



Legal Protection and Certainty Management of Gold Mining in The Customary Rights of The Customary Law Community of Buru Regency, Maluku Province

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ABSTRACT

The rights of indigenous law communities over natural resources, particularly minerals and coal, are regulated under Article 33 paragraph (3) in conjunction with Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as well as Law Number 3 of 2020 on Mineral and Coal Mining. Legal certainty in the utilization of mining resources has been concretely implemented at the Gunung Botak Gold Mining area in Buru Regency, which has been operating since 2011. This study employs a normative-empirical legal research method with an approach that examines the implementation of positive law in factual conditions within society. The findings indicate that Law Number 3 of 2020 does not specifically regulate the legal status of indigenous communities, despite the Constitutional Court Decision Number 35/PUU-X/2012, which provides legal protection and recognition of indigenous peoples' rights to manage their natural resources. To achieve legal certainty in the utilization of gold mining at Gunung Botak, the Provincial Government of Maluku and the Buru Regency Government have proposed the designation of Mining Business License Areas (WIUP) and People's Mining Areas (WPR), with People's Mining Licenses managed in the form of cooperatives administered directly by the indigenous law community of Petuanan Kayeli, Buru Regency.

Keywords: Legal Protection, Customary Law Communities, Mining Utilization.

ABSTRACT

Hak masyarakat hukum adat atas sumber daya alam mineral dan batubara diatur dalam Pasal 33 ayat (3) jo. Pasal 18B ayat (2) UUD NRI 1945 serta UU Nomor 3 Tahun 2020 tentang Pertambangan Mineral dan Batubara. Kepastian hukum pemanfaatan pertambangan baru diterapkan secara nyata di Pertambangan Emas Gunung Botak, Kabupaten Buru, yang beroperasi sejak 2011. Penelitian ini menggunakan metode hukum normatif empiris dengan pendekatan implementasi hukum positif secara faktual di masyarakat. Hasil penelitian menunjukkan bahwa UU No. 3 Tahun 2020 belum mengatur secara spesifik kedudukan masyarakat hukum adat, meskipun Putusan Mahkamah Konstitusi Nomor 35/PUU-X/2012 telah memberikan perlindungan dan pengakuan atas hak masyarakat adat dalam pengelolaan sumber daya alam. Sebagai upaya mewujudkan kepastian hukum, Pemerintah Daerah Provinsi Maluku dan Kabupaten Buru mengusulkan penetapan Wilayah Izin Usaha Pertambangan (WIUP) dan Wilayah Pertambangan Rakyat (WPR) dengan Izin Pertambangan Rakyat berbentuk koperasi yang dikelola oleh masyarakat hukum adat Petuanan Kayeli, Kabupaten Buru.

Keywords: Perlindungan Hukum, Masyarakat Hukum Adat, Pemanfaatan Pertambangan.

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INTRODUCTION

The use of natural resources to promote social welfare in Indonesia is implicitly reflected in the state's objectives. The goal of the Indonesian nation is to establish a just and prosperous society based on Pancasila, as explicitly stated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, which includes protecting the entire nation and all of Indonesia's people, advancing the general welfare, educating the life of the nation, and participating in the establishment of a world order based on independence, lasting peace, and social justice. These objectives must be realized by the state as the highest organization of the Indonesian nation, with their implementation grounded in the values of Pancasila.¹

The distinctive values contained in the constitution of the Unitary State of the Republic of Indonesia, make a distinction between the legal system in Indonesia and other legal systems so that the term Pancasila law state emerged, which Mahfud MD later introduced with the term prismatic value, if it is associated with the literature on the combination of more than one choice of social values, which therefore in the legal context can be referred to as Prismatic law. The territory of the country that stretches from Sabang to Merauke, in addition to having abundant natural *resources* like emeralds of manikam quality along the equator, also has cultural *resources* that are varied.²

One of the things that is known and respected by the constitution is the customary law society that has existed in Indonesia even before Indonesia proclaimed its independence, which is stated in article 18B paragraph (2): The State recognizes and respects the units of customary law societies and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in law.³ The content of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia on the element of the word "as long as it is alive" mandates that the Indonesian state has a pluralist constitution. Which means that the constitution considers customary law to be a law that needs to be used as a source of guidelines for community life in modern times.⁴ So that with the recognition of indigenous peoples and customary law, unfortunately, the formation of national and regional laws and regulations, especially related to natural resource management, can make customary law a source and

¹ Mahfud MD, *Building Legal Politics to Enforce the Constitution*, (Jakarta: Rajawali Press, 2011), p. 17

² I Nyoman Nurjaya, *Natural Resources Management*, (Jakarta, Prestasi Pustaka Publisher, 2008), p. 2

³ Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia

⁴ Yanis Maladi, "The Existence of Customary Law in the State Constitution After the Amendment of the 1945 Constitution", *Journal of Law and Development* Year 41 No. 3, Faculty of Law, University of Indonesia, Jakarta, 2011, p. 430

consideration because customary law communities also have the right to access natural resources.

One of the natural resources that should be managed for the greatest prosperity of the people is the wealth of energy, minerals, and coal resources. Mining is a relatively promising business sector in terms of income for the prosperity of the people of countries in the world. Especially for Indonesia, as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, that the earth, water, and natural resources contained in it must be intended for the prosperity of the people⁵. The substance of Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia is a form of nationalism by upholding the principles of togetherness and kinship. Togetherness and kinship are cultural concept that lives in Indonesian society. This is different from Western culture, which tends to live in individualism. The Indonesian nation has noble cultural values that strongly uphold togetherness and cooperation.⁶ The people's understanding of the article must also be understood without exception, including the customary law community itself.⁷

Through these provisions, it shows that the use of the earth, water, and natural resources in it is solely for the welfare of the people by paying attention to the aspect of justice. So that in order for the goal of people's prosperity to be realized, mining business actors are needed to process the potential of mineral and metal content. In Indonesia itself, in addition to state companies, private companies, and foreign companies that invest in mining in Indonesia, which are mining business actors, people's mining is also recognized by the government as a mining managers who generate profits. Mining business has a definition in Article 1 number 6 of Law Number 3 of 2020 concerning Minerals and Coal, explaining that "mining business is an activity in the context of Mineral or Coal business which includes the stages of general investigation, exploration, feasibility study, construction, mining, processing and/or refining or development and/or utilization, transportation and sales, and post-mining."⁸

Related to Indonesia's wealth there is a scene seen at the location of the gold mine on the bald mountain located in Petuanan Adat Kayeli or Kayeli Village, Buru Regency, Maluku. Mount Botak is a golden mountain area that is used as a place Mining wild in Buru Island, Maluku. Mining activities here have started since October 2011. However, this mine has been reopened repeatedly by miners. In the past,

⁵ Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia

⁶ Ibid, p. 426

⁷ Achmad Sodiki, "Indigenous Peoples Symposium: Questioning the Existence of Indigenous Peoples as Legal Subjects". *Journal*, HuMa, Society for Community-Based and Ecological Legal Reform. Jakarta.

⁸ Article 1 number 6 of Law Number 3 of 2020 concerning Minerals and Coal

mining management was still carried out by the bald method, but until now based on the results of direct monitoring of gold in bald mountains, gold processing on bald mountains has been very scary and uncontrolled where illegal miners use the soaking method, among 2 other methods. As for the other one, it is drum and barrel from Mercury and using the wallet method using an absorbent carpet gold. As for the immersion method, using Cyanide. Since then, various levels of mining have sprung up at the location, ranging from businessmen, miners, gold processors, traders, and even others. And not only that, gambling, liquor circulation to criminal acts in the form of murder often occur at mine sites. The use of mercury and cyanide is also crazy. Although many times the Government assisted by the TNI/Polri to try to carry out control, the location is still entered by miners for illegal activities, and the surrounding environment is starting to be polluted and suffer quite fatal damage.

The existence of natural resources is expected to facilitate the economic recovery of indigenous peoples and the surrounding ecosystem in mining areas, as well as to support law enforcement processes against various violations that have occurred within the mining environment. However, a paradox persists in which regions with significant mining potential are often associated with poverty and high levels of conflict. Based on this condition, the problems examined in this study focus on the legal protection of customary rights of indigenous law communities in mining areas within the Indonesian legal system and the legal certainty of the customary rights of the indigenous law community of Buru Regency, Maluku, in utilizing the Mount Botak gold mining area.

METHOD

The type of research used is normative feminist legal research. Normative (applied) law research is research that examines the implementation or implementation of positive legal provisions (legislation) and written documents in *action* (factual) on a certain legal event that occurs in society. The assessment aims to ascertain whether the results of the application of the law in concrete legal events are in accordance with or not in accordance with the provisions of laws and regulations. Or in other words, whether the provisions of laws and regulations have been implemented as they should, so that the interested parties achieve their goals or not.⁹

In normative law research, there is a combination of two stages of study, namely the first stage, the study of normative law (laws and regulations), and the second stage, the study of empirical law in the form of application (implementation) of legal events *in a concrete* order to achieve predetermined goals. Normative feminist law research requires secondary data and primary data.¹⁰ The implementation or implementation of

⁹Abdulkadir Muhammad, *Law and Legal Research*, (Bandung: Citra Aditya Bakti, 2004), p. 53

¹⁰ *Ibid.*, 53.

the law is realized through: a. Real *action*. b. Legal document. Based on the results of the application (implementation or non-implementation) of the law, it can be understood whether the provisions of laws and regulations have been implemented as they should be or not. This can be known from the results of the application of the law. If the predetermined results have been achieved, it means that the provisions (norms) have been implemented as they should be. If the results are not achieved or even if they are not achieved as they should be, it means that the provisions (norms) are not in accordance with their implementation.¹¹

DISCUSSION

1. Legal Protection of the Customary Rights of Customary Law Communities in Mining Areas in the Indonesian Legal System

Article 33 of the 1945 Constitution, as the basis of the National Mining Law, regulates the basics of the economic system and economic activities desired in the Indonesian state, but Article 33 of the 1945 Constitution is not something that stands alone, but is related to social welfare. Based on such thinking, the effort to understand Article 33 of the 1945 Constitution is inseparable from the basis of thinking about Social Welfare. On that basis, the purpose of the National Mining Law on natural resources is social justice and the greatest prosperity of the people.

Regarding the National Mining Law for the greatest prosperity of the people, according to Bagir Manan, it will realize the obligations of the state:

1. All forms of utilization (earth and water) and the results obtained (natural resources), must significantly increase the prosperity and welfare of the community;
2. Protect and guarantee all the rights of the people contained in or above the earth, water, and certain natural resources that can be produced directly or enjoyed directly by the people;
3. Prevent any action from any party that will cause the people to have no opportunity or will lose their right to enjoy natural resources.

According to the provisions of Article 1 number 1 of Law Number 3 of 2020 concerning Mineral and Coal Mining, it is stated that Mining (Mineral and Coal Mining Law), is part or all of the stages of activities in the context of research, management and exploitation of minerals or coal that include general investigation, exploration, feasibility studies, construction, mining, processing and/or utilization, transportation and sales, and post-mining activities.

In the provisions of Article 2 of the Mineral and Coal Mining Law, it is stated that minerals and coal are managed based on:

1. benefit, fairness, and balance;

¹¹ *Ibid.*, p. 54.

2. partiality to the interests of the nation;
3. participation, transparency, and accountability;
4. sustainable and environmentally friendly.

In the view of customary law, "Customary rights are the highest rights to land owned by a legal alliance (village, tribe) to ensure the orderly use/utilization of land. Customary rights are rights owned by a legal alliance (village, tribe), where the citizens of the community (legal alliance) have the right to control the land, the implementation of which is regulated by the head of the alliance (the head of the tribe/village head concerned). Roestandi Ardiwilaga stated that customary rights are the right of the legal alliance to freely use lands that are still bush forests within their territory, for the benefit of the legal alliance itself and its members, or for the benefit of outsiders (foreigners) with the permission of the Head of the Alliance. Customary rights are basically related to the legal relationship between customary law communities and land within their territory. The legal relationship contains authority and obligations to land with all its contents, namely waters, plants, and animals in its territory, which are the source of life and livelihood. Therefore, the scope of customary rights includes all agrarian resources that exist within the environment of the territory, and land is the main object of customary rights.¹²

As a form of legal protection of customary law communities, the Constitutional Court Decision Number 35/PUU-X/2012 defines customary law communities as written in Article T51 of the Constitutional Court Law, namely "The unity of customary law communities as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in the Law". In the provisions of Article 3 and the general explanation of Law Number 5 of 1960 concerning the Basic Provisions of Agrarian Affairs, in principle, it is explained that the implementation of customary rights of customary law communities as long as they still exist, is adjusted to the national and state interests, and will be occupied in its proper place in today's state nature. The recognition of customary law in the UUPA, especially in Article 5, states that agrarian law that applies to earth, water, and space is customary law. Thus, it shows that customary law is not only the main source, but also a complement in the formation of national agrarian law.

As stated by Van Vollenhoven, what is meant by customary rights is *beschikingsrecht*, describing the relationship between the customary law community and its land. There are (2) two things that cause land to have a very important position in customary law, namely:

1. Because of its nature, land is the only property that is fixed in its state as a tangible object.

¹² Agusta Pinta Kurnia Rizky, SH., M.Kn and Aris Prio Agus Santoso, SH., MH. Page 114

2. Because land is a place of residence and provides livelihood for the customary law community, the burial place of their ancestors, and the residence of the ancestral spirits of the customary law community.

In the context of the implementation of the national land law, in addition to the demands of indigenous peoples, on June 24, 1999, the Regulation of the Minister of State Agrarian Affairs/Head of the National Land Agency No. 5 of 1999 concerning Guidelines for Solving Customary Rights Issues of Indigenous Peoples was issued. The regulation is intended as a product in providing guidelines in the context of regulating and making operational policies in the land sector, as well as steps in resolving problems related to customary land.

The regulation contains a policy that explains the principle of recognition of "customary rights and similar rights of customary law communities" as defined in Article 3 of the UUPA. These policies include:

1. Equalization of the perception of "Ulayat rights" (Article 1).
2. Criteria and determination of the existence of customary rights and similar rights of customary law communities (Articles 2 and 5).
3. The authority of customary law communities over their customary lands (Articles 3 and 4).

In the regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency No. 5 of 1999, in Article 2 paragraph 2, it is stated that the customary rights of customary law communities are considered to still exist (exist) if they meet three conditions:

1. There is a group of people who still feel bound by their customary law order as citizens with a certain legal alliance, who recognize and apply the provisions of the alliance in their daily lives.
2. Certain customary lands are the living environment of the citizens of the legal alliance and where they meet in their daily lives.
3. There is a customary law order regarding the management, control, and use of customary land that applies and is obeyed by the citizens of the legal alliance.

Furthermore, regarding the recognition and protection of Customary Rights, it has basically been regulated in Indonesian Laws and Regulations, which can be described as follows:

1. The 1945 Constitution Article 33 paragraph 3, reads: "The earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."
2. The 1945 Constitution Amendment 11, 111, IV, in terms of amending Article 18 and adding Articles 18A and 18B as well as Article 28 1, paragraph 3. Article 18, paragraph 5, reads: "The local government exercises the widest possible autonomy, except for government affairs which are determined by law to be

the affairs of the Central Government. Local governments have the right to establish regional regulations and other regulations to carry out autonomy and assistance tasks. The structure and procedures for the administration of local government are regulated in the law."

3. Article 18A reads: "The relationship of authority between the central government and the local government of provinces, districts, and cities, or between provinces and districts and cities, shall be regulated by law concerning the specificity and diversity of the region. Financial relations, public services, utilization of natural resources, and other resources between the central government and local governments are regulated and implemented fairly and harmoniously in accordance with the law."
4. Article 18B consists of two verses: Paragraph 1: "The State recognizes and respects special or special local government units regulated by law." Paragraph 2: "The State recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, as regulated in law."
5. Article 281 paragraph 3: "Cultural identity and traditional community rights are respected in harmony with the development of the times and civilization."
6. Decree of the People's Consultative Assembly No.IX/MPR/2001 concerning Agrarian Reform and Natural Resources Management, Article 4: "Agrarian reform and natural resource management must be carried out in accordance with the principles in paragraph (j), namely: recognizing, extinguishing, and protecting the rights of indigenous peoples and the nation's cultural diversity over agrarian/natural resources."
7. Law No. 5 of 1960 concerning basic regulations on agrarian subjects. Article 3 reads: "Bearing in mind the provisions in Articles 1 and 2 the implementation of customary rights and similar rights of customary law communities, as long as they still exist, must be in such a way that they are in accordance with the national and state interests, which are based on national unity and must not conflict with other higher laws and regulations." The Law, UUPA No. 5 of 1960, is a legal product that affirms the recognition of customary law. This provision can be seen in article 5, which states that: "Agrarian law that applies to earth, water, and space is customary law, as long as it does not challenge national and state interests based on national unity".
8. Law No. 39 of 1999 concerning Human Rights. Article 5, paragraph 3 "Everyone who belongs to a vulnerable community group has the right to receive more treatment and protection with respect to their specialty. So, editorially, the word "customary rights" is not found in the articles of the 1945 Constitution, both before and after the amendments. However, these two

words appear in Law No. 39 of 1999 concerning Human Rights. In Article 6 of Law No. 39 of 1999, it is stated:

- a. In the context of the recognition of human rights, differences and needs in customary law communities must be considered and protected by the community, the community, and the government.
- b. The cultural identity of customary law communities, including the right to customary land, is protected, in line with the times.

The explanation of Article 6 above states:

- 1) Customary rights that are still valid and upheld in the community environment of customary law must be respected and protected in the context of protecting and enforcing human rights in the community concerned by paying attention to the laws and regulations.
 - 2) In the context of the enforcement of human rights and the national cultural identity of customary law communities, customary rights that are still clearly upheld by local customary law communities are still respected and protected as long as they do not conflict with the principles of the state of law, which is based on justice and people's welfare.¹³
9. Law No. 41 of 1999 concerning Forestry, as amended by Law No. 19 of 2004 concerning the Stipulation of Government Regulations in place of Law No. 1 of 2004 concerning Amendments to Law No. 41 of 1999. The term customary law community is again mentioned expressly in this law, after it was almost abolished by Law Number 5 of 1967 concerning the Basic Provisions of Forestry, which is a product of the New Order regime. In contrast to Law Number 5 of 1967, Law Number 41 of 1999 concerning Forestry emphasizes in Article 1, number 6, that customary forests are state forests that are within the territory of customary law communities¹⁴. Furthermore, in Law Number 41 of 1999, several articles regulate customary law communities and customary forests, namely:
- a. Article 4 states as follows:
Paragraph (1) All forests within the territory of the Republic of Indonesia, including the natural resources contained therein, are controlled by the State for the greatest prosperity of the people.
Paragraph (2) The control of forests by the State, as intended in paragraph (1), authorizes the government to:
 - 1) to regulate and manage everything related to forests, forest areas, and forest products;

¹³ Prof. Dr. H. Suparman Usman, S.H. *Agrarian Law in Indonesia (Land Law Section)*, (Banten: IAIN "Suhada" Press 2009), P, 57

¹⁴ Bambang Wiyono, *The Position of Customary Forests and Forest Management in Indonesia*, (Banyumas: Pena Persada, 2021), p, 98

- 2) Establish the status of a particular area as a forest area or forest area. not a forest area; and
 - 3) regulate and establish legal relations between people and forests, as well as regulate legal acts related to forestry. Paragraph (3) The control of forests by the State still pays attention to the rights of customary law communities, as long as the reality still exists and their existence is recognized, and does not conflict with the national interest.
- b. Article 37 states as follows:
- Paragraph (1) The use of customary forests is carried out by the customary law community concerned, in accordance with its function.
- Paragraph (2) The use of customary forests that function as protection and conservation can be carried out as long as they do not interfere with their function".
10. Law Number 18 of 2004 concerning Plantations (Plantation Law). In Article 9 paragraph (2) of the Plantation Law, it is emphasized that if the application for the right to plantation business is on customary land which in reality still exists, the right applicant is obliged to conduct deliberations with the indigenous people concerned to obtain an agreement on the handover of the land and its compensation (compensation). Related to the management of mines in the territory of customary law communities, it has a wide influence and impact on the customary law community itself. These influences are not only related to economic development activities and mine production, but also social and cultural problems, as well as the environment in which indigenous peoples live.

From some of the descriptions above, it can be said that customary rights are the rights of customary law communities which are essentially the authority possessed by certain customary law communities over a certain area to benefit from natural resources including land in the area for survival and life that typically arises from external and internal relationships. generations, and there is no disconnect between the people in customary law and their territory. In this case, customary rights show the existence of a legal relationship between customary law communities as the subject of rights and land as the object of their rights, where the relationship between customary law communities and their territorial lands is a relationship of control.

The principle contained in customary rights, related to one of the principles of customary law, is *bersas Communal (Commuun)* in customary law means prioritizing one's own interests. Customary law societies have the idea that every individual member of society is an integral part of society as a whole. In addition, it is also believed

that every individual's interests should be in accordance with the interests of society because no individual is separated from their society.¹⁵

Development is a natural process to realize the ideals of the state, namely, a prosperous, just, and equitable society. Economic development has 2 (two) side impacts on the community, both those that are constructive and improve the welfare of the community, and the gloomy impact on the life side of the community itself, which is mainly related to the environment, both physically and socially. If economic development policies do not pay attention to social and environmental factors, and only think about economic interests in the short term, it can cause environmental degradation over time, and in the end, the capacity of natural resources will not be able to support people's lives in the future.

In the explanation, Law Number 32 of 2009 concerning Environmental Protection and Management states that the availability of natural resources in quantity or quality is uneven, while development activities require increasing natural resources. Development activities also contain the risk of pollution and environmental damage. This condition can result in a decrease in carrying capacity, carrying capacity, and environmental productivity, which ultimately becomes a social burden.

Therefore, Indonesia's environment must be protected and managed properly based on the principles of state responsibility, the principle of sustainability, and the principle of justice. In addition, environmental management must be able to provide economic, social, and cultural benefits based on the principles of prudence, environmental democracy, decentralization, as well as recognition and appreciation of local wisdom and environmental wisdom. Environmental protection and management requires the development of an integrated system in the form of a national policy for environmental protection and management that must be implemented in a principled and consequential manner from the center to the regions.

There is a need for government supervision in supervising the management of mines in its territory, including the role of local governments, so that mining operations follow the provisions that have been set and ensure the safety of the surrounding communities, including indigenous peoples.

Law No. 3 of 2020 is a form of state power over natural resources on earth. The state regulates how mineral and coal mining activities should be carried out. Law No. 3 of 2020 is here to provide legal certainty to business actors in the mineral and coal sector in mining management and business activities. Mining business actors carry out mining businesses to make a profit. Mining business actors can be individuals or legal entities. Textually, the articles contained in Law No. 3 of 2020 concerning Mining do not have a

¹⁵ Prof. Dr. A. Suriyaman Mustari Pide, S.H., M.Hum, *Customary Law Past, Present, and Future*, (Jakarta: Prenadamedia Group, 2020), p. 14

single article that specifically regulates the position of indigenous peoples. In fact, if you look at an indigenous people, they have jurisdiction and control over their territory.¹⁶

However, on the other hand, in the provisions of Article 139 paragraph (1) of the Mining Law, the Minister provides guidance on the implementation of mining business management carried out by the provincial government and city district governments in accordance with their authority. Furthermore, in paragraph (2), the Coaching includes:

- a. the provision of standard clan guidelines for the implementation of mining business management;
- b. providing guidance, supervision, and consulting;
- c. education and training; and
- d. Planning, research, development, monitoring, and evaluation of the implementation of the mining business in the mineral and coal sector.

The law must be seen in a comprehensive perspective. Law is not only seen from the point of view of "Legal Positivism," which is often a weapon of certain parties to take refuge behind the interests of certain groups alone, although that does not mean that we do not deny that legal positivism is also necessary for the certainty of law enforcement. Problems need to be seen in a case-by-case manner, and a compromise that provides the best solution for all parties¹⁷.

2. Legal Certainty of Customary Rights of Customary Law Communities in Utilizing Gold Mining in Mount Baltak, Buru Regency, Maluku

Article 18 B paragraph (2) and Article 28 I paragraph (2) of the 1945 Constitution of the Republic of Indonesia, Article 26 paragraph (2) of the United Nations Declaration on the Rights of Indigenous Peoples provide a relevant description to explain what is meant by traditional rights (especially in the context of natural resource management), where traditional rights can be understood as the right to own, use, develop and control the lands, territories and resources they possess based on traditional ownership or other traditional placement and utilization, as well as lands, territories and resources owned by them in other ways.¹⁸

Looking at the field results by researchers of Mount Botak, we are currently faced with big problems that will later give birth to natural and health disasters that have an impact on the consequences of illegal mining. Where forest exploitation, digging holes, spraying mountains, baths have destroyed the periphery of the mountain, the uncontrolled use of mercury and cyanide will have an impact on health, as well as

¹⁶ Zainul Akmal, " Guarantees for Environmental Sustainability and the Existence of Indigenous Peoples in Law Number 3 of 2020", *Journal*, Faculty of Law, University of Riau Vol 6, 2022.

¹⁷ Helza Nova Lita, Fatmie Utarie Nasution, "Legal Protection of Indigenous Peoples in Mining Areas", *Journal*, Faculty of Law, Padjadjaran University, Bandung.

¹⁸ Article 26 paragraph (2) of the United Nations Declaration on the Rights of Indigenous Peoples.

pollution and environmental damage that is extraordinary, and of course, detrimental to natural resources that are not managed properly to prosper the local customary law community. Based on other sources, landslide accidents often occur and pile up miners who are digging until they take their lives¹⁹. Especially in the gold mining plain directly adjacent to the Buru Regency Agricultural Area, which is afraid of having an effect on the surrounding plants, considering that previously there were several plants that began to turn yellow, and also the death of residents' cattle due to drinking chemical waste.²⁰ Not only that, with illegal mining, there is a high level of crime in the area, where gambling, drunkenness, prostitution, and murder are rampant in the Bald Mountain area.

The efforts of the Buru Regency Regional Government to overcome the problems of miners who carry out illegal mining activities in the Gunung Botak area, Anahoni Hamlet and Wamsait Hamlet to protect the rights of the customary law community of the Buru Regency Regional Government refers to Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (MINERBA). The authority of the central government in the management of mineral and coal mining includes several articles, including:

Article 6 Paragraph 1

The Central Government, in the management of Mineral and Coal Mining, is authorized to:

- a. establishing a national Mineral and Coal management plan;
- b. establishing national Mineral and Coal policies;
- c. to establish laws and regulations;
- d. establish national standards, guidelines, and criteria;
- e. conducting Mining Investigations and Research in all Mining Jurisdictions;
- f. determine the taxpayer after being determined by the provincial Regional Government in accordance with its authority and consult with the House of Representatives of the Republic of Indonesia;
- g. establish WIUP Mineral Metals and Coal WIUP;
- h. establishing non-metallic mineral WIUP and rock WIUP;
- i. Establish WIUPK;
- j. carry out WIUPK offerings on a priority basis;
- k. issue a Business License;

¹⁹Winda Hermani, "Police Help Evacuate Miners Hit by Landslides on Mount Baltak," <https://ambon.antaranews.com/berita/145061/polisi-bantu-mengevakuasi-penambang-tertimbun-longsor-di-gunung-botak> accessed May 18, 2023.

²⁰ Adi, "Three Cows Die After Drinking Illegal Gold Processing Chemical Waste in Gunung Botak," <https://terasmaluku.com/headline/2018/03/09/tiga-sapi-mati-setelah-minum-limbah-bahan-kimia-pengolahan-emas-ilegal-gunung-botak/> accessed May 18, 2023.

- l. conducting guidance and supervision of the implementation of Mineral and Coal Mining Business activities carried out by Business License holders;
- m. establish production, marketing, utilization, and conservation policies;
- n. establishing policies of cooperation, partnership, and empowerment of the people;
- o. managing and determining non-tax state revenues from the results of the Mineral and Coal Mining Business;
- p. managing geological information, information on potential mineral and coal resources, and mining information;
- q. conducting coaching and supervision of Reclamation and Post-Mining;
- r. preparing a balance sheet of Mineral and Coal resources at the national level;
- s. develop and increase the amount of income added to mining business activities;
- t. to improve the ability of the Central Government and Provincial Regional Government apparatus in the implementation of Mining Business management.
- u. setting the benchmark price of Metallic minerals, Non-metallic minerals of certain types, Radioactive minerals, and Coal;
- v. managing mine inspectors; and
- w. managing Mining Supervisory Officers;

Article 9

- (1) Taxpayers as part of the Mining Jurisdiction are the basis for the determination of Mining Business activities.
- (2) The taxpayer, as intended in paragraph (1), is determined by the Central Government after being determined by the provincial Regional Government in accordance with its authority and in consultation with the House of Representatives of the Republic of Indonesia.
- (3) The determination of taxpayers as referred to in Article 9 paragraph (2) consists of:
 - a. WUP;
 - b. WPR;
 - c. WPN; and
 - d. WUPK.
- (4) The determination of the taxpayer as intended in Article 9 paragraph (2) is carried out:
 - a. transparent, participatory, and accountable;
 - b. in an integrated manner by referring to the opinions of relevant government agencies, affected communities, and by taking into account

ecological, economic, human rights, and socio-cultural aspects, as well as being environmentally friendly; and

- c. by paying attention to regional aspirations.

Article 35 (1) Mining Business is carried out based on a Business License from the Central Government.

Article 38

IUP is awarded to:

- a. Business Entities;
- b. cooperatives; or
- c. Sole proprietorship.

Article 65

(1) Business Entities, cooperatives, or individual companies as referred to in Article 51, Article 54, Article 57, and Article 60 that carry out Mining Business are required to meet administrative, technical, environmental, and financial requirements.

(2) Further provisions regarding administrative, technical, environmental, and human requirements as intended in paragraph (1) are regulated by Government Regulations.

Article 66

People's mining activities, as referred to in Article 20, are grouped as follows:

- a. Mining Metallic Minerals;
- b. Mining Non-metallic Minerals; or
- c. Rock mining.

Article 67

(1) IPR is granted by the Minister to:

- a. natural persons who are residents; or
- b. cooperatives whose members are residents.

(2) To obtain an IPR as intended in paragraph (1), the applicant must apply to the Minister.

Article 68

- i. The area for 1 (one) IPR can be given to:
 - a. the largest area of 5 (five) hectares; or
 - b. The largest cooperative is 10 (ten) hectares.
- ii. IPR is granted for a maximum period of 10 (ten) years and can be extended 2 (two) times for 5 (five) years each.

The articles stated in Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (MINERBA) have been regulated

that all mining management permits are regulated by the Central Government and Regional Governments only to prepare the determination of proposed mining areas.²¹

Basically, mining activities carried out by people, communities, or legal entities or business entities can be classified into two types: *Illegal Mining* is an activity carried out by people or communities without permission from an authorized official, and *Legal Mining* is a mining activity carried out by a business entity or legal entity based on a permit issued by an authorized official. One form of permit is a mining business license (IUP). The term mining business license comes from the English translation, namely, mining permit. A mining business license is a permit to carry out a mining business. There are two most important elements of a mining business license: 1. The existence of a permit; 2. Mining business

Licensing is the granting of legality to a person or a certain business actor/activity, either in the form of a license or a business registration certificate. Permits are one of the most widely used instruments in administrative law to guide the behavior of citizens. In addition, permission can also be interpreted as a dispensation or release/exemption from a prohibition. There is also a definition of a permit in a narrow and broad sense:²² A permit is a statement or agreement that allows the holder to carry out a mining business. Mining *business* is: "Activities in the context of mineral and coal business which include the stages of general investigation activities, exploitation, exploration, feasibility *study*, construction, mining, management and refining, transportation and reclamation, and post-mining activities". The general provisions of Law Number 3 of 2020 concerning Mineral and Coal Mining have been defined as the meaning of the eight stages of mineral business activities. General investigation is a stage of mining activities to find out: a. Regional geological conditions, b. Indications of mineralization. Regional geological conditions are the state of the structure and composition of minerals in a certain area. Indications of mineralization are signs of the presence of mineral materials in a mining area. Exploration is a stage of mining business activities to obtain detailed and thorough information about the location of excavated materials, the form of excavated materials, the dimensions of excavated materials, the distribution of excavated materials, the quality and resources of the excavated materials, and the social and environmental environment.

Mining activities are not only given the right to SOEs and Private Business Entities to do so, but residents are also given the right to pursue mining activities. Residents who apply for mining businesses are submitted through a people's mining permit (IPR). The definition of people's mining permits is contained in Article 1 paragraph (11) of Government Regulation of the Republic of Indonesia Number 96 of

²¹ Republic of Indonesia, Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (MINERBA).

²² Philipus M. Hadjon, Introduction to Licensing Law, (Surabaya: Yuridika, 1993), pp.2-3

2001 on the Implementation of Mineral and Coal Mining Business Activities: '1. The People's Mining Permit, hereinafter referred to as IPR, is a permit to carry out Mining Business in people's mining areas with limited area and investment." The elements include: 1. The existence of a permit. 2. The existence of a mining business. 3. The area is in people's mining. 4. Limited area. 5. Limited investment. A permit is a declaration of grant or approval that allows residents to carry out mining activities. The mining business is an activity in the context of the mineral or coal business, which includes several stages. General research. Exploitation of feasibility studies for construction, mining, management, refining, Mining and sales and post-mining.²³

Cooperatives are business entities based on the principle of the family whose members can come from people or legal entities, namely cooperatives, to drive the people's economy. This refers to Law Number 17 of 2012 (Cooperative Law). The purpose and definition of cooperatives are also regulated in Article 1 of Law Number 25 of 1992 concerning Cooperatives (Cooperative Law). The definition of a cooperative is a legal entity that contains people or legal entities whose activities are based on the principles of cooperatives and the principle of kinship with the aim of moving to a better people's economy.²⁴

The existence of cooperatives in Indonesia has had a positive impact, namely helping the community in developing their economy in various fields of business activities. With its characteristics, cooperatives are so liked by the Indonesian people that they have the principle of economic activities based on the people's economic system and cooperation.

The presence of cooperatives in people's mining business activities is for supervision, so that activities are in accordance with the normative. The concept of people's mining activities is that activities are carried out in the WPR set by the Government. Each WPR has at least has a cooperative to support and supervise business activities.

Mining cooperatives will generally be given an allocation of 10 hectares of the People's Mining Area (WPR). After the WPR was established, the People's Mining Permit (IPR) was born. So it can be said that with the existence of mining cooperatives, people can more easily access the WPR and IPR. The provisions for taking care of permits related to this cooperative are not much different from the usual ones. For example, every cooperative that will take care of legal gold mining permits from the local government must have a clear business land status and not take business land owned by others. Then, regarding post-mining activities, one of them, such as waste disposal, will be held directly by the Smelter company, which must hold a Refining Mining Business License (IUPP), referring to Article 169 of Law Number 3 of 2020.

²³ Salim, *Law of Mineral and Coal Mining*. (Jakarta: Sinar Grafika, 2012). p. 75.

²⁴ Republic of Indonesia, Law Number 25 of 1992 concerning Cooperatives.

The management of People's Mining in the form of a Cooperative is a form of legal certainty for the Petuanan Kayeli Customary Law Community of Buru Regency in utilizing natural resources in their area to further provide benefits to the local community, and to be directly involved in their mining activities. The Regional Government of Buru Regency highly appreciates the natural resources in all Petuanan customary jurisdictions, even though there is no Regional Regulation that specifically discusses Customary Forests and Natural Resources.

In this effort, the Regional Government of Maluku Province has been active in proposing a Mining Area with the proposal to determine the Mining Business License (WIUP) and People's Mining Area (WPR) with a People's Mining Permit in the form of a Cooperative to the Central Government (ESDM). Where this Cooperative is managed directly by the Customary Law Community in Petuanan Kayeli, Buru Regency. Based on data submitted by the Head of the Maluku Provincial Energy and Mineral Resources Office, Abdul Haris, on Tuesday (29/4/2025) at the Maluku Governor's Office, he explained the names of the ten cooperatives.

The 10 (ten) Cooperatives that received IPR are;

1. Putri Daramanis Mandiri Producers Cooperative
2. New Tanila Producers Cooperative
3. Fena Rua Bupolo Producers Cooperative
4. Baheren Floly Kai Kai Wai Producer Cooperative
5. Wahidi Mnamut Mandiri Producer Cooperative
6. Nusa Ina Solissa Group Producer Cooperative
7. Putra Kayeli Producers Cooperative United
8. Independent Wa Suet Producers Cooperative
9. Marahidi Independent Producer Cooperative
10. Kawi Wai Bumi Lalen Producers Cooperative

In his explanation, these ten cooperatives have been eligible to have IPR in accordance with the regulations of Law Number 3 of 2020 concerning "Mineral and Coal Mining," which is revealed in Presidential Regulation number 55 of 2022 concerning "Delegation of Business Licenses in the Mineral and Coal Mining Sector", where in Chapter II Article 2 paragraph 3 letter (e), explained that the IPR is delegated to all commodities.

"This delegated IPR is for all commodities including metals and non-metals, on this basis there are 20 cooperatives that have submitted applications, and after being technically verified that meet the requirements there are 10 cooperatives and then the 10 cooperatives are processed through the OSS application at the Investment and One-

Stop Integrated Services Office, he further explained, through the process in this OSS application, IPRs have been issued on behalf of the 10 cooperatives on August 6, 2024."²⁵

The Maluku Provincial Government hopes that the 10 Cooperatives that have obtained People's Mining Permits (IPR) in the Gunung Botak Mining Area, Buru Regency, can improve the economy of residents, and their management can really maintain environmental sustainability, because what is managed today will later become a legacy for our children and grandchildren in the future. (Diskominfo Maluku)

The efforts of the Maluku Provincial Government to take over and reorganize the management of illegal gold mines in Mount Botak (GB), Buru Regency, through a cooperative scheme, apparently did not go smoothly. Ten cooperatives that have obtained People's Mining Permits (IPR) have not met a number of mandatory administrative requirements before they can operate. Meanwhile, the Maluku Provincial Government, together with the TNI and Buru Police officers are now conducting a total sweep and control of the Mount Botak area from Unlicensed Gold Mining (PETI) activities that have lasted for more than 13 years. And finally, the Control lasts from December 1 to 14, 2025.

The Buru Police Chief gave a briefing to the community, emphasizing that the purpose of this regulation is to arrange the mining area to be managed legally and structurally. "We understand that these changes affect the lives of many people. However, we hope that the public can see that this policy will provide long-term benefits, both for the regional economy and environmental sustainability," explained the Buru Police Chief²⁶.

The emergence of management factors in illegal mining in Buru Regency is Cultural Customary Factors, socio-economic factors, Education factors, and law enforcement factors. These factors are the cause of illegal mining on Mount Botak. As long as the researcher conducts research in the Bald Mountain area, it is a reference that the researcher can analyze related to these factors as follows:

1. Cultural Factors

The Gunung Botak area is a customary right of the Petuanan Kayeli customary law community. The management of all the activities of the miners on Mount Baltak is always backed up with the clans or soa in Petuanan Adat Kaeli. For example, there are financiers who have money, and the clan has holes or land for digging. Not only that, according to other sources, there are even individuals who name the Petuanan Kayeli

²⁵ <https://mediacenter.malukuprov.go.id/kadis-esdm-promal-jabarkan-10-koperasi-yang-mendapatkan-ipr-di-wilayah-pertambangan-gunung-botak/>

²⁶ <https://fokusmaluku.com/2025/12/05/kapolres-buru-bersama-satgas-penertiban-sosialisasikan-penataan-tambang-emas-gunung-botak/>

Customary Government in the form of a soaking collection committee to pay or pay tribute to the Kayeli Customary Tuanan Government of Rp. 10,000,000.²⁷ The Government of Petuanan Adat Kayeli can be said to be very weak and unable to control mining activities in Mount Botak, and tends to be divided between the Customary Law Communities in Petuanan Kayeli.

2. Socioeconomic Factors

At the beginning of the discovery of the gold mine in the bald hills, researchers witnessed and felt the results of the miners' income in one day at least Rp.750,000,- to Rp.2,000,000,- for antelope workers (Transport Labor) even according to the sustenance of the miners who carried out excavation activities, wallets and bathtubs could get a minimum of Rp.10,000,000,- and the largest up to hundreds of millions depending on the weight of the gold obtained. This is what tempts people to do mining on bald mountains. The community also left their old jobs with an income of Rp.1,000,000 to do mining. With this mining, many people have changed their professions to become miners who used to work in the community as farmers, fishermen, manual laborers, and honorary teachers, health, and in the office.

3. Educational Factors

In this case, the community also thinks about how much profit they get to fulfill their daily lives to make a living through their work in mining without thinking about the future impact on themselves and the environment around them. As for the low level of education of the surrounding community, people who work as gold mining workers without permits. On average, they have a junior high school education or an elementary school education. dropped out of school, and from the community, some did not study at all. This educational factor triggers people to work what is important to be able to make money quickly, quickly, and a lot, without them realizing it, they have broken the law and also eroded natural wealth.

4. Law Enforcement Factors,

The law enforcement factor is one of the most influential where law enforcement in this case carried out by the Buru Island Police and the Maluku Police is considered not serious in handling criminal practices in the mining area to Mining Donors, Chemical Importers and also Individuals Who Back Up Illegal Miners, this can be seen by the gradual process of Criminal Proceedings that have been carried out and the lack of investigation or neglect to illegal miners to be free in carrying out miners. The Regional Government of Buru Regency is also suspected of allowing illegal miners to carry out illegal mining, as can be seen from the length of time the Regional Government has made efforts to Legally Mine Gold in Buru Regency.

²⁷ East Axis, "LDM Urges Maluku Police to Arrest Illegal Mining Perpetrators of Gunung Botak" <https://aktivis.co.id/ldm-desak-polda-maluku-tangkap-abdullah-wael-some-nurlatu-haji-markus-dan-panitia-penagihan-di-area-wasboli/> accessed May 18, 2023

CONCLUSION

Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 on Mineral and Coal Mining provides opportunities for communities to utilize natural resources for economic purposes provided that they possess the required permits; however, in practice, illegal mining activities (PETI) remain widespread and constitute normative violations that potentially cause losses to local governments and the state. This condition indicates the need for a legally recognized framework to accommodate community-based mining activities. Nevertheless, Law Number 3 of 2020 does not specifically regulate mining governance within the customary rights of indigenous law communities. The rights of indigenous peoples over natural resources, particularly minerals and coal, are constitutionally protected under Article 33 paragraph (3) in conjunction with Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, as well as reinforced by Constitutional Court Decision Number 35/PUU-X/2012, which affirms legal protection and freedom for indigenous peoples to utilize natural resources for economic interests. Within the mining law framework, People's Mining Licenses (IPR) may be granted to residents, community groups, and cooperatives, thereby providing a legal basis for cooperative-based mining activities. Accordingly, cooperatives offer a viable legal mechanism to facilitate the participation of the indigenous law community of Buru Regency in utilizing gold mining at Mount Botak. To ensure legal protection and certainty for indigenous law communities, existing positive legal provisions related to land and resource management should be further analyzed and reformed, and the Central Government is urged to promptly issue Mining Business Permit Areas (WIUP) and People's Mining Licenses (IPR) to prevent illegal mining and promote sustainable and lawful mining practices at Mount Botak, Buru Regency.

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