



# International Conference on Law and Social Science

Editorial Office: Faculty of Law, Riau Islamic University, Pekanbaru, Indonesia.

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## CHARACTERISTICS OF COASTAL AREA LICENSE MANAGEMENT IN THE PROVINCE OF BANGKA BELITUNG ISLANDS

Muhammad Syaiful Anwar<sup>a</sup>, Rafiqasari<sup>b</sup>, Ndaru Satrio<sup>c</sup>

<sup>a</sup>Faculty of Law, Bangka Belitung University

Email Address: [syaiful-anwar@ubb.ac.id](mailto:syaiful-anwar@ubb.ac.id)

<sup>b</sup>Faculty of Law, Bangka Belitung University

Email Address: [rafiqasari01@gmail.com](mailto:rafiqasari01@gmail.com)

<sup>c</sup>Faculty of Law, Bangka Belitung University

Email Address: [satrio.ndaru9@gmail.com](mailto:satrio.ndaru9@gmail.com)

### Abstract:

*Coastal areas are related to the interests of regional governments and the interests of the central government regarding management, especially mining in coastal areas. Mining activities that occur in the Bangka Belitung Islands are not only on land but have also entered coastal areas. There is overlap in the authority to grant permits and there is environmental damage which must be accounted for by those carrying out mining activities. This research aims to determine the characteristics of granting mining permits in coastal areas based on regional autonomy rights and environmental law enforcement on coastal mining activities in the Bangka Belitung Islands region. This research uses normative legal research which takes a statutory and conceptual approach. The results of this research indicate that there is still overlapping authority rules for granting permits between the central government and regional governments in coastal areas based on the principle of regional autonomy and the characteristic mechanisms of environmental monitoring patterns that are more directed towards enforcement of administrative law but also the criminal dimension which is premium remidium.*

**Keywords:** Management, Licensing, Coastal Area

## I. Introduction

Indonesia has different characteristics from other countries, namely a country with the character of a unitary state. The concept of a unitary state is a mandate given by the constitution of the Unitary State which is divided into the Central

Government and Regional Government.

This is also stated in Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that: "The Unitary State of the Republic of Indonesia is divided into regions-provincial areas, and provincial areas are divided into districts and cities, each of

which has a regional government, which is regulated by law." Normatively, regional development patterns are based on regional autonomy rights as regulated in Law Number 23 of 2014 concerning Regional Government as a derivative of implementing regulations for the Indonesian Constitution.

Implementation of Government Affairs is in the fields of forestry, maritime affairs, as well as energy and mineral resources which are divided between the Central Government and provincial regions based on Article 14 paragraph 1 of Law Number 9 of 2015 concerning Amendments to Law Number 23 of 2014 concerning Government Regional So in this case it can be seen that regional governments also have authority, one of which is in the field of energy and mineral resources. One of the mineral resources is the result of mining. Where in Article 1 number 1 of Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (UU Minerba) explains that Mining is some or all stages of activities in the framework, management and exploitation of minerals or coal which includes general investigations, exploration, feasibility studies, construction, mining, processing and/or refining or development and/or utilization, transportation and sales, as well as post-mining activities.

One of the areas which is a central point for mining is in the Bangka Belitung Islands Province with mining products

in the form of tin. Traces of the history of mining in the Bangka Belitung Islands (Babel) have been carrying out traditional exploration since the 18th century. After independence, the mining process related to tin shifted to management by the state. Traditional mining, which is still the backbone of the community's economy, requires permits from the relevant institutions, both by the regional government and the central government. Licensing administration experiences ups and downs of regulations due to the various authorities not being properly integrated. In the division of management authority over mining, there is friction in authority due to overlapping regulations surrounding the management of tin mines. The tin mining process is carried out without paying attention to the impact or consequences of the mining, especially on environmental aspects.

Mining activities that occur in Indonesia, one of which is in the Bangka Belitung Islands Province, are no longer just in land areas but have entered the realm of coastal areas, which in fact coastal areas are areas that are not used in the capacity for exploration or exploitation in the name of mining. . There are overlapping regulations in the management and use of coastal areas. The authority to manage by regional governments in the name of regional autonomy or the authority to grant permits in the name of the state by the central government is a polemic of authority in itself. Where in the

implementation, spatial planning of coastal areas and small islands is part of government affairs which is ultimately broken down into several levels, starting from the highest level of government called the state or central government to the provincial and district government levels. /city.

Regionally, mining activities that occur in the Bangka Belitung Islands Province have entered the realm of coastal areas, which in fact, coastal areas are areas whose management must have very strict prerequisites because they are related to the effects of the mining process and management which, if not careful, can result in will damage the environment of coastal areas. Damage to coastal areas often becomes a polemic on the basis of management authority, between the central government and regional governments who claim to have more rights to control the management of these areas. The central government bases it on the licensing administration pattern, while the regional government relies on regional autonomy rights which are legally enshrined in the constitution. The crucial problem is related to the authority over spatial planning which indirectly clashes with the principle of regional autonomy and the development of law enforcement patterns related to mining in coastal areas that are structured, massive and sustainable which must continue to be carried out in order to preserve environmental quality standards. The size of the mining permit

area, both land and sea, indirectly positions the location of areas that are ready to be explored.

In terms of spatial planning, it is not only the authority of the central government, but also the authority of regional governments, namely carrying out spatial planning in provincial and district/city areas. This matter regarding regional authority is regulated in Law Number 9 of 2015 concerning the second amendment to Law Number 23 of 2014 concerning Regional Government, where provincial areas in the field of spatial planning are regulated by development planning and control, supervision and utilization, and also regulated regarding implementation of public order, public peace and provision of public facilities and infrastructure. So this spatial planning is very important, especially in terms of maintaining the environment so that it remains a healthy and clean environment, which is the obligation of all parties. Therefore, one of the actions that has been taken by the government to protect coastal areas is by enacting Law (UU) Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. However, even though there are regulations governing coastal areas, there are still many individuals, whether people or communities or institutions, who commit violations related to coastal areas. Where damage to the coastal ecosystem will certainly be followed by

environmental problems, including coastal erosion, flooding, sedimentation, a decline in the standard of living of people who depend on areas around the coast and a decline in fisheries productivity and other losses that have systemic impacts.

Based on the 2019 IKPLHD [Regional Environmental Management Performance Information] document for the Bangka Belitung Islands Province, the area of mining land according to excavated materials and mining business permits covers 1,007,372.66 hectares of the 1,642,400 hectares of the total area of Bangka and Belitung. There are 25 types of minerals, managed by hundreds of companies. Of this area, almost 50 percent of the mining permits are owned by PT. Timah Tbk. Based on the 2021 presentation, this company has 120 IUPs with an area of 428,379 hectares. The Land IUP area is 288,716 hectares, while the Marine IUP area is 139,663 hectares.<sup>1</sup>

Some mining activities themselves are carried out openly during the day, some are carried out secretly at night. One of the illegal mining locations is Kelabat Dalam Bay. In this 16 thousand hectare water area, dozens of sand sucking pontoons (PIP) from illegal weighers are clearly visible sucking tin sand from the seabed. This activity causes underwater sediment to rise, changing the color of

the sea water from blue to cream. Meanwhile, on the coast, you can see how rows of mangroves have turned black and withered due to the haphazard activities of the miners<sup>2</sup>. Apart from that, mining in the sea itself has resulted in the destruction of coastal ecosystems and marine waters, and ultimately has an impact on disrupting around 45 thousand traditional fishermen who depend on the coast and sea for their livelihood. This also places Bangka Belitung Province in the highest position with damaged and very critical land conditions reaching 1,053,253.19 hectares or 62 percent of Babylon's land area. It is not only the environmental crisis and people's safety that is threatened. The economy of the community, especially fishermen, is threatened by the increasingly massive tin mines operating<sup>3</sup>

The government is taking preventive action to protect coastal areas, namely by reconstructing Law (UU) Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. In reality, these regulations are only a tiger on paper, because there are still many violations of mining activities that actually result in environmental damage as well as further actions, namely corrupt actions regarding the

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<sup>1</sup> <https://www.mongabay.co.id/2022/12/27/tambang-timah-dan-masa-depan-generation-muda-bangka-belitung/>, accessed March 15, 2024

<sup>2</sup> Rasdianto, Fajar Yusuf. (2021), <https://news.detik.com/x/detail/investigasi>

</20210427/Tenggelam-dalam-Timah/>, accessed March 23, 2024

<sup>3</sup>Walhi, (2018)

mining results. This is proven by the emergence of tin trading cases in Babylon involving various parties who carried out acts of corruption in the tin mining sector. In the report, the Attorney General's Office through a team of experts from the Bogor Agricultural Institute [IPB], represented by Bambang Hero Suharjo, estimated that the economic losses from the suspects' actions reached IDR 271.06 trillion. This loss calculation is based on Minister of Environment Regulation No. 7 of 2004.<sup>4</sup>

Many of the mining activities themselves are carried out openly during the day, some are carried out secretly at night. One of the illegal mining locations is Kelabat Dalam Bay. In this 16 thousand hectare water area, dozens of sand sucking pontoons (PIP) from illegal weighers are clearly visible sucking tin sand from the seabed. This activity causes underwater sediment to rise, changing the color of the sea water from blue to cream. Meanwhile, on the coast, you can see how rows of mangroves have turned black and withered due to the haphazard activities of the miners<sup>5</sup>.

Environmental damage in coastal areas that occurs as a result of sporadic mining activities violates statutory provisions, especially those relating to the environment. One of them concerns mining activities carried out in coastal

areas, which is an act prohibited in Article 35 letter (k) of Law Number 20 of the year 2007 concerning Management of Coastal Areas and Small Islands which states that carrying out mineral mining in areas which, technically and/or ecologically and/or socially and/or culturally, causes environmental damage and/or environmental pollution and/or harms the surrounding community.

Environmental damage in coastal areas that occurs as a result of mining activities sporadically violates statutory provisions, especially those relating to the environment. One of them concerns mining activities carried out in coastal areas which have an impact on overall environmental damage and result in losses to other sectors. The factor of overlapping authority over the management of natural resources between the central government and regional governments creates its own problems, considering that regional governments are based on the principle of regional autonomy with all its forms of specificity. In mining environmental management, the litigation process against individuals causing environmental damage is still weak, this is based on imposing penalties on perpetrators which are more related to administrative areas. Law enforcement

<sup>4</sup> <https://www.mongabay.co.id/2024/02/29/tersangka-kas-corruption-timah-telah-ditetakan-bentang-alam-bangka-belitung-besar-dipulihkan/>, accessed March 12, 2024.

<sup>5</sup> DawnYusuf Rasdianto. (2021), <https://news.detik.com/x/detail/investigasi/202104>

[27/Tenggelay-dalam-Timah/](https://www.tempo.co/read/news/2024/02/27/Tenggelay-dalam-Timah/), accessed on February 23, 2024

against perpetrators of environmental damage is still limited to differentiating actions against perpetrators.

Research related to coastal management was carried out by Rahmat Datau and Hairan entitled *Legal Aspects in Coastal Area Management in the Perspective of Regional Autonomy*. The focus of this research is on the potential of natural resources as well as the potential of human resources who are directly involved in managing coastal area resources and act as subjects, not as objects. Regional governments also need to pay attention to potential conflicts and customary laws that apply among coastal communities as a form of accommodation for the community's social response to existing regional regulations. In this research, the difference is that it focuses more on the characteristics of the authority to manage mining permits and mining law enforcement in coastal areas based on regional autonomy by reconstructing rule-based environmental law enforcement methods related to coastal area management.

Based on the background of the problem in this research, the following problem formulation was produced: Does the granting of mining permit management by the Central Government in coastal areas of the islands conflict with regional autonomy rights?, and How is the

development of an environmental law enforcement system for mining activities in coastal areas on the island of Bangka Belitung?

## **II. Legal Materials and Methods**

This research is normative juridical research, with data collection methods through library research.<sup>6</sup>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 statutory regulations, which include the 1945 Constitution of the Republic of Indonesia; Law Number 23 of 2014 concerning Regional Government, Law no. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining; Government Regulation Number 27 of 2012 concerning Environmental Permits and Government Regulation Number 22 of 2021 concerning Implementation of Environmental Protection and Management, as well as related laws and regulations. Primary data will be supported by secondary data, in the form of library materials containing information about primary materials, in the form of textbooks, journal articles and other supporting materials. A statutory approach and a conceptual approach will be used in this research.

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<sup>6</sup> Soerjono and Sri Mamudji Soekanto, *Short Review of Normative Legal Research* (Jakarta: Rajawali Pers, 2015).

The data collected comprehensively will be analyzed qualitatively, where all research data is processed in a legal reasoning process. Means or tools for analyzing using grammatical interpretation by interpreting statutory regulations to answer existing problems, then a conclusion is drawn and submitted as a suggestion<sup>7</sup>

### III. Results and Discussion

#### Authority for Mining Licensing in Coastal Areas Based on Regional Autonomy

Regional autonomy is a principle attached to the division of regions in Indonesia which is contained in Article 18 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that, "Provincial, Regency and City regional governments regulate and manage government affairs themselves according to the principles of autonomy and duty. assistance." The process of administering regional government is related to the Principle of Regional Government Autonomy. According to I Gede Yusa, the word autonomy comes from the Latin words *auto*, which means alone, and *nomoi*, which means law, so regional autonomy means making your own laws. However, in reality the regional government does not only make laws or carry out legislative functions, but also carries out regional government

administration functions as an executive in the region.<sup>8</sup> Regional autonomy is not only related to the implementation of regional government institutionally but also related to the authority that overlaps with the central government, one of which is related to the management of natural resources. In Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, it is stated in relation to natural resources that "Earth, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people", this is a philosophical basis as well as a basis juridical management of natural resources in Indonesia". Textually, the concept of regional autonomy is not independent in government administration, but also side by side with the central government. Regional government contextually is an inseparable part of the central government, because in all the actions within regional government there is a flow of coordination and harmonization of regulations that underlie a policy that will be issued by the region. One of the policies that is often issued by the government is related to the management of natural resources which overlaps the authority of the central government and regional governments.

Natural resource management in Indonesia is closely related to Regional

<sup>7</sup> Jonaedi Efendi & Johnny Ibrahim, *Normative & Empirical Legal Research Methods*, vol. 1, cet. 2 (Jakarta: Kencana, 2016).

<sup>8</sup> et al. I Gede Yusa, *Constitutional Law Post Amendments to the 1945 Constitution of the Republic of Indonesia* (Malang: Setara Press, 2016)., 165

Government, both Provincial Governments and City Regency Regional Governments. This is a derivation or derivation of regional autonomy stipulated by Law Number 23 of 2014 concerning Regional Government (hereinafter the Regional Government Law) with an orientation towards exploring regional potential which is aimed at improving community welfare, one of which is related to mining. Mining activities carried out in Indonesia, especially in the Bangka Belitung Islands region, were previously carried out on land but are now entering coastal areas.

Eman Rustiadi explained that there are 3 (three) main issues faced in the management of this coastal area, including, First, the issue of biophysical degradation of the coastal environment (corals, fish stocks, coastal erosion, pollution, sedimentation and siltation), Second, the issue of conflicts over use and authority in coastal areas thereby reducing the effectiveness of sustainable coastal management, and Third, legal uncertainty often occurs due to ambiguity in ownership and control of coastal resources<sup>9</sup>.

The basic basis for the management and utilization of natural resources is that there is a tug-of-war between authorities, both the central government and regional governments. The construction

of regional autonomy with state control for the benefit of society is of interest at the conceptual level so that it can be derived at the level of statutory regulations. Various regulations relating to mineral and new stone mining from a licensing administration perspective require obtaining permission from the Central Government. This is stated in Article 6 paragraph (1) letter k of Law Number 3 of 2020 concerning Minerals and Coal which states that "The Central Government, in managing Mineral and Coal Mining, has the authority to issue Business Licensing". This means that the Central Government again has the authority to grant permits to carry out mining activities.

Textually, this regulation attributively gives authority to the Central Government to exercise authority in issuing permits related to mineral and coal mining. The problem with this regulation does not stop with this authority, but the impact of the excesses of this regulation gives the central government the opportunity to have full authority in issuing mining permits. In the process, the procedures for granting permits are divided into which government agency will issue the permit. This is also indirectly related to the Revenue Sharing Fund (DBH) between the regional government and the central government. This licensing issue

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<sup>9</sup>Rustiadi, Ernan, Potential and Problems of Coastal Areas Based on Fisheries and Marine Resources, <http://www.academia.edu/3396901/Poten>

si\_dan\_Perproblem\_Pesisir\_Resources-Based\_Perikanan\_dan\_Kelautan, accessed 23 February 2024

indirectly intersects with regional original income as an excess of natural resource management.

The distribution of Profit Sharing Funds (DBH) is contained in Law Number 23 of 2014 concerning Regional Government in Article 289 paragraph (4) which states that: DBH sourced from natural resources as intended in paragraph (1) letter c comes from:

- a. forestry revenues originating from forest utilization business permit fees (IIUPH), forest resource provisions (PSDH) and reforestation funds generated from the relevant regional area;
- b. mineral and coal mining receipts originating from fixed fee receipts (landrent) and receipts from exploration fees and exploitation fees (royalties) generated from the relevant regional areas;
- c. state revenues from natural resources from petroleum mining produced in the relevant region;
- d. state revenues from natural gas mining resources produced in the relevant regional area; and
- e. receipts from geothermal energy originating from the receipt of deposits from the Central Government, fixed fees, and production fees generated from the relevant regional area.

Profit Sharing Funds (DBH) are also contained in Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional

Governments in Article 111 paragraph (1) explaining several divisions between the center and the regions, namely: DBH consists of: a. Tax DBH b. Natural Resources DBH. Then in Article 111 paragraph (3) which states that; Natural resources DBH as intended in paragraph (1) letter b consists of: a. forestry; b. minerals and coal; c. petroleum and natural gas; d. geothermal; and e. fishery. Based on the basic principles of DBH, regional governments, both provincial and district/city, indirectly have some rights in the management and income from natural resources produced in the region. This intersects with regional management rights based on regional autonomy rights inherent in regional authority.

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 permits from the central government. This is considered to be contrary to the right to regional autonomy.

The central government's authority emerged after changes to the mineral and coal law, namely Law Number 3 of 2020 concerning Minerals and Coal. However, in principle, mining activities currently occur not only in land areas but also in coastal areas, which in this case fall under other authorities, especially regional government authorities. This creates a wedge of authority between one regulation and another, resulting in

overlapping understanding regarding mining management. This shows that there is still not optimal harmonization of regulations regarding mining management authority between the central government and regional governments.

Regulations related to mining have undergone various quite significant changes, both from the law, namely Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba) and its derivative regulations. If you investigate further, there are several derivative regulations that have been made, including Presidential Regulation Number 55 of 2022 concerning Delegation of Granting Business Licensing in the Mineral and Coal Mining Sector; Government Regulation Number 25 of 2023 concerning Mining Areas, or Minister of Energy and Mineral Resources Regulation No. 16 of 2021 concerning Amendments to the Regulation of the Minister of Energy and Mineral Resources Number 7 of 2020 concerning Procedures for Granting Areas, Licensing and Reporting to Mineral and Coal Mining Business Activities and other regulations which are technical derivative regulations in mining.

If we examine further, in Law Number 23 of 2014 concerning Regional Government, specifically in 27 paragraph (2) of Law No. 23 of 2014, it is stated that the Regional Authority of

Provinces to manage natural resources in the sea includes exploration, exploitation, conservation and wealth management. sea outside oil and gas. So in this case, there is an emphasis on exploration, exploitation, conservation and management of marine resources only for resources other than oil and gas. In other words, oil and natural gas fall under the authority of the central government, whereas other than oil and natural gas it is part of the authority of provincial regional governments. In Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, it is explained that Article 16 paragraph (1) states that the use of space from Coastal Waters must be carried out in accordance with the spatial planning plan. and/or Zoning Plan. Then proceed to Article 16 paragraph (2) which states that every person who utilizes space from coastal waters as intended in paragraph (1) must have compliance with marine space utilization activities from the Central Government. This explains that marine space utilization activities must have permission from the government. center. Regarding this matter, the regional government of the Bangka Belitung Islands Province has made Regional Regulation Number 3 of 2020 concerning RZWP3K, which overlaps with this law.

The RZWP3K Bangka Belitung Regional Regulation organizes regional spatial plans in the Bangka Belitung Islands

based on Article 1 point (6) of the Bangka Belitung Islands Province Regional Regulation Number 3 of 2020 concerning Zoning Plans for Coastal Areas and Small Islands (RZWP3K) states that Management of Coastal Areas and Small Islands is a process of planning, utilization, supervision and control of Coastal and Small Island Resources, between sectors, between the Government and Regional Government, between land and sea ecosystems, and between science and management to improve community welfare.

In relation to the authority to carry out activities in marine space or exploration activities, the regional government has the right to manage it, plus the Bangka Belitung Islands Province which is one of the provinces with archipelagic characteristics, in Article 28 of the Regional Government Law, the Provincial Government with archipelagic characteristics is granted authority. continuation from the Central Government. Provincial governments with archipelagic characteristics have the right or authority to manage natural resources in the sea. Then the provincial government exercises authority in the maritime sector based on the principle of Assistance Tasks provided by the Central Government. The assignment must meet the norms, standards, procedures and criteria set by the Central Government. This is the basis that the Bangka Belitung Islands Province has a slice of authority related to limited

mining with the RZWP3K Regional Regulation which is the basic reference for zoning in the Bangka Belitung Islands region. So in principle, the Bangka Belitung Islands Province has a slice of authority regarding mining activities in coastal areas.

In terms of regional autonomy, there is a blurred pattern of authority between the central government and regional governments. The emergence of regulations related to administrative licensing, the contents of which overlap with one another, actually abandons the principle of regional autonomy itself. In essence, regional autonomy itself is part of managing a region for the welfare of its people by adhering strictly to existing laws and regulations. Management of coastal areas based on regional autonomy is something that must be implemented as a form of responsibility for handing over regional management authority within the framework of a unitary state.

Confirmation of coastal area management must be carried out immediately by taking several progressive steps to avoid overlapping regulations and implementation in the field in the future, including: First, harmonization of statutory regulations. Harmonization of these regulations must be carried out comprehensively from laws to implementing regulations in the field by related parties. Second, Populist Policy, coastal area management is not only related to permits but is also related

to other aspects, including aspects of the environment, society, boundaries, and other things that are affected directly or indirectly. Therefore, there must be a policy that is populist and a solution so that a policy can be implemented well and effectively so that management can run well in accordance with the planned direction and objectives. Third, Community Linkage Point, community involvement specifically by positioning the community as an actor in the environmental management process, especially in coastal areas, is the main thing to do. This means that people who are directly involved will make environmental management a culture that has a positive impact on society now and in the future.

### **Environmental Monitoring and Law Enforcement Mechanism for Coastal Mining**

Law enforcement is in principle inherent in the existence of a legal event, including legal events in mining law. In terms of mining law itself, it will apply actively from the time the mining plan is implemented, this is related to the licensing area and the potential impact of mining, whether carried out on land or in coastal areas. Coastal area management, apart from being related to territorial control, is also related to administrative management. Administrative management itself, in its

implementation, also has law enforcement carried out administratively.

Coastal area management, apart from being related to territorial control, is also related to administrative management. Administrative management itself, in its implementation, also has law enforcement carried out administratively. According to Eka Merdekawati Djafar, environmental law enforcement itself is part of law enforcement which must understand and synergize in implementing environmental law enforcement. This is due to the existence of legal actions or failure to carry out legal actions that relate to environmental protection and management which must be enforced<sup>10</sup>.

In order to implement a pre-legislative regulation effectively, law enforcement action is required, one of which is in the form of sanctions. In implementing the sanctions contained in several regulations, especially in Law Number 6 of 2023 concerning the Determination of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law, especially in Article 18 which includes several provisions in Law Number 27 2007 concerning Management of Coastal Areas and Small Islands (State Gazette of the Republic of Indonesia of 2007 Number 84, Supplement to the State Gazette of the

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<sup>10</sup> Eka Merdekawati Djafar, "Synergy in the Implementation of Indonesian Environmental Law Enforcement," *Journal of Law and Justice* 3 (2014),

<https://doi.org/http://dx.doi.org/10.25216/jhp.3.3.2014.237-242>.

Republic of Indonesia Number 47391 as amended by Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands (State Gazette of the Republic of Indonesia of 2014 Number 2, Supplement to the State Gazette of the Republic of Indonesia Number 5490) is amended as follows in Part One, Suitability of Marine Space Utilization Activities and Business Licensing in Article 16A which states that "Every Person those utilizing space from Coastal Waters that do not comply with marine space utilization activities as intended in Article 16 paragraph (2) are subject to administrative sanctions."

Administrative sanctions themselves are regulated in Article 71A paragraph (1) which states that "Administrative sanctions as intended in Article 16A, Article 26B and Article 71 can be in the form of: a. Written warning, b. Temporary cessation of activities, c. location closure, d. Revocation of Business License, e. Cancellation of Business Licensing, and/or f. Administrative fines". These administrative sanctions can be added to criminal sanctions if they result in a change in the function of the space, this is in accordance with Article 73A which states that "Every person who utilizes a Small Island and the surrounding waters for foreign investment who does not

have a Business License as intended in Article 26A which resulting in a change in the function of the space shall be punished by a maximum imprisonment of 4 (four) years and a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah)."

Legal instruments in enforcing administrative law are a reaction to non-compliance or violations by deliberately carrying out these violations for the benefit of oneself or another party. In the process of giving administrative sanctions, especially in the environment, there are several sanctions that can generally be used, including:

a. Government Coercion

What is meant by government? The application of government coercion must be preceded by a written warning as a notification or warning to the person responsible for the business/activity to stop the violation being committed. In this way, real action in the form of government coercion can be avoided. Where the warning letter is considered not to be a state administrative decision (TUN Decision), because the warning letter does not fulfill the elements of a TUN Decision. This is based on Article 1 Number 9 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts<sup>11</sup>.

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<sup>11</sup> H. Bachrul Amiq, Application of Administrative Sanctions in Environmental Law (Yogyakarta: Laksbang Mediatama, 2013).

b. License suspension

Freezing this permit implies the government's authority to freeze permits that have been granted to an industry that is proven to be polluting the environment. By freezing its operational permit, the company is legally unable to operate its company<sup>12</sup>. The administrative sanction of freezing an environmental permit and/or protection and management permit is a sanction in the form of legal action for not temporarily enforcing an environmental permit and/or protection and management permit which results in the cessation of a business and/or activity. This permit suspension can be done with or without a time limit.

c. Imposition of forced money by the government

In administrative law, the imposition of forced money can be imposed on a person or citizen who does not comply with or violates the provisions set by the government as an alternative to government coercive measures. The imposition of forced money is an alternative to real action which means a subsidiaire sanction and is considered a reparatory sanction<sup>13</sup>.

d. Imposition of Administrative Fines

Making laws can give authority to government organs to impose punishments in the form of penalties on someone who has violated statutory regulations<sup>14</sup>. What is meant by administrative fines is the imposition of an obligation to pay a certain amount of money to the person in charge of the business and/or activity for being late in carrying out government coercion. The imposition of fines for delays in implementing government coercion starts from the period when the government coercion is not implemented.

In terms of targets, there are two types of sanctions in administrative law, namely reparatory sanctions and punitive sanctions. Reparatory sanctions are defined as sanctions applied as a reaction to violations of norms aimed at returning them to their original condition or placing them in a situation in accordance with the law (*legale situatie*). Meanwhile, punitive sanctions are sanctions that are solely intended to punish someone<sup>15</sup>. According to Achmad Santosa, environmental law enforcement in the administrative sector has several strategic benefits compared to other law enforcement tools because<sup>16</sup>:

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<sup>12</sup> Adji Samekto, *Environmental Law* (South Tangerang: PT Gramedia, 2020).

<sup>13</sup> Ridwan HR., *State Administrative Law* (Jakarta: PT Raja Grafindo Persada, 2006).

<sup>14</sup> Ridwan HR.

<sup>15</sup> Ridwan HR.

<sup>16</sup> Syahrul Machmud, *Indonesian Environmental Law Enforcement (Enforcement of Administrative Law, Civil Law and Criminal Law According to Law No. 32 of 2009)* (Bandung, 2011).

- a. Administrative environmental law enforcement can be optimized as a preventative tool.
- b. Administrative environmental law enforcement is more efficient from a funding perspective when compared to civil and criminal law enforcement. Funding for administrative law enforcement only includes funding for field supervision and laboratory testing.
- c. Administrative environmental law enforcement has more ability to invite community participation starting from the licensing process, monitoring, compliance/supervision and community participation in submitting objections to requesting state administration officials to impose administrative sanctions.

However, the implementation of sanctions from the administration itself must be implemented properly so that they comply as they should. In the application of administrative sanctions based on Article 5 paragraph (2) of the Regulation of the Minister of Environment of the Republic of Indonesia Number 02 of 2013 concerning Guidelines for the Implementation of Administrative Sanctions in the Field of Environmental Protection and Management states that the Application

of Administrative Sanctions is carried out through a mechanism<sup>17</sup>:

- a. Gradually, in the gradual application of administrative sanctions, namely the application of sanctions that are preceded by mild administrative sanctions to the heaviest sanctions. If the written warning itself is not obeyed, the implementation of the next, more severe administrative sanction, namely government coercion or suspension of permits, will increase. If the government's coercive sanctions or license suspension are not complied with, even more severe sanctions can be imposed, namely the sanction of license revocation.
- b. Free (Not Gradual), in the application of administrative sanctions freely where there is freedom for officials authorized to impose sanctions to determine the choice of type of sanction based on the level of violation committed by the person in charge of the business and/or activity. However, if the violation committed by the person in charge of the business and/or activity itself has caused environmental pollution and/or damage, then the government can immediately be subject to coercive sanctions. Furthermore, if the

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<sup>17</sup> Amelia MK Panambunan, "Application of Administrative Sanctions in Enforcing Environmental Law in Indonesia," *Lex*

*Administratum* 4, no. 2 (2016), <https://doi.org/https://ejournal.unsrat.ac.id/v3/index.php/administratum/issue/view/1263>.

government's coercive administrative sanctions are not implemented, the permit will be revoked without being preceded by a written warning.

- c. Cumulative, the cumulative application of administrative sanctions consists of internal cumulative and external cumulative. Internal cumulative is the application of sanctions carried out by combining several types of administrative sanctions for one violation.

Implementation of violations against the environment indirectly has a systemic impact so that law enforcement must be detailed and have a crucial impact on perpetrators of violations of legal rules relating to the environment. In principle, the application of law enforcement against perpetrators can be used through the application of external cumulative sanctions by combining administrative sanctions with civil legal sanctions and criminal sanctions. The application of external, communal sanctions has more positive excesses with the aim of enforcing the law itself.

Environmental Protection and Management (UUPPLH) confirms and explains what is stated in the general explanation section that the nature of criminal sanctions is called a double

track system, meaning that perpetrators who violate regulations are required to repair their environment so that it returns to its original state. This is done because environmental problems are complex, so that in solving them, criminal sanctions are not only given to the perpetrators with imprisonment, fines or imprisonment, but the perpetrators must be able to correct the environmental conditions as they should be.<sup>18</sup>

Cumulative theory is a theory that is based on law-making activities and this activity has historical, sociological, juridical and political reasons. Cumulative according to the Big Indonesian Dictionary is related to cumulation, which means adding; occurs from increasing parts; piled up. The definition of cumulative is anything that continues to increase or accumulate from various sides or parts, which in Latin comes from the word "Cumulare"<sup>19</sup>. In implementing the administrative sanctions as mentioned above, the most appropriate thing to implement for activities that damage the environment is implementation using an external cumulative mechanism. The application of external cumulative as mentioned above is clear that internal cumulative is the application of sanctions carried out by combining the types of sanctions

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<sup>18</sup> Aviany Yanti and Winda Fitri, "Environmental Pollution Sanctions in the Job Creation Law: A Comparative Study of Japanese Countries," *Mulawarman Law Review* 7, no. 1 (2022), <https://doi.org/DOI:10.30872/mulrev.v7i1.772>.

<sup>19</sup> F. (2019). *Legal Logic*. Jakarta: Prenadamedia Group. Jurdi, *Legal Logic* (Jakarta: Prenadamedia Group, 2019).

contained in administrative sanctions with sanctions existing in criminal law or civil law for one violation. The application of external cumulative sanctions is considered appropriate, especially for damage that occurs in coastal areas and small islands.

The advantages of giving cumulative sanctions, if implemented properly, can reflect the objectives of giving administrative sanctions themselves, namely: First, as an effort to enforce the provisions of laws and regulations. Second, provide punishment for anyone or everyone who violates a norm in statutory regulations. Third, it deters someone from violating the law again. By imposing sanctions, it is hoped that people will not commit these violations again. Fourth, prevent other parties from violating the law. Where with the threat of sanctions, it is hoped that people will not violate the law. This is a warning so that someone does not do something that is prohibited<sup>20</sup>.

The application of external cumulative sanctions is an effective effort that can be carried out in providing sanctions against perpetrators who cause damage to the environment in coastal areas and small islands. According to criminal law theory, there is an opinion which explains that the application of criminal sanctions is an *ultimum remedium*

against perpetrators of environmental crimes. This is based on the understanding that the occurrence of environmental damage itself is a matter for the government regarding environmental management efforts through the imposition of administrative sanctions. This administrative action itself is the determination of a permit by an authorized agency or institution, where if a violation occurs, administrative sanctions will be applied<sup>21</sup>.

However, the application of sanctions using an external cumulative method gives a role to criminal sanctions based on a *premium remedium* where criminal sanctions are applied the same as when administering administrative sanctions. So that criminal sanctions, which are the last resort in imposing sanctions, are used as sanctions that are given initially at the same time as administrative sanctions.

The application of administrative sanctions must of course be based on the principles of preservation and sustainability. The principle of sustainability and sustainability states that every person bears obligations and responsibilities towards future generations and towards each other within the same generation by making efforts to preserve the carrying capacity

<sup>20</sup> Wicipto Setiadi, "Administrative Sanctions as One of the Law Enforcement Instruments in Legislation" 6, no. 4 (2009), <https://doi.org/https://doi.org/10.54629/jli.v6i4.336>.

<sup>21</sup> et al. Ni Putu Risna Daryani, "Responsibility for Environmental Crimes Viewed from the Perspective

of Criminal Law in Indonesia," Kertha Wicara: Journal of Legal Studies 9, no. 4 (2020), <https://doi.org/https://ojs.unud.ac.id/index.php/kerthawicara/article/view/43516>.

of the ecosystem and improve the quality of the environment. So that the application of sanctions is not only based on the deterrent effect of someone who commits the violating act, but the quality of the damaged environment must be restored to what it was before the act was committed. In the study of state administrative law, there is a nature of administrative sanctions themselves where these administrative sanctions are a mixture of reparatoir (recovery) - condemnatoir (punishment), namely restoring them to their original condition and imposing punishment.<sup>22</sup>. So it is clear that the main aim of implementing administrative sanctions is to return the situation to normal. As happened on Bangka Belitung Island, it is clear that the damage caused by mining activities is detrimental to the people of Bangka Belitung directly and indirectly.

Apart from that, the success of law enforcement using this administrative instrument itself can be implemented well if it has elements to strengthen it. One of them is related to the legal culture that lives and develops in people's lives. According to Lawrence Meir Friedman in Slamet Tri Wahyuni, he explains that the success or failure of law enforcement depends on: Legal Substance, Legal Structure/Legal Institutions and Legal

Culture. In detail it can be explained as follows<sup>23</sup>:

- a. Legal Substance, in Lawrence Meir Friedman's theory, this is referred to as the Substantial system which determines whether or not the law can be implemented. In Substance it also means products produced by people within the legal system which includes the decisions they issue, the new rules they compose. Substance also includes living law, not just the rules in law books;
- b. Legal Structure, in Lawrence Meir Friedman's theory, this is also referred to as a structural system which determines whether or not the law can be implemented properly;
- c. Legal Culture, Legal culture according to Lawrence M Friedman is human attitudes towards law and the legal system - their beliefs, values, thoughts and hopes. Legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided, or misused. Legal culture is closely related to society's legal awareness. The higher the public's legal awareness, the better legal culture will be created

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<sup>22</sup> Sri Nur Hari Susanto, "The Juridical Character of Administrative Law Sanctions: A Comparative Approach," *Administrative Law and Governance Journal* 2, no. 1 (2019), <https://doi.org/https://doi.org/10.14710/alj.v2i1.126-142>.

<sup>23</sup> Slamet Tri Wahyudi, "Problematics of the Application of the Death Penalty in the Context of Law Enforcement in Indonesia," *Journal of Law and Justice*, 1, no. 2 (2012), <https://doi.org/http://dx.doi.org/10.25216/jhp.1.2.2012.207-234>.

and can change people's mindset regarding law. In simple terms, the level of public compliance with the law is an indicator of the functioning of the law.

Based on the concept of system theory, there are intersections that position legal performance to be maximal. In legal substance, the material of the rules that regulate and relate to environmental and mining issues, there should be uniformity of objectives or harmonization of rules both in formal legal harmonization and material legal harmonization. This is important as an initial basis for implementing regulations that will be implemented in regions, both provinces and districts/cities so that there is no overlap in authority over the management of natural resources and regional management related to the implementation of regional autonomy. This leads to the benefit of the community so that regional and central governments can make regulations with the aim of ensuring that the implementation of regulations based on the principle of regional autonomy can run sustainably in order to achieve the goal of improving the welfare of the community.

The legal structure dimension in this theory is indirectly related to the usefulness or acceptance of a rule that can be implemented or not in society. If the formation of these regulations actually contradicts other rules or the

rules actually burden the community, then in this pattern the content or material of the rules will overlap with other norms, thereby hampering the implementation of these rules. It is important for rule makers to pay attention to this, whether in the form of laws or regulations under them, so that in the process of forming these regulations they must also pay attention to whether the material content of the rules can be implemented or not and the public's understanding of whether they can implement them in a structured manner properly and correctly.

The legal culture pattern is one of the important things that must be implemented in a structured, massive and sustainable manner. Legal culture focuses on awareness of the law or rules. The higher the level of public compliance with the law is an indicator of the functioning of the law. The general public must be given education and understanding regarding mining management, so that people do not commit illegal actions related to mining.

Enforcement of environmental law, especially in mining, will relate one aspect to another aspect so that all these aspects complement each other to become a complete part in the implementation of environmental administrative law. The implementation of this law is not only from the government side but also the community and stakeholders who must play an active role in protecting and preserving

the environment, especially in coastal areas and small islands, especially in the Bangka Belitung Islands region.

#### **IV. Conclusion and Suggestions**

The authority to grant mining permits in coastal areas overlaps with the authority of regional governments based on regional autonomy rights. The authority to grant mining permits in coastal areas is not in accordance with regional autonomy rights, where there are several statutory regulations, namely Regional Government Law Number 9 of 2015 concerning amendments, Law Number 11 of 2020 concerning Job Creation, Regional Regulations for the Bangka Belitung Islands Province No. 3 of 2020 concerning the Zoning Plan for Coastal Areas and Small Islands which is still conflicting in regulating the authority of regional governments in granting mining permits in coastal areas, the authority to grant permits should remain in the hands of regional governments in accordance with regional autonomy rights. Regarding the enforcement of environmental administrative law on mining activities in coastal areas on the island of Bangka Belitung, it is based on the enforcement of environmental administrative law, namely by means of an External Cumulative method, which combines administrative sanctions with criminal sanctions in the application of sanctions, so that the application of

environmental criminal sanctions leads to a remedial premium.

#### **Acknowledgment**

Thanks are given to the Research and Community Service Institute (LPPM) of Bangka Belitung University which has funded this activity through the Bangka Belitung University Lecturer Acceleration Research scheme in 2023

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