The Urgency of Recognizing and Protecting the Rights of Customary Law Communities to Natural Resources in Mining Management: A Review of the Perspective of Islamic Law

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***Abstract**: This paper aims to examine the regulation of recognition and protection of customary law communities in mining management, and to review its suitability from an Islamic legal perspective. The method used is normative legal research with a legislative approach, especially regarding mining law policies and the existence of customary law communities. The results of the study indicate that the mining sector is a national strategic sector, but in practice it often causes conflicts with customary law communities that depend on their customary land for their livelihoods. Although the constitution and several regional regulations have recognized the existence of customary communities, there are no comprehensive regulations in the mining sector. The lack of synchronization between regulations causes legal uncertainty and weak protection for customary communities. From an Islamic legal perspective, recognition of land and resource rights by customary communities is part of the principles of justice ('adl), welfare (maṣlaḥah), and protection of property (ḥifẓ al-māl). Therefore, this paper recommends the ratification of the Customary Law Community Bill as an important step in realizing structural justice and protection of the rights of customary communities in an integral manner, including in the mining sector. The bill is expected to provide legal certainty, become a reference for other sectoral regulations, and ensure that natural resource management is carried out fairly and sustainably in accordance with Islamic values.*

***Keywords**: Customary Law Community, Mining, Islamic Law, Maṣlaḥah, Legal Certainty*
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Introduction

The provision of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that "The State recognizes and respects the unity of Indigenous 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 is a tangible form of the state's recognition of the existence of indigenous community entities, as well as the recognition of customary law and traditional community cultural entities.

The existence of indigenous communities is indeed already recognized by the state. However, the granting of rights to indigenous communities is often overlooked. One of those rights is the right to manage natural resources. As far as we know, there are many natural resources stored in the land of Indonesia, especially in areas inhabited by indigenous communities (Ahsana Nadiyya, 2021).

Reconciling development and environmental preservation is a difficult balance to achieve. The concept of developmentalism relies too heavily on capital growth and neglects environmental balance. This concept certainly receives a lot of criticism, but developmentalism is able to adapt to contemporary conditions (Dent, 2018). On the contrary, environmental balance is uncompromising with anything destructive (Guarini &

Oreiro, 2022). One of the legal subjects that has the concept of environmental protection is the Indigenous Law Community. Indigenous communities produce customary knowledge that serves as the basis for ecological protection, although it is scientifically weak (Jessen et al., 2022). Wardhani's study in Nauru shows that development not only causes environmental damage but also the loss of indigenous knowledge (Wardhani, 2023). The thesis that indigenous communities are not reconciled with the concept of development has become the Resource Curse, a globally recognized phenomenon. Leyton Flor's study states that the majority of mines located on indigenous lands (Leyton-Flor & Sangha, 2024) damage forest cover and ecology.The same case occurs in Canada, Finland, Norway, and Sweden (Horowitz et al., 2018).

The management of mines is actually mandated by Article 33 Paragraph (3) of the Constitution, which states that the Earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Overall, this article represents the people's sovereignty in the economic field, which should serve as a blueprint for economic development in Indonesia (Zon et al., n.d.).

Decision of the Constitutional Court No. 001-021-022/PUU-I/2003 interprets 'controlled by the state' as more than private control in civil matters, because private control will not achieve the goal of "the greatest prosperity for the people. "According to Hayati, the meaning of "controlled" is not directly managed by the state or government, but can be handed over to private parties with supervision from the government, including mines.The duty of the state is to create regulations and oversight to ensure the welfare of the people (Hayati, 2019).

Data from Mineral One Data Indonesia states that there are 7,326 Mining Business Licenses (IUP) and Special Mining Business Licenses (IUPK) granted to mining entrepreneurs.The position of mining itself is quite important in Indonesia. In addition to infrastructure needs, mining has also successfully created job opportunities. In 2023, the mining sector absorbed 308,107 Indonesian workers (TKI) and 2,074 foreign workers (TKA), bringing the total to 1,662,488 mining and excavation workers. The high absorption of labor increases economic growth. For example, studies in Bangka (Prapti Rahayu et al., n.d.), East Kalimantan (Fatikhurrizqi & Kurniawan, n.d.), or Kolaka (Asmiani et al., 2023). The realization of non-tax state revenue (PNBP) in the ESDM sector in 2023 reached Rp

300.3 trillion or 116% of the target set at Rp 259.2 trillion, with coal accounting for 80 percent.

The aspect of increasing economic growth, in fact, contrasts with the marginalized condition of indigenous communities. A study in ASEAN observed that aggressive development has marginalized indigenous communities (Torrejas et al., 2023). The absence of legal instruments has led to massive violations. However, the ironic note from Torrejas is the Philippines and Indonesia. Although there are legal protection instruments for indigenous peoples, violence and marginalization still occur, even in Indonesia involving state apparatus.

During the year 2023, the legal and policy conditions for indigenous peoples worsened, resulting in the transfer of 2,578,073 hectares of customary land for investment, business, or infrastructure development purposes. AMAN (Indigenous Peoples Alliance of the Archipelago) presented this data in the 2023 Annual Report. Violence and criminalization of Indigenous peoples in Indonesia are followed by the seizure of their territories. Most of the land seizures from indigenous communities are accompanied by violence and criminalization. This resulted in 247 victims, 204 of whom were injured, 1 person killed, and approximately 100 Indigenous houses destroyed because they were considered state conservation areas (Erasmus Cahyadi dan Muhammad Arman, n.d.).

The conflict between mining companies and indigenous communities must certainly include the Amungme and Kamoro indigenous communities against PT Freeport. Operating since 1967, Freeport has become a symbol of the victory of the state (and mining corporations) over indigenous communities. With military support (Leith, 2002), violence against the Amungme and Komoro indigenous communities often occurs. Freeport is still operating, and the indigenous Amungme and Komoro people are still marginalized.

The record of this struggle for space can be extended from the past to the present day. However, this case leads to one conclusion: that the state prioritizes economic growth over the rights of indigenous legal communities. This reality, as described by Babic (Babic et al., 2017) and Kim (Kim & Milner, 2019), shows that corporations have grown stronger than the state. This reality is quite ironic because the constitution recognizes the existence of customary law communities.

As an implementation of the provisions of Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia, the rights of indigenous peoples over customary

land are protected under Law No. 5 of 1960 concerning Basic Agrarian Principles. It is stated that the agrarian law applicable to land, water, and space is customary law, as long as it does not conflict with national and state interests. In addition to Article 18B paragraph (2) of the 1945 Constitution, the recognition and respect for customary law communities are also regulated in Article 28I paragraph (3) of the 1945 Constitution based on Article 18B paragraph (2) of the 1945 Constitution, the recognition and respect for customary law communities and their traditional rights must be based on the following conditions: As long as they are still alive; In accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, it is regulated by law (Irfan Nur Rahman, Anna Triningsih, Alia Harumdani W, 2011).

The relationship between indigenous communities and the environment is also provided by Law No. 32 of 2009 on the Protection and Management of the Environment, which grants authority to the government (Central and regional) to establish policies regarding the procedures for recognizing the existence of customary law communities, local wisdom, and the rights of customary law communities related to the protection and management of the environment. However, the formulation of these norms cannot yet serve as a premise that Indigenous Peoples are well protected. Besides empirical evidence proving otherwise, regulations regarding indigenous communities in relation to mining have not provided legal certainty. In a field that is highly prone to agrarian conflicts, the recognition and protection of indigenous communities are not clearly regulated.

Law Number 4 of 2009 on Mineral and Coal Mining (Minerba Law) is the main legal basis that regulates all mining activities in Indonesia.as amended by Law Number 3 of 2020 on Mineral and Coal Mining, which was amended by Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation, as well as other regulations, such as Government Regulations (PP) and Minister of Energy and Mineral Resources Regulations (Permen ESDM), refer to and complement the provisions in the Minerba Law.

The regulation grants 23 authorities to the central government to manage mining. Starting from establishing the national Mineral and Coal management plan, national Mineral and Coal policies, national standards, guidelines, and criteria and regulations; to the government also having the authority to manage Mining supervisory officials.

Such extensive authority in mining management does not guarantee protection for customary law communities. Land, as the main battlefield for the struggle for space, is not

given clear regulations. Studies show that the existence of indigenous communities is not a primary consideration in mining (Farhan, 2023), (Rajab et al., 2022). Even after the Job Creation Law was enacted, indigenous peoples' territories became increasingly threatened (Sari, 2021), (Fariz & Kodiyat, n.d.), including coastal areas (Zamroni & Kafrawi, n.d.).

This is, of course, ironic, as Article 2 letter (d) of the Minerba Law explains that the principle of mining is sustainable and environmentally aware. The principle of sustainability essentially views the balance of development not only in terms of economic growth but also encompasses humanitarian values and social justice. Pancasila-based development practices consider the interests of local wisdom, such as customary law communities, rather than the other way around (Wahanisa & Adiyatma, n.d.).

The study conducted by Farhan descriptively explains that the neglect of indigenous people's rights occurs due to the absence of regulations in the Mineral and Coal Law (Farhan, 2023). The results of Rajab's study also show a similar thing. Rajab even added that the IPR provisions only extend to communities and cooperatives, and are not granted to indigenous communities that have become legal subjects themselves (Rajab et al., 2022). And finally, a study by Wahyu Nugroho, which views the Minerba Law as too semi-centralistic and not 'considering' the very harmonious approach of indigenous communities in mining management (Nugroho, 2019).

The study by Farhan and Rajab indeed provides a description of the neglect of regulations towards indigenous communities, but it is limited to the Minerba Law (Farhan, 2023). As for Nugroho's study (Nugroho, 2019), it has not yet observed the latest developments in the Mineral and Coal Mining Law, which have become more centralistic, although the ecological proposals for mining management from indigenous communities could be elaborated. This writing aims to examine the regulation of customary law communities in the field of mining.The object of study is not only about the Minerba Law but also attempts to examine other related regulations.This writing is expected to provide an alternative to the tug-of-war between economic development and ecological harmony.

Research Methods

This study uses a normative legal method with a statutory approach and an Islamic legal-normative approach, namely by examining the provisions of positive law that regulate

the recognition and protection of customary law communities, especially in the mining sector, and examining the relevant principles of Islamic law, such as justice ('adl), welfare (maṣlaḥah), and ownership in Islam (al-milkiyyah). Using a descriptive analytical approach, this writing will be supported by secondary legal materials in the form of positive law literature and classical and contemporary Islamic law literature. The study begins with a description of the recognition of customary law communities in the 1945 Constitution and national laws and regulations, then continues with an analysis of mining sector regulations. Furthermore, these norms are examined within the framework of Islamic law to assess their suitability to the principles of social justice and the distribution of natural resources according to sharia.

Results and Discussion

A. Protection of Indigenous Legal Communities in Indonesia

It seems there is no text provided for translation. Please share the text you'd like me to translate, and I'll be happy to help!Besides Science, one of the results of modern knowledge is racist knowledge.Muzakkir notes that Western scientists like Levy Bruhl observed non-Western societies growing and thinking in different ways (Muzakkir, 2023). The perspective of the 'other' was reinforced by Carey's study during British colonialism in Southeast Asia, where scientists like Crawfurd viewed Asians as primitive, savage, and incapable of advancement (Peter Carey, 2022)

The perspective of the "other" was reinforced by Carey’s studies during British colonialism in Southeast Asia, where scientists like Crawfurd viewed Asians as primitive, savage, and incapable of progress (Peter Carey, 2022). The awareness of equality after colonialism did not erase the boundary between modern and primitive. The awareness of equality at the end of colonialism did not erase the boundary between modern and primitive. The category of the primitive remains preserved, placing customary law societies as objects contrasted with modern life filled with technological advancements.

Primitive categories remain preserved, placing indigenous legal communities as a contrast to modern life filled with technological advancements. Through the Indigenous and Tribal Peoples Convention, 1989 (No. 169), indigenous communities are recognized as part of independent nations and exist under unequal conditions. This situation marginalizes them

and causes them to lose their original rights.This situation occurs everywhere, including in Indonesia, which according to AMAN records has 20 million indigenous people.

Before the proclamation of independence, the Unitary State of the Republic of Indonesia had more than 250 self-governing landscapes and communities throughout its territory. For regions that previously had their own governance systems, such as the Sultanate of Yogyakarta, the terms "autonomous region" or " kingdom region" were also used. However, the term volksgemeenschappen is used to refer to and explain villages in Java and Bali, and nagari in Minangkabau. However, it is currently difficult to find volksgemeenschappen (customary areas) such as villages in Java, nagari in Minangkabau, dusun and marga in Palembang, huta and kuria in Tapanuli, and gampong in Aceh, although they are still recognized and respected as the smallest units of government (Irfan Nur Rahman, Anna Triningsih, Alia Harumdani W, 2011).

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It seems that your message is empty. Could you please provide the text you'd like me to translate?This status quo continued when the government enacted Law No. 5 of 1960 on the Principles of Agrarian Law. Article 2, Paragraph (4) explains the control of agrarian rights to customary law communities. Article 3 then explains the prerequisites as long as, according to the facts, they still align with national interests. Then, in Article 5, it is explained that the applicable agrarian law is customary law, as long as it does not conflict with national interests and the State.

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did not provide space for indigenous communities. The New Order that came later did not provide space for indigenous communities. The New Order rejected the concept of indigenous community diversity with the argument that everyone was born in the Indonesian archipelago. Similar to colonialism practices, the New Order had a program to 'civilize' indigenous communities living on remote islands, forests, hills, and mountains. According to Tamma, this policy strengthens the distinction between the center and the periphery (Tamma & Duile, 2020).

The amendment to the 1945 Constitution then recognized Indigenous Law Communities as one of the legal subjects. Article 18 B Paragraph (2) explains that the State recognizes and respects the unity of customary law communities along with 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. As a result, customary law communities have a constitutional position in the Unitary State of the Republic of Indonesia. Article 18 B paragraph (2) of the 1945 Constitution of the Republic of Indonesia reinforces the position of customary law communities as part of the prevailing law in Indonesia. This is reinforced by the provision of Article 28 I paragraph (3) which states: "Cultural identity and the rights of traditional communities are respected in accordance with the development of the times and civilization. "Natural resources must be utilized to the fullest for the prosperity of the people as explained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Aris Adianto, 2020).

Mahkamah Konstitusi melalui Putusan 35/PUU-XII/2012 telah memutusakan bahwa frasa ‘negara’ di Pasal 1 Ayat (5) UU No 40 tahun 1999 tentang kehutanan yang berbunyi, *Hutan adat adalah hutan negara yang berada di wilayah masyarakat hukum adat*. Hilangnya frasa ‘negara’ menunjukan, bahwa pengakuan terhadap masyarakat hukum adat tidak berhenti terhadap eksistensinya, tapi diakui pula mengenai hak miliknya, dalam hal ini yaitu hutan adat (Wenar & Gilbert, 2020).

Through Decision 35/PUU-XII/2012, the Constitutional Court also ordered that in the management of forests, the rights of customary law communities must be taken into account, provided 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.In addition, the Constitutional Court's decision also provides an opportunity for indigenous communities to form associations, thereby strengthening their position (Arasy Pradana A Azis, 2019).

The decision is often referred to as a turning point in strengthening the position of indigenous communities. Post-verdict, there has been an 'inflation' of recognition for indigenous communities through regulations. AMAN recorded 161 Regional Legal Products in the form of regulations and decrees. Several studies show the establishment of indigenous communities and customary forests, such as in Kampar Regency (Ulfia, 2024), the Indigenous Community of Dataran Waeapo, Maluku (Rachman et al., 2021), and the Batak indigenous community (Amantharo Saragih et al., 2023).

B. Protection Of Indigenous Legal Communities In Mining

Mining is an activity that has a wide impact on the environment. These consequences make mining activities strictly regulated. In simple terms, mining activities begin with the designation of a Mining Area (WP). Mining areas are regions that have the potential for minerals and/or coal and are not bound by administrative government boundaries, which are part of the national spatial planning.

Within the WP, there are Mining Business Areas (WUP), People's Mining Areas (WPR), State Reserve Areas (WPN), and Special Mining Business Areas (WUPK).This regulation is to prevent overlapping. After the determination of WP, every business entity that wishes to manage mining can apply for a business license from the government. Business permits are submitted to obtain a business identification number, standard certificates, and permits consisting of IUP, IUPK, IPR, and SIPB. The permit holder can then carry out mining operations after obtaining approval from the land rights holder.

The lengthy mining activity procedure begins with the designation of mining areas. According to Article 9 Paragraph (2) letter b of the Mining Law, the determination of mining areas is decided by the central government after being determined by the Provincial Government in accordance with its authority and in consultation with the DPR. Article 10, Paragraph (2), letter b explains that the determination of Mining Areas is carried out in an integrated manner by referring to the opinions of relevant government agencies, affected communities, and by considering ecological, economic, human rights, and socio-cultural aspects, as well as being environmentally conscious.

The Constitutional Court (MK) through Decision number 32/PUU-VIII/2010 then explained that the phrase "public opinion" in the determination of Mining Areas is interpreted as the obligation to protect, respect, and fulfill the interests of the community

whose areas or lands will be included in the mining area and the community that will be affected.

Furthermore, the Court's opinion is that coordination, consultation, and consideration of public opinion should not be merely formalities that obscure the primary goal of respecting and protecting the economic and social rights of citizens. The Court then explained that in the determination of Mining Areas, the opinions and interests of the community must be prioritized to ensure legal certainty and the constitutional rights of citizens are not violated.

The discussion will begin with the question of whether the series of court opinions in that ruling (and other protective norms) sufficiently provide legal certainty for the protection of indigenous communities in mining. For positivist scholars, the court's opinion and the verdict do not once mention the phrase 'protection of customary law communities'. There is also no indication of an expanded meaning that the phrase 'society' includes 'customary law society'. This reasoning, if followed, will lead to a conclusion that is detrimental to customary law communities. The obligation to accommodate the land-owning community whose land is used for mining will turn into neglect if the concept of land ownership is viewed solely from a civil law perspective. The concept of Ulayat Rights understood by customary law communities regarding their resources differs from the concept of private law.

If the concept of private law applies only in one dimension for the rights holder, customary land rights also have a public aspect, which will be used communally, for example, for religious rituals. Moreover, customary land rights arise through inheritance without being recorded by any specific institution. Thus, the ownership of ulayat rights is difficult to prove in modern law. This conclusion reinforces the studies by Farhan and Rajab that customary law communities do not have a strong position in mining (Farhan, 2023), (Rajab et al., 2022). The customary land rights for indigenous communities are ultimately regulated through the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2019 concerning the Procedures for Administration of Customary Community Land. Article 3 Jo. Article 5 explains that the administration of ulayat land is carried out through the establishment of recognition and protection of the Customary Law Community, which is determined based on statutory regulations.

This policy indicates that the designation of ulayat land cannot be carried out without the recognition of customary law communities. However, the next discussion is to answer the question, how is the basis for the recognition of customary law communities according to legislation. This question will lead to various answers that result in legal uncertainty. The Constitution through Article 18B Paragraph (2) states that the recognition and respect for customary law communities are regulated by law. The formulation of the recognition of customary law communities can be seen in several regulations, for example, Law No. 39 of 2014 on Plantations and Law No. 27 of 2007 on the Management of Coastal Areas and Small Islands. However, the law intended as recognition of customary law communities has never existed. Even in Law No. 41 of 1999 concerning Forestry. Article 67 Paragraph (2) Jo. Paragraph (3) states that the affirmation of the existence and the abolition of customary law communities are determined by Regional Regulations, which will subsequently be regulated by Government Regulations.

This unfulfilled constitutional mandate is emphasized in the Court's opinion in Decision MK NO 35/PUU-X/2012, where the law mandated by Article 18B paragraph (2) of the 1945 Constitution has yet to be established. Due to urgent needs, many regulations were enacted before the intended law was formed. This can be understood as an effort to fill the legal void in order to ensure legal certainty.

Based on AMAN data, hundreds of regional regulations (Perda) have been issued that recognize Indigenous communities. The next discussion is whether the issued Regional Regulations have provided legal certainty as intended in the Constitutional Court's decision. Regional Regulation of West Nusa Tenggara Province Number 11 of 2021 on the Recognition, Respect, and Protection of Indigenous Law Communities, the recognition of Indigenous Law Communities only needs to be carried out by collecting data on Indigenous Law Communities that meet the requirements, to then be directly designated as Legal Subjects of Indigenous Law Communities. A more concise regulation can be found in the Melawi Regency Regional Regulation Number 4 concerning the Recognition and Protection of Indigenous Law Communities' Rights, which does not even explicitly explain the recognition mechanism.

Different mechanisms are seen in the Provincial Regulation of Papua Province Number 5 of 2022 concerning the Recognition and Protection of Customary Law Communities in Papua Province or the Regional Regulation of Sarolangun Regency Number 3 of 2021 concerning Guidelines for the Recognition and Protection of Customary Law

Communities in Sarolangun Regency. The regulatory mechanisms in those regulations are more complex because they include the identification of customary law communities, verification and validation of customary law communities, and the establishment of recognition for customary law communities. The constitutional mandate that is not synchronized in its implementation (Tjok Istri Putra Astiti, Gusti Ayu Putri Kartika, 2015) has the potential to lead to unlimited discretion and open gaps in power relations. This ambiguity reinforces Taufik's study that there has been sectoral egoism among agencies in regulating indigenous communities (Taufik Qul Basyar, Arfa'i & Mahasiswa, 2024).

The 'inflation' of regional regulations is more a reflection of the local government's clumsiness in responding to the resurgence of customary law communities. As forIn the study of regional policies, legal uncertainty has the potential to make indigenous communities merely political commodities for electoral purposes. Hasani's study on sharia bylaws proves this (Ismail Hasani, 2020).

C. Urgency of Protection of Customary Law Communities in Mining from an Islamic Law Perspective

The main problem of the absence of legal protection for customary law communities is the failure to fulfill the constitutional mandate. Customary law communities have a constitutional right to be recognized and respected. The constitution clearly states that the recognition and respect for customary law communities are regulated by law, but the law in question has never been enacted.

So far, only the Draft Law on Customary Law Communities has been formed. This draft was first proposed by the Nasdem Faction on February 6, 2020.Then, five stages of harmonization were carried out, which were completed on November 4, 2020.At this stage, an audience was held with civil society coalitions such as AMAN. The Harmonization Stage ended on November 4, 2020, with an agenda of a meeting to present the expert team's findings on the harmonization study and to make decisions on the harmonization. The Bill on Indigenous Law Communities is included in the National Legislation Program for Priority Bills for 2020 – 2024 with Number 168.

The ratification of this draft law can at least provide legal certainty in two aspects. First, the authority to recognize customary law communities is delegated to the Customary Law Community Committee formed by the Regent/Mayor, Governor, or Minister. The stages

that are followed are the same, namely the process of identification, verification, and validation, and the determination by the Minister. What is happening today is that each level of government is creating regulations that do not connect with each other.

Second, there are customary areas.Article 1 Paragraph (6) of the Draft Law states that customary territory is not limited to land and forests only. But it includes waters along with all the resources above and within them that have been obtained through generations and have specific boundaries, which are used to meet the needs of the Indigenous Law Community. This formulation is certainly very progressive, considering that many indigenous communities have customary territories that include the sea, such as the Bajo and Mandar tribes. Regulations established by the government, such as Permen ATR No. 18 of 2019, only recognize indigenous people's territories as limited to land. This limitation is certainly very detrimental to customary law communities.

The draft regulation also provides quite strong protection for agrarian ownership. Article 25 Paragraph (1) states that in the event that there are natural resources in the Customary Law Region that play an important role in meeting the needs of the community, the Central Government, Regional Government, or corporations can manage them after deliberation with the Customary Law Community to reach a mutual agreement.

The phrase "can manage after deliberation" indicates the primary position of customary law communities in mining activities over development interests. The resource curse and marginalization will not be resolved by placing customary law communities and mining interests on the same level. Because only by prioritizing the interests of indigenous communities can development and environmental preservation be achieved simultaneously. In the context of mining, this provision is actually in line with the provisions of Article 135 Jo. 137 A Paragraph (1) of the Mining Law, which states that holders of Exploration IUP or Exploration IUPK can only carry out their activities after obtaining approval from the land rights holders (provided that the customary law community has been recognized and granted land management rights), and if it is not resolved, it can be settled by the central government through mediation.

The point of difference lies in the compensation mechanism for the land used for the benefit of Natural Resources. The Mining Law does not offer anything. ESDM Ministerial Decree Number 301/MB.01/MEM.B/2022 on the National Mineral and Coal Management Plan for 2022 – 2027 mentions compensation for the use of indigenous people's territories

through joint land use. The control of the land is achieved by facilitating and encouraging both parties to resolve the issues.

Regarding the Customary Areas that are ultimately managed for the benefit of natural resources with widespread impact, namely mining. Indigenous communities are given various forms of compensation such as money, replacement land, resettlement, share ownership, or other forms agreed upon by both parties. The bill even offers key benefits in the implementation of corporate social responsibility that aligns with the priority needs of Indigenous Law Communities.

The Draft Law on Indigenous Peoples should be enacted because it has strong recognition and protection.In addition to fulfilling the constitutional mandate, legal certainty will also increase. The mining business is a business with complex legal risks, ranging from environmental lawsuits, social conflicts, large capital financing to industrial disputes.Legal uncertainty increases legal risks and makes them less attractive to investors.Harmonious regulations can achieve both welfare and social justice simultaneously.

From an Islamic legal perspective, the existence of customary law communities is part of a social reality that must be recognized and respected. Islam strongly emphasizes the importance of justice and recognition of cultural diversity and local traditions that live in society. When the state has not provided adequate legal protection for customary law communities, this reflects the existence of inequality in realizing social justice, which in Islam is included in the main objectives of sharia or maqāṣid al-sharī‘ah. The rights of customary law communities to land, territory, and natural resources are in line with the principle of milkiyah (ownership) in Islam. The Prophet Muhammad SAW even stated that humans are partners in three things: water, grasslands, and fire. This hadith shows Islam's recognition of joint ownership of resources that are the livelihood of many people, including customary areas managed by customary law communities from generation to generation.

Furthermore, Islam also recognizes the existence of local customs through the principle of "al-‘ādah muḥakkamah" which means that customs that do not conflict with sharia can be used as a legal basis. Therefore, the social, economic, and legal systems implemented by customary law communities, as long as they do not conflict with the basic values of Islam, should be preserved and facilitated by the state. The absence of valid and binding laws to protect customary law communities is in fact a form of neglect of the state's responsibility as a representative of the people in carrying out the mandate of justice. In

Islam, leaders or rulers serve as khalīfah fī al-ardh (managers of the earth) who are obliged to protect all levels of society, including minority groups such as indigenous peoples. When regulations only recognize customary areas within land boundaries, and ignore the living space of indigenous peoples in water areas such as the Bajo and Mandar tribes, then this is a form of discriminatory treatment that is not in line with the principles of justice in Islam.

Thus, protection of indigenous legal communities is not only a constitutional mandate, but also in line with the basic principles of Islamic law. The state has a moral and spiritual obligation to provide legal guarantees that are fair, comprehensive, and respect the traditions and rights of indigenous legal communities as part of the unity of the nation. The ratification of the Indigenous Legal Community Bill is very important to ensure that justice is truly realized for all Indonesian people without exception.

Closing

Mining is a strategic sector in national economic development. However, in practice, mining activities often clash with the interests of indigenous peoples who have long managed their territories for generations. In the context of Islamic law, this situation reflects the harmony between the economic interests of the state and the principles of justice (al-‘adl), welfare (al-maslahah), and trust management (al-amānah) over natural resources.

Islam emphasizes that the earth and all its contents belong to Allah SWT which are given to humans to be managed fairly and without damage. QS. Al-A'rāf verse 56 prohibits humans from causing damage on earth after order is created. Therefore, mining activities that harm indigenous peoples and damage the environment are not in line with the values of Islamic law. Moreover, if the management of these resources ignores the rights of indigenous peoples who have historically and culturally become part of the local community.

The Indonesian Constitution has actually recognized the existence and legal rights of indigenous peoples through Article 18B paragraph (2) of the 1945 Constitution. However, this recognition has not been followed by concrete sectoral regulations, especially in the mining sector. From an Islamic legal perspective, this shows that it provides space for legal protection (fāghir al-ḥimāyah), which results in social injustice against indigenous communities. The principle of "lā ḍarar wa lā ḍirār" (must not harm and endanger each other) is also the basis that exploitation of natural resources must not cause harm to the community.

On the other hand, in Islam there is recognition of good customs or 'urf as a source of law. The system of management and control of territory by indigenous peoples based on local wisdom, as long as it does not conflict with Islamic principles, should be preserved. Therefore, enforcement of regulations through the Draft Law on Indigenous Legal Communities is very important as a form of justice and respect for 'urf shālihah (good customs). The Indigenous Peoples Bill not only focuses on recognition and protection, but also includes participatory and environmentally aware management of natural resources, in line with Islamic teachings. This concept reflects the value of tadbīr al-khalq (management of creation) which is fair, sustainable, and avoids damage (fasād). Management based on local wisdom that takes ecology into account also reflects tawāzun (balance), which is an important part of Islamic environmental ethics.

Thus, from an Islamic legal perspective, the ratification of the Indigenous Peoples Bill is a strategic step in realizing justice, welfare, and continuity. The state as the caliph on earth is obliged to ensure that development policies, including in the mining sector, do not violate the rights of indigenous peoples, and are in line with the principles of environmental ethics and social justice in Islam.

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