



# Normative Review Of Indigenous Community Rights In Mining Areas

Dhea Meila Fitriani<sup>1</sup>

<sup>1</sup>Faculty of Law, Universitas Negeri Gorontalo, Indonesia.

Korespondensi: E-mail: [dheameilafitriani@gmail.com](mailto:dheameilafitriani@gmail.com)

**Abstract:** This study aims to determine the rights of indigenous peoples in mining areas. The research method is a normative research method using a descriptive approach and qualitative analysis techniques. The results of this study show that the position of the rights and obligations of indigenous peoples in the mining world is still far from clear and has not been able to provide clear and unequivocal protection in the Mineral and Coal Law. Article 18B (2) of the 1945 Constitution, as one of the constitutional foundations of indigenous peoples, stipulates declarative recognition that the State recognizes and respects the existence and rights of indigenous peoples. However, this recognition sets limits or requirements for a community to be recognized as a customary law community. The Government must have full responsibility to protect and provide avenues and forums for indigenous peoples to maintain their rights in maintaining their existence.

**Keywords :** Rights; Culture; Mining

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## 1. Introduction

In our daily life, even in society, there are often injustices and violations committed by certain people and people who threaten some members of society to meet the needs of life.<sup>1</sup> Moreover, with the development of the times, it is not only positive for humans in terms of accessing everything, especially concerning global mining areas. So the rapidly growing development of internet technology has had a tremendous impact on the world community.<sup>2</sup>

Mineral and coal mining is one form of natural wealth in Indonesia. Mining is a vast part of the needs of people's lives. How not can this mining business provide added value for economic growth and sustainable development for a country? Marilang said that mining is an invaluable natural resource, so it must be appropriately managed to optimize its use for the welfare of the people. The regulation of mineral and coal mining in Law provides binding power for all Indonesian citizens. Another problem raised is at the level of implementation that has not been implemented. Mining is a national problem, including environmental problems due to illegal mining. The actions of the people's mining authority always pay attention to their potential to cause negative impacts.<sup>3</sup> Salim emphasized that the consequences of the mining business in Indonesia are: the negative impact of mineral mining as a result of the mining business. The negative impact of the existence of mining businesses includes the destruction of the surrounding forest area, mining, marine pollution, disease outbreaks for people living in mining areas, and conflicts between communities around mines and mining companies.<sup>4</sup>

This mining business has a tremendous potential to affect natural losses if it is not monitored in an understanding of the control of the applicable Law. The direct consequence of this mining activity is ecological damage such as rivers, and seas, damage to coral reefs caused by anchors that are often stuck, to soil damage caused by excavations. The mining search begins with logging forests and excavating soil layers deep into certain soils. Indirectly this will provide a change in the State of the water in this environment. Mountains and forests that were initially a source of clean water for the community eventually became extinct, so people had difficulty getting clean water.

Mineral and Coal Mining is one of the critical things that are very influential and provide

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<sup>1</sup> Dian Ekawaty Ismail, Mohamad Taufiq Zulfikar Sarson. (2021). Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes. *Jurnal Law Review*. 3 (3), 58

<sup>2</sup> Mohamad Rivaldi Moha. (2020). Urgensi Pendaftaran Penyelenggara Sistem Elektronik Bagi Pelaku Usaha E-Commerce. *Jurnal Law Review*. 2 (2), 115

<sup>3</sup>Fenty U Puluhulawa. (2015). Negative Impact Prevention To The Environment On Illegal Community Mining Toward Command And Control Approach. *Jurnal Dinamika Hukum*. 15 (3), 273

<sup>4</sup> Dolot Alhasni Bakung. (2020). Unraveling The Authority Of Coal Mining Management By The Regional Government And Implications For Rehional Autonomy. *Indonesia Journal Of Advocacy and legal Services*. 1 (2), 229

a significant boost to the economy in Indonesia. For this reason, it is essential to create a statutory regulation regarding mining which will later be weighted and also based on the principle of justice. In addition, to create a fair law without taking sides with a particular group. With this activity, Law No. 3 of 2020. Law No. 3 of 2020 is an amendment to Law No. 4 of 2019 concerning Mineral and Coal Mining. This Law is also a tool to regulate mineral and coal mining from upstream to downstream, along with all licensing forms. However, the role of this Law has polemics that occur, one of which is that the Government violates many people's rights. Supposedly Innate community groups and their traditional territories are indistinguishable units from one another. In addition, with the enactment of the new Mineral and Coal Law, the provisions of article 162 and article 164. Article 162 of Law No. 3 of 2020 concerning Mineral and Coal states that:<sup>5</sup>

"Everyone who hinders or interferes with the mining business activities of the IUP, IUPK, IPR, or SIPB holders who have met the requirements as referred to in Article 136 paragraph (2) shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 100,000,000.00 (one hundred million rupiah)".

This article does not say who is meant by "people who hinder so this gives rise to multiple interpretations as to whether indigenous peoples who want to defend their rights can be included in the category of "obstacles." However, what is included in the sentence "people who hinder" is indigenous peoples, then the situation will be worse for indigenous peoples. Then, Article 164 of Law No. 3 of 2020 concerning minerals and Coal regulates additional penalties for people referred to in Article 162 of Law No. 2020 concerning minerals and Coal. Additional sanctions include confiscation of goods used to commit a crime, deprivation of benefits derived from a criminal act, and/or commitment to pay the costs incurred caused by a criminal act. So with the enactment of these two articles, the rights of indigenous peoples are increasingly unprotected, even their right to maintain their living space as if they were just released.

Based on the 1945 Constitution, in particular Article 18B paragraph 2, the State recognizes and respects customary law community units and their traditional rights as long as they are still alive and following community development and the principles of the Unitary State of the Republic of Indonesia, which Law regulates.<sup>6</sup>

The position of the State as the owner of minerals directs the allocation and utilization of minerals for the prosperity of the people so that the State controls the minerals. The reason for control by the State (Government) is so that national wealth is used as much as possible for the success of all Indonesian people. Therefore, neither people, communities, nor trade characters on screen, indeed ever have rights to a piece of land

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<sup>5</sup> Undang-Undang Nomor 3 Tahun 2020 tentang Mineral dan Batubara

<sup>6</sup> Dolot Alhasni Bakung. (2019). Tertium Comparatum Pengaturan Hak Ulayat Masyarakat Adat Dalam Pelaksanaan Akad Nikah. *Jurnal Legalitas* 12 (1), 48

that appears on the surface, do not have the right to control or own the minerals contained.<sup>7</sup>

In Law No. 3 of 2020 concerning Minerals and Coal, indigenous peoples have a lower position than business entities. Because legally, the business entity has a mining permit. In sociological juridical theory, there is a legal dualism that explains that, on the one hand, the making of these laws and regulations wants to protect the community. On the other hand, the legislators make these laws only for personal interests, not for the benefit of the general public. Clearly, the longer the indigenous peoples are expelled from their traditional territories. This will cause the loss of indigenous peoples because indigenous peoples are identical to land, so if the land is lost, the bonds are lost, the tribe is lost, then the indigenous people will also be lost.

The Unitary State of the Republic of Indonesia guarantees the welfare of each of its citizens, including the protection of human rights. The reason is that government policies, as outlined in laws and regulations, are always followed by criminal sanctions<sup>8</sup> and the involvement of the State, which is also one of the characteristics of the conflict phenomenon.<sup>9</sup> Furthermore, the form of the legal system also requires people to have a sense of love and affection, mutual respect, mutual help, loyalty, honesty, and adequate physical and spiritual support, so that the implementation of the legal system can run following people's lives in general.<sup>10</sup> Furthermore, an essential point in the preparation of every policy issued by the Government comes solely from the people's wishes.<sup>11</sup> So that when this does not cause problems and if the policy is not under the behavior patterns of the community, then the Government must resolve a problem with the community itself.<sup>12</sup> Everyone else, including the Government, must heed it by making laws based on natural rights.<sup>13</sup> Because of this, one of the aims of the recognition and establishment of the rule of Law is to protect human rights, meaning that individual rights and freedoms are recognized, respected, and upheld.<sup>14</sup> Considering that Indonesia is also one of the countries that put forward the constitution in every aspect of the life of

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<sup>7</sup> Salim. *Hukum Pertambangan di Indonesia*. (Jakarta: PT RajaGrafindo Persada, 2014), 10

<sup>8</sup> Hwian Christianto, Michelle Kristina. (2022). Fulfilling the Right of Education during Covid- 19 Pandemic Period: A Comparative Study. *Jurnal Law Review*. 4 (1), 1

<sup>9</sup> Yudha Chandra Arwana. (2019). Jalur Mediasi dalam Penyelesaian Sengketa Pertanahan Sebagai Dorongan Pemenuhan Hak Asasi Manusia. *Jurnal Law Review*. 1 (2), 21

<sup>10</sup> Dedi Sumanto, Dkk. (2021). The Existence of the Religious Court in Handling Divorce Cases on the Reason of Domestic Violence. *Jurnal Law Review*. 3(2), 228

<sup>11</sup> Fitriyadi, Ahmad Adi. (2020). Diferensiasi Pengungsi dan Pencari Suaka dalam Hukum Pengungsi Internasional dan Hubungannya dengan Prinsip Non-Refoulement. *Jurnal Law Review*. 2 (2), 127

<sup>12</sup> Bakung, Dolot Alhasni. (2020). Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right. *Jurnal Law Review*. 2 (1), 67

<sup>13</sup> Badu, Lisnawaty. (2012). Euthanasia Dan Hak Asasi Manusia. *Jurnal Legalitas*. 5 (1), 1-11

<sup>14</sup> Fakhris Lutfianto Hapsoro. (2020). Interpretasi Konstitusi dalam Pengujian Konstitusionalitas untuk Mewujudkan The Living Constitution. *Jurnal Law Review*. 2 (2), 145

the nation and State.<sup>15</sup>

## 2. Method

The type of research used by the author in this study is normative. Suppose you refer to the opinion of Mukti Fajar and Yulianto Ahmad, where it is said that normative research examines norms, legal rules, legal principles, and statutory regulations.<sup>16</sup> The research approach uses analytical descriptive and uses qualitative analysis techniques.

In this empirical research method, the researcher describes the results of an in-depth study of the application of criminological theories, analyzes the causes of the rise of narcotics abuse, and provides the right solution for overcoming narcotics abuse. The approach used by researchers in compiling this research is a case approach.

## 3. Analysis or Discussion

### 3.1 Rights of Indigenous Peoples in Mining Areas

Provisions regarding the presence of indigenous people's rights in this country are contained in the 1945 Constitution, Laws, and other laws and regulations. This shows that the legal framework in force in Indonesia recognizes the rights of indigenous peoples. As regulated in Article 18B paragraph 2 of the 1945 Constitution, it is explained that:<sup>17</sup>

"The state recognizes and respects customary law community units and their traditional rights as long as they are still alive and following the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated by law."

Article 18B (2) of the 1945 Constitution regulates declarative recognition of the State's recognition and respect for the life and rights of indigenous peoples as one of the constitutional foundations of indigenous peoples. However, this recognition sets limits or requirements for a community to exist as an indigenous community. Therefore, the role of all stakeholders must act decisively and thoughtfully in handling cases such as the rights of indigenous peoples to ensure social welfare for their communities. Based on the substance of existing regulations,<sup>18</sup> the Law plays a fundamental role in ensuring the

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<sup>15</sup> Nurdin, Putri Handayani. (2019). Politik Hukum Pengaturan Pendidikan Politik oleh Partai Politik. *Jurnal Law Review*. 1 (2), 146

<sup>16</sup> Mukti Fajar, Yulianto Achmad. *Dualisme Penelitian Hukum (Normatif dan Empiris)*, (Yogyakarta: Pustaka Pelajar, 2010), 153.

<sup>17</sup> Pasal 18B Ayat 2 UUD 1945

<sup>18</sup> Ariefulloh, Abd Asis, Maskun. (2019). Dilema Penerapan Sanksi Pelanggaran Lalu Lintas Terhadap Anak. *Jurnal Law Review*. 1 (2), 198

realization of social goals.<sup>19</sup>

In Law Number 3 of 2020, undergoing an update from Law Number 4 of 2009 concerning Minerva Mining, it is explained that the Government has essential responsibilities, including permits for mining, mining to regulate its territory, and the right to control the mining area. In this case, mining, especially those that do not have permits, can negatively impact indigenous peoples in the mining environment. The term liability in legal terminology is often also replaced by liability. Responsibility can be interpreted as a fundamental willingness to carry out what is an obligation.<sup>20</sup>

If we look at the Minerva Law, it shows that the State does not only pay attention to the transparency of the transfer of rights of indigenous peoples and the feasibility of using housing but only to community participation. In mining. The non-fulfillment of their human rights tests the existence of indigenous peoples. National development and mining permits replace their environmental, economic, legal, social, and cultural rights. Customary law areas have been changed for the national interest, although only for sectoral interests, so the Government has manipulated the Government by allowing the exploiters to destroy local wisdom. In addition, the large number of indigenous peoples is the cause of the incomplete regulation of the use of natural resources, so that the exploiters are free to invest in customary areas that the Government should protect.<sup>21</sup> The philosophy of regulating mineral and coal mining in a legal product contains a reasonably precise meaning and is substantially binding for all Indonesian citizens.<sup>22</sup>

Indigenous peoples are still vulnerable to government discrimination. It can be seen from the Minerva Bill (RUU Minerva), which the Minerva Law passed; several clauses are more in favor of corporations than the community. An assessment between the power oligarchy and the corporate oligarchy plays a practical game by ignoring the community's rights, one of which is the community. And community participation in the formation of public policies in the management of mineral and coal resources is considered necessary in any policy-making process regarding the wealth of indigenous peoples. .<sup>23</sup>

Law represents the highest authority to determine human interests that must be

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<sup>19</sup> Puluhulawa, Fenty, et al. (2022). Artikel. Plastic Waste Management: Comparison of Regional Legal Policies, 1

<sup>20</sup> Tijow, Lusiana. (2010). Perlindungan Hak Asasi Manusia Teriiadap Hak Hidup Anak Dalam Kandungan Di Luar Pbrkawinan Yang Sah. *Jurnal Legalitas*. 3 (2), 88

<sup>21</sup> Nadiyyya Ahsana,dkk. (2021). Menakar Undang-Undang Mineral Batubara Terhadap Kerentanan Perlindungan Hak Masyarakat Hukum Adat. *Jurnal Lex Generalis*. 2 (3), 205-206

<sup>22</sup> Fenty U. Puluhulawa, Nirwan Junus. (2013). Perlindungan hukum terhadap usaha pertambangan rakyat di provinsi gorontalo. *Laporan tahunan/akhir*, 2

<sup>23</sup> *Ibid.* hlm.198

protected and regulated.<sup>24</sup> Legal Community Rights in the management of mineral and coal resources have broad rights, not only the right to manage their natural resources but also the right to legal protection in the exercise of these rights for the survival of the local community

By turning the issue of the rights of indigenous peoples into the management of mineral resources into a matter of justice, it can be said that indigenous peoples have the right to manage natural resources or at least get benefits that will improve their standard of living. The legal community and the State are responsible for this.<sup>25</sup>

Suppose you refer to what Prof. Fenty Puluhalawa in his writings that the Government, through the Law, has provided a starting point for the judiciary, which is carried out for the sake of justice based on the Almighty God.<sup>26</sup> Quoting, as said by Suwitno Yutye Imran, that justice serves as a guide to distinguish between fair and unfair actions, elements of the aspect of justice can be contained in the substance.<sup>27</sup>

However, in dealing with the State, legal associations are often excluded. The State limits the rights of local communities to manage mineral and coal resources for the national interest with their tenure rights. They find it difficult to defend their rights due to poverty and lack of education. Indigenous peoples who are weaker than investors and the Government have made it easier for the Government to seize natural resources without a fair trial or even compensation.

They face violations of property rights, the right to adequate food and nutrition, the right to an adequate standard of living, the right to participate in cultural life, the right to self-determination, and the right to self-determination. The highest attainable standard of physical and mental health and well-being, mental and many other rights. Many studies say the courts that should be the last bastion against injustice are powerless.<sup>28</sup>

According to Daes, the general issue regarding the rights of indigenous peoples to natural resources is that the state/government recognizes or accepts the rights of indigenous peoples to land, territories, and natural resources; discriminatory laws and policies against indigenous peoples concerning their lands and natural resources; the refusal or reluctance of the state/government to establish customary sites; and the failure of the

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<sup>24</sup> Puluhalawa, Fenty U. (2009). Perlindungan Itukum terhadap Perempuan sebagai Korban Kekerasan dalam Rumah Tangga. *Jurnal Legalitas*. 2 (1), 8

<sup>25</sup>Marthen B. Salinding. (2019). Prinsip Hukum Pertambangan Mineral dan Batubara yang Berpiihak Kepada Masyarakat Hukum Adat. *Jurnal Konstitusi*. 16 (1), 159

<sup>26</sup> Fenty Puluhalawa, Lusiana M, Tujow, Sutrisno. (2020). Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim. *Jurnal Gorontalo Law Riview*. 3, (2), 174

<sup>27</sup> Suwitno Y. Imran. (2021). The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments. *Jurnal Law Review*. 3 (2), 398

<sup>28</sup> Dalimunthe, Indra Feri, Fenty U. Puluhalawa, and Fence M. Wantu. (2021). Desain Penuntutan Hukum Pidana Dalam Sistem Peradilan Pidana Di Masa Yang Akan Datang. *Philosophia Law Review* 1 (1), 3

state/government to enforce or enforce laws protecting indigenous peoples' lands.<sup>29</sup> The use of natural resources by indigenous peoples often leads to accusations of theft because the actions of indigenous peoples are not recognized as illegal.<sup>30</sup> Every individual in the customary law community has the right to own, manage, manage, and utilize natural resources in their customary law area.

With regard to mineral and coal extraction, every party implementing a mineral and coal mining project in the territory of indigenous peoples is obliged to provide accurate information about all aspects of mining, including its positive and negative impacts on indigenous peoples. Indigenous peoples have the right to have sufficient time to discuss this information and to seek advice or assistance from any party in a language they understand. This is important considering their value system, way of thinking, and lifestyle differences between them and other people.<sup>31</sup>

Free, prior, and informed consent can be interpreted as the right of indigenous peoples to receive information prior to the implementation of investment programs or projects for mining in indigenous peoples' territories and the free access of indigenous peoples to make decisions based on that information. Agree or reject. All this means to be fair to the locals.

The considerations or reasons for this regulation can be seen from the philosophical, juridical, and sociological foundations of the academic text of the Minerva Law. This philosophical foundation illustrates that mine management should be controlled by the State and used as effectively as possible to meet the needs of the people and realize the welfare and prosperity of all Indonesian people, as well as the sovereignty of the Unitary Republic of Indonesia. As stated in the preamble to 1945. Constitution of the Republic of Indonesia, the Republic of Indonesia.

The sociological basis shows that implementing the Minerva Law promotes democracy and regional autonomy, guarantees human rights, protects the environment, and increases community participation. The most common problems in the implementation of the Minerva Law are those related to management and/or development. The Mineral and Coal Law requires mining companies to control non-renewable natural resources and the livelihoods of many people and manage them under state control, which can provide real added value to the national economy. However, environmental problems in Indonesia stem from the issuance of mining permits which are getting out of control. Interestingly, it is not only illegal (illegal) mining that destroys the land but also permitted activities that you don't want to leave. It is clear that these impacts pose a threat

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<sup>29</sup> Ibid

<sup>30</sup> Ni Luh Ariningsih Sari. (2020). Pengakuan Dan Perlindungan Hukum Terhadap Masyarakat Adat (Dalam Prespektif Negara Hukum). *Ganec Swara* 13 (1), 443

<sup>31</sup> *Ibid*, hlm 166



to environmental sustainability, public health, and climate change. Climate change is a cost that affects the environment and indigenous peoples, and Indonesian society as a whole. This legal framework shows the need for a robust legal framework for mineral and coal mining utilization.

Until now, there has been a legal framework regulating it, particularly the Minerva Law. However, the Law may not protect the community's survival in their journey. In the decision of the Constitutional Court 32/PUU-VIII/2010 regarding the provisions of Article 10b of the Minerva Law, "The determination of the WP as referred to in Article 9 (2) b. taking into account the views of relevant government agencies and the community and taking into account environmental, economic, and socio-cultural aspects, as well as environmental aspects. The Government cannot volunteer, so it must first consult with the DPR RI and listen to public opinion. The sentence "paying attention to public opinion" cannot be enforced if the mechanism is implemented only to fulfill the formal provisions of laws and regulations and hide the main objectives, especially respect, protection, and implementation of the economic and social rights of citizens. as needed in the context of natural resources.

Used for the greatest prosperity of the people. Community participation is a particular object and is more valuable than just a formality, as evidenced by a written statement that is not necessarily made by the person concerned. This concrete evidence prevents conflicts between mining business entities in the WP, the community, and the State.<sup>32</sup>

Local communities affected by the actions of mining companies that destroy their homes cannot be held accountable to local governments. Worse, it can be found in Article 162 of the Minerva Law. Based on the contents of the article state:

"Everyone who hinders or interferes with the mining business activities of the IUP, IUPK, IPR, or SIPB holders who have met the requirements as referred to in Article 136 paragraph (2) shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 100,000,000.00 (one hundred million rupiah)".

Article 162, it was evident that the Minerva Law ignores the rights of citizens. In this article, citizens are not given the opportunity to refuse or veto. When residents try to defend their rights, they are deemed to have obstructed or hindered mining activities. They can be sentenced to a maximum of 1 year and a maximum fine of Rp. 100 million. Meanwhile, in the implementation of the environment in this country, the arrangements have been formulated in Article 28 H paragraph (1) and Article 33 paragraph (3), as well as paragraph (4) of the 1945 Constitution. Then in Law Number 17 of 2007 concerning the National Long-Term Development Plan, Law No. 39 of 1999 on Human Rights, and Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH). On March 3,

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<sup>32</sup> Naskah Akademi Undang-Undang Nomor 3 Tahun 2020 Tentang Mineral dan Batubara

2020, the company can report those who try to interfere in any form of mining and face criminal penalties, including fines of up to 100 million. This very irrational rule happened in the midst of injustice and criminalization of many companies against the mining community and was highly praised by the President.

Under the new Minerva law, local communities will not only lose their natural resources to a small number of mining conglomerates but also criminalize those who try to refuse to use their territory.<sup>33</sup> The right to control by the State in Article 33 of the 1945 Constitution of the Republic of Indonesia is used in the management of natural resources and essential production branches that affect the livelihood of many people.<sup>34</sup>

The incident occurred in Alasbuluh Village, Wongsorejo District, Banyuwangi Regency, where three residents protesting the excavation, who wanted to fight for the right to a better and healthier environment, were instead charged with obstructing mining permits. As a result, the Banyuwangi District Court sentenced them to 3 months in prison. This is a result of Article 162 of the Minerva Law, which does not have a unique element so that miners can use it to commit crimes against the community. Based on this case, it can be clearly seen that there is a lack of community forums to provide a way to maintain and protect mineral and coal objects the Government should provide. The Government should provide direction and a forum to protect the rights of the people in maintaining their existence.

Based on the explanation above, there has been a contradiction between Article 162 of the Minerva Law and the 1945 Constitution. In Article 28 H paragraph (1) and Article 33 paragraph (3), the rights and existence of the community have been recognized. Meanwhile, in Article 162 of the Minerva Law, indigenous peoples are ignored and even protected. This means that the natural substance of the Minerva Law cannot correctly translate Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. This Law should recognize the community's rights that are directly related to the environment and natural resources.

This Law also does not provide a clear description of transparency, participation, and accountability in realizing good governance. The most important thing is the principle of justice for the rights of the community and consideration of the limitations of the carrying capacity and capacity of the environment. This further makes it clear that the State should have full responsibility to fulfill and implement the rights of its citizens, such as having a good and healthy environment according to the applicable regulations. In addition, the State can submit a guarantee for the utilization of natural resources that will give the most

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<sup>33</sup><https://www.walhi.or.id/menju-2-tahun-uu-minerba-puluhan-warga-dikriminalisasi-jutaan-hektar-lahan-dijarah>. Accessed on May 2022 at 10:00 WITA.

<sup>34</sup> Puluhalawa, Fenty, and Amanda Adelina Harun. (2017). Implementation Article 33 Paragraph (3) of UUD NRI 1945 in Law of Coastal Areas and Small Island Management. *JL Pol'y & Globalization*. 62, 33

significant possible benefit to the happiness and quality of life of the community for the descendants of this time and does not rule out the possibility for future generations.

There are various discrepancies between the provisions and the mandate of paragraph 3 of Article 33 of the Constitution in the development of mining companies by issuing mining permits. In accordance with Law no. 3 of 2020, this Law stipulates that oil and natural gas are strategic in Indonesian mining areas because natural resources are national assets controlled by the State, and the Government carries out their implementation as the holder of mining business permits in these business activities.<sup>35</sup> Article 1 paragraph 28A also states that the Mining Legal Area is the entire land space, sea space, including space within the earth as a single territorial unit, namely the Indonesian archipelago, land under waters, and the continental shelf. Through this article, mining companies can arbitrarily cover their mining areas without looking at areas or areas belonging to the protected community, one of which is customary land.

#### **4. Conclusion**

The position of the rights and obligations of indigenous peoples in the mining world is still far from clear and has not been able to provide clear and unequivocal protection in the Mineral and Coal Law. Article 18B(2) of the 1945 Constitution, as one of the constitutional foundations of indigenous peoples, stipulates declarative recognition that the State recognizes and respects the existence and rights of indigenous peoples. However, this recognition sets limits or requirements for a community to be recognized as a customary law community. The Government must have full responsibility to protect and provide avenues and forums for indigenous peoples to maintain their rights in maintaining their existence.

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<sup>35</sup><https://jdih.kemenkeu.go.id/fulltext/2001/22TAHUN2001UUPenj.htm#:~:text=Berdasarkan%20jiwa%20Pasal%2033%20ayat,kekayaan%20nasional%20yang%20dikuasai%20negara>. , Accessed on 18 May 2022 at 20:00 WITA

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