

Discourse on Delegation of Authority of Law No.3 of 2020 Concerning Minerals and Coal and Law No.6 of 2023 Concerning Job Creation Regulating Minerals and Coal

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Abstract: The President's direction to facilitate investment and job creation was realized with the enactment of Law No.6 of 2023 concerning Job Creation which simplified 79 laws in various sectors with the Omnibus Law method including Law No.4 of 2009 concerning Mineral and Coal Mining regarding the amendment of Law No. 4 of 2009 which is prioritized to stimulate investment, ease of doing business in the regions and work needs at the productive age of 197.91 million people and reduce unemployment by 7.05 million based on the labor force, in fact it still leaves problems about the idea of delegation that is not in accordance with the 1945 Constitution Article 18 paragraph (2) that Regions are divided based on the principle of autonomy and assistance duties and are not in accordance with the annex to Law 23 of 2014 on Regional Government concerning the conception of the Division of Government Affairs in the field of Energy and Mineral Resources.

Keywords: Presidential Directive, Job Creation, Energy and Mineral Resources.

A. Introduction

The codification system for drafting laws and regulations with the omnibus law method is determined by implementing regulations or executive acts by law implementing agencies or branches of executive power to overcome hyper-regulatory problems that hinder bureaucracy and investment, this is in accordance with the President's mandate on a more harmonious arrangement with changes to one law integrated with new laws. The omnibus law trial began with enthusiasm with the drafting of the Job Creation Law with the aim of accelerating the economy and ease of investment which still leaves frictions both materially and formally. Therefore, many consider that the omnibus bill undermines democratic legislation in the parliamentary forum as stated by C.E.E Frank in the omnibus bill subvert our legislative process.

Omnibus legislation applied to Law No.6 of 2023 concerning Job Creation in article 35 paragraph (2) in substance regulates the Conception of the Idea of delegation is also affirmed in Law No. 3 of 2020 concerning Minerals and Coal in article 35 paragraph (4) The Central Government can delegate the authority to grant business licenses as referred to in paragraph (2) to the governor in accordance with the provisions of laws and regulations.

Based on the norms of the 1945 Constitution Article 18 paragraph (2) which states that regions are divided based on the principle of autonomy and assistance duties, meaning based on the principles of broad autonomy and responsible autonomy. The conception of regional autonomy means that regions are given the flexibility to organize their respective regions and are responsible for their regional government. Based on the above background, it poses the following problems:

1. How is the implementation of government affairs authority in the field of energy conservation, new energy and renewable energy in the regions based on Law No.3 of 2020 concerning Minerals and Coal and Law No.6 of 2023 concerning Job Creation?
2. What is the conception of the ideal regulation for the implementation of authority in strengthening the implementation of government affairs in the field of energy conservation, new energy and renewable energy in the regions based on the 1945 Constitution and Law No. 23 of 2014 concerning Regional Government?

B. Discussion

1. The concept of delegation is interpreted as handing over government affairs to provincial regional governments (autonomous regions), the Governor in carrying out delegation, acting as the head of the autonomous region and the APBD is used to carry out delegated activities. The regulatory concept in the draft presidential regulation aims to provide guidance to the governor in the implementation of business licensing in the field of mineral and coal mining delegated, Business licensing delegated to the provincial government consists of: standard certificates and permits. Permits that can be delegated to local governments consist of the government:

- a. IUP PMDN for nonmetallic mineral commodities
- b. IUP PMDN for commodities
- c. SIPB
- d. IPR
- e. Upgrade and sales permit for non-metallic mineral commodities
- f. Permit for transportation and sale of rock commodity
- g. IUP for one province, dn
- h. IUP for special sales of rock and non-metallic commodities

The authority delegated to the provincial government cannot be sub delegated to the district / city government In delegation to the Regional Government, prepare a regional apparatus work unit needed in the implementation of business provision in the field of mineral and coal mining

Delegation Governance According to Law No.3 of 2020 and Law No.6 of 2023 the conception is as follows:

No	Function	Activities	Insurer Answer Decision	Human Resources	Budget	Facilities and infrastructure	Organization
1.	Licensing	Granting permissions	Governor	Civil Servant	Area	Area	PTSP
2.	Coaching	• Approval (RKAB, Suspension, Damage, OP • Mentoring • Guidance and Tactical • Facilitation of Problem Resolution related to overlapping spatial planning, land and community complaints	Governor	Civil Servant	Area	Area	Department of Energy and Mineral Resources
3a.	Aspect Supervision	• Evaluate reports and field supervision of • Technical Mining • Conservation of mineral and coal resources • Mining safety • Environmental management, reclamation and post-mining • Mastery of the development of the application of mining technology	Minister	IT	Navel	Navel	UPT
b.	Aspect Supervisor	Conduct field evaluation and supervision of: • Production and marketing • Finance • Mineral and coal data management • Utilization of goods, services, technology and domestic engineering and design capabilities	Minister	Aspect Supervisor	Navel	Navel	UPT

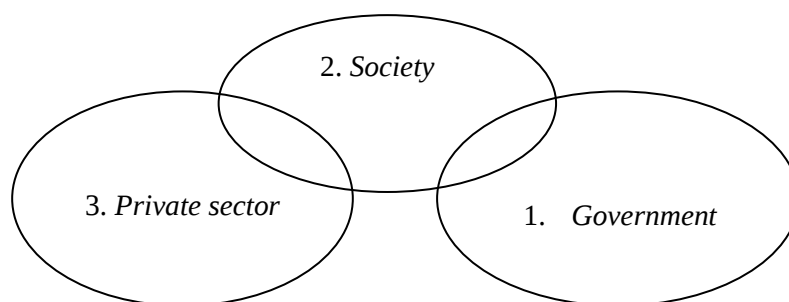
		• Development of mining technical workforce • Development and empowerment of local communities					
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2. Construction of ideal arrangements for the implementation of authority in strengthening the implementation of government affairs in the field of energy conservation, new energy and renewable energy in the regions based on the 1945 Constitution and Law No. 23 of 2014¹ concerning Regional Government. Furthermore, if further examined in the regulatory norms of Article 35 Paragraph 4 of Law No. 3 of 2020 as available below, delegation is carried out to provincial regional governments as autonomous regions (the definition of regional governments in Article 1 Number 37 of Law No. 3 of 2020 is an autonomous region).

On this basis, presumably the delegation regulated in Article 35 Paragraph 4 of Law No. 3 of 2020, should be interpreted as being able to be held through an assistance task mechanism considering that those who receive delegations are provincial regional governments as autonomous regions. This is in accordance with the provisions of Article 18 of the 1945 Constitution. The mechanism of the assistance task is currently still constrained by the regulation of PP No. 7 of 2008 concerning Deconcentration and Assistance Duties, including in Article 49 Paragraph 2 which stipulates that funding for assistance tasks is allocated for physical activities.

Although these arrangements have been improved with the Deconcentration RPP and Assistance Duties, in connection with the above, it is possible to do the delegation through a deconcentration mechanism by interpreting that the provincial regional government referred to in Law No. 3 of 2020 is the Governor as the Representative of the Central Government (GWPP). This should be theoretically justified In the event that delegation is translated into its implementation through a deconcentration mechanism where the provincial regional government is interpreted as the Governor as the Representative of the Central Government, then the budgeting becomes the central responsibility through the State Budget. The Ideal Concept of delegation to meet public needs, namely: Substantially, there is a need for synchronization and harmonization of laws and regulations in the mineral and coal sector with sector laws with the ideal foundation of Pancasila and the 1945 Constitution; Structurally, full support is needed from the Government and all components of Indonesian society as one of the agencies that have duties and responsibilities in mineral and coal management in Indonesia. Culturally, consistency in the implementation of corporate governance principles creates legal certainty between entrepreneurs and government actions in the realization of people's welfare.

To show the position between government, society and the business sector is explained in the following section:



A= Interaction 1&2
 B= Interaction 1&3
 C= Interaction 1,2& 3
 D= Interaction 2 & 3

Information:

1. Public sector (Government).

The government has a function in creating laws and political environments that are conducive to the development of the country; with evolving ABC interactions.

2. Society

¹Undang-Undang No.23 Tahun 2014 tentang Pemerintahan Daerah

The community plays an active and positive role in all activities of state life that are directly related to the interests of citizens; with evolving ACD interactions.

3. Business Sector.

The business sector has a role to play in creating employment and income opportunities for the community; with evolving BCD interactions.

The function of the state is to control important branches of production that control the livelihoods of many people as well as the earth, water and natural resources contained therein as Article 33 of the 1945 Constitution.

Bibliography

- [1]. C.E.S Franks, 2010, Omnibus Bill Subvert Our Legislative process, The Globe and Mail, Ottawa, America.
- [2]. Jimly Assidique, 2020, Omnibus Law dalam Penerapannya di Indonesia, Konpress, 2020, Jakarta.
- [3]. Undang-Undang No.23 Tahun 2014 tentang Pemerintahan Daerah.
- [4]. Undang-Undang No. 3 Tahun 2020 tentang Pertambangan Mineral dan Batubara.
- [5]. Undang-Undang No. 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang nomor 2 Tahun 2022 tentang Cipta Kerja.

