study includes conceptual data, recognizing its significance in creating a sovereign local government that can self-govern without getting trapped in a rigid legal framework. To facilitate a comprehensive analysis, we utilize a qualitative methodology rooted in legal interpretation. This approach allows us to conduct a detailed examination of both normative and conceptual legal data. Our goal is to accurately evaluate the extent of authority that Regional Governments hold in formulating mining regulations within their jurisdictions. Ultimately, this assessment seeks to reinforce the concept of participatory governance at the local level while reducing the extent of central government intervention. By doing so, we

¹¹ Supriyadi A Arief, "The Issue of Village Communities Constitutional Rights on Supervision of Village Head Election," *Jurnal Konstitusi* 19, No. 4 19, no. 4 (2022): 887, <https://doi.org/10.31078/jk1946>.

¹² Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: PT. Raja Grafindo Persada, 2004).

¹³ Satjipto Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009).

aim to highlight the importance of empowering Regional Governments to effectively manage and regulate mining activities within their areas.

ANALYSIS AND DISCUSSION

Challenges in Regional Governments for Issuing Mining Business Permits

The authority of regional governments to grant mining business permits has faced significant challenges, especially in the context of their autonomy. While Article 1(1) of the 1945 Constitution establishes Indonesia as a unitary state and Article 18 affirms regional autonomy, recent regulations, particularly Law No. 3/2020, have created ongoing tension between established laws (*lex superior*) and specific regulations (*lex specialis*). To effectively exercise this authority, it is essential to have collaborative decision-making throughout all stages—from planning and licensing to oversight and enforcement. Nonetheless, practical implementation faces several barriers: (i) Unclear Roles and Overlaps: There is often ambiguity about who is responsible for what, leading to role confusion and conflicts over jurisdiction; (ii) Information Gaps and Capacity Issues: Many local governments struggle with limited access to information and resources, impacting their ability to make informed decisions; (iii) Financial Disparities: Economic equalities hamper Local Own-Source Revenue (PAD), reducing the incentives for regional governments to effectively manage resources; and (v) Risks of Non-State Entities: Delegating decision-making to non-governmental actors can disrupt established hierarchy and lead to inconsistencies.

1. Examining the Tension and Conflicts in Legal Frameworks

Article 1, paragraph (1) of the 1945 Constitution clearly defines Indonesia as a unitary state, which implies a centralized government structure. This central government serves as the primary authority, delegating power to regional entities at the provincial and regency/municipal levels. As Jimly Ashiddiqie notes, this means that Regional Governments operate under powers delegated by the central government. Consequently, the unitary state concept is inherently linked to the republican form of government, thereby precluding monarchical systems.¹⁴ Miriam Budiardjo expands on this idea by stating that in a unitary state, the central government is primarily responsible for the administration of the country but can also grant some autonomy to regional governments to carry out their functions.¹⁵ Strong's perspective emphasizes that these regional governments do have the rights and responsibilities to manage their territories, though they still operate under the broader authority of the central government.¹⁶ Despite the central government retaining ultimate authority, the 1945 Constitution reaffirms the right to self-govern. For instance, Article 18 outlines their entitlement to autonomy. Law Number 23 of 2014 on Regional Government further empowers regional entities to develop regulations for mining licenses, highlighting the principles of regional autonomy. Decentralization is key here; it is all about transferring significant authority from the

¹⁴ Jimly Ashiddiqie, *Konstitusi & Konstitusionalisme Indonesia*. Jakarta: Sekretariat Jenderal Dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2005 (Jakarta: Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi, 2005), 209.

¹⁵ Miriam Budiardjo, *Dasar-Dasar Ilmu Politik*, Edisi Revisi (Jakarta: Gramedia, 2008), 269.

¹⁶ C.F. Strong, *Konstitusi-Konstitusi Politik Modern: Studi Perbandingan Tentang Sejarah Dan Bentuk Terjemahan Modern Political Constitutions: An Introduction to the Comparative Study of Their History and Existing Form*, *Trans. Derta Sri Widowatie*, II (Bandung: Penerbit Nusa Media, 2008), 105.

central government to these regional governments. This includes control over policymaking, planning, implementation, and budgeting. Deconcentration refers to the process where the central government delegates specific powers to regional authorities at provincial or regency/municipal levels. Additionally, there is a concept of co-administration (or *tugas pembantuan*), which allows the central government to assign certain tasks and responsibilities to regional governments, facilitating the execution of governmental functions in their areas.¹⁷

In line with the idea of regional autonomy, Regional Governments have the constitutional rights to set policies, regulate, and manage mining business licenses in their areas. However, the passing of Law Number 3 of 2020, which amends Law Number 4 of 2009 concerning Mineral and Coal Mining, has shifted the power to issue mining business licenses to the central government. This change centralizes control that used to rest with the Regional Governments, potentially undermining the principles of decentralization, deconcentration, and co-administration that were supposed to empower them. While this change is recognized within our legal framework, it has unfortunately heightened the tensions between central and regional authorities. This tension leads to inconsistencies that complicate efforts for collaborative regional development. As a result, the overlapping responsibilities can hinder effective government operations. Moreover, Regional Governments are now less capable of managing their natural resources effectively, which is further complicated by a drop in their Local Own-Source Revenue (PAD).¹⁸

According to Article 14, paragraph (4) of Law No. 23 of 2014, the local government in a regency or municipality is responsible for the direct utilization of geothermal energy within those areas. In contrast, Article 10 gives the central government absolute authority over key matters such as foreign policy, defense, security, and economic affairs.¹⁹ This suggests that Regional Governments should ideally have the authority to issue mining business licenses as part of their autonomous regional responsibilities, which aligns with Article 18 of the 1945 Constitution. This article empowers both Provincial and Regency/Municipal Governments to manage government affairs based on principles of autonomy and co-administration. Unfortunately, the authority transferred to the Ministry of Energy and Mineral Resources (ESDM) by Law No. 3 of 2020 limits the regulatory capabilities of Regional Governments in their own territories. Although Law No. 3 of 2020 addresses specific issues in mining, it has created a disbalance in environmental control and has led to friction with Regional Governments. A collaborative approach to issuing mining permits, where both central and regional governments participate, would better reflect the principles of regional autonomy outlined in Article 18 of the 1945 Constitution and Law No. 23 of 2014. Alternatively, the central government could take on more of a supervisory role, focusing on overseeing and evaluating mining operations to ensure Regional Governments follow the existing regulations. This would help avoid direct policy interference in the jurisdiction of Regional Governments.

As stated in Article 10 of Law No. 23 of 2014, the central government's primary focus should be on its core areas of national development to achieve the vision for "Golden Indonesia 2045," which aims for a nation that is advanced, just, and prosperous. Continued central intervention in regional policies, which should be the domain of Regional Governments, risks reinforcing centralized

¹⁷ Moh. Mahfud MD, *Politik Hukum Di Indonesia*, 95.

¹⁸ Mahmuzar Mahmuzar, "Model Negara Kesatuan Republik Indonesia Di Era Reformasi," *Jurnal Hukum & Pembangunan* 50, no. 2 (2023): 302.

¹⁹ Undang-Undang Nomor 23 Tahun 2014 Tentang Pemerintahan Desa LN.2014/No. 244, TLN No. 5587, LL SETNEG: 212 HLM.

authority and undermines the spirit of regional autonomy. The principle of regional autonomy is a vital philosophical, moral, and constitutional foundation for dividing authority between central and regional governments, deeply rooted within the framework of the Unitary State of the Republic of Indonesia (NKRI).²⁰

2. The Hierarchy of Norms and Delegations to Non-State Entities.

Recently, the central government has made a move by allowing religious mass organizations to manage mining permits, as specified in Article 51 of Law No. 2 of 2025, which amends Law No. 4 of 2009 on Mineral and Coal Mining. Additionally, universities have been included in the mining permit process, a change laid out in Article 51A. However, when we take a closer look at the roles and purposes of these mass organizations, as outlined in Articles 5 and 7 of Law No. 17 of 2013, it is clear that they have no official mandate for managing natural resources. Their main focus is on social and religious roles, like preserving religious values and upholding community morals, rather than commercial mining activities.²¹ Similarly, universities are not designed for managing natural resources. Their primary mission is to produce highly skilled and competitive individuals through education, research, and community service, as guided by the concept of “*Tri Dharma Perguruan Tinggi*.”

This scenario raises three important concerns. *First*, by taking control of mining permits away from Regional Governments, the central government risks undermining regional autonomy. According to Article 18 of the 1945 Constitution and Law No. 23 of 2014, Regional Governments should ideally handle these matters. *Second*, the central government seems to overlook the reason social and religious organizations exist. Their main goal is to promote social values, not to participate in mining activities. *Lastly*, involving these entities in mining management could dilute the main purpose of universities, which is to nurture intellectual growth and foster national character. To address these issues, we need a balanced approach. The central government should consider revising Law No. 3 of 2020 to reinforce the role of Regional Governments in regulating mining business permits. By making this strategic adjustment, the government could enhance the constitutional authority of Regional Governments, rebuild trust in local administrations, ease tensions between central and regional authorities, and ultimately create fairer outcomes for all parties involved.²²

Moreover, by not formally involving Regional Government through clearly defined legal channels, the central government may hinder regional planning and development initiatives. Below is a table that outlines key conflicts between central and regional governments, along with potential solutions:

²⁰ Cipto Prayitno, “Restriction to Change the Form of Unitary State of the Republic of Indonesia in 1945 Constitution of the Republic of Indonesia in Constitution Making Perspective,” *Jurnal Konstitusi* 15, no. 4 (2018): 732, <https://doi.org/10.31078/jk1543>.

²¹ Muhammad Mutawalli Mukhlis et al., “Regional Autonomy System: Delegation of Authority and Power of Regional Government in Indonesia in the Study of Fiqh Siyasa,” *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 2024): 505–26, <https://doi.org/10.29240/jhi.v9i2.9709>.

²² Iin Ratna Sumirat, “Penegakan Hukum Dan Keadilan Dalam Bingkai Moralitas Hukum,” *Al-Qisthas: Jurnal Hukum Dan Politik* 11, no. 2 (2020): 86, <https://jurnal.uinbanten.ac.id/index.php/alqisthas/article/view/3827>.

Table 1: *Internal and External Conflicts Between Central and Regional Governments*

No	Internal Aspect	External Aspect	Solution
1.	Weakening the role of regional autonomy	Conflict in central–regional government relations	Revise Law No. 2 of 2025 to ensure legal certainty for regional governments
2.	Risk of losing Regional Original Revenue (PAD)	Potential disharmony in state administration	Establish a fair revenue-sharing arrangement for mining
3.	Socio-community conflict	Resistance from mass organizations and concerns over university involvement	Create policies ensuring Regional Government participation to restore public trust

Source: Based on various laws and regulations related to regional autonomy.

From this legal and regulatory framework, one critical observation stands out: public sentiment indicates that mining policies have not adequately reflected the interests of local communities. Many view the central government’s formalization of mining policies, which favor mass organizations and involve universities, as disconnected from local needs. This situation hints a legislative process that is influenced by political factors rather than the genuine needs of communities. A more progressive approach is necessary—one that not only acknowledges the realities of autonomous regions but also prioritize the use of law as a tool for equitable justice. This approach should guide the central government’s actions, aiming to foster prosperity and improve the well-being for the populace.²³

The Constitutional Guarantee of Regional Governments in Regulating Mining Activities

Indonesia, as a modern republic with a presidential system, balances authority between the central government and regional governments. While the central government holds supreme power to establish national policies (as noted in Article 1, paragraph 1, and Article 4, paragraph 1 of the 1945 Constitution), Regional Governments are entrusted with the important tasks of enhancing local community welfare and facilitating public services (see Article 18). This constitutional framework not only promotes the development of prosperous regions but also recognizes the rights of Regional Governments to utilize their natural resources. To clarify how the constitution protects Regional Governments in managing mining activities, we will explore two key aspects : 1) The 1945 Constitution as the “grundnorm” of authority distribution and 2) The Importance of legal certainty, justice, and public benefit in regional autonomy.

1. The 1945 Constitution as the “Grundnorm” for Authority Distribution

According to Kelsen’s theory, the “grundnorm” serves as the highest norm in a legal hierarchy, supporting all subordinate regulations. He conceptualized laws as mechanisms designed to safeguard and operationalize legal entitlements.²⁴ Consequently, in Indonesia, the 1945 Constitution provides legitimacy to both the central and regional governments in fulfilling of their constitutional roles. The central government’s responsibilities include managing the national strategic issues, preserving the

²³ Satjipto Rahardjo, *Hukum Progresif Sebuah Sintesa Hukum Indonesia*, 17.

²⁴ Hans Kelsen, *Teori Umum Tentang Hukum Dan Negara Terjemahan General Theory of Law and State (New York: Russel and Russel, 1971), Trans. Raisul Muttaqien, IV (Bandung: Nusa Media, 2009), 115.*

country's unity, safeguarding sovereignty, and driving national development. Regional autonomy, as described in Article 18 of the 1945 Constitution, allows the central government to delegate authority to regional governments. This means that Regional Governments are empowered to manage natural resources on behalf of the central government.²⁵ Article 33, paragraph 3 of the Constitution reinforces this, stating that the state controls land, water, and natural resources for the welfare of all. Thus, Regional Governments are constitutionally guaranteed the authority to manage these natural resources within their territories, affirming that “the land, water, and natural resources contained within are controlled by the state and utilized for the greatest prosperity of the people.”

However, the centralized regulation of mineral and coal mining through Law No. 3 of 2020—which grants exclusive authority to the central government—has raised significant public concern. Notably, the central government's move to delegate mining management to mass organizations and its proposals for university participation (as outlined in Government Regulation No. 25 of 2024 and Law No. 2 of 2025) deviate from established norms and present constitutional concerns. The management of mining activities ideally belongs to Regional Governments at the provincial, regency, or municipal levels. This alignment fulfills the principles of regional autonomy stated in Article 18 paragraph 2 of the 1945 Constitution. Moreover, the current mining policies seem detached from national objectives outlined in the Preamble of the 1945 Constitution, which encompasses protecting the Indonesian nation, promoting public welfare, ensuring educational opportunities, and nurturing a peaceful and just world order. These policies also appear inconsistent with the 2020–2024 National Medium-Term Development Plan (RPJMN), which prioritizes sound governance, equitable practices, and sustainable development.²⁶

Legal scholar Jimly Ashiddiqie argues that the constitution mandates the implementation of regional autonomy as specified in Article 18, Paragraph 1. He suggests that the main aim of regional autonomy is to decentralize authority that has been concentrated at the national level, allowing regional governments to make decisions that best serve their communities. This change is seen as giving Regional Governments the power to regulate themselves and manage their own areas.²⁷ The policy of regional autonomy, which is centered on decentralization, is considered vital for promoting national unity and integration. In fact, it is the Regional Governments that are in the best position to drive this process forward.²⁸

Mahfud MD asserts that Regional Governments can manage their own affairs as long as they follow the regulations set by the central government and any higher regional authorities. They have the power in three main areas: 1) They can create rules that are relevant to their specific regions; 2) They should help the central government implement existing regulations; 3) They can make regulations on topics that the constitution allows, but they need to get approval first from higher government levels.²⁹ Mahfud also points out that the protections in the 1945 Constitution regarding regional autonomy serve several important purposes: 1) They uphold the principle of freedom; 2)

²⁵ Hariyanto Hariyanto, Idamatussilmi Idamatussilmi, and Daud Rismana, “The Government's Role in Legal Protection of Land Ownership: Urutsewu Case,” *Legality : Jurnal Ilmiah Hukum* 32, no. 2 (August 2024): 277–91, <https://doi.org/10.22219/ljih.v32i2.34254>.

²⁶ Bappenas RI, *Rencana Pembangunan Jangka Menengah Nasional Tahun 2020-2024* (n.d.), accessed July 7, 2025, https://ditkumlasibappenas.go.id/download/file/Narasi_RPJMN_2020-2024.pdf.

²⁷ Asshiddiqie, *Konstitusi Dan Konstitusionalisme Indonesia*, hlm 226.

²⁸ Asshiddiqie, hlm 226.

²⁹ Moh. Mahfud MD, *Politik Hukum Di Indonesia*, 104.

They empower communities to express and pursue their own interests within a democratic system; and 3) They ensure that citizens receive the best possible public services in their regions.³⁰ As a result, the Constitution grants Regional Governments the authority to manage mining permits, as long as these actions align with the central government policies and regulations. This authority not only validates their role in managing natural resources in their areas but also requires them to coordinate with the central government, ensuring smooth and effective governance.³¹

2. The Importance of Legal Certainty, Justice, and Public Benefit in Regional Autonomy

In the context of regional autonomy, the regulations governing how Regional Governments issue mining business licenses are designed to ensure legal certainty, equity, and public well-being. Achieving these goals requires a solid legal framework that promotes clarity and fairness while protecting the rights of all citizens.³² This involves creating clear guidelines that lead us through the entire lawmaking process—starting from the initial concept and drafting phases to implementation by the executive branch. The aim is to ensure that regional licensing processes are predictable, just, and ultimately serve public interest.³³

Mining regulations, as part of this framework, demonstrate regional autonomy, reflecting the state's commitment to decentralized governance and collaborative decision-making, which prevents the concentration of power. This means that by allowing Regional Governments to issue mining business licenses, we can uphold principles of justice and avoid allowing mass organizations or universities to commercialize mining activities. Additionally, this approach highlights the central government's dedication to regional development, with the expectation that managing these licenses will positively impact local economies, particularly through increased Local Own-Source Revenue (PAD).³⁴

To successfully implement these essential values of regional autonomy, the central government must adhere to three fundamental principles when interacting with regional governments, which have constitutionally protected rights to govern and manage their territories. Delegating the authority to issue mining licenses to Regional Governments can establish legal certainty by ensuring that all regulations are clear, adaptable, and aligned with the Constitution. As a result, all licensing regulations developed by Regional Governments should be grounded in legal principles consistent with the 1945 Constitution and the regional autonomy laws specified in Law No. 23 of 2014 and Law No. 2 of 2025. These laws revised to strengthen Regional Governments' roles in managing mineral and coal resources.

Through a robust legal framework, we can foster a cooperative relationship between central and regional governments, minimizing potential overlaps in authority and jurisdictional conflicts. This

³⁰ Moh. Mahfud MD, 93.

³¹ Antonius Galih Prasetyo, Rusman Nurjaman, and Maria Dika Puspa Sari, "Overcoming Good Governance: Towards Localized and Contextual Public Administration in Indonesia," 2018, 404, <https://www.atlantis-press.com/proceedings/aapa-18/25896133>.

³² Saru Arifin, "Illiberal Tendencies in Indonesian Legislation: The Case of the Omnibus Law on Job Creation," *Theory and Practice of Legislation* 9, no. 3 (n.d.): 386–403, <https://doi.org/10.1080/20508840.2021.1942374>.

³³ Arif Rahman et al., "Constitutional Transition in a Democratic State: A Critical View of the Omnibus Law Establishing Employment Copyright Law," *Journal of Law and Legal Reform*, Contemporary Issues on Law Reform in Indonesia and Global Context, vol. 5, no. 4 (2024): 1925, <https://doi.org/10.15294/jllr.v5i4.1552>.

³⁴ Lalu Wira Pria Suhartana et al., "Risk-Based Mining Investment in the Framework of Fair Legal Certainty," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 8, no. 1 (2025): 64, <https://doi.org/10.24090/volgeist.v8i1.12894>.

collaboration supports effective governance by integrating established principles while delegating mining licensing authority to Regional Governments. By doing so, we reaffirm our commitment to justice and promote a fair distribution of power and resources. Recognizing the central government's dedication to creating collaborative environments for Regional Governments will help advance the interests of local communities. The process of issuing mining business licenses should be revised to align with the principles of regional autonomy, avoiding any preferential treatment based on affiliations or university involvement.³⁵ With a focus on legal clarity and equitable practices, the licensing process should maximize public benefit, which is vital for realizing the goals of regional autonomy in mining regulations. Each mining license should aim to benefit the public and yield positive environmental impacts, prioritizing environmental preservation and avoiding harm. This approach places an emphasis on the public benefit as a key way to support decentralized regional autonomy. It goes beyond just handing out authority; it aims to drive regional development, reduce poverty, and boost local economies.³⁶

Incorporating this perspective aligns with the Preamble of the 1945 Constitution, which emphasizes promoting general welfare and social justice for all Indonesians. Mining operations must be strategically directed toward achieving regional development goals. This aligns with the Ministry of Energy and Mineral Resources (ESDM) Regulation No. 26 of 2018, which focuses on implementing responsible mining practices and overseeing mineral and coal activities. This regulation particularly highlights the importance of post-mining activities aimed at restoring environmental and social functions, utilizing responsive and preventive techniques. However, the practical management of mining faces significant oversight challenges, particularly evident in the coal mining permit processes in East Kalimantan. This is largely due to central government's insufficient active supervision, resulting in a legal void at the implementation level. Consequently, we often encounter inconsistent and vague norms that lead to various interpretations of environmental management protocols in mining operations.³⁷

To effectively tackle these challenges, implementing strong mining practices is essential. These practices should prioritize not just the role of the central government, but also emphasize the critical involvement of regional governments. Here are some necessary measures to improve the current mining landscape:

- a. Regional Governments as Technical Implementers: Regional governments should take charge of the actual mining operations.
- b. Oversight of Mineral Conservation: Regional governments need to monitor and conserve mineral and coal resources.
- c. Supervision of Work Safety: They should ensure the safety and health of mine workers.
- d. Ensuring Operational Safety: Involvement from regional government is vital to guarantee safe mining Practices.

³⁵ Ahmad Zaini, Iin Ratna Sumirat, and Moh. Zainor Ridho, "Identity Politics in Electoral Politics," *POLITICON: Jurnal Ilmu Politik* 5, no. 2 (2023): 137.

³⁶ Desty Novita Sari et al., "Hubungan Antara Pemerintah Pusat Dan Daerah Menurut Perspektif Hukum Tata Negara," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 4 (2024): 168, <https://doi.org/10.62383/amandemen.v1i4.567>.

³⁷ Mohammad Nasir, Alurens Bakker, and Toon Van Meiji, "Environmental Management of Coal Mining Areas in Indonesia: The Complexity of Supervision," *S 36, No. 5 (2023): 534*, *Society & Resources* 36, no. 5 (2023): 534, <https://doi.org/10.1080/08941920.2023.2180818>.

- e. Monitoring Environmental Impact: Active supervision of environmental and social impacts from mining activities is crucial.
- f. Encouraging Modern Technology: Regional governments should promote the use of modern technology in mining practices.

These recommendations advocate for integrating Regional Governments as both regulators and supervisors of mining activities. This approach aims to foster transparent, responsible, and sustainable resource management, aligning with best practices in the mining industry. The ultimate goals are to enhance public welfare, ensure environmental sustainability, support regional development, and strengthen Regional Governments' role in managing their territories—all while reflecting the principles of decentralization, deconcentration, and co-administration. This framework signifies a commitment to responsible governance within a unitary republic, free from undue influence.

CONCLUSION

The study highlights that the promise of regional autonomy, as state in Article 18 of the 1945 Constitution, is not been fully realized when it comes to issuing mining licenses. The introduction of Law No. 3/2020 has led to a centralization of authority that was previously entrusted to Regional Governments under Law No. 4/2009. This shift has created gaps in authority, insufficient oversight, and operational challenges. While Law No. 23/2014 aimed to promote decentralization, deconcentration, and collaboration, the subsequent adoption of Government Regulation No. 25/2024 and Law No. 2/2025 has only intensified these problems. These new regulations prioritize mass organizations and involve universities in mining management, which raises both constitutional and practical concerns, particularly regarding their alignment with the educational missions outlined in the Tri Dharma. To address these challenges, the study recommends rethinking the current mining governance structure to adopt a constitutional co-administration model. This model would allow Regional Governments to have a say in key licensing processes, such as ensuring spatial and environmental impact assessments are in line with regulations and obtaining social consent from local communities. Additionally, oversight could be improved through joint inspection and a system of tiered sanctions, all documented by a digital audit trail for enhanced transparency. It is also important that decision-making authority remains firmly with governmental bodies, following a clear principle that prevents delegation of this power. To resolve conflict between different legal frameworks, a harmonization clause is needed to ensure that Article 18 and Law No. 23/2014 take precedence in cases of overlaps with sectoral regulations. Furthermore, aligning incentives—through performance-based budget allocations—could directly link legal certainty and community welfare to the effectiveness of oversight. By implementing these measures, we can transform constitutional mandates into tangible actions. This will help restore regional autonomy, enhance legal certainty, and ensure public benefit in the oversight and management of mining activities.

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