CONCEPTS OF MINING MANAGEMENT IN LEUSER ECOSYSTEM AREAS IN A SPECIAL AUTONOMOUS CONTEXT

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ABSTRACT

Background: Act No. 11 of 2006 on the Government of Aceh, granting broad authority to the government of Aceh in the context of the management of natural resources in Aceh, as regulated in Article 7 paragraph (1), which states that the government and the district/city authority regulate and manage affairs in all sectors except for the affairs of government, which becomes the authority of the government. Article 149(1) of Act No. 11 of 2006 explains that the Government of Aceh and the Governments of the district or city are obliged to carry out the management of the living environment in an integrated manner, taking into account the spatial planning, the protection of the natural resources, non-biological resources, artificial resources, the conservation of natural resources and their ecosystems, cultural reserves, and biodiversity about the rights of indigenous peoples and to the greatest of the well-being of the people. But the reality is that many parts of the Leuser ecosystem bordered by protected forests and conservation forests are used as both legal and illegal mining grounds. The application of the law to the management of ecosystems in Leuser is not optimal, so flora and fauna can’t be saved from irresponsible human actions.

Objective: To analyze the inconsistencies in the implementation of concepts of mining management in Leuser Ecosystem Areas in a Special Autonomous Context.

Theoretical framework: This research and analysis is about discovering and developing the theory of the authority of the government of Aceh in mining management and the development of mining management by the government in the Leuser Ecosystem Area. The Aceh government can establish mining areas with strong ecological authority. The closest government should also efficiently control the implementation of mining activities by enforcing strict regulations and maintaining a natural governance system that regularly guides the mine settlement’s local community, ensuring that mining operations adhere to legal requirements, particularly regarding executive and ecological insurance. The management of mining by the Government of Aceh in the Leuser ecosystem area has not been based on the State Responsibility Framework, which plays an important role in taking account of such impacts, while the Government of Aceh has the authority to direct the maintenance of mining of minerals and coal, with the privilege and specialty of Aceh to oversee mining at the level of provinces and districts/cities.

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Method: In this study, the method of normative law research is used to solve regulatory problems and inconsistencies that occur in search of solutions. The research uses several approaches: conceptual, historical, comparative, and analytical approaches; government regulation; and laws enforced.

Keywords: mining management, leuser ecosystem areas, special autonomy.

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CONCEITOS DE GESTÃO MINEIRA EM ÁREAS DO ECOSISTEMA DE LEUSER EM UM CONTEXTO AUTÔNOMO ESPECIAL

RESUMO

Antecedentes: Lei n.º 11 de 2006 sobre o Governo de Aceh, que concede uma ampla autoridade ao Governo de Aceh no contexto da gestão dos recursos naturais em Aceh, tal como regulamentado no n.º 1 do artigo 7.º, que estabelece que o Governo e a autoridade distrital/municipal regulam e geram os assuntos em todos os setores, exceto os assuntos do Governo, que passa a ser a autoridade do Governo. O artigo 149.o, n.o 1, da Lei n.o 11 de 2006 explica que o Governo de Aceh e os Governos do distrito ou da cidade são obrigados a assegurar a gestão do ambiente habitacional de forma integrada, tendo em conta o ordenamento do território, a protecção dos recursos naturais, os recursos não biológicos, os recursos artificiais, a conservação dos recursos naturais e dos seus ecossistemas, as reservas culturais e a biodiversidade, sobre os direitos dos povos indígenas e para o maior bem-estar das populações.

Mas a realidade é que muitas partes do ecossistema de Leuser que fazem fronteira com florestas protegidas e florestas de conservação são usadas como campos de mineração ilegal. A aplicação da lei para a gestão dos ecossistemas em Leuser não é ótima, então flora e fauna não podem ser salvas de ações humanas irresponsáveis.

Objetivo: Analisar as inconsistências na implementação de conceitos de gestão de mineração em Áreas do Ecossistema Leuser em um Contexto Autônomo Especial.

Estrutura teórica: Esta pesquisa e análise é sobre descobrir e desenvolver a teoria da autoridade do governo de Aceh na gestão de mineração e o desenvolvimento da gestão de mineração pelo governo na Área Ecossistêmica de Leuser. O governo de Aceh pode estabelecer áreas de mineração com forte autoridade ecológica. O governo mais próximo também deve controlar eficientemente a implementação de atividades de mineração aplicando regulamentações rígidas e mantendo um sistema de governança natural que oriente regularmente a comunidade local do assentamento mineiro, garantindo que as operações de mineração cumpram requisitos legais, particularmente no que diz respeito a seguros executivos e ecológicos. A gestão da exploração mineira pelo Governo de Aceh na zona do ecossistema de Leuser não se baseou no quadro de responsabilidade do Estado, que desempenha um papel importante na tomada em consideração de tais impactos, enquanto o Governo de Aceh tem autoridade para orientar a manutenção da exploração mineira de minerais e carvão, com o privilégio e a especialidade de Aceh para supervisorizar a exploração mineira ao nível das províncias e distritos/cidades.

Método: Neste estudo, o método de pesquisa de lei normativa é usado para resolver problemas regulatórios e inconsistências que ocorrem na busca de soluções. A pesquisa usa várias abordagens: conceptuais, históricas, comparativas e analíticas; regulamentação do governo; e leis aplicadas.

Palavras-chave: gestão mineira, áreas ecossistêmicas de leuser, autonomia especial.
1 INTRODUCTION

The environment is a necessity that must be provided for all living creatures. The availability of a good living environment reflects the high level of concern of the government and society for managing and protecting environmental sustainability to create a healthy, comfortable, and prosperous life. The state has the responsibility for sustainable environmental development. Sustainable development aims to be long-term development that takes into account the interests of generations by leaving sufficient resources and a healthy living environment for the next generation and realizing human welfare.\(^5\)

Essentially, this declaration fulfills the mission of the 1972 Stockholm Declaration, so it is not surprising that the provisions listed are a reflection of the previous declaration's provisions. The Rio Declaration affirms that human beings are at the heart of sustainable development and are entitled to live in a healthy and productive environment in harmony with nature.\(^6\) The 1992 Rio Declaration conference produced 27 principles, among them:\(^7\) (1) The Precautionary Principle; (2) The Principle of Intergenerational Equity; (3) The Principles of Intragenerational Equity; (4) The Principles of Integration Both the Stockholm Conference, the Nairobi Conference, and the Rio Janeiro Conference have three aspects of environmental management:\(^8\)

1) Sustainability is a concept of sustainable development; 2) The comprehensive aspect; 3) The concern for the livelihoods of the present and future generations; this aspect developed from the notion of sustainability.

2 THEORETICAL FRAMEWORK

The State of Indonesia carries out the rescue of the living environment, i.e., in the construction of the National Environmental Law of Indonesia as formulated and the MPR Decree No.IV/MPR/1999 on GBHN in 1999-2004, the national legislature became a policy priority in the field of law. To avoid divergence of opinion, it is necessary to confirm the understanding of the Indonesian National Law.\(^9\)

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In fact, UUD 1945 Article 28 H paragraph (1) stipulates that: "Everyone is born and born in a well-being, has a place to live and has a good and healthy living environment and has the right to health care". It is the right of every man to have a healthy environment. It is a duty of God to the believer, and it is worthwhile to build sustainable and environmental understanding and wisdom in the management of the environment. Environmental law has two functions: regulating human behavior in managing the environment and at the same time protecting the environment itself almost without restrictions.

"Natural damage has become a concern for observers, and conservation of nature and the environment has recently become a hot issue. The symptoms are evident in increasing deforestation, erosion, tsunamis, volcanic eruptions, floods, global warming, acid rainfall, rising sea levels, and the depletion of the ozone layer that threatens the future lives of mankind and its environment. Human beings are beginning to realize the need to reconsider their attitudes and actions towards nature”.

The development of habitats is structured based on ecological concepts and ecosystems that are central to ecology. The Leuser Ecosystem Area (LEA) is one of the ecosystems existing in Indonesia. It is an ecological system shaped by the interaction between living creatures and their environment. In fact, the Leuser ecosystem is experiencing disturbances caused by internal and external factors. Internal disturbance of the Leuser ecosystem is natural, while external disturbance can be moral and legal. The application of the law to the management of ecosystems in Leuser is not optimal, so flora and fauna can't be saved from irresponsible human actions.

The efforts to preserve the Leuser Ecosystem Area as a national natural resource are crucial in relation to the development of a sustainable environment, among others: 1) the contents of flora and fauna that have their own characteristics; 2) a nature conservation area that should be preserved as a place to take place in a balance of natural resources; 3) an area of tourism, recreation, and hunting tourism that should obtain legal protection; 4) local and national assets must be safeguarded optimally as the function of forests by all means, both customarily and culturally supporting it; 5) for all legal actions carried out

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12A. Sonny Keraf, Environmental Ethics, Compass, Jakarta, 2006, pp. 123.

by individuals or groups, such as illegal mining and reducing the quantity of animals, it is imperative that the enforcement of the law is comprehensive and integrated according to the inclusion of the elements of society; 6) the existence of the Leuser Ecosystem Area is becoming increasingly important in the era of regional economy, especially in terms of its management and setting up of the authority of the Government of Aceh juridically.14

Act No. 11 of 2006 on the Government of Aceh, granting broad authority to the government of Aceh in the context of the management of natural resources in Aceh, as regulated in Article 7 paragraph (1), which states that the government and the district/city authority regulate and manage affairs in all sectors except for the affairs of government, which becomes the authority of the government. Management is the planning, implementation, utilization, and supervision of business activities that can be explored, exposed, and cultivated. (2). The Government of Aceh has extensive opportunities to regulate development in Aceh with the concept of green legislation as a derivative and implementation of the Green Constitution.15 The Act of the Government of Aceh is the foundation of the policy of the government of Aceh in implementing the construction of Aceh. Articles 147 and 149 are the implementation of the vision of environmental legislation.

Article 147 states that “Implementation of development in Aceh and districts/cities must be based on the National Development Plan and Space Management guided by the principles of sustainable development, preservation of the functioning of the living environment, utility, and justice.”

Article 149(1) states that “the Government of Aceh and the Government of the District/City are obliged to carry out the management of the living environment in an integrated manner, taking into account the spatial arrangement, the protection of the natural resources, the non-living natural resources, and the natural artificial resources, conservation of the biological resources and their ecosystems, cultural reserves, and biodiversity with regard to the rights of indigenous peoples and to the greatest extent for the well-being of the people”.16

Forest and irrigation conservation areas in the province of Aceh, according to the Decree of the Minister of Environment and Forestry No. SK.103/MenLHK-II/2015,

16Ibid. pp..142-143.
covering approximately 3.557.928 ha, includes the forest of the Leuser Ecosystem. The area covering the area reaches 2.255.577 ha. According to Presidential Decree No. 33 of 1998 on the management of the ecosystem area of Leuser, the Leuser Ecosystem Area is a region that is naturally integrated by natural expression factors, characteristic characteristics of flora and fauna, the balance of habitats in support of the continuity of life and biodiversity, and other characteristic factors, so that they form a unified ecosystem that is ultimately referred to as the Leuser ecosystems.17

According to the Act of the Governor of Aceh No. 5 of 2014 on the Modalities and Conditions of Use of the Leuser Ecosystem Area in the Territory of Aceh, the Leuser Ecosystem Area is an area unit within the territory of the administration of Aceh consisting of a portion of the Conservation Forest and Other Usage Areas and other protected areas that have been designated or designated as national strategic areas, the management and use of which refers to the status and function of the area under applicable regulations.18

Division of the Leuser Ecosystem Area in detail by function and size as follows:
1) Nature reserve area and nature conservation area of 1,058.144 ha; 2) Protected forest area of 913.261 ha; 3) Limited forest production area of 141.771 ha; 4) Permanent forest production zone of 554.339 ha; 5) Converted forest production areas of 15.409 ha.

However, forest areas in these 13 districts continue to be damaged by various illegal activities. Walhi Director Muhammad Nur explained on July 19, 2019, based on satellite image footage, that the forest coverage of the Leuser Ecosystem Area continues to decrease as a result of various illegal activities.

January-December In 2019, the lost forest reached 2,686 ha. The highest damage occurred in East Aceh (760 ha), followed by South Aceh (626 ha), and the third position was Nagan Raya (278 ha). The Leuser Ecosystem Area is one of the most important conservation areas on the face of the earth and is the largest shelter for rainforests that have generally not been much disturbed.19

The area was established under Code No. 33 of 1998 on the Management of the Leuser Ecosystem Area. Subsequently reinforced by Act No. 11 of 2006, in Article 150 para. (1), the government authorizes or mandates the government of Aceh to administer

17 Safutra Rantona, Oekan Soekotjo and Iriana Bakti, Deforestation The Leuser Ecosystem : Environmental And Poverty In Aceh, 5th Conference on Communication, Culture and Media Studies. Padjadjaran University, 2019
the area of the Leuser ecosystem area. Then, in paragraph (2), the government, the Government of Aceh, and the District/City Government are prohibited from issuing forest management permits in the Leuser Ecosystem Area, which adversely affects its sustainability.

The granting of mining permits in the forest area of the Leuser Ecosystem Area becomes a contradiction; on the one hand, the Leuser Ecosystem Area has been designated as a rich area of biodiversity, but on the other hand, the granting, issuance, or recommendation of mining permits continues to be managed in the same way. The Leuser Ecosystem Area covers an area of 2,260.186 hectares in 13 districts and cities in Aceh. Mount Leuser National Park in Aceh is part of the Leuser ecosystem area, which covers a total area of approximately 624.388 hectares, or 28% of the total area that lies in the West Aceh district or city. Nagan Raya, Southwest Aceh, South Aceh, Subulussalam, Singkil, Central Aceh, Gayo Luwes, and Southeast Aceh.

As a basis for legality in the forestry consolidation process, the Forestry Minister's Decree No. 276/Kpts-II/1997 has been issued on the establishment of a Mount Leuser National Park covering 1,094.692 ha cultivated in the province of Aceh and North Sumatra. In the decision that Mount Leuser National Park consists of (1) Mount Leuser Margasatwa Ashram (416,500 ha); (2) Kluet Margasitwa Ashram (20,000 ha); (3) Kappi Margasatwa Ashram (142.800 ha); (4) Secondary Margasathwa Ashram (60.600 ha); (5) Western Rarkatwa Margasetwa Ashram (51.000 ha); (6) Southern Rarhatwa Markasatwa Ashram (82.985 ha); (7) Gurah Tourist Park (9.200 ha).

According to data obtained from the Forest Area Management Room of the Ministry of Environment and Forestry of the region of Aceh until March 2021, the area of the Leuser Ecosystem Area according to its respective functional division is: (1) Nature Reserve (307.01 ha), (2) Margasatwa Refuge (81,390,78 ha), (3) TN (624,911,07 ha), (4) Buru Park (31,339,46 ha), 5) HL (913,261,10 ha), 6) HPT (34,204,23 ha), 7) HPT (231,081,00 ha), 8) Water Bodies (8,422,50 ha), 9) APL (327,416,52 ha), 10) No Data (1,23 ha). The total forest area of the Kel Territory in Aceh is 2,252,334,91 ha.

But the reality is that many parts of the Leuser Ecosystem Area bordered by protected forests and conservation forests are used as both legal and illegal mining land. While the Mining Power licensee has been in a forest conservation area, it means that the

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20 Triono Eddy, Analisis Yuridis Pengelolaan Kawasan Ekosistem Leuser di Wilayah Nanggroe Aceh Darussalam, Jurnal Doktrin Vol. 3, No. 6 Juli 2015, UMSU.
area should not be used for mining. According to the results of the Swadaya Society Institute report on GeRAK Aceh from 2015 to 2019, 80 mining enterprise permissions that reach an area of 434,485 ha have been recommended by the Ministry of Environment and Forestry to be withdrawn and 70% of them have already been issued withdrawal schemes by the regional government, leaving only 105 mining permits that are predicted to be reduced. According to the results of the study by the Mineral and Coal Monitoring Team of the Government of Aceh of 105 Mining Enterprise Permissions remaining area (2339,478 hectares), 83,139 hectares entered the area of the Leuser Ecosystem Area and 124,569 hectares are in the protected forest area.

This is the contradictory situation that is happening in Aceh, where the Governor of Aceh has issued various policies that have sparked a wave of protests and rejections, one of which is the granting, issuance, or recommendation of mining enterprise permits until 2019 based on information and data from the Aceh Mining and Energy Department related to mining permits for both metal and coal mining and non-metal mineral mining and coal non-metallic mineral mining and stone in the territory of Aceh, 185 mining companies have a Mining Enterprise License.

In just a few years since Aceh obtained the status of Special Autonomous Region through Act No. 11 of 2006, there has been an increase in the issuance of Mining Enterprise Permissions, according to data from the Aceh Energy and Mineral Resources Service until the year 2019. Mining permits for commodities Mineral Metal and Stone Bar in Aceh amount to 28 mining permits with a total area of 70,761,10 hectares, which is in some districts and cities. While mining of non-metallic minerals and rocks is known as C, by the year 2019, it had reached 252 mining implementation permits that were spread out in some areas. The abundance of illegal mining activities carried out by communities in the area of the Leuser Ecosystem Area indicates that the management of mining in the Leuser Ecosystem Area is still imperfect. The government of Aceh must undertake reconstruction efforts related to good mining governance to realize the development of Aceh that is environmentally sustainable.

From a background explanation and identification of the problem, it can be concluded that the problem is: what is the authority of the government of Aceh in the

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22 Mining and Energy Department of Aceh Province, accessed on November 5, 2023.
23 Ibid.
management of mines, and the management of mines by the government in the Leuser Ecosystem Area?

3 METHODOLOGY

The methods used are normative methods. Research using this method is often also called doctrinal law research. Normative law research is a method of legal research that is carried out by studying library materials or secondary data.\textsuperscript{24} Data consisting of primary materials, secondary materials, or tertiary data is then collected completely. The data is processed, organized, and grouped in classification according to the subject matter and understanding.\textsuperscript{25}

4 RESULTS AND DISCUSSION

4.1 GOVERNMENT AUTHORITY IN THE MANAGEMENT OF MINING IN THE LEUSER ECOSYSTEM AREA

The authority of the government in the concept of the rule of law derives from the rules of the laws in force. According to Huisman, the governing body cannot assume that it has its own governmental authority. The legislature gives authority not only to the government but also to officials and special bodies. As P. de Haan put it, the authority of government does not fall from heaven but is determined by the ethics of law.\textsuperscript{26}

Regarding the authority, in accordance with Article 10, paragraph 1 of Law No. 32 of 2004, it is affirmed that "the regional government in organizing the affairs of the government which is in its jurisdiction, except for the matters of government which by this law are determined to be the affairs of the government. "Further in paragraph 2 “In the organization of the affairs of government which become the authority of the region as referred to in paragraph 1, the regional government exercises its broad autonomy to regulate and manage its own government matters on the basis of autonomy and the duty of assistance”.

If referring to the idea that the regional government has authority over the exploitation of natural resources, the local government has the authority to issue permits for any activity in its territory. However, in its implementation, the authority for licensing

\textsuperscript{25} Soerjono and Abdurrahman, Op.Cit, pp. 56; Mukti Fajar and Yulianto Acmad, 2007, Dualism of Legal Research, UMY, pp. 130.
\textsuperscript{26} Ridwan HR, Law of State Administration, Yogyakarta, UII Press, 2011, pp. 103.
in certain areas is not fully granted to the region. This is found in Law No. 32 of 2009 on the Protection and Management of the Environment; because in the case of permits, it turns out that there are still some matters that fall within the competence of the Central Government.

Further, Article 2, paragraph (1) of the Agrarian Tree Act states: “On the basis of the provisions of Article 33, paragraph (3) of the 1945 NKRI Constitution and the matters as referred to in Article 1, the earth, water, and space, including the natural wealth contained therein, are at the highest level controlled by the state, as the organization of power of the whole people.”

In connection with this, AP Parlindungan further explains that the conclusions of Articles 1, 2, 3, 4, and 99 of the Agrarian Tree Act are all in the context of national resilience, as mentioned by Article 2, paragraph (4) of the Agricultural Tree Law: “The authority that belongs to the sovereign right of the State in paragraph (2) of this Article is used to the greatest prosperity of the people, in the sense of happiness, well-being, and independence in an independent, sovereign, fair, and prosperous Indonesian society and the rule of law.”

Thus, the government, in exercising its sovereignty over the state, shall endeavor to establish several legal institutions to comply with the provisions of Article 4 in the exercise of its duties, whether in terms of integrity, nationality; or not integrity and statehood, which facilitate the access of a person or entity to the benefit of a land but not as its owner. Subsequently, according to Constitutional Court Decision No. 002/Law-I/2003, the powers held by the state to maintain the right to dominate the state over natural resources were transformed in several forms, namely, the establishment of policy and management, regulation, management, and supervision.

The shift of authority in the management of mineral and coal mining has begun since the State of Indonesia changed its legal policy on the relationship of power between the Central Government and the originally centralised Regional Government to decentralization by handing over its extensive authority to the Autonomous Regional Government. The authority of the State to control the natural wealth of Indonesia is an attributive authority granted by the Basic Law of 1945. The first mining management

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27 AP Parlindungan in Nandang Sudrajat, Indonesian Mining Theory and Practice, Yogyakarta, Medpress Digital Publisher, 2013, pp. 38
28 Ibid.
arrangement in Indonesia was a Government Regulation replacing the Act that later became the Mining Act No. 37 of 1960.  

The Central Government Act of 1967, which formed the basis of the rules of authority for the management of mineral and coal mining in the era of the New Order, was still in force and was not amended in the period of post-reformation autonomy until 2009 through Act 4/2009. The authority of mining management of minerals and coal regulated in the Central Government Act 1967 with Government Regulation No. 32 of 1969 as its implementing regulations gives authority in mining administration to the Minister, namely the Minister of Energy and Mineral Resources. As mentioned in Article 4, paragraph (1) of the Act of Central Government of 1967, the Minister has the authority to exercise state control and arrangement of strategic and vital mineral mining enterprises.  

In the Central Government Act of 1967, mineral materials were divided into three categories, namely, the class of strategic mineral materials is later called mineral A, the next vital mineral material is called mineral B, and mineral materials that are not included in class A or B are further called mineral C. In the Central Government Act of 1967, the authority to manage mining in categories A and B is the authority of the central government, so it is centralistic, but for the supervisory authority for mineral C, it becomes the authority of the regional government level and can be handed over to the government of the district or city.  

Regional jurisdiction was originally regulated in the Minerba Act, where the authority to issue mining permits can be issued by the regional government or the district or city according to the location of the mining. However, in Article 35 of Act No. 3 of 2020 on Amendments to the Minerba Act, it is expressly stipulated that mining operations are carried out on the basis of permission from the Central Government. The arrangement has had implications for the regional authority to issue permits in the mining sector, as the authority of the regional government to issue mining permits is restricted.  

However, there is one interesting thing concerning the authority to issue mining permits, where the provisions of Article 35 para. (4) of Law No. 3 of 2020 stipulate that “The Central Government may delegate the power to grant business permits as referred to in paragraph (2) to the Regional Government of the province in accordance with the regulations of the legislation.” This provision implies the existence of an opportunity to involve the Provincial Regional Government in the issue of mine permits. It becomes an

30 Abrar Saleng, *Op.Cit.*, hlm. 70
interesting explanation when the provisions of such articles directly use the phrase delegation, whereas general provisions in the law usually use the sentence submitted or otherwise.

The authority derived from the attribution and delegation may be entrusted to the body or officers who are not in a position to exercise the authority themselves. The characteristic of the authority acquired by delegation is that the responsibility of the claimant held by the delegate is transferred to the delegator; so the delegation cannot use that authority again unless there is a withdrawal by adhering to the contarius actus basis.31

In the Explanation of Law No. 3 of 2020, in particular the explanation to Article 35, paragraph (4), the phrase “can” contained does not explicitly mean the ability of the region to manage mining. That is, given the characteristics of the delegation authority mentioned above, there is still authority held by the provincial government in issuing mining permits, even if the form of permits is limited.

Of course, the Regional Government no longer has the authority to oversee other forms of mining permits as referred to in Article 35, paragraph (3) of Act No. 3 of 2020, given that the powers it currently has are very limited. The involvement of the regional government in the mining sector should not only be limited to the issuance of people's mining permits and mining aid permits but also relate to research, inventory, granting people's mining permits, mining license aid, construction, surveillance, and dispute settlement. However, it does not give the entire authority, but only the limits of authority of a distinct nature that take into account the conditions and potential of the region.

If you look at the description of the letter of the Director-General Minerba 1481/30.01/DJB/2020, then the authority for the management of mining mines becomes the authority of the Central Government. However, the provisions of Article 35 (4) of the Minerba Amendment Act relating to forms of authority in the field of mining to the Regional Government require more specific clarification. The problem of “attraction” authority between the central government and the regional government will be difficult to solve if we link it with the existence of regional autonomy. Typically, there will be competition of authority for licensing, policymaking, regulation, and financial division between the Central Government and the Regional Government, which will attract the distribution of income over the use of natural resources such as mining.

Under Article 140 of Law No. 4 of 2009, it is stated that the supervision of mining activities is in line with the system of decentralization and regional autonomy, where decentralization is an autonomous process, that is, the process of granting autonomy to the people in a particular region. The issue of mining licenses can be addressed since the legislation of Act No. 4 of 2009 is the implementation of decentralization in the framework of good mining practices, where the district or city government has the authority to issue mining permits. However, in its implementation, there are various issues that are one of the reasons for the transfer of the authority to issue mining permits to the Central Government and the Provincial Government, in addition to the problem of low legal certainty and investment certainty for investors due to the rise of the investment climate in Indonesia, unstable political and legal conditions aggravated by corruption, and still weak regulatory conditions.

According to Gerald S. Major, decentralization and regional autonomy are two sides of a single currency. The existence of decentralization in its entirety is still stipulated in Act No. 4 of 2009, but since the enactment of Law No. 23 of 2014 on Regional Government (Act No. 23 of 2004), government affairs in the field of energy and mineral resources are no longer the competence of the district or city government but cease at the level of the provincial government, as affirmed in Article 14 paragraph (1) of the Act of 23 of 2014, namely “Maintenance of the administration of forestry, marine, as well as energy and mineral resources shared between the Central Government and the Provincial Government.”

According to the provisions of Article 4 of Law No. 3 of 2020 above, especially paragraph (3), the supervisory function is carried out by the Central Government and is further confirmed in Article 140 of Law No. 3 of 2020, namely, “The Minister supervises the implementation of mining business activities carried out by mining business license holders, and special mining operation permit.

Special Mining Operation Permit as Contract/Agreement Operation Continuation, People’s Mining Permit, Mining Assistance Permit Letter, Transportation and Sales Permit, or Mining Services Permit The existence of Law No. 3, 2020, increasingly strengthens the authority of the Central Government in the activities of mining enterprises and furthers the intervention of enterprise activities in the autonomous regions.

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32 Rizkyana Zaffrinda Putri “A Legal Political Study on Changes in the Authority to License Mining and Coal Enterprises in Indonesia from Act No. 32 of 2004 to Law No.23 of 2014 on Regional Governance”, Diponegoro Semarang University Law Faculty Thesis, pp. 100-107, 2015.
Regional Government, which is supposed to participate in the control and supervision of the wealth of natural resources in its own autonomous territory, is increasingly deprived of its authority by the Central Government.

Seeing the limitations of the space of movement of the regional government in Act No. 3 of 2020 surely raises questions about the legal utility of such legislative changes. Self-use is one of the foundations of mining law, as contained in the provisions of Article 2 of Law No. 4 of 2009. The meaning of this base of benefit is the compatibility of the concept with the utility of law proposed by Jeremy Bentham, who has the view that the law must provide benefits or have a useful nature for the people (to serve utility). The existing mining law should move to create intergovernmental synergy instead of putting the central and regional governments on different paths for sustainable development.

But of course, the Mineral and Coal Act leads towards centralization, while the Constitutional Court, in its decision No. 10/Law-X/2012, considered that the division of government affairs of an optional nature should be based on the spirit of a constitution that grants wide autonomy to the regional government. The Constitutional Court states that the district has jurisdiction in determining the mining territory, the mine area, as well as the boundaries and extent of the mining area license. Therefore, the phrase “after coordination with the regional government” in Article 6, paragraph (1) letter e, Article 9, paragraph (2), Article 14, paragraph (1), and paragraph (2), Article 17, Act No. 4 of 2009 is changed to “after determined by the local government. In this case, the MK explicitly states that the division of government affairs in the Constitution is a broad autonomy and acknowledges that the management of mineral and coal resources has a direct impact on the region, but with the presence of the Mineral and Coal Act, gradually returns to the centralistic direction.

Regarding the aspect of authority, on the one hand, the organizer of the state has the authority to manage the mining, but on the other, he also has the power to maintain environmental sustainability, so in the context of his responsibility, he emphasizes the responsibility to preserve the environment. It is stated in Article 67 of the Environmental Protection and Management Act that everyone is obliged to maintain the sustainability of

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the functioning of the environment as well as to control pollution and/or damage to the environment. Article 68 of the Law on the Protection of Environmental Management states that there is an obligation to manage and maintain the continuity of the functions of the living environment properly, accurately, and openly, in compliance with the provisions of the standards or criteria of raw materials for environmental damage.\textsuperscript{35}

Mining is a form of exploitation of natural resources that requires special attention, so it is important to pay attention to the principles or legal foundations contained in environmental management in order to create harmony between cause and effect. The legal basis for the management of the living environment is explicitly regulated in the Law on the Protection and Management of the Living Environment; this law becomes one of the sources of environmental law that includes authority over the management and protection of the environment.

Forest management and mining activities in forest areas should be synergistic and mutually supportive. Synergy of activities is necessary to maintain the integrity of ecosystems and to maintain ecosystem balance. Thus, the synergy of such activities can support the improvement of the welfare of the people as well as the preservation of the living environment. Synergy activities that can be undertaken in forest areas include (1) protection of areas; (2) inventory of potential areas; (3) research and development to support the functioning of the area; and (4) adjustment of programs between forestry and mining in areas to be mined.\textsuperscript{36}

The regulations in the forestry and mining sectors today are dominated by legislative regulations of a command-and-control nature characterized by the presence of certain standard requirements for granting permits and sanctions for breaches. This is as laid down in Law No. 11 of 1967 on the Mining Tree Rules, Law Number 5 of 1990 on the Conservation of Life, and Law Number 41 of 1999 on Forestry and its Rules of Implementation. The loading material regulated in these laws still feels nuanced command and control, so it is considered not to drive the world of investment and not pro-poor.\textsuperscript{37}


\textsuperscript{36} Reyhandhi Alfaq Muslim and Fatma Ulfutan, Environmental Protection in Copyright Law, Indonesia State Law Review, Vol. 5 No. 2, October 2022.

\textsuperscript{37} Gunardi, Ahmad Redi, Luthfi Marfungah, Reconstruction of Forest Loan Permit for Mining Activities in Indonesia”, Jurnal Era Law, Vol. 19 No. 1, 2021, pp. 298
Policy formulation with the command and control approach is ineffective due to nine weaknesses: First, instrument command and control require policy formulation to have a comprehensive and accurate policy of the way things work and the capacity of an activity. Second, the instruments of command and control do not provide incentives for companies to exceed the minimum standards established, especially companies that have invested in environmental control and forest management technology. Third, instrument command and control enforcement is expensive and difficult. This is very important because it has a negative impact on its reliability. Even though the bodies are bound to enforce them, most of the settlement regimes do not have adequate resources. Fourthly, the instrument of command and control is vulnerable to political manipulation.\[38\]

In connection with the development of requirements instruments in the mining sector, the Government of Indonesia has ratified the Minamata Convention into Act No. 11 of 2017 on Minamata Validation Convention on Mercury (Konvensi Minamata Mengenai Merkuri). This Convention is an international agreement designed to protect human health, aimed at managing mercury efficiently, effectively, and coherently, while its members are striving for its total elimination. It regulates, inter alia, the acquisition and trade in mercury and mercurous compounds, including the mining of mercury, its use in industrial products and processes, and its management in small-scale gold mining.\[39\]

As proof of the Indonesian Government’s commitment to mercury management, Presidential Decree No. 21 of 2019 on the National Plan of Action for Mercury Reduction and Elimination was issued. In Article 6, paragraph (1) of the Presidential Regulations of the National Plan of Action for Reduction and Elimination of Mercury, it is stated that the national plan of action for the reduction and elimination of mercury shall be the reference for the Governor and the Mayor to draw up the Regional Action Plan for the elimination and reduction of mercury. It is reaffirmed by Article 15, Letters a and b, that the governor and mayor shall be obliged to prepare a regional action plan for the prevention and eradication of mercy for a period not exceeding 1 (one) year from the date of entry into force of the President’s Regulations.

The increased exploitation of natural resources in the Leuser Ecosystem Area has attracted special attention from around the world. As a result, the UNESCO World Heritage Committee listed the tropical rainforest of Sumatra, including Mount Leuser

\[38\]Ibid.

National Park, as a world heritage site in danger on June 22, 2011. Even at the last meeting of the 41st UNESCO World Heritage Committee, held in Krakow, Poland, on July 4, 2017, the UNESCO World Heritage Committee still held its status as a World Heritage site in danger for the tropical rainforest of Sumatra, including Mount Leuser National Park, in view of the threat.40

According to the Forestry Act, forest areas are divided into three groups: conservation forests, protected forests, and production forests. Further Part Three: Forest Management Article 4, Paragraph (1): All forests within the territory of the Republic of Indonesia, including the natural wealth contained therein, are controlled by the state for the greatest prosperity of the people.

The same article (2) states that forest ownership by the state, as referred to in paragraph (1), authorizes the government to: 1) regulate and manage everything relating to forests, forest areas, and forest products; 2) establish the status of a particular area as a forest area or forest area as not a forest zone; and 3) regulate and establish the legal relations between people and forests, as well as regulating the legal acts concerning forestry.

Article 6 (1) The Law No. 41 of 1999 establishes that forests have three functions, namely: a. conservation function; b. protection function; and c. production function. (2) The government defines forests on the basis of the following basic functions: (a) conservation forest, (b) protection forest, and (c) production forest. Article 8(1) and (2) state that the government may designate a specific forest area for special purposes necessary for the general interest, such as research and development, education, and training, as well as religious or cultural. Article 8 (3) states that if a forest area with a special purpose, as referred to in paragraph (1), does not alter the basic function of the forest area as described in Article 6,

Article 35 of the Forestry Act states that under certain circumstances and as necessary to preserve or restore the sustainability of natural resources and ecosystems, the government may suspend exploitation activities and close national parks, forest parks, and natural tourist parks. In particular and necessary circumstances are the conditions and situations that occur in a nature conservation area due to natural disasters (mountain eruptions, toxic gas discharges, fire hazards), and damage resulting from continuous

exploitation that can endanger humans and flora and fauna in particular. Article 32 of Act No. 5 of 1990 affirms that national parks are managed by a zoning system consisting of core zones, exploitation zones, and other zones as required. The core zone is a part of the national park area that is fully protected and does not allow for any human activity that causes change.

If the Chamber of Representatives of the People's Republic of Indonesia does not establish an agreement on the mine, then the Minister of Forestry has no right or legality to issue Hulu Wood Processing Industry or permit the extension of the mine. Similarly, Presidential Decree No. 28 of 2011 on the Use of Protected Forest Areas for Mining has regulated the procedural licensing of mining in protected forests.

In accordance with the Forestry Act as clarified by Presidential Decree No. 28 of 2011 on the Use of Protected Forest Areas for Underground Mining, Article 2 paragraphs (1) and (2) state that within the protected forest area, mining activities may be carried out by the method of underground mining without changing the provision and function of the trees in protected forest areas.

The use of forest areas for mining activities through the Forest Area Loan Permit mechanism raises problems at the level of implementation, especially the ability of borrowers to make claims and return the borrowed object to the forest area as it is used. The conservation area is left unconserved or unmanaged. In many cases, individuals working in government agencies (executive, legislative, law enforcement, and others) are involved in various scenarios of forest resource destruction in the conservation area where they serve. It cannot be denied that the mining sector also has a share in the destruction of forest resources in conservation areas.

The unconserved and unmanaged conservation areas resulted in the emergence of opportunities for new groups to take advantage of the conservation area. Entrepreneurs and new political elites from the area around the conservation area are working together with new agencies from outside to drain resources in these conservation areas. They cleverly exploit the relatively poor population around the conservation area to loot the area. This elite moves behind the scenes but receives the greatest profit. Those with great and powerful power are hard to touch by the law. These elites form a very solid network and build an "underground government" that moves the "underground economy" in the

region. The areas of Mount Leuser National Park that are affected by these conditions are Besitang-Langkat and the valley of Alas-Kutacane.42

4.2 THE ROLE OF THE LEUSER ECOSYSTEM AREA IN THE DEVELOPMENT OF ACEH

The anthropocentric vision is embraced and lived by environmental law and the concept of sustainable development.43 It's because all concepts, including law, are abstractions. In the process of abstraction, there will always be a reduction that brings a gap, whereas the abstract process will produce power, the logical consequence of which is that power will lead to domination and exploitation. As we know, that abstraction can only be done by humans. So it's not surprising that environmental laws and the concept of sustainable development are so anthropocentric because they're human-conceived.44

This is the basis of thought that directs the legislators to agree to the policy that the natural resource use law must pay attention to the balance of development for future generations. The limits of sustainable development are conscious and planned efforts to integrate environmental, social, and economic aspects into development strategies to ensure the integrity of the living environment as well as the safety, capabilities, well-being, and quality of life of present and future generations.45 The implementation of sustainable development is carried out through efforts to preserve the function of the living environment by establishing a network that leads to the maintenance of the survival of the supporting power and the fitness of the living environment. In terms of the purpose of the preservation of the living environment to support the life of human beings, and other living creatures, and the balance between the two.

The environmental issues of the present era are not apart from those formulated by the World Commission on Environment and Development, which formulated a “global agenda for change,” which includes the formula for“(1) a long-term environmental strategy for the development of the 21st century; (2) proposing development patterns that take into account the interrelationship between population, natural resources, the environment, and economic development; (3) suggesting even better ways for the

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42 Ibid.
44 Ibid.
international community to respond to environmental challenges; and (4) contributing to a common perception of long-run environmental issues and the follow-up necessary to develop the environment in the forthcoming decade's agenda of work.

Regarding the concept of sustainable development, Sutikno and Maryunani quoted the Brundtland Commission as saying that sustainable growth is “development that meets the needs of the present generation without jeopardizing the ability of future generations to meet their needs.” So sustainability is an effort to carry out development while always taking into account the future of future generations.

The concept of sustainable development has actually been introduced since 1972 at the Stockholm Environment Conference (UN Conference on the Human Environment 1972). However, the new Sustainable Development Goals were declared in 2015. In this case, there are at least 17 goals consisting of 241 indicators set and agreed upon as sustainable development goals in the Sustainable Development Goals. But what is fundamental to living environmental affairs is set out in Objective 13 (Taking Rapid Action to Deal with Climate Change and Its Impacts)” and Objective 15 (Protecting, Restoring, and Improving the Sustainable Use of Land-based Ecosystems, Managing Forests sustainably, Stop Deforestation, Restore Land Degradation, and Stop Loss of Biodiversity).

The rationality and wisdom of the management of the habitat are demonstrated by the consciousness of the administrator to obey the general principles of the law in the field of the environment, which are the basic principles in the management, and through the constraints of such sustainable development, both the process and the purpose of development remain measured, so as to avoid the continuation of the development that validates all means to meet the needs of the present and future generations and otherwise proceed rational and wise development only for the present generation.46

Mount Leuser National Park was established by Decree of the Minister of Agriculture No. 811/Kpts/UM/1980 with an area of 792.675 ha, and by Decision of the Ministry of Forestry No. 276/ Kpts-VI/1997 of May 23, 1997, on the Appointment of Mount Leusser National Park, the area increased to 1.094.692 ha. Mount Leuser National Park ranked highest for conservation contributions to conservation areas throughout the

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46 I Made Arya Utama, Environmental Conflict Management for Achieving Sustainable Development This paper was presented at a national seminar between the Environment Parliament Watch (EPW) institutions of East Indonesia at Hotel Patricia Sanur Denpasar, February 7–18, 2007, pp. 8-9
Indo-Malayan region. Mount Leuser National Park received two global status ranges: as a Biosphere Reserve in 1981 and as a World Heritage Site in 2004. Both statuses were established by UNESCO and the World Heritage Committee on the proposal of the Government of Indonesia, after a rigorous selection process.

The province of Aceh, through its specialty in managing the Leuser Ecosystem Area, should also include the Leuser Ecosystem Area as one of the important points in the preparation of the Medium-Term Development Plan. However, according to the 2018-2022 Aceh Middle-term Development Plan, the Leuser Ecological Area did not fall under any of the planning on development. However, this Mid-term Development Plan of Aceh must be integrated with the results of the Strategic Environmental Survey of the Middle-term Plan of Development of Aceh because the policies, plans, and programs contained in the Mid-Term Strategic Development Plan are considered to formulate strategic issues and establish programs in the medium-term development plan that have an impact on the environment. Thus, the Strategic Environmental Survey of the Aceh Medium-Term Development Plan is an integral part of Aceh’s medium-term development plan in an attempt to realize sustainable Aceh development.

Based on the agreement of the parties involved in the preparation of the Strategic Environmental Survey of the Medium-Term Development Plan of Aceh, the strategic issues related to the Strategy Environment of Aceh are: (1) degradation of forests or land, among others, due to the presence of wild deforestation, (2) Energy constraints; pollution and environmental degradation (especially soil and water), (3) hydrometeorological and geological disasters; land displacement (farming, forest, plantation, and wetlands), and (4) social conflict (land and fauna); biodiversity. If you look at the description of these strategic issues from the perspective of the Leuser Ecosystem Area, pollution and the transfer of forest land functions to mining are aspects that should be taken into account by the Government of Aceh.

The failure of the Leuser Ecosystem Area to be included in the Mid-term Development Plan of Aceh represents a regression to the commitment of the Government of Aceh to protect and manage the Leuser Ecosystem Area as described in Article 150 of the Act of the Aceh Government. This is due to the abstract view of the role of the Leuser Ecosystem Area in the development of Aceh because an understanding of environmental development for the long term has not been necessary, so the Leuser Ecosystem Area is
only an area that is continuously exploited by its natural resources without regard to the impact that may be caused in the future.

5 CONCLUSION

The city of the Government of Aceh in Mining Management has not been implemented as required by the legislation because the obligation to draw up a Regional Action Plan for Reducing and Eliminating Mercury is derived from the Mercure Act, so the government of Aceh has been contrary to the duty to draft a Regional Plan of Action for the Reduction and Eradication of Mercury and control the exploitation of space in the mining sector.

The Regional Space Plan set out in the Act of Aceh No. 19 of 2013 does not accommodate Kel as one of the four National Strategic Areas in Aceh. This is a threat because, with the absence of the Leuser Ecosystem Area in the Aceh Territory Space Plan, the Regional Government is opening the door for activities to activate in this area, considering that the Leuser Ecosystem Area is no longer a shelter.

As is well known, the territorial planning plan is an instrument that will guide the development of the territory over the next 20 years. several mining management functions by the Government of Aceh are organized through the Mount Leuser National Park Hall in the area management tasks, among others: zoning, preparation of activity plans, monitoring, and evaluation of the management of the national park area; investigation, protection, and protection of the national park area; and empowerment of the community around the national park area. Through his specialty in managing the Leuser Ecosystem Area, Leuser should also include the Ecosystems Area as one of the key points in the preparation of the Medium-Term Development Plan.
REFERENCES

Sonny Keraf, Environmental Ethics, Compass, Jakarta, 2006.


AP Parlindungan, Indonesian Mining Theory and Practice, Yogyakarta, Medpress Digital Publisher, 2013.


Data from the Forestry Area Management Room of the Ministry of Environment and Forestry of the Aceh Region was obtained as of March 1, 2021.


I Made Arya Utama, Environmental Conflict Management for Achieving Sustainable Development This paper was presented at a national seminar between the Environment Parliament Watch (EPW) Institute of East Indonesia and the Patricia Sanur Denpasar Hotel, February 7–18, 2007.


Rizkyana Zaffrinda Putri, Legal and Political Study on Changes in the Authority to License Mining and Coal Enterprises in Indonesia from Act No. 32 of 2004 to Law No. 23 of 2014 on Regional Governance, Faculty of Law of Diponegoro Semarang University, pp. 100-107, 2015.

Safutra Rantona, Oekan Soekotjo and Iriana Bakti, Deforestation The Leuser Ecosystem: Everonmental And Poverty In Aceh, 5th Converence on Communication, Culture and Media Studies. Padjadjaran University, 2019.


