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Protection of Indigenous Communities in the Management of Oil and Gas Natural Resources In the Warim Block Central Papua

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Abstract: Indonesia is a country rich in mineral and gas natural resources (oil and gas), this makes Indonesia one of the countries that is a center for oil and gas related investments. In terms of normative construction, the authority to manage oil and gas natural resources has been regulated in Article 33 paragraph (3) of the 1945 Constitution concerning the State's Right to Control (HMN) and its derivative regulations, namely Law No. 22 of 2001 concerning Oil and Gas and related regulations in the management of natural resources. On the other hand, the allusion between HMN and the control of customary territories by Indigenous Legal Communities (MHA) is an interesting point, where Article 18B of the 1945 Constitution and the existence of the Papua Special Autonomy Law provide space for protection for MHA in Papua, specifically in Agimuga. This research method uses a normative method, which traces laws and regulations related to natural resources as well as the Papua Special Autonomy Law and its derivative regulations. The results of this study place the existence of a guarantee of protection in the Oil and Gas Law in Article 11 paragraph (3) if the state is present in the context of the welfare of the people, specifically MHA, and specifically creates a new norm in the form of the Customary Law Community Law which becomes the lex specialis norm of MHA.

Keyword: Protection, Indigenous Communities, Oil and Gas.

INTRODUCTION

Indonesia continues to be a key player in the global mining industry. The country has significant mineral reserves and production of coal, copper, gold, tin, and nickel. Indonesia ranks 15th in the world in coal reserves, 7th in gold reserves, 7th in copper reserves, 5th in tin reserves, and 8th in nickel reserves. Indonesia is also one of the world's largest exporters of thermal coal. The extractive industry is one of Indonesia's most important industries, generating employment, taxes, and foreign exchange earnings. The mining industry makes a significant contribution to the Indonesian economy as a whole, accounting for approximately 12% of GDP in 2014 and approximately 4% of GDP in 2015. The significant decline between 2014 and 2015 was largely due to the implementation of a ban on the export of unprocessed minerals in January 2014 and the introduction of significant export duties on mineral concentrates. (Asia Indigenous Peoples Pact's Handbook, 2019)

Control over natural resources is part of the state's management of natural resources. The state also recognizes and respects the existence of indigenous peoples (MHA) and their constitutional and traditional rights. Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution serve as the constitutional basis for recognizing and protecting the rights of indigenous peoples. The concept of state control over Indonesia's mineral and coal resources is based on Article 33 (3) of the 1945 Constitution, which states that "Land, water, and the natural resources contained therein shall be examined by the State, and utilized for the prosperity of the people, if possible." Article 33 paragraph (3) simultaneously constitutes state management and the philosophical basis for Indonesia's natural resources and legal management.

Article 33 paragraph (3) of the 1945 Constitution stipulates that land, water, and space, including the natural resources contained therein, are controlled at the highest level by the State as an organization of power for all the people. The HMN gives the State the authority to: (1) regulate and organize the allocation, use, supply and maintenance of the earth, water and space, (2) determine and regulate legal relations between people and the earth, water and space, (3) determine and regulate legal relations between people and legal acts concerning the earth, water and space. The State's authority which originates from the HMN is used for the greatest prosperity of the people as stated in Article 1 paragraph (2) UUPA.Pengaturan tentang penguasaan terhadap SDA Migas dapat dilihat dalam Undang-Undang Republik Indonesia Nomor 22 Tahun 2001 Tentang Minyak Dan Gas Bumi, Pasal 4 ayat (1) Minyak dan Gas Bumi sebagai sumber daya alam strategis takterbarukan yang terkandung di dalam Wilayah Hukum Pertambangan Indonesia merupakan kekayaan nasional yang dikuasai oleh negara; ayat (2) Penguasaan oleh negara sebagaimana dimaksud dalam ayat (1) diselenggarakan oleh Pemerintah sebagai pemegang Kuasa Pertambangan.

The explanation of Article 1 paragraph (1) refers to the spirit of Article 33 paragraph (3) of the 1945 Constitution, which states that oil and natural gas, as strategic natural resources contained within the Indonesian Mining Legal Area, constitute national assets controlled by the state. The state's control, as stated above, is intended to ensure that these national assets are utilized for the greatest prosperity of all Indonesian people. Therefore, individuals, communities, or business actors, even if they have rights to a plot of land on the surface, do not have the right to control or own the oil and natural gas contained beneath it.

Article 11 paragraph (3) of the Cooperation Contract as referred to in paragraph (1) must contain at least the following basic provisions, one of which is letter p. The development of the surrounding community and the guarantee of the rights of indigenous peoples;

The construction of Article 11 paragraph (3) provides for the guarantee of the rights of indigenous peoples. Guarantees for customary law communities are contained in Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which states that there is state recognition of customary law communities and Article 28A of the 1945 Constitution which states, "Everyone has the right to live and the right to defend their life and livelihood."; Article 28I Paragraph (3) "cultural identity and the rights of traditional communities are respected in line with the development of the times and civilization; paragraph (4) "Protection, advancement, enforcement and fulfillment of human rights is the responsibility of the state, especially the government."

Freeport's experience managing natural resources in the Amungme tribal territory in Papua has provided the Agimuga customary community with valuable insights. The vast potential of the Warim Block has not brought happiness to the indigenous population. The Agimuga community, living in the Warim Block, is concerned about the various damages and negative impacts resulting from oil exploration there. Agimuga is another name for Akimeugah. They fear being displaced from their homeland. They also fear only waste and seeing their wealth enjoyed by others. Therefore, they oppose exploitation of the Warim Block. Their concerns are not without basis. Freeport's exploitation has become clear evidence of

environmental damage that has had a negative impact on them. Freeport's mining waste has caused sedimentation in the river south of Mimika. The silting of the river has made it impossible for boats to navigate, even though Agimuga is only accessible by river. The community is forced to travel through the extremely dangerous Arafura Sea.

Indigenous Papuans in Agimuga District, Mimika Regency, have repeatedly expressed their opposition to the development of the Warim Block. They fear not only being displaced from their homeland, but also worry that mining will return Agimuga to an area of armed conflict. What is so deeply imprinted on the minds of the Agimuga people that they are reluctant to embrace the Warim Block as their future? Why do they also associate this anxiety with Freeport? Why hasn't the government involved indigenous Papuans potentially affected by the Warim Block? And has mining truly provided equitable prosperity for indigenous Papuans.

METHOD

The object of study of legal science, namely positive legal norms, is a cultural product (human product) that contains human values, ideals, desires, and interests. The system of positive legal norms of a country (society) reflects the values, philosophy, ideals, and also reflects the natural conditions of the environment and human interests at the time of the formation of legal norms. The object of study of legal science is the positive legal norms of a country (society) which are generally established by the state (the state organ that holds the authority to form laws). The system of positive legal norms is a system of rules that serves to guide (direct) the behavior of members of society. The system of positive legal norms originates from a normative source as the origin of all positive legal norms of a country (society). The origin of all positive legal norms is called legal ideals (rechtsidee). Legal ideals contain normative content as the source (origin) of positive legal norms. (Asmak Ul Hosnah et al., 2021)

This research uses a normative research approach. This approach refers to the researcher's perspective in selecting the discussion space that is expected to explain the substance of the scientific work(I Made Pasek Diantha, 2016)

RESULTS AND DISCUSSION

Bagaimana Pengakuan Masyarakat Hukum Adat dalam pengelolaan Sumber Daya Alam Minyak Dan Gas Bumi

The relationship between indigenous peoples and their land has been a long-standing topic at the international level. In every country, people consider their relationship with land to be not only an economic issue, but also a social and spiritual one. Professor Robert A. Williams describes the relationship between indigenous peoples and their land as follows: Indigenous peoples have emphasized that the spiritual and material basis of their cultural identity is maintained by their unique relationship with their traditional territories, which have been passed down from generation to generation. (Dyah Ayu Widowati et al., 2014)

Terminologically, "recognition" means the process, method, or act of acknowledging or recognizing, while the word "acknowledge" means declaring one's right. Recognition in the context of international law, for example, regarding the existence of a State/government, usually refers to the terms de facto and de jure recognition. Real recognition of a particular entity to exercise effective power in a territory is called de facto recognition. De facto recognition is temporary, because this recognition is indicated by the facts regarding the position of the new government, whether it is supported by its people and whether its government is effective, which causes its position to be stable. If it can then be maintained continuously and continues to progress, then de facto recognition will automatically change into de jure recognition. De jure recognition is permanent and is followed by other legal actions. Meanwhile, legal recognition (de jure) is the recognition of one State by another State followed

by certain legal actions, such as the establishment of diplomatic relations and the conclusion of agreements between the two States. (Ismi, 2015)

F. Budi Hardiman stated that the phrase “the state respects….as long as….” is a conditional recognition that is monologue and subject-centric. This is because it displays the image of a state that is trying to “tame” indigenous legal communities under the rules established by the state. This paradigm is a logical valor that is glorified by the state, but in essence is contradictory to the concept of equality in a democratic state. Satjipto Rahardjo also expressed his criticism in line with the concept of conditional recognition put forward by Hardiman, that through Article 18B paragraph (2) of the 1945 Constitution, the state is trying to categorize the existence or non-existence of indigenous legal communities. This conditional recognition certainly contradicts the first phrase used in the article, namely “the state respects.” By implementing the condition in the guarantee of human rights for indigenous legal communities in the Constitution, it means that the state is not trying to accommodate the protection of indigenous legal communities as a whole, but is trying to slow down the recognition and protection of these indigenous legal communities. (Putri, 2021)

According to Simarmata, the state's recognition of customary law communities in the amended 1945 Constitution has in certain respects created a setback compared to before the amendment. More specifically, after the second amendment in 2000, in Article 18B, it is stipulated that: (1) The State recognizes and respects regional government units that are special or exceptional in nature which are regulated by law; (2) The State recognizes and respects customary law community units and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law." The separation between Article 18B paragraph (1) and Article 18B paragraph (2) provides an important meaning for distinguishing between the form of customary (legal) community association with the old "kingdom" government which is still alive and can be special. (Sabardi, 2014)

He concluded that the guarantee of Human Rights in the framework of extractive activities must be part of the duties of the State, adding that currently companies are also part of this duty, and that the only way in which it can be achieved full protection of people's rights is in collaboration with all the actors who participate in the activities, from indigenous communities, the State, companies, institutions such as the UN, among others (Diana Caroline Poma Castillo, 2022)

The 1945 Constitution reaffirms its recognition of MHA in the Chapter on Regional Government, Article 18B paragraph (2) of the 1945 UUDNRI. Not only that, in the Chapter on Human Rights, Article 28I paragraph (3), the constitution also states that the state respects "cultural identity and the rights of traditional communities." (Yanto & Hikmah, 2023)

Tracing legal history shows that oil and gas in Indonesia, its legality can be found in Law Number 44/Prp of 1960 concerning Oil and Gas Mining, and Law Number 22 of 2001 concerning Oil and Gas. The two laws mentioned legally have similarities, and differences which of course affect the legal political direction of oil and gas management policies. The direction of oil and gas management policy in this law, mutatis mutandis, also has different legal consequences in oil and gas management according to the time it was in force (Hanafie et al., 2023)

The legal history approach to regulation of upstream oil and gas business activities in general can be divided into 3 (three) different periods. First, the upstream oil and gas business activities during the 1960 Oil and Gas Law, second, the enactment of the 2001 Oil and Gas Law, and third, based on the Constitutional Court Decision Number 32/PUU.X/2012 dated 13 November 2012 until now. Comparing these three laws can be stated as in Article 1 letter h of the Oil and Gas Law of 1960, which determines the general provisions for mining concessions, or mining concessions (KP). In legal terminology, this KP is the authority of the state to the

party appointed as the recipient of the authority to carry out its business activities in the utilization of oil and gas, and is an effective and efficient provision (Hanafie et al., 2023)

The enactment of Law No. 22 of 2001 concerning Oil and Natural Gas (Oil and Gas Law) also did not change the oil and gas management system. The contract system used by Law No. 22 of 2001 and Law No. 8 of 1971 concerning Pertamina is the same, namely the production sharing contract system as stipulated in Article 1 number 19 of Law No. 22 of 2001 concerning Oil and Natural Gas (Oil and Gas Law). (Indah Dwi Qurbani, 2012)

Based on the considerations in Law Number 22 of 2001, national development must be directed towards realizing the welfare of the people by carrying out reforms in all areas of national and state life based on Pancasila and the 1945 Constitution, so that as a strategic non-renewable natural resource, changes to regulations regarding oil and gas mining are expected to create oil and gas business activities that are independent, reliable, transparent, competitive, efficient, environmentally conscious, and encourage the development of national potential and roles as well as provide a legal basis for steps to renew and organize the implementation of oil and gas business. (Indah Dwi Qurbani, 2012)

The interpretation of the State's right to control has been interpreted broadly by the Constitutional Court through judicial review of several related laws, not only in terms of implementing policies (beleids) by the Government but also regarding administration (bestuurdaad), regulation (regelendaad), management (beeherdaad) and supervision (toezichthoudendaad), so that it is clear that policies in the management of agrarian resources that must pay attention to public interests must also be connected to human rights issues, meaning that responsiveness to human rights is firmly stated in the related legal instruments. (Yusran & Koswara, 2022)

The Human Rights Law (HAM), Article 6 paragraphs (1) and (2) of Law No. 39 of 1999 concerning HAM explains that: “In the context of enforcing human rights, differences and needs within customary law communities must be taken into account and protected by law, society, and the Government (Paragraph 1). The cultural identity of customary law communities, including rights to customary land, is protected, in line with developments in the times (Paragraph 2). This provision certainly indicates the need for a legal instrument in efforts to protect customary law communities (and their rights) and their culture related to the enforcement and protection of customary law communities' human rights by the government. (Zein & Nurvianti, 2017).

The key points for Indigenous Peoples' (MHA) involvement can be seen in the revised Article 25 of Law Number 26 of 2007 concerning Spatial Planning, which states that the AMDAL document must also include suggestions, input, and responses from communities directly affected by the business plan and/or activities. This provision adds the phrase "directly affected by relevant impacts," which is two-tiered, meaning that in addition to being directly affected, the community must also be relevant. This addition can be seen as an attempt to limit indigenous peoples' participation in the preparation of AMDAL documents. Definitive criteria for "directly affected" and "relevant" have also not been determined, thus creating an opportunity to reduce MHA participation. The composition of the AMDAL document Feasibility Test Team also eliminates the participation of MHA representatives. This poses a threat to indigenous communities, as harmonious relationships with the forest are a part of their daily lives, making it crucial for them to be involved in decision-making regarding large-scale forest management plans. (Indah Dwi Qurbani, 2012)

Such legal conditions do not make the position of customary law communities weak in terms of authority in regulating, in fact, with the presence of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter abbreviated as UUPA) which confirms that communities are recognized and protected as stated in Article 3, Article 5, Article 56 and Article 58 of UUPA which in essence states that the regulation of customary land is regulated based on customary law as long as it still exists, in accordance with the development of the

times, the principles of the Unitary State of the Republic of Indonesia. The cohesion of UUPA and Article 18 B paragraph (2) of the 1945 Constitution shows that there is a clear legal relationship which still provides the prerequisites for the recognition of customary law communities over customary land. (Salam et al., 2023)

Recognition of Customary Land Rights in accordance with PMA/KBPN No. 5/1999 This recognition requires the recognition of customary rights granted through the District Regulation (Perda) after going through a number of research stages. The results of the research are to assess whether the rights recognized by the community have met the criteria for customary rights stipulated by PMA/KBPN No. 5/1999. This ministerial regulation has several weaknesses in terms of the boundaries of the recognized customary land: it is not customary land that has been controlled by individuals/legal entities with land rights in the UUPA; and it is not on land plots that have been released. (Dyah Ayu Widowati et al., 2014)

Recognition of customary territories using Law No. 26/2007 Recognition can be done in two ways: recognizing customary territories as areas with strategic value, and recognizing customary territories as rural areas. This law is considered to have the advantage of regulating space in a more general sense, so that it applies to both forest and non-forest areas. However, the obstacle is the separation between space/territory and land rights. So even though there is a determination of strategic/rural areas that provide protection to customary law communities, there is no automatically clarity on land rights for them. (Dyah Ayu Widowati et al., 2014)

Explanation of MHA in Law Number 22 of 2001, Article 33 paragraph (3) letter a In this provision, what is meant by public places, public facilities and infrastructure are facilities provided by the Government for the benefit of the wider community and have a social function, such as: roads, markets, cemeteries, parks and places of worship.

And the explanation of Article 33 paragraph (4) Considering that public places, public facilities and infrastructure, fields and defense buildings are facilities built by the Government for the benefit of the Community or defense, permission is required from the relevant Government agency, taking into account community suggestions. Specifically for cemeteries, places considered sacred and land owned by indigenous communities, before issuing a permit from the authorized Government agency, it is necessary to obtain approval from the local community.

Article 11 paragraph (3), Article 33 paragraph (3), and paragraph (4) provide space for recognition of the existence of MHA in the Oil and Gas Law. This recognition in the Articles in question confirms the stages of recognition of MHA in oil and gas exploration activities.

The relationship between recognition of MHA can be understood from a human rights perspective, giving rise to the relationship between the government and citizens related to human rights. Human rights theory contains two forms of state obligations based on the Covenant on Economic, Social, and Cultural Rights (ECOSOC), namely (1) the obligation to act; (2) the obligation to produce results. The obligation to act includes: (1) the obligation to recognize; (2) the obligation to promote; (3) the obligation to respect; (4) the obligation to protect; and the obligation to fulfill. The existence of the obligation to recognize gives the state the obligation to recognize MHA in the context of human rights. (Gede Marhaendra Wija Atmaja, 2012)

Konstruksi Pasal Konstitusi dan Pasal dalam UU Migas yang menjamin masyarakat customary law, if we look back at the intersection of the state and MHA related to the management of natural resources/HMN, it is more about the weak position of MHA towards the state's interests in HMN to realize the welfare of the state. Normatively, the form of this guarantee does not clearly explain the guarantee for MHA, but the Oil and Gas Law provides an interpretation of what is meant by guarantee for MHA. If the MHA guarantee is linked to Article 28A and Article 28I paragraph (4), it requires the state to guarantee protection for MHA in the management of natural resources in customary areas. By constructing related laws in the management of natural resources and protection of human rights, it can be seen that the position

of customary law communities in the management of oil and gas receives a guarantee of recognition from the state and the PPLH Law in regional construction can be seen that there is recognition from the state towards MHA in the harmonization of laws and regulations.

Bagaimana Pengaturan Perlindungan Masyarakat Hukum Adat Dalam Pengelolaan Sumber Daya Alam Minyak Dan Gas Blok Warim di Papua Tengah

Prof. Dr. FX. Adji Samekto, S.H, M.Hum, presented on Globalization and the Challenges of Political and Legal Development of Natural Resources within the Framework of Sustainable Development. In this context, he explained the concept of human relations values in the environment and natural resources, and the existence of anthological aspects and human perspectives on the environment and natural resources in a global and national perspective. In a global perspective, according to him, there are three schools of thought, namely Ecopasis, Ecopopolis, and Ecodevelopmentalism. Ecopasis is simply explained as the environment and natural resources are more important than humans, Ecopopolis is related to the environment and natural resources for human welfare, while Ecodevelopmentalism is the balance of survival between natural resources and humans. "In a national perspective, if we look at it based on Pancasila, as the nation's outlook on life, then we can find one value that cannot be separated from the living unit of the Indonesian nation and its homeland," (“Tantangan Membangun Politik Hukum Dalam Pengelolaan SDA Indonesia,” 2022)

Peter Mahmud Marzuki stated that the place where the protection of public interests must be stated in the law (statutory regulations). Grammatically, protection itself means a place of shelter or protection, a reason that allows protection. Meanwhile, the theory of legal protection, in English is termed legal protection theory, and in Dutch the phrase theorie van de wettelijke bescherming is used, which means saving or providing assistance to legal subjects. The elements of legal protection itself philosophically include: a) Legal subjects, b) Protected objects, and c) Forms/methods and objectives of the protection itself. (Febrian Hilmi Firdaus, 2024)

The unity of customary law communities as legal subjects holding traditional rights is a central issue in the implementation of the fulfillment and protection of rights. Wiratraman explains the formulation of customary law communities as subjects of rights in the 1945 Constitution as follows. (Wospakrik & Hence Thesia, 2024):

1. Protection of indigenous peoples' rights is not individual, but rather a recognition of a "collective" (collective in nature);
2. Recognition of these "collective" rights is related to: First, the social unit of the "indigenous legal community." and Second, the traditional rights of that social unit.

This means that legal protection for indigenous legal communities is related to their collective nature as a legal community association, which also relates to their collective rights. The individual rights of indigenous legal communities are part of the scope of citizenship rights. The legal concept of indigenous legal community rights in our constitution means protection for the special "collective rights" of indigenous legal communities, due to the cultural identity and traditions inherent in indigenous legal communities.

The view in referring to customary law communities in the context of Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia is in the sense of being members or citizens of the Customary Law Community Unity. Afdilah Ismi Chandra's view, what is meant by "unity" in front of the customary law community is a symbol, which indicates the existence of two systems, which move and regulate various elements of a Customary Law Community Unity. Thus, KMHA can be conceptualized as an organization that includes interrelated elements, namely: a. the existence of a community whose citizens have a group feeling (in-group feeling); b. the existence of customary government institutions; c. the existence of customary assets and/or objects; and d. the existence of customary legal norms and e. the existence of a certain territory. (Gede Marhaendra Wija Atmaja, 2012)

Based on the considerations in Law Number 22 of 2001, national development must be directed towards realizing the welfare of the people by carrying out reforms in all areas of national and state life based on Pancasila and the 1945 Constitution, so that as a strategic non-renewable natural resource, changes to regulations regarding oil and gas mining are expected to create oil and gas business activities that are independent, reliable, transparent, competitive, efficient, environmentally conscious, and encourage the development of national potential and roles as well as provide a legal basis for steps to renew and organize the implementation of oil and gas business. (Indah Dwi Qurbani, 2012)

The natural resources sector is the sector that can provide the largest contribution to Non-Tax State Revenue (PNPB), however, this contribution is not in line with the conditions of people's prosperity. There is a disharmony and imbalance in the implementation of national development through natural resource management. This is because natural resource management has so far had quite a negative impact that has never been calculated as part of the results of national development. These impacts, mentioned by I Nyoman Nurjaya, include: 1) ecological degradation; 2) economic loss; 3) social and cultural destruction; 4) conflict over resource tenure; 5) human rights violations; and 6) poverty.12 In reality, these impacts are most experienced by vulnerable groups, such as indigenous communities, coastal communities (fishermen), and farmers. Their rights are most affected by corporations conducting business activities in the natural resource sector because they live near the operational areas. (Qurbani & Rafiqi, 2022)

Legal instruments relating to natural resources in the Indonesian legal system basically have the following characteristics and substantial weaknesses: (Tonggo Michael Sihombing et al., 2023)

a. Oriented toward the exploitation of natural resources (resources-use-oriented), thus ignoring the importance of conservation and the sustainability of natural resource functions, as the law is used solely as a legal instrument to support the achievement of economic growth targets and increase state revenue and foreign exchange;
b. Oriented toward and favoring large investors (capital-oriented), thus ignoring the access and interests of and stifling the economic potential of indigenous/local communities;
c. Adhering to the ideology of control and utilization of natural resources that is centered on the state/government (state-based resource management), resulting in a centralized orientation of natural resource management;
d. Natural resource management uses a sectoral approach, so that natural resources are not viewed as an integrated ecological system (ecosystem);
e. The sectoral nature of authority and institutions results in a lack of coordination and integration between sectors in natural resource management; and
f. The failure to fully recognize and protect human rights, particularly the rights of indigenous/local communities and the legal plurality in the control and utilization of natural resources.
g. Subsequently, after the government recognized the various substantial weaknesses mentioned above, a number of corrective measures were taken by creating new laws to manage natural resources. However, fundamental issues in natural resource management remain unaddressed in both the substance and implementation of these laws, as the following weaknesses remain:
    1) The government still dominates the control and utilization of natural resources (state-dominated resource management);
    2) Integration and coordination between sectors remain weak; third, the management approach is not comprehensive;
    3) The rights of indigenous/local communities to control and utilize natural resources have not been fully recognized;
    4) Space for community participation in natural resource management remains limited; and

5) Government transparency and accountability to the public in natural resource management have not been explicitly regulated.

Article 11 paragraph (3) of the Cooperation Contract as referred to in paragraph (1) must contain at least the following basic provisions, one of which is letter p. development of the surrounding community and guarantee of the rights of indigenous peoples;

Looking at the construction of Article 11 paragraph (3), it provides space for guarantees for the rights of indigenous peoples. Guarantees for indigenous peoples are already in Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, which recognizes the state of indigenous peoples, and Article 28A of the 1945 Constitution, which states, "Everyone has the right to live and the right to defend their life and livelihood."; Article 28I paragraph (3) "cultural identity and the rights of traditional communities are respected in accordance with the development of the times and civilization; paragraph (4) "The protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government."

The UN defines Indigenous People as “a broad spectrum of social groups, including Indigenous Ethnic Minorities, Tribal Groups, or Scheduled Tribes, that is, groups that have a social and cultural identity that can be distinguished from the dominant society, which makes them disadvantaged in the development process.” As will be seen later, the Special Autonomy Law has clearly not only adopted the spirit of the UN, but has also encouraged affirmative action policies. Referring to the Special Autonomy Law, at least three keywords are found, namely ‘Indigenous Peoples’, ‘Indigenous Law Communities’, ‘Indigenous Papuans’.

In the protection and recognition of KMHA specifically in Papua, it is contained in the Republic of Indonesia Law Number 2 of 2021 concerning the Second Amendment to Law Number 21 of 2001 concerning Special Autonomy for Papua Province (Papua Special Autonomy Law), namely, Article 1 number 20, Article 43 paragraph (1), Special Regional Regulation of Papua Province Number 23 of 2008 concerning Customary Rights of Customary Law Communities and Individual Rights of Customary Law Community Members to Land, Regional Regulation of Papua Province Number 5 of 2022 concerning Recognition and Protection of Customary Law Communities in Papua Province in Article 3, Article 15, Article 17 and Article 25.

Papua Provincial Regulation Number 5 of 2022 concerning the Recognition and Protection of Indigenous Peoples in Papua Province, is a legal recognition of KMHA in Papua based on territory and utilization of natural resources that do not harm and pay attention to the interests of MHA in Papua in the welfare of natural resource management. This can be linked to the Oil and Gas Law which provides guarantees for the existence of MHA in involvement in oil and gas management in customary areas. Related to Perdasi No. 5 of 2022 This is the latest and most comprehensive Regional Regulation at the provincial level (post-regional expansion). This Regional Regulation regulates: Official recognition of indigenous peoples (tribes, sub-tribes, clans, clans), Protection of rights to customary land, customary forests, and natural resources; Verification and determination of customary areas through a special committee. Main objectives: Providing legal certainty, respect, and protection of the rights of indigenous peoples in Papua Province.

Yance Arizona stated that in the context of Papua's special autonomy, the policy of recognizing customary forests must be seen as part of the pillars of Papua's unique dimension. Therefore, the Ministry of Forestry needs to create special regulations to accelerate the recognition of customary forests in Papua. "There is no longer a need for a subject recognition mechanism, because all traditional socio-political structures can be holders of customary rights, including in accelerating the recognition of customary forests." The politics of recognition through the Indigenous Peoples Bill and the operationalization of Papua's Special Autonomy continue to contest development legal policies such as the Job Creation Law and the Mineral and Coal Mining Law, as well as projects deemed more strategic by the national government.

The Perdasus lacks the power to operationalize special autonomy. The government ignores and ignores Perdasus in issuing HGU (Cultivated Land Use Rights) and permits for forest product utilization. (Yayasan Pusaka Bentala Rakyat, 2025)

Under current legal policy, the validity of regulations follows the hierarchy of their creators and the hierarchy of power. The lower the position of the person making the regulation, the weaker its validity. In this context, although regional regulations (Perdasus) effectively protect the rights of indigenous peoples, if ministerial and government regulations disregard the provisions stipulated in the Perdasus, the Perdasus will still be defeated, and that is what has been happening all along.

CONCLUSION

Indonesia is a country rich in mineral and gas natural resources (oil and gas), this makes Indonesia one of the countries that is a center for investment related to oil and gas. In terms of normative construction, the authority to manage oil and gas natural resources has been regulated in Article 33 paragraph (3) of the 1945 Constitution concerning the State's Right to Control (HMN), namely Law No. 22 of 2001 concerning Oil and Gas and related regulations in the management of natural resources. The connection between HMN and the control of customary territories by Indigenous Legal Communities (MHA) is an interesting point, where Article 18B of the 1945 Constitution and the existence of the Papua Special Autonomy Law and its derivative regulations have specifically provided space for the protection of MHA in Papua, specifically in Agimuga, as well as the relationship between Article 28I Paragraph (3) of the 1945 Constitution of the Republic of Indonesia related to human rights. In Article 11 paragraph (3) of the Oil and Gas Law, there can be space for the protection of MHA in the exploration area of oil and gas natural resources by the state that is not being paid attention to. In order to guarantee more regular protection for MHA, the presence of the Law on Customary Law Communities norms has become a lex specialis in the protection of MHA, especially in natural resources in Indonesia.

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