Legal Position Analysis of Regional Regulations Regarding the Zero-Mining Zone Over Mining Business License Areas (Case Study in East Belitung Regency)

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Abstract This research focuses on the implementation of Regional Regulation no. 3 of 2020 concerning Zone Plans for Coastal Areas and Small Islands regarding the determination of mining zone areas that do not accommodate the East Belitung Regency area in granting mining business permits. In fact, East Belitung is included in the mining zone or mining business area and has a mining business permit belonging to the stackholder PT. Timah. which has been outlined in the provisions for determining mining areas according to applicable law. This research uses normative research methods. The results of this research are the implementation of PERDA RZWP3K as outlined in PERDA No. 3 of 2020, the Bangka Belitung Islands Province has been harmonized with higher regulatory provisions, namely Law no. Number 1 of 2014 concerning Management of Coastal Areas and Small Islands and Law no. 3 of 2020 concerning Mineral and Coal Mining as well as ministerial regulations governing mining zones. In this case, inappropriate regional regulations need to be tested and amended and the regulations revoked if the nuances presented hinder the growth of economic development for national and regional development purposes.

Keywords: RZWP3K, Mining Area, Mining Business Permit, Regional Regulations

1 Introduction

Indonesia, with its abundant natural resources, has the potential to provide prosperity for its people.[1] Exploration and exploitation of these natural resources are carried out across the nation to harness the benefits of the country's bountiful resources for the well-being of its citizens.[2] Article 33, paragraph (3) of the Constitution of the Republic of Indonesia underlines that the management of mining resources is primarily intended for the welfare of the people. The article states: "The land and waters and the natural riches contained therein are controlled by the state and are to be utilized for the greatest prosperity of the people." This clause underscores that the state has absolute sovereignty over the country's natural resources, and the rightful ownership of these resources is vested in the Indonesian people. "State ownership rights are an instrument, while the greatest prosperity of the people is the ultimate goal of natural resource management."[3] This constitutional norm has guided the development of the nation's natural resources, emphasizing state control for the benefit of the people.[4]

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Furthermore, Indonesia is a welfare state, as articulated in the Preamble of the 1945 Constitution, which states, "To form a government of the State of Indonesia that will protect and improve the public welfare." To achieve this well-being, regional governance is established, as stipulated in the considerations of Law Number 23 of 2014 on Regional Governance (Regional Law), which states, "The implementation of regional governance is directed toward accelerating the realization of public welfare through the enhancement of services, empowerment, and community participation, as well as improving the competitiveness of the region, while considering the principles of democracy, equity, justice, and regional specificity within the framework of the Unitary State of the Republic of Indonesia."[5] In Article 12, paragraph (1) of Law Number 23 of 2014 on Regional Governance, one of the mandatory affairs related to basic services includes public works and spatial planning. Spatial planning is related to mining areas, which is the phenomenon to be examined in this writing, specifically in one of the provinces, namely Bangka Belitung.[6]

The Bangka Belitung Islands Province is known for its natural resources, including the agricultural, marine, and mining sectors.[7] This region is renowned as the 'tin island,' thanks to its international tin mining market. According to the Central Statistics Agency of the Bangka Belitung Islands Province in 2021, the province produced 19,719.32 tons of tin in 2014. As cited from the official website of the Bangka Belitung Islands Province, it is a region with substantial mining potential, as it contains a wealth of land with mineral ores such as tin and other minerals (e.g., quartz sand, building sand, kaolin, volcanic rocks, clay, and granite). Furthermore, mining activities are a significant source of livelihood for the residents of Bangka Belitung. As a result, mining activities are a pivotal driver of the local economy in Bangka Belitung.[8]

Mining activities are not limited to land but also extend into maritime areas. Maritime mining differs from land mining in terms of methods, as maritime mining utilizes suction dredger vessels capable of excavating up to 25 meters below the sea surface. Coastal communities are concerned about the operation of these suction dredger vessels, as they fear that many of their livelihoods as fishermen will be lost. All maritime mining operations result in damage to the coast, such as coral reef destruction, diminished fish habitats, and reduced fishing yields.[9]

In response to these concerns, the Provincial Government of the Bangka Belitung Islands passed Regional Regulation on Zoning of Coastal Areas and Small Islands (Peraturan Daerah RZWP3K) for the Bangka Belitung Islands Province.[10] Zoning plans determine the direction of resource usage for each planning unit, outlining permissible and restricted activities and those that require authorization. According to Regional Regulation No. 3 of 2020 on Coastal and Small Island Zoning Plans for the Bangka Belitung Islands Province, these zoning plans dictate the resource usage direction for each planning unit, establishing spatial structures and patterns for planning areas that outline permissible and restricted activities, which can only be carried out with authorization.

Regarding sea mining permits in Bangka Belitung, several issues have emerged in the field, such as problematic granting of Mining Business Permits (Izin Usaha Pertambangan or IUP), lack of participation by fishermen and coastal communities in the Environmental Impact Assessment (AMDAL) process, and more. While these issues relate to the 2009 Environmental Protection and Management Act, the focus of this research is not on these matters. In reality, there is a particular region in the East Belitung Regency of the Bangka Belitung Province concerning mining zones that lacks a sub-zone specifically for mineral mining, referred to as

KPU-TB-MN.[11] Furthermore, as stipulated in Article 24 of Regional Regulation No. 3 of 2020, the East Belitung Regency is not included, only the regions of Bangka, West Bangka, South Bangka, and Central Bangka.[6]

However, the East Belitung region is an area for mining operations owned by one of the stakeholders, PT. Timah, which holds a Mining Business Permit (IUP) in East Belitung Regency. PT. Timah, though, cannot conduct mining activities because its authority is undermined by the presence of this Regional Regulation. According to Oce Madril, the revocation of regional regulations can also occur if the existing regional regulation obstructs investment and development activities. Therefore, the author contends that the presence of this Regional Regulation is flawed because it contradicts the zoning determined by the central government through the Mineral and Coal Mining Law (UU No. 3 of 2020) provided to PT. TIMAH. Furthermore, the Mining Business Permit (IUP) has been in place since 2015, before the enactment of the RZWP3K Regional Regulation. This is why the regional regulation can be annulled if it conflicts with the law through the Supreme Court (MA). Consequently, this research aims to analyze the legal position of regional regulations regarding the zero-mining zone in the mining business permit area in East Belitung Regency.

2 Method

The methodology employed in this academic paper is normative writing, based on relevant literature concerning the topic at hand.[12] This writing endeavor seeks to analyze normative legal studies and material facts through legal decisions, journals, and various other references. The technique used in this paper is qualitative analysis, with a focus on the implementation of continuously relevant regulations in response to real-world events. Data sources obtained are collected, verified, and subsequently incorporated into the text.

3 Result and Discussion

The abundant natural resources and ecosystems, as well as the unique and beautiful natural phenomena in Indonesia, are considered divine blessings. These natural resource potentials and ecosystems need to be developed and utilized for the greatest prosperity of the people to achieve a balance between protection, preservation, and sustainable utilization.[13] The management of natural resources in Indonesia is constitutionally guided by Article 33, paragraph (3), while still considering Article 28H, paragraph (1) of the 1945 Constitution.[14] Article 33, paragraph (3) of the 1945 Constitution establishes that "the land and water and the natural wealth contained therein are controlled by the state and are used for the greatest prosperity of the people," as a fulfillment of the basic rights of citizens as mandated in Article 28H, paragraph (1) which states that "everyone has the right to a prosperous life, both physically and spiritually, to reside, and to have a good and healthy environment, and the right to obtain health services."

Since the decentralization policy was implemented, regions have started to pay attention to their potential, which can be developed economically to improve the welfare of their communities. Some regions in Indonesia with coastal and small island territories realize the importance of managing these areas for various activities, both economically and for conservation, in a balanced and appropriate manner. Coastal and small island areas indeed have their unique characteristics, but they are also vulnerable to conflicts of interest, economic and social

conflicts, and various environmental issues due to non-ecological principles as the basis for sustainable resource management.[15] Jurisdictional conflicts in coastal and small island areas can arise when there is a paradigm shift in natural resource management within the jurisdiction of local government in the framework of decentralization of authority. In the case of natural resources that do not cross borders, it may not cause significant problems given that the jurisdiction is relatively clear. However, for resources that are transboundary, such as fisheries and marine resources, this requires careful attention due to the high potential for jurisdictional conflicts.[16]

In this context, coastal areas are categorized within the mining zone. The mining area, as part of the national spatial plan, serves as the foundation for mining activities established by the government after coordinating with local governments and consulting with the People's Consultative Assembly of the Republic of Indonesia. The determination of mining areas is done transparently, participatively, and responsibly, with an integrated approach, taking into account the opinions of relevant government agencies, communities, and considering ecological, economic, socio-cultural, and environmental aspects, as well as regional aspirations. The government and local governments are obliged to conduct mining investigations and research in preparing mining areas.

The implementation of Regional Regulation (PERDA) of Bangka Belitung No. 3 of 2020 concerning Coastal and Small Islands Spatial Zoning has created restrictions in the determination of mining zones, particularly in the coastal area of East Belitung. This PERDA did not provide access and did not accommodate mining activities in the coastal area of East Belitung. However, the coastal area of East Belitung is a mining business area and holds a mining business permit owned by PT. Timah In the context of this situation, relating to Law No. 7 of 2017 concerning Coastal and Small Islands Spatial Management, it is mentioned that "in the utilization of coastal and small islands areas, any person, directly or indirectly, is prohibited from conducting mineral mining activities 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." The key phrase in this article is "cause environmental damage and/or environmental pollution and/or harm the surrounding community," which is the basis for rejecting mining zones in the East Belitung coastal area and was not intended in the provisions of the applicable PERDA for environmental reasons as the subject affected by mining activities.

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However, in the mechanism of mining business permits based on regional spatial plans and coastal and small islands areas, companies that hold IUPs in mining areas, such as PT. Timah, have already accommodated provisions in the Environmental Impact Assessment (AMDAL).

The AMDAL is an environmental permit for business activities with environmental impacts. Therefore, the emphasis is placed on the environmental permit (AMDAL), and the clause in the law cannot be directly adopted to remove mining zones held by companies with IUPs.

Referring to the elaboration provided in Law No. 3 of 2020 on Minerals and Coal Mining, the Mining Area, or WP, refers to areas with potential minerals and/or coal and is not bound by government administrative boundaries as part of national spatial planning. The Mining Business Permit Area, or WIUP, is the area granted to the holder of the IUP or SIPB. Not being bound by administrative boundaries is interpreted as mining areas that have obtained permits from the relevant regulations and should be executed in accordance with the laws governing them. Therefore, the lower-level legal provisions cannot be used as a basis to obstruct mining activities, as seen in the provisions of PERDA No. 3 of 2020.

In the context of the study and regional development in East Belitung, the basic reason for the rejection of mining zones in this area within the provisions of PERDA RZWP3K is based on Article 23, paragraph (2) of Law No. 1 of 2014 concerning the Management of Coastal Areas and Small Islands. This article states that the utilization of small islands and the waters around them is prioritized for conservation purposes, education and training, research and development, aquaculture, tourism, sustainable fisheries and marine industries, organic agriculture, animal husbandry, or national defense and security. However, this prioritization does not provide a basis for removing areas designated for public use that already include mining zones, especially since RZWP-3K should follow and combine central government and regional government plans, taking into account zones and sea lanes set according to legal regulations. The mining zone is one of the areas for public use where mining permits have already been granted in accordance with the applicable regulations. In other words, the word "priority" in Article 23, paragraph (2) of Law No. 1 of 2014 cannot override areas already designated, including mining zones with mining permits that have already fulfilled their environmental management requirements through an environmental permit (AMDAL), as specified in Article 23, paragraph (3) of Law No. 11 of 2014.

Furthermore, in the theory of legal regulations, according to Article 1, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the state of Indonesia is a Unitary State in the form of a Republic.[17] In the framework of this unitary state, according to Article 18, paragraph (1) of the 1945 Constitution of the Republic of Indonesia, "The Unitary State of the Republic of Indonesia is divided into Provinces and those Provinces are further divided into Regencies and Cities, each of which has Regional Governments regulated by law." This emphasizes that the term "divided into" signifies that the Unitary State of the Republic of Indonesia is a unitary state where state sovereignty is in the hands of the center, in contrast to the term "composed of," which more indicates federalism as it suggests that state sovereignty lies in the hands of the state.

The authority to exercise this sovereignty can be delegated by the Central Government to Regional Governments based on autonomy rights, creating a mutual relationship that results in a relationship of guidance and supervision. The guidance relationship between the Central Government and Regional Governments can be based on the principles of decentralization, deconcentration, and task assistance. Meanwhile, the supervision relationship between the Central Government and Regional Governments can be carried out by supervising the legal products of the Region.

The authority relationship between the Central Government and Regional Governments, in terms of guidance, is intended to ensure the unity of government operations from the center to the regional level.[18] The supervision relationship, on the other hand, is intended to prevent Regional Governments from abusing their autonomy in making Regional Regulations. In other words, the implementation of autonomy through the creation of Regional Regulations should not infringe on the rights of the citizens themselves.

Peraturan Daerah (PERDA) is a local regulation created by regional governments in Indonesia to implement autonomy and carry out delegated tasks. The authority granted by the central government to regional governments through autonomy is essential to ensure the functioning of democracy. Autonomy enables regional governments to independently manage their own affairs and the interests of the local community within the framework of the Unitary State of the Republic of Indonesia. This includes the power to create regulations that align with the specific needs and characteristics of the region.

PERDA and other local regulations formulated collaboratively by executive and legislative bodies at the regional level hold similar weight to national laws. This category of regulations is often referred to as "local laws" or "local legislation" and can be thought of as local equivalents to national laws. The primary difference lies in their territorial or geographical scope. While national laws, including Undang-Undang, apply nationwide, PERDA is confined to specific regional territories, such as provinces, regencies, or cities.

The content of PERDA at the provincial and regency/city levels may encompass subjects and matters similar to those addressed by national laws, but with a more localized focus. The processes of drafting, forming, enacting, and disseminating PERDA follow a similar framework to that of national laws. However, the key distinction is the geographical area in which they are applicable. National laws apply across the entire nation, while PERDA is limited to the respective territorial jurisdictions of provinces, regencies, or cities.

To ensure harmony and compliance between national laws and regional regulations, mechanisms for testing and evaluating the compatibility of PERDA with higher-level laws are established. When there are conflicts or inconsistencies between the two, appropriate processes and institutions are in place to address and resolve such issues, often through judicial review or other legal means. This helps maintain the integrity of the legal system, upholding the principles of democracy, rule of law, and the unitary nature of the Indonesian state.

Article 24C(1) of the 1945 Constitution of the Republic of Indonesia stipulates that one of the powers of the Constitutional Court is to test laws against the Constitution. Meanwhile, based on Article 24A(1) of the 1945 Constitution of the Republic of Indonesia, it is stated that the Supreme Court has the authority to adjudicate at the cassation level, to examine regulations below the Law against the Law, and to have other authorities granted by the Law.[19] From the text of this article, the Supreme Court has the authority to examine Provincial and District/City Regulations if they are in conflict with the Law. According to this article, the Supreme Court is not only allowed to examine the content of regulations under the Law but also to assess whether the process of creating regulations under the Law complies with the procedures for formulating regulations based on the Law. However, based on Supreme Court Regulation No. 1 of 2004 concerning Material Testing Rights, the authority granted by the 1945 Constitution and the Law to test regulations under the Law has been narrowed down to only encompass material testing,

and the Supreme Court's authority to examine regulations under the Law for formal compliance has been removed.

District/City Regulations, as products of local legislative bodies, occupy a position within the hierarchy of regulations and laws in Indonesia. Therefore, it is the authority of the Supreme Court to test these regulations if they are in conflict with higher-level regulations. In this context, the testing of the Provincial Regulation of Bangka Belitung No. 3 of 2020 should be pursued by examining it in light of the Minerba Law No. 3 of 2020 and Law No. 1 of 2014 concerning the Management of Coastal Areas and Small Islands. This is particularly relevant as PT Timah holds a valid business permit within the area. However, the presence of this local regulation has seemingly diminished the authority of stakeholders who hold mining permits, which have been granted under higher-level laws and ministerial regulations. Additionally, the Provincial Regulation of Kepulauan Bangka Belitung regarding the Coastal and Small Islands Spatial Zoning Plan (RZWP3K), which was developed based on the RZWP3K document, appears to exclude the Mining Zone within Belitung Timur District from the Provincial Regulation and/or the Final Document of the RZWP3K of Kepulauan Bangka Belitung Province. This omission appears to be in contradiction with the regulations and laws in place. Article 36, for example, states: "The mining zone (KPU-TB zone) referred to in Article 27 is a space whose use is mutually agreed upon by various stakeholders and is in accordance with regulations and laws."

This calls for a thorough examination of the regulatory framework to address potential conflicts and inconsistencies within the legal framework governing mining activities in the Belitung Timur District.

Article 1, number 11 of Law No. 27 of 2007, in conjunction with Law No. 1 of 2014, defines a "zone" as a space whose use has been mutually agreed upon by various stakeholders and has been legally designated. To provide further context, the following points are noteworthy:

1. Article 10, letter a, of Law No. 27 of 2007, in conjunction with Law No. 1 of 2014, explains that the Zone for public use, equivalent to the cultivation zone in Law No. 26 of 2007 on Spatial Planning, is an area used for economic and socio-cultural purposes, including activities such as fisheries, maritime infrastructure, tourism, settlements, and mining.
2. Article 20(1)(e) of the Regulation of the Minister of Maritime Affairs and Fisheries No. 23/PERMEN-KP/2016 outlines that the public use zone includes mining.
3. Article 1, number 4 of Law No. 27 of 2007, in conjunction with Law No. 1 of 2014, defines Coastal and Small Island Resources as including non-living resources, such as seabed minerals.
4. Article 26(1)(a) of the Regulation of the Minister of Maritime Affairs and Fisheries No. 23/PERMEN-KP/2016 states that the Regional Development Planning Agency (Dinas) is responsible for preparing the initial document of the Coastal and Small Islands Spatial Zoning Plan (RZWP3K), including the description of coastal and small island resource potential and utilization activities.
5. Article 1, number 41 of the Draft Provincial Coastal and Small Islands Spatial Zoning Plan (Raperda RZWP3K) for the Kepulauan Bangka Belitung Province defines mining as various stages of activities related to the research, management, and utilization of minerals or coal. These stages encompass general investigation, exploration, feasibility studies, construction, mining, processing and purification, transportation, sales, and post-mining activities.

In light of this legal framework, it is evident that the definition of a "mining zone" within Article 36 of the Provincial Regulation of Kepulauan Bangka Belitung on Coastal and Small Islands Spatial Zoning Plan (RZWP3K) is inaccurately formulated. This definition contradicts the description found in Article 1, number 11, and the clarification in Article 10, letter a, of Law No. 27 of 2007, in conjunction with Law No. 1 of 2014, as well as Article 20(1)(e) of the Regulation of the Minister of Maritime Affairs and Fisheries No. 23/PERMEN-KP/2016. Furthermore, mining zones are directed towards understanding and managing seabed minerals as a coastal and small island resource. From the initial document to the final document of the RZWP3K, the potential of coastal and small island resources, particularly seabed minerals, has been described based on the valid Mining Operation Production Permit, which holds a legally compliant status in accordance with existing regulations (as indicated in the Final Document of the Coastal and Small Islands Spatial Zoning Plan for Belitung Timur District).

4 Conclusion

Based on the analysis presented by the author, the implementation of the Regional Regulation (PERDA) on Coastal and Small Island Spatial Zoning (RZWP3K) as stipulated in Provincial Regulation No. 3 of 2020 of the Bangka Belitung Islands Province appears to be in disharmony with higher-level regulations, namely Law No. 1 of 2014 concerning Coastal and Small Island Management and Law No. 3 of 2020 concerning Mineral and Coal Mining, as well as ministerial regulations governing mining zones. In this regard, any provisions within the regional regulation that are deemed inadequate should be subject to examination and revision, and, if necessary, revoked if they are found to impede economic growth for the purpose of national and regional development.

The steps required to address this lack of alignment may involve legal processes and amendments to regional regulations, potentially requiring a reevaluation of the definition of mining zones and consultations with various stakeholders, including the central government, local government, and mining companies such as PT. Timah. This review and update of the regional regulations should consider environmental, economic, social, and cultural aspects to strike an adequate balance between resource utilization and environmental preservation. It may also involve negotiations or mediation between the central government and local government to reach agreements that can reconcile various interests.

However, it is important to note that such a process may require significant time and effort, as well as cooperation among various parties involved. Additionally, it should adhere to applicable legal procedures and involve the role of judicial institutions such as the Supreme Court to ensure compliance with the law.

The alignment between regional regulations and higher-level regulations is crucial to ensure coherence and sustainability in regional development planning and to minimize potential legal conflicts. Therefore, efforts to rectify this lack of alignment are highly relevant to support sustainable economic development and environmental preservation in the region.

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