

## Mining Business Permit (IUP) Regulations & Policies That Provide Legal Certainty and Ease of Investing in the Mining Sector in Indonesia

**Wahyudi Siswanto**

Faculty of Law, Trisakti University, Jakarta, Indonesia, E-mail:  
[wahyuditriski@gmail.com](mailto:wahyuditriski@gmail.com)

**Abstract.** *The promulgation of Law Number 23 of 2014 concerning Regional Government, revoked the authority of City/Regency Regional Governments in granting Mining Business Permits (IUP) and henceforth this authority was given by the Central Government to Provincial Governments. However, in practice, the implementation of this policy is still faced with many obstacles, including a lot of overlap in the granting of IUPs before the new policy was adopted. Therefore, it is important to offer a policy model for granting IUPs that provides more legal certainty and makes it easier to invest in the mining sector in Indonesia.*

**Keywords:** *Business; Investing; License; Mining.*

### 1. INTRODUCTION

The philosophical basis and constitutional basis for the management of Natural Resources (SDA) (Ali, 2012a), especially in the mining sector, is stipulated in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) (Farhan, 2022), which states that, "Earth, water and the natural wealth contained therein is controlled by the state and used for the greatest prosperity of the people" (Situmorang, 1994). Based on the provisions in Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution, the State gives authority to the government (Friedmann et al., 1919), both the central government and regional governments in managing natural resources, including mining products starting from regulation (Latif & Ali, 2011), exploitation (structuring) and supervision (Hayati, 2015). Thus, only the state has the right and authority to control "earth" and "water" including minerals and coal as well as the natural wealth contained therein" to be used only for the prosperity of the people (Mertokusumo, 1991). Furthermore, based on the provisions of Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is a guide that every administration of government affairs within the framework of the Republic of Indonesia must be coordinated (Priyatno & Aridhayandi, 2018), including mining affairs, as well as matters relating to regulations (rules) (Anwar & Negara, 2004), administrative areas (besturen) and in the context of supervision (toezichthouden) (Rahardjo, 2009).

As an implementation of the provisions of Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution, Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) and Law Number 4 of 2009 concerning Mineral and Coal Mining in conjunction with Law Number 3 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) (Salim, 2012).

Based on Article 2 of the UUPA which states that the State has the authority to control and regulate all natural resource wealth contained in Indonesia to be managed as well as possible in order to achieve prosperity and prosperity for the Indonesian people (Sujamto, 1986). Then Article 8 of the UUPA states that, "On the basis of the State's right to control as intended in Article 2, the extraction of natural resources contained in the earth, water and outer space is regulated" (Soekanto et al., 1983). Based on the provisions in Article 2 UUPA and Article 8 UUPA above, the implementation of natural resource management in the mining sector requires separate regulations in the form of mining legislation (Basah, 1995). In the field of mineral and coal mining, a derivative of Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution is the Mineral and Coal Law (Soemardi, 2010). Based on the formulation of Article 4 paragraph (1) of the Mineral and Coal Law (Atmosudirdjo, 1981), it is stated that "Minerals and coal as non-renewable natural resources are national assets controlled by the state for the greatest welfare of the people" (Hadjon, 1998).

The state's control over natural resources as economic commodities directly contributes to improving the country's economy (Rumokoy, 2013). Research conducted by Noor Wahyuningsih stated that "in fact, the mining and quarrying sector is still a mainstay for Indonesia in supporting economic growth and employment (Marzuki, 2008). This can also be seen from the still high interest in investment in the mining and quarrying sector (Marzuki & Sh, 2021). This condition occurs because Indonesia still has abundant natural resources, such as coal commodities" (Notohamidjojo, 1970). Quoting Indonesia Investments, "Indonesia is one of the largest coal producers and exporters in the world (Putri & Wicaksono, 2016). Since surpassing Australia's production in 2005, Indonesia has emerged as a major exporter of steamed coal (Wahyuningsih, 2019). The majority of steam coal exported consists of medium grade (5100-6100 cal/g) and low grade (less than 5100 cal/g), and most of the demand comes from China and India (Sudrajat, 2013). "Based on information provided by the Ministry of Energy and Mineral Resources, it is estimated that Indonesia's coal reserves will be exhausted in the next 83 years if current production levels continue" (Yamin, 1960).

The trend of increasing investment interest in the mining sector is related to mining business licensing issues in Indonesia (Kusumaatmadja, 1970). The legal regime that regulates licensing issues in the mining sector, apart from being regulated in the Mineral and Coal Law (Mahfud, 2020), is also regulated in the Regional Government Law, which distributes authority in granting Mining Business Permits (IUP) to the Central Government (Ministry of Energy and Mineral Resources) and/or Regional Governments within the framework of autonomy area (Badrulzaman, 1997).

Based on the provisions of Article 4 paragraph (2) of the Minerba Law, it stipulates that "Mineral and coal exploitation by the state as intended in paragraph (1) is carried out by the Central Government and/or Regional(Soepipto & Attamimi, 1998)". Government" In relation to the authority of Regional Governments in mining

management (Rasjidi et al., 1993), there has been a change in the scope of authority following the promulgation of Law Number 23 of 2014 concerning Regional Government (hereinafter referred to as the 2014 Regional Government Law) (Friedman, 1975). The enactment of the 2014 Regional Government Law provides several changes to regional government affairs in managing mineral and coal mining. Authority over the mineral and coal mining sector, which previously belonged to Regency/City Regional Governments, has now been taken over by the Central Government and given to Provincial Governments through the 2014 Regional Government Law (Hardjasoemantri, 1990). Article 14 paragraph (1) of the 2014 Regional Government Law regulates new provisions that reads "The administration of government affairs in the fields of forestry, marine and mineral resources and energy resources is shared between the Central and Provincial Governments" (Sarna & Latif, 2015). Then, Article 14 paragraph (5) of the 2014 Regional Government Law stipulates the provision that "Producing and non-producing Regency/City regions receive a share of the profits from carrying out government affairs as referred to in paragraph (1)" (Rapar, 1991). Based on these provisions, the authority to administer mineral and coal, namely in terms of granting IUPs which previously belonged to the Regency/City Government, was revoked by the Central Government and subsequently this authority was given to the Provincial Government (Asshiddiqie, 2005). The revocation of the authority of City/Regency Regional Governments in granting IUPs is based on the principles of externality, accountability, efficiency and national strategic interests (Jimly Asshiddiqie, 2021).

As an effort to overcome the disharmony between the 2014 Regional Government Law and the Mineral and Coal Minerals Law, on April 22 2015, the Ministry of Energy and Mineral Resources established several policies, including (Nurlinda, 2016):

- 1) Ask the Governor, Regent and Mayor to revoke the Non CNC (Clean and Clear) IUP;
- 2) Request that the Regent and Mayor immediately hand over the IUP licensing documents in the Regency/City to the Governor in accordance with the mandate of the 2014 Regional Government Law;
- 3) Handover of PMA IUP management from the Regent/Mayor/Governor to the Minister, along with supporting documents;
- 4) The Provincial Government establishes a One Stop Integrated Service (PTSP) and a legal umbrella for licensing;
- 5) The Governor can form a UPT in the Regency/City to carry out guidance and supervision;
- 6) The Governor increases the number of IT functional employees (recruiting Regency/City IT personnel and IT training) for employees;
- 7) The Governor begins to develop and strengthen the mineral and coal mining database;

8) Ask the Ministry of Home Affairs to resolve the issue of Regency/City

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The results of the Evaluation of Deviations in the Issuance of Mining Business Permits (IUP), the DPD RI Recommendation Paper, among other things, stated that there were legal irregularities in the licensing sector at the Regency/City Regional Government level, and the low level of legal certainty and investment guarantees for investors (Irwansyah, 2020). Indonesia's abundant potential for natural resources (SDA) invites the interests of various parties who want to gain maximum profits in a short time through uncontrolled exploitation of natural resources based solely on considerations of economic capitalization (Syaukani & Thoari, 2010). Natural resource management is only oriented towards maximum economic profit without paying attention to social aspects and environmental interests (Arif, 2014). More specifically in the field of mineral and coal mining, its management orientation has so far only been seen as a source of foreign exchange and employment, a real contribution to tax revenues from the mining sector (Nurcholis, 2007). It has not yet been part of policy considerations regarding the impact of ecological damage and decline in environmental quality, as well as the impact on loss of life and property (Kelsen & Muttaqien, 2006). Different policies issued tend to be sector specific, which can lead to duplicate policies. In addition, mining management in many areas has repeatedly led to ongoing conflicts between communities and concession owners, and between those illegally (Kelsen, 2017). Problems that often start with disputes over ownership and management of land give rise to criminal problems in the form of community resistance and property damage, so that many community members are suspected and convicted, at least being on the Wanted List (DPO) (Hendratno, 2009). In many areas, Regents/Mayors use their territorial powers to gain benefits from their policies. The incumbent Regent/Mayor can change the state system to have direct, exclusive and discretionary power over state assets. Regent/Mayor can control bribery practices in the bureaucracy and provide rewards or sanctions to politicians, bureaucrats, and even private parties (Hartana, 2017).

Information provided by the Director General of Mineral and Coal at the Ministry of Energy and Mineral Resources stated: There are many overlapping permits given by regional governments (Sumaryono, 1995). This generally results from the existence of overlapping authority between the central government and regional governments (Sumaryono & Sumaryono, 1995). For example, mining permits located in forest areas, where the IUP is issued by the regional government. However, permanent forest use rests with the central government (Fattah, 2013). Overlapping IUPs with other permits

also often results in poor communication at the regional level (Gunawan, 2008). This is partly due to changes in regional heads, where many regional heads issued permits that conflicted with using the previous IUP. When a regional chairman changes, there are generally problems. "The new regent or mayor places a person who is not in line with the previous regional head" (Lukman, 2018).

Legal cases caused by overlapping IUPs issued based on the Mining and Coal Law (IUPs were issued before the 2014 Regional Government Law was promulgated) can be observed in Supreme Court Decision Number 343 K/TUN/2021. The legal dispute began with the decision of the Regent of East Barito Number 392 of 2012 Reducing the Expansion Area of Mining and Exploration Business Permits to become PT Padang Mulia Mining and Production Business Permits on 23 October 2012. With the issuance of this Decree, the mining area of PT. Padang Mulia, which was originally 2,433 hectares, was then reduced to 2,037 hectares. The reason the Regent of East Barito issued the decision to reduce the size of PT Padang Mulia's mining area was based on the consideration that there were similar activities or permits from other parties, on areas of land that had the same permits as PT. Padang Mulia, namely PT. Creative Creation Award (ESDM, 2015).

Based on the description above, the author is interested in conducting research using a Mining Law perspective. The scope of the research is limited to the interest of knowing and getting an overview of the implications of overlapping IUPs from the aspects of legal certainty and ease of mining business/investment in Indonesia. The title chosen is, "Mining Business Permit (IUP) Regulations and Policies That Provide Legal Certainty and Ease of Investing in the Mining Sector in Indonesia" (Runggandini, 2012).

## **2. RESEARCH METHODS**

### **Research Type**

Research based on the focus of the study can be divided into (a) normative research and (b) empirical research. According to Irwansyah, normative research is understood as research to test applicable norms or provisions. Research regarding, "Mining Business Permit (IUP) Regulations and Policies That Provide Legal Certainty and Ease of Investing in the Mining Sector in Indonesia", is a type of doctrinal research, or also called normative legal research. Meanwhile, the nature of the research used is descriptive-analytical, namely research that describes and describes the secondary data that the author obtained in this research (Campbell & MacDougall, 1967).

The approaches used in this research are the statutory approach and the case approach (McLeod, 2020). According to Irwansyah, "a statutory approach or juridical-normative approach is carried out by examining all statutory regulations related to the problem (legal issue) being faced." In this research, a legislative approach was taken on Law Number 4 of 2009 concerning Mineral and Coal Mining and Law Number 23 of 2014 concerning Regional Government. Meanwhile, a case approach was taken regarding the Supreme Court Decision Number 343 K/TUN/2021 (Runggandini, 2012).

### **Data**

Based on the type and form, the data required in this research is secondary data obtained through literature study. Literature data/secondary data is classified into three legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials include the products of legislative institutions. Secondary legal materials are also used in this research to provide explanations of primary legal materials, including various literature on Mining Law, supported by scientific books, articles, journals, scientific papers, results of previous research.

### **Data source**

The data sources used in this research consist of three legal materials, namely:

1. Primary legal materials, namely legal materials that are binding, and consist of:
  - a) The 1945 Constitution of the Republic of Indonesia;
  - b) MPR Decree Number IX/MPR/2001 concerning Agrarian Reform and Natural Resources Management;
  - c) Law Number 5 of 1960 concerning Basic Agrarian Regulations;
  - d) Law Number 4 of 2009 concerning Mineral and Coal Mining;
  - e) Law Number 23 of 2014 concerning Regional Government;
  - f) Government Regulation Number 22 of 2010 concerning Mining Areas;
  - g) Government Regulation Number 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities;
  - h) Supreme Court Decision Number 343 K/TUN/2021.
2. Secondary legal materials, which provide explanations of primary legal materials, research results, and work from legal circles.
3. Tertiary legal materials or supporting legal materials, basically include; materials that provide guidance on primary legal materials and secondary legal materials, better known as legal reference materials, examples of legislation and legal dictionaries.

### **Data collection technique**

The method used to collect data is by library research. Literary research was carried out at the Trisakti University Faculty of Law Library and the National Library in Jakarta (Runggandini, 2012).

### **Data analysis**

The research data obtained was compiled systematically and then analyzed qualitatively. The legal materials obtained are analyzed using descriptive analytical methods, namely analysis carried out by understanding and assembling the data that has been obtained and arranged systematically, then conclusions are drawn (Nasional & Kehakiman-RI, 1995).

### **How to Draw Conclusions**

The method of drawing conclusions using deductive logic, namely drawing from a general statement to specific statements (Tanya, 2011). How to draw conclusions using deductive logic, namely a method of drawing general conclusions from specific statements. The way to draw conclusions is done by analyzing the two main issues raised, namely how the legal implications and consequences of overlapping Mining Business Permits (IUP) have on legal certainty and ease of business/investment in the mining sector in Indonesia (Supreme Court Decision Study Number 343 K/ TUN/2021), and what is the ideal form or role model (role model) of an IUP that provides more legal certainty and ease of business/investment in the mining sector in Indonesia (Wowor, 2014)

## **3. RESULTS AND DISCUSSION**

### **3.1. Legal Certainty Theory**

Aristotle in his book *Rhetorica* explains that the aim of law is to seek justice solely and the content (content material) of law is determined by ethical awareness regarding what is said to be fair and what is said to be unfair. Containing this theory, law has a sacred and noble task, namely justice by giving each person what they are entitled to receive and requiring separate regulations for each case. For this to happen, according to this theory, the law must create what are called *algamene regels* (general regulations/provisions) where these general regulations/provisions are needed by society for the sake of legal certainty (Tanya & Bana, 2011).

Legal certainty is very necessary to guarantee peace and order in society, because legal certainty has the following characteristics:

- a. There is external coercion (sanctions) from the authorities who are tasked with maintaining and fostering social order through their tools.
- b. The nature of the law applies to anyone (Harsono, 2015).

Certainty is shown in a person's outward attitude, it does not matter whether a person's inner character is good or bad, what is considered is how his or her outward actions are. Legal certainty does not impose sanctions on someone who has a bad mental attitude, but what is sanctioned is the manifestation of that bad mental attitude, or turning it into a real or concrete action (Desmon, 2019). Normative legal certainty is when a statutory regulation is created and promulgated with certainty, because it regulates clearly and logically. It is clear that in *Mariam* it does not give rise to doubt (multiple interpretations), and it is logical that in *artisan* it becomes a system of norms with other norms, so that it does not clash or cause conflict with norms.

Norm conflicts arising from uncertainty in legislative regulations can take the form of norm contestation, norm reduction, or norm distortion (Budiman, 2007b).

The theory of legal certainty was put forward by Gustav Radbruch who stated that "everything that is done must have a purpose or purpose". Laws are made with a purpose, this purpose is the value that people want to achieve (Budiman, 2007a). There are three main purposes of law, namely: justice for balance, certainty of determination, benefit for happiness. According to O Notohamidjojo, legal certainty relates to the objectives of law, namely: Protecting human rights and obligations in society, protecting social institutions in society (in a broad sense, which includes social institutions in the political, social, economic and cultural fields), on the basis of justice to achieve balance and peace and general prosperity (*bonum commune*) (Arsel, 2009). Authoritative laws are obeyed, both by legal officials and by *justitiabelen*, namely people who must obey the law (Rasyid, 2004).

The law will increase in authority if:

- a. Obtain support from the value system that applies in society. The law of one type of norm in the applicable value system will be more easily supported by other applicable social norms.
- b. Law in its formation of subject orders or legal officials, is not isolated from other social norms, in fact it is connected to applicable norms.
- c. Legal awareness of *justitiabelen*. The authority of the law will become stronger if there is new legal awareness.
- d. Official legal awareness of legal officials who are called to maintain the law and to be guardians of the law, legal officials must realize and understand that the authority of the law increases if their actions are orderly according to their authority and if they respect and protect the order of their bonds (*verbandсорde*) (Sutedi, 2010).

Meanwhile, according to Mochtar Kusumaatmadja regarding certainty, he stated the following: To achieve order in society, there must be certainty in interactions between people in an orderly society, but this is an absolute requirement for a living organization that goes beyond the boundaries of the present. That's why there are legal institutions, such as marriage, property rights and contracts. Without the certainty of law and order in the society that humans have created, it is impossible for humans to develop the talents and abilities that God has given them optimally in the society in which they live.

The opinion of legal experts is that the form of legal certainty is generally in the form of written regulations made by a body that has authority. Legal certainty itself is one of the principles of good governance. With legal certainty, citizens will automatically receive legal protection. Legal certainty requires the creation of general regulations or general rules that apply generally, and results in the duty of general law to achieve legal certainty (for the sake of order and justice for all Indonesian people). This is done to create a safe and peaceful atmosphere in the wider community and is strictly



enforced and implemented (Jonaedi Efendi, 2018).

### **3.2. Mining Business License (IUP)**

Article 1 number 7 of the Mining and Coal Law provides the formulation, "Mining Business License (IUP) is a permit granted to carry out a mining business". Meanwhile, in Article 1 point 6 of the Mining and Coal Law, it is stated that, "Mining Business is an activity within the framework of mineral or coal business which includes the stages of general investigation, exploration, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-mining" (Ujan, 2009).

In Article 4 of the Mineral and Coal Law, the classification of minerals is regulated based on mining business groups, as follows:

Mining businesses are grouped into:

1) Mineral mining;

2) Coal mining.

b. Mineral mining as referred to in paragraph (1) letter a is classified into:

1) Radioactive mineral mining;

2) Metal mineral mining;

3) Mining of non-metallic minerals;

4) Rock mining.

According to Nanang Sudrajat, "the legality of mining minerals according to Law Number 4 of 2009 concerning Mineral and Coal Mining, in substance only comes in one form, namely a mining business permit (IUP). This is different from the legality of exploiting mining minerals at the time of the enactment of Law Number 11 of 1967 concerning Basic Mining Provisions which consisted of various forms (Abdul & Ali, 2010), namely Mining Authorization (KP), Work Contract (KK), Coal Mining Concession Work Agreement ( PKP2B) for coal businesses, Regional Mining Permit (SIPD) for industrial minerals, and People's Mining Permit (IPR) for people's mining."

Mining businesses can be carried out in the form of Mining Business Permits (IUP), People's Mining Permits (IPR), and Special Mining Business Permits (IUPK). The provisions of Article 36 of the Mining and Coal Law divide Mining Business Permits (IUP) into two stages, namely: According to Abrar Saleng, "in order for the environment to maintain its ecological balance, a business permit is required. The mining permits are Mining Business Permits (IUP) for Exploration and IUP for Exploitation. This Mining Business License is granted in the form of: (a) IUP in the Mining Business Area (WUP); (b) IUPK in the State Reserve Area (WPN). Furthermore, "the prohibition on transferring IUPs is regulated in Article 93 paragraph (1) of the Jo Minerba Law (Saleng, 2004). Government Regulation Number 24 of 2012 concerning the Implementation of Mineral and Coal Mining Business Activities. "This transfer prohibition is intended so that IUPs and IUPKs are not traded like securities which is in direct conflict with the essence of the grant" (Ali, 2012b).

With the change in statutory regulations relating to regional government from Law Number 32 of 2004 to Law Number 23 of 2014, regulations regarding mineral and coal mining have also changed. The authority of the central government, provincial regional governments and district/city governments is contained in the Attachment to Law Number 23 of 2014 concerning the Division of Simultaneous Government Affairs between the Central Government and State and Regency/City Regional Governments. The authority of district/city governments in the Appendix to the Mineral and Coal Subsector Law has changed, meaning that district/city governments have lost the authority to grant IUPs (P. P. R. I. Nomor, 55 C.E.).

The authority of the Central Government, including the determination of mining areas in the context of state spatial planning. It consists of mining areas, municipal mining areas, state reserve areas, and special mining areas; determination of metal and coal mining permit areas and mining permit areas; identification of work areas for non-metallic minerals and rocks in states and waters greater than 12 miles; obtain a metal mineral, coal, non-metal and rock mining business permit; issuing mining industry business permits as part of foreign investment; in particular, issuing permits for minerals and coal; issue registration of mining permits to determine the production of metal mineral commodities and coal in each state; in the context of foreign investment, issuing mining permits for special production factories for processing and refining processing and refining plants or mining raw materials originating from other areas outside the place of entry; issue mining service business permits and registration certificates related to domestic and foreign investment operating throughout Indonesia; determining reference prices for metallic minerals and coal; management of mining inspectors and mining supervisors (P. P. Nomor, 23 C.E.).

The authority of the Provincial Government, including determining permitted areas for the excavation of non-metallic minerals and rocks within one area and an area up to 12 miles; issuance of metal mineral and coal mining permits related to domestic investment in regional mining permit areas located within one state, including up to 12 miles; issuance of non-metallic mineral and rock mining business permits related to domestic investment in the mining permit area of one country, including up to 12 miles; issuance of regional government mining permits for metal mineral raw materials, coal, non-metallic minerals and rocks within regional government mining areas; issuance of mining permits for special production plants for processing and refining within the scope of domestic investment; issuance of Mining Services Business Permits and Registration Certificates relating to Domestic Investment (PMDN) whose business location is in one country; setting benchmark prices for non-metallic minerals and rocks (P. P. Nomor, 22 C.E.).

### **3.3. Implications and Legal Consequences of Overlapping Mining Business Permits (IUP) on Legal Certainty and Ease of Mining Business/Investment in Indonesia (Study of Supreme Court Decision Number 343 K/TUN/2021)**

Indonesia is a country rich in Natural Resources (SDA), especially minerals and coal which must be managed well and used for the prosperity of the people. This is a constitutional mandate as stated in Article 33 paragraph (3) of the 1945 Republic of Indonesia Constitution that, "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people"(RI, 2004).

Based on the formulation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the constitution gives the state the authority to manage and control natural resources, which is realized in the form of state control. State control is the state's right to control natural wealth, and its utilization for the greatest prosperity of the people is defined as the legal ownership of natural wealth by the Indonesian people. The two meanings are one. Government control rights are a means, and maximizing human welfare is the ultimate goal of natural resource management, including the management of mineral and coal mining (Indonesia, 2009).

Furthermore, based on Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stated that "the Unitary State of the Republic of Indonesia is divided into provincial areas, and provincial areas are divided into regencies and cities, each of which is a province, district and The city has a regional government, which is regulated by law (U.-U. Nomor, 5 C.E.). Article 18 paragraph (2) then states that "Provincial, district and city governments regulate and manage government affairs themselves according to the principles of autonomy and assistance duties" (Nurlinda, 2008).

Regional autonomy empowers local governments to organize and administer their own territories. The dynamics of the development of the implementation of regional autonomy in Indonesia, especially in terms of the authority to manage mineral and coal mining, have changed after the promulgation of Law Number 23 of 2014 concerning Regional Government, replacing Law Number 32 of 2004 (Indonesia, 2002).

Based on Article 14 paragraph (1) of Law Number 23 of 2014, a new provision is stipulated, namely, "The administration of government affairs in the fields of forestry, maritime affairs, as well as energy and mineral resources is divided between the Central and Provincial Governments." Then in Article 14 paragraph (5) of Law Number 23 of 2014, it is stated that, "Producing and non-producing Regency/City regions receive a share of profits from the administration of Government Affairs as referred to in paragraph (1)". Based on these provisions, the authority to manage mineral and coal, namely in terms of granting Mining Business Permits (IUP), which was previously the authority and distributed also within the authority of the Regency/City Government was revoked by Law Number 23 of 2014, and subsequently the authority of the Regional City Government /The district is given to the Provincial Government (Farhan, 2022).

Amendments to the Regional Government Law as mentioned above have implications for a shift in the authority to grant IUPs which only falls under the authority of the Central Government and/or Provincial Governments. The division of government affairs in the field of minerals and coal between the Central Government and Provincial Governments is stated in the Attachment to Law Number 23 of 2014 concerning Regional Government letter (cc) concerning the division of government affairs in the field of energy and mineral resources in sub-affairs number 2 concerning minerals and coal (Indonesia, 2009).

In relation to the granting of IUP, the authority of the Central Government based on the attachment above is:

- 1) Issuance of Mining Business Permits (IUP) for metallic minerals, coal, non-metallic minerals and rocks to:
  - a. Mining Business Permit Areas located in cross-provincial areas;
  - b. Mining Business Permit Areas that directly border other countries;
  - c. The sea area is more than 12 miles.
- 2) Issuance of Mining Business Permits (IUP) for foreign investment.
- 3) Granting Special Mining Business Permits (Special IUP) for minerals and coal.
- 4) Providing registration of mining business permits and determining the production amount for each provincial region for metal mineral and coal commodities.
- 5) Issuance of Mining Business Permits (IUP) for special production operations for processing and refining mining commodities originating from other provincial areas outside the location of processing and refining facilities, or imported and in the context of foreign investment.
- 6) Issuance of mining service business permits and registered certificates for domestic investment and foreign investment whose business activities are carried out throughout Indonesia (Indonesia, 2002).

Meanwhile, the authority of the Provincial Government in granting IUPs includes:

- 1) Issuance of Metal Mineral and Coal Mining Business Permits (IUP) relating to domestic investment in regional permit areas for mining companies in one country, including waters up to 12 nautical miles (Farhan, 2022).
- 2) Issuance of Mining Business Permits (IUP) for non-metallic minerals and rocks related to domestic investment in a mining permit area within one country, including waters up to 12 nautical miles.
- 3) Issuance of regional government mining permits for metallic mineral raw materials, coal, non-metallic minerals and rocks in the local mining area.
- 4) Issuance of Mining Business Permits (IUP) for domestic investment specifically for processing and refining production businesses, where the mining raw materials come from the same state.
- 5) Issuance of Mining Services Business Permits and Registration Certificates relating to Domestic Investment whose business location is in the same country.

Based on the division of authority for issuing IUPs between the Central Government and Provincial Governments as described above, the policy direction for managing mineral and coal mining is explicitly formulated to facilitate efforts to do business/invest in the mining and mineral sector in Indonesia.

The capital and technology intensive nature of the mineral and coal mining business has encouraged the Government to make efforts to create a business climate that is accommodating to the entry of investors both in the context of Foreign Direct Investment (PMA) and Domestic Investment (PMDN). The policy adopted is to localize the issuance of IUPs for foreign investment only under the authority of the Central Government through the Ministry of Energy and Mineral Resources. Meanwhile, investment in mineral and coal mining is within the framework of domestic investment, the issuance of the IUP is under the authority of the Provincial Government.

In the context of the mineral and coal mining management policy which is oriented towards making it easier to do business/invest in the mining and mineral sector in Indonesia, it can also be observed from the new policy which allows mining operations to be carried out in the Exclusive Economic Zone (EEZ) sea area. IUP for mineral and coal mining located in mining areas exceeding 12 miles, the granting of the IUP is under the authority of the Central Government, while for policies for managing mineral and coal mining located in mining areas less than 12 miles, the granting of the IUP is authority of the Provincial Government (Latif & Ali, 2011).

However, the policy to foster an investment climate (PMA/PMDN) in mineral and coal mining as described above requires legal certainty regarding the granting of IUPs. Investors will make the legal certainty variable the main consideration in making investments. Moreover, the characteristics of mining businesses are capital intensive, requiring capitalization and technology intensive, making the variable of legal certainty a basis for investing (Situmorang, 1994) .

On the other hand, legal certainty in granting IUPs is still a problem in Indonesia. Based on variance assessment data on the Recommendations of the Indonesian Regional Representative Council (DPD) for the Issuance of Mining Business Permits (IUP), the following results were obtained: Investment legal certainty and certainty for investors. Deviations in licensing law can be seen from the issuance of IUPs which have political impacts by Regency/City Governments, and in many cases still overlap with the issuance of Mining Business Permits (IUP).

Based on data from the Ministry of Energy and Mineral Resources, Directorate of Minerals and Coal, as of February 3 2014, it was recorded that overlapping authority in issuing IUPs occurred in all mineral and coal mining clusters in Indonesia, with details in Sumatra 27 cases, Kalimantan 102 cases, Sulawesi 29 cases, Maluku Islands 3 cases, and Papua 14 cases. Data on overlapping cases nationally is even greater if indicators of IUP problems based on overlapping commodity types are added. One case of overlapping authority in granting IUP can be observed in the Supreme Court Decision Number 343 K/TUN/2021 regarding IUP PT. Padang Mulia and PT. Creative Creation Award.

Legal cases caused by overlapping authority to grant IUPs issued based on the Mining and Coal Law (IUPs were issued before the promulgation of Law Number 23 of 2014 concerning Regional Government), can be observed in the Supreme Court Decision Number 343 K/TUN/2021. The legal dispute began with the Decree of the Regent of East Barito Number 392 of 2012 concerning Reducing the Area of Exploration Mining Business Permits (IUP) to Production Operation Mining Business Permits (IUP) to PT Padang Mulia on October 23 2012. With the issuance of this Decree, the area mining area of PT. Padang Mulia, which was originally 2,433 hectares, was then reduced to 2,037 hectares. The basic reason why the Regent of East Barito issued the decision to reduce the size of PT Padang Mulia's mining area was based on the consideration that there were similar activities or permits from other parties, on plots of land that had the same permits as PT. Padang Mulia, namely IUP PT. Creative Creation Award.

Legal case of overlapping IUP PT. Padang Mulia and IUP PT. Anugrah Kreasi Karya is categorized as overlapping authority to grant IUP. In practice, apart from overlapping authority, there can be overlapping of IUP grants for the same commodity and/or overlapping of different commodities. However, whatever the category, the fact that there is still overlap in granting IUPs will have a direct impact on investors' perceptions of legal certainty and ease of doing business/investing in the mining and mineral sector in Indonesia. If things are not managed well, then the initial aim of revoking the authority of the City/Regency Regional Government in terms of granting IUP and handing it over to the Provincial Government to encourage investment and provide legal certainty in business/investment will not get optimal results.

Legal case of overlapping authority to grant PT IUP. PT. Padang Mulia and IUP PT. Anugrah Kreasi, which was examined and decided by the Supreme Court based on Supreme Court Decision Number 343 K/TUN/2021, is not the only case examined and decided by the judiciary. Recapitulation of the Ministry of Energy and Mineral Resources, Directorate of Mineral and Coal Mining as of February 3 2014 recorded 2938 cases of overlapping IUP granting nationally, and 175 cases of them (5.96%) were overlapping authority. This shows the high urgency of legal certainty in granting IUPs which will become a basis not only for the Government (Central

Government/Provincial Government/City-Regency Regional Government), as well as a basis for consideration by business actors in the mineral and coal mining business sector to invest in Indonesia. Legal certainty regarding the granting of an IUP is important because the dynamics of the legal process in this case are differences in providing legal interpretations by judicial institutions, namely between the Palangkaraya PTUN and the Jakarta PTUN and the Supreme Court.

PT. Padang Mulia is a company that has Coal Exploration Mining Authorization based on the Decree of the Regent of East Barito Number 227 of 2007 concerning the Granting of Coal Mineral Exploration Mining Authorization An. PT Padang Mulia on 17 July 2007 and has been upgraded to a Production Operation Mining Business License (IUP) based on the Decree of the Regent of East Barito Number 593 of 2009 concerning Approval of Upgrading the Exploration Mining Business License to a Coal Production Operation Mining Business License to PT Padang Mulia on 31 December 2009 with a mining area of 2,434 (two thousand four hundred and thirty four) hectares in East Barito Regency which is valid for 20 (twenty) years until it ends on March 17 2029.

On April 17 2020 PT. Padang Mulia received Letter Number: 540/759/IV.1/DESDM from the Central Kalimantan Province Energy and Mineral Resources Service Office, which contained the reduction of the IUP. PT Padang Started based on the Decree of the Regent of East Barito. Reasons for reducing the area of IUP PT. Padang Mulia because in this area there are other permits issued by the Regent of East Barito, so to avoid overlapping permits it is necessary to reduce them, even though PT. Padang Mulia has a C&C Certificate, and based on Clean and Clear (C&C) status from the Ministry of Energy and Mineral Resources as C&C Certificate Number: 113/Bb/03/2013 dated October 30 2013, it guarantees that the Plaintiff's mining area is 2,434 (two thousand four hundred thirty-four) hectares does not overlap with other IUPs.

Based on Central Kalimantan Province ESDM Service Letter Number: 540 /02.05/IV.1/DESDM. dated January 22 2020, it was stated that in the IUP area of PT. Padang Mulia covering an area of 2,434 (two thousand four hundred and thirty four) hectares overlaps with the Coal Production Operation IUP. PT Anugerah Kreasi Karya, even though in reality the area of 2,434 (two thousand four hundred and thirty four) hectares owned by PT. Padang Mulia does not have any other activities and activities apart from PT. Padang Mulia.

With the issuance of the Coal Production Operation IUP an. PT Anugerah Kreasi Karya above the mining area owned by PT. Padang Mulia, resulting in a reduction in the area of the mining area from the original 2,434 hectares to an area of 2,037 hectares issued by the Regent of East Barito, of course this is very detrimental to PT. Padang Mulia, because the reduction in mining areas has reduced the coal reserves that will be mined by PT. Padang Mulia and in the shrinkage area there is a very large bartubara content, so it can be confirmed that PT. Padang Mulia will experience huge investment losses, besides that the existence of the Dispute Object has disrupted the long-term coal mining plans that PT. Padang Mulia submitted and was approved by the East Barito Regency Coal Mining and Energy Service through approval of the Work Plan and Budget.



Regarding this legal case, PT. Padang Mulia filed a lawsuit against the Palangka Raya State Administrative Court with Decision Number 19/G/2020/PTUN.PLK., dated November 11 2020, but the Palangkaraya PTUN Panel of Judges rejected the lawsuit. Next PT. Padang Mulia submitted an appeal to the Jakarta State Administrative High Court with Decision Number 23/B/2021/PT.TUN.JKT., dated March 30 2021 where the Jakarta PTUN Panel of Judges upheld the Palangkaraya PTUN Decision.

Furthermore, in the cassation process at the Supreme Court regarding this case, by the Supreme Court:

1. Adjudicate:
  - a. Granted the cassation petition from the Cassation Petitioner PT. Padang Mulia.
  - b. Cancel the Decision of the Jakarta High State Administrative Court Number 23/B/2021/PT.TUN.JKT., dated March 30 2021, which upheld the Decision of the Palangka Raya State Administrative Court Number 19/G/2020/PTUN.PLK., dated 11 November 2020.
2. Judge Yourself:
  - a. Grant the Plaintiff's lawsuit in its entirety;
  - b. Statement dated 23 October 2012 concerning the Abolition of East Barito Year 2012 Number 392 to Increase Exploration and Mining Permits for Production and PT Padang Mulia Mining Permits;
  - c. The defendant was urged to revoke the Decree of the Regent of East Barito Language No. 392 of 2012 to increase exploration and mining permits for PT Padang Mulia's production and mining permits. October 23, 2012;
  - d. Sentenced the Respondent to Cassation I and the Respondent to Cassation II to pay case fees at all court levels, which at the cassation level was set at Rp. 500,000.00 (five hundred thousand rupiah).

Based on the case position and the Supreme Court's Cassation Decision as described above, the legal construction that forms the basis of the Supreme Court's Cassation Decision is the provisions of Article 74 paragraph (1) of Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities which states, "Permit Holders Mining Businesses (IUP) can at any time submit a request to the Governor or Regent/Mayor in accordance with their authority, to reduce part of or return the entire IUP."

Based on the facts revealed at the trial, PT. Padang Mulia previously obtained an Exploration Mining Business Permit (IUP) which was later upgraded to a Production Operation Mining Business Permit (IUP) based on the Decree of the Regent of East Barito Number 593 of 2009 concerning Approval of a Coal Production Operation Mining Business Permit in the name of PT Padang Mulia dated 31 December 2009, with a mining area of 2,433 hectares, he had never submitted an application for land

reduction to the Regent of East Barito, as regulated in Article 74 paragraph (1) of Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities.

Reduction carried out by the Regent of East Barito on the size of the land plot granted IUP to PT. Padang Mulia, based on the consideration that there are similar activities or permits from other parties, on plots of land that have the same permits as PT. Padang Mulia cannot be proven, even PT. Padang Mulia has obtained a Clean & Clear Certificate Number 113/Bb/03/2013, dated 30 October 2013, which basically states that on the plot of land for which a Mining Business Permit (IUP) is granted, there are no similar rights or permits from other parties. This is in accordance with the results of field investigations carried out by the First Level Panel of Judges (PTUN Palangara). Because the author agrees with the Supreme Court Cassation decision, the subject of the dispute is East Barito Regent's Decree No. 392 of 2012 concerning Reduction of Areas for Increasing Mining Business Permits from Exploration to Mining Permits Produced at PT Padang Mulia on 23 October 2012, is contrary to Article 74 paragraph (1) of Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, so it must be declared cancelled.

Furthermore, the legal consequences of the Supreme Court's Cassation Decision declared null and void the Decree of the Regent of East Barito Number 392 of 2012 concerning Reducing the Area of Upgrading Exploration Mining Business Permits to Production Operation Mining Business Permits to PT Padang Mulia on 23 October 2012, and obliged the Regent of East Barito to revoke The Decree of the Regent of East Barito Number 392 of 2012 concerning Reducing the Area of Upgrading Exploration Mining Business Permits to Production Operation Mining Business Permits for PT Padang Mulia, dated 23 October 2012, can be analyzed based on licensing rules in the State Administrative Law on the basis of Law Number 30 of 2012. 2014 concerning Government Administration.

From the perspective of State Administrative Law, the Decree of the Regent of East Barito Number 392 of 2012 concerning Reducing the Area of Upgrading Exploration Mining Business Permits to Production Operation Mining Business Permits to PT Padang Mulia dated 23 October 2012, can be qualified as a defect in authority. The provisions in Article 64 paragraph (1) of Law Number 30 of 2014 concerning Government Administration, regulate that "Decisions can only be revoked if there is a defect in: (a) authority; (b) procedures; and/or (c) substance. Then in paragraph (2) it is stated that, "In the event that a decision is revoked, a new decision must be issued stating the legal basis for the revocation and taking into account the AUPB." Meanwhile, in paragraph (3) "Revocation decisions as intended in paragraph (2) can be made: (a) by the Government Official who stipulates the Decision; (b) by the superior official who determines the decision; or (c). by order of the Court". Then Article 64 paragraph (5) of Law Number 30 of 2014 concerning Government Administration, further regulates that "Revocation decisions made on the orders of the Court as intended in paragraph (3) letter c shall be made no later than 21 (twenty-one) working days from the Court's order, and takes effect from the date the revocation decision is determined."

Based on the provisions in Article 64 paragraph (1) of Law Number 30 of 2014, according to the author of the Decree of the Regent of East Barito, Number 392 of 2012 concerning Reducing the Area of Upgrading Exploration Mining Business Permits

to Production Operation Mining Business Permits to PT Padang Mulia on 23 October 2012 is a lack of authority. This is based on the legal facts at trial that the decision to reduce the size of the area to increase the Exploration Mining Business License to a Production Operation Mining Business License for PT Padang Mulia is contrary to Article 74 paragraph (1) of Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, which stipulates the provision that, "Mining Business License (IUP) holders may at any time submit a request to the Governor or Regent/Mayor by their authority, to reduce part of or return the entire IUP." Thus, the East Barito Regent's decision was declared null and void.

Therefore, the party that supports the investigation of PT Padang Mulia's production and mining permits on 23 October 2012 and the abolition of the East Barito Constitution of 2012 Number 392 to increase mining permits is the court, the Supreme Court. Furthermore, the Supreme Court's decision. Number 343 K/TUN/2021 requests the provisions of Article 64 (5) of Law Number 30 of 2014. (3) Letter c will be issued within 21 working days of the court's decision and will take effect from the date the annulment decision is made. In addition, Article 67 (1) of Law Number 30 of 2014 will be the basis for decision making, or decisions made by government agencies and/or authorities if the decision is cancelled.

#### **3.4. Offering IUP Ideal Forms or Models (role models) that provide more Legal Certainty and Ease of Mining Business/Investment in Indonesia**

The offer of ideal forms or models (role models) in this research departs from the ongoing problem of granting IUPs after the promulgation of Law Number 23 of 2014 concerning Regional Government which revoked the authority to grant IUPs by City/Regency Regional Governments and then handed over this authority to the Government. Provincial areas, thus raising issues of legal certainty and ease of mining business/investment in Indonesia.

In the previous discussion, research findings were obtained, that although Law Number 23 of 2014 concerning Regional Government has revoked the authority to grant IUPs by City/Regency Regional Governments, the pattern that emerges is cases of legal deviation in the form of overlapping. The authority to grant IUPs issued before 2014 (when Law Number 23 of 2014 concerning Regional Government was promulgated), by the Regent and/or Mayor as Officials who at that time had the authority to issue Decisions will continue to be continued in the legal process in Court (PTUN). This pattern emerged in the hope that the Court (PTUN) would provide a legal interpretation that accommodates the overlapping of IUP grants by the relevant Regent/Mayor Decree. This is proven by the PTUN Decision which was decided after the promulgation of Law Number 23 of 2014 concerning Regional Government which can be observed in the legal case used in this research.

The lawsuit filed by PT. Padang Mulia to the Palangka Raya State Administrative Court was decided on November 11 2020 through Decision Number 19/G/2020/PTUN.PLK. Likewise, the appeal process was examined and decided by the Jakarta PTUN on March 30 2021 through Decision Number 23/B/2021/ PT. TUN. JKT. where the two judicial institutions declared PT's lawsuit. Padang Mulia is not accepted.

Whereas then the Supreme Court through Supreme Court Decision Number 343 K/TUN/2021, declared the East Barito Regent's Decision Number 392 of 2012 null and void concerning the Reduction of the Area for Increasing Exploration Mining Business Permits to Production Operation Mining Business Permits to PT Padang Mulia on 23 October 2012, and requires the Regent of East Barito to revoke the Decree of the Regent of East Barito Number 392 of 2012 concerning Reducing the Area of Upgrading Exploration Mining Business Permits to Production Operation Mining Business Permits to PT Padang Mulia, dated 23 October 2012, but shows that even in the judiciary there is still room differences in providing legal interpretations regarding the revocation of the authority of City/Regency Regional Governments in terms of granting IUPs. This certainly triggers legal uncertainty and the ease of mining business/investment in Indonesia.

Based on the findings of the research results above, to provide legal certainty and ease of mining business/investment in Indonesia, offering an ideal form or model (role models) to provide legal certainty and ease of mining business/investment in Indonesia is to encourage the Supreme Court to issue The Supreme Court Regulation (PERMA) whose legal substance clearly/clearly sets out guidelines for lower courts in examining and deciding disputes over the granting of IUPs at all levels of justice is to base itself only on Law Number 23 of 2014 concerning Regional Government.

The offer of an ideal form or model (role model) of research by encouraging the Supreme Court to issue PERMA which contains guidelines with Judges in examining and deciding disputes regarding the granting of IUP based only on certain laws, has actually been carried out by the Supreme Court itself. In line with the polemic of Law Number 11 of 2020 concerning Job Creation following Constitutional Court Decision Number 91/PUU-XVIII/2020, the Industrial Relations Court will continue to examine and decide industrial relations disputes based on Law Number 13 of 2003 concerning Employment (not based on Job Creation Law) until the Government, based on the Constitutional Court's decision, makes changes to the procedures and legal substance of the Job Creation Law (P. P. Nomor, 23 C.E.).

It is hoped that with the existence of a PERMA whose legal substance clearly/clearly sets guidelines for lower courts in examining and deciding disputes over the granting of IUPs at all levels of justice to base itself only on Law Number 23 of 2014 concerning Regional Government, closing the room for overlapping resolutions. (overlapping) authority to grant IUPs continues at the litigation level in the judiciary, which will impact legal uncertainty and ease of business/investment in the mining sector in Indonesia (P. P. Nomor, 22 C.E.).

In parallel, in addition to the issuance of PERMA, at the same time a new legal policy was established in granting IUP. This is important, considering the changes in the scope of Regional Government authority in granting IUPs after the promulgation of Law Number 23 of 2014 concerning Regional Government. As previously explained, the authority to grant IUPs which was previously also the authority of Regency/City Regional Governments, has now been taken over by the central government and given to the Governor.

The new legal policy for granting IUPs, which is formulated in Article 14 paragraph (1) of Law Number 23 of 2014, states that the administration of government affairs in the

forestry, marine and mineral resources and energy resources sectors is shared between the central government and provincial regions. Furthermore, in Article 14 paragraph (5) of Law Number 23 of 2014, producing and non-producing regencies/cities receive a share of the profits from carrying out government affairs. Its implementation is based on the principles of externality, accountability, efficiency and national strategic interests.

Therefore, the role model for granting IUPs offered is to revoke all Non-CNC (Clean and Clear) IUPs as a comprehensive evaluation of IUP holders. The revocation of Non-CNC IUPs is a transitional policy, considering the high potential for overlapping IUPs because before the promulgation of the new Regional Government Law the authority to grant IUPs was distributed to the Central Government for IUPs with PMA status, Provincial Regional Governments and City/Regency Regional Governments.

Revocation of all Non-CNC IUPs can refer to the Minister of Energy and Mineral Resources Regulation (Permen ESDM) No. 43 of 2015 concerning Procedures for Evaluation of the Issuance of Mineral and Coal Mining Business Permits. The regulation regulates a number of provisions regarding the evaluation of Mining Business Permit (IUP) holders, including the evaluation mechanism carried out by the Governor regarding Clean and Clear (CNC) status.

ESDM Ministerial Regulation No. 43 of 2015 refers to Law Number 23 of 2014 concerning Regional Government, in determining the functions of the Governor. Along with the issuance of the new Regional Government Law, the Regent or Mayor no longer has the authority to issue or revoke IUPs, and then the Governor will evaluate the licensing documents and the results can be given CNC status and/or revocation of IUPs if the status is Non CNC (Latif & Ali, 2011).

Based on data from the Ministry of Energy and Mineral Resources, there are more than 10,000 IUPs throughout Indonesia. Of this number, only almost 6,500 IUPs have obtained CNC. While the rest are still non-CNC. Through Minister of Energy and Mineral Resources Regulation No. 43 of 2015, the Non-CNC IUP still has the opportunity to obtain CNC status if it meets the terms and conditions. Based on Article 5 paragraph (2) ESDM Ministerial Regulation No. 43 of 2015 regulates several criteria for obtaining CNC status, including: (1) Submission of an IUP application or increase in Mining Authorization (KP) is carried out before the validity period expires; (2) Exploitation KP must be an improvement from Exploration KP; (3) KP reserves may not be in areas that are active and have the same commodity; (4) The IUP area must not overlap with other areas with the same commodity. Furthermore, based on Article 7 of Minister of Energy and Mineral Resources Regulation No. 43 of 2015, if the specified conditions are not met, the IUP can be revoked by the Governor or the Director General of Mineral and Coal at the Ministry of Energy and Mineral Resources (Rahardjo, 2009).

Based on the legal substance regulated in Minister of Energy and Mineral Resources Regulation No. 43 of 2015, as mentioned above, according to the author, a comprehensive evaluation of Non-CNC IUP is the first step to serve as a basis for further policy regarding the granting of IUP to provide more legal certainty. From the perspective of Friedman's legal system theory, a comprehensive evaluation of all IUPs after the promulgation of the new Regional Government Law is the embodiment of a new legal culture, especially the institutions related to the granting of IUPs, namely the

Ministry of Energy and Mineral Resources and Regional Government (Governor, Regent/Mayor).

A comprehensive evaluation of Non-CNC IUPs as a role model for granting IUPs will be effective if the Regent and Mayor consistently immediately hand over the receipt of IUP licensing documents in the Regency/City to the Governor in accordance with the mandate of Law Number 23 of 2014, and/or hand over the management of PMA IUPs from the Regent/Mayor/Governor to the Minister of Energy and Mineral Resources, along with supporting documents (Friedmann et al., 1919).

Furthermore, after there is legal certainty regarding IUPs, whether they have CNC status or still have Non-CNC status, the Provincial Government is encouraged to form a One Stop Integrated Service (PTSP) and a legal umbrella for licensing IUP applications. In fact, the Provincial Government can still monitor and supervise the implementation of IUPs in mining areas at mining locations by means of the Governor establishing a Technical Implementation Unit (UPT) in the Regency/City for the implementation of guidance and supervision, and increasing the number of IT functional employees (recruiting). Regency/City IT personnel and IT training for employees, developing and strengthening the mineral and coal mining database, as well as encouraging the Ministry of Home Affairs to resolve the issue of administrative area boundaries of the Regency/City where mining locations are located to minimize overlapping IUPs (Hayati, 2015).

#### **4. CONCLUSION**

Legal deviations in granting Mining Business Permits (IUP) by City/Regency Regional Governments involve granting new IUPs on mining concession land that has previously been issued an IUP. The factual condition of overlapping authority to grant IUPs occurs in all Mining Areas in Indonesia, which has implications for legal uncertainty and the ease of doing business/investing in the mining sector in Indonesia. The policy taken to minimize overlapping authority in granting IUPs is by promulgating Law Number 23 of 2014 concerning Regional Government, the legal substance of which is to revoke the authority to grant IUPs by City/Regency Regional Governments. The fact that there is overlapping authority to grant IUPs can be observed in the Supreme Court Decision Number 343 K/TUN/2021. The legal consequences of the Supreme Court's Cassation Decision which declared the Decree of the Regent of East Barito Number 392 of 2012 concerning Reducing the Area of Exploration Mining Business Permits to Increase Production Operation Mining Business Permits to PT Padang Mulia dated 23 October 2012, and obliged the Regent of East Barito to revoke the Decree. Regent of East Barito Number 392 of 2012 concerning Reducing the Area of Upgrading Exploration Mining Business Permits to Production Operation Mining Business Permits to PT Padang Mulia, dated 23 October 2012, in the perspective of State Administrative Law can be qualified as a defect in authority, because it is contrary to Article 74 paragraph (1) Government Regulation Number 23 of 2010 concerning the Implementation of Mineral and Coal Mining Business Activities, so that according to the provisions in Article 64 paragraph (5) of Law Number 30 of 2014 concerning Government Administration, the revocation by the Regent of East Barito is carried out no later than 21 (twenty one) working day from the Court's order, and effective from the date the revocation decision is determined, and based on Article 67 paragraph (1) of Law Number 30 of 2014, the

Regent of East Barito must withdraw all documents, archives and/or items that become legal consequences of the Decision or become the basis for determining the Decision.

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