

Fulfillment of Rights Indigenous Peoples in the Management of Mineral Resources of C Mining

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Abstract

Natural resources in the Mining sector must be developed as much as possible to achieve development. So there needs to be an integrated survey from experts so that it can generate benefits for the welfare of indigenous peoples, environmentally friendly. The type of research conducted by the author is normative research. The purpose of the research is to find out and analyze the fulfillment of indigenous peoples' rights in the management of Class C mineral resources. The research results obtained are that in fulfilling the rights of indigenous peoples in the management of Class C mineral resources, there needs to be cooperation between indigenous peoples, companies and the government so that it will have an impact on the welfare of indigenous peoples and also the realization of the principle of sustainable development through *Good Mining Practice*.

I. Introduction

Indonesia is known as a country rich in natural resources, natural resources minerals, gas, oil, coal, gold, coastal and marine resources are found almost evenly distributed throughout Indonesia, is a very valuable gift from God to the people and the Indonesian nation. Natural resource wealth is understood as important capital in organization development national. Because That development Which dedicated on pursuit target growth economy, for the sake of improvement income And foreign exchange country, thenutilization source Power natural done with heed principles justice, democracy and sustainability of function resource natural¹

In line with the concept of sustainability and environmental awareness, in Law Number 4 Year 2009 Which has changed with Constitution No 3 Year 2020 about Article 2 letter (d) of the Mineral and Coal Mining Law (UU Minerba) emphasizes that Mineral and/or coal mining is managed on the basis of: "sustainable and environmentally friendly" environment" which in his explanation is a principle that integrates in a planned manner dimensions economy, environment, And social culture in overall business mining mineral And coal for realize welfare present time And future. So that in the management of C-type mineral resources, many problems arise related to the rights of indigenous peoples. In terms of land which is owned by indigenous peoples which has a positive impact because it contains C-type mining materials, namely granite sand.

Regulated in Law The Constitutional Court through Constitutional Court Decision No. 31/PUU-V/2007 defines customary law communities as a unity of customary *law* communities along with their traditional rights which still exist and/or are alive (*actual existence*) if they at least contain dangerous elements.²

1. There are societies whose citizens have group feelings (*in-group feeling*)
2. There are customary government institutions

¹H. Salim, *Mining Law in Indonesia* , Raja Grafindo Persada, 2005, page 23

²Satoejari, *National Human Rights Inclusion*, National Human Rights Commission, 2018, page 34

3. There are assets and/or traditional objects
4. There is a set of customary legal norms
5. Specifically for territorial customary law community units, there are also certain customary law area elements.

Indigenous peoples have rights that are respected by the government or state, especially in relation to the use of natural resources. The government is obliged to fulfill the rights of development and welfare of the people, including *indigenous people*, in the management and use of natural resources.

One of the potential national resources in the Haya village area is the mineral resources of type C mining, namely granite sand, type C mining materials, namely granite sand, are non-renewable natural resources. When there was granite sand in Haya village, there was no socialization from the Waragonda Pratama company with the Haya community regarding the extraction of granite sand. In fact, when there is socialization built between the community, the government and PT Waragonda Pratama, it will have an impact on the welfare of the people, especially for the fulfillment of the rights of indigenous peoples.

Exploitation of mining materials is an opportunity and hope for the people to gain prosperity that only comes once. Mining materials are also assets for the people to be used in the process of improving prosperity. Thus, exploitation of mining materials must bring benefits (*return on assets*) optimally for the welfare of the people.³

The concept of state control over mineral and coal resources in Indonesia is based on the provisions in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states "The land, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". The provisions of Article 33 paragraph (3) are the philosophical and legal basis for the management of natural resources in Indonesia. In addition to state control and

³Akhabar Saleh, *Chapter on natural resource law*, Bandung Membumi Publishing, 2013, page 37

management of natural resources, the state also recognizes and respects the existence of Customary Law Communities (MHA) along with their constitutional rights and traditional rights as stipulated in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

However, often indigenous peoples are marginalized when dealing with the state. With the right to control that they have, the state marginalizes the rights of indigenous peoples in managing mineral and coal resources on the grounds of national interests. The weak political position of indigenous peoples compared to investors and the government results in the easy takeover of natural resources by the government without going through a fair legal process, or even without any compensation.

Indigenous communities must receive direct economic benefits from mining activities, such as profit sharing, fair compensation, and local infrastructure development.⁴ Moreover, according to Law No. 32 of 2009 concerning Environmental Protection and Management, Article 63 paragraph (2) explains that the government and regional governments are obliged to recognize and respect the rights of customary law communities in environmental management and protection. Invest in programs that support local economic development and improve the welfare of indigenous communities. Mine management should include environmental conservation efforts and post-mining land rehabilitation to minimize negative impacts on ecosystems and indigenous peoples' livelihoods.

According to Article 1 number 10 of Law No. 3 of 2024 concerning amendments to Law No. 4 of 2009 concerning Mineral and Coal Mining, it explains that, Mining business permits hereinafter referred to as IUP are permits to carry out mining businesses. Mining IIN is an official authorization granted by the government to individuals or companies to carry out mining activities in a certain area.

This licensing process involves several steps and requires the fulfillment of a number of

⁴Fitriandi Arif, mining management and customary law communities as a form of social justice. Proceedings of the national seminar of the Doctoral Program, 2024

requirements to ensure that mining activities are carried out legally, safely and sustainably. Ensuring that all these aspects are met, mining permits can be granted in a way that supports the sustainability, safety and welfare of communities and the environment.

2. Research Method

This study uses a descriptive qualitative method to determine and examine the fulfillment of community rights to the management of Class C mineral resources. This method was chosen because it allows for in-depth research with a focus on explaining the phenomenon and its relationship to applicable legal norms. The qualitative approach was chosen because it is oriented to gain an understanding of the fulfillment of community rights to the management of Class C mineral resources. Specifically, the normative aspects, implementation and impact on the rights of indigenous peoples. This study uses a data collection method through literature study, namely the collection of information from various written sources, both printed and digital. The main data sources include law books, academic journals, relevant laws and regulations, official government documents and scientific works related to the research topic.

The data analysis process was carried out using content analysis, namely categorizing data based on main themes such as mining law regulations, regulations related to customary law communities, and government responsibilities related to granting permits.

3. Results and Discussion

Fulfillment of indigenous peoples' rights to the management of Quarry C mineral resources.

Indigenous peoples are the descendants of people who have inhabited a certain territory, before the territory was invaded and colonized by other peoples. According to the United Nations (UN), indigenous peoples are original communities, societies or nations that historically had territory and self-identity before the colonial era and identify themselves as a distinct group and are now

fighting to maintain part or all of their territory.⁵

According to Mochtar Kusumaatmadja,⁶ rights basically mean the freedom to do or not do something regarding something or to a certain legal subject or all legal subjects without hindrance or interference from any party, and such freedom has a legal basis and is therefore protected by law. The characteristics inherent in rights according to law include:

1. This right is attached to a person who is called the owner, who is called the person who has the right to the goods that are the target of the right.
2. This right that exists in a person obliges the party to do or not do something
3. Every right according to this has a title, namely a certain event which is the reason for attaching that right to its owner.

Customary law communities as community groups have a legal territory called customary rights. Customary rights occur naturally, along with the birth of customary law communities. Legal communities with customary rights cannot be separated from each other, so that the existence of customary rights is very dependent on the existence of customary legal communities. Customary rights cannot be owned or controlled individually. Members of customary law communities have rights and obligations towards the forest, these rights are related to the fulfillment of their daily needs from the forest which include the right to enjoy forest products in the form of wood, rattan, resin, honey and so on including places to hunt animals and the obligation of customary law communities towards the forest is to maintain the forest so that it remains sustainable.⁷

Customary rights are the highest rights to land owned by a legal association (village, tribe) to ensure orderly use of the land. Customary rights are a series of authorities and obligations of a customary law community relating to land located within its territory. These authorities and obligations fall within the field of civil law and those that fall within the field of public law. The authority and obligations in the field of civil law are related to joint ownership rights over the land.

According to Boedi Harsono, in order to be able to say that customary rights in a particular place

⁵Munandar, *The dream tree of customary law communities*, Ponogoro, 2019, p. 67

⁶Asikin, *Introduction to legal science*, Jakarta, 2012. Page 36

⁷Ngaken, *PO Dynamics of the forestry sector decentralization process in Sulawesi*, Bogor center for international forestry research, 2005, page 25

are still recognized as existing, three elements must be fulfilled, namely:⁸

1. Elements of society, namely every person who feels bound by their customary legal order as a citizen of a certain legal association which recognizes and applies the provisions of said association in everyday life.
2. Territorial elements, namely the existence of certain customary land which is the living environment of the members of the legal community, as well as a place for the members of the customary legal community concerned to obtain their daily necessities.
3. The elements of the relationship between customary law communities and their territory are the existence of customary law systems regarding the management, control and use of their customary land which are still valid and adhered to by the members of the legal community concerned.

Natural resources (SDA) are things that exist in nature that are useful and have value. Natural resources are all physical, chemical, biological and social factors that form the environment around us. Natural resources can be said to be natural resources if they meet the requirements, namely that something exists, can be taken and is useful. Based on their nature, natural resources can be classified into renewable and non-renewable. Renewable natural resources are natural resources that can continue to exist as long as their use is not overexploited, while non-renewable natural resources are limited in quantity because their use is faster than the process of their formation and if used continuously they will run out.

Natural resources in the mining sector must be developed as much as possible to achieve development. Therefore, it is necessary to have an integrated survey and evaluation from experts in order to generate large profits with minimal losses both economically and ecologically. The use of ecology in mining development is very necessary in order to improve the quality of mining results and to calculate in advance the influence of mining development activities on natural resources and environmental processes.⁹

The natural mineral resources in Haya Village are granite sand which can be classified as C excavation. Granite sand is located on the land of the customary law community. When investors visited Haya Village regarding information about granite sand, there was no communication

⁸Mulyadi, *The existence of dynamics and legal protection of customary land rights of indigenous communities in Indonesia*, Medan Alumni, 2022, page 54

⁹Wina Waniatri, Muslihudin, Sri Lestari, Sustainable sand mining management strategy in Lingung village, West Java, *Journal of Environmental Education & Sustainable Development*, Vol 2, No 01, 2022, page 15

between the community and investors, the communication that was built was only between investors and the head of Haya Village. So that the granite sand located on the customary land of the community has not had a work agreement related to granite sand taken from the customary land of the community, how is the selling value of granite sand.

The problems that occur with the people in Haya village, associated with the welfare theory, explain the conditions of human needs being met. This theory is based on Adam Smith's thoughts in his book *The wealth of nation*. According to Ramesh Mishra,¹⁰ he stated that a country is said to be prosperous if it has four pillars, namely; 1) *social citizenship* 2) *full democracy* 3) *modern industrial relation system* 4) *Right to education oh modern mass education system*. According to the author, a welfare state can be interpreted as a welfare government, as a tool to protect vulnerable communities from the risk of exploitation by oligarchies. The government's task is to protect the interests of indigenous communities who are in a weak position in order to fulfill the needs of indigenous communities.

The government must be aware that its large natural resources must be utilized optimally and fully supervised in various ways, starting from making regulations, implementing various natural resource conservation programs such as counseling on the impact of environmental damage, providing education to the younger generation on the importance of environmental conservation that is oriented towards sustainable development. In fulfilling the rights of indigenous peoples in the management of mineral resources, there needs to be supervision that is so complex and full of meaning, as a follow-up to the responsibility borne by the government.

Government Efforts in Supervising the Management and Utilization of Mineral Resources for Type C Mining

Nowadays, the management and utilization of natural resources, especially in the mining sector, is better because an assessment has been carried out on the damage caused by mining activities.¹¹ It can be stated that currently there are many regulations governing mining activities. Mining activities have now received the government's full attention by carrying out intensive supervision at each location.

Likewise, in terms of granting permits, it is not simply obtained by miners who do not have

¹⁰Mishra R . *Globalization and the welfare state* , London Mcmilan, 2021, p. 21

¹¹Nor Umaniyah, Hario Tamtome, Zulfikri Akbar, Renewable energy collaboration on developing the green energy sector through environmentally friendly mining, Jurnal Hukum & Kehutanan, Vol 2 No 2 Oct 2023, page 13

knowledge of the environmental damage that arises and/or indirectly to the physical, chemical and/or biological properties of the environment that exceed the standard criteria for environmental damage. In relation to supervision of environmental damage, normatively it also receives serious attention from the government. Likewise, in the case of natural resource management that does not pay attention to social aspects, it has also received attention and in various cases has even been brought to the legal realm as a result of attention to social aspects, such as for *corporate social responsibility* (CSR).

A mining activity that is considered detrimental can be supervised in such a way that the implementation of mining does not cause even greater damage. A determination of a mining area must pay attention to several aspects of the determination as regulated in Article 10 of the Mineral and Coal Mining Law : Determination of mining areas as referred to in Article 9 paragraph (2) is carried out: 1) in a transparent, participatory and responsible manner 2) in an integrated manner by taking into account the opinions of relevant government agencies, the community, by taking into account ecological, economic, and socio-cultural aspects, as well as being environmentally aware, 3) by taking into account regional aspirations.

Thus, if a mine is found that does not meet the criteria for determining the area as referred to in the Mineral and Coal Mining Law, it can be followed up with applicable sanctions. This is also as mandated by the 1945 Constitution that "The land, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. This means that all natural resources contained in the land of Indonesia are rights that must be used to prosper the people, but this freedom is often violated by foreigners who come to Indonesia and take Indonesia's natural resources which are then used by them to enrich themselves.

An example of a case that occurred in Haya village, the community suffered losses due to the lack of profit sharing, environmental abrasion occurred, which led to a conflict of interest between the company and the indigenous community. For this reason, the role of the government is very much expected to be able to provide solutions for the welfare of indigenous communities. It is hoped that the efforts made will provide a positive impact not only economically but also in relation to environmental problems which must also apply the principles of sustainable development.

In line with the above, Therefore, natural resource management should continue to be improved and there should be government responsibility regarding the granting of permits. Therefore,

indigenous peoples must play an important role in environmental conservation through sustainable practices that respect the balance of the ecosystem. (Aminah, 2019) Legal recognition and protection of their rights are essential to ensure that they can continue to manage the environment in a sustainable manner while facing the challenges of modernization and land conflicts. Collaboration between indigenous peoples, governments and other stakeholders is key to achieving sustainable well-being and environmental conservation.¹²

Government Regulation of the Republic of Indonesia Number 25 of 2024 amends several provisions in Government Regulation Number 96 of 2021 concerning the implementation of Mineral and coal mining business activities. This regulation was issued to ensure the implementation of good mining principles, as well as to provide legal certainty and investment certainty for mining business permit holders. One of the important points in this regulation is the change in several articles related to the requirements and duration of mining business permits. This regulation also adds new provisions that give priority to the offering of special mining business areas (WIUPK) to business entities owned by religious community organizations, in order to improve community welfare. In addition, the regulation also emphasizes sustainable management of mineral and coal resources, including environmental impact control in accordance with the results of policy studies and post-mining planning.¹³

The authority for mining non-metallic rocks such as granite sand, is the authority of the province according to Government Regulation, so the permits given come from the province through the Energy and Mineral Resources Service. The government's responsibility in granting environmental permits should also have a supervisory function for monitoring and evaluation related to the granting of permits issued. But in reality, the activity of dredging granite sand in the village has not had a supervisory function from the government that issued the permit, as well as the company never reported activities to the Energy and Mineral Resources Service. For that, good coordination is needed between the provincial government and the company regarding responsibility¹⁴

¹²Ahmad K. Coal mining management model based on strengthening indigenous community institutions in Burgo district, *Journal of Socio-Humanitarian Science*, vol 2, no 3 2020, page 14

¹³Rizal. (2019). The impact of mining policies on the socio-economic life of the community in Makroman sub-district. *Journal of socio-human sciences*

¹⁴Novi Tutuarima, Dessy Hahanussa, Margie G, Sopacua, Criminal Law Enforcement against Mining Activities, *Jurnal Tatos* i Vol 1 no 12 2022, page 8

As for the way to manage mining development, it is proper management so that the impact can be minimized and the benefits can be maximized by means of *Good Mining practice*. *Good Mining practice* is a mining activity that complies with well-planned rules, applies appropriate technology based on effectiveness and efficiency, maintains environmental functions, accommodates community needs and improves community welfare and creates sustainable development.

4. Conclusion

Later Fulfillment of the rights of indigenous peoples to manage class C mineral resources must be transparent and accountable, both between indigenous peoples, companies and the government. Many mining companies obtain permits without adequate consultation with indigenous communities. Therefore, local governments that have the authority to grant permits must build communication with the community regarding the division of labor and also the impact of granite sand extraction that causes abrasion. Likewise, the role of the company must also build communication with the community. So that the principle of sustainable development will be realized and bring prosperity to indigenous communities.

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