GOVERNMENT RESPONSIBILITY IN THE MANAGEMENT OF NATURAL RESOURCES FOR THE PROTECTION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN THE BALAESANG REGION

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ABSTRACT

There are two aims of this paper: first to analyze the responsibility of the government in the commitment to protect the rights of indigenous and tribal peoples in natural resource management activities; secondly, to analyze the implementation of government responsibilities in mining management in relation to the rights of indigenous and tribal peoples in enjoying their rights in the ecosystem, such as the environment. The method used in the research is empirical normative method, namely research that emphasizes the secondary data that is by studying and reviewing the principles of law and positive law principles derived from the existing literature materials in legislation and the provisions especially in relation to the exclusion of indigenous people's rights in the obligation of the state to create a healthy environment for the management of natural resources as a manifestation of human rights protection, and supplemented by empirical data in the form of interviews with related parties in Balaesang Tanjung Donggala District. The results show that natural resource management activities, linked to indigenous and tribal peoples' rights in environmental protection are regulated in various laws, both nationally and internationally. Implementation of government responsibility in mining management is related to the right of customary law community in enjoying the environment has not been optimally done. From the case of Balaesang Tanjung Donggala, it is envisaged that local governments ignore the rights of indigenous and tribal peoples in enjoying a healthy environment.
Key Words: Natural Resource Management; Abandonment of the
economic, social, and cultural rights of Indigenous People

PREFACE

BACKGROUND

The indifference of the rights of indigenous people in natural resource management activities, which is damaging the environment is the government's failure to implement the responsibilities to prosper the people in the current era of globalization and technological improvement (Pratama, without years: 11), inter alia, in maintaining the environment resources, such as water resources. This is not in accordance with the fifth principles of Pancasila, that is Keadilan Sosial (Social Justice) illustrated in the 1945 Constitution which is justice for the people including protection of human rights in the economic, social and cultural fields (International Covenant on Economic, Social and Cultural Rights), (Sen, 1994: 23) which is the government's commitment to ratification, which exist in Law No. 11 of 2005.

Indigenous People is a group of people who are bound as a unit in an orderly unity, which is eternal and has its own leadership and wealth both tangible and intangible and inhabit or live above a certain area (Praguba, 2010: 31). Customary law rights are internationally regulated in the International Covenant on economic, social and cultural rights (International Covenant on Economic, Social and Cultural Rights) or in Indonesian, it is more commonly known as
the International Covenant on Economic, Social and Cultural Rights. This Convention is an international legal instrument which regulates the protection and compliance of human rights in the economic, social, political and cultural fields.

Indonesia ratified the covenant in Law No. 11 of 2005, and included in 152 countries that have ratified the covenant which took an effect on January 3, 1976 with 1,072 ethnic groups, including 11 ethnic groups with numbers exceeding one million people, Indonesia is one of the nations which have the most diverse culture. Populations with diverse ethnicities are part of an estimated 370 million inhabitants of indigenous people in the world who live in almost 70 countries (Saly, 2000: 7). Even though the 1945 Constitution of Indonesia had a solid foundation and vision for the recognition of the existence and rights of indigenous people, until now, there is no national law that specifically regulates the protection of the rights of indigenous people. The existence of indigenous people is regulated in the 1945 Constitution, especially in Article 18B verse (2), which determines that the state protects and respects the unity of indigenous people.

As stated in the 4th paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia that the State of Indonesia is a State of Law based on the Constitution of the 1945 Constitution and Pancasila. The purpose of the 1945 Constitution is to protect the entire Indonesian people, promote general health, educate the life of the nation, and participate in world order based on independence, eternal
peace and social justice, so that in Indonesia, there are no member of community who are not guaranteed the right, and are not being ignored even indigenous people. But in reality, there are quite a number of violations of the rights of indigenous peoples, in the exploitation and management of mines that disturb the environment in which they live. Various cases indicate that the government/ state does not protect even as if ignoring the existence of indigenous people, and not respecting the rights of the indigenous people.

PROBLEM FORMULATION

Based on the background above, the problems can be formulated as follow:

1. How is the responsibility of the government to protect the rights of indigenous peoples in natural resource management activities regulated?
2. How is the implementation of the responsibilities of the government in the management of mining related to the rights of indigenous peoples in enjoying their economic, social, and cultural rights, such as the living environment?

RESEARCH PURPOSES

Based on the problem formulations, the purposes of the research are:
1. To analyze the responsibility of the government regarding the commitment of protection of the rights of indigenous people in natural resource management in the regulations;

2. To analyze the implementation of the responsibility of the government in the management of mining is associated with the rights of indigenous peoples in enjoying their rights in the field of economic, social, and cultural, such as the living environment.

**RESEARCH ADVANTAGE**

To broaden the knowledge, reform the law in the development of national law, and expected to be useful for stakeholders who are related to the rights of indigenous people in the economic, social, political fields.

**RESEARCH METHOD**

The method used in the study is the empirical normative method, that is the research that emphasizes the secondary data by studying and reviewing the principles of law and the principles of positive law derived from the literature contained in the legislation and provisions law, especially relating to the indifference of the rights of indigenous people in the obligation of the create a healthy environment for natural resource management as a manifestation of the protection of human rights, and equipped with empirical data in
the form of interviews with related parties to the cases in Balaesang Tanjung Donggala.

**LITERATURE REVIEW**

The government is failed to implement responsibility in environmental protection related to the implementation of human rights in the economy, social and cultural aspect (ecosob), as an illustration of the implementation of the principle of justice if it done or even allows the indifference of indigenous peoples' rights in the management of natural resources (Prasodjo, 2007: 19; also Saly, 1999: 11). This case happens because natural resources have a big role in maintaining the existence of indigenous peoples, such as the hygiene of drinking water.

Economic, social and cultural rights are an integral part of human rights. Economic, social and cultural rights (*Ekosob* rights), have intrinsic value. *Ekosob* rights create conditions for increasing capability by eliminating deprivation. These rights allow freedom to determine the way of life that we value (Sen, 1994: 21). Human potential is able to be expressed through their civil rights in supporting the improvement of the country's economy, but the development of this potential requires an adequate commitment from the state/government (Ghai, 2000: 19).

Various outlook mention, inter alia Haryani Stefanus that if natural resources are disturbed, especially it is alienated by the state/government or the third party, then what will be threatened is not only
the economic, social and cultural life of the indigenous people, but the
whole existence of the indigenous people itself (Stefanus, www.
Komnasham.go.id) including various other rights, if indigenous
peoples are unjustly exiled from their natural resources which
traditionally have been a source of their living, especially, it is related
to the health of drinking water (Adrianus, 2010: 9). Natural resources
are regulated in our fundamental law (UUD 45) which is in Article 33
verse (3) which determines that natural resources and management
authority, the earth, water, space and natural resources contained
therein are controlled by the state and utilized as much as possible for
the prosperity of the community. Natural resources are known for
their ideology of the right to control the state over natural resources.

In accordance with the description mentioned above, the
occupancy rights are implemented for the public importance, which is
for the prosperity of the community. If that intention is carried out by
the government as a responsibility for the prosperity of the community
which is the Indigenous People, then the indifference of the rights of
indigenous people in the management of natural resources will not be
occurred, and the creation of social justice, which is described in
further confirmed in Article 2 verse (1) Law No. 5 of 1960 concerning
the Basic Agrarian Regulations. The issue of social justice is based on
the right to manage natural resources as the right of indigenous people
and the state's obligation to comply these rights, observed in the
situation that not everyone has the same opportunity to enjoy their
rights is a justice issue.
Justice demands that injustice be eliminated, so that everyone is treated pursuant to their rights, and that there is no arbitrary difference in treating members of community. A good law is a law that at least minimizes the danger of an injustice. Rawls said in Social Justice, about justice which stated the principle of justice fairness by using the concept of "posisi asali" (original position) and "selubung ketidaktahuan" (veil of ignorance). Original position is the same and equal situation between each person in the community and no party has a higher position between each other, such as position, social status, intelligence level, ability, strength, etc. Therefore, those people are able to make agreements with other parties in balance.

Such thing is based on the understanding of reflective equilibrium based on the characteristics of rationality, freedom, and equality in order to regulate the basic structure of society. While the veil of ignorance is that everyone is faced with the closure of all facts and the state of itself, including certain social positions and doctrines, thus blinding the concept or knowledge of justice that is developing.

Through these two theories, Rawls tried to lead people to obtain the principle of fair equality. That is why Rawls calls his theory "justice as fairness". John Rawls has perfected his principles of justice as follows: First, everyone has the same claim to comply their primary rights and freedoms which are compatible and of the same type for everyone, and the same political independence is guaranteed by the fair values; Secondly, social and economic inequality can be complied on the two conditions basis, those are: (1) attached to positions opened
to all people under conditions of equal opportunity; and (2) maximum benefit for the most disadvantaged members of community, which in this regard are indigenous people in the management of natural resources.

The principles of justice presented by John Rawls are generally very relevant for developing world countries, such as Indonesia. For example, the relevance is getting stronger when almost the majority of the world's population that lives in Indonesia is still classified as a weak community who live below the poverty line. Indeed, before Rawls's views related to social justice come forth, the Indonesian people had actually instilled the foundation of their nation and state life on the basis of social justice. The term "social justice" is mentioned twice in the fourth paragraph of the Preamble to the 1945 Constitution of Indonesia. Thus, social justice has been placed into one of the basic foundations of the goals and ideals of the state (staatsidee) as well as the basis for statehood (filsofische grondslag) which is contained in the fifth principle of Pancasila. This shows that, from the beginning, the founding fathers founded Indonesia based on the principles and ideals of realizing social justice both for their own citizens and the global society.

RESULTS AND DISCUSSION

The rights of indigenous people in particular related to the rights in the Ekosob field in the development of globalization have not been regulated, even though many proposals have been proposed,
such as the rights of indigenous people in the field of labor, land, etc. eventhough its existence has been recognized in the 1945 Constitution of Indonesia. Furthermore, these rights are inserted in norms that contain recognition and protection by the state as stated in Article 18B verse (2) and Article 28I verse (3) of Law 1945, Article 2 verse (4) and Article 3 of the Agrarian Law (UUPA) No. 5 of 1960, Explanation of Article 6 paragraph (2) of Law No.39 of 1999 concerning Human Rights (HAM), Article 1 verse (31) and Article 63 verse (1), (2), and (3) of Law No. 32 of 2009 concerning Environmental Protection and Management, and point 9 F of Law No. 26 of 2007 concerning Spatial Planning, but, practically, it is not optimal.

This situation is able to be seen in reality, there are quite a lot of violations of the rights of indigenous people. Various cases that announce the government/state are not protecting and even appear to ignoring the existence of indigenous people, and do not respect the rights of indigenous people. The examples of similar cases is such as conflicts between silver gold mining companies PT. Indo Muro Kencana (IMK) with the Siang Adat community, in the Barito region, Central Kalimantan, which rejects mining activities. The IMK work contract is valid for 30 years from February 1985 to 2014 (Rika, 2017: 10).

The location is at the surrounding area of Dayak Siang, Murung and Bakumpai community settlement, including several watersheeds and tributaries. River water pollution that has arisen since
the existence of PT. IMK in the area occurred in the Sei Muro Menawing Watershed (DAS) from the Pute River, under the tailing dam, in the Sei Mengkahui Watershed from the mining of acid waste at the Serujan mining, in the Doho'o Ma'an watershed flowing to Sei Babuat from the mine acid waste disposal of the Bukit Tengkanong mining site (Rika, *ibid*). The impact of river pollution is massive fish deaths since November 1994 on the Muro and Menawing Rivers to the Barito River and the River Mengkahui the same year and repeated periodically throughout 1998. The disruption of the health of the community and other living creatures in the area is a result of river pollution. It also caused the death of water animals and residents’ livestock who consume the river water. The unfeasible river water by the residents is replaced by PT. Indo Muro Kencana with inadequate clean water facilities. People who reject the mining action finally have to give up and accept the situation because all the efforts and actions they have done have never received a response from any party.

Another example of a similar case is the gold company, PT Sumber Energi Jaya (SEJ), which operates in the traditional territory of Picuan Village, Motoling Timur, South Minahasa, North Sulawesi, since 2012. The company has a South Minahasa Regent Decree (SK) No. 87 of 2010 in a mining business license with duration of 20 years contract. But the indigenous people of Motoling Picuan continue to utter their rejection since the decree was issued. The existence of the SEJ mining company pollutes the environment, especially the Ranoyapo River watershed, because it removes excavated material
directly into the river. Other than the environmental issues, the social impact in the mining area has been very worrying, especially the social conflicts that have occurred so far to disrupt the Society’s security and order (Kantibmas). But the South Minahasa Regency Government, especially the Regent of South Minahasa, Tetty Paruntu, has no real action to protect its people or the environment in South Minahasa. The residents also questioned PT. SEJ's permit, where the obtained permits were only in the exploration phase, but the company reached the point of production operations. Previously PT SEJ raised the irony of the greedy exploitation of gold seeds. Commitment with the community around the mine is complained because it has not been noticed anymore. PT SEJ ignores the local labor, most of the labor comes from the outside, causing jealousy of residents around the location.

Not only that matters, hundreds of people around the mining which are in South Minahasa’s Regency were also jailed by PT SEJ. The resistance by the people over the refusal of the operation of this mining company has been carried out repeatedly, using the mechanism for licensing operations of community mining operations to the Regent of South Minahasa but not receiving a response. The residents ask the South Minahasa district government and the South Sulawesi Provincial Government to examine PT SEJ along with its permits. This tiered mining of the Environmental Impact Analysis (AMDAL) permits, which are from the South Minahasa Regency Government Environmental Impact Analysis (AMDAL),
Environmental Impact Analysis (AMDAL) of North Sulawesi Provincial Government and the Ministry of Energy and Mineral Resources (ESDM). However, PT SEJ has no Environmental Impact Analysis (EIA). This was said by Iwan Moniaga, in the Research Results Report, related to social justice in the position of Indigenous People, North Sulawesi Government and Social Observers (Satjipto, without year: 15). Until now PT SEJ and the South Minahasa District Government seem not to look after this environmental issue. PT SEJ's gold mining production operations, according to the LMI Customary Community Organization, is considered into the category of environmental crime that must be stopped immediately. The LMI urged the people's representatives in the North Sulawesi Provincial People’s Representatives Assembly/ DPRD to urge the North Sulawesi Governor to nullify the company's operations. They asked the North Sulawesi People’s Representatives Assembly/ DPRD to urge the North Sulawesi Provincial Government to evaluate the exploitation of PT SEJ.

Allegations of environmental crime along with crimes against humanity committed by PT SEJ have been quite disturbing. Furthermore, it is said that mining and the environment authorities are now under the authority of North Sulawesi province, so the authority of the governor is the one who determines. But the efforts of the people have not been followed up until now. The case studied was the indigenous people of To’Balaesan in Balaesang Tanjung Subdistrict / Donggala Regency, Central Sulawesi with PT. Cahaya Manunggal
Abadi (CMA) (Saly, 2017). The conflict began when the Regent of Donggala, Habir Ponulele published an exploration permit No 188.45 / 0288 / DESDM / 2010 dated February 5, 2010 to PT. CMA covering an area of 5000 hectares which was projected in two villages that are Malei and Walandano, but apparently in the Mining Permit/ IUP of PT.CMA map concessions cover six villages. Those are Malei Village, Walandano Village, Kamonji Village, Rano Village, Palau Village and Pomolulu Village. Then, a year later the Regional People’s Representatives Assembly/ DPRD of Donggala authorized Region’s regulation/ Perda No. 1 of 2011 concerning RTRW (Regional Spatial Plan) of Donggala Regency in 2011-2031, in which one of its contents stipulates the area of Balaesang Tanjung District as a mining area.

The reason for the refusal of the indigenous people of To 'Balaesan is that the mine location next to Lake Rano which is the source of clean water for eight villages. Waste from mining activities is feared to pollute the Watershed (DAS) (Burhanudin, 2017). The community considers that local government policies are more in favor of investors' interests without considering the aspirations of the local people. The Government of Donggala Regency to the sub-district and village level is also considered to be less open in legalizing the entrance of PT. CMA.

On March 6, 2012, the people of Balaesang Tanjung held a demonstration at the Donggala BLH office, the Regent's Office and the Donggala DPRD Office. In this action, the people of Balaesang
Tanjug Subdistrict openly stated their demeanor by refusing gold mining in Balaesang Tanjung. Furthermore, it also demanded that the Donggala Regency government nullifying the PT. CMA’s license and revising the 2012 Donggala Regency Spatial Plan (RTRW) which makes Balaesang Tanjung District as a mining area. But until now there has been no response. Then the community carried out various protest actions which essentially rejected PT. CMA continues its activities to the production program. The conflict among the communities cannot be avoided, even though the people of Balaesang Tanjung Subdistrict previously lived peacefully, because basically they have close family/ family/ genetic relationship. Until now, PT. CMA's activities have obtained AMDAL licenses which suddenly come out immediately without the consent of the residents and have entered the stage of production operations, even though the residents continue to oppose it. Until now the government seems to turn a blind eye to citizen protests that were not being followed up.

The examples of the three cases above indicate that there are still frequent conflicts between indigenous people and employers that clearly violate the laws and regulations. As we know that the preamble of the 4th paragraph of the 1945 Constitution states that the Indonesia is a State of Law based on the Constitution of the 1945 Constitution and Pancasila. The aim of the establishment of the 1945 Constitution is to protect the entire Indonesian people, promote general health, educate the life of the nation, and participate in the conduct of world order based on independence, eternal peace and social justice.
In fact in Indonesia there is no single Law that may conflict with the 1945 Constitution. In Article 33 verse (3) of the 1945 Constitution affirms that "The Earth, water and all the wealth contained therein is controlled by the state and used for the greatest prosperity of the people.” It contains the responsibility of the state in the management of natural resources aimed at the prosperity of the community. People's prosperity is able to be achieved if the state empowers and protects the rights of the people in the economic, social and cultural fields that are recognized nationally and internationally.

Nationally, legal protection for the rights of indigenous people is a continuous matter in the framework of national development. Based on the 1945 Constitution Article 18 B verse (2) and Article 28 I verse (3) which affirms the state's recognition of cultural identity and the rights of traditional societies, the indigenous people and their rights have obtained a major place in the legal system in Indonesia. In principle, the recognition of customary law is certainly related to the recognition of all existing customary rights (Muhammad, 2006: 22).

In General Explanation II number 1 UUPA No. 5 of 1960 which regulates the natural resources known as BARA (Bumi, Air, Ruang, dan Angkasa) or the Earth, Water, Space and Atmosphere is contained therein, and also regulated the customary rights of indigenous peoples which are the highest rights in customary law.

One of the objectives of the establishment of the UUPA is to situate the foundations for the formulation of national agrarian law which will be a tool to bring prosperity, happiness and justice to the
state and the community, in the framework of a justice and prosperous community. The income from natural resource businesses that are non-renewable, such as oil and minerals, are not directly accepted and savored by the people, so this is what causes various tensions between the center and regions that have the potential of these minerals (Katili, 2000: 26) If we examine the interrelationship of state ownership rights (Sen, 1999: 12) with the greatest prosperity for the people, they will realize the obligations as follows:

a. All forms of the usage (earth and water) and the results obtained (natural wealth), should significantly increase the prosperity and welfare of the people.

b. Protect and guarantee all the rights of the people contained in or above the earth, water and certain natural resources that are able to be produced directly or enjoyed directly by the people.

c. Prevent all actions from any party that will cause the people not to have the opportunity or will lose their rights in enjoying natural wealth.

Protection of indigenous people in addition to being regulated in the 1945 Constitution and the UUPA, there is Law No. 4 of 2009 concerning Mineral and Coal Mining which has its own philosophical aspects, which is minerals and coal contained in the Indonesian mining jurisdiction constituting non-renewable natural wealth as a gift from God The Almighty who has an important role in complying the lives of many people, therefore the management should be controlled by the state to provide real added value to the national economy in an
effort to achieve welfare and prosperity of the people in a justice manner.

The provisions of Law No. 4 Year 2009 have been written that in the framework of creating sustainable development, mining business activities should be carried out by taking into account of the environmental principles, transparency and community participation. The case of the indigenous peoples of To’Balaesan in Central Sulawesi against PT. CMA shows the indifference of the rights of indigenous peoples who are in a weak position, and tend to be treated arbitrarily. Appropriately, the state has an obligation to provide protection for all of the people. But in fact there are still many irregularities; for example, there is no request for approval from the indigenous people concerned in terms of setting the Regional Spatial Plan (RTRW) in accordance with Law No. 26 of 2007 concerning Spatial Planning and Government Regulation No. 15 of 2010 concerning the Implementation of Spatial Planning, so that Regional Regulation No. 1 of 2011 concerning the RTRW of Donggala Regency emerge, which stipulates the area of Balaesang Tanjung District as a mining area.

The rights of indigenous people in the management of natural resources related to human rights have a broad coverage. Not only the right to manage its natural resources, and obtain legal protection in enjoying these rights, but also the right as a participant in complying EIA requirements so that their survival will be guaranteed. In the provisions of weighing point B of Law No. 39 of 1999 concerning
Human Rights (Human Rights Law) states that human rights are fundamental rights inherent in human beings, it is universal and long lasting, so they should be protected, respected, maintained, should not be ignored, reduced or taken away by anyone (including by state/ government). By making the issue of the rights of indigenous people in the management of natural resources as an issue of justice and human rights, it is able to be claimed that indigenous people have the right to manage natural resources as well as other parties and the state/ government is responsible for realizing that matter.

But unfortunately, indigenous peoples are frequently eliminated when their state/ government with the right to control has marginalized the rights of indigenous people in the management of natural resources on the grounds of national importance. Unlike the current government policy which considers the rights of indigenous people, this is able to be seen in the granting of land management certification in forest areas within a period of 30 years as a manifestation of attention and support in creating their prosperity according to the 1945 Constitution. Compensation that is given to indigenous people is not balanced with the benefits gained by the state/ government. Even frequently, instead of getting compensation, the existence of indigenous people is not even recognized by the state/ government.

In middle of the globalization, privatization and regional autonomy, the rights of indigenous people, including the rights of indigenous people in the management of natural resources are
severely threatened. In many cases, indigenous people are in a position in which is not protected by justice and legal settlement. They have difficulty defending their rights due to poverty and lack of education. Indigenous people are frequently labeled as environmental destroyers, underdeveloped community groups, obsolete community groups, and other negative stigma related to their daily living activities that utilize natural resources. Indigenous people are frequently seen as a community group that restrains development when they try to fight for their rights to the natural resources.

The position of indigenous people which is politically weak compared to private entrepreneurs and government results in the easy takeover of natural resources by the government without going through a fair legal process, or even without any compensation. The example is the case between PT Freeport McMoran Indonesia and the Amungme and Komoro tribes, in which mining concessions were granted to indigenous territories. Not only didn’t they benefit from the existence of PT Freeport in its territory, but also the indigenous people were marginalized and their rights were violated. The violations they experience are violations of ownership rights, food and adequate nutrition rights, a decent standard of living rights, take part in cultural life rights, self-determination rights, enjoy the highest standards rights that are able to be achieved for physical health and mentally, as well as many other rights, where these rights are included in the human rights (http://www.tempointeraktif.com/hg/narasi/2004/06/17/nrs, 20040617-05, id.htm).
Indiansa said, a common problem faced by indigenous people in relation to their natural resource rights is the failure or reluctance of the state/government to recognize the rights of indigenous people to land, territory and natural resources; discriminatory laws and policies that affect indigenous people in relation to their land and natural resources; the failure/receptance of the state/government to impose limits on customary land; and the failure of the state/government to carry or implement laws that protect the lands of indigenous peoples (Kirana, 2001: 145).

Legislation related to the control and utilization of natural resources is contained in various laws and regulations, among others, the 1945 Constitution, Law No. 5 of 1960 concerning Basic Agrarian Provisions, Law No. 11 of 1967 concerning Basic Mining Conditions, Law No. 5 of 1990 concerning Conservation of Biological Resources and their Ecosystems, Law No. 24 of 1992 concerning Spatial Planning, Law No. 23 of 1997 concerning Environmental Management, Law No. 41 of 1999 concerning Forestry, and Law No. 7 of 2004 concerning Management of Water Resources. These various laws and regulations govern and interpret natural resources in various spectrums. Starting from a narrow understanding of natural resources, understanding natural resources is as commodities or production factors, until the understanding natural resources which are intact ecosystems.

Human rights are rights which (should be) universally recognized as rights which inherent in humans because of the quiditty
and nature of human birth as human beings. Human rights are fundamental rights or basic rights that have been brought by humans since they were born as a gift from God Almighty, where human rights are the basis of other rights and obligations (Darmodiharjo and Shidarta, 2006: 168). That fundamental right is firmly attached to the human identity of humanity. Whoever the human being is, they have the rights to have the rights. That means, in addition to its legitimacy is maintained in the existence of humanity, there is also a genuine obligation to be able to understand, comprehend and responsible for maintaining it (Bosko , 2006: 71-82).

Internationally, the obligations of the state in its responsibility to protect economic, social and cultural rights are regulated in the International Covenant on Economic, Social and Cultural Rights in 1976, which is part of the protection of human rights. The reason and purpose of the agreement of the Covenant by the United Nations, contained in the Preamble which is, "The States Parties to the present Covenant, considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal rights and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, recognizing that these rights derive from the inherent dignity of the human person, recognizing that in accordance with the Universal Declaration of Human Rights, the ideal condition of free human beings enjoying of freedom from fear and want can only be achieved if conditions are created whereby people are able to
enjoy economic, social and cultural rights, as well as their civil and political rights, considering the obligation of States under the charter of the United Nations to promote universal respect for and observance of, human rights and freedoms.

Realizing that individuals, having duties to other individuals and to the community to which he belong, is under responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, the 1976 covenant of the Charter of the United Nations. The reasons and objectives are set forth in body of the Covenant, including in PART II Article 2, which determines that:

"1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, politics or other opinion, national or social origin, property, birth or other status.
3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognition in the present Covenant to non-nationals."

The important elements of the implementation of the 'State Obligations' based on Article 2 verse (1) of the Covenant mentioned above are the use of terms: (1) undertakes to take steps; (2) to maximum of its available resources (3) achieving progressively; and (4) by all appropriate means, including particularly the adoption of legislative measures.

The elements in Article 2 verse (1) above are not used in the International Covenant on Civil and Political Rights. Article 2 (1) of the Covenant on Civil Rights states that, Every states party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in this present Covenant. The reasons and objectives of the agreement in Article 2 indicate that the country that recognizes and ratifies the Covenant undertakes to implement the contents of the provisions, which are not ignoring the social, economic and cultural rights of indigenous people, but in practice has not been optimally achieved. This situation is able to be seen in the cases stated above, especially the indifference of the rights of indigenous people in the obligation of the government to create a healthy environment for natural resource management activities as an objective and protection of social and cultural economic rights in the region of Balaesang Tanjung.
CLOSING

Conclusion

Based on the analysis and discussion, it can be concluded as follows:

1. Natural resource management activities, related to the rights of indigenous people in environmental protection are regulated in various laws and regulations, both nationally and internationally. Nationally, in various laws and regulations as the implementation of the 1945 Constitution, which is based on the philosophy of social justice, the Basic Agrarian Law No. 5 of 1960, Law No.26 of 2007 concerning on Spatial Planning, Law No. 39 of 1999 concerning on Human Rights, Law of the Republic of Indonesia Number 4 of 2009 concerning on Mineral and Coal Mining, Law No. 32 of 2009 concerning on Environmental Protection and Management. Internationally is the 1976 Covenant on Economic, Social and Cultural Rights (Ecosob) ratified in Law No. 11 of 2005

2. The implementation of the responsibility of the government in managing mining related to the rights of indigenous people in enjoying the environment is not yet optimally carried out. From the case that occurred in Balaesang Tanjung Donggala, it was illustrated that the local government ignored the rights of indigenous people in enjoying a healthy environment.
SUGGESTION

This research suggest as follows:

1. There is a necessity for counseling to the local government on how to regulate the rights of indigenous peoples in various aspects, which in this regard is the right to enjoy the living environment.

2. Central government supervision is needed in the implementation of awareness of stakeholders, especially in the regions to inspire the implementation of the rights of indigenous peoples in relation to human rights related to state responsibility in the prosperity of society as a whole, including indigenous peoples through environmental protection which is the right of living in their own territory.

DAFTAR ACUAN


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