

LEGAL PROTECTION FOR THE CUSTOMARY LAW COMMUNITY OF THE AMUNGME TRIBE WHOSE LAND IS AFFECTED BY MINING ACTIVITIES BY PT FREEPORT INDONESIA

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Abstract

Protection of the unity of customary law communities to defend their constitutional rights if there is a law that is detrimental to their constitutional rights is enshrined in Law Number 24 of 2003 on Constitutional Court *juncto* Law Number 8 of 2011 on Amendments to Law Number 24 of 2003. The purpose of this research is to analyze legal protection for customary law communities over their customary land rights in the mining area, the implementation of the customary rights of the Amungme tribal customary law community in Papua on which there is gold mining carried out by PT Freeport Indonesia, and the ideal legal politics for customary law communities whose customary lands are affected by mining. The research method used in this study is normative juridical. The unclear boundaries of recognition become a potential conflict (dispute) against the existence of the position of customary rights over land today in Papua Province, which have a diversity of customary law communities (tribes/clans/clans) spread based on the ecology of highland culture (mountainous, pre-mountainous, and lowland areas) in Papua. Customary law communities are allowed to deal directly with mining entrepreneurs who will use customary land for their mining business activities. The need for the formation of associations such as in mining, such as in Lihir Papua New Guinea, will provide legal certainty and maximum benefits for the Amungme customary law community

Keywords: *Customary Law Community; Customary Land*

1. INTRODUCTION

The concept of state control over natural resources in Indonesia, including minerals and coal, is clearly regulated in Article 33 paragraph (3) of the 1945 Constitution, which states "The land and water and the natural resources contained therein are controlled by the state and utilized for the greatest prosperity of the people". The proclamation of independence on August 17, 1945 marked a new chapter in Indonesia's legal development. The Proclamation of Independence replaced the colonial legal system and established a new legal framework: a national legal system adapted to the needs and character of the nation.¹ The next section outlines the new legal regime in the field of mineral and coal mining. As mentioned at the beginning of the article, the development of mineral and coal mining policies is carried out not only with separate regulations regarding coal mining and extraction, but also with other regulations related to minerals and coal, so that this can be discussed. This discussion also covers other regulations that are closely related to minerals and coal.

¹ Indra Perwira, "Realitas Politik Hukum Perundang-Undangan Indonesia Pasca Reformasi," *Padjadjaran Law Review* 5, no. 1 (December 2017), <https://jurnal.fh.unpad.ac.id/index.php/plr/article/view/463>.

Based on Article 33 paragraph (3) of the 1945 Constitution, the development of land, water, and natural resources in Indonesia has essential elements that include the following: These two main factors constitute the core of all land, water, and natural resource exploitation (hereinafter referred to as natural resources) This provision serves as the philosophical and legal foundation for the state's authority in managing natural resources in Indonesia.²

Indonesia has mining laws that regulate mining and processing activities since the colonial era of the Dutch East Indies until the period of independence. This includes the Dutch East Indies era up to the present day: implementation and modifications or replacements during the Old Order, New Order, and Reform Order. The mining law enforced during the Dutch colonial era was the *Indische Mijnwet* (Indies Mining Law) of 1899 (Staatblad 1899-214).³ The main purpose of the establishment of Indo-Mijnwet was to protect the economic interests of the Netherlands and ensure full control over natural resources by granting exclusive rights to Dutch companies. However, during the period of independence and the old order, mining laws focused on revoking mining rights and nationalizing Dutch mining companies operating in Indonesia.

The mining regulations that were in effect during the New Order era were Law Number 11 of 1967 on Basic Provisions of Mining.⁴ Reform is necessary in all sectors, including the mining sector. One of them is the transition from a centralistic paradigm towards maximum regional autonomy based on Law Number 32 of 2004 on Regional Government. On January 12, 2009, Law Number 4 of 2009 on Mineral and Coal Mining came into effect. This law is aimed at addressing strategic environmental challenges and the impact of globalization to promote democratization, regional autonomy, human rights, environmental protection, and technological development.⁵

In carrying out the management of natural resources in Indonesia, the government is obligated to respect the unity of customary law communities. This is emphasized in Article 18B paragraph (2) of the 1945 Constitution, which states: “The state recognizes and respects the unity of customary law communities 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, as regulated by law”. This provision creates a constitutional obligation for the state (a) to recognize and respect indigenous peoples, and (b) to obtain recognition and respect for their traditional rights.

Legal protection ensures national and/or societal protection for citizens in carrying out their functions, rights, duties, and roles in accordance with applicable laws and regulations. To provide legal protection for indigenous communities, the government has established several laws and regulations, including:

1. Law Number 39 of 1999 on Human Rights;

² Ahmad Redi, *Hukum Sumber Daya Alam dalam Sektor Kehutanan* (Jakarta: Sinar Grafika, 2014).

³ Sajuti Thalib, *Hukum Pertambangan Indonesia* (Bandung: Penerbitan Akademi Geologi dan Pertambangan, 1974).

⁴ Ahmad Redi and Luthfi Marfugah, “Perkembangan Kebijakan Hukum Pertambangan Mineral dan Batubara di Indonesia,” *Undang: Jurnal Hukum* 4, no. 2 (November 21, 2021): 473–506, <https://doi.org/10.22437/ujh.4.2.473-506>.

⁵ Redi and Marfugah, “Perkembangan Kebijakan Hukum Pertambangan.”

2. Law Number 5 of 1960 on Basics Agrarian Principles;
3. Law Number 3 of 2020 on Amendments to Law Number 4 of 2009 on Mineral and Coal Mining;
4. Law Number 18 of 2004 on Plantation;
5. Law Number 1 of 2014 on Amendments to Law Number 27 of 2007 on Coastal Zone and Small Islands Management;
6. Law Number 32 of 2009 on Protection and Management of Environment;
7. Law Number 6 of 2023 on tentang Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation to Become Law;
8. Decision of Minister of Energi and Natural Resources Number 301.k/mb.01/MEM.B/2022 on National Management Plan of Mineral dan Coal Year 2022–2027.⁶

Gustav Radbruch put forward the concept of the idea of *das recht* which requires three legal goals, namely justice, utility, and legal certainty. Located right on the equator, Indonesia is known for its development as a very fertile country. Agriculture is the most important source of livelihood for the community. The development of the concept of customary law is of course also rooted in the condition of agrarian society. It all started from the lives of indigenous people who made a living from agriculture. The emerging concepts of customary law include "*malo*" (profit sharing); for cooperation in cultivating the land, "*Sepikul Segendongan*"⁷ for inheritance law, "*Panjer*" for the legal basis of buying and selling, "*Petuk*" and "*Girik*"⁸ for land tax, as well as "Tribute" to pay taxes to the State. Furthermore, in this customary law, the ownership of land that is "public" is known as "customary rights" and the maintenance of this public property, is carried out by mutual cooperation.⁹

The purpose of this research is to analyze the legal protection of customary law communities over their customary land rights in the Mining area and the implementation of the customary rights of the customary rights of the Amungme tribal customary law community in Papua on which there is gold mining carried out by PT Freeport Indonesia.

2. RESEARCH METHODS

The research method used in this study is normative law. The approaches used are the legislative approach, the legal case approach, the historical approach, and the conceptual approach. Meanwhile, the legal materials used include primary, secondary, and tertiary legal materials.

⁶ Marthen B. Salinding, "Prinsip Hukum Pertambangan Mineral dan Batubara yang Berpihak Kepada Masyarakat Hukum Adat," *Jurnal Konstitusi* 16, no. 1 (April 2019): 148, <https://doi.org/10.31078/jk1618>.

⁷ Ilham Ahmad Hikamur Rosyid and Krisno Aji, "Penerapan Pewarisan Sistem Waris Adat dalam Pembagian Waris Masyarakat Jawa Timur (Studi Kasus Pembagian Waris Masyarakat Jombang)," *Causa: Jurnal Hukum dan Kewarganegaraan* 1, no. 12 (2023): 51–60, <https://doi.org/10.3783/causa.v1i12.1556>.

⁸ Sri Handayani, Pius Triwahyudi, and Soehartono, "Pendaftaran Hak Atas Tanah Asal Leter C, Girik Dan Petuk D Sebagai Alat Bukti Permulaan Di Kabupaten Sleman Daerah Istimewa Yogyakarta," *Jurnal Repertorium* 2, no. 2 (July-December 2015): 126–135, <http://jurnal.hukum.uns.ac.id/index.php/repertorium/article/view/764>.

⁹ Jogi Tjiptadi Soedarjono, "Kontrak Production Sharing Sebagai Landasan Kegiatan Eksplorasi/Eksploitasi Minyak di Lepas Pantai" (undergraduate thesis, Universitas Indonesia, 1984).

3. ANALYSIS AND DISCUSSION

3.1. Legal Protection of Customary Law Communities on Mining Areas

According to Sutiono, legal protection is an action or effort to protect the community from arbitrary and unlawful actions carried out by the authorities in order to uphold order and peace and enable the community to exercise its dignity and humanity.¹⁰ Likewise, the unity of the common law community as a legal consequence of the recognition and respect for the 1945 Constitution both in the primary, secondary, and tertiary constitutions.

In the customary law literature that developed during the Netherlands East Indies, the customary law community or *Rechtsgemeenschappen* customary law is semantically the same and consistent with the village or *Volks gemeenschappen*, and two regulations related to the village (one on the island of Java, the other on the island of Java). Because these two regulations respect the traditional rights of customary law communities, villages and customary law communities are called village republics (*dorps republiek*).¹¹

Viewed from the historical background, customary law communities in the Indonesian Archipelago has a very old historical and cultural background and long before the formation of kingdoms and nations.¹² Historically, members of Indonesia's common law community and the surrounding ethnic groups have actually been immigrants from other regions in Southeast Asia. Culturally, they belong to the Austronesian cultural environment, which is a cultural environment of growing rice with a communal structure and collectively organized property rights, especially the property rights of customary lands. In political life, some ethnic groups managed to control other tribes and their territories, forming traditional kingdoms on a local and regional scale.¹³

According to Moh. Koesnoe, the four functions related to traditional rights¹⁴ in the communion of rural communities regarding maintaining harmony between the community and the universe system includes: Government function, Spirit maintenance function, Religious maintenance function, Customary law development function.¹⁵

The recognition, respect, and protection of the unity of customary law communities have experienced ups and downs along with the development of the form of Indonesia's state, namely a unitary republic. The existence of

¹⁰ Setiono, "Rule of Law" (thesis, Universitas Sebelas Maret, Surakarta, 2004).

¹¹ Nanang Subekti et al., *Membangun Masa Depan Minangkabau dari Perspektif Hak Asasi Manusia* (Jakarta: Pademangan, 2007).

¹² Jawahir Thontowi, "Pengaturan Masyarakat Hukum Adat dan Implementasi Perlindungan Hak-Hak Tradisionalnya," *Pandecta: Research Law Journal* 10, no. 1 (June 2015), <https://doi.org/10.15294/pandecta.v10i1.4190>.

¹³ Safroedin Bahar, *Seri Hak Masyarakat Hukum Adat: Inventarisasi dan Perlindungan Hak Masyarakat Hukum Adat* (Jakarta: Komisi Nasional Hak Asasi Manusia, 2005).

¹⁴ Ni Nengah Adiyaryani, "Penyelesaian Perkara Terhadap Pidana Adat Oleh Kerta Desa Di Bali," *Jurnal Majelis: Media Aspirasi Konstitusi* 2 (August 2020): 239.

¹⁵ Adiyaryani, "Penyelesaian Perkara Terhadap Pidana Adat."

Volksgemeinschaften (customary areas) such as Javanese villages, Nagari in Minangkabau, settlements and clans in Palembang, Futa in Tapanuli, and Gampong in Aceh is still difficult to find, but its existence is still minimally recognized and respected as a unitary government.

From 1999 to 2002, the 1945 Constitution was amended in four stages. The constitution adopted after the 1945 amendment distinguishes between special and special local government units, and the regulations governing the *Volksgemeinschaften* (general jurisdiction) are discussed in separate paragraphs. Approval of the *Volksgemeinschaften* must also be based on certain constitutional requirements. This is of course different from the 1945 Constitution which before the amendment classified *Landschappen* and *Volksgemeinschaften* as special regions that have the right to self-determination.¹⁶

The protection of the unity of customary law communities to defend their constitutional rights if there is a law that is detrimental to their constitutional rights is enshrined in Law Number 24 of 2003 on Constitutional Court *juncto* Law Number 8 of 2011 on Amendments to Law Number 24 of 2003 (hereinafter referred to as the Constitutional Court Law). However, there are certain conditions that must be met so that the unity of customary law communities has legal standing to apply for legal testing at the Constitutional Court because not all customary law communities have legal standing in testing laws.¹⁷

Legal protection of customary law communities in mining areas can be seen from several perspectives: Towards the establishment of the Indonesia nation. The recognition and respect for common law communities by the state carries philosophical implications that the state will always maintain, protect, and enforce the constitutional rights of customary law communities. The position of the state is in accordance with the second, third, fourth and fifth precepts of Pancasila. The constitutional rights of customary law communities include the right to manage land (urayat rights), the right to manage and regulate their own household affairs (autonomy rights), and the right to harvest natural products.¹⁸

In terms of law, recognition by the Constitution of the Republic of Indonesia, although it contains regulations that are not in accordance with the 1945 Constitution, at least gives indigenous peoples the right to their rights, regardless of the conditions: It provides an opportunity to protect and fight for rights. It is unclear whether the steps contained in the 1945 Constitution are still questionable. In addition, it is a constitutional basis for state governments on how they should treat indigenous peoples. In addition to the amendment of the 1945 Constitution, history records that Indonesia has several national legal instruments that recognize the existence of indigenous peoples, including:

¹⁶ Adiyaryani, "Penyelesaian Perkara Terhadap Pidana Adat."

¹⁷ Adiyaryani, "Penyelesaian Perkara Terhadap Pidana Adat."

¹⁸ Nabilah Apriani and Nur Shofa Hanafiah, "Telaah Eksistensi Hukum Adat Pada Hukum Positif Indonesia Dalam Perspektif Aliran Sociological Jurisprudence," *Jurnal Hukum Lex Generalis* 3, no. 3 (March 2022): 231–46, <https://doi.org/10.56370/jhlg.v3i3.226>.

- a) Law Number 5 of 1960 on Basics Agrarian Principles is a legal product that first affirms its recognition of customary law. This provision can be seen in Article 5 which states that "Agrarian law that applies to the earth, water and space is customary law, as long as it does not conflict with national and state interests based on national unity". Article 5 is a formulation of awareness and the fact that most people are subject to customary law, so that the legal awareness owned by the Indonesian nation is legal awareness based on custom. It's just that the spirit of this law, then less attention, due to the shift in economic politics and agrarian law.¹⁹ Nevertheless, this law is still a positive law that regulates agrarian matters. Therefore, it is still a legal tool in strengthening the rights of indigenous communities.
- b) Decree of the People's Consultative Assembly (*Ketetapan Majelis Permusyawaratan Rakyat/TAP MPR*) Number XVII/MPR/1998 on Human Rights first contains provisions on the recognition of the rights of indigenous peoples. In Article 41 of the Human Rights Charter, which is an integral part of the TAP MPR, it is emphasized that "The cultural identity of traditional communities, including the right to customary land is protected, is in line with the times". With the existence of this article, the rights of existing indigenous peoples are determined as one of the human rights that must be respected, and one of those rights according to this article is the right to customary land.
- c) Law Number 39 of 1999 on Human Rights as an operationalization of the TAP MPR Number XVII/MPR/1998 which affirms that the rights of indigenous peoples are part of the Rights of Human Beings. Article 6 of Law Number 39 of 1999 states: (1) In the context of upholding human rights, differences and needs in customary law societies must be considered and protected by law, society, and government; (2) The cultural identity of customary law communities, including the right to protected customary land, is in line with the development of the times.²⁰ The explanation of Article 6 paragraph (1) of this Law states that "customary rights" that are still valid and upheld in the community of customary law must be respected and protected in the context of the protection and enforcement of Human Rights in the society concerned by paying attention to laws and regulations. Meanwhile, the explanation for paragraph (2) states that in the context of upholding human rights, 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 state law that are centered on justice and people's welfare.²¹

¹⁹ M. Misbahul Mujib, "Kajian Sosio Historis Hukum Adat Dalam Konstitusi Indonesia," *Supremasi Hukum: Jurnal Kajian Ilmu Hukum* 4, no. 1 (June 2015): 200–210, <https://doi.org/10.14421/sh.v4i1.1978>.

²⁰ Mujib, "Kajian Sosio Historis."

²¹ Mujib, "Kajian Sosio Historis."

- d) TAP MPR Number IX/MPR/2001 on Agrarian Reform and Management of Natural Resources, the rights of indigenous peoples are not only limited to customary land rights, but also concern agrarian resources/natural resources, including cultural diversity in their management and utilization. It is stated in Article 4 that "Agrarian reform and natural resource management must be carried out in accordance with the principles of recognition, respect, and protection of the rights of customary law communities and the nation's cultural diversity over agrarian resources/natural resources". In general, TAP MPR Number IX/MPR/2001 was born due to the empirical situation of centralistic, exploitative natural resource management, impoverishing the people (including indigenous peoples) and inequality in the structure of control and ownership. and massive environmental damage. Therefore, the TAP MPR mandates agrarian reform by the government in terms of management of natural resources based on the principles of respect for human rights, democratization, transparency, and people's participation, justice of control and ownership, as well as recognition, respect, and protection of indigenous peoples.
- e) Law Number 32 of 2004 on Regional Government is more focused on affirming the rights of customary law communities to manage their political and governmental systems in accordance with the provisions of local customary law. Article 203 paragraph (3) states that "The election of the Village Head in the unity of the customary law community and their traditional rights as long as they are alive and whose existence is recognized shall apply to the provisions of local customary law stipulated in the regional regulation guided by Government Regulations". This article also gives meaning that customary law communities according to their development can develop their form of alliance into a village-level government as mentioned in the explanation of Article 202 paragraph (1) that "The villages referred to in this provision include, among others, Nagari in West Sumatra, Gampong in NAD province, Lembang in South Sulawesi, Villages in South Kalimantan and Papua, and Negeri in Maluku".²²

From a sociological point of view, positive law is said to be valid if it contains or is in line with the existing law in society. This is the opinion of Eugen Erlich and Lescou Pound when considering law, or better known as the legal theory of sociology of jurisprudence. Savigny further emphasizes the organic and inseparable relationship between law and the nature and character of the state. As to the relationship between society and law, what the philosophers said earlier was logical: the emergence of law is accompanied by the emergence of social problems, and the laws that prevail in a society are the result of the laws that exist in that society being thoroughly considered.

²² Mujib, "Kajian Sosio Historis."

This meaning means that the laws of one society can be different from the laws of other societies.²³

Based on this division, this is where the law is not only born from social reality, but also as a tool of social engineering.²⁴ The existence of the division is expected to be able to protect all interests. Human interest conflicts in society are inevitable, because there are differences in interests.²⁵ Law is necessary and arises from conflicts in society. Therefore, here the law positions itself as a tool of social engineering.

Laws must be made not only based on the interests of individuals and groups, but also the interests of the wider community, and must be made in such a way that protection can be felt by all levels of society, both individuals and groups, without discrimination.

Mohtar Kusumaatmaja expands the idea of the Kolam Rescou Indonesia, where law is a tool of social engineering. Pound tends to only take one side of his opinion, that law is a means to transform or reform society, but in reality the application of law as a means of social renewal has a social impact. Protecting the community from causing unrest and socio-political.²⁶

Koentjaraningrat²⁷ predicted about 30 years ago, if the Indonesia government did not take the right and satisfactory policies for the people of Irian Jaya (now Papua), social problems would arise and become "homework" for the Indonesia government. This prediction became a reality, and Cendrawasi was integrated into the Republic of Indonesia in 1963 and the conflict continues to this day.²⁸

The long historical journey since the colonial colonization of the Netherlands and the desire to have its own government sharpened the dislike of the Papuan people towards foreigners or non-Papuans. Although *de facto* in 1963 Irian Jaya joined Indonesia,²⁹ but culturally it has not been integrated. The Papuan people actually never felt part of the unitary state of the Republic of Indonesia, where they did not recognize the agreement between the Netherlands government that handed over their colony of the Dutch East Netherlands to the Republic of Indonesia. They never felt like they were colonies of the Netherlands but were more likely to join the Melanesian archipelago of the South Pacific. The unfair treatment and behavior of the migrants assigned to Papua made the people's displeasure with non-Papuans deepened and the

²³ Dominikus Rato, Fendy Setyawan, and Koko Roby Yahya, "Aliran Hukum Sociological Jurisprudence dalam Perseptif Filsafat Hukum," *Jurnal Insan Pendidikan dan Sosial Humaniora* 1, no. 1 (February 2023): 45–60, <https://doi.org/10.59581/jipsoshum-widyakarya.v1i1.76>.

²⁴ Harpani Matnuh, "Law as a Tool of Social Engineering," in *Proceedings of the 1st International Conference on Social Sciences Education - "Multicultural Transformation in Education, Social Sciences and Wetland Environment" (ICSSE 2017)* (Paris, France: Atlantis Press, 2018), <https://doi.org/10.2991/icsse-17.2018.28>.

²⁵ Mujib, "Kajian Sosio Historis."

²⁶ Darji Darmodiharjo and Shidarta, *Pokok-Pokok Filsafat Hukum: Apa dan Bagaimana Filsafat Hukum Indonesia* (Jakarta: Gramedia Pustaka Utama, 1995).

²⁷ Koentjaraningrat, *Sejarah Teori Antropologi I* (Jakarta: UI Press, 1987).

²⁸ Yoseph Yapi Taum, "Kekerasan dan Konflik di Papua: Akar Masalah dan Strategi Mengatasinya," *Jurnal Penelitian* 19, no. 1 (2015): 1–13, <https://e-journal.usd.ac.id/index.php/JP/article/view/980>.

²⁹ Nevriza Wahyu Utami, "3 Alasan Papua Masuk ke Indonesia, Nomor Satu Penyerahan Kekuasaan Belanda," *Okezone News*, February 15, 2023, <https://nasional.okezone.com/read/2023/02/15/337/2764672/3-alasan-papua-masuk-ke-indonesia-nomor-satu-penyerahan-kekuasaan-belanda>.

desire to break away from the Republic of Indonesia became stronger. The first uprising of the Papuan people on July 26, 1965 by Papuan battalion soldiers and its series gave birth to an organization that demanded an independent Papua and was called the Free Papua Organization (*Organisasi Papua Merdeka/OPM*) by the Indonesia government which was then led by the late Kelly Kwalik.³⁰

3.2. Implementation of Customary Rights Land of the Amungme Tribal Customary Law Community in Papua on which There is Gold Mining Carried Out by PT Freeport Indonesia

The concept of customary right ownership can be seen from the strength of its enforcement. According to Muhammad Bakri, customary rights have the power to apply inward and outward. Having strength going into the composition consists of:³¹

- a) The legal society in the sense that its members can jointly collect the produce of the soil and the animals and plants found there without being preserved;
- b) The legal society may restrict the freedom of movement of its members over the land for its own interests. The relationship between the rights of the sovereign and the rights of the individual is contraction-expanding, reciprocal and endlessly reciprocal. This means that if individual rights are strengthened, the rights of lords are weakened. Likewise, if individual rights are weakened, then the rights of the lord are strengthened;
- c) Members of the community can hunt and collect forest products for their own use and obtain property rights from what they obtain;
- d) Community members can take trees that grow by themselves in the forest by attaching a sign and performing worship;
- e) Members of the community have the right to open land, namely organizing their own relationship with a piece of land by giving signs and performing worship (traditional ceremonies);
- f) Indigenous peoples can determine land for common interests such as for food, public grazing, and others.

The unclear boundaries of recognition become a potential conflict (dispute) to the existence of the position of customary rights over land today in Papua Province, having a diversity of customary law communities (tribes/clans/clans) which are scattered based on the ecology of highland culture (high land): mountainous, pre-mountainous, and lowland areas: rivers/rivers, lakes, swamps, coasts, and islands/archipelagos with seven customary territories in the land of Papua, namely La Pago, Me Pago, Ha Anim, Saireri, Tabi/Mamta (in Papua province), Bomberay, and Domberai (West Papua Province), and with the diversity of customary government structures.

³⁰ Utami, "3 Alasan."

³¹ Muhammad Bakri, *Hak Menguasai Tanah Oleh Negara: Paradigma Baru Untuk Reformasi Agraria* (Yogyakarta: Citra Media, 2007).

According to J.R. Mansoben (1994) there are four types of traditional political systems in Papua, namely Big Man System, Clan System, Kingdom System, and Mixed Leadership System. The four types of customary government have an important role in the control and ownership of customary rights over customary land of customary law communities and individual lands of customary law communities, respectively based on the kinship system and customary law institutions. Therefore, it is necessary to identify and arrange customary territorial boundaries and customary rights to customary land and/or study ideal and procedural rules in the system of control, utilization, and ownership of customary rights to customary land based on indigenous knowledge, kinship law system and legal institutions.³²

Adat as a qualitative reference to support the identification of the preparation of regional spatial planning in seven development areas of Mimika regency including district areas, and village areas administratively and/or quantitatively. Another example is for example as a first step in the government's attitude in terms of land policy as stated in the various formations of Customary Rights Regulations in districts/cities in Papua Province. Furthermore, for example, against "Recognition of Customary Rights on the Land of the Amungme Customary Law Community in the Mining Area of PT Freeport Indonesia in Mimika Regency", by the state in the form of a Regional Land Regulation (*Peraturan Daerah/Perda*).³³ The issue of the existence of PT Freeport Indonesia operates in the area of the Amungme customary law community in the highland cultural ecological area and the Kamoro tribe in the lowland cultural ecological area.³⁴

Culturally and legally in the Amungme customary law community in Mimika Regency, where customary rights to land in three valleys, namely the valley of the Tsinga customary law community, the valley of the Waa Banti customary law community, and the valley of the Arwanop customary law community in the mining area of PT Freeport Indonesia, with the boundaries of control, ownership of Land Policy Arrangement and the use of customary rights over land in the cultural and legal order applicable in the regulation on the spatial arrangement of customary territories (customary rights over customary land) is a rule that is passed down by the indigenous people of Mimika district from generation to generation orally, so that the clarity is very relative. These two things have resulted in many internal and external conflicts in handling problems related to customary rights to the customary land of the indigenous people of Jayapura regency with the government, the private sector or the business world (entrepreneurs/companies).³⁵

Conflicts or problems that often occur result in different attitudes or perceptions between the government (bureaucrats), the community, and the Law in particular

³² Frans Reumi, "Pluralisme Hukum dan Kebijakan Pertanahan di Papua," in *Prosiding Penataan Kebijakan Pertanahan Nasional Untuk Sebesar-besarnya Kemakmuran Rakyat*, 14–43 (Jakarta: Sekretariat Jenderal MPR RI, 2019), 2, https://mpr.go.id/img/jurnal/file/210421_PROSIDING%20PERTANAHAN%20PAPUA.pdf.

³³ Reumi, "Pluralisme Hukum."

³⁴ Eric Hirsch, "New Boundaries of Influence in Highland Papua: 'Culture', Mining and Ritual Conversions," *Oceania* 71, no. 4 (June 2001): 298–312, <https://doi.org/10.1002/j.1834-4461.2001.tb02755.x>.

³⁵ Hirsch, "New Boundaries."

(Law Number 5 of 1960 on Basics Agrarian Principles). Conflicts of customary rights over customary land that occur from the government's side are often seen as an obstacle to development on the part of the community, while the law only provides recognition, not regulation. So that it raises the attitude or view of the Amungme customary law community in the three valleys, as a form of deprivation of customary rights over land that has been owned for generations. As a strategic step, the regional development planning of Mimika Regency is to support the improvement of the spatial preparation of customary territories on the customary land of Mimika Regency as mentioned above.

It is very necessary to conduct a fundamental study from a cultural and legal perspective regarding the arrangement or mapping of the boundaries of customary rights to customary land (spatial planning of customary territories or space of customary rights to land), so that it is reflected in the "Recognition of Customary Rights on the Land of the Amungme Customary Law Community in the Mining Area of PT Freeport Indonesia in Mimika Regency", in the customary law community there are 11 customary areas in the land of Amungsa, but the focus of the study is three customary areas, namely the valley of the Tsinga customary law community, the valley of the Waa Banti customary law community, and the valley of the Arwanop customary law community in the mining area of PT Freeport Indonesia.³⁶

At the same time, the state or incomplete legal rules that accommodate and regulate aspects of control and ownership of customary land rights inherited collectively by tribes, clans/*keret/faam* and nuclear families in the form of customary land. In other parts, the implementation of the law on customary land by the Amungme customary law community in three customary law community valleys: the Tsinga customary law community valley, the Waa Banti customary law community valley, and the Arwanop customary law community valley in the mining area of PT Freeport Indonesia, which is built on the basis of collectivity, tends to be oriented towards individualism alone, has not yet provided a place for the regulation of customary land rights motivated by cultural, legal, and customary law conceptions that build on the basis of collectivity. This problem is made worse by cultural and legal pluralism (legal/cultural pluralism) and/or the difference in legal systems (state law, customary law, religious law, and other customs) cultural pluralism includes: social structure and organization as well as the basic structure of the traditional economy that underlies the control and ownership and utilization of customary land in the three valleys of the territory of indigenous peoples in Mimika Regency today.³⁷

Observing the difficulties in recognizing and regulating customary land as mentioned above, which is caused by the legal and cultural orientation that is between customary law, religious law and state law on the one hand and cultural diversity with tribal, clan, *keret*, and *fam* groups in three customary law community areas of Mimika

³⁶ Roni Sulistyanto Luhukay, "Tanggung Jawab PT Freeport Indonesia Terhadap Penanganan Kerusakan Lingkungan Akibat Pertambangan di Kabupaten Ninika Papua," *Lex Et Societas* 4, no. 3 (2016): 84–92, <https://doi.org/10.35796/les.v4i3.11533>.

³⁷ Reumi, "Pluralisme Hukum."

regency on the other hand, the problem faced conceptually is the emergence of differences in perception between Amungme customary law communities, The Regional Government, and PT Freeport Indonesia regarding the recognition and protection of customary rights to land, resulting in a "statement regarding where should efforts to provide a place for the recognition and regulation of customary rights to land by and in State law begin?" and/or in the form of Regional Regulation on "Recognition of Customary Rights on the Land of the Amungme Customary Law Community in the Mining Area of PT Freeport Indonesia in Mimika Regency" in order to implement sustainable development for the welfare and justice of the general public, especially in three valleys of the Amungme customary law community, namely the valley of the Tsinga customary law community, the valley of the Waa Banti customary law community, and the valley of the Arwanop customary law community in the mining area of PT Freeport Indonesia.³⁸

On January 6–7, 1974, a meeting was held between the Amungme tribe and PT Freeport Indonesia and the Government of Indonesia known as the "January 1974 Agreement." In the two-day meeting, a "written agreement" was produced, the essence of which was, PT Freeport Indonesia is willing to build a school and teachers' housing, a polyclinic and nurses' housing, a market and shopping center, and build several people's houses. However, in the last point of the agreement, it is said that the Amungme Tribe Community is prohibited from entering the PT Freeport Indonesia Employee Housing city in Tembagapura.³⁹ Freeport Indonesia Company obtained the first contract work permit in Indonesia during the new order era under the regime of "President Soeharto".⁴⁰ Previously, in the era of President Soekarno, he was very anti-capitalist and opposed the hegemony of the United States.

On April 27, 1967, an American mining company called Freeport Minerals Company was allowed to exploit a copper mine amounting to 30,000,000 tons called a contract of works volume 1. Starting with the results of a Netherlands geologist expedition in 1936, a geologist Jean Dozy and 2 of his colleagues came to Holland (now Puncak Jayawijaya Papua is better known as Puncak Cartenz). The name of the mine location is Erstberg.

Based on the MoU dated July 13, 2000 signed by Lemasa and PT Freeport Indonesia, Freeport stated that it recognizes and respects the customary land. In addition to profit sharing, according to Markus, the MoU also states that the mining company from the United States will build various facilities for residents, such as education, road construction, people's economic development, and social assistance. the Amungme and Comoros tribes in Timika, Papua, collect a 1% share of PT

³⁸ Reumi, "Pluralisme Hukum."

³⁹ John Magal, "Setengah Abad PT Freeport Keruk Gunung Keramat Orang Amungsa," *Jubi.id*, April 10, 2024, <https://jubi.id/opini/2024/setengah-abad-pt-freeport-keruk-gunung-keramat-orang-amungsa/>.

⁴⁰ Ahmad Redi, "Kontrak Karya PT Freeport Indonesia Dalam Perspektif Pancasila dan UUD NRI 1945," *Jurnal Konstitusi* 13, no. 3 (2016): 613–38, <https://doi.org/10.31078/jk1337>.

Freeport Indonesia's gross mining profits. The profit sharing was triggered in a MoU between the two major tribes and Freeport in 2000.⁴¹

The delegates of PT Freeport Indonesia and the Amungme-Kamoro Tribe Community went to New Orleans, United States to enter into an agreement on the provision of trust funds to the Amungme-Kamoro Tribe Community by making an offer to buy part of the shares of PT Freeport Indonesia, and that PT Freeport is willing to grant the Trust Fund to the Customary Rights Owners Community in the amount of \$1,000,000 per year, with details of \$500,000 for the Amungme Tribal Community and \$500,000 for the Kamoro Tribal Community.⁴² Trust funds will be taken from the 1% Gross Income Fund of PT Freeport Indonesia.⁴³ However, the use of the trust funds until now is unclear. Meanwhile, the Amungme-Kamoro people remain poor on top of their abundant wealth. With a share ownership of 9.36%, of course, the economic benefits obtained by the Government of Indonesia are not optimal, even the role of the Indonesia government is also insignificant in the Company's management process starting from Planning, Organizing, actuating, to Controlling and promoting national interests in PT Freeport Indonesia Company.⁴⁴

That based on monitoring and investigation, data, information and facts were obtained as follows:⁴⁵

- 1) That the basis for the entry of PT Freeport Indonesia is mining in Timika because of the Contract of Work between the Government of the Republic of Indonesia and PT Freeport was signed on April 7, 1967 without involving the Amungme community.⁴⁶ According to Halim H.S., "initially, the guidelines used in the implementation of the work contract were Law Number 1 of 1967 on Foreign Investment and Law Number 11 of 1967 on Basic Provisions of Mining."⁴⁷
- 2) The Amungme Tribe community was only involved long after the Labor Contract, namely in the January Agreement⁴⁸ which is an agreement between Freeport Indonesia and the Amungme Community which was implemented on January 8, 1974, under the supervision of the Government

⁴¹ S. Elik, "Suku Amungme Tagih Jatah Laba Satu Persen Freeport," *Tempo*, June 12, 2024, <https://nasional.tempo.co/read/135445/suku-amungme-tagih-jatah-laba-satu-persen-freeport>.

⁴² Rfq, "Masyarakat Adat Amungme Gugat Freeport AS\$30 Miliar," *Hukum Online*, August 7, 2009, <https://www.hukumonline.com/berita/a/masyarakat-adat-amungme-gugat-freeport-as30-miliar-ho122809/>.

⁴³ Ratri Ninditya and Eduard Lazarus, *Menjaga Nyala: Model Pendanaan Bagi Suar Kehidupan Kesenian* (Jakarta: Koalisi Seni, 2019).

⁴⁴ John A. Pearce and Richard Braden Robinson, *Strategic Management: Formulation, Implementation, and Control* (USA: Richard D. Irwin, Inc, 2009).

⁴⁵ Komisi Nasional Hak Asasi Manusia, *Temuan Data, Fakta Dan Informasi Dari KOMNAS HAM Tahun 2017* (2017).

⁴⁶ Arman Nefi, Irawan Malebara, and Dyah Puspitasari Ayuningtyas, "Implikasi Keberlakuan Kontrak Karya PT Freeport Indonesia Pasca Undang-Undang Nomor 4 Tahun 2009 tentang Pertambangan Mineral dan Batubara," *Jurnal Hukum & Pembangunan* 48, no. 1 (2018), <https://doi.org/10.21143/jhp.vol.48.no.1.1604>.

⁴⁷ H.S. Salim, *Hukum Pertambangan di Indonesia* (Jakarta: Rajawali Pers, 2010).

⁴⁸ Dominggus Mampioer, "50 Tahun January Agreement; Melawan Lupa Perundingan Freeport Inc Dan Suku Amungme Nemangkawi," *Jubi.id*, January 11, 2024, <https://jubi.id/tanah-papua/2024/50-tahun-january-agreement-melawan-lupa-perundingan-freeport-inc-dan-suku-amungme-nemangkawi/>.

of the Republic of Indonesia cq. The Irian Jaya Provincial Government at that time was represented by A.W. Darwis, S.H., Head of the Special Directorate of Irian Jaya Province and was also attended by several elements of the local community. Article 3 of the Agreement states that Freeport Indonesia will be effective in the time that will be and has been determined in accordance with the mutually agreed plan to:

- a. Constructing school buildings, which include teacher housing.
- b. Constructing medical clinics and housing for nurses.
- c. Build structures for the market, including shops.
- d. Building a few decent model houses for residents and assisting in the construction of further houses.
- e. Provide local residents with facilities and employment opportunities that are aligned with the Company's development.
- f. Provide government posts with the required facilities, including offices and houses.

The concept and mapping of the CSR program carried out by PT Freeport Indonesia is in line with the Indonesia government regulations that regulate the implementation of the Community Development and Empowerment (*Pengabdian dan Pemberdayaan Masyarakat/PPM*) program by mining companies.⁴⁹ In line with the Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 and the Decree of the Minister of Energy and Mineral Resources Number 1824 of 2018,⁵⁰ PT Freeport Indonesia prepares a PPM program plan based on social mapping and an assessment of the needs of the community around the company's operating area. Mapping and assessment are carried out by involving communication with the surrounding community, local government, and other local stakeholders. The communication is organized both formally and informally, through joint meetings, joint councils and forums, and community liaison officials working with local community members. Through this media, PT Freeport Indonesia can receive input on priority issues that are of concern and need to the community.⁵¹

PT Freeport Indonesia's CSR program is implemented with the aim of building integrity as a good company and committed to making positive contributions to society, as well as minimizing internal and external risks that may occur. The risks that can be experienced by companies can be in the form of legal sanctions due to violating Article 74 Law Number 40 of 2007 which regulates social and

⁴⁹ Benedict M.SM. Renyaan, Michael Mantiri, and Ventje Kasenda, "Efektivitas Corporate Social Responsibility (CSR) PT Freeport Dalam Meningkatkan Pembangunan di Kabupaten Mimika Provinsi Papua," *Jurnal Eksekutif* 3, no. 3 (2019): 1–11, <https://ejournal.unsrat.ac.id/index.php/jurnaleksekutif/article/view/28163>.

⁵⁰ *Regulation of the Minister of Energy and Mineral Resources Number 25 of 2018 on Mineral and Coal Mining Business.*

⁵¹ Andrea Pinondang Caroline, Agus Naryoso, and Joyo NS Gono, "Corporate Social Responsibility (CSR) Untuk Peningkatan Pendidikan Formal Masyarakat Papua Di Kabupaten Mimika Sebagai Upaya Pembangunan Reputasi PT Freeport Indonesia," *Interaksi Online* 12, no. 1 (December 2023): 258–275, <https://ejournal3.undip.ac.id/index.php/interaksi-online/article/view/42364>.

environmental responsibility. Other risks can come from the surrounding community who are negatively affected by the company's operations.

The company after preparing the plan is to implement the program. The implementation stage of the CSR program consists of three main steps, namely socialization, implementation, and internalization.⁵² The socialization step is an activity to introduce aspects related to the implementation of CSR programs. In the implementation of PT Freeport Indonesia's scholarship program, socialization was carried out by a selection team consisting of the Partnership Fund Compliance division and parties selected directly by the community. The implementation of socialization was held through counseling on the importance of education for children. The presentation was delivered to parents in three villages around PT Freeport Indonesia's highland work area, namely Banti, Tsinga, and Aroanop villages. This team also selected children from the three villages for the requirements to receive scholarships from PT Freeport Indonesia. The existence of the selection activity also indirectly introduces the public to the existence of the PT Freeport Indonesia scholarship program.

The scholarship program is distributed to children from seven indigenous tribes around Mimika Regency, namely Amungme, Kamoro, Dani, Moni, Damal, Nduga, and Mee. The Scholarship Program has been routinely carried out by PT Freeport Indonesia together with YPMAK (*Yayasan Pemberdayaan Masyarakat Amungme Kamoro*) since 1996. In 2021, as many as 944 students have received scholarships at the junior high school, high school/vocational, undergraduate, postgraduate, and flight school levels. The scholarship recipients were 47% from the Amungme Tribe, 25% from the Kamoro Tribe, 3% from the Damal Tribe, 6% from the Dani Tribe, 8% from the Mee Tribe, 4% from the Moni Tribe, 3% from the Nduga Tribe, and 3% from other Papuan tribes.

From the results of interviews and document reviews, it was also found that PT Freeport Indonesia has not conducted an assessment of the impact of CSR programs in the health sector that have been carried out on the health status of the target communities, as well as an assessment of community empowerment in the health sector and the independence of the target communities in overcoming health crises. In fact, the health programs carried out by PT Freeport Indonesia are very numerous and focus on the community in its operating area.

Among the 20 respondents, there were several respondents who gave additional comments related to mining activities carried out by PT Freeport Indonesia, one of which is the recognition of the existence of customary rights/customary territories belonging to the indigenous people of the Amungme tribe and the recognition of the Amungme Tribal Customary Consultative Institution (*Lembaga Musyawarah Adat Suku Amungme/LEMASA*). In addition, the steps that must be taken by PT Freeport

⁵² Achmad Kurniawan, Wahyu Hidayat, and Sri Suryoko, "Analisis Penerapan Corporate Social Responsibility Dalam Upaya Pengembangan Masyarakat (Studi Kasus Program Kemitraan Bank Jateng Pada SPT Bubakan)," *Jurnal Ilmu Administrasi Bisnis* 4, no. 2 (2015): 51–61, <https://ejournal3.undip.ac.id/index.php/jiab/article/view/8189>.

Indonesia and the government, according to the indigenous people of the Amungme tribe, to improve this constrife is to hold a direct meeting with the local indigenous people.⁵³

4. CONCLUSION

Protection of the unity of customary law communities to defend their constitutional rights if there is a law that is detrimental to their constitutional rights is enshrined in Law Number 24 of 2003 on Constitutional Court juncto Law Number 8 of 2011 on Amendments to Law Number 24 of 2003. However, there are certain conditions that must be met so that the unity of customary law communities has legal standing to apply for legal testing at the Constitutional Court because not all customary law communities have legal standing in testing laws.

The unclear boundaries of recognition become a potential conflict (dispute) to the existence of the position of customary rights to land today in Papua, having a diversity of customary law communities (tribes/clans) that are scattered based on the ecology of highland culture: mountainous, pre-mountainous, and lowland areas: rivers/rivers, lakes, swamps, coasts, and islands/archipelagos with seven customary territories in the land of Papua, namely La Pago, Me Pago, Ha Anim, Saireri, Tabi/Mamta (in Papua province), Bomberai, and Domberai (West Papua Province), and with the diversity of customary government structures. From the results of interviews and document reviews, it was also found that PT Freeport Indonesia has not conducted an assessment of the impact of CSR programs in the health sector that have been carried out on the health status of the target communities, as well as an assessment of community empowerment in the health sector and the independence of the target communities in overcoming health crises. In fact, the health programs carried out by PT Freeport Indonesia are very numerous and focus on the community in its operating area.

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⁵³ Respondent from Amungme Tribe, interview by author, 2024.

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