FUNDAMENTAL PRINCIPLES OF MINERAL AND COAL RESOURCES MANAGEMENT IN THE REGIONAL AUTONOMY ERA

Azmi Fendri , Busyra Azheri
Faculty of Law Andalas University, Padang
Pancasila No.10, Belakang Tangsi, Kec. Padang Baru., Kota Padang
E-mail: azmifendri75@gmail.com; Phone Number: (0751) 72985.

Received: 22/09/2022; Reviewed: 17/10/2022; Accepted: 12/12/2022.

DOI: https://doi.org/10.24815/kanun.v00i0.28324

ABSTRACT

The management of mineral and coal resources is affected by the shift in the paradigm of regional government administration, which now emphasizes aspects of regional autonomy. Law Number 23, 2014 concerning Regional Government, which genuinely adheres to the maxim of maximal regional autonomy, appears to be incompatible with Law Number 3, 2020 concerning the revision of Law Number 4, 2009 on Mineral and Coal Mining. In practice, this results in a variety of interpretations of the nature and significance of regional autonomy, which ultimately has repercussions for the management of mineral and coal resources. This research aims to investigate the significance and nature of regional autonomy in connection to the management of mineral and coal resources. This is doctrinal legal research and a philosophical approach is applied based on legal principles. The findings are the fundamental principles of managing mineral and coal resources in the future era of regional autonomy focuses on returning to the principle of being a state, which means that the use of mineral and coal resources must be in accordance with the ideals of the state outlined in paragraph 4 of the Preamble of the 1945 Constitution, aspects of environmental harmonization and spatial alignment and the application of the principle of proportionality in regulating government and local government authorities.

Keywords: management; mineral and coal resources; regional autonomy

INTRODUCTION

Philosophically, the management of mining activities cannot be separated from Article 33 paragraph (3) of the 1945 Constitution stating that the land, water, and natural resources contained therein are under the control of the state and utilized for the greatest prosperity of the people. Thus, in the section on remembering of the Law Number 3, 2020 regarding Mineral and Coal Mining (later called Mineral and Coal Mining Law), it is emphasized that the minerals and coal contained

Kanun Jurnal Ilmu Hukum
Vol. 24, No. 3, (December, 2022), pp. 196-211.

in the mining jurisdiction of Indonesia are non-renewable natural resources as a gift from God Almighty who plays an important role in fulfilling the lives of many people, thus its management must be controlled by the state to provide real added value to the national economy in order to achieve prosperity and welfare of the peasantry. As a result, the government, as a regulator and facilitator in the implementation of mining activities, should organize in such a way that not only permit-holding corporations but also the community, can benefit from these natural resources.

In the context of regional autonomy, the replacement of Law Number 22, 1999 with Law 32, 2004 has shifted the paradigm of regional government from centralization to decentralization. In the system of the unitary state of the Republic of Indonesia, decentralization is the transfer of government authority to autonomous areas for the regulation and management of government matters. As a result of the autonomy enacted by Law Number 32, 2004, decentralization of control of mineral and coal mining is required in the context of central-regional relations.

Article 10 paragraph 3 of Law Number 32, 2004 emphasizes the notion of decentralization by stating that the government's jurisdiction extends to areas such as foreign policy, defense, security, justice, national monetary and fiscal, and religion. The contents of this article indicate that the regional government's authority extends beyond the previously listed areas. Thus, the phrasing of Article 10 paragraph 3 of Law Number 32, 2004 is implicitly interpreted to mean that the mineral and coal mining sector falls under the authority of the regional administration. Paragraphs (1), (2), and (3) of Article 17 of Law Number 32, 2004 indirectly stress the regulation of central and regional authorities in the usage of natural resources, particularly minerals and coal. This means that Law Number 32, 2004 establishes the groundwork for managing natural resources, particularly mining. However, its future arrangements will be strictly controlled by a special law which is the Mineral and Coal Mining Law. For this reason, this study will cover some of the fundamental principles of mineral and coal resource management.

The publication of Regional Government Law Number 23, 2014 has repercussions for the regulation of authority in the mineral and coal mining sector. In Law Number 23, 2014, government affairs in the realm of mineral and coal mining are included. Article 9 paragraph 3 in conjunction with Article 13 paragraph 1 of Law Number 23, 2014 defines concurrent government affairs as government affairs that are divided between the Central Government and provincial and district or city regions according to the principles of accountability, efficiency, externality, and

national strategic interests. Article 11(1) of Law Number 23, 2014 specifies that concurrent government affairs, which are the responsibility of the regions, consist of Mandatory Government Affairs and Optional Government Affairs. Government Affairs in the Mineral and Coal Mining Sector, Including Optional Government Affairs as per Article 12 paragraph 3 letter e of Law Number 23, 2014. While the control of government affairs in the field of mineral and coal mining is further specified in the annexes that are an integral component of Law Number 23, 2014.

RESEARCH METHOD

The fundamental issue of this research is the integration of the fundamental principles of managing mineral and coal resources with the dynamics of the connection between the center and the regions in the context of regional autonomy. This research is, in essence, legal or doctrinal research. Recognizing that the problem of central and regional relations in the utilization of mineral and coal resources in an era of regional autonomy is extremely complex and can be studied from a variety of disciplines within and outside the legal sciences, this research is also inter and multidisciplinary in nature. seen as a system.

This research focuses on legal research that is supported by the results of studies in non-legal sciences that require theoretical contributions for the purposes of analysis, compilation, and application of a legal system, specifically concerning the fundamental principles of managing mineral and coal resources in the context of regional autonomy. In legal research, the two research topics are discussed using the statutory approach and the legal history approach.

Data sources are obtained from libraries and field research. A literature review is conducted on a variety of legal sources that can be categorized into three categories. Primary legal materials are in the form of the 1945 Constitution, MPR Decrees, and implementing regulations pertaining to the regional government. Secondary legal materials are literature, research results, seminar papers, and articles pertaining to regional autonomy. Tertiary legal materials dictionaries, encyclopedias, etc., pertaining to the use of mineral and coal resources in the context of regional autonomy.

The legal materials discovered through additional research are described based on the topic matter examined. The description is based on "positive legal content and structure" (Philipus M. Hadjon, 1994), which pertains to the application of the concurrent principle in the administration of government affairs in the field of spatial planning and mineral resources, beginning with Article

Kanun Jurnal Ilmu Hukum
Vol. 24, No. 3, (December, 2022), pp. 196-211.

18 of the 1945 Constitution, Law Number 12, 20011, Law Number 3, 2020 and Law Number 23, 2014. The mentioned legal material is then determined using an interpretation method in an effort to provide an explanation for ambiguous phrases or terms in a legal document pertaining to the subject under investigation so that others can comprehend it. (Yudha Bhakti Ardhiwisastra, 2000).

RESEARCH OUTCOME AND DISCUSSION

1) The Significance of Regional Autonomy within the Context of Indonesia's Unitary State

In the course of its history, Indonesia's conception of regional governance, which originated during the Old Order period, has seen various transformations. The end of the New Order regime on 20 May 1998 was followed by elections in 1999. The 1945 Constitution, which was previously considered sacred/untouchable and could not be changed by the People's Consultative Assembly (later called the MPR), is amended for the first time on 19 October 1999, when nine articles of the 1945 Constitution were amended during the MPR General Session.

Later, on August 18, 2000, at its annual session, the MPR amended and/or added provisions to the Constitution of 1945. As per one of the revisions and additions to Article 18, the Unitary State of the Republic of Indonesia is subdivided into provinces, and the provinces are subdivided into regencies and cities, each of which has a regional administration governed by the law. act. According to the concepts of autonomy and co-administration, provincial, regency, and municipal regional governments administer and manage their own governance issues. Regional administrations at the provincial, county, and municipal levels have a Regional People's Representative Council whose members are elected in general elections. Governors, Regents, and Mayors are democratically elected as the respective heads of the province, district, and municipal regional governments.

The regional government exercises the greatest possible autonomy, with the exception of government affairs that are statutorily defined as government affairs. The regional government has the authority to enact regional regulations and other rules in order to carry out autonomy and coadministration responsibilities. The organization and methods of regional government administration are governed by statute. The relationship of authority between the central government and provincial, district, and city regional governments is governed by law, taking into account the particularities and diversity of regions; Financial relations, public services, and

the utilization of other natural resources between the central government and regional governments are governed by law and carried out in a fair and harmonious manner.

The state acknowledges and respects special or special regional government bodies governed by statute. As long as they are still alive and in accordance with the development of society and the unitary state principles of the Republic of Indonesia, the state recognizes and respects community units governed by customary law and their traditional rights.

Due to alterations to Article 18 of the Constitution of 1945, the Elucidation of the 1945 Constitution, which has been used as a reference for governing local administration, is no longer legitimate. Thus, the only constitutional sources for local government are Article 18, Article 18A, and Article 18B. In addition to eliminating confusion, the deletion of the elucidation of Article 18 is concurrently a restructuring of the 1945 Constitution, both from the historical perspective of providing clarifications and eliminating inconsistencies.

The purpose of its change is to further define the division of regions under the Unitary State of the Republic of Indonesia, which consists of provinces, regencies, and cities within provincial borders. Article 18 paragraph 1 is related to Article 25A regarding the territory of the Republic of Indonesia.

Conceptually or legally, the new regional government provisions of the 1945 Constitution contain new concepts and political directions for regional governance. This is evident from the following principles and provisions:

1. Article 18 paragraph 2 of the Constitution states that the fundamental principle of self-regulation and management of government matters in accordance with the principles of autonomy and co-administration, which confirms that regional government is an autonomous government within the Unitary State of the Republic of Indonesia. Only independent governance exists in regional government (including co-administration). Article 18's new principle is more in accord with the notion of regions developing regional administrations as autonomous units in democratic regions. In regional regulations, government affairs are no longer centralized. Governors, regents, and mayors merely as regional autonomous administrators.
2. Article 18 paragraph 5 states the notion of exercising as much autonomy as possible. Regional autonomy was restricted in favor of a centralized authority, despite the fact that the Constitution of 1945 had traditionally desired the greatest possible autonomy.

Kanun Jurnal Ilmu Hukum
Vol. 24, No. 3, (December, 2022), pp. 196-211.

To confirm the consensus that existed at the time of the 1945 Constitution's formulation and to prevent the centralization of autonomy, it is essential that Article 18 the fifth paragraph only recognizes the broadest feasible implementation of autonomy. Regions have the authority to regulate and administer all government matters and functions not statutorily assigned to the center.

3. The regional power and diversity concept in Article 18A paragraph (1). This notion argues that the creation and content of regional autonomy are determined by specific regional conditions and variety.
4. Article 18B paragraph 2 provides the notion of recognizing and respecting community entities governed by customary law and their historic rights. What does customary law mean? A community is a legal group founded on customary law or traditions, such as villages, clans, hamlets, and others. Customary law communities are territorial or genealogical community units that have their own assets, have citizens who can be separated from members of other legal communities and can act inwardly or outwardly as an independent and self-governing single legal entity (legal subject). These community organizations are not only acknowledged but also respected.
5. Article 18B paragraph 1 gives the notion of recognizing and respecting unique and distinct regional administrations. This clause enables the existence of exceptional and unique government units (both at the provincial, district, and city or village levels).
6. The representative body is elected directly within the general election unit is worded in Article 18 paragraph 3. In the 2004 general election for DPRD members, this was realized. Each as the head of government, governors, regents, and mayors are elected democratically.
7. The central-regional relations principle must be implemented fairly and in harmony as worded in Article 18A paragraph 2. This idea is enshrined in Law No. 32 of 2004 pertaining to Regional Government, which specifies that relationships involving authority, finances, public services, usage of natural resources, and other resources must be conducted equitably and harmoniously.

Pursuant to Article 18 of the Constitution of 1945, regional autonomy is a constitutional requirement that must be carried out. The MPR Decree Number XV/MPR/1998 regarding the implementation of regional autonomy reaffirms these principles. On the basis of the MPR Decree Number XV/MPR/1998, regional autonomy is implemented primarily in accordance with the following principles:

1. The implementation of regional autonomy gives broad, real, and accountable authority to the regions in a proportionate manner which is realized through the regulation, distribution, and equitable use of national resources as well as regulation of central and regional financial developments.
2. The implementation of regional autonomy is carried out with the principles of democracy and taking into account regional diversity.
3. Implementation of autonomy, regulation, distribution, and utilization of equitable national resources, and central and regional financial balances within the framework of maintaining and strengthening the state on an ongoing basis which is strengthened by the oversight of the DPRD and the community.

The aforementioned concepts are then detailed in Law Number 32, 2004, which has been superseded by Law Number 23, 2014. In the General Explanation of Law Number 23, 2014, the principles of regional autonomy are that the provision of as much autonomy as possible to the regions is intended to expedite the achievement of community welfare by enhancing services, empowerment, and community participation. In addition, the regions are expected to be able to increase their competitiveness through broad autonomy in the global strategic environment by taking into account the principles of democracy, equity, justice, privileges, and specificities, as well as the potential and diversity of regions in the system of the Unitary State of the Republic of Indonesia. On the basis of the notion of a unitary state, the greatest possible autonomy is granted to the Regions. In a unitary state, only the state government or national government has sovereignty; the regions lack sovereignty. No matter how great the autonomy granted to the Regions, the Central Government will retain control. In a unitary state, the Regional Government is therefore a single entity with the National Government. In accordance with this, the Regions' developed and implemented policies constitute an intrinsic part of the national policy. The distinction comes in how to leverage regional wisdom, talent, innovation, competitiveness, and

creativity to achieve these national goals at the local level, which will in turn contribute to the attainment of national goals as a whole.

On the basis of the General Explanation of Law Number 23, 2014, the following concepts of regional autonomy can be deduced:

1. The principle of broadest autonomy in the sense that the area is given the authority to manage and regulate all government affairs in accordance with the provisions of this legislation. Regions have the capacity to establish regional policies to offer services, encourage participation, begin initiatives, and empower communities in an effort to improve the well-being of the populace in accordance with real and accountable principles.
2. The principle of real autonomy states that the management of government affairs is based on duties, authorities, and obligations that actually exist and have the ability to grow, live, and develop in line with the region's potential and distinctiveness.
3. The principle of responsible autonomy is autonomy, which in its execution must be truly in accordance with the purposes and intent of providing autonomy, which is essential to empower the region, including enhancing the welfare of the people, which is the core of national objectives.

The principles of autonomy outlined in Law Number 23, 2014 must be reflected in the implementation of regional autonomy, which means that these principles serve as the basis for the administration of regional government in Indonesia, particularly the management of mineral and coal resources. However, this is not reflected in the relationship between the center and the regions, which does not grant districts/cities any power over the management of mineral and coal resources.

Theoretically, there are two fundamental principles that can be applied when separating authority: function and politics. On the basis of function, authority is separated between managing funds and managing functions. In other words, for each level of government, the function of regulating and managing is precisely specified for each sort of power. In contrast, if the fundamental premise adhered to is political division, then the regulatory and management functions are not explicitly split across tiers of government. Thus, in terms of a single sort of

sectoral authority, the same regulatory and management tasks are owned by two distinct levels of government. (Benjamin Hoessein, 2002)

Articles 6, 7, and 8 of the Mineral and Coal Mining Law have regulated the division of jurisdiction between the central government and regional governments based on regulatory and administrative functions. The Center focuses on national regulatory functions, such as the stipulation of national policies, the formulation of laws and regulations, the stipulation of national standards/guidelines and criteria, the stipulation of a national minerals and coals mining licensing system, and the stipulation of Mining Areas as an essential component of mining activities. In addition, the federal government mandates special mining licenses based on national interests (IUPK). In the meantime, provinces and regencies/cities regulate according to their level of authority, such as by enacting regional laws and regulations, granting IUP, resolving community conflicts, guiding and supervising reclamation, and exercising other authorities proportional to their level of authority.

Based on this distribution of authority, the authors are of the opinion that a number of factors could impede the decentralization of authority within the mining industry. The central government's authority to determine WP and WUP might be an impediment to the implementation of decentralization. Even while local governments have the right to issue IUPs, they cannot do so if the center has not recognized the area as a mining area. Even though the regions have control of the mining sector, this authority is restricted, indicating insufficient decentralization. New regions have complete autonomy or complete decentralization in smallholder mining, including the decision of the WPR and the issue of the IPR.

Observing the foregoing, one may conclude that the ability of the regions to regulate and administer the management of mineral and coal resources in accordance with the Mineral and Coal Mining Law is still limited. The new regions have complete control or total decentralization over the management of smallholder mining. It can be concluded that restricting regional authority in mining regulation is based on differences in the potential of natural resources in each region, hence, regions without mineral and coal resources can also benefit from natural resource management via natural resource revenue-sharing funds from the mining sector.

Supposedly, the principles of autonomy outlined in Law Number 23, 2014 must be represented in the implementation of regional autonomy, which indicates that these values serve

Kanun Jurnal Ilmu Hukum
Vol. 24, No. 3, (December, 2022), pp. 196-211.

as the basis for the administration of regional government in Indonesia. The issue is whether the principles of regional autonomy have been implemented consistently in drafting the provisions of Law Number 23, 2014.

2) Natural Resource Management Principles in the Context of Regional Autonomy

Article 33 paragraphs (1), (2), (3), and (4) of the 1945 Constitution have outlined the constitutional principles of natural resource management which are the family principle, the notion of government control, the utility principle, efficiency principle, justice principle. sustainability principle, independence principle, balance principle, and archipelago or nationality principle. It has influenced the thinking of governments and non-governmental organizations (NGOs) in both developed and developing countries to improve the management of natural resources and the environment in a way that promotes the principles of justice, democracy, and the sustainable functioning of natural resources and the environment. (I. Nyoman Nurjaya, 2008).

These concepts are an expansion of those outlined in the Stockholm Declaration, Rio Declaration, and Johannesburg Declaration. The Stockholm Declaration, which was established on June 16, 1972, produced 26 principles in response to environmental problems that existed prior to 1972, the Rio Declaration, which was issued on June 14, 1992, produced 27 principles which were the development of the Stockholm Declaration in implementing sustainable development, and the Johannesburg Declaration, which was issued on September 4, 2002, produced a political commitment from all levels of the international community.

On the basis of an examination of the three declarations, numerous universally applicable principles and ideas of environmental management within the framework of sustainable development can be identified, namely:

1. Right to a healthy environment
2. Intergenerational and intergenerational equity
3. Sovereignty over natural resources not to course damage to the environment of other states or no areas beyond national jurisdiction
4. Sustainable use of natural resources
5. Eradication of poverty
6. Prevention of environmental harms
7. Precautionary principles

8. Duty to cooperate in the spirit of global partnership
9. Command the heritage of humankind
10. Public participation
11. Access to information
12. Environmental impact assessment and informed decision making
13. Peaceful settlement of the dispute
14. Equal, expanded, and effective access to judicial and administrative proceedings

In controlling the authority of the government and local governments over the usage of mineral and coal resources, these concepts are incorporated, including the principles of justice, democracy, and sustainability.

3) Application of the Principle of Proportionality in Organizing Government and Regional Government Authorities for Mineral and Coal Resources Utilization

The application of the principle of proportionality to the utilization of mineral and coal resources departs from the formulation of Article 18 A of the 1945 Constitution, which expressly emphasizes that the relationship of authority between the center and the regions in the utilization of mineral and coal resources must be carried out in accordance with the law. In addition, the relationship between the center and the regions regarding the utilization of mineral and coal resources remains based on the philosophy of Article 33 paragraph 3 of the 1945 Constitution, which stipulates that all natural resources, including minerals and coal, must be utilized for the greatest benefit of the community.

To determine the meaning of the proportionality principle, one must deviate from the philosophical definition of justice. Justice is the most essential virtue in human life because its value cannot be swapped for any other. According to Dennis Lloyd, "the law without justice is a sham, if not a contradiction." Nevertheless, according to Hans Kelsen, the pioneer of pure legal theories, justice is an irrational ideal that reflects the emotional response of individuals or groups to positive legal ideas; consequently, justice does not merit philosophical investigation (Edgar Bodenheimer, 1978). Regardless of variations regarding the nature and meaning of justice, it is undeniable that from ancient times to the present, people have always desired justice.

In addition, according to Aristotle's work "Nichomachean ethics" (Raymond Wacks, 2008), justice is the most important virtue. According to Aristotle, fairness is characterized by treating others proportionally. This principle breaks from the idea that "equal things are treated

similarly, and unequal things are handled proportionally." Meanwhile, Ulpianus (Raymond Wacks, 2008) describes justice as "*justitia est constants et perpetua voluntas ius suun cuique tribuendi*" (justice is the will that continues to give each one what is due). This implies that justice can be palpable if a person receives an amount equivalent to what he deserves. This concept is essentially a beginning point for defining the proportionality principle in the context of executing the interaction between the center and the regions in the usage of mineral and coal resources.

In accordance with the aforementioned viewpoint, Peter Mahmud Marzuki (Peter Mahmud Marzuki, 2003) refers to the principle of proportionality with the phrase "equitability contract" that includes components of justice and fairness. The definition of "equitability" is a relationship that is equal, not one-sided (unilateral), and fair means that the contractual relationship is essentially proportional and fair. In the context of the relationship of authority between the center and the regions in the utilization of mineral and coal resources, it is essentially also a contractual relationship, as the relationship was born from an agreement or political compromise, as stated in Article 18 paragraph (1) of the 1945 Constitution that provides "The Unitary State of the Republic of Indonesia is divided into provincial regions, and the provincial regions are further divided into regencies."

In the concept of a unitary state, state authority over territory or region is controlled only by the central government, which possesses components of cohesion and cohesion. In general, unitary nations have a government structure that can be centralized (power centralization) or decentralized (a division of power). The principle of a unitary state is that the central government holds the highest authority over all state issues. Even if the delegation of power, authority, or autonomy to the regional government is carried out in this manner, the delegation is a unanimity with the central government retaining the greatest authority. (Agus Salim and Andi Gadjong, 2007).

Thus, the concept of a unitary state is both a philosophical and legal foundation for central and regional interactions in the usage of mineral and coal resources based on the proportionality principle. The application of the concept of proportionality does not imply that the center and regions have equal rights and responsibilities (authority), nor does it imply that the dominant party (central government) can exploit this inequality to impose their will (power) on other parties (local government).

The essence of the principle of proportionality, a philosophy of justice, does not imply that the allocation of rights and obligations is equal, so the division of authority between the central government and regional governments must continue to be founded on a "different" basis. The application of the concept of difference to the distribution of authority departs from the understanding that there is the necessary authority that is the exclusive duty of the central government. As the holder of executive authority, the central government has the authority to control and manage government affairs, including the mining sector.

In addition, the difference principle can be utilized as a criterion for determining whether or not this authority can be decentralized. As previously mentioned, the government authority that cannot be decentralized is the central government's authority over foreign affairs, defense, and security, fiscal and monetary, justice, and religion. There are three ways to wield this type of authority namely by making pure centralization, deconcentrating, and co-administration. The decentralized authority as a source of concurrent authority can be exercised by pure centralization as the government is still responsible for certain matters, and deconcentrates the power of the central apparatus in order to be institutionalized in the regions, decentralization, and co-administration.

For this reason, the concept of difference as a component of the principle of proportionality is extremely rational in the organization of authority between the center and the regions, particularly in the usage of mineral and coal resources. This is due to the fact that national policies that have an impact on national interests as a whole are the responsibility and duty of the central government. Regional governments, which are legally an extension of executive power, are granted the right to control and manage their territories according to externality, accountability, and efficiency standards.

Consequently, the allocation of authority between the central government and regional governments in the development of mineral and coal resources is centered on two factors. First, in unitary nations, the model of authority division applied in reality is based on function. The central government is responsible for the bulk of the nation's regulatory function. However, provinces and districts or cities regulate according to their respective levels of jurisdiction. Second, in accordance with the regulatory authority possessed, each level performs the management function in accordance with the authority possessed either the authority to regulate by the central government, there are types of authorities that are authority owned by a province,

districts, and cities, the authority to administer within the framework of decentralization, the authority to administer within the framework of de-concentration, the authority to administer within the context of co-administration, and the authority to administer within the context of centralization can all be developed. In federal and state countries, it is implemented comprehensively in the constitution to reduce contradictions and ambiguities. The proposal is that the distribution of authority based on the functions of regulating and managing be spelled out in detail in the legislation. As currently implemented, government policies tend to favor the center and weaken the regions.

The implementation of the proportionality concept is also found in the mining profit sharing provision of Law Number 33, 2004 resembles the proportionality principle. The application of the proportionality principle to the determination of mining profit distribution is consistent with the principle of distributive fairness. The goal of distributive justice is to distribute goods that can be possessed in accordance with the abilities and needs of each member of society. In this context, distributive justice is the basis for determining the distribution of mining revenues, with the assumption that mining-producing regions must receive a larger share than non-producing regions, as it is tied to the hopes, desires, and aspirations of the local community regarding their mining potential. Therefore, it is logical that, given the potential for natural wealth, people have high expectations for its management, hence the requirements of the third paragraph of Article 33 can be fulfilled. However, it is vital to provide information on mining management, particularly the amount of mineral and coal mining results obtained annually, which is not the same every year. This transparency will give local governments access to the value of revenue-sharing monies for mining, particularly minerals and coal.

In addition, the proportional concept can be employed when assigning responsibility for recovery. Mineral and Coal Mining Law regulates that recovery obligation is included in reclamation and post-mining plans. As previously established, the reclamation and the post-mining plan are an effort to restore the land's condition so that it can serve its designated purpose. Plans for reclamation and post-mining are required for Production IUP and Production IUPK applications. Reclamation and post-mining plans are technically the duty of the Production Mining Permit holder and the Production Mining Permit holder, but the Minister, Governors, and Regents or Mayors supervise the implementation of reclamation in accordance with their

respective authorities. In other words, efforts to restore land conditions to be functioning properly to their designation are not solely the responsibility of the mining company, but also the responsibility of the government, in this regard, the Minister, Governors, Regents, or Mayors, as they carry out the evaluation and approval of the reclamation plan and supervise the implementation of reclamation by mining companies. Thus, it can be said that the allocation of recovery obligations is based on the principle of proportionality that is the weight of this responsibility is proportional to the level of achievements by the parties. The higher their accomplishment, the more responsibility they must carry, and vice versa.

CONCLUSION

To sum up, the fundamental principles of managing mineral and coal resources in the future era of regional autonomy are to return to the principle of being a state, meaning that the use of mineral and coal resources must be in harmony with the ideals of the state that is written in the fourth paragraph of the 1945 Constitution's Preamble which provides the state must realize social justice for all the people of Indonesia. This idea is then codified in Article 33, Section 3 of the Constitution of 1945. The aspect of environmental harmonization means that mining policies must be aligned with environmental management policies by creating coordination patterns between levels of government to minimize environmental damage caused by mining activities. In addition, the aspect of spatial planning harmonization means that spatial planning norms are used as the primary norm in the implementation of mining activities and apply the principle of proportionality in the regulatory framework.

Bibliography

Akhmad Fauzi, *Ekonomi Sumber Daya Alam dan Lingkungan Teori dan Aplikasi*, Penerbit, Gramedia Pustaka Utama, Jakarta, 2005.

Amrah Muslimin, *Beberapa Asas dan Pengertian Pokok Tentang Administrasi Dan Hukum Administrasi*, Penerbit Alumni Bandung, 1985.

Ateng Syafrudin, *Pasang Surut Otonomi Daerah*, Binacipta, Bandung, 1985.

Bagir Manan, *Beberapa Hal di Sekitar Otonomi Daerah sebagai Sistem Penyelenggaraan Pemerintahan*, Majalah Padjajaran Jilid V, Bina Cipta Bandung, 1974.

-------, *Hubungan Antara Pusat dan Daerah Menurut UUD 1945,* Pustaka Sinar Harapan, Jakarta, 1994,

-------, *Menyambut Undang-Undang Baru Pemerintahan Daerah*, Bandung, 1999,

------- *Wewenang Propinsi, Kabupaten dan Kota dalam rangka Otonomi Daerah*, Makalah dalam Seminar Nasional : Pengembangan wilayah dan Pengelolaan Sumber Daya Alam di Kawasan Pesisir dalam rangka Penataan Ruang, FH. UNPAD, Bandung, 2000.

Bayu Surianingrat, Desentralisasi dan Dekonsentrasi Pemerintahan di Indonesia Suatu Analisa. Dewa Rici Pres, Jakarta, 1980.

-------- *Wewenang, Tugas dan Tanggung Jawab Camat,* Pacto, Jakarta-Surabaya, 1981.

Boenjamin Hoessein, Dalam Otonomi Daerah, Jurnal. No.6, 2002.

Dennis A. Rondinelli, "*Decentralization, Territorial Power and the State A. Critical Response*", dalam *Development and Change, Newbury Park and New Delhi*: Sage, London, Vol. 21, 1990.

Djohermansyah Djohan, *Reformasi Otonomi Daerah, Makalah pada Seminar Nasional "Pemerintahan di Daerah dan Permasalahan Tentang Otonomi Daerah dalam Era Reformasi di Negara Indonesia"*, Fakultas Hukum Universitas Surabaya, 21 September 1998.

A. Peterson and E.G. Plowman, *Business Organization and Management*, Revied, Homewood, III, Richard. D. Irwin. Inc, 1984.