



Problems of Indigenous Community-Based Coastal Area Management in the Bangka Belitung Islands

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Abstract. The interests of coastal indigenous peoples in Bangka Belitung Islands in managing coastal areas are eroded by economic interests covered by mining licenses. This research examines the management of coastal areas by Bangka indigenous peoples in terms of coastal area management. This research uses a normative juridical approach. This study used normative juridical approach. Then, the legal evidence were collected through literature reviews study and documents. The results of this study show that the management of the Bangka island coastal area by Bangka indigenous peoples is eroded by the administration of licenses from the central government so that indigenous peoples lose their special rights. The protection of the interests of Bangka indigenous peoples related to the management of coastal areas has not been accommodated. The indigenous people of Bangka Belitung islands must be given legal space through regional regulations that accommodate the interests of sustainable indigenous peoples.

Keywords: Indigenous Peoples, Coastal Areas, Bangka Belitung Island

1. Introduction

The concept of the Republic of Indonesia is constitutionally enshrined in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "The State recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law." By the highest law, indigenous peoples are recognized and have rights to their social life.

Indigenous peoples stretch from east to west Indonesia as legal subjects who live communally and have their own customary law concepts that are recognized and implemented by the community, including indigenous peoples in the Bangka Belitung Islands. Indigenous peoples in the Bangka Belitung Islands adapt to all current life practices, but still maintain a culture that lives in the midst of society, especially with regard to environmental management. The beautiful environment with a positive impact on the lives of indigenous peoples was then disrupted by the presence of mining activities in Bangka Belitung, namely tin mining.

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The presence of tin as one of the commodities with a high selling price at the international level makes investors present to conduct mining both legally and illegally. Mining activities that have been carried out by various parties, indirectly deny the existence of indigenous peoples of the Bangka Belitung Islands. This can be seen from the many indigenous territories that have been permanently lost due to mining activities or other activities that have converted indigenous forest areas into oil palm plantations. The aggression of mining activities in the mainland has been long enough that the existence of tin in the mainland is depleting so that the miners switch to the coastal area.

Coastal areas, which have been the livelihoods of indigenous peoples who work as fishermen, have begun to be threatened by the presence of mining activities in coastal areas. This mining activity is indirectly accommodated through legislation, namely in Law Number 3 of 2020 concerning Minerals and Coal Article 6 paragraph (1) letter k which states that "The Central Government in the management of Mineral and Coal Mining, is authorized to issue Business Licenses".

Based on this, the Central Government has the authority to grant licenses to carry out mining activities. Furthermore, Article 35 paragraph (1) of Law Number 3 of 2020 concerning Mineral and Coal Mining also states that mining businesses are carried out based on business licenses from the central government. This clearly describes that all mining activities in the regions obtain licenses from the central government, which indirectly does not pay attention to the existence of indigenous peoples in the area, especially the indigenous peoples of Bangka Belitung. In other regulations, there is indirect protection for Bangka Belitung indigenous peoples listed in the Regional Regulation, namely the Regional Regulation on the Zoning Plan for Coastal Areas and Small Islands of the Bangka Belitung Islands Province for 2020-2040 (hereinafter referred to as the RZWP3K Regional Regulation). In the RZWP3K Perda, there are still pros and cons related to the implementation of the Perda, but indirectly the Perda accommodates the boundaries of the mining area so that indigenous peoples can still utilize the coastal area space.

There are several studies related to tin mining, including the first research conducted by Risdawati, et al., with the title *The Suffering Behind the Mine: The Contestation of Political Economic Interests in Tin Mining in Bangka Belitung*, the focus of the research is related to the pros and cons of unconventional tin in the Bangka Belitung area, the switch of fishermen and construction workers to tin miners because they get money relatively quickly, the existence of social conflicts that occur in the community.[1] The difference between the author's research is the problem of tin mining on indigenous peoples who still exist in Bangka Belitung, which distinguishes this research from previous research. Second, research conducted by Khoiril Muslih, et al, on the *Effect Of Tin Mining Activities On Fish Diversity And Indigenous Knowledge In Bangka*. The focus of the study was on the effect of mining activities on water quality and fish species diversity as well as local wisdom related to the protection and utilization of river water resources.[2]

The fundamental difference with this research is the focus of research on the relationship patterns of indigenous peoples affected by mining activities so that

mining changes the perspective and lives of indigenous peoples in Bangka and Belitung.

In its implementation, there is a legal gap that occurs against the licensing pattern that is withdrawn by the Central Government. There are also administrative problems that occur under the pretext of increasing state foreign exchange, but on the other hand make indigenous peoples lose their existence in their own territory. In particular, it is necessary to harmonize laws and regulations related to accommodating the interests of indigenous peoples in higher laws and regulations as protection of the rights of indigenous peoples can be achieved.

2. Problems

Based on explanation above, the problems in this study are:

- a. Has the management of mining licenses in coastal areas by the Central Government accommodated the interests of indigenous peoples of the Bangka Belitung Islands?
- b. What is the form of legal protection for Bangka Belitung indigenous peoples in the management of coastal areas in the Bangka Belitung islands?

3. Method

This research is a normative juridical research, with data collection methods through library research. The secondary data that the author uses in this research consists of primary legal materials, namely legal materials that are binding and researched in the form of laws and regulations related to mining licensing. Primary data will be supported by secondary data, namely library materials that contain information about primary materials, in the form of textbooks, journal articles, and other supporting materials. Statute approach and conceptual approach will be used in this research. The data collected comprehensively will be analyzed qualitatively, where all research data is processed in the process of legal reasoning. Means or tools to analyze using grammatical interpretation by interpreting laws and regulations to answer existing problems, then a conclusion is drawn and submitted as a suggestion. Data is analysis by juridical qualitative.

4. Discussion

4.1. Concept of Coastal Zone Management

Management of coastal areas and small islands is generally controlled by the state and used to the greatest extent for the prosperity of the people.[3] Regarding regional management, it is stipulated in the 1945 Constitution, specifically in the provisions of Article 33 paragraph (3) of the 1945 Constitution. This provision becomes the doctrine of state control and at the same time becomes the philosophical and juridical

basis for control of natural resources in Indonesia, including control over marine resources in coastal areas. The provisions as stipulated in the provisions of Article 33 paragraph (3) of the 1945 Constitution emphasize that state control over natural resources is used to the greatest extent for the prosperity of the people, so any management of natural resources must be based on these provisions.[4]

Sustainable Coastal Management can be interpreted as an activity is said to be sustainable, if development activities are economically, ecologically and socio-politically sustainable. Economically sustainable means that a development activity must be able to produce economic growth, capital maintenance, and efficient use of resources and investment. Ecologically sustainable means that the activity in question must be able to maintain the integrity of the ecosystem, maintain the carrying capacity of the environment, and conserve natural resources including biodiversity, so that it is expected that resource utilization can be sustainable. Meanwhile, socio-political sustainability requires that a development activity should be able to create equitable distribution of development results, social mobility, social cohesion, community participation, community empowerment (decratization), social identity, and institutional development.[5] Resource management, especially management based on indigenous peoples themselves, refers to the achievement of maximum benefits for the prosperity of the people based on social justice to advance and prosper communities in various regions, especially coastal areas.

Management of marine resources in coastal areas is carried out through planning, utilization, supervision and control of human interaction in utilizing these resources and natural processes in a sustainable manner in an effort to improve the welfare of the community and maintain the integrity of Indonesia.[6] The management of coastal areas itself is generally based on tourism potential. However, in recent decades, the management of the marine sector itself has begun to produce good results for increasing Regional Original Income (PAD) in various sectors, including the mining sector. Regions that have large natural resources will carry out activities directly to increase their original regional income, including the Bangka Belitung Islands region. Utilization of the coastal sector or area has pros and cons, but in general it has an impact on life in various sectors, both economic, social, cultural, educational and so on. However, it also has an impact on indigenous peoples who still exist in the coastal areas of the Bangka Belitung islands.

4.2. Pattern of Protection of Indigenous Peoples' Interests

Indigenous peoples are an integral part of Indonesian society. Legally and socio-culturally, indigenous peoples provide guidance through the existence of local wisdom, including the utilization of the environment, both the environment in the mainland and coastal areas. Local wisdom itself is a synthesis of luhar values that live in society, so that the existing order in society is part of the values of the people in the region or area. The existence of local wisdom is still well maintained, especially in the Bangka Belitung Islands.

The basis for the protection of indigenous peoples in Indonesia is constitutionally regulated in the 1945 Constitution of the Republic of Indonesia in Article 28I paragraph (3) which states that "The cultural identity and rights of

traditional communities shall be respected in harmony with the development of the times and civilization". Based on the written rules in the 1945 Constitution, especially in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it clearly raises the protection of the rights of indigenous peoples. Then derived in a more specific regulation, namely Law Number 31 of 2004 concerning Fisheries, there are rules that must consider customary law and / or local wisdom that exists in the vicinity, especially indigenous peoples.

According to Saini, local wisdom is often associated with local communities. In foreign languages, it is conceptualized as local wisdom, local knowledge, or local genius. Local wisdom is the attitude, outlook, and ability of a community in managing its spiritual and physical environment, which gives the community resilience and growth in the area where it is located. In other words, local wisdom is a creative response to local geographical, political, historical and situational situations.[7]

Specifically, as a derivative regulation, the recognition and protection of customary law communities is also regulated in the Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities. In the general provisions of Article 1 point 1, what is meant by customary law communities are Indonesian citizens who have distinctive characteristics, live in groups harmoniously according to their customary laws, have ties to ancestral origins and / or similarities of residence, there is a strong relationship with the land and the environment, as well as a value system that determines economic, political, social, cultural, legal institutions and utilizes a certain area for generations. So specifically that the state guarantees the existence of customary law and indigenous peoples who are still alive and carry out traditions for generations.

Indigenous peoples themselves live based on values that have been believed to be noble values that live and are implemented by the community, including environmental empowerment. One form of environmental empowerment is by utilizing the existing environment. Indigenous peoples, who are in principle administrative to the state, will submit and obey all regulations made by the state. Regarding the utilization of the environment around indigenous peoples, there is a tug of war over the authority that issues permits for environmental management. In the process, there are several legal rules that change with different systems or patterns. Rules relating to licensing in the regions include Law Number 23 of 2014 concerning Regional Government, Law Number 3 of 2020 concerning Mineral and Coal Mining (Minerba Law), mining licenses are entirely transferred to the Central Government and Law Number 11 of 2020 concerning Job Creation.

In this regulation, there is a transfer of authority between these laws related to the transfer of authority of the party entitled to issue licenses for mining. Based on this, Law Number 11 of 2020 concerning Job Creation clearly revokes regional authority to issue mining licenses, so that only the central government can issue these licenses. Regarding this matter, the central government indirectly takes over administrative authority in the process of granting mining licenses, this also intersects with the conditions and situations in their respective regions or regions.

The central government sometimes forgets the existence of indigenous peoples who actually live and carry out activities in areas that are actually coastal areas which are the scope of these indigenous peoples. Therefore, with the authority to grant mining licenses by the central government, it has implications for community participation in the implementation of the authority to grant mining licenses. In fact, when the granting of mining licenses is still carried out by the local government, it is easier for the community to directly supervise and monitor mining activities by the community, so that the community's control function is broader and stronger.

In mining management, especially related to licensing issues, indigenous peoples have generally never been involved in the process of controlling mining licenses. Therefore, conflicts often occur between indigenous peoples and miners who obtain licenses or partnerships from PT Timah in the process of mining activities, especially in coastal areas. Inadequate access and information flow have resulted in poor relations and communication between indigenous peoples and mining license holders. The indigenous people of Bangka Belitung hold their culture and customary law very tightly, therefore the indigenous people of Bangka Belitung have more respect for customary heritage, whether rivers, seas, or mountains to be well maintained. When licensing-based economic interests enter to carry out mining activities, indigenous peoples are not included in various matters, including determining the mining area, mining area boundaries, the scope of customary territories, and so on. This is what makes the interests of indigenous peoples in Bangka Belitung never accommodated by the government, both the central government as the highest regulator in the mining sector.

4.3. Legal Protection of Bangka Belitung Indigenous Peoples from Mining Activities in Coastal Areas

In state administration, the implementation of spatial planning of coastal areas and small islands is part of government affairs which is finally broken down into several levels, starting from the highest level of government called the state or central government to the provincial and district / city levels of government, which must be oriented towards community participation in carrying out services to the interests of the community, one of which is related to mining management licensing. Mining activities that occur in Indonesia, one of which is in Bangka Belitung where miners exploit natural resources related to Tin itself in the coastal area. Indeed, coastal areas and small islands are part of the natural resources that need to be preserved so that they can be utilized by all levels of society, including indigenous peoples for today and the future.

The protection of indigenous peoples itself, intersects with spatial planning and territory. In terms of spatial planning, it is not only the authority of the central government, but also the authority of the regional government, which is to carry out spatial planning in provincial and district / city areas. This matter of regional authority is regulated in Law Number 9 of 2015 concerning the second amendment to Law Number 23 of 2014 concerning Regional Government, where the provincial area in the field of spatial planning is regulated planning and development control, supervision and utilization, and also regulated regarding the implementation of public

order, public tranquility and provision in terms of public facilities and infrastructure. [8]

This sequence of spatial planning is related to the pattern of protection of natural resources, human resources, as well as the boundaries of the jurisdiction of the area that borders between one region and another, especially coastal areas. In the management of coastal areas, it is stipulated in Law Number 27 of 2007 concerning the Management of Coastal Areas and Small Islands. In general, the purpose of establishing regulations related to coastal areas is related to the fact that there are still many parties who often commit violations related to coastal areas. Because if there is damage to the coastal ecosystem, it must be understood and considered deeply, where the damage to the coastal ecosystem will certainly be followed by environmental problems as well, including coastal abrasion, flooding, sedimentation, and decreased fisheries productivity. Many of these impacts are experienced by indigenous peoples in the Bangka Belitung Islands.

In the provisions of Article 6 paragraph 1 letter k of Law Number 3 of 2020 concerning Minerals and Coal states that "The Central Government in the management of Mineral and Coal Mining, is authorized to issue Business Licenses". This means that the Central Government again has the authority to grant licenses to carry out mining activities. Furthermore, Article 35 paragraph 1 of Law Number 3 of 2020 concerning Mineral and Coal Mining also explains that mining businesses are carried out based on business licenses from the central government.

Bangka Belitung Islands is one of the island regions with many mining activities, one of which is tin mining. Supporting this, a Regional Regulation on the Zoning Plan for Coastal Areas and Small Islands of the Province of Bangka Belitung Islands for 2020-2040 was born. In connection with the mining permit in the Regional Regulation where it is explained in Article 56 number (1) of the RZWP3K Regional Regulation states that every person who carries out the spatial utilization of part of the coastal waters and the use of part of the small islands on a permanent basis is required to have a Water Location Permit. Furthermore, Article 58 explains that "In granting Location Permits and Management Permits as referred to in Article 56 and Article 57, the Governor shall consider:

- a. preservation of coastal ecosystems and small islands;
- b. availability of location and/or access for Local Communities and Traditional Communities to utilize space and resources of coastal waters and small island waters;
- c. small-scale fishermen and traditional fishermen;
- d. national interest; and
- e. the right of peaceful passage for foreign vessels".

However, in reality, the preservation of coastal ecosystems and environmental conservation in the management of coastal areas on Bangka Island and Belitung Island is not in accordance with what is stated in the Regional Regulation on coastal area management. One concrete example of illegal mining activities on the island of

Bangka is proven to be very much happening. Some of the mining activities are done openly during the day, while others are done secretly at night. One of the illegal mining locations is Teluk Kelabat Dalam. In this 16,000-hectare water area, dozens of Sand Suction Pontoons (PIPs) from illegal miners are clearly visible sucking tin sand from the seabed. This activity causes underwater sediments to be lifted, changing the color of the sea water from blue to beige. Meanwhile, on the coast, we can see how the mangroves have been blackened and withered due to the reckless activities of these miners. These plants, which are supposed to be an important ecological buffer for the land, are nothing but dry stems with fallen leaves.[9]

In addition, mining in the sea itself has resulted in the destruction of coastal ecosystems and marine waters, and ultimately has an impact on the disruption of around 45 thousand traditional fishermen who rely on their lives from the coast and sea. This also puts Bangka Belitung Province in the highest rank with damaged and highly critical land conditions reaching 1,053,253.19 hectares or 62 percent of Babel's land area. Tin mining activities not only damage the environment but also endanger the safety of the people.[10]

Environmental damage carried out due to mining activities in principle has violated. In actions that violate the provisions of the legislation, of course, there must be law enforcement as a form of legal certainty for actions that are certainly not in accordance with applicable regulations. However, this environmental damage, especially in coastal areas and beaches, is still a dilemma. One of them is regarding mining activities carried out in coastal areas which are prohibited in Article 35 letter (k) of Law Number 20 of 2007 concerning Management of Coastal Areas and Small Islands which states that conducting mineral mining in areas that technically and/or ecologically and/or socially and/or culturally cause environmental damage and/or environmental pollution and/or harm the surrounding community.

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This is a form of serious commitment from the state to recognize the position of indigenous peoples who are as important as other communities. If this is done, indigenous peoples have the space to prosper through the control and utilization of customary lands and forests as well as coastal areas. In addition, indigenous peoples have sovereignty over their cultural identity through the recognition of a multicultural national identity, and indigenous peoples have the right to participate through the implementation of participatory development. Tiered and sustainable development from upstream to downstream as evidence of recognition and protection of indigenous peoples.

Structurally, it is not easy to implement a regional regulation related to the recognition and protection of indigenous peoples. This is because this effort will directly deal with various economic and political interests, especially related to the control of natural resources. Indeed, a legal product is the basis for implementing a common goal, including economic goals, but it also intersects with environmental sustainability and the rich culture and traditions of a nation, one of which is related to the protection of indigenous peoples themselves.

The existence of indigenous peoples has been understood and considered by positioning them in the 1945 Constitution as one of the inherent parts of Indonesian society. In the Indonesian constitution, the position of indigenous peoples and their constitutional rights are enshrined in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution. In principle, with regard to indigenous peoples, especially with regard to the recognition, respect, protection and fulfillment of the rights of indigenous peoples, it is not only the task of the central government's mandate but also an obligation for local governments. In the international arena, Indonesia became one of 144 countries that declared UNDRIP (United Nations Declaration on the Rights of Indigenous Peoples) which was passed by the United Nations (UN) in New York on September 13, 2007. If we look at the system and principles in UNDRIP, the values in the protection of Indigenous Peoples and local regulations on indigenous peoples can be carried out and implemented as evidence of the state's partiality towards indigenous peoples.

Legal protection of existing regulations as far as protection of indigenous peoples, there are several stratifications of regulations, including First, Article 18 B paragraph (2) of the 1945 Constitution, which reads, "The state recognizes and respects the unity of customary law communities and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law." And, Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia; "The cultural identity and rights of traditional communities shall be respected in line with the development of the times and civilization." Secondly, there are at least 16 laws in Indonesia, which regulate the existence and rights of customary law communities. These include Law No. 39 of 1999 on Human Rights; Law No. 41 of 1999 on Forestry; Law No. 22 of 2001 on Oil and Gas; Law No. 20 of 2003 on the National Education System; Law No. 24 of 2003 on the Constitutional Court; Law No. 27 of 2003 on Geothermal; Law No. 7 of 2004 on Water Resources; Law No. 18 of 2004 on Plantations; Law No. 31 of 2004 on Fisheries. Law No. 26/2007 on Spatial

Planning; Law No. 27/2007 on Management of Coastal Areas and Small Islands; Law No. 30/2009 on Electricity; Law No. 32/2009 on Environmental Protection and Management; Law No. 18/2013 on Prevention and Eradication of Forest Destruction; Law No. 1/2014 on Amendment to Law No. 27/2007 on Management of Coastal Areas and Small Islands; and Law No. 6/2014 on Villages. Third, other laws and regulations governing indigenous peoples, such as TAP MPR. IX/MPR/2001 on Agrarian Reform and Natural Resource Management; Constitutional Court Decision No. 35/PUU-X/2012 on Customary Forests; Presidential Decree No. 111/1999 on the Empowerment of Remote Indigenous Communities; and Minister of Home Affairs Regulation No. 52/2014 on Guidelines for the Recognition and Protection of Customary Law Communities. So by regulation, it can be done systematically and sustainably to implement the recognition and protection of indigenous peoples.

The output form of legal protection of indigenous peoples can be done by the process of forming public policies, so non-legal factors will always affect the implementation process. According to Esmi Wirassih, to anticipate this, policy steps are needed, including, first, integrating a program action plan by setting clear tests, setting implementation standards, time and costs, Second, implementing the program by mobilizing structures, staff, costs, resources, procedures and methods, Third, making an implementation and monitoring schedule to ensure the program, goes according to plan. Thus, if there is a violation in the implementation of the program, action will be taken which will involve the elements of time, planning and monitoring.[11]

5. Conclusion

The results of this research show that the management pattern of the Bangka Belitung island coastal area has never involved Bangka Belitung indigenous peoples, especially related to mining activities. Then related to the legal protection of indigenous peoples, in writing, it has not been maximally accommodated about the protection of the interests of Bangka Belitung indigenous peoples related to the management of coastal areas. The indigenous people of Bangka Belitung islands must be given legal space through more specific rules, namely regional regulations that accommodate the interests of sustainable indigenous peoples

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