

Legal Politics of Tin Mining Governance in the Dynamics of Indonesian History

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Abstract. Political Law of Mining Governance including tin mining depends on the regime in power. From the old order regime, the new order regime, to the reform order regime, each has a different spirit and policy. Each regime of norms contained in mining governance legal products is different so that it is difficult to achieve the goals of the Indonesian state. It This policy change is called the legal politics of tin mining governance in Indonesia. Second, the research method of this paper is normative research with a mining regulatory approach related to tin metal minerals. Third, each regime of political power, the legal governance of tin mining is different. In this paper, it is found that governance regimes are in the form of mining authority regimes and mining business permit regimes and special mining business permits.

Keywords: Politics Law, Governance and Mining, Tins, Regime of Power

1 Introduction

Indonesia is a country rich in minerals (mining).[1] These minerals include: gold, silver, copper, petroleum and natural gas, coal, tin and others. These minerals are controlled by the state as stated in Article 33 paragraph (3) of the 1945 Constitution which states: Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.[1]. The aim is to achieve state goals. The goals of the Indonesian state are definitively stated in the fourth paragraph of the Preamble to the 1945 Constitution which includes:[2]: 1) Protecting the entire nation and all of Indonesia's blood, (2) Advancing general welfare, (3) enlightening national life, (4) participating in implementing world order, based on independence, eternal peace and social justice.

Tin is the first metallic element in the world that humans used to mix with other metallic elements in an effort to obtain new, better -quality metals. Tin metal entered Egyptian culture in 3000 BC.[2] Meanwhile in Indonesia, in the 1st century tin from Kapur City, Bangka, Bangka Belitung was transported by Indian sailors to their country as material for making religious ritual statues. Based on research and analysis, tin mining is the oldest mining in the world.[3]

The tin metal mineral in the world is only found in Southeast Asia which stretches from Myanmar, Thailand, Malaysia, the Timah Islands Jajasan in eastern Sumatra to western Kalimantan which is known as the stretch of the Southeast Asian Tin Belt.[4] Most of these tin

deposits are closely associated with Tertiary granitic rock intrusions found in Peninsular Malaysia, Karimun, Kundur, Singkep, Bangka and Belitung. Until now, tin mining in this area is still being explored.[2]

The politicization of tin mining management in Indonesia continues to ebb and flow depending on who is in power. Tin exploration was first carried out by the VOC, the Dutch East Indies government, Japan and the Republic of Indonesia. Then tin metal was sold in European markets in 1776 and Indonesia itself in 1826. Since then, the word "Bangka" has been synonymous with tin. So Bangka is known as Tin Island or the starting point of Tin.[3]

Currently the Political Regime for tin mining is the Mining Business Permit (IUP) Regime as regulated in Law no. 4 of 2009 concerning Mineral and Coal Mining Juncto Law no. 3 of 2020 concerning Amendments to Law no. 4 of 2009 concerning Mineral and Coal Mining. Previously, the Mining Authority Political Regime as regulated in Law no. 11 of 1967 concerning Basic Mining Provisions. There are 3 regimes for managing tin mining in Indonesia, namely the Old Order Mining Regime regulated in UU Prp no. 37 of 1960 concerning Mining, Second New Order Regime Law no. 11 of 1967 concerning Basic Mining Provisions, Third Reform Order Regime Law no. 4 of 2009 concerning Mineral and Coal Mining Juncto Law no. 3 of 2020 concerning Amendments to Law no.[5].

That this article will discuss the legal politics of tin mining governance since Indonesia's independence. This article makes observations about the values contained in tin mining legal products from the three regimes, whether they can have an impact on the development and welfare of the Indonesian people. Tin metal, as one of the natural resources contained in the Indonesian earth, is controlled by the state and used as much as possible for the prosperity of the Indonesian people.

Management of natural resources in Indonesia is controlled by the state. The state has the "right to control" which must be interpreted as a regulator so that there is a balance in the use of rights and responsibilities as well as freedom and responsibility. Mastering cannot be equated with owning and using it yourself[2]. The current regime of the 2009 and 2020 Mining Laws is that the state grants mining business permits and determines mining business areas. The government prepares a set of regulations and then managers, both corporations and individuals, are obliged to submit and comply with mining regulations.

The norms contained in the Mining Law have a different political and legal regime in regulating tin mining governance. These norms have accommodated the interests of prosperity and well-being as mandated by the 1945 Constitution as the goal of the Indonesian state. The Mining Law regulates the granting of permits, social relations of affected communities, reclamation and closure/post-mining. The granting of mining permits for each law is very different because it depends on other legal products such as the Environmental Law, Regional Government Law, Investment Law, Employment Law, Taxation Law, etc.

Based on the background of the problem above, this research will focus on how is the legal politics of tin mining governance in the historical dynamics since Indonesia's independence in accordance with the norms contained in the legal products in the laws of the three regimes?

The aim of this research is to find out the legal politics behind the birth of the Mining Law from the Old Order Regime, the New Order Regime, and the Reform Regime regarding mining governance, including tin. The benefit obtained from this research is that it can reveal several significant changes in each mining governance regime.

2 Method

The problem will be studied using normative legal research methods with a statutory and regulatory approach because it will focus on analyzing mining legal products in the historical dynamics since Indonesia's independence.[4] In essence, the legal approach carried out by examining all laws and regulations that are related to the legal issue being handled has both practical and academic benefits.[6].

The material used in this research is Government Regulation in Lieu of Law no. 37 of 1960 concerning Mining, Law no. 11 of 1967 concerning Basic Mining Provisions, Law No. 4 of 2009 concerning Mineral and Coal Mining Junto Law no. 3 of 2020 concerning Amendments to Law no. 4 of 2009 concerning Mineral and Coal Mining as well as laws and regulations related to mining governance as primary legal material. Meanwhile, secondary legal materials are bibliographic references including book and journal literature as well as internet pages that are relevant to the theme of this research.

3 Result and Discussion

The legal politics of tin mining governance since Indonesia's independence have undergone changes in laws.[5] This is in line with the change of regime or power in Indonesia. Since independence, Indonesia has ratified and enforced the Mining Law, namely: during the old order, Perpu no. 37 of 1960 concerning Mining, New Order era Law no. 11 of 1967 concerning Basic Mining Provisions, the reform period of Law no. 4 of 2009 concerning Mineral and Coal Mining Junto Law no. 3 of 2020 concerning Amendments to Law no. 4 of 2009 concerning Mineral and Coal Mining. This research will discuss Mining Laws in each regime.

3.1. Old Order Regime

With a passionate spirit of nationalism, the newly independent country nationalized mining companies in Indonesia controlled by the Dutch, including tin mining companies. From 1945 – 1960 Indonesia took over the tin mining company from the Dutch. In Indonesia there are 3 tin mining areas, namely Banka Tin Winning Bedrijft (BTW), Gemeenschaappelijke Minjbouw Maatschaappij Billiton (GMB), Singkep Tin Exploitasie Maatschaappij (SITEM).

Banka Tin Wining Bedrijft (BTW) was nationalized on March 1 1953. Then BTW was replaced with the Bangka Tin Mining Company (TTB), SITEM (Singkep Tin Exploitasie) was nationalized on December 31 1957 which was managed by the Minister of Industry, Bureau of State Mining Companies Affairs. Gemeenschaappelijke Minjbouw Maatschaappij Billiton (GMB) was nationalized on March 1 1958, replaced and managed by the Belitung Mining Company. The nationalization process exists both diplomatically and by force.

After successfully nationalizing tin mining companies, the Indonesian government drafted, ratified and enforced Law no. 37 of 1960 concerning Mining. UU no. 37 of 1960 contains 13 chapters consisting of: Chapter I Terms, Chapter II Business and Classification of Minerals, Chapter III Forms and Organization of Mining Companies, Chapter IV Mining Business, Chapter V Mining Authorization, Chapter VI Methods and Conditions on How to Obtain Mining Authorization, Chapter VII Expiration of Mining Authorization, Chapter VIII Relationship between Mining Authorization and Land Rights, Chapter IX State Levies, Chapter X Mining Supervision, Chapter XI Criminal Provisions, Chapter XII Transitional Provisions and Chapter Then there are 31 articles that regulate mining management, including tin mining.

UU no. 37 of 1960 without discussing and exploring the substance, the legal product is a responsive/populistic legal product, because the legal product reflects a sense of justice and fulfills society's expectations. In the manufacturing process, social groups or individuals in society play a big role and full participation[7]. By nationalizing natural resources, we are able to achieve state goals as mandated in the Preamble and Article 33 of the 1945 Constitution.

As implementer of Law no. 37 of 1960 is PP no. 39 of 1960 concerning Classification of Minerals. In PP no. 39 of 1960 stated that tin is a strategic mineral. Article 1 PARAGRAPH (1) PP No. 39 of 1960 reads:

Minerals are divided into three groups: a. Classes of strategic minerals are: anthracite, all types of coal, all types of young coal, asphalt rock; petroleum, asphalt, wax-earth and all kinds of bitumen both solid and liquid and all flammable gases; helium, jodium, bromium and their compounds; uranium, terium and other radio-active materials; copper, mercury, aluminum, tin, manganese, iron, cobalt, nickel, sulfur; and other minerals, if found together with the materials mentioned above, in one layer, so that the mining business cannot be carried out separately.

In Article 10 of Law no. 37 of 1960 states that the business of mining minerals including tin includes the following: a. general inquiry; b. exploration; c. exploitation; d. refining and processing; e. transportation; f. sale. To do this, you must first obtain permission from the mining authority. Mining authority is the authority given to an entity or individual to carry out a mining business, see Article 1 letter 1 of Law no. 37 of 1960.

However, the implementation of the Mining Law in this regime is not very focused. Because the focus was on nationalizing tin mining companies from the Dutch side. The aim of mining governance must be independent as in the jargon *berdikari* (standing on one's own feet). During the 1959-1966 period, the country's political stability was unstable, the economy slumped and the prices of basic necessities rose sharply so that Indonesia's mining management went from second place in the world to fourth in the world.

Therefore, the political and legal configuration of tin mining governance is in accordance with Law no. 37 of 1960 is the Mining Authority.[5] However, technically mining governance still adheres to Dutch heritage, because Indonesia does not yet have sophisticated mining equipment to carry out tin mining, for example dredgers. The dredger was originally owned by the Dutch.

3.2. New Order Regime

After the Old Order Regime collapsed due to the 30 September 1965 Movement, political and economic stability was not good and healthy. President Soekarno was ousted as President and General Soeharto became the second President of the Republic of Indonesia. With the rise of Soeharto as the 2nd President of Indonesia, policies underwent changes.

On December 2 1967 the New Order regime ratified and promulgated Law no. 11 of 1967 concerning Basic Mining Provisions as a replacement for Law no. 37 of 1960. The Journey of Law no. 11 of 1967 was very long until 2009 before this Law was replaced with Law no. 4 of 2009 concerning Mineral and Coal Mining.

After Law no. 11 of 1967 and the management of tin mining was opened to foreign capital, then in October 1968, through a three year negotiation period, the government awarded a tin mining work contract to PT Koba Tin in Koba Bangka with the condition that the Government held 25% of the shares and the remainder belonged to PT Koba Tin. PT Koba Tin is a consortium consisting of three Australian companies: Colonial Sugar Refining, Blue Metal Industries, and Ready Mixed Concrete. PT Koba Tin ended its Tin Mining Work Contract in September 2013.

UU no. 11 of 1967 consists of 13 chapters and 36 articles consisting of: chapter i general provisions, chapter ii classification and implementation of mining materials, chapter iii form and organization of mining companies, chapter iv mining enterprises, chapter v mining authorization, chapter vi method And the requirements for how to obtain mining power, CHAPTER VII of the end of the Mining Authority, Chapter VIII The Relationship of Mining Authorities with Land Rights, Chapter IX of State Levies, Chapter X Mining Supervision, Chapter XI Criminal Provisions, Chapter XII Transitional Provisions and Chapter XIII Closing Provisions.

In substance or regulatory norms in Law no. 11 of 1967 is not much different from Law no. 37 of 1960. Like the Mining Authority, it is the authority of the central government, in this case represented by the Minister of Mines. Article 14 Law no. 11 of 1967 Minerals Mining Business which includes: a. general investigation. b. exploration; c. exploitation; d. processing and refining; e. transportation; f. Sale. To operate mining, you must obtain a Mining Authorization from the Minister.

In Article 15 paragraph (1) of Law no. 11 of 1967 reads: The mining business referred to in article 14 can only be carried out by companies or individuals mentioned in articles 6, 7, 8 and 9 if they have been given mining authority. Mining authority was initially granted by the Minister of Mines as intended in Article 1 PP No. 32 of 1969 reads: Any mining business for minerals which is included in the strategic minerals category and the vital minerals category can only be carried out if it has first obtained a Mining Authorization from the Minister of Mines. So according to this regulation it is centralized to grant mining permits/authorization.

Then in 2001 after the birth of Law no. 22 of 1999 concerning Regional Autonomy, PP No. 75 of 2001 concerning the Second Amendment to PP No. 3 of 1969 concerning Implementing Regulations of Law No. 11 of 1967, it has been determined that any mining business for minerals which are included in the class of strategic and vital minerals can only be implemented

after obtaining a mining authorization. Mining Authorization is stated in the Mining Authorization Decree. Officials authorized to issue mining authorization decrees, namely[8]:

1. The Regent/Mayor has the authority to issue a mining authorization decree if the mining authorization area is located within a district/city area and/or in a sea area up to 4 nautical miles.
2. The governor has the authority to issue mining authorization if the mining authorization area is located in several districts/cities and there is no cooperation between districts/cities or between districts/cities and provinces and/or in sea areas located between 4 and 12 nautical miles.
3. The Minister has the authority to issue mining authorization if the mining authorization area is located in several provincial areas and there is no inter-provincial cooperation, and/or in areas located outside 12 nautical miles.

Differences in Political and Legal Mining Governance specifically for tin mining in the New Order regime and the reform regime. The reform regime gives regions the authority to issue mining authorization letters, sign work contracts and coal mining business agreements.

The impact of regional autonomy in the 1998 reform regime, the governance of tin mining changed and many new corporations emerged gaining tin mining authority from the Regent and Governor. Each corporation has a refinery smelter and can export. The people of Bangka Belitung were given broad freedom to carry out tin mining. This smelter was able to export starting with the issuance of Decree of the Minister of Industry and Trade Number 558 of 1998 and 146 of 1999 which stated that Tin was free to export. From this decision, many corporations set up smelters to export. These two decisions from ministerial regulations actually conflict with Government Regulation (PP) No.27/1980 which states tin is a strategic mineral that cannot be exported.[9].

UU no. 11 of 1967 along with implementing regulations PP no. 32 of 1969 Junto PP 27 of 1980 states that tin is a strategic mineral. Then the legal product was defeated by the Decree of the Minister of Industry and Trade allowing every corporation to export tin and anyone could trade it. The corporation obtains mining authority from the Regent and/or obtains tin sand from the community.

In regional government regulations, Law Number 5 of 1974 concerning Regional Government (1974 Regional Government Law) was replaced with Law Number 22 of 1999 concerning Regional Government (1999 Regional Government Law). This change brings changes to the broad autonomy of districts and cities, which receive authority through an open end arrangement, namely the transfer of authority to carry out government affairs with a general formula, so that autonomous regions have the authority to carry out various government affairs that are not prohibited by statutory regulations or not included in the jurisdiction of another government[10]. The existence of community mines, hereinafter referred to as Unconventional Mines, has caused controversy to this day. Because on the one hand it provides opportunities for society to improve the economy after the economic crisis and on the other hand it causes environmental damage and state losses due to not receiving tax payments.

3.3. Reform Regime

The 1998 reform marked a new chapter in efforts to improve governance in Indonesia. In the mining sector, much has changed after this reform. The changes are not entirely in regulations that specifically regulate mining, but also other regulations that are related to mining, for example regarding regional government[11].

The new reform regime replaces Law no. 11 of 1967 in 2009 with the promulgation of Law no. 4 of 2009 concerning Mineral and Coal Mining, hereinafter referred to as the Minerba Law. The norms in Law no. 4 of 2009 changed the norms in the previous Mining Law. This also changes the governance of tin mining.

In Law No. 4 of 2000 almost all changes to the norms in Law no. 11 of 1967, in the Minerba Law this regime is structured in very detail, consisting of 26 chapters and 175 articles. The chapters consist of: CHAPTER I General Provisions, CHAPTER II Principles and Objectives, CHAPTER III Control of Minerals and Coal, CHAPTER IV Authority for Mineral and Coal Mining Management, CHAPTER V Mining Areas, CHAPTER VI Mining Businesses, CHAPTER VII Mining Business Licenses , CHAPTER VIII Mining Business Licensing Requirements, CHAPTER IX People's Mining Permits, CHAPTER X Special Mining Business Permits, CHAPTER XI Special Mining Business Licensing Requirements, CHAPTER Special Mining Business, CHAPTER XV Expiration of Mining Business Permits and Special Mining Business Permits,

The 2009 Mineral and Coal Law regime is a mining business permit, community mining business permit and special mining business permit regime. In 36 paragraph (1) Mining Business Permits there are two stages: first stage. Exploration Permit which includes general investigations, exploration and feasibility studies, the second stage includes Production Operation IUP covering construction, mining, processing and refining activities, as well as transportation and sales. Likewise, special mining business permits have two stages in granting permits for mining tin metal minerals.

Then with the enactment of the 2009 Mining and Coal Law, a new chapter began. The transfer from the existing contract regime to the mining business permit (IUP) and special mining business permit (IUPK) regime was not an easy thing to do. The Work Contract (KK)/Coal Mining Concession Work Agreement (PKP2B) remains recognized until the end of the contract/agreement as regulated in Article 196 of the 2009 Mining and Coal Law which provides for an adjustment period of no later than one year, including regarding the certainty of extending the KK/PKP2B into a permit. However, this cannot be implemented.

Then Law no. 4 of 2009 was amended by Law No. 3 of 2020 that the authority of the Governor and Regent/Mayor to grant mining business permits and special mining business permits was returned to the Central Government. Then currently the central government is planning to stop the export of tin metal. The aim is to increase the added value of tin sales and pricing. Thus, the political and legal configuration of mining governance is the granting of mining business permits.

4 Conclusion

This article has looked at the legal political configuration of tin mining governance in historical dynamics since Indonesia's independence, namely the granting of management rights.

Management rights are granted by the state as the authority in the form of permits. Each regime for granting management rights is different. The old order regime had the enthusiasm to take over Dutch colonial mining businesses. So Law no. 37 In 1960 the spirit was nationalism. During the Old Order regime, it also provided opportunities for foreign investors to mine, including Indonesian tin. Due to unstable political turmoil, mining management is not optimal. Technically it still uses Dutch dredger technology.

When the New Order regime came to power, it provided the widest and easiest opportunities for mining management to anyone, including foreign capital, as regulated in Law no. 11 of 1967 and Law no. 1 of 1967 concerning Foreign Investment. In the Foreign Investment Law, the state gives special management rights to foreign parties mining in Indonesia. The special right is called a Work Contract (KK) and the Coal Mining Concession Work Agreement (PKP2B) is called the mining authority regime. There are two types of Political and Legal Configurations in Mining Management, namely First, Mining Authorization for Domestic Mode, Second, Work Contract and PKP2B. Foreign mode of tin mining was given to PT Koba Tin with a capital agreement of 25% capital from the Indonesian government and 75% from the Australian Consortium.

Then in 1998, the New Order regime collapsed and the Reform Order regime was born, the spirit of mining management including tin entered a new phase. Previously, tin was a strategic mineral that was not free to export because of the Decree of the Minister of Industry and Trade Number 558 of 1998 and 146 of 1999 which stated that tin was free to export. Basically, these two ministerial decisions actually conflict with Government Regulation (PP) No.27/1980. Apart from that, because Law no. 22 of 1999 concerning Regional Government Autonomy, Granting Management Rights is only the authority of the Central Government, then Provincial and District/City Governments have the authority to grant mining authority including work contracts and PKP2B. freely export. Meanwhile, the mining governance reform regime was made in detail as regulated by the 2009 Minerba Law in conjunction with the 2020 Minerba Law. Initially, the 2009 Minerba Law abolished the Work Contract and Coal Mining Concession Work Agreement which caused PT Koba Tin's work contract to end and not be extended. However, changes to the 2009 Minerba Law mean that the KK and PKP2B regimes are included in the 2020 Minerba Law. Thus, the legal politics of tin mining governance from time to time since Indonesia's independence which has been explained in this article shows that tin mining must be seen as an important and strategic commodity so that it is worthy of being fought over and managed properly in order to achieve the goals of the Indonesian nation and state.

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