

Institutional Territory on Folk Mining in Indonesia

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Abstract: Natural resource management in Indonesia could have a positive impact on national development for the welfare of the people, namely through the institutional territory of folk mining. The institutional area on folk mining is the basic for a folk mining permit. It means without permission it is banned to conduct the folk mining. The Institutional area on folk mining is inseparable with the provisions of the Local Government. This study is aimed at answering issue about changes in the authority distribution would have a significant impact on the pattern of permission folk mining in the area in Indonesia. Since the issuance of the first permission of extraction under the district/city authority, it now becomes a provincial jurisdiction where it is an institutional territory which determines the fate of the folks by the Central Government. It is influenced by the institutions in the determination area of folk extraction; which causes this Act to become Mine Regulation. That is under the authority of district/ city, now a provincial jurisdiction where the territory of folk mining determination becomes the authority of central government. This study used a socio-legal approach. With this method, the law will not be seen as an autonomous system, but one interacting with other subsystems such as politics, economic, socio-cultural subsystems.

Keywords: Institutional Territory, Folk Mining, National Development, Indonesia

1. Introduction

Proclamation of independence on August 17, 1945, brought significant changes in all aspects of Indonesian life, including the implementation of the law. Framework and the basic structure of Indonesian state organizations listed in the Constitution of 1945 (as amended by the Constitution of the Republic of Indonesia 1945). The fourth paragraph is explicitly one of the goals of our state is the general welfare and social justice as mentioned in Article 33. The state is required to achieve these objectives by formulating it into legislation to make the country's goal. The general welfare is one of the national goals to be achieved. Efforts to provide common prosperity among all stated in Constitutional of 1945 Chapter XIV of the National Economy and Social Welfare, Article 33 paragraph (3) Constitutional of 1945, which asserts that "earth and water and natural resources contained therein controlled by the state and used for the greatest prosperity of the people". The definition of controlled by the state became one of the concepts that must be understood, considering the mistakes in applying the idea of state control over natural resources can deliver a fatal impact, such as the capitalization of natural resources and increasingly limited access to natural resources. This is apparently not for state to control prosperity.

The interpretation of the Constitutional Court about the state control includes the meaning of control by the country in the broad sense which is sourced and derived from the conception of the sovereignty of the people of Indonesia overall resources "earth and water and natural resources contained therein", including the sense of public ownership by the collective people over the resources in question. People collectively are constructed by Constitutional of 1945 which mandates the state to create policies (belied) and management actions (bestuursdaad), setting (regelendaad), management (beheersdaad) and surveillance (toezichthoudensdaad) for the maximum benefit of the people.



The ownership of natural resources is based on the public property of the people sovereignty, which the state must carry out a policy function, maintenance, regulation, management, and supervision. Strategic services to be operated by the government through the right policies and management of natural resources can be a positive impact on national development for people welfare. This is achieved through institutional arrangements concerning the establishment of Folk Mining Areas in Indonesia in which can be seen from the result of advanced research on folk mining in Province of Bangka Belitung Islands, Indonesia.

2. Methodology

Types of data in this study are primary data and secondary data derived from primary and tertiary legal materials. Primary data result from the interview which is obtained directly from the informant in the district of Bangka. Secondary data is done through literature studies as well as documents derived from primary legal materials and secondary legal materials.

primary legal document is the 1945 Constitution, Law no. 09 of 2009 on Coal Minerals. Secondary law material uses literature study of literature books and official records related to this study. The Tertiary legal content, or supporting legal documents that will provide guidance on information/ explanation of primary legal materials and legal materials, such as Legal dictionaries, index of law magazines, legal journals and others. The location of the study is in Bangka District.

3. Findings

3.1. Institutional Folk Mining Areas Existence As Basic Folk Mining Permits

Simply, permissions are given meaning as government action in the form of agreements. Motive or purpose of the permissions focused more on the object of licensing protection. Motivation or purpose of licensing is also related to the security of the subject or the receiving party as a part of the licensing laws. Permits must also provide legal certainty for the individuals who are subject to a licensing or beneficiary with respect to the sustainability of effort activities or is the object of licensing other parties' disorders. The active role of the government to give effect to the daily life of the community at large can be found in the Constitution of the Republic of Indonesia in 1945, which apparently confirms the control of government interference in people's lives and the controlling includes the social, political and economic, cultural and environmental fields. It can be seen from the Articles relating to it, such as Article 23, Article 26, Article 27, Article 28, Article 29, Article 32, Article 33, which the government entered into arrangements that people act by existing regulations.

Permission is interpreted as government action in the form of licensing. It is more intended to provide the object permissions protection. The purpose of licensing is also related to the security of the subject or the party receiving license as a part of legal protection. It also certainty ensures permission for the parties who are subject to the license recipient with respect to the sustainability of it activities or business which is the object of licensing of the interference of others.

The government role actively gives effect to the daily life of the broad community. It can be found in the Constitution of 1945 which explicitly confirms the government's intervention in controlling the people's lives including social, politic and economic, cultural and environmental fields. It can be seen from the Articles concerning those matters, such as Articles: 23, 26, 28, 29, 32 and 33, which the government policy is an arrangement controlled by existing regulations.

Furthermore, based on the Constitution 1945 mandate the government both the center and the regional control various aspects of community life through a different legal action of the state which governs and to manages of mainly intended to control people's lives to follow any laws in force. The government implementing of its task. This one with the instrument permitting the stipulation shall comply with all statutory requirements.

Many kinds of licensing form a legal basis for doing mining business by Act number 4, 2009, as follows ;

- 1) Mining Business License
- 2) Special Mining Business License
- 3) Folk Mining Permits (license of Folk Mining)

3.1.1. Mining Business License

Article 1 number 7, Law Number 04 the Year 2009 about Mineral and Coal Mining to command that the mining Business License is a license to conduct mining business. The parties may apply for Mining Business License under Article 38 Act number 4, 2009 i.e. enterprises, cooperatives, and individuals. Article 1 point 32 determines that the company is any legal entity engaged in the mining established under Indonesian law and domiciled in the territory of the Republic of Indonesia (NKRI; Negara Kesatuan Republik Indonesia). Based on the explanation of Article 38 Act number 4, 2009, the meaning of businesses here also includes the State Owned Enterprises (BUMN: Badan Usaha Milik Negara) and the Regional Owned Enterprises (BUMD; Badan Usaha Milik Daerah). The business entity meant is a company that is a business entity which carries on business in the economy (finance, industry, and trade), performed continuously or regularly (regulating) undisguised (openlijk) and with a purpose to gain or profit (wins oogmerk).

It can be concluded that the entity is divided into three types i.e. the National Private Enterprises, State Owned Enterprises, and Regional Owned Enterprises engaged in mining.

National Private Business Entity is a legal entity and not a legal entity which is 100% wholly owned by domestic entrepreneurs (Salim, 2012), for example, PT. Aneka Tambang or PT. Timah's partner company. Article 1 of Law No. 19 of 2003 on State Owned Enterprises set the SOE as a business entity that is wholly or primarily owned by the state capital through direct investments originating from state assets are separated, for example, PT. Timah regarding to Article 4 of Law No. 5 of 1962 concerning Regional Government Enterprise, the legality of a local company as a legal entity acquired by the Regional Regulation. The example is PT. Bangka Global Mandiri which is engaged in the exploration of tin with its subsidiary, PT. Bangun Multi Niaga, which is involved in the tin export.

The legal entity is a legal intended to form company partnership (not legal entities) and legal entities regulated by the Act, for example, Firm (Vennootschap Onder Firm/Fa) and (Commanditaire Vennotschap/CV) regulated in the Law on Commercial Law, Limited Liability Company (PT) is adjusted in Law No. 1 of 1995 is amended by Law Act No. 40 of 2007, Public Corporation and Limited Liability Company regulated in Law No. 9 OF 1969, about forms of State Enterprises and Cooperatives regulated in Law No. 25 of 1992, concerning Cooperatives whereas Cooperatives in proposing Mining Business License should be focused on mining activities. Unions must comply with the provisions of the Act on organizations.

Mining Permit can also be submitted by individuals either in the form Firm and limited partnership company or CV. The individual company is a company which capital is owned individually, so the risks and benefits enjoyed and borne alone. The firm is an alliance because the entrepreneur is a (partner) which more than one person. The business was established to run a company under a name approvingly together and are jointly and severally liable. CV is an open alliance which openly runs the company, which also has a passive ally CV also has an active ally acting as a manager. CV is a further development of the business firm. In this CV there Firm characteristics inherent in active affiliates that function as manager. For instance, the company is a partner of PT. Timah CV. Nurjanah (group).

3.1.2. Special Mining Business License

Act number 4, 2009 article 1 point 11 about special mining license (IUPK/ Izin Usaha Pertambangan Khusus) is a permit to carry out mining business in a particular mining permit area. Grants are given by the licensee (IUPK/ *Izin Usaha Pertambangan Khusus*) to conduct mining operations in the mining site within certain period specified in the Act. Special Mining Business License is considered unique for various aspects, namely;

- a) From the officer side who gives permission
- b) The applicant who can apply for a permit
- c) Types of minerals that are exploited
- d) Special Mining Business License mode of administration
- e) Area and period territory on special mining business license.
- f) c. Folk's Mining Permissions

The definition of folk mining license can be found in Act number 4, 2009 Article 1 point 10 about permission to carry out the mining business in a mining site and the people with a large area and limited investment. Agreements (gunning) according to Van der Pot is a decision that permits something prohibited. Another opinion expressed by Steinbeck who formulate their permission is a decision to allow some action as a deviation from the prevailing circumstances, which forbids it. Both of these formulations are viewed in principle a specific activity is prohibited by law, so it to implement the act must be applied permission.

There are Many kind licensing forms a legal basis for doing mining business in Indonesia by Act number 4, 2009, as follows ;

- 1) Mining Business License
- 2) Special Mining Business License
- 3) Folk Mining Permits (license of Folk Mining)

The explain in detail this table below about Differences Mining Business License, Special Mining Business License And Folk Mining Permits as follows;

Table 1: Differences Mining Business License, Special Mining Business License And Folk Mining Permits (license of Folk Mining)

o		Mining Business License	Special Mining Business License	Folk Mining Permits (license of Folk Mining)
.	The authorities competence for permission	Minister of Energy and Mineral Resources, the Governor and Regent / Mayor	Especially the Minister of Energy and Mineral Resources	only Governor
.	Applicant can apply for a permit	Enterprises, cooperatives, and individuals	Especially the Owned Enterprises (BUMN) and the Regional Owned Enterprises (BUMD) and Private Owned Enterprises	Individuals and community groups.
.	Objects minerals	Mineral metal, nonmetal, and	Especially the metal mineral	Mineral metal, nonmetal, and coal

		coal	and coal	
.	Mode of administration territory folk mining permits.	WP Determination by the central government	Priorities and auction by the Minister of Energy and Mineral Resources	Territory on folk mining Determination by the central government of the Minister of Energy and Mineral Resources
.	Large area of mining Business License	Metal mineral exploration min. 5000 and max. 100,000 hectares, nonmetals min. 500 hectares and max. 25,000 hectares, 5,000 hectares of production of nonmetals	Metal mineral exploration to 100,000 hectares, 25,000 hectares production, coal production of 15 000 hectares	Individual max. 1 hectare, community groups max. 5 hectares
.	Duration	8-year- metals mineral exploration, nonmetals three years, 40 years of metal production, production of non-metals minerals 20 years, the production of non-metals 15 years	metals mineral exploration and production of non-metals minerals 48 years,	Exploration and production of coal least 47 years old five years and may be extended

3.2. Institutional Zoning In The Folk's Mining

There are several definitions according to Macmillan that institutional are relationships, norms, rules and one of its kind is the formal institutions (Friedman) with the public sector categories. Definition by Macmillan, a set of relations that is the relationship between the authorities in the management of artisanal mining, ranging from the Central Government represented by the Ministry in the field of mineral and coal mining to the level of Regional Government of Regency based on legislation related to Act number 4, 2009, Law about regional government and implementing regulations under the authority of the determination of Territory on folk mining which is the basis of given licence of Folk Mining.

Viewed from the definition of an institution as a term institutional delivered by Adelman and Thomas, as a form of interaction between people, especially at the level of the second, including laws and regulations that specialize in what is called the rule (the rule of the game). A crucial element of this institution is how a constancy can walk in a particular norm that gave birth to the continuous action that is recognized and followed as a guideline and can be used as a characteristic of the continuum. An act that continues to be a habit it will be institutionalized (institutionalized). More details below represents the institutional Territory of Folk mining in Indonesia;

Table 2: Institutional Territory of Folk mining in Indonesia

o	Number 04 The year 2009 about Mineral and Coal Mining	Government Regulation No. 23 of 2010 About Implementation Business Activities of Mineral and Coal Mining	Regulation of the Minister of Energy and Mineral Resources No. 02 The year 2013 About the Supervision of the Implementation of the Mining Business Management The Executed by the Provincial Government and District / City Government
.	Article 1 (32), the territory of folk mining is part of the land of mining to do activities of folk extraction mining.	Article 1 (1), the area of folk mining is part of the territory of mining to do activities of folk extraction mining.	Article 1 (5) Folk's Mining Area after this abbreviated the Territory of Folk Mining, is part of the WP where do folk's mining business activities.
.			Article 3(1) The Director-General shall supervise the compliance with the legislation by the governor/ mayor in the establishment of Territory of Folk Mining.(2) Supervision in the establishment Territory on folk mining by governors/ mayors referred to in paragraph (1) shall include at least: a. Area on folk mining determination made after coordinating with the provincial governments and in consultation with the regional council districts/ cities;
.	Article 20, the folk mining activities carried out on territory of folk mining	Article 16 (3), an area of folk extraction mining, set by regents / Mayors	b. Before coordination with the provincial governments and in consultation with the House of Representatives of Regional area/ city, as intended in a regent/ mayor shall ensure Territory on folk mining locations:
.		Article 26 (1), About procedures for the granting of territory of folk mining; Regent / Mayor draft the Stipulation a land of mining being territory on folk mining as regulate Article 16, paragraph (1) letter b based map potential mineral and /or coal as be governed by section 12 subsection (1) As well as map potential /backup metal and/or fuel as be regulated of article 17, paragraph (1)	

There are no fundamental differences in the provisions, explaining that the area designated for the people who will conduct mining activities so people may hold mining activities as long as it's done in this designated area. When viewed from the above provisions, a territory on folk mining is the basis for the regional government can grant Permission of folk extraction. Folk mining activity has become a source of income for the community, for example in Bangka Regency, so it must be entangled with the determination of WPR as the basis of mining permits that should be the regional authority following Act number 04 the Year 2009 about Mineral and Coal Mining. Because it is located in the area and the people's mine is a mine with a different category with the pit by the company (IUP or IUPK). Regions are still given equal authority related to the people mine.

4. Conclusion

Since the power distribution changed, the determination of Institutional territory on folk mining area is not inseparable with the Provisions of the Local Government Regulation (act No. 23, 2014). It is influenced by the institutions in the determination territory of folk mining; it causes this Act became mine management. That is under the authority of district/ city, now a provincial jurisdiction where the land of folk mining determination become the central power government

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