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Implications of the Non-Involvement of the Cek Bocek Selesek Reen Sury Indigenous Community in the Mining Business Approval Process in Sumbawa Regency

Problematika Implikasi Ketidaklibatan Masyarakat Adat Cek Bocek Salesek Reen Sury dalam Proses Persetujuan Usaha Pertambangan di Kabupaten Sumbawa

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Abstrak

Penelitian ini membahas implikasi ketidaklibatan masyarakat adat Cek Bocek Salesek Reen Sury dalam proses persetujuan usaha pertambangan di Kabupaten Sumbawa. Penelitian ini bertujuan untuk mengeksplorasi bentuk perlindungan hukum bagi masyarakat adat yang tidak dilibatkan dalam persetujuan tersebut. Metode yang digunakan adalah pendekatan sosio-legal dengan analisis kualitatif berdasarkan data primer, sekunder, dan tersier. Hasil penelitian menunjukkan bahwa ketidaklibatan masyarakat adat melanggar asas partisipasi, transparansi, dan akuntabilitas sebagaimana diatur dalam Undang-Undang Pertambangan Mineral dan Batu Bara, serta Undang-Undang Pengelolaan Lingkungan Hidup. Selain itu, ketidaklibatan ini mengabaikan prinsip-prinsip pembangunan berkelanjutan yang seharusnya mengedepankan keseimbangan antara kepentingan ekonomi, sosial, dan lingkungan. Secara sosiologis, hal ini memicu konflik berkepanjangan antara perusahaan dan masyarakat adat, yang mencakup ketegangan sosial dan penurunan akses masyarakat terhadap tanah ulayat mereka. Kesimpulannya, pelibatan masyarakat adat dalam persetujuan usaha pertambangan sangat penting untuk memastikan perlindungan hukum yang berkeadilan, menjaga harmoni sosial, dan menghindari dampak negatif yang berpotensi merusak hubungan antara masyarakat adat dan pemerintah maupun perusahaan. Rekomendasi strategis diperlukan untuk menciptakan tata kelola yang lebih inklusif dalam proses perizinan usaha pertambangan

Kata kunci: *Masyarakat Adat Cek Bocek Salesek Reen Sury; Usaha pertambangan; Implikasi hukum; Konflik masyarakat adat*

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Abstract

This research discusses the implications of not involving the Cek Bocek Salesek Reen Sury indigenous community in the mining business approval process in Sumbawa Regency. This research aims to explore the form of legal protection for indigenous peoples who were not involved in the approval. The method used is a socio-legal approach with qualitative analysis based on primary, secondary and tertiary data. The results show that the exclusion of indigenous peoples violates the principles of participation, transparency and accountability as stipulated in the Mineral and Coal Mining Law and the Environmental Management Law. In addition, it ignores the principles of sustainable development, which should prioritize a balance between economic, social and environmental interests. Sociologically, this has led to prolonged conflicts between companies and indigenous communities, which include social tensions and decreased community access to their customary lands. In conclusion, the involvement of indigenous peoples in mining business approvals is essential to ensure equitable legal protection, maintain social harmony, and avoid negative impacts that have the potential to damage relations between indigenous peoples and the government and companies. Strategic recommendations are needed to create more inclusive governance in the mining licensing process.

Keywords: Cek Bocek Salesek Reen Sury Indigenous Community; Mining Business; Legal Implications; Indigenous Community Conflict

Introduction

Indonesia as an archipelago has abundant natural resources, spread from Sabang to Merauke. This wealth includes natural resources as well as cultural diversity, ethnicity and traditions passed down from generation to generation by ancestors.[2] Behind this diversity, indigenous peoples have an important role in maintaining the values of local wisdom, including the management of customary land which is their source of livelihood. However, in the practice of natural resource management, conflicts often occur between indigenous peoples and the state, especially in terms of granting mining business licenses that do not involve indigenous peoples as the main stakeholders. This raises questions about the extent to which the state provides legal protection for indigenous peoples in natural resource governance.

Previous studies have examined the role of indigenous peoples in natural resource management, such as research conducted by A that discusses customary land conflicts in the forestry sector, and research by B that reviews the impact of mining licenses on local communities.[3] However, in-depth studies on the involvement of indigenous

[2] Yance Arizona, *Antara teks dan konteks: Dinamika pengakuan hukum terhadap hak masyarakat adat atas sumber daya alam di Indonesia* (Jakarta: Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa), 2010), 9.

[3] Dominikus Rato, "Perlindungan HAM Masyarakat Hukum Adat Yang Bhineka Tunggal Ika Di Era Digital," *Majalah Hukum Nasional* 51, no. 2 (7 Desember 2021): 155, https://doi.org/10.33331/mhn.v51i2.147.

peoples in the AMDAL process in the mining sector are still limited. This research offers novelty by focusing on the Cek Bocek indigenous community in Sumbawa Regency[4] , who have a long history of protecting their customary land but are not involved in the mining business licensing process. This gap analysis shows the importance of further studies to fill the literature gap on the legal protection of indigenous peoples in the context of mining governance.[5]

The urgency of this research is based on the social, legal and environmental impacts of conflicts between indigenous peoples and mining companies. The non-involvement of indigenous peoples in the licensing process not only ignores their constitutional rights, but also has the potential to trigger prolonged conflicts that disrupt social stability and public order. This research is relevant to support the ius constituendum, which is the strengthening of indigenous peoples' protection policies in equitable and sustainable natural resource management.

The legal issues that are the focus of this research include two main issues. First, what form of legal protection should be given to the indigenous people of Cek Bocek in the mining business licensing process, considering that their rights are often neglected in natural resource management practices. This relates to the implementation of the principles of participation, transparency and accountability stipulated in various regulations, including Law Number 3 of 2020 concerning Mineral and Coal Mining, and Law Number 32 of 2009 concerning Environmental Management. Second, do the provisions of Article 28 and Article 32 of Government Regulation No. 22 of 2021, which require the involvement of directly affected communities in the Environmental Impact Assessment (AMDAL) process, provide optimal protection for indigenous peoples? This focus is important because the phrase "and/or" in these provisions has the potential to become a legal loophole that allows exceptions to the specific involvement of indigenous peoples, resulting in legal uncertainty and the risk of conflict between indigenous peoples and companies or the government.

This research aims to explore the legal implications of excluding indigenous peoples from the Environmental Impact Assessment (AMDAL) process in the mining

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[4] Ferzya Farhan dan Dkk, "Menggaungkan Suara Marginal: Cerita Dari Kawasan Timur Indonesia," *Centre for Innovation Policy and Governance (CIPG)* (blog), 2019, 4, https://cipg.or.id/en/publication/menggaungkan-suara-marginal-1/.

[5] Iwan Jaya Azis, *Pembangunan Berkelanjutan - Peran dan Kontribusi Emil Salim* (Jakarta: Kepustakaan Populer Gramedia, 2010), 22.

sector, with a particular focus on the Cek Bocek indigenous community in Sumbawa Regency. This objective includes analyzing violations of the principles of participation, transparency and accountability stipulated in relevant regulations, as well as the impact on indigenous peoples' rights to safeguard their customary land and local wisdom. This research also aims to identify legal loopholes in existing regulations, such as in the provisions of Article 28 and Article 32 of Government Regulation No. 22 of 2021, which allow for the exclusion of indigenous peoples' involvement in the AMDAL process. In addition, this research provides strategic recommendations to strengthen the legal protection of indigenous peoples, including through improving natural resource governance policies that are more inclusive and equitable, to avoid prolonged conflicts and ensure sustainable development that takes into account social, economic and environmental aspects.

This research is expected to make a significant contribution to the development of policies that are more inclusive, equitable, and oriented towards protecting the rights of indigenous peoples, particularly in the context of natural resource governance in the mining sector. By highlighting gaps in existing regulations, such as the lack of involvement of indigenous peoples in the Environmental Impact Assessment (AMDAL) and mining business licensing processes, this research is not only relevant as a reference for formulating policies based on the principles of justice and sustainability, but also as a basis for advocacy to strengthen legal protection for indigenous peoples. Based on the research findings, the regulatory principles of mining licensing governance are currently considered not to provide optimal space for the protection of the rights of indigenous peoples, especially related to their customary land and local wisdom. Therefore, a policy approach that takes into account social, cultural and environmental aspects is needed to prevent prolonged conflicts and ensure more equitable and sustainable development. Based on the explanation above, it shows that the principle of governance of mining licensing does not provide optimal space for the protection of the rights of indigenous peoples in their customary territories.

Method

This research uses the socio-legal method, which sees law as a social phenomenon that functions in people's lives. Lawrence M. Friedman explains that "the legal system is

a reflection of the culture of its society".[6] This approach is relevant to analyze the non-involvement of the Cek Bocek Selesek Reen Sury indigenous community in the mining business approval process in Sumbawa Regency.

The legal anthropology approach is used to examine local wisdom and legal pluralism that develops in indigenous communities. John Griffiths (1986) states that "legal pluralism is the presence in a social field of more than one legal order".[7] This approach helps to understand the interaction between formal legal norms and local wisdom, as well as the legal implications of not involving indigenous peoples in the AMDAL process.

Data were collected through interviews with indigenous leaders and affected communities, field observations in Cek Bocek's customary territory, and analysis of legal documents related to AMDAL and mining licensing. Data analysis was conducted qualitatively to understand how legal pluralism affects the involvement of indigenous peoples in natural resource management. This method is expected to provide a comprehensive picture of legal protection for indigenous communities in natural resource governance, and answer the research problems that have been formulated.

Result and Discussion

A. Implications of the Non-Involvement of Cek Bocek Reen Sury Indigenous Community in Mining Business Approval in Sumbawa Regency

The starting point of the problem of the exclusion of the indigenous community of Cek Bocek Reen Sury in the approval of mining business in Sumbawa Regency resulted in 1 (one) conclusion that the indigenous community of Cek Bocek Reen Sury is a victim of economic liberalization and the problem also involves legal issues across generations, from the new order to the reformation. It can also be concluded that the exclusion of the indigenous community of Cek Bocek Reen Sury was due to liberal and unpopular policies during the New Order.

Implication has the meaning of the impact or conclusion that is caused in the future that is felt when doing something[8] , while juridical according to the law

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[6] Lawrence M. Friedman, *The Legal System: A Social Science Perspective* (New York: Russell Sage Foundation, 1975), 47.

[7] John Griffiths, "What is Legal Pluralism?," *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (Januari 1986): 55, https://doi.org/10.1080/07329113.1986.10756387.

[8] Stefani Ditamei, "Pengertian Implikasi Adalah: Berikut Arti, Jenis, dan Contohnya," detikjabar, 2022, https://www.detik.com/jabar/berita/d-6210116/pengertian-implikasi-adalah-berikut-arti-jenis-dan-contohnya.

means in terms of law.[9] Juridical implications mean that the impact caused in the future of an action seen from a legal point of view. Furthermore, juridical implications or legal consequences are consequences arising from the law, on matters regarding an action taken by a legal subject. In addition, legal consequences are also a result of actions taken which aim to obtain an effect desired by the subject of law. In this case, the intended effect is an effect regulated by law, while the actions taken are legal actions, namely actions that are in accordance or not in accordance with applicable law.

One of the reasons for the influx of unfiltered foreign investment is the emergence of Law Number 1 of 1967 concerning Foreign Investment which was initiated to become the main door to the entry of various foreign investments, and the exploitation of natural resources by the state and outside parties. Therefore, the implications intended by the researcher are not only administrative legal implications, but more than that, including conflicts of norms, legal principles that contradict each other as part of the consequences of a series of fragile legal protection for the Cek Bocek Reen Sury community as a national Indigenous identity. other than that, the sociological implications that arise as a result of not involving the Cek Bocek Reen Sury community in mining business licenses will also be illustrated as a form of *socio-legal* study.

B. Juridical Implications of the Non-Involvement of the Adat Community of Cek Bocek Reen Sury in the Mining Business Agreement in Sumbawa Regency

The researcher places the juridical implications as the main focus to understand the legal provisions that were violated due to the non-involvement of the indigenous community of Cek Bocek Reen Sury in the mining business agreement in Sumbawa Regency. There are two important points in this study: first, the non-involvement of indigenous communities from the beginning shows that they are not recognized as customary law communities that have legality, especially because New Order policies prioritize economic liberalization over the protection of customary rights. Second, the change of the contract of work to a mining business license by PT NNT was carried out without a thorough evaluation, including the involvement of directly affected communities.

[9] Dzulkifli Umar dan Utsman Handoyo, *Kamus Hukum* (Surabaya: Mahirsindo Utama, 2014), 399.

The renegotiation of work contracts into mining business licenses resulted in six main agreements, including payment of non-tax state revenue (PNBP) obligations, management of mines in the country, reduction of land area, divestment of shares, and continuation of operations with special mining business licenses (IUPK). However, this renegotiation process seems to favor companies over indigenous peoples. The provisions of Article 169 of Law No. 4/2009 are the basis for this renegotiation, but still show limitations in accommodating the participation of indigenous peoples.[10]

In the context of legal antinomy, the provisions of Article 169 of Law No. 4/2009 prioritize state revenue without considering environmental aspects and the rights of indigenous peoples. This antinomy reflects the conflict between legal certainty and justice, as explained by Radbruch that the law should ideally accommodate benefit, justice, and legal certainty proportionally. Unfortunately, this balance is difficult to achieve, given that antinomies often occur in legal norms and in their implementation.[11]

This antinomic conflict is also evident in the Investment Law, which shows a conflict between the principles of equality and justice.[12] Similarly, Article 169 of Law No. 4/2009, where the renegotiation of contracts of work emphasizes state revenue over the involvement of indigenous peoples. In fact, the principles of participation, transparency and accountability are at the heart of good rule of law, as explained by J.J.H. Bruggink and M. Hadjon, that legal principles are the basis of testing in the formation of applicable rules.[13]

The disconnect between legal principles and implementation is evident in the case of PT NNT in Sumbawa Regency, where the rights of the indigenous community Cek Bocek Reen Sury were violated without adequate remedy. The state and companies should prioritize the protection of the rights of affected communities in

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[10] Republik Indonesia, *Pasal 169 A Undang-undang Nomor 4 tahun 2009 sebagaimana diubah dengan Undang-undang Nomor Undang-undang Nomor 3 tahun 2020 tentang Pertambangan Mineral dan BatuBara bahwa perubahan kontrak karya (KK) dan P2Kb hanya didasarkan pada pertimbangan upaya peningkatan penerimaan negara, dan syarat lain seperti Ketentuan wilayah produksi terbatas pada luas wilayah 25.000 ha.*, 2020.

[11] Bertrand Russel, *Sejarah Filsafat Barat dan Kaitannya dengan Kondisi Sosio-politik dari Zaman Kuno Hingga Sekarang* (Yogyakarta: Pustaka Pelajar, 2020), 7.

[12] Torben Spaak, "Meta-Ethics and Legal Theory: The Case of Gustav Radbruch," *Law and Philosophy* 28, no. 3 (1 Mei 2009): 261, https://doi.org/10.1007/s10982-008-9036-8.

[13] W. Friedmann, *Teori dan Filsafat Hukum: Telaah Kritis atas Teori-Teori Hukum (Susunan I, II, III)* (Jakarta: Rajawali Pers, 1990), 33.

the conversion of contracts of work into mining business licenses. This is important to prevent intergenerational conflicts and ensure a balance between state revenues and the individual rights of indigenous peoples.[14]

Renegotiation of work contracts into mining business licenses must be carried out mutatis mutandis by paying attention to the restoration of the rights of directly affected communities . Although this policy is carried out in the name of people's prosperity and state revenue, the principles of participation, transparency and accountability must be maintained. With a fairer approach, legal conflicts that occur can be minimized, and the ideals of the state to manage natural resources for the greatest prosperity of the people can be realized without sacrificing the rights of indigenous peoples.

C. Prolonged Protest on the Exclusion of the Indigenous Community of Cek Bocek Reen Sury

The juridical implications illustrate the events that arise from a legal perspective, there are also impacts arising from the exclusion of the Cek bocek Reen Sury indigenous community from the mining business. The facts in the field since its establishment as a mining production area and the prohibition by the local government on the grounds that it was carried out for mining surveys, as follows are revealed by the sources:[15]

"..... Initially *the ban occurred in 1982 as I remember in November, the ban was directly from the local government who prohibited us from going down and doing activities in our customary land and forest areas here, various stories also clarified the action, we thought what was the survey for, and we took it casually but gradually we felt oppressed"*

As Indigenous people who move in and out of the forest, this condition is quite unsettling when it is also announced to residents not to move in the forest, which is a concern and anxiety from the community, in addition to this prohibition accompanied by persecution for anyone who dares to enter their customary land.

"...Persecution is carried out consistently, meaning that this is the way they go, while when we ask about our rights there, they only say that we are not legally

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[14] Richard A. Posner, "Utilitarianism, Economics, and Legal Theory," *The Journal of Legal Studies* 8, no. 1 (Januari 1979): 132, https://doi.org/10.1086/467603.

[15] Suhardin Mandja, Wawancara dengan Suhardin Mandja, Mantan Kepala Desa Lawin dan tokoh Masyarakat Adat Masyarakat Adat Cek Bocek Salesek Reen Sury, Pada Tanggal 10 November 2022, Pukul 12.00. WITA, di Kabupaten Sumbawa, 2022.

recognized, our existence is considered illegal by them, but we are also confused that in Sumbawa *district there are no recognized indigenous peoples either, so we are confused about what this means."*

Uncertainty and anxiety continue to be felt by the Cek Bocek Reen Sury community until a critical awareness arises by the local community to hold a two-way deliberation, between the local government in this case through the sub-district, following the interview with the source:[16]

"...We complained at that time, but apparently to no avail, because at that time the local sub-district head said that PT NNT had agreed to build many facilities here, including mosques, health centers and renovation of schools, in principle this is good, but our land was destroyed and then taken by them in exchange for such development, of course this really hurt us."

The resistance did not stop there, when land measurements and surveys were carried out, intimidation of the surrounding community increased. With determination, the indigenous community continues to make efforts to pressure the government and NNT to enter their customary land so that they really pay attention to their situation, the following interview with the source:[17]

"*Whether there is PT NNT or not, we are determined to survive in the Indigenous territory" is an affirmation by Datu Sukanda because they realize that the land used is truly historical land, land entrusted by their ancestors."*

"*...Ka we expelled all company workers on our land, we demoed the ropang sub-district, we demoed the government what roa I our existence tha means we once expelled all company workers on our land, we demoed the sub-district government and local government for not recognizing and respecting the land and livelihood of our community"*

There have been at least two times of oppression and deprivation of the rights of the indigenous community of Cek Bocek Reen Sury, namely before independence and after independence, precisely when the economic liberalization agenda of the new order became more serious. Compared to before, the indigenous community of Cek Bocek Reen Sury said that since the existence of the Dutch they have been

[16] Alwi Oslan, Wawancara dengan Alwi Oslan selaku masyarakat dalam Komunitas Adat Cek Bocek Reen Sury, 2022.

[17] Datu Sukanda, Wawancara dengan Datu Sukanda Kepala Adat Masyarakat Adat Cek Bocek Salesek Reen Sury, Pada 10 November Pukul 15.00, di Kabupaten Sumbawa, 2022.

divided, but it is the customary land that unites them, because they are still bound by customary rituals that they often routinely perform. From the various information obtained, it strengthens the results of the previous study, namely that the Adat community Cek Bocek Reen Sury is a victim of economic liberalization, while the impacts caused are the emergence of prolonged conflicts through protests carried out by the Adat community Cek Bocek Reen Sury. From the various protests expressed, there are several demands of the indigenous community of Cek Bocek Reen Sury regarding customary land, including the following:[18]

1. Ask the government, the West Nusa Tenggara government, the Sumbawa district government or other authorities to truly respect our customary rights in granting utilization permits and to anyone on the customary land.
2. Requesting the government, West Nusa Tenggara provincial government, Sumbawa district government or other authority holders to involve us in determining policies regarding the plan to utilize the customary land for any purpose including mining.
3. Requesting the government, the provincial government of Nusa Tenggara Bara, the district government of Sumbawa or other authorities to grant us permission to self-manage mining in the area for the welfare of our community or our people.
4. If the government gives permission to other parties, we ask for it:
    a. Receive material compensation from the utilization of the land
    b. In order for our community, the NTB provincial government and the Sumbawa district government to obtain automatic share ownership without the granting of shares in the company as compensation for the utilization of the customary land by third parties
    c. To prioritize workers from our community, both skilled and unskilled.
    d. In order to recruit labor from outside the region through the doors of our community
    e. To provide special empowerment to our Indigenous communities

The impact of not including the community in the mining license is that many things have been taken away from the Indigenous community since the start of PT

[18] Salim Hs dan Erlis Nurbani, *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi* (Jakarta: Rajawali Pers, 2023), 204, https://rune.une.edu.au/web/handle/1959.11/63466.

NNT's exploration in 1983. Complaints that the community can no longer access their customary territories because they are blocked by the company and even the company makes efforts to expel indigenous peoples who are carrying out customary rituals in the customary territory often occur. The most burdensome thing for the community is the increasingly difficult life of the community because the customary territory that is the source of their life and livelihood is "taken away".

Until now, the community has been in conflict with PT NNT, and now PT NNT has changed its name to PT AMNT, which has a very different management from the previous PT NNT. The struggle of the indigenous community of Cek Bocek under the leadership of Dato Sukanda is increasingly difficult. So that in carrying out activities such as pilgrimage to eat the graves of ancestors, they cannot be free. PT AMNT is getting faster in carrying out activities in the Cek Bocek customary territory. The land area to be used by PT AMNT is currently approximately 16,000 ha on the Cek Bocek customary territory which includes the Suri, dodo and selesek areas. Nevertheless, the indigenous people of Cek Bocek still hope that the state will constitutionally resolve the issue of customary rights of indigenous peoples.[19]

Therefore, the indigenous people of Cek Bocek urgently need the attention of the Government, be it the Central Government, the Provincial Government or the Regional Government of Sumbawa Regency, so that the customary rights of the community are currently still being used by PT AMNT to be returned to the indigenous people. And the government must also be firm and fair in taking a stand to stop the exploration process in the area so that it can end the conflict that has been going on for 15 (fifteen) years.

D. Ideal Concept of Involving Indigenous Peoples in Mining Business Agreement

The case against the Cek Bocek Reen Sury indigenous community seems endless as a community with customary values is still floating. Contributions from the local and central government seem to be limited to individualistic rather than communal recovery, and the political will to conduct a total evaluation of the indigenous community of Cek Bocek Reen Sury has not been seen, so that the way for deliberation is unlikely to produce maximum results. This is because Cek Bocek

[19] Irawansyah, "Dinamika Kepemilikan Tanah Masyarakat Adat Cek Bocek di Sumbawa," *Mata Nusantara* (blog), 2019, https://www.matanusantara.com/2019/01/dinamika-kepemilikan-tanah-masyarakat.html.

Reen Sury's indigenous community is a victim of the loss of recognition of indigenous peoples in a contract of work that was drafted based on the principles of economic liberalization. Therefore, the problem cannot be solved through deliberation alone, because deliberation is only for negotiation and lobbying, while the problem requires not only deliberation but also "restoration of rights" as a whole.

The right to involvement, recognition and existence of Indigenous Peoples is a complex topic of discussion, as the study is multidimensional. It is not only the rights that are protected but also the values and other customary tools that should be protected. The state's position is still ambiguous and half-hearted in recognizing the existence of the community. This can be seen from 2 (two) Constitutional Court decisions Number 45/PUU-IX/2011[20] and Constitutional Court Decision Number 35/PUU-X/2012.[21]

The two decisions of the Constitutional Court affirmed and resolved several issues of the rights of Indigenous peoples, one of which is about Indigenous forests which are directly defined as state forests located on land in the territory of Indigenous peoples. In fact, a forest is referred to as a state forest if it is located on land that is not encumbered by a land right. This allows the state to grant rights over customary land to certain legal subjects without obtaining the consent of the Adat law community and without a legal obligation to pay compensation to the Adat law community that has customary rights over the land.

In such a position, the Forestry Law does not see the reality on the ground that Indigenous forests are in *fact* located in customary rights areas, and most importantly, the Constitutional Court has annulled Article 1 point 6 of the Forestry Law contrary to the 1945 Constitution. The word "state" is changed to "national" so that it reads, *"As long as in fact it still exists and is recognized for its existence, and does not conflict with national interests."* The phrase "state" still tends to be rigid and

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[20] Republik Indonesia, *Mahkamah mengabulkan permohonan pemohon, dengan menentukan bahwa frasa "ditunjuk dan atau" dalam UU Kehutanan dinyatakan telah inkonstitusional dan bertentangan dengan prinsip negara hukum, dari berbagai pertimbangan Mahkamah bahwa negara melalui UU Kehutanan Tersebut memonopoli penetapan Kawasan hutan tanpa mempertimbangkan kepemilikan hak subjek hukum di dalamnya, perorangan, kelompok maupun masyarakat Adat. (Pasal 1 angka 3 UU No 41 tahun 1999 mengenai kehutanan, sebagaimana telah diubah dengan UU No. 19 Tahun 2004)*, 1999.

[21] Republik Indonesia, *Mahkamah mengabulkan permohonan pemohon dengan menentukan bahwa Pada intinya hutan Adat juga diakui secara konstitusional, sehingga Pasal 1 angka 6, Pasal 4 ayat (3), Pasal 5 ayat (1) beserta penjelasannya dan Pasal 5 ayat (2) Undang-undang Kehutanan disesuaikan dengan kedudukan masyarakat hukum Adat, bahwa hutan Adat yang dikelola oleh masyarakat hukum Adat beralasan menurut hukum.*, t.t.

full of political interests, while the phrase "national" also includes Indigenous interests and values that must be protected. There are differences in the treatment of various laws that are directly related to the existence and rights of Indigenous Peoples, as shown in the following comparison table:

Table 1. Sectoral Laws relating to the Existence of Indigenous Peoples

Sectoral Laws relating to the Existence of Indigenous Peoples			
Forestry Law	**Coal Mineral Law**	**Environmental Management Law**	**Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management**
Article 1 paragraph (6): Hutan Adat state forest located within the territory of an Adat law community.	**Article 10 paragraph (2):** Mentioning affected communities	**Article 63 paragraph (1), paragraph (2), (3):** The central, provincial governments stipulate policies regarding the procedures for recognizing the existence of Adat law, while the regions implement them.	**Article 32 paragraph (2):** Indigenous peoples are classified as affected communities and are subjected to public consultation only
The article has been overturned by the Constitutional Court that Adat forests are no longer part of state forests. In other words, Adat forests are treated the same as state forests, not as a single entity **(Constitutional Court Decision 35/PUU-X/2012)**.	There is no clear definition of what is meant by affected communities, in the broad sense of what is meant by affected communities, one of which is Indigenous Peoples.	The Environmental Management Law is limited to administratively determining the existence of Indigenous Peoples.	The existence of Masyarakat Hukum Adat in this provision is only limited to being involved in the approval, not as mandated by the Forestry Law as decided by the Constitutional Court.

These laws are sectoral regulations on the management of natural resources (SDA), but unfortunately these three regulations are not in line with the Forestry Law after the Constitutional Court Decision on the existence of Indigenous peoples. The Mineral and Coal Mining Law and the Environmental Management Law do not place Indigenous peoples on the same level as the Court did in its decision. The three regulations only provide limited space for the involvement/participation of Indigenous peoples like other communities. Whereas, as is known that indigenous peoples have specificities and values that are far different from other communities.

Within the limits of reasonable reasoning, the provisions of the above laws and regulations are interrelated with each other, including those on forests, mining and the recognition of Indigenous peoples. It must be recognized that the Constitutional Court has made progressive efforts related to the position of indigenous peoples in forest management and ownership, indicating that indigenous peoples have clear *legal standing*, especially in the customary forest area, as considered by the Constitutional Court as follows:[22]

"Although Adat forests are included as part of state forests, this does not reduce the existence and sustainability of Adat forests. Such a conclusion will be strengthened if the phrases of Article 1 number 6 and Article 5 that include the category of Adat forest are understood comprehensively with Article 4 paragraph (3) in conjunction with Article 5 paragraph (3) and paragraph (4), as well as Article 67 of the Forestry Law that recognizes the existence of Adat law communities with certain requirements. This means that if customary law communities have been recognized by the Forestry Law, then customary forests as one of the main elements and an inseparable part of customary law communities must be recognized."

The problem with the Forestry Law is the inconsistency in the conception of rights and their application to Adat forest communities. Theoretically, citing the definition of human rights, the rights of indigenous peoples should be understood as a right that is inherent to indigenous peoples because they meet the criteria of being indigenous peoples.[23] However, the Forestry Law states that the rights of

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[22] Mahkamah Konstitusi, *Putusan Nomor 35/PUU-X/2012*, 2012, 128.

[23] Mahkamah Konstitusi, *Sebagaimana dikemukakan oleh Ter Haar Bzn dalam bukunya yang berjudul Beginselen en Stelsel van het Adatrecht yang dikutip oleh Soejono Soekanto dalam bukunya Hukum Adat Indonesia, dan telah pula dijadikan sebagai Yurisprudensi Mahkamah Konstitusi, disebutkan bahwa ciri-ciri dari kesatuan masyarakat hukum Adat sebagai berikut: a) adanya kelompok-kelompok teratur; b) menetap*

indigenous peoples are the rights of the state that happens to be in the territory of indigenous peoples. Although this issue has been decided by the Constitutional Court, 2 (two) further questions arise:[24] First, although the existence of customary law communities is recognized with the conditions as stated in Article 18B paragraph (2) of the 1945 Constitution, it is inevitable that there will be changes due to the relationship of these communities with the outside world. The implication raises the question of whether the legal relationship between the legal subjects of Customary law communities and outside parties of Customary law communities on a land object is regulated separately, or whether they choose the law governing one of the parties, or follow the law governing the legal object (land for example).

Secondly, has the transaction with the object of Adat land that must be subject to the provisions of national land law (the law) occurred a "quasi exile of Adat land'?

The question is a follow-up response to the Constitutional Court's decision on the right to manage Indigenous forests by Indigenous peoples, as well as alluding to the existence of Indigenous peoples in mining business agreements. The link is that if the government consistently recognizes the existence of Adat forests as an absolute right owned by Indigenous peoples *A Prima Facie*[25] then laws relating to natural resource management in the territory of Indigenous peoples must also be treated the same as *legal standing* in the provisions of the Forestry Law after the Constitutional Court Decision. In other words, Indigenous peoples in Indonesia also have more or less the same challenges, namely that they experience problems regarding their rights to natural resource management.

With the arrival of development policies by the State, their lands and forests are victimized. What is even more ironic is when the state is silent and does not recognize the customary rights of indigenous peoples under the pretext of national interests and then deliberately makes laws and regulations that deliberately ignore

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di suatu daerah tertentu; c.) mempunyai pemerintahan sendiri; dan d.) memiliki benda-benda materiil maupun immateril (Yurisprudensi Mahkamah Konstitusi dalam Putusan Nomor 31/PUU-V/2007)., 2007, 124.

[24] Achmad Sodiki, "Pemulhan Hak Masyarakat Adat atas Ruang Lingkup Hidup dalam Putusan MK No 45/2011 dan 35/2012," 2016, https://www.aman.or.id/wp-content/uploads/2016/02/Achmad-Sodiki_Ringkasan-Putusan-MK-No.-45-2011-dan-35-2012.pdf.

[25] Mahkamah Konstitusi, *A Prima Facie, Yang berarti hak itu sudah ada sebelum negara ini membuat peraturannya, negara yang datang justru harus tidak boleh membuat peraturan yang bertentangan dengan peraturan yang dianut masyarakat Adat. Faiq Tobroni, Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35/PUU-X/2012)*, 2012, 46.

them. To take over the land of indigenous peoples, there is first a regulation to eliminate all indigenous institutions.[26]

Further analysis leads to the provisions of regulations on natural resource management, in the Mineral and Coal Mining Law and the Environmental Management Law, both of which together place Indigenous peoples as a community whose rights as Indigenous peoples are only respected, not their management. This is evidenced by the existence of Article 32 paragraph (2) of Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management, which places Indigenous peoples as a classification of affected communities. It is stated in the law that the involvement of affected communities is limited to other public consultations with a participation model. If the government is consistent and has the courage to implement the Constitutional Court's decision on Forestry Law Number 35/PUU-X/2012, as long as the determination of mining areas in the customary rights zone, there are equal rights as a form of respect and protection of indigenous peoples. This means that indigenous peoples have the same bargaining position between the state and companies when clashed with the right to manage natural resources (SDA) because according to the Constitutional Court, the existence of customary forests / customary ulayat areas cannot be separated from indigenous peoples. The two elements form a single entity concept about legal subjects who have absolute rights to manage natural resources (SDA).

However, none of the laws explicitly *declare* the rights of Indigenous Peoples in the management of natural resources. that the delay in the ratification of the Indigenous Peoples draft is evidence of a tug-of-war over natural resources.

Therefore, this argument is built on a strong and relevant foundation modeled on constitutional and human rights thinking.

The understanding of engagement is no longer interpreted as limited to public consultation alone, affected communities may not get any benefits from natural resource management (SDA), in European countries meaningful participation / engagement has been developed in the context of mineral and coal mining. This formulation is recognized as quite difficult, because it involves multidimensional parties, namely constituents, the state, the mining industry, corporations and

[26] Ifdhal Kasim, *Terjajah di negeri sendiri : IMF dan hak asasi manusia di Indonesia* (Jakarta: Elsam, 2003), 9.

stakeholders that make up the community, including Indigenous peoples.[27] *Meaningful* participation leads to the FPIC (*Free Prior* and *Informed Consent*) mechanism that has been well established by the UN Permanent Forum in Indigenous Issues 2005 which states that:

- *People are not coerced, pressured or intimidated in their choice of development*.
- *Their Consent is sought and freely given prior to the* authorization *of development activities.*
- *The have full information about* the *scope and impact of the proposed development activities in their lands, resources and well-being*.
- *Their choice to give or withhold consent over developments affecting them is respected and upheld*. (Their choice to give or withhold consent over developments affecting them is respected and upheld)

The FPIC study is a participatory study and its practice is considered particularly relevant for industrial mining which must navigate a range of economic, social and environmental impact expectations.[28] Although not entirely new, the concept of FPIC is being discussed among academics to also be applied in the mining sector, because currently the discourse is successful only on the scale of MINERBA mining interests (Oil, minerals and Coal). The basis of FPIC is based on the collective

empowerment of affected communities and indigenous peoples, this concept is being developed in various European countries. Another concept proposed by the researcher as confirmed to be the will of the Cek Bocek Reen Sury Indigenous community is ADAT SHARE,[29] this concept is entirely new and is a proposal from the Cek Bocek Reen Sury community, therefore the concept of involvement in the formulation of the third problem will be discussed comprehensively, involvement in accordance with the FPIC Concept and involvement of customary landowners and/or Indigenous forests treated as legal subjects.

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[27] Diane Ruwhiu dan Lynette Carter, "Negotiating 'Meaningful Participation' for Indigenous Peoples in the Context of Mining," *Corporate Governance* 16, no. 4 (1 Agustus 2016): 644, https://doi.org/10.1108/CG-10-2015-0138.

[28] Richard Parsons, Justine Lacey, dan Kieren Moffat, "Maintaining legitimacy of a contested practice: How the minerals industry understands its 'social licence to operate,'" *Resources Policy* 41 (1 September 2014): 84, https://doi.org/10.1016/j.resourpol.2014.04.002.

[29] Rampulong, Hasil Rampulong (musyawarah Adat) masyarakat Adat Cek Bocek Salesek Reen Sury yang menghasilkan beberpa poin diantaranya menuntut saham kepada PT. AMNT tanpa melalui mekanisme pembelian saham dengan mengorbankan wilayah Adat., 2022.

The issue of involving affected communities in the mining sector has become the center of serious attention in the world, especially since the 2000s, because in that year, public awareness of the balance between natural resource management and dedication to empowering surrounding communities, especially directly affected communities, slowly emerged. These directly affected communities are characterized as the general public, in the sense of individuals, so what needs to be protected is their individual rights. The protection given to individuals may be fairly straightforward, as their individual rights may be classified as those of modern society in general, meaning that there are no special customs compared to Indigenous communities. The biggest challenge arises when the concept of balance is clashed with the rights of indigenous peoples. This is because the rights of Indigenous people have unique values compared to those of the general public.

Conclusion

Implication means the impact or conclusion caused in the future, legal implications that will occur Specifically, the norms governing renegotiation are contrary to the principles of participation, transparency and accountability in the Coal Mineral Mining Law as well as contrary to the principles of participation and local wisdom in Law 32 of 2009 concerning Environmental Management, while the sociological implications caused are prolonged conflicts between the company and the indigenous people of Cek Bocek Reen Sury. The involvement of Indigenous peoples in the approval of mining businesses, as regulated in the provisions of the Environmental Management Law with the AMDAL mechanism is not sufficient in accommodating the interests and legal protection of Indigenous peoples as a whole, this is due to the fact that the AMDAL is only participatory and community participation is a formal requirement for the issuance of environmental permits. The ideal involvement is FPIC (Free Prior Informed Consent) because this stage aligns indigenous peoples with companies and the state in environmental management.

Bibliography

Arizona, Yance. *Antara teks dan konteks: Dinamika pengakuan hukum terhadap hak masyarakat adat atas sumber daya alam di Indonesia*. Jakarta: Perkumpulan untuk Pembaharuan Hukum Berbasis Masyarakat dan Ekologis (HuMa), 2010.

Azis, Iwan Jaya. *Pembangunan Berkelanjutan - Peran dan Kontribusi Emil Salim*. Jakarta: Kepustakaan Populer Gramedia, 2010.

Ditamei, Stefani. "Pengertian Implikasi Adalah: Berikut Arti, Jenis, dan Contohnya." detikjabar, 2022. https://www.detik.com/jabar/berita/d-6210116/pengertian-implikasi-adalah-berikut-arti-jenis-dan-contohnya.

Farhan, Ferzya, dan Dkk. "Menggaungkan Suara Marginal: Cerita Dari Kawasan Timur Indonesia." *Centre for Innovation Policy and Governance (CIPG)* (blog), 2019. https://cipg.or.id/en/publication/menggaungkan-suara-marginal-1/.

Friedman, Lawrence M. *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation, 1975.

Friedmann, W. *Teori dan Filsafat Hukum: Telaah Kritis atas Teori-Teori Hukum (Susunan I, II, III)*. Jakarta: Rajawali Pers, 1990.

Griffiths, John. "What is Legal Pluralism?" *The Journal of Legal Pluralism and Unofficial Law* 18, no. 24 (Januari 1986): 1–55. https://doi.org/10.1080/07329113.1986.10756387.

Hs, Salim, dan Erlis Nurbani. *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*. Jakarta: Rajawali Pers, 2023. https://rune.une.edu.au/web/handle/1959.11/63466.

Irawansyah. "Dinamika Kepemilikan Tanah Masyarakat Adat Cek Bocek di Sumbawa." *Mata Nusantara* (blog), 2019. https://www.matanusantara.com/2019/01/dinamika-kepemilikan-tanah-masyarakat.html.

Kasim, Ifdhal. *Terjajah di negeri sendiri : IMF dan hak asasi manusia di Indonesia*. Jakarta: Elsam, 2003.

Mahkamah Konstitusi. *A Prima Facie, Yang berarti hak itu sudah ada sebelum negara ini membuat peraturannya, negara yang datang justru harus tidak boleh membuat peraturan yang bertentangan dengan peraturan yang dianut masyarakat Adat. Faiq Tobroni, Menguatkan Hak Masyarakat Adat Atas Hutan Adat (Studi Putusan MK Nomor 35/PUU-X/2012)*, 2012.

———. *Putusan Nomor 35/PUU-X/2012*, 2012.

———. *Yurisprudensi Mahkamah Konstitusi dalam Putusan Nomor 31/PUU-V/2007).*, 2007.

Mandja, Suhardin. Wawancara dengan Suhardin Mandja, Mantan Kepala Desa Lawin dan tokoh Masyarakat Adat Masyarakat Adat Cek Bocek Salesek Reen Sury, Pada Tanggal 10 November 2022, Pukul 12.00. WITA, di Kabupaten Sumbawa, 2022.

Oslan, Alwi. Wawancara dengan Alwi Oslan selaku masyarakat dalam Komunitas Adat Cek Bocek Reen Sury, 2022.

Parsons, Richard, Justine Lacey, dan Kieren Moffat. "Maintaining legitimacy of a contested practice: How the minerals industry understands its 'social licence to operate.'" *Resources Policy* 41 (1 September 2014): 83–90. https://doi.org/10.1016/j.resourpol.2014.04.002.

Posner, Richard A. “Utilitarianism, Economics, and Legal Theory.” *The Journal of Legal Studies* 8, no. 1 (Januari 1979): 103–40. https://doi.org/10.1086/467603.

Rampulong. Hasil Rampulong (musyawarah Adat) masyarakat Adat Cek Bocek Salesek Reen Sury yang menghasilkan beberpa poin diantaranya menuntut saham kepada PT. AMNT tanpa melalui mekanisme pembelian saham dengan mengorbankan wilayah Adat., 2022.

Rato, Dominikus. “Perlindungan HAM Masyarakat Hukum Adat Yang Bhineka Tunggal Ika Di Era Digital.” *Majalah Hukum Nasional* 51, no. 2 (7 Desember 2021): 155–78. https://doi.org/10.33331/mhn.v51i2.147.

Republik Indonesia. *Pasal 1 angka 3 UU No 41 tahun 1999 mengenai kehutanan, sebagaimana telah diubah dengan UU No. 19 Tahun 2004)*, 1999.

———.*Pasal 1 angka 6, Pasal 4 ayat (3), Pasal 5 ayat (1) beserta penjelasannya dan Pasal 5 ayat (2) Undang-undang Kehutanan.*, t.t.

———. *Pasal 169 A Undang-undang Nomor 4 tahun 2009 sebagaimana diubah dengan Undang-undang Nomor Undang-undang Nomor 3 tahun 2020 tentang Pertambangan Mineral dan BatuBara.*, 2020.

Russel, Bertrand. *Sejarah Filsafat Barat dan Kaitannya dengan Kondisi Sosio-politik dari Zaman Kuno Hingga Sekarang*. Yogyakarta: Pustaka Pelajar, 2020.

Ruwhiu, Diane, dan Lynette Carter. “Negotiating ‘Meaningful Participation’ for Indigenous Peoples in the Context of Mining.” *Corporate Governance* 16, no. 4 (1 Agustus 2016): 641–54. https://doi.org/10.1108/CG-10-2015-0138.

Sodiki, Achmad. “Pemulhan Hak Masyarakat Adat atas Ruang Lingkup Hidup dalam Putusan MK No 45/2011 dan 35/2012,” 2016. https://www.aman.or.id/wp-content/uploads/2016/02/Achmad-Sodiki_Ringkasan-Putusan-MK-No.-45-2011-dan-35-2012.pdf.

Spaak, Torben. “Meta-Ethics and Legal Theory: The Case of Gustav Radbruch.” *Law and Philosophy* 28, no. 3 (1 Mei 2009): 261–90. https://doi.org/10.1007/s10982-008-9036-8.

Sukanda, Datu. Wawancara dengan Datu Sukanda Kepala Adat Masyarakat Adat Cek Bocek Salesek Reen Sury, Pada 10 November Pukul 15.00, di Kabupaten Sumbawa, 2022.

Umar, Dzulkifli, dan Utsman Handoyo. *Kamus Hukum*. Surabaya: Mahirsindo Utama, 2014.