

Overlapping Authority Between BPN and Ministry of Energy and Resources in Issuing Certificates of Right of Use and Mining Business Permits

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Abstract

*The overlapping authority between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources (ESDM) remains a persistent issue in Indonesia's legal system, particularly regarding the issuance of land use certificates (SHP) and mining business permits (IUP). The inconsistency between the Basic Agrarian Law (UUPA) of 1960 and Law No. 4/2009 jo. Law No. 3/2020 on Mineral and Coal Mining (Minerba Law) has resulted in legal uncertainty and conflicts between land and mining rights. This study employs a normative juridical method through statutory, conceptual, and case approaches, with Bandung High Court Decision No. 116/PDT/2020/PT BDG as its primary source. The findings reveal that a mining business permit cannot nullify existing land rights, and every IUP holder must first settle land ownership status before conducting mining operations. The hierarchy of laws places the UUPA as the superior legal norm, while the Minerba Law serves as a sectoral regulation subject to the principle of *lex superior derogat legi inferiori*.*

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1. INTRODUCTION

Legal certainty over land and natural resource management is a fundamental element of the national legal system. In practice, the implementation of authority between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources (ESDM) often gives rise to conflicts of authority. Both carry out different legal mandates: the BPN is authorized to issue land title certificates based on Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), while the Ministry of Energy and Mineral Resources is authorized to issue mining business permits (IUP) based on Law Number 4 of 2009 in conjunction with Law Number 3 of 2020 concerning Mineral and Coal Mining (UU Minerba). When these two authorities are exercised without coordination, overlapping land rights and mining permits arise.

The UUPA philosophically originates from Article 33 paragraph (3) of the 1945 Constitution, which states that the earth, water and natural resources are

The land contained therein is controlled by the state and utilized to the greatest extent possible for the prosperity of the people. Therefore, all land rights are derived from the state's right to control. In this regard, the National Land Agency (BPN) is granted direct attribution authority by law to ensure legal certainty through the national land registration

system. In contrast, the Ministry of Energy and Mineral Resources only has delegative authority to regulate and grant permits for mining activities.

The hierarchy between the two laws must be viewed within the context of the legal system as stipulated in Law Number 12 of 2011 in conjunction with Law Number 13 of 2022 concerning the Formation of Legislation, which emphasizes that principal laws have a higher status than sectoral laws. Therefore, the UUPA, as *lex superior*, has a higher status than the Minerba Law, which is *lex specialist*. In other words, the issuance of a mining business permit cannot override land rights that are valid according to agrarian law.

The conflict between the two laws is clearly evident in the case of PT Varia Indopermai v. PT Megatop Inti Selaras, decided by the Bandung High Court Number 116/PDT/2020/PT BDG. In that case, a mining permit issued by a local government official overlapped with a right-of-use certificate issued by the National Land Agency (BPN). The court emphasized that a mining business permit cannot extinguish land rights, and that IUP holders are required to resolve the land rights status before conducting exploration. Furthermore, the court also stated that disputes regarding the validity of the permit fall under the jurisdiction of the State Administrative Court (PTUN), not civil courts, because they involve administrative government decisions.

Furthermore, Philipus M. Hadjon's theory of governmental authority provides an important basis for understanding the division of authority between state institutions. Hadjon distinguishes authority into attribution, delegation, and mandate, where every government action must have a clear legal basis and must not exceed the limits of authority established by law. Based on this theory, the actions of the Ministry of Energy and Mineral Resources in issuing IUP without paying attention to the status of land that has been certified by the BPN can be categorized as a violation of the principle of legality.

In the agrarian context, Boedi Harsono explains that land rights must be understood comprehensively. *Horizontal separation*, namely that land rights do not include rights to the minerals found beneath it. This means that mining activities utilizing minerals and coal require separate permits, but their implementation must not disregard land rights. This horizontal separation emphasizes that land and minerals fall under different legal regimes, making inter-agency coordination essential.

Meanwhile, Gustav Radbruch, through the theory of legal certainty (*Rechtssicherheit*), emphasized that the law must provide protection and clarity regarding the rights of the people. When mining permits are issued without regard to legal land rights, the principles of legal certainty and justice are violated. Therefore, the concept of *Clear and Clean (CnC)* used by the Ministry of Energy and Mineral Resources should not only examine the administrative aspects of mining permits, but also include verification of the legal status of land that is the object of mining activities.

From the description above, the main problem of this research can be formulated:

What are the boundaries of authority between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources (ESDM) in issuing right-of-use certificates and mining business permits, and how is the hierarchy of statutory regulations between the UUPA and the Minerba Law applied in this context?

2. RESEARCH METHODS

This research uses a normative juridical research type, namely legal research that focuses on applicable legal norms and principles and the relationship between laws and regulations in a legal system. The approaches used consist of three forms, namely: the statute approach, the conceptual approach, and the case approach.

A statutory approach is used to examine the provisions of the 1960 Basic Agrarian Law (UUPA), the 2009 Law in conjunction with the 2020 Law on Mineral and Coal

Mining, and Law Number 5 of 1986 in conjunction with Law Number 9 of 2004 concerning State Administrative Courts (PTUN). A conceptual approach is used to understand the theory of government authority, the theory of legal certainty, and the principle of horizontal separation of land and mineral rights. A case-based approach is applied by examining the Bandung High Court Decision Number 116/PDT/2020/PT BDG, which serves as a concrete example of overlapping authority between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources.

The legal materials used in this study consist of primary legal materials in the form of laws and court decisions, as well as secondary legal materials in the form of books, scientific journals, and previous research results. The analysis was conducted using a normative qualitative analysis method, namely interpreting and assessing legal norms based on the principles of legal hierarchy, the principle of *lex superior*, and the principle of legality.

3. RESULTS AND DISCUSSION

A. BPN's Authority in Issuing Land Use Rights Certificates

The National Land Agency (BPN) holds a central role in ensuring legal certainty over land through the land registration system, as stipulated in Article 19 of the UUPA. This authority is attributive, meaning it is granted directly by law and does not rely on delegation from other institutions. Through this authority, the BPN is tasked with carrying out land registration throughout Indonesia in order to provide legal certainty for land rights holders.

In the context of overlapping authority, BPN has a role to play in *plotting revision* and clarification of land boundaries are required to prevent conflicts with mining business permit (IUP) areas. However, in practice, coordination between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources (ESDM) is often poor, resulting in the BPN only becoming involved after mining permits have been issued. As a result, land rights violations often occur because mining activities are carried out on certified land.

This lack of coordination indicates that the implementation of administrative authority has not adhered to the principles of good governance, namely inter-agency integration and procedural certainty. From a legal hierarchy perspective, the BPN's authority stems from the basic law (UUPA), which holds a higher status than sectoral regulations and should therefore serve as the primary reference in all state administrative actions related to land.

B. Authority of the Ministry of Energy and Mineral Resources (ESDM)

The Ministry of Energy and Mineral Resources (ESDM) is authorized to regulate and supervise mineral and coal mining activities under Articles 35 to 39 of the Mineral and Coal Mining Law. These regulations stipulate that mining activities may only be conducted with official permits issued by the central government or regional governments, as appropriate. However, the granting of mining permits is often done without considering the legal status of the land, thus giving rise to conflicts with pre-existing land rights.

The authority of ESDM is delegative, namely the authority granted by law to carry out part of the state's control function over natural resources. In the administrative law system, delegative authority is subject to the principle of legality and must comply with higher regulations in the legal hierarchy. Therefore, the implementation of ESDM authority must adhere to the principle of *lex superior derogat legi inferiori*, placing the UUPA as a legal norm that is superior to the Minerba Law.

The Bandung High Court Decision Number 116/PDT/2020/PT BDG strengthens this by emphasizing that mining business permits cannot revoke land rights granted by the BPN. Thus, the implementation of ESDM authority must take into account coordination with the BPN to ensure that there are no violations of the constitutional rights of land certificate holders.

C. Hierarchy of Legislation between UUPA and UU Minerba

In the national legal system, a hierarchy of laws and regulations governs the levels of legal norms to prevent conflicts between them. According to Law No. 12 of 2011 in conjunction with Law No. 13 of 2022, principal laws have a higher status than sectoral laws. Thus, UUPA, as the main law in the agrarian sector, has a higher position than the Minerba Law, which is technical and sectoral in nature.

The theory of legal hierarchy asserts that lower-level regulations must not contradict higher-level ones. This principle is known as *lex superior derogat legi inferiori*, meaning that lower-level legal regulations must not violate or negate higher-level regulations. Therefore, mining business permits issued by ESDM officials must remain subject to agrarian norms regulated by the UUPA.

In practice, mining administration officials often issue permits without considering land status. This has the potential to violate the principles of legality and abuse of power (abuse of authority), because officials act beyond their legitimate authority. If this occurs, the appropriate legal mechanism for resolving the matter is through the State Administrative Court (PTUN), not through a civil court.

D. The Concept of Clear and Clean (CnC) from the Perspective of Legal Certainty

Draft *Clear and Clean (CnC)*. It was originally introduced by the Ministry of Energy and Mineral Resources as an administrative mechanism to ensure that mining areas have met legal, technical, and environmental requirements before a mining business permit (IUP) is issued. Ideally, the principle CnC functions as a filtering instrument so that each mining permit has legal legitimacy and does not give rise to land ownership conflicts.

However, the application of this concept has so far been limited to the administrative aspects of mining permits and has not explicitly linked verification to the legal status of the land. In fact, according to Boedi Harsono, land as an object of rights has a higher legal standing than sectoral permits, because land rights are proof of ownership guaranteed by the state. Therefore, the principle CnC should include checking the legality of the land plots in the permit area, including clarity regarding the status of use rights or ownership rights.

Within the framework of the legal hierarchy, the principle CnC must be aligned with agrarian norms as *lex superior*. This means that no mining permits may be granted without coordination with the National Land Agency (BPN), the authority authorized to determine the legality of the land. If the principle CnC develops towards data integration between BPN and ESDM, so that conflicts over overlapping mining permits and land certificates can be minimized.

In addition, from the perspective of Gustav Radbruch's theory of legal certainty, the law must not only be formally consistent, but also guarantee substantive justice for the affected communities. If a mining permit is granted on certified land without a valid legal basis, then the government has violated the principle of protecting citizens' rights as guaranteed in Article 28H paragraph (4) of the 1945 Constitution.

E. Analysis of Bandung High Court Decision No. 116/PDT/2020/PT BDG

The case between PT Varia Indopermai and PT Megatop Inti Selaras is a clear reflection of the conflict of authority between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources (ESDM). The dispute stems from an overlap

between land use certificates issued by the BPN and mining business permits (IUP) issued by regional ESDM officials.

In its legal considerations, the panel of judges at the Bandung High Court emphasized that land rights cannot be removed by mining permits, because both are under different legal regimes. The judge also cited the principle of horizontal separation as explained by Boedi Harsono, that land rights only cover the surface of the earth, while minerals and coal located underground are objects controlled by the state and regulated by separate permits.

However, the judge also highlighted the BPN's negligence in clarifying land boundaries and the lack of coordination with the Ministry of Energy and Mineral Resources, which resulted in the issuance of a mining permit on certified land. The judge deemed this a procedural violation that should have been resolved through the State Administrative Court (PTUN), as the dispute concerns the validity of a decision by a state administrative official.

The ruling reinforces the importance of consistently applying the legal hierarchy. In this context, the UUPA, as the basic agrarian law, holds a higher position than the Minerba Law. Therefore, all administrative actions in the mining sector must comply with and align with the UUPA's provisions. *The higher law derogates from the lower law*. becomes the normative basis that sectoral regulations may not violate or eliminate basic regulations.

From a legal protection perspective, this ruling establishes an important precedent that land certificate holders are entitled to legal protection against any mining activity that violates their land rights. Therefore, the government needs to establish joint regulations between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources to ensure that every IUP issuance undergoes systematic land data verification.

4. CONCLUSION AND SUGGESTIONS

Based on the above description, it can be concluded that the overlapping authority between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources (ESDM) in issuing land use rights certificates and mining business permits is due to the unsynchronized implementation of the hierarchy of laws and regulations in Indonesia. The 1960 UUPA, as the basic agrarian law, holds a higher position than the 2009 Law in conjunction with the 2020 Law on Mineral and Coal Mining, which is sectoral. Therefore, the issuance of a mining business permit (IUP) must not override the existence of land rights already issued by the BPN.

Principle *Clear and Clean (CnC)* should not only be interpreted as administrative verification of mining, but should also include clarity on the legal status of the land that is the object of the permit. Implementation of the concept *integrated* with land data will strengthen legal certainty and prevent cross-sector conflicts.

As a recommendation, the government should establish a Joint Regulation between the National Land Agency (BPN) and the Ministry of Energy and Mineral Resources (ESDM) that would regulate the coordination mechanism for issuing mining permits and registering land, along with an integrated database system linking the two institutions. This step would strengthen legal protection for land rights holders and create equitable and sustainable natural resource governance.

5. BIBLIOGRAPHY

Book

Asshiddiqie, Jimly. *Perihal Undang-Undang*. Jakarta: Rajawali Pers, 2016.

Boedi Harsono. *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi, dan Pelaksanaannya*. Jakarta: Djambatan, 2016.

Gustav Radbruch. *Legal Philosophy*. Oxford: Clarendon Press, 1950.

Hadjon, Philipus M. *Kewenangan Pemerintahan*. Surabaya: Yuridika, 2015.

Ibrahim, Johnny. *Teori dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia, 2006.

Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2017.

Soekanto, Soerjono. *Pengantar Penelitian Hukum*. Jakarta: UI Press, 2014.

Sumardjono, Maria S.W. *Kebijakan Pertanahan: Antara Regulasi dan Implementasi*. Jakarta: Kompas, 2008.

Usman, Rachmadi. *Hukum Perizinan di Indonesia*. Jakarta: Sinar Grafika, 2018.

Legislation

Law Number 5 of 1960 concerning Basic Agrarian Regulations. State Gazette of the Republic of Indonesia 1960 Number 104.

Law Number 4 of 2009 concerning Mineral and Coal Mining. State Gazette of the Republic of Indonesia 2009 Number 4.

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining. State Gazette of the Republic of Indonesia 2020 Number 147.

Law Number 12 of 2011 concerning the Formation of Legislation. State Gazette of the Republic of Indonesia 2011 Number 82.

Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation. State Gazette of the Republic of Indonesia 2022 Number 143.

Law Number 5 of 1986 concerning State Administrative Courts. State Gazette of the Republic of Indonesia 1986 Number 77.

The 1945 Constitution of the Republic of Indonesia.

Scientific Journals and Reports

Al Rasyid, Harun. "Hierarki Hukum dan Implementasi Lex Superior." *Jurnal Hukum dan Pembangunan* Vol. 49, No. 2 (2021): 211–232.

Kementerian Energi dan Sumber Daya Mineral. *Pedoman Pelaksanaan Prinsip Clear and Clean pada Wilayah Pertambangan*. Jakarta: Direktorat Jenderal Minerba, 2017.

Court ruling

Bandung High Court Decision Number 116/PDT/2020/PT BDG.