



Protecting of the O'hongawa Manyawa Remote Indigenous Communities in The Nickel Mining Industry

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Abstract:

The Job Creation Law as the main regulation in job creation efforts through ease of doing business, improving the investment ecosystem and accelerating national strategic projects which is further regulated in Presidential Regulation Number 109 of 2020 becomes the basis for organizing the nickel mining industry in North Maluku province. This research is empirical legal research which aims to identify the rights of the O'Hongawa Manyawa remote indigenous communities in the mining concession area, as well as analyzing the implementation of free, prior, and informed consent in mining policies by companies as well as the government's commitment to human rights which are constitutional rights of the remote indigenous communities. The research results show that the nickel mining business permit area managed by Weda Bay Nickel company is in an area that is the living space of the O'Hongawa Manyawa remote indigenous community which is nomadic and grouped. Land clearing and excavation activities carried out by companies have resulted in the reduction/loss of food sources, decreasing the environmental quality of hunting and gathering areas and even starvation. From the government side, there was a low level of commitment to protect the O'Hongawa Manyawa remote indigenous community acknowledged and involved the remote indigenous community in making mining management decisions that had an impact on their living space, while on the other hand the government was progressively encouraging the formation of legal products that provide privileges and accelerate activities. mining business as part of accelerating the implementation of national strategic projects.

Keywords: Remote Indigenous Communities; O'Hongawa Manyawa; Nickel Mining Industry.

1. Introduction

Article 33 paragraph (3) of the 1945 Constitution states that the earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. This means that it is an obligation to manage the earth, water and space as well as the wealth placed in the control of the State to be used to realize the welfare of all Indonesian people. In implementing national development, the Government has stipulated Law Number 11 of 2020 concerning Job Creation as last amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Job Creation into Law which is the legal basis for efforts to create jobs through ease of doing business, show the State's support for investment in natural resource management, and become the basis for confiscating/taking over the living space of customary law communities.

National strategic policy in North Maluku is identified in the development of industrial areas as most recently regulated by Presidential Regulation Number 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects as most recently amended by Presidential Regulation Number 109 of 2020 concerning the Third Amendment to Presidential Regulation Number 3 of 2016 concerning Acceleration of Implementation National Strategic Projects such as the Weda Industrial Zone and Buli.

Protection of the constitutional rights of customary law communities as stipulated in Article 18B paragraph (2) of the 1945 Constitution, the existence of customary law communities and their traditional rights, including land rights as long as they are still alive, obtain constitutional guarantees from the State, therefore the Regional Government as an organization of state power in the regions assumes responsibility in formulating policies to protect the rights of customary law communities in their respective regions.

2. Problem

The O'Hongawa Manyawa Remote Indigenous Communities, which is the Tobelo Dalam tribe (often called Togutil), is an indigenous communities that resides in the mining concession area on a nomadic basis at several points such as Kao Rahai, Ake Jira, Tofu, Ake Sangaji, and Ake Meing. Several O'Hongawa Manyawa communities have settled semi-permanently in the Remote Indigenous Communities project placement area in Dodaga village, East Halmahera Regency. Currently, these Remote Indigenous Communities are the parties most

affected by mining resource management activities without having a bargaining position in the context of protecting rights to natural resources and living space.

Nickel and cobalt mining and processing activities in Central Halmahera Regency and East Halmahera Regency by PT. Weda Bay Nickel for making electric car batteries, within a concession area of 120,500 Ha (before addendum) is mostly located in the forest area which is the living area of O'Hongana Manyawa. Forest clearing activities for construction of company camps, mining roads and mining areas have destroyed living space, a source of resilience for nomadic life which is completely dependent on forests. The fact that there is damage and loss of natural sago plantations, deer and pigs, shellfish and fish in the river have changed color due to company bulldozer activities, resulting in starvation and forcing them to move, which was conveyed by one of the nomadic O'Hongana Manyawa women, shows that there is a gap in fulfilling their right to life.

Based on the direction of national development policy to realize the vision of a golden Indonesia 2045, one of the positions and potential contributions of North Maluku is the nickel processing industry through the Industrial Zone which continues to encourage investment through "the Sonic Bay project[6]" in response to the high demand for world nickel. This industrial acceleration is realized through changes to statutory regulations through the Omnibus Law as well as the designation of the Weda Bay Industrial Area as a priority Industrial Area and National strategic project. This has implications for the possibility that forest damage and degradation of O'Hongana Manyawa's life will continue to occur as compensation for achieving national development targets.

3. Method

This research is a type of empirical legal research (socio-legal). This research approach is legal anthropology which is carried out exploratively as a policy study which critically analyzes its meaning and implications for legal subjects, especially O'Hongana Manyawa as a marginalized group in Central Halmahera Regency and East Halmahera Regency which are also mining and industrial areas through the National Strategic Project.

4. Results and Discussion

4.1. The Meaning of the Rights of O'Hongana Manyawa Remote Indigenous Communities, Human Rights Perspective

Rights based on justice, morality, custom or law that exist for humans in social life which subjectively constitute power whose existence is recognized by law and whose use obtains legal guarantees in order to produce a situation, which according to adherents of historicism is a spiritual phenomenon to regulate people. others are based on law. LB Curzon, following the views of Hohfeld (1879-1918), stated that the term "right" contains four very basic legal relationships, namely "claim", "privilege", "power" and "immunity"[1]. Furthermore, Curzon outlined the views of Ronald Dworkin who stated that "rights as expressing a community of principles"[2], therefore rights do not originate from sources outside humanity, but originate from society and depend on practice, institutional justice, politics and law (the need for society to protect the dignity of its members through political and legal action).

In Indonesia, the government's efforts to respect and uphold human rights began with the issuance of Presidential Decree No. 129 of 1998 on the National Action Plan on Human Rights of Indonesia, which was followed by Law No. 39 of 1999 on human rights, as well as Law No. 26 of 2000 on the Human Rights Court. Indonesia has also ratified international human rights treaties, including Law No. 11 of 2005 on Ratification of the International Covenant on Economic, Social, and Cultural Rights, and Law No. 12 of 2005 on Ratification of the International Covenant on Civil and Political Rights.

The rights of indigenous peoples under international law have evolved from existing international law, including human rights treaties, to address the specific problems and priorities faced by indigenous peoples. ILO Convenant No. 169 concerning the Protection and Integration of Indigenous and Other Tribal and Semi Tribal Populations in Independent Countries, Article 1 (b), defines Indigenous peoples as follows:

"peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."

In accordance with ILO Convention 169, Durning outlined many criteria for indigenous people, including the following five key elements:

- a. The descendants of the original inhabitants of an area who were later inhabited by a stronger group of people from outside;
- b. A group with a different language, traditions, culture, and religion from the dominant group;
- c. Associated with various economic conditions in society;
- d. The descendants of hunting, nomadic, and shifting cultivator societies;
- e. A society with social relations that emphasize group relationships and decision-making through agreement.[3]

This Convention are the only specifically dealing with indigenous peoples rights that fundamentally concerned with non-discrimination. Another international law is the The UN Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly on September 13 of 2007, which has a comprehensive instrument detailing the rights of indigenous peoples in international law and policy, containing minimum standards for the recognition, protection and promotion of these rights, such as:

- a. Right to self determination;
- b. Right to lands, territories and resources;
- c. Right to economic, social and cultural development;
- d. Collective rights;
- e. Equality and non-discrimination.

Based on its basic structure in Indonesia, Soepomo is formed into 2(two) legal associations, as follows: “(1) based on the relationship of descent (genealogy), namely the legal alliance that occurs on the basis of the relationship of descent according to patrilineal, matrilineal or parental arrangements; and (2) based on the regional environment (territorial) where membership of the association is determined by residence/region”.[4]

Thus, rights are legal guarantees that contain fundamental powers to demand respect and protection for the dignity of legal subjects in a community environment, which in the customary law literature Van Vollenhoven calls “*beschikkingsrecht*”, as follows:

“it is the fundamental right of a jural community freely to avail itself of and administer all land, water and other resources within its territorial province (*beschikkingsgebied*, area of avail) for the benefit of its members, and to the exclusion of outsiders, except those to whom it has extended certain limited, and essentially temporary, privileges. The right of avail is thus conceived also as the basic communal source of a whole range of discrete and more or less individualized user rights, which are vested in persons or groups by virtue of their membership of the community.”[5]

Customary law was born from natural and cultural conditions as a source of values which were then passed down to a magical, religious, communal, concrete and direct way which according to F.D. Holleman aims to restore the disturbed religious magical balance so that harmonious relationships can be achieved. The cosmology of the customary law community has not changed substantively or in substance, but the external form may experience changes due to natural conditions, namely changes in interactions within the community. According to Dominikus Rato, the condition of the existence of customary law is because customary law contains norms born from the experience of members of the customary law communities over many years (tens, hundreds or even thousands) which are then passed down from generation to generation with changes. which is adapted to the real needs of members of the customary law community.[6]

Rights are generally conceived of as securing or protecting fundamental human interest[7]. In the context of the rule of law, it is realized through the principle of equality before the law which requires equal treatment for everyone before the law (*gelijkheid van ieder voor de wet*), which is expressively stated in Article 27 paragraph (1) in conjunction with Article 28D paragraph (1) the 1945 Constitution, meaning that all citizens (people of the original Indonesian nation and people who are legalized as citizens by law), regardless of the differences in question, including various structures of legal community associations (genealogical and territorial) with a diversity of customary laws, receive guarantee of recognition, fulfillment, protection and equal service before the law. Thus, Indigenous law communities, including the O'Hongana Manyawa Remote indigenous communities which is located in the sovereign territory of the Republic of Indonesia with a variety of living legal patterns and living space characteristics (*beschikkingskring*) must receive the same treatment in legal policy.

The O'Hongana Manyawa Remote Indigenous Communities refers to itself as a community forest to differentiate it from the coastal village community (O'Berera Manyawa), which Duncan calls the Tobelo Forest[8].

They occupies the Halmahera forest area, meeting subsistence food needs by hunting, gathering, shifting cultivation and fishing traditionally as a way of maintaining the natural balance of the surrounding ecosystem in accordance with the value view and cosmological understanding of forests. Syaiful Madjid stated that "the natural understanding of the forest as a cosmos contains religious aspects, agricultural and hunting systems, as well as cultural aspects that build a complete life, so that O'Hongana Manyawa's conceptualization of self and the environment is contained in the oral traditions of *wawango* (life) and *ligiriri* (search) becomes a reference for the interpretation of forest life"[9].

Apart from forest units, O'Hongana Manyawa also recognizes other spatial unit systems called "house units" which are called *o tau moi manyawa* led by a male head of family, and "settlement units" which consist of 3-7 house units, called *gogere*. Management of forest units is based on traditional beliefs that focus on the presence of ancestral spirits, which in cosmological terms is expressed through the expression "*manga life de manga roehe hagaraka de hobuba, ngomi mia roehe de mia life imaki kuoioaka de ma fongana nako mia fongana mia paliara, kaimatero de mia gomanamia paliara*"[10], implies the unity of feelings and soul of O'Hongana Manyawa which is one with the forest. The forest is the mother who protects and feeds, so respecting the spirits (*gikiri*) is a manifestation of devotion to the ancestors.

The O'Hongana Manyawa Remote Indigenous Communities, in managing the sustainability of its life, divides the forest into 3(three) parts based on Weda By Nickel report 2010, namely *O'Hongana ma gomanga* (ancestral dwelling place, sacred area, protected forest), *O'Fongana* (primary forest yang ditanami tumbuhan pangan lain) and *Raki Ma'Amoko* (*Dusun raja* or large gardens and food sources)[10]. This forest classification contains the essence of sorting traditional territories according to regional characteristics and determining them based on instructions obtained in ritual ceremonies. Roem Topatimasang[11] divides the patterns of arrangement and use of space in the customary areas of customary law communities into 3 (three) areas, namely:

- a. Cultivation areas which are divided into residential/residential sub-areas and farming or agricultural sub-areas;
- b. Production areas where natural resources can be extracted and utilized on a limited basis;
- c. Conservation areas where natural resources are not allowed to be taken throughout the year to maintain human relationships with nature, including the spirits of ancestors.

Based on Article 3 of UNDRIP state that "Indigenous peoples have the right to selfdetermination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development", it can be concluded that the O'Hongana Manyawa has the right to determine their own fate regarding their lifestyle, whether nomadic or sedentary, their living space management pattern, as well as their spiritual relationship with the forest and its traditional resources. As the guardian of the Halmahera forest, the nomadic O'Hongana Manyawa stated that "if there are no more forests, there will be no more O'Hongana Manyawa"[12] indicating that the forest cluster is under control based on local wisdom values as a subsistence for the survival of their lives, so that The state must treat O'Hongana Manyawa and its forests with respect, including the freedom to do or not do something with its living space without outside interference.

O'Hongana Manyawa's other rights is the rights to land, territory and resources in the living space which are currently part of the mining business permit area which is normatively very minimally regulated in Law Number 4 of 2009 concerning Mineral and Coal Mining. The forest which is the living space for the O'Hongana Manyawa community holds the potential for biodiversity, including nickel, which is currently an object for strategic mining. Even though the basis for controlling mineral resources in the highest authority is in the hands of the state, Article 10 of UNDRIP states that "Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return," as does Article 15 paragraph (1) of ILO Convention No. 169 states that "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources."[13] These two regulations clearly show that the State is obliged to respect O'Hongana Manyawa for the forest which is its living identity, by implementing free, prior and informed consent.

Ideas of equality and non-discrimination are also important in defending O'Hongana Manyawa. Upholding the ideal of equality before the law is essential to maintaining the supremacy of law and justice. The rule of law guarantees human rights for citizens as a legal responsibility. Equality and non-discrimination are basic

constitutional ideals that support the supremacy of law and promote peace and prosperity through the fulfillment of basic rights and freedoms. To protect the right to non-discrimination, the government must address both direct and indirect discrimination. This can be accomplished by demonstrating a commitment to removing existing structural and systemic barriers to healthy relationships in society, as well as strengthening protection against discrimination against remote indigenous communities.

Thus, O'Hongana Manyawa's conceptualization of self and environment in the oral traditions of *wawango* (life) and *ligiriri* (search) in forest management as part of identity and ancestral heritage contains the meaning of a type of self and group accountability in a magic religious cosmological relationship that living in harmony and balance involves managing physical and natural resources in accordance with their demands, which is an expression of cultural identity. This existence should be leveraged as cultural capital to achieve development plans based on Pancasila, a national philosophy that values respect for God's grace, humanity, and justice. It also assures the preservation of O'Hongana Manyawa as a national citizen.

4.2. Nickel Mining Industry and Protection of the O'Hongana Manyawa Remote Indigenous Community

National Strategic Projects are projects implemented by the Government, Regional Government, and/or business entities that have a strategic nature to increase growth and equitable development in order to improve community welfare and regional development. The existence of Law No. 11 of 2020 concerning Job Creation as most recently amended by Law No. 6 of 2023 shows the State's support for investment in natural resource management, as well as being the basis for confiscating or taking over the living space of customary law communities including the O'Hongana Manyawa through the development of national strategic projects.

Based on Presidential Regulation Number 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects as last amended by Presidential Regulation No. 109 of 2020 concerning the Third Amendment to Presidential Regulation No. 3 of 2016 concerning the Acceleration of Implementation of National Strategic Projects, several development projects have been implemented, including the Industrial Area in Banten (Wilmar Serang), Central Sulawesi (Morowali), South Sulawesi (Bantaeng, Takalar), Southeast Sulawesi (Konawe), North Maluku (Obi, Weda Bay), and West Papua (Bintuni Bay) as well as other sectors such as energy, smelters, economic equality and other national strategic programs.

This Presidential Decree provides many conveniences in implementing National Strategic Projects, including:

- (1) permits with a short period (minimum), where permits and non-permits that are under the authority of the government/regional government are carried out within a minimum time;
- (2) taking over licensing authority to speed up the issuance of permits, where the Presidential Decree stipulates administrative sanctions for Regional Governments that are slow in issuing permanent;
- (3) exempt from fees for acquiring rights to land and buildings, where local governments are prohibited from collecting (charging a rate of 0%) fees for acquiring rights to land and buildings for national strategic projects;
- (4) guarantee of continuity of project development implementation even though the licensing period ends;
- (5) the obligation to adjust regional spatial planning according to the location of national strategic;
- (6) Implementation of national strategic projects in forest areas with a lease-to-use forest area permit;
- (7) Government/regional government support for prioritizing land provision; and
- (8) Acceleration of government/regional government procurement of goods/services for national strategic projects.

Central Halmahera's industrial area has 66 mining business permissions covering 142,964.79 hectares, which accounts for approximately 60% of the area. Some of these permits are located in forest areas. Data from the North Maluku Indigenous Peoples Alliance (AMAN) shows that the mining concession is located in a forest area of 72,775 hectares. The area consists of 35,155 hectares of Ake Kobe protected forest, 20,210 hectares of limited production forest, 8,886 hectares of production forest, and 8,524 hectares of convertible production forest. These areas are the living spaces of indigenous communities including O'Hongana Manyawa.[14]

PT Weda Bay Nickel holds the Seventh Generation Contract of Work under the President Decree No. B.53/PRES/1/1998, for nickel and cobalt ore mining and processing activities in Central Halmahera Regency and East Halmahera Regency, covering an area of 120,500 ha. After the most recent reduction in 2019, the total area

of this company's contract of work is currently 45,065 ha. The company's environmental management through AMDAL (ANDAL, RKL, and RPL) was approved in 2009 in line with the Head of the North Maluku Province Environmental Agency's Decree No. 02/Kep-Feasibility/BLH-MU/06/09. Weda Industrial area by PT Indonesia Weda Bay Industrial Park (IWIP) is a joint venture of three Chinese investors, namely Tsingshan, Huayou, and Zhenshi, which carries out processing activities of nickel ore deposit mineral resources and 30kt/Ni Nickel Pig Iron into final products in the form of batteries electric vehicles and steel[15]. This integrated heavy metal processing industrial area is one of the National Priority Projects featured in the 2020-2024 National Medium Term Development Plan as well as one of the National Strategic Projects.

The Ministry of Energy and Mineral Resources estimates that nickel reserves in North Maluku are 1.4 billion tons. In this way, Maluku is in second place after Sulawesi which has nickel reserves of 2.6 billion tons, followed by Papua with 60 million. This mineral commodity has value in the global market because it can be used to produce stainless steel, batteries and raw materials for various other industries. Implementation of national strategic project policies with all guarantees of convenience for investors further weakens the position of indigenous communities affected by the industrial area policy, especially in mining areas which threaten and destroy the living space of the nomadic O'Hongana Manyawa remote indigenous communities. In reality, the damage to *Raki Ma'Amoko* (large garden and food source) was due to land clearing activities and nickel exploitation[15]. This was conveyed by Maratana/Haerani, a woman from O Hongana Manyawa, that "the bulldozers have destroyed sago trees, other plants and made the fish in the river die". AMAN Malut said "O'Hongana Manyawa lost an important habitat that supports their lives which was maintained as their home, namely the Halmahera forest"[16].

The concept of systematic legal protection for the O'Hongana Manyawa Remote Indigenous Communities is built on the principle/concept of human rights recognition and protection, as well as Pancasila, which will serve as the "substance", and the concepts of "rechtstaat" and "the rule of law" as the "method". This conception begins with the preposition, firstly that "human rights which are inherently a gift from God must be respected and protected by the state, law and all citizens of the nation", this preposition comes from the general theory of human rights, as an element of "rechstaat" according to Friedrich J. Stahl or "the rule of law" according to A.V Dicey. The second preposition, that "law as a means of development must accommodate the life of a pluralistic society", comes from Mochtar Kusumaatmadja's theory of development law which adds the pragmatic aim of law, namely development as an instrument for developing society. Thus, the syllogism of the two prepositions above is "law as a means of development must respect and protect the values of human rights in the life of a pluralistic society".

Law, as envisioned by Mochtar Kusumaatmadja, serves as both a social order and a social engineering tool to achieve the goal of implementing legal growth that is based on order, clarity, and fairness. The mining law should incorporate justice values based on the equality liberty principle. This principle recognizes the values of customary law communities and their relationship with *lebensraum*. It also aims to balance pluralism with responsive and profitable development policies.

The concept of systematic legal protection takes into account the diversity of customary law, embraces differences or plurality as a common identity through recognition of cultural identity, facilitates maximum participation in a free position, provides a complaint mechanism (objections/lawsuits/demands), provides legal assistance, allocates fair compensation, and encourages increased community capacity through empowerment.

Thus, the O'Hongana Manyawa remote indigenous community of must obtain recognition from the regional government through regional legal products as formal or actual existing legality as per Regulation of the Minister of Home Affairs No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Customary Law Communities. O'Hongana Manyawa's legal recognition will influence the quality of protection of rights to living space in the form of rights institutions as well as concrete legal relationships which is *conditio sine qua non* in planning, utilizing and controlling customary territories as a derivation of fundamental right (*beschikkingsrecht*). However, until now there has been no legal policy for the regional governments of Central Halmahera Regency and East Halmahera Regency to recognize the actual existence of O'Hongana Manyawa through regional regulations or regional head decisions.

The formation of regional legal products related to the protection of customary law communities, including the O'Hongawa Manyawa remote indigenous community, is very urgent based on the Article 18b paragraph 2 of the 1945 Constitution which is the constitutional basis for the formation of organic regulations under it. This article should be the legal basis for the formation of regulations that have fundamental dimensions regarding local wisdom values and human rights.

Furthermore, in protecting the rights to living space of O'Hongana Manyawa as part of citizens, the government or regional government must ensure that the implementation of development policies including investment in the mining sector, especially minerals and coal, applies the principles of human rights as regulated in UNDRIP and the ILO Convention No. 169 especially the free, prior and informed consent regarding sustainable mining management. The adoption of free, prior, and informed consent is also part of mining management guidelines for mining companies. It is also necessary to ensure that this principle is incorporated into the customary law system so that it binds all parties, which will have a positive impact on the decisionmaking process regarding natural resource management policies that affect the lives of customary law communities, including the O'Hongana Manyawa.

The challenge faced in implementing free, prior and informed consent is how to apply this principle in the management of mining resources in remote Adar communities who live nomadic lives, whether this must be done directly or through representatives in taking consent. Baker and McKenzie state "some countries are accepting steps to involve indigenous peoples directly in the process through direct contact"[17]. However, the strategy of involving remote indigenous communities who have a nomadic pattern, especially those who have not had contact with foreigners/outside, must be really thought out so that it does not threaten the continuity of their lives due to direct contact that occurs in seeking to implement FPIC.

Sustainable mining practices require a holistic approach that integrates economic viability, environmental protection and social justice. Currently, there is an instrument to encourage responsible mining companies, namely the Initiative for Responsible Mining Assurance (IRMA) Standards. The Initiative for Responsible Mining Assurance (IRMA) is an internationally recognized voluntary assurance program aimed at improving the performance of mining operations. IRMA's standards for responsible mining are the only mining standards with practices that encompass business integrity, social responsibility, planning for a positive legacy and environmental responsibility.

The IRMA Standard for Responsible Mining Chapter 2.2 lays out detailed expectations for mines with activities that affect the rights or interests of Indigenous Peoples. The following rights of indigenous peoples are especially relevant in relation to industrial-scale mining developments:

- a. The right to self-determination, by virtue of which indigenous peoples freely determine their political status and pursue their economic, social and cultural development;
- b. Rights to property, culture, religion, and non-discrimination in relation to lands, territories and natural resources, including sacred places and objects;
- c. Rights to health and physical well-being in relation to a clean and healthy environment;
- d. Rights to set and pursue their own priorities for development; and The right to make authoritative decisions about external projects or investments.[18]

The description of rights above shows respect for the rights, honor, culture and life patterns of customary law communities. The IRMA Standard defines FPIC as consent based on:

- a. engagement that is free from external manipulation, coercion and intimidation;
- b. notification, sufficiently in advance of commencement of any activities, that consent will be sought;
- c. full disclosure of information regarding all aspects of a proposed project or activity in a manner that is accessible and understandable to the people whose consent is being sought;
- d. acknowledgment that the people whose consent is being sought can approve or reject a project or activity, and that the entities seeking consent will abide by the decision.[18]

One critical requirement in the IRMA Standard is that new mines must obtain the FPIC of potentially affected Indigenous Peoples. This commitment is clearly formulated in the Policy Commitment, which states that "Operating companies must have a publicly available policy that includes a statement of the company's respect for the rights of indigenous peoples, as regulated in UNDRIP, as well as ensuring that indigenous peoples are potentially impacted by related company activities. with mining are aware of this policy".

The above means that new and existing mines must obtain free, prior and informed consent from indigenous communities wherever possible, proposing changes to company plans or activities that could significantly change the nature or extent of existing impacts, or result in additional impacts on the mine, rights, land, territory, resources and property rights, livelihoods, culture or religion of indigenous peoples.

The company policy in the mining industrial area in Central Halmahera, namely Eramet, has shown a positive response to realizing responsible mining. Chief Sustainability and External Affairs Officer Eramet Group

Virginie de Chasseay commented, “as a shareholder in PT Weda Bay Nickel in Central Halmahera, Eramet is committed to implementing IRMA standards. Eramet is preparing WBN for an audit by third-party auditor IRMA on environmental, social, and community elements, with the external audit slated for 2025”[19]. This commitment demonstrates good faith in running a responsible mining business, but its implementation in the field cannot yet be measured in terms of compliance with procedures for implementing free, prior, and informed consent in the implementation of mining activities at PT Weda Bay Nickel. motivated by the condition of the legal subjects of the O'Hongana Manyawa indigenous people who are remote nomads and do not have contact with foreigners to obtain free, prior, and informed consent.

On the other hand, the legal politics of protecting the rights of customary law communities through the draft Law on Customary Law Communities shows the uncertainty of the State's commitment to providing guarantees for the protection of rights as citizens, thus tending to weaken the position of customary law communities, including the nomadic O'Hongana Manyawa remote indigenous community which continues to move. a place to avoid extractive activities that continue to exploit Halmahera's forests.

5. Conclusion

UNDRIP protects indigenous peoples' rights to natural resources. However, the instruments are not legally binding. This proclamation has tremendous importance and could pave the way for future binding agreements or international customary law. ILO Convention 169, in addition to UNDRIP, controls indigenous peoples' rights and protections. It emphasizes their right to consult and participate in decision-making regarding activities affecting them.

The state must recognize and protect the rights of traditional law communities, such as the O'Hongana Manyawa community in the Halmahera forest lebensraum area. This includes the right to life and living space, which is based on wawango and ligiriri values in their cosmology. To protect the right to non-discrimination, the government must address both direct and indirect discrimination. This can be accomplished by demonstrating a commitment to removing existing structural and systemic barriers to healthy relationships in society, as well as strengthening protection against discrimination against remote indigenous communities.

National strategic projects in the mining and industrial sectors of Central Halmahera Regency, North Maluku Province, must not compromise respect and protection for traditional communities, including the O'Hongana Manyawa, by incorporating FPIC into mining management. Thus, the government/regional authority must develop rules to recognize O'Hongana Manyawa and implement all relevant international legal provisions relating to the respect, recognition, and preservation of O'Hongana Manyawa's rights to their dwelling place.

In systematic legal protection, the combination of legal positivism with intuitive experience/perspective/interaction of customary law communities and their living space will create a more humanist and holistic relationship. This is because, the pattern of relations that emphasizes the dominance of the state's legal way of thinking which emphasizes the quantity of legal construction results will experience a shift towards a more humanist, conservative direction by prioritizing the quality of norms through cooperation/joint roles in a pattern of complementary relations not only between society and government, including ecological relations.

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