

Tin Exploration and Protection of Local Varieties as Communal Intellectual Property in the Bangka Belitung Islands

Darwance^{1*}, Dwi Haryadi¹, and Rafiqqa Sari¹

¹ *Department of Law, Faculty of Law, Universitas Bangka Belitung, Bangka,*

Abstract. Tin mining activities in the Bangka Belitung Islands have been going on for a long time. A number of literates noted that tin mining in this area had begun in 1709 AD. Tin mining occurs massively when the government opens the tap for tin mining which was originally only allowed to be mined by certain parties, in this context PT. Tin and PT. Kobatin, can be mined by anyone, including the general public. As a result, tin mining became out of control. Tin mines target not only certain areas such as rivers, plantation areas, but also kelekak which contains local plants typical of this region. Kelekak is the name for the typical plantations of the people of this region which contain local plants. On the other hand, Law No. 29 of 2000 concerning the Protection of Plant Varieties, one of which requires the protection of local varieties as part of the conservation of biodiversity. Massive tin mining, especially on land, as well as the free access to tin mining, certainly has an impact on efforts to protect local varieties. This empirical juridical research aims to determine the impact of tin mining on the existence of local varieties, as well as the problems of regulation of protection of local varieties when associated with permits for tin mining. From the results of the study, it was found that regulatoryly, there are parts that do not support each other between the Mineral and Coal Mining Law, Law Number 32 of 2009 concerning Environmental Protection and Management, and the PVP Law that is currently in effect. In addition, tin mining has an impact on efforts to protect local varieties. The land which originally contained local varieties of plants, turned into tin-added land which in turn turned into a kolong (small lake).

1 Background

Tin mining activities in the Bangka Belitung Islands have been going on for a long time. A number of literates noted that tin mining in this area had begun in 1709 AD. Tin mining occurs massively when the government opens the tap for tin mining which was originally only allowed to be mined by certain parties, in this context PT. Tin and PT. Kobatin, can be mined by anyone, including the general public. As a result, tin mining becomes out of control [1]. This situation continues to this day.

* Corresponding author: darwance@yahoo.co.id

Tin mines target not only certain areas such as rivers, plantation areas, but also kelekak which contains local plants typical of this region. Kelekak is the name for the typical plantations of the people of this region which contain local plants. On the other hand, Law No. 29 of 2000 concerning the Protection of Plant Varieties, one of which requires the protection of local varieties as part of the conservation of biodiversity. Massive tin mining, especially on land, as well as the free access to tin mining, certainly has an impact on efforts to protect local varieties. Bangka Belitung Islands is an Indonesian province with complicated ecological issues. Environmental damage is widespread both on its earth and in its ocean [2]. The Ministry of Environment and Forestry of the Republic of Indonesia stated that 275.5000 hectares of land in the Bangka Belitung Islands Province was critical due to tin ore mining [3].

The massive tin mining activity, which is also supported by the government's policy of granting permission to anyone to mine tin, certainly has an impact on environmental issues. Mining locations which were originally localized in certain areas in accordance with the permits granted, are practically carried out anywhere as long as it contains tin. As a result, a lot of land has been turned into tin mining areas. People's plantations have also been transformed from pepper plantations to mining areas. Not only that, uncontrolled tin mining also has an impact on the existence of local varieties in the Bangka Belitung Islands which have long been cultivated for generations together.

As an archipelagic country, Indonesia is rich in potential, including knowledge, traditions, and traditional culture [4]. The same potential is also owned in terms of local varieties. Currently, there are 27 local varieties registered in the Bangka Belitung Islands, both on Bangka Island and on Belitung Island, even on small islands around these two islands, for example Lepar Island in South Bangka Regency. On the island of Bangka, namely Lada Nyelungkup dan Alpukat Roro registered by the Governor of the Bangka Belitung Islands, then there are Padi Raden, Padi Puteh, Padi Mayang Pasir, Durian Putri Dewa, Padi Runteh, Padi Balok, Padi Utan Antu, Padi Seluman, Padi Damel, Padi Mayang Pandan, and Padi Pulut Merah registered by the Regent of Bangka, Durian Klamunod yang didaftarkan oleh Bupati Bangka Barat, then there Nanas Bikang, Ubi Jalar Bigo Ungu Dale, Mangga Pelem Lepar, Ubi Jalar Bigo Pungu, Ubi jalar Bigo Oren, Ubi jalar Bigo Ning, Ubi jalar Bigo Ngutih, Ubi jalar Ungu Dake registered by the Regent of South Bangka, Nanas Badau Belitong, Aren Kabong Belitong registered by the Regent of Belitung, as well as Kemiri Kumbek, Kopi Gading Dandang, and Kopi Liberika Bagus registered by the Regent of East Belitung [5]. On the other hand, with the existence of tin mining, the population of this registered local variety is also threatened. This of course has an impact on legal protection efforts.

2 Research Methods

This research was conducted based on empirical juridical research methods with a legal approach so that what was analyzed and studied was the workings of law in society. More specifically, this research was conducted to determine the implementation of the rule of law [6], as well as research on the effectiveness of the law [7]. The data obtained were then analyzed qualitatively.

3 Discussion

Living environment versus mining are two different issues meet at one point [8]. A good and healthy environment is a human right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia. Indonesian constitutional law

evidently commits to protect human rights and sustainable development in natural resources management [9]. In addition, the declining quality of the environment has threatened the survival of human life and other living creatures, so that serious and consistent environmental protection and management are needed by all stakeholders. These are some of the considerations behind the issuance of Law Number 32 of 2009 concerning Environmental Protection and Management. Apart from being based on constitutional rights because it is explicitly regulated in the constitution, the enactment of the Environmental Law is also based on the fact that the quality of the environment is considered to be declining.

Consideration of the enactment of this Environmental Law is certainly very relevant to the objective of this regulation, namely to ensure legal certainty and provide protection for everyone's right to a good and healthy environment as part of the protection of the entire ecosystem. In the context of the protection of local varieties, what is most relevant is to ensure the survival of living things and the preservation of ecosystems, namely the order of the elements of the environment which constitute a comprehensive whole and influence each other in shaping environmental balance, stability, and productivity.

The spirit of protecting the environment, in accordance with the spirit of this law, on the other hand is not supported by mining policies, including tin mining in the Bangka Belitung Islands region [10]. Tin mining which was originally monopolized by certain companies on the basis of a permit from the government at that time, became allowed to be mined by anyone, is one proof. There is no clear boundary between the mining area and the area containing local varieties of plants, resulting in the extinction of the local variety. In other words, tin mining has an impact on efforts to protect local varieties. The land that originally contained local varieties of plants, turned into tin-added land which in turn turned into a kolong (small lake).

When examined normatively, there are parts that do not support each other between the Mineral and Coal Mining Law, Law Number 32 of 2009 concerning Environmental Protection and Management, and the PVP Law that is currently in effect. If the UULH substantively regulates efforts to maintain the balance of the ecosystem, the same applies to the UUPV, the opposite happens with the Minerba Law and other policies by the government, both central and regional. Regarding intellectual property, from the existing regulations, legal politics in the regulation of IPR does not involve local governments in all branches of IPR. Local governments are involved only in the protection of geographical indications, which are contained in the Trademark and Geographical Indications Law [11].

It must be admitted that the regulations governing the protection of local varieties have not been constructed to protect local varieties in Indonesia. In the PVP Law, for example, the norms governing local varieties are only regulated in one article and four paragraphs, namely Article 7 Paragraph (1) to Paragraph (4). Substantially, this article states that local varieties belonging to the community are controlled by the state which are implemented by the government. The government is obliged to provide planting of local varieties whose technical rules are further regulated by the government. Then, Government Regulation No. 13 of 2004 was issued concerning Naming, Registration and Use of Original Varieties for the Manufacture of Essential Derivative Varieties. Neither in the PVP Law nor in this government regulation, it is not regulated about when and under conditions such as when a local variety can be legally declared to have expired.

Normatively, the construction of laws and regulations has not been very clear on the protection of local varieties. The explanation of Law No. 29 of 2000 concerning Protection of Plant Varieties states that the provision of protection for plant varieties is carried out to encourage and provide opportunities for the business world to increase its role in various aspects of agricultural development. In the future, it is hoped that the business world can play a more active role so that more superior and more diverse plant varieties can be produced. However, this protection is also not intended to close the opportunity for small farmers to use

new varieties for their own needs, while protecting local varieties for the benefit of the wider community. Article 7 Paragraph (1) states that what is meant by local varieties are varieties that have existed and have been cultured from generation to generation by farmers, and become the property of the community.

Environmental aspects are an important part of mining activities [12]. Empirically, tin mining activities that are not constrained are due to regulatory loopholes that are supported by government policies that seem pro-tin mining which no longer make environmental issues a guide, clearly making local varieties that have been registered and local varieties that have not been registered but potential registered, endangered. When we talk about factual data like this, we are no longer talking about the validity period of protection that is not regulated in regulations. If the object protected by regulation has been destroyed, the protection provided will also automatically be completed. In general, it can be said, Rich in natural resources, Indonesia faces a great challenge. With proper management, these resources can be utilized for the best interest of the people of Indonesia. On the other hand, mismanagement can bring about what is called the resource curse [13].

4 Conclusion

Data from the Ministry of Agriculture records that there are many registered local varieties originating from the Bangka Belitung Islands. On the other hand, tin mining continues to this day, and this threatens the existence of local varieties, both those that have been registered and those that have the potential to be registered in order to obtain legal protection. From the results of the study, it was found that regulatory, there are parts that do not support each other between the Mineral and Coal Mining Law, Law Number 32 of 2009 concerning Environmental Protection and Management, and the PVP Law that is currently in effect. In addition, tin mining has an impact on efforts to protect local varieties. The land which originally contained local varieties of plants, turned into tin-added land which in turn turned into a kolong (small lake).

Thank you to the Faculty of Law, University of Bangka Belitung for funding the publication of this paper through the RKKAL 2022.

References

1. Darwance, S. Nugroho, Yokotani, Strategi Pengelolaan Sumber Daya Alam Dalam Pengaturan Pertimahan Di Provinsi Kepulauan Bangka Belitung: Dari Zaman Voc Hingga Indonesia Merdeka, Prosiding Seminar Nasional dan Call For Paper Ekonomi dan Bisnis (SNAPER-EBIS 2017)
2. D. Haryadi, Ibrahim, Darwance, Strategic Ecological Issues: Environmental Problems in a Perspective of Regional Development in Bangka Belitung, E3S Web of Conferences 241, 05001 (2021)
3. D. Haryadi, Darwance, R.D. Salfutra, Implementasi Tanggungjawab Reklamasi Pertambangan Timah Di Pulau Belitung, Jurnal Hukum Progresif: Volume XII/No.2/ Desember 2018.
4. Darwance, R. Sari, T. Ramadhani, Mapping of the Potential of Geographical Products as Intellectual Property Rights in Bangka Belitung Islands, <https://eudl.eu/doi/10.4108/eai.8-6-2021.2314370>
5. Anonim. <http://pvtpp.setjen.pertanian.go.id/cms2017/informasi-publik/daftar-varietas-lokal-terdaftar/>, diakses pada tanggal 9 Juli 2022.
6. H.S. Salim and E.S. Nurbani. 2017. Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi (Jakarta: RajaGrafindo Persada)

7. S. Soekanto. 2012 Pengantar Penelitian Hukum (Jakarta)
8. D. Haryadi, Darwance, R.D. Salfutra, Integrative Law Enforcement about Tin Mining Reclamation Responsibility at Bangka Belitung Island, E3S Web of Conferences 68, 0 (2018).
9. D. Haryadi, Ibrahim, Darwance, Environmental Regulations (its Identification and Downstream Implementation in Bangka Belitung), E3S Web of Conferences 241, 05002 (2021)
10. Darwance, D. Haryadi, Yokotani, [Reconstructing the Developmet of Eco-Friendly Environment as the Green Constitution \(Study of Tin Mining and Environmental Degradation in Bangka Belitung Islands\)](#), 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)
11. Darwance, Yokotani, W. Anggita, Politik Hukum Kewenangan Pemerintah Daerah Dalam Pengaturan Hak Kekayaan Intelektual, Journal of Political Issues Volume 2, Nomor 2, Januari 2021.
12. D. Haryadi, Darwance, P.P. Saputra, Building Environmental Legal Culture in Mining Activities in Belitung Timur, IOP Conf. Series: Earth and Environmental Science 519 (2020) 012021
13. D. Haryadi, Ibrahim, Darwance, Politics of environmental law in relation to mining in Bangka Belitung: A mapping, IOP Conf. Series: Earth and Environmental Science 599 (2020) 012087