Politics of Environmental Law

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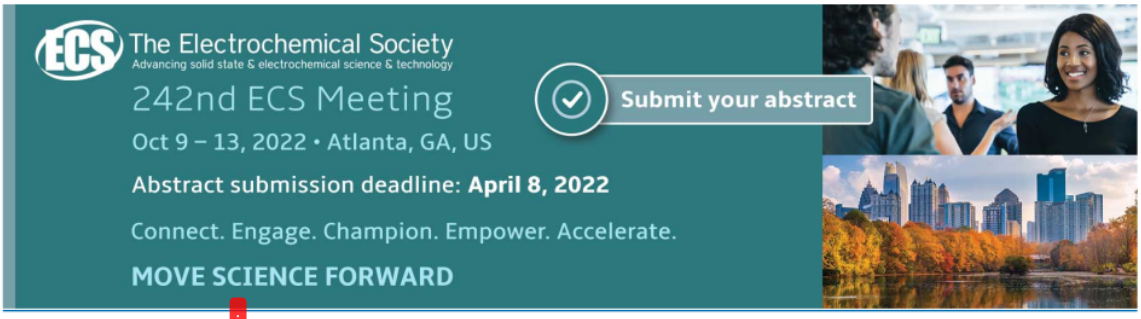

Politics of environmental law in relation to mining in Bangka Belitung: A mapping

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Abstract. Legal policy is an official policy that is enforced by either adding new laws or by replacing old laws with new ones in order for a country to accomplish its goals. In environmental context, attention to legal policy becomes crucial, especially when associated with massive mining that takes place in some areas. In other words, mining activity in all its forms and operational methods is bound to be influenced by government's environmental policies, including those in the form of laws and regulations. Since environment and mining affect each other, they are inseparable. The substances of environmental policies affect policies in the mining sector. Hence this normative study aims to do a mapping of environmental policies in regards to tin mining in Bangka Belitung. The data collection technique employed in this qualitative study was literature review, with laws and regulations as its primary data. This study used two approaches, namely statute approach and conceptual approach.

1. Introduction

Rich in natural resources, Indonesia faces a great challenge. With proper management, these resources can be utilized for the best interest of the people of Indonesia. On the other hand, mismanagement can bring about what is called the resource curse. The economic value of the vast resources might raise conflicts between the government and the people or among the people themselves. To avoid this, the Indonesian government has created a number of regulations. A set of regulations has been issued so that explorations of natural resources take place in an orderly manner.

Some mining regulations that have been enacted in Indonesia are included in Law No. 37 Prp. of 1960 on Mining. This law was issued based on several considerations, among which is the fact that minerals play an important role in many sectors of industry as well as having immediate uses for the people of Indonesia. This law firmly states that all minerals found within the Indonesian mining jurisdiction in the form of natural resources are national wealth that are controlled by the state.

Going seven years into force, Law No. 37 Prp. of 1960 on Mining was no longer deemed responsive to the condition of mining at that time. This law was then replaced by Law No. 11 of 1967 on the Basic Provisions of Mining. The promulgation of this law also marks the beginning of a more comprehensive mining regulation in Indonesia. However, in its later development, the law granted the central government too much authority in controlling the potentials of natural resources at the regional level, while the regions with the resources only serves as the executor of the central government's instructions.

On January 12, 2009, Law No. 4 of 2009 on Mineral and Coal Mining was passed, at the same time revoking the Law of Basic Provisions of Mining that had been in force for years. The most crucial thing about this law is that it regulates the authority in regards to mining activities. In addition, the enactment of the Law on Regional Government, which gives more authority to the regions to carry out regional affairs, implies authority in the mining sector. With this authority, the regional government began to provide the opportunity for anyone to do mining activities, which brought new problems to the table.

Every regulation that has been issued by the Indonesian government has had an impact on the mining sector management. The shifting authority to the regional governments has led to a tug of war with the central government. As a result, the House passed Law Number 3 of 2020 amending Law Number 4 of 2009 on Mineral and Coal Mining.

2. Methodology

The type of normative legal research selected for this paper is the positive law inventory research with vertical and horizontal synchronization of the regulation [1]. The research used statutory approach to regional and national regulations [2]. The research revolves around mining law and its dynamics since the regime of New Order to the one issuing Law No. 4 of 2009. Data sources were primary legal materials and secondary legal materials, from regional regulations to national law. The results were analyzed qualitatively to illustrate the dynamics of mining policy in Bangka Belitung Islands Province.

3. Result and Discussion

3.1. The Beginning: Law No. 11 of 1967

One of the root causes of mining problems in Indonesia is the enactment of Law No. 11 of 1967 on Basic Provisions of Mining (Law 11) which was passed by the Indonesian House of Representatives on December 2, 1967. This law revoked Law No 37 Prp. of 1960 on Mining that had served as the foundation for mining affairs regulation in Indonesia. The enactment of Law 11 became a monument to mining regulations in Indonesia. Law 11 regulated "the grouping and implementation of control over minerals, the structure and organization of mining enterprise, mining enterprise, mining authorization, procedures and requirements for obtaining a mining authorization, termination of mining authorization, the relation between mining authorization and land rights, state levies, and mining supervision."

The minerals referred to in this law are all kinds of minerals (chemical elements, minerals, ores, and all kinds of rocks, including precious stones constituting natural deposits). This law categorizes the minerals into three groups, namely strategic minerals, critical minerals, and other minerals not included in the first two groups. While the ministry holds authority over the management of strategic and critical minerals, the provincial government is authorized to manage critical minerals and non-strategic as well as non-critical minerals.

3.2. From Strategic to Free Good: Questioning the Decree of the Minister of Industry and Trade in 1998

Tin mining in Bangka Belitung Islands has been taking place for hundreds of years [3]. The history of Bangka Belitung has recorded the presence of two large tin mining companies in this province, namely PT. Timah Tbk as BUMN (State Owned Enterprise) and PT. Koba Tin, which stopped operating in 2013 because the government stopped extending the company's mining authorization. In its later development, particularly in the era of regional autonomy, the number of parties who practiced unlicensed mining and smelting activities in Bangka Belitung kept on rising [4]. In this region, smelting companies thrive with their activities of refining and processing tin ores.

In the beginning, tin was a strategic national commodity that was only exploited by state companies or private companies that had mining permits from the government. Accordingly, mining activities were only carried out by certain companies, while the people were not given the permit to do the same. This changed after the Decree of the Minister of Industry and Trade No. 146/MPP/Kep/4/1999 on the revocation of the status of tin as a strategic commodity and the Decree of the Minister of Industry and Trade No. 294/MPP/Kep/10/2001, which does not include the trade system of tin as a commodity that

is regulated, supervised, and prohibited for exports. The birth of these regulations changed the management of tin, included in which was the permit for people's mining, which the law had not allowed before. As a result, tin mining that had been monopolized by certain companies, especially BUMN, could now be done by the people. Tin mining became unmanageable. Tin mining activities were ubiquitous, and as such, the environment became the victim.

3.3. Under Regional Regulation No. 6 of 2001

In the interest of creating an effective, efficient, fair, green and sustainable management of natural resources mining in order to provide widespread benefit for people in the region, the Government of Bangka Regency issued the District Regional Regulation No. 6 of 2001 on General Mining Management. This regional regulation provided access to mining for the public. The regional legal products mentioned earlier was enforced in Central Bangka, West Bangka, and South Bangka, which were not yet established as independent regencies.

This law provides the opportunity for the public to conduct mining activities, with the consequence that mining tax has to be paid, which became one of the initial triggers leading to the complex tin mining issues [5]. It is one of the regulations that set off the practices of unlicensed mining in these regions. Regional autonomy enforced after the reformation was capitalized by the local government to give access for public tin mining. Consequently, illegal tin mining bloomed, violating government regulations and causing environmental damages.

3.4. From Land to Sea

Historically, tin mining in Bangka Belitung Islands has been around ever since the colonial era. The mining activities at that time were focused on certain areas approved by the Dutch. The majority of the mining were done in certain areas on land. The Dutch even prohibited mining activities in watershed areas.

Eventually, tin mining activities in Bangka Belitung Islands slowly shifted from land to the sea since it was found that tin could also be found under the surrounding sea bed. The shift of tin mining activities from land to sea is a new challenge that needs to be mitigated by the region. The potential damage to the sea bed due to tin mining, like that which had occurred on land, raised some concerns. The conflict of interest resulted in frequent conflicts between fishermen and miners within the region in recent times.

3.5. Under Law No. 4 of 2009 on Mineral and Coal Mining

Law No. 4 of 2009 on Mineral and Coal Mining (Minerba Law) was approved on January 12, 2009 in lieu of the long-standing Law on Basic Provisions of Mining (Law 11). Law 11 was considered too centralized, while the progression of mining development has to always adjust to strategical changes in the environment. Several issues that were not anticipated in Law 11 were globalization effect that encouraged democratization, environment, regional autonomy, and the demand to increase the involvement of private enterprises and the people. Accordingly, the Law on Mineral and Coal Mining was initiated to provide legal foundation for reformation and realignment of mineral and coal mining management and exploitation.

The law stated that the non-renewable resources of minerals and coals are controlled by the state and its development and utilization are carried out by the central and regional governments together with business entities. The government then provides opportunities for legal business entities in Indonesia, cooperatives, individuals, and local communities to operate mineral and coal mining with the permits issued by the central government and/or regional government in accordance with their respective authorities, which are in line with regional autonomy.

In the context of decentralization and regional autonomy, mineral and coal mining management is carried out based on the principles of externality, accountability, and efficiency involving both central and regional governments. Mining businesses must provide maximum economic and social benefits for the welfare of the people of Indonesia. It has to accelerate regional development and encourage economic activities for the society or small and medium businesses, as well as nourish the growth of

supporting mining industry. In order to create a sustainable development, mining businesses and activities must be carried out with regards to the safety of the environment, transparency, and community participation.

3.6. Under Regional Government Law

Following the regional autonomy, regional governments expanded its authorities under the Law no. 22 of 1999 on Regional Government. Several regions including Bangka Belitung Island province took this opportunity to regulate and manage the mining sector in their respective regions. Initially, only state-owned companies and permitted private companies are granted permission to operate tin mining, but now people were also able to do the same. Unconventional mining (TI) was widespread within the region.

The spread of TI was first sparked by PT Timah's policy that allowed TI in mines that no longer had value for the company. After the reformation, TI started to carry out tin mining outside of PT Timah's mining authority areas. These TI activities were done spontaneously, and they constantly moved from one area to another. Hence, the exact number of TI in operation was unclear. Initially, the mining activities were only operated on land, but then they were massively moved to the sea. As a result, the environmental damage did not only take place on land, but also in most of the surrounding waters.

Unlicensed mining led to a complex problem between economic demands, environmental damage, and law enforcement (Law is an order by way of system of rules on human behavior) [6]. First, the problem that unlicensed mining brought concerns some social problems related to the community's economic resources. Repressive law enforcement will cause great turmoil and the people will perceive that the government is not in favor of the poor. Second, overlooking this problem will increasingly threaten the environmental balance, and eventually will affect other segments, passing down a damaged environment to the next generations [7]. The lack of access to legal mining also triggers illegal mining (PETI) [8].

3.7. New Mineral and Coal Mining Law: New Chronicle

The government continues its efforts to regulate mining sector through a set of regulations. Mineral and coal mining management enters a new chapter after the Indonesian House of Representatives (DPR) and the government agreed to issue Law No. 3 of 2020 Amending Law No. 4 of 2009 on Mineral and Coal Mining. Several matters addressed in this amendment includes licensing authority, extension of permits, regulations for Small Scale Mining Permit (IPR) and environmental aspects, downstreaming, divestment, and arrangements to strengthen state-owned enterprises (BUMN).

In the latest Mineral and Coal Mining Law, it is stated that the control of mineral and coal is carried out by the central government through the functions of policy, regulation, administration, management, and supervision. The central government has the authority to determine the amount of production, sales, and prices of metal minerals, certain types of non-metal minerals, and coal. However, there are types of permits delegated to regional governments, including small-scale rock permit and Small-Scale Mining Permit (IPR). This Mining Law Amendment illustrates the transfer of authority from regional government to central government.

This led to a new page of mining governance in Indonesia, particularly in Bangka Belitung Islands province. The transfer of authority from the regional government to the central government is considered against the spirit of regional autonomy. Moreover, this is a setback to the past when the authority, especially in regards to permits, is controlled entirely by the central government. Once again, the regional government only carries out the instruction of the central government.

4. Conclusion

The abundance of natural resources owned by this nation requires the government to regulate it in a number of regulations. If it is not, it will potentially lead to conflicts, both between the government and citizens and among fellow citizens. Several mining regulations have been implemented in Indonesia, started from Law Number 37 Prp 1960 concerning on Mining to Law Number 3 Year 2020 concerning

on Amendment to Law Number 4 Year 2009 concerning on Mineral and Coal Mining. These amendments certainly have an impact on the authority over mining owned by the central and regional governments, and also impacts on environmental conditions due to mining activities, especially tin mining in the context of the Bangka Belitung Islands. On the other hand, revisions on the regulation lead out to a new chronicle in mining governance in Indonesia, including governance of tin mining in the Bangka Belitung Islands. Withdrawing authority from the regions to the centre in this regulation for example is considered to be contrary to the spirit of regional autonomy.

References

[1] Abdurrahman M 2009 *Sosiologi dan Metode Penelitian Hukum* (Malang: UMMPress) pp 129-130
[2] Marzuki PM 2009 *Penelitian Hukum* (Jakarta: Kencana) pp 96
[3] Sujitno S 2005 *Dampak Kehadiran Timah Indonesia Sepanjang Sejarah* (Jakarta: Cempaka Publishing) pp 7
[4] Ibrahim 2013 *Sengkarut Timah dan Gagapnya Ideologi Pancasila* Imperium pp 48
[5] Darwance, Nugroho S, and Yokotani 2017 Strategi Pengelolaan Sumber Daya Alam Dalam Pengaturan Pertimahan di Provinsi Kepulauan Bangka Belitungh: Dari Zaman VOC Hingga Indonesia Merdeka *Prosiding Seminar Nasional danCall for Paper Ekonomi dan Bisnis (SNAPER-EBIS 2017)* pp 546
[6] Asshiddiqie. 2006 *Teori Hans Kelsen tentang Hukum.* Sekretariat Jenderal dan Kepaniteraan MK RI (Secretariat General and Registrar of Indonesian Constitutional Court) pp 13
[7] Rahman B et al. *Menyoal Penambangan Timah Babel* Khomsa pp 21
[8] Haryadi D and Darwance 2017 *Kebijakan Pertambangan Timah Berbasis Pancasila dan Konstitusi* (Yogyakarta: Thafa Media)

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