

## CHAPTER ONE

### INTRODUCTION

#### A. Background

Indonesia is a country that has abundant natural resources and a rich country in the mining sector. This makes Indonesia specifically regulates the rules or policies to run the activity in terms of natural resource management, and the purpose these is that all these activities will be implemented as they should be.

As a rich country, Indonesian should be able to get the welfare of the wealth from the natural resources. Based on the data from the Indonesian Mining Association (IMA), Indonesia's mining wealth is ranked the 6<sup>th</sup> in the world and this is enough to finance the welfare of the Indonesian Nation. However, between the wealth of Indonesia's mining resources and the welfare of the Indonesian nation is not proportional. Therefore, the authority of the local government in the management of natural resources is in question.<sup>1</sup>

Since 1970, Indonesia has produced several varieties of metallic minerals and coal, for instance, iron sand, bauxite, tin, copper, gold, silver and nickel. And step by step it developed the added value processing technology, e.g., gold/silver, tin, aluminum, copper, and nickel. Moreover, in the broader sense, the simple meaning of added value is the result of

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<sup>1</sup> Ledyawati, "Kewenangan Pemerintah Daerah dalam Pengelolaan Sumber Daya Alam Pertambangan Minerba di Era Otonomi Daerah", *Jurnal Agregasi (Aksi Reformasi Government dalam Demokrasi)*, V (May, 2017), p.8.

techno-economic transformation from the initial condition of mineral resources and commodity toward the condition with the greater value of economic, utilization and usefulness than before, then this new condition would contribute positive impact upon the economic, social and culture at the level of global, regional and national.<sup>2</sup>

Common issues in the mineral and coal mining sector in Indonesia are mainly caused by the centralistic policy instruments and the regional autonomous principles, which are not accommodated yet by the central government. Moreover, the rate of the mining investment is low due to the inconsistent regulations, particularly related to the management aspects of the forest sector, spatial uses, environment, and the central-regional authority sharing. Interest conflicts over land use, security, and illegal mining cause the mining investment that is very low. Accordingly, the supply of the products of the mineral and coal commodities for the domestic needs automatically decline.<sup>3</sup>

Based on the Article 33 Paragraph (3) on the 1945 Constitutions “earth, water, and natural resources contained therein are controlled by the State and used for the prosperity of the people.” One of the natural resources that are perceived to have a strategic and vital position in promoting the national

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<sup>2</sup> Ukar Soelistijo, “Impact of Corporate Social Responsibility in Indonesia: A Case Study of General Mining Industries”, *Indonesian Mining Journal*, XVI (June, 2013), p.112.

<sup>3</sup> Bambang Yudianto, “Analysis of Small-Scale Mining in Mineral and Coal Mining Law Number 4/2009 (Inputs for Formulation of Implementing Regulation)”, *Indonesian Mining Journal*, XII (October, 2009), p.98.

economy is mineral and mineral coal.<sup>4</sup> Therefore, this is what makes Indonesia need to arrange concretely about the management of mining directly by the state, either by the central or local government.

It is clarified in the main idea of the Law No. 4 of 2009 on Mineral and Coal Mining, which states that “Minerals and coal as non-renewable resources are controlled by the state and their development and utilization are carried out by the Government and Regional Government together with business actors.”

From the geological point of view, Indonesia has abundant mineral and coal resources. That is why the government must put more attention on the regulation in the sector. Especially since mineral and coal are non-renewable resources, the utilization has to be effective and efficient for the people welfare. Bad governance in regulation formulation and issuance is, unfortunately, a negative example of how regions manage their mineral and coal resources in their areas.<sup>5</sup>

The data on several regions and business operations show that various problems have occurred. It needs early action to avoid bigger problems that will create a negative impact on the investment climate in the mineral and

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<sup>4</sup> Daud Silalahi, “Perizinan Dalam Kegiatan Pertambangan di Indonesia Pasca Undang-Undang Minerba No. 4 Tahun 2009”, *Law Review Universitas Pelita Harapan*, XI (July, 2014), p.2.

<sup>5</sup> Darsa Permana, “Analysis of Regional Regulation on General Mining Sector (Mineral and Coal)”, *Indonesian Mining Journal*, XI (February, 2015), p.6.

coal mining sector, and will eventually hinder the improvement of people welfare.<sup>6</sup>

Based on the Law No. 23 of 2014 on Local Government, among the functions of local government in carrying out government affairs are the authority, finance, public services, utilization of natural resources and other resources.

In the law of local government that has been applied since October 2<sup>nd</sup>, 2014 it is stated that the agency that has the authority in the administration of government affairs in the field of mineral and coal mining is not the district/city government, but becomes the authority of the provincial government.

How it is supposed to be in every mining activity (minerals and coal) there are always two poles of legal relations (*tweezijdige rechtsverhouding*), i.e. between the Government and the mine users on the basis of the concession. In the Administrative Law, concessions are granted to private parties to carry out exploration and exploitation of mining but accompanied by the government oversight in connection with the vital nature of projects. In the context of public services, mining is including the *bestuurszorg* part of the government, but its management is mandates implemented by private parties.<sup>7</sup>

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<sup>6</sup> Darsa Permana, "Implementation Impact of Law No. 4 of 2009 on Mineral and Coal Mining Towards Mineral and Coal Business Development, *Indonesian Mining Journal*, XIII (June, 2010), p.47.

<sup>7</sup> Tri Hayati, *Era Baru Hukum Pertambangan: di Bawah Rezim UU No. 4 Tahun 2009*, Jakarta, Yayasan Pustaka Obor Indonesia, 2015, p.17.

A major challenge faced by mineral and coal mining is the influence of globalization that encourages democratization, regional autonomy, human rights, environmental, development of technology and information, intellectual property and demands of the increased participation of private and public.<sup>8</sup> The Implementation of regional autonomy is basically encouraging local governments to be more creative and productive in managing every resource they have including natural resources, human resources, capitals, and management systems.<sup>9</sup>

Related to the enactment of the law on local government that makes authority in the field of mineral and coal mining as the authority of the provincial government hence a significant increase for mining permits in the Special Region of Yogyakarta from the previous when the authority is still as the authority of the district/city government. The increase is seen from the previously only 47 mining business that has permission, in that after the law No. 23 of 2014 is applied, there are at least 168 companies apply for mining permits for the entire province of the Special Region of Yogyakarta in 2016, with the details that the application of the permit comes from Kulon Progo Regency totaling 91 companies, Gunungkidul Regency

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<sup>8</sup> Otong Rosadi, *Pertambangan dan Kehutanan dalam Perspektif Cita Hukum Pancasila*, Semarang, Thafa Media, 2012, p.56.

<sup>9</sup> Juanita Horman, "Analysis of Regency Readiness Level in Implementing Autonomy of Mineral Resources Management in West Papua Province", *Indonesian Mining Journal*, XIX (May, 2015), p.19.

with as many as 37 companies, Bantul Regency with as many as 24 companies, and Sleman Regency with 26 companies.<sup>10</sup>

The example case of illegal mining in the Special Region of Yogyakarta is the case of abuse of mining permits that occurred in Grogol VII, Parangtritis Village, Kretek, Bantul, in that he offender runs the mining activities which abuse the mining permits even though previously the offender has Exploration Mining Permits, but in practice, the offender commits the Production Operation activities. In accordance with the Law No. 4 of 2009, Mining Permits are divided into Area of Mining Permits (WIUP), Exploration Mining Permits and Production Operation Permits. If the offender only has an exploration mining permit and does not have a production operation mining permit, the activities undertaken are limited to exploration activities and are not allowed to conduct the production operations activities.

From many problems in the existing mining in the Special Region of Yogyakarta, the case of illegal mining occurs frequently because the potential of minerals which is spread in this province makes anyone ambitious to be able to get and even control the results of existing mines. It encourages many mining entrepreneurs to only pay attention practically in running the mining business without following the procedures set forth in the applicable rules.

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<sup>10</sup> Izin Pertambangan di DIY Membludak, IUP Tak Ada yang Disetujui, *Tribun Jogja* (Yogyakarta), February 13<sup>rd</sup> 2016, p.5, col.3-6.

Based on the above things, it is necessary to know, understand, and also examines the role of the Special Region of Yogyakarta Government.

## **B. Research Problem**

1. How does the role of Provincial Government of the Special Region of Yogyakarta in combating the illegal mining?
2. How does the law enforcement in tackling the illegal mining in the Special Region of Yogyakarta?

## **C. Objectives of Research**

1. To explain the efforts that have been done by the provincial government in combating cases of illegal mining in the Special Region of Yogyakarta.
2. To describe the law enforcement processes in the Special Region of Yogyakarta related to the sanctions and criminal offenses in case of illegal mining violations.

## **D. Benefits of Research**

1. Theoretical Benefit

Giving contributions to the development of law science in general and specifically in the scope of Administrative and Criminal Law.

2. Practical Benefit

Contributing thoughts to government and the competent authority in making rules as well as the law enforcement in tackling efforts on illegal mining in the Special Region of Yogyakarta.