



## Community Assistance on the Responsibilities of Oil and Gas Mining Business License Holders for the Bati Tribe Community

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### Abstract

**Introduction:** Lack of understanding of the community's rights around the mining area and lack of understanding of the permit and approval procedures from the indigenous peoples before the operation of the oil and gas mining company. This is the basis for the consideration of the Civil Law section of the Faculty of Law, Pattimura University to carry out community service activities as a form of implementing the Tri Dharma of higher education.

**Purposes of The Devotion:** Providing legal knowledge related to the procedures for mining business license holders who carry out their business activities in the mining area.

**Method of The Devotion:** The method used is the legal counseling method in the Bati Tribe, Kian Darat District, Eastern Seram Regency.

**Results Main Findings of the Devotion:** Activities of PT. Balam Energy Limited and PT. Bureau Geophysical Processing without going through a process of requesting approval from the Bati Tribe community, which has an area that will be used for oil and gas mining management activities. This is contrary to Article 33 paragraph (3) of Law Number 22 of 2001 concerning Oil and Gas (Oil and Gas Law). And it has implications for the use of land owned by indigenous peoples related to land that is considered to have sacred value, settlements, public facilities and infrastructure, nature reserves, cultural heritage and land belonging to customary law communities.

**Keywords:** Indigenous; Mining Business License Procedure; Responsibility.

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## INTRODUCTION

In Indonesia, mining investment is one of the management activities by the state to become a source of income for the state. Based on Law Number 22 of 2001 concerning Oil and Gas (Oil and Gas Law), oil and gas exploration companies are obliged to carry out *community development*, but the presence of companies for oil and gas exploration and exploitation actually raises various legal, economic problems and potential disputes with community rights to use land for oil and gas mining businesses.

CSR regulation is important and regulated in the rules of State law, because; *First*, that there is no coercive force from the law of custom or *sucrela*, without being ratified in the regulations of a country. *Second*, that the voluntary principle that is not binding will not have any effect clearly and measurably. Similarly, the opinion of Pablo Nieto, also explains the reason for the need for CSR to be regulated by state law, *First*, that the state has a role to regulate corporations and *second*, legal arrangements are needed to clarify the definition of

the concept of CSR, the measure of implementation and standardization in the audit system.<sup>1</sup>

The implementation of CSR policies actually marginalizes and differentiates indigenous peoples. So that in its implementation, transparency, accountability, participation and optimal services are needed for the welfare of the people. For this reason, all stakeholders (companies, governments and communities) as *stakeholders* are actively involved in both policy formulation and implementation. Therefore, it is important for local governments and local communities to carry out socialization and education related to responsibilities in the form of CSR from companies holding oil and gas mining business licenses, to be mandatory for the community and the surrounding environment. This is a form of implementation of CSR implementation based on laws and regulations.

The presence of a company holding a mining business license in the area of community ownership is not because it has obtained a permit, so that the Company only aims to pursue the company's profit, so as to ignore its responsibilities as required in the provisions of laws and regulations. Companies that hold mining business licenses that do not carry out social and environmental responsibilities will be subject to sanctions in accordance with applicable laws and regulations.

The reality that happened to the Bati Tribe community in Eastern Seram Regency, was that there was a conflict in the community in Watu-Watu village which is better known as part of the Bati Tribe community, located in Kian Darat District, Eastern Seram Regency. When the Oil and Gas Mining Business License Holders, namely PT Balam Energy Limited and PT. Bureua Geophysical Prospecting (hereinafter abbreviated as PT. BGP) carrying out oil and gas exploration activities, has caused conflicts with the surrounding community, this occurs because management activities for oil and gas exports cause various environmental damage, even the community does not get an explanation for the presence and activities in their father's area, which has been maintained as a sacred area for the activities of the outside community, because the land for their beliefs is "sacred" that must be protected and cared for, not to be damaged. However, with the permits pocketed by the two oil and gas mining companies, drilling has been carried out at three points very close to settlements and in locations that are considered sacred (outside people are prohibited from entering the khan). Exploration activities on lands that are considered by the surrounding community as "Sacred Land" as the land of the ancestors and land close to community settlements. This triggers conflicts between the community and the company, so that the community takes an eviction action for the presence of the company in their area, then the community performs a traditional ritual, which means cooling the soil (fakariki ritual) and then it is carried out with the action of "Sasi Hutan" one of the forms of traditional traditions of the local community.<sup>2</sup>

Tana Bati (Tanah Bati) has abundant natural resource potential. One of the potentials that then becomes the object of conflict, because in the area of the Bati Tribe Community, there is a mixture of minyak and gas. Therefore, based on the Mining Business License to conduct exploration, which was obtained by PT. Balam Energy Limited and PT. BGP conducts exploration activities for natural gas and natural gas in the area. Exploration activities were

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<sup>1</sup> Mukti Fajar ND, *Tanggung Jawab Sosial Perusahaan Di Indonesia*, Jakarta: Pustaka Pelajar, 2013, p. 104

<sup>2</sup> Nancy Silvana Haliwela, dkk, *Tanggung Jawab Pemegang Izin Usaha Pertambangan Bagi Masyarakat Suku Bati di kabupaten Seram Bagian Timur*, Hasil Penelitian Yang Tidak Dipublikasi, Fakultas Hukum Universitas Pattimura, Ambon, 2003, p. 36

carried out by digging holes at several points, including close to settlements and in areas that are sacred to the indigenous people of the Bati Tribe. This activity then caused conflict with the Bati Kelusi (Bati Awal) and Bati Tabalean tribes.

## **METHOD OF THE DEVOTION**

Community service activities are a form of implementation of the tri dharma of higher education carried out by lecturers of the Civil Law Section, Faculty of Law, Pattimura University. This activity is aimed at the community in the Bati Tribe, Kian Darat District, Eastern Seram Regency. Community Service in an effort to provide legal knowledge about the procedure for mining business licenses is carried out using legal counseling methods. The counseling process is carried out by first the team delivering material that has been prepared beforehand, after the presentation of the material, the community is given the opportunity to convey problems or questions related to consumer protection issues, which are then answered by the team in turn.

## **RESULTS AND DISCUSSION**

### **A. Mining Business License in Law Number 22 of 2001 Concerning Oil, Gas and Earth**

Every mining company must obtain a permit from the authorities before carrying out mining business activities. The term mining business is derived from the English translation, namely *mining permit*<sup>3</sup>. One of the forms of permits required is a Mining Business License. Article 1 Number 20 of Law Number 22 of 2001 concerning Oil, Gas and Earth states that a business license is a license granted to a Business Entity to carry out Processing, Transportation, Storage and/or Trading with the aim of obtaining profits and/or profits. The implementation of Oil and Gas business activities regulated in the Law based on the people's economy, integration, benefits, justice, balance, equity, common prosperity and welfare of the people, security, safety, and legal certainty and environmentally sound.

Article 33 explains that oil and gas business activities cannot be carried out on a. burial places, places that are considered sacred, public places, public facilities and infrastructure, nature reserves, cultural heritage, and land owned by indigenous peoples; b. fields and national defense buildings and surrounding lands; c. historical buildings and national symbols; d. buildings, houses, or factories along with surrounding yard land, except with permission from Government agencies, community consent, and individuals related to the matter.

Furthermore, Article 34 explains that in the event that a Business Entity or Permanent Business Formation will use areas of land rights or state land within its Working Area, the Business Entity or Permanent Business Formation concerned is obliged to first settle with the right holder or land user on state land, in accordance with the provisions of the applicable laws and regulations. So it is very necessary to have the approval of the land rights holder to obtain a mining business license.

### **B. Customary Law Society**

The State of Indonesia recognizes the existence of a living Customary Law Society and is still recognized as stated in the formulation of Article 18B paragraph (2) and 28I paragraph

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<sup>3</sup> Salim HS, *Hukum Penyelesaian Sengketa Pertambangan di Indonesia*, Bandung: Pustaka Reka Cipta, 2012, p. 94

(3) of the Constitution of the Republic of Indonesia 1945 Such as the existence of Indigenous Peoples in the village of Watu-Watu which is better known as part of the Bati Tribe community, located in Kian Darat District, Eastern Seram Regency, Maluku Province.

Indigenous peoples are a fixed and orderly community unit where their members are not only bound to the place of residence of a certain area, both in the worldly connection as a place of life and in spiritual connection as a place of worship to ancestral spirits (territorial), but also bound to hereditary relations in the same blood and or kinship of one ancestor, both indirectly because of marital ties and customary ties called genealogical<sup>4</sup>. Each indigenous people has customary laws that are used to regulate all problems that occur in the customary environment. Customary law is a collection of rules of conduct that only apply to the bumi putera group or indigenous people of Indonesia, which are coercive and have not been codified in the form of laws and regulations<sup>5</sup>.

People in a life full of kinship and kinship, it is possible that problems related to their own interests in the civil environment such as the issue of the distribution of inherited land and other inheritance divisions, which often cause disputes in their own family environment<sup>6</sup> in fact, often the rights, heritages and lands of indigenous peoples are threatened and become polemics between stakeholders and customary law communities so that the state is also present to provide legal protection in terms of accommodating the rights of customary law communities in laws and regulations.

### **C. Responsibility of Mining Business Permits in the Customary Law Community of the Bati Tribe**

Paying attention to the phenomenon that occurred and based on the results of previous research by the Team, on the people of the Bati Tribe, Eastern Seram Regency in Maluku Province, which is known as one of the strongest and mysterious tribes. The Bati tribe inhabited their lordship called the territory of power (*Watas Nakuasa*), covering mountainous areas, lowlands and beaches. Most of the territory is forest, but the forests and residential areas are under the control of the Bati tribal alliance based on the Clan or Clan. Located in the administrative area of Kian Darat District, Eastern Seram Regency, Maluku Province, Watu-Watu Village is led by a king as the head of the guild, is part of the Bati Tribe area. Watu-watu Village is one of the areas of the Bati Tribe, whose area is a place for exploration activities in oil and gas mining business activities by PT. Balam Energy Limited and PT. BGP. Based on the permit obtained from the government, this company conducts exploration activities to find oil and gas sources. Exploration activities are carried out by the Company in coordination with the Regional Government, in this case the Regent and related Agencies. However, the Regional House of Representatives of East Seram Regency as a legislative institution in the region, which is also a unit of local government, is not aware of the activities of PT. Balam Energy Limited and PT. Bureau Geophysical Prospecting in Eastern Seram Regency, the existence of the two companies was only known by the Regional People's Representative Council after a conflict with the community.

Similarly, the people of Watu-Watu Village also do not know about the presence of the two companies in their area. The results of the study show that the activities of PT. Balam

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<sup>4</sup> Hilman Hadikusuma, *Pengantar Ilmu Hukum Adat Indonesia*, Bandung, Bandung: Mandar Maju, 2003, p. 108-109

<sup>5</sup> Abdul Manan, *Hukum Islam Dalam Berbagai Wacana*, Jakarta: Pustaka Bangsa, 2003, p. 221

<sup>6</sup> Ahmad Ibrahim, Menyelesaikan Sengketa Pembagian Harta Warisan Melalui Peran Kepala Desa, *Jurnal Hukum, Universitas Gorontalo*. 05.01 (815), 2010, p. 1



Energy Limited and PT. BGP without going through a process of requesting the approval of the Bati tribe, who have a land area that will be used for oil and gas mining management activities. This is certainly contrary to Article 33 paragraph (3) of Law Number 22 of 2001 concerning Oil and Gas (Oil and Gas Law) stipulates that companies holding oil and gas mining business licenses, in addition to obtaining a Mining Business License, companies holding Mining Business Licenses are also required to obtain the approval of customary law communities, whose area will be the location of mining management. This has implications for the use of land owned by indigenous peoples related to land that is considered to have sacred value, settlements, public facilities and infrastructure, nature reserves, cultural heritage and land belonging to customary law communities. Mining Business License holders can carry out exploration activities after obtaining approval from the land rights holder<sup>7</sup>. The company only conducts socialization to the Heads of Hamlets, Kings, and Kian Darat Sub-districts. The community as the landowner is not included in socialization activities, especially people who are close to the location that will be used as an oil and gas mining management area by the company. One of them is the people of Watu-Watu village, Kian Darat District, Eastern Seram Regency, Maluku Province.

When there is no agreement from the Bati tribal customary law community, it causes a conflict between the people of Watu-Watu Village and some of the Bati tribal people with PT. Balam Energy Limited and PT. BGP. The conflict occurred due to the activities of the company, which had cleared the forest for the construction of camps and helipeds before socialization and the company carried out survey activities by digging holes in the ground to carry out exploration activities to find oil and gas content. This activity is carried out by the company at a location close to community settlements and there are three points of digging holes on the land or soil, which is considered sacred on Mount Bati as the place of the ancestors according to the beliefs of the Bati people.

As a form of resistance to the company's activities, the Bati Tribe Community carried out expulsion actions against the company and carried out traditional rituals, which were meant to cool the land (*fakariki* ritual). The goal is to restore the land and avoid the anger of the ancestors, as the company has destroyed the land in the area that is considered sacred. According to the beliefs of the Bati people, the territory of the Bati people, land is considered alive and sacred. Therefore, the community made various efforts, as a form of reaction to the company's activities, both by means of communication with the company, but it was not responded to and together with community leaders conducted customary deliberations, resulting in several customary decisions, namely: carrying out customary ceremonies to cool the land (ritual *fakariki*), installing Sasi Adat signs (*Datal noma*; sign of customary prohibition) at a location that is considered sacred, instructed the company, namely PT. Balam Energy Limited and PT. BGP to stop all exploration activities in the area of the Bati Tribe and for the damage caused by the company must pay a fine of Rp. 3,000,000,000,- (three billion rupiah)<sup>8</sup>.

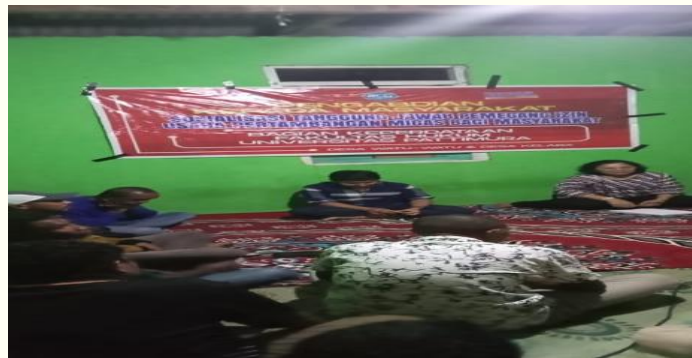
Therefore, through this Community Service activity, the community needs to obtain legal reinforcement regarding the rules of the mining management law related to mining business activities that will be carried out in areas that are owned by the community. that even though the company has held a mining business license from the government, the

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<sup>7</sup> Salim HS, *Hukum Penyelesaian Sengketa Pertambangan di Indonesia*, Bandung: Pustaka Reka Cipta, 2021, p. 94

<sup>8</sup> Nancy S Haliwela *Op. Cit*,

company also has the responsibility to obtain approval from the surrounding community, this is as stipulated in Article 33 paragraph (3) of the Oil and Gas Law and related regulations. The purpose is for the public to know the activities of the company and related to land or land to obtain approval from the land rights holder, as well as respect the rights of customary law communities as regulated in the recognition and existence of the Constitution of the Republic of Indonesia in Article 18 B paragraph (2), that the state recognizes and respects the units of customary law communities and their traditional rights as long as they are alive and in accordance with the development of the community and the principle of the unitary state of the Republic of Indonesia. The implementation is by providing access for indigenous peoples to participate in providing approval for companies that will carry out oil and gas mining management activities.



**Figure 1. Presentation of Material by Resource Persons**

In addition to the approval of indigenous peoples, it is also important for the community to gain knowledge and legal understanding of the company's responsibility for the community and the environment, when the company carries out oil and gas management activities in the territory of customary law communities, namely responsibility for the community and the environment in the form of *Good Corporate Governance* (GCG) and *Corporate Social Responsibility* (CSR), as stipulated in Article 47 of Law Number 40 of 2007 concerning Limited Liability Companies (Limited Liability Company Law) Number 25 and Article 15 letter (b) of Law Number 25 of 2007 concerning Investment (Investment Law) and Government Regulation Number 47 of 2012 concerning Social and Environmental Responsibility of Limited Liability Companies. The goal is to create a harmonious, balanced relationship with the Company, and in accordance with the environment, values, norms and culture of the local community, so as to realize the purpose of natural resource management, for the greatest possible prosperity and welfare of all Indonesian people, in accordance with the state objectives in the Constitution of the Republic of Indonesia. Legal counseling is carried out for the indigenous people of the Bati Tribe.



**Figure 2. Community Photo**

The form of GCG and CSR responsibility by the company towards the community and the environment, specifically not specified in the laws and regulations, but by the Law it is determined in Article 74 paragraph (2) of the Limited Liability Law stipulates that Social and Environmental Responsibility as referred to in paragraph (1) is the Company's obligation which is budgeted and calculated as the Company's costs which are carried out with regard to propriety and fairness. This article regulates the form of corporate responsibility in the implementation of GCG and CSR in the form of obligations for the company and is carried out based on the propriety and fairness of the company, meaning that its implementation is adjusted to the needs of the community and the environment. The implementation of this company's responsibility has been carried out since the company carried out activities both during exploration and exploitation and even after oil and gas mining.

The management of oil and gas mining natural resources, in management by licensee companies, often conducts their business without realizing that they have done environmental damage, which is detrimental to the surrounding community. This happens due to the orientation of mining license holders only trying to compete to get as much profit as possible, without caring about the social life of the community and the surrounding environment. The rights of indigenous peoples over the territory they own are controlled and destroyed by the management activities of companies holding oil and gas mining permits. As a result, conflicts continue to occur between indigenous peoples and companies holding oil and gas mining business licenses.

Referring to the CSR arrangements in the laws and regulations, namely the Limited Liability Company Law and the Investment Law, providing an explanation that the Company has the status of a legal entity "Limited Liability Company" has an obligation to carry out the Company's social responsibility, in the explanation of the law it is stated that what is meant by corporate social responsibility is the responsibility inherent in each investment company to remain create harmonious and balanced relationships and in accordance with the environment, values, norms and culture of the local community.<sup>9</sup>

If the company does not carry out GCG and CSR, then according to Article 74 paragraph (3) of the Limited Liability Company Law, it is stipulated that a Company that does not carry out its obligations as referred to in paragraph (1) is subject to sanctions in accordance with the provisions of the law. This provision emphasizes that sanctions for mining management companies that do not carry out their responsibilities to the community and the environment will be subject to sanctions in accordance with the law, in this case the Oil and Gas Law and related laws. Based on this provision, the local government and the community can file a claim against the company to carry out the company's responsibility, as well as for the Regional Government, the Watu-Watu Village State Government and the Bati Tribe Community can understand the legal basis for filing a claim for the Company's responsibility.

If the company consistently implements GCG and CSR, of course, mining companies will receive support from indigenous peoples, as well as support from the Regional Government, because since the beginning of the company's activities, the company has built a dialogue with local indigenous peoples, community leaders, and the Regional Government. The company's deliberation and openness about activities will create an

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<sup>9</sup> Badan Pembinaan Hukum Nasional Departemen Hukum dan HAM RI, *Tanggung Jawab Sosial Perusahaan*, Jakarta, 2009, p. 21

investment climate that supports mining business activities. Similarly, conflicts in the mining environment can be overcome and build a harmonious relationship between the company and the surrounding community.

## CONCLUSION

Activities of PT. Balam Energy Limited and PT. The Geophysical Prospecting Bureau is unknown and there is no approval from the people of Watu-Watu village, Kian Darat District, Eastern Seram Regency, and the Regional People's Representative Council of Eastern Seram Regency as a legislative institution in the region so that the impact of all mining area management activities causes environmental damage and is not accounted for by the company. This has violated Article 33 Paragraph (3) of the Oil and Gas Law. So that through the Community Service carried out, the researcher provides legal counseling to the village government and the community to provide legal education, knowledge and legal understanding related to the procedure for implementing mining business activities in the indigenous people's territory by mining business license holders, and the responsibility of oil and gas mining business license holders, both to the community and to the environment, so that conflicts between the community and companies It doesn't happen again. As well as the Village Government and the surrounding community have knowledge of the legal rules regarding the activities of companies holding oil and gas mining permits to carry out business activities in the ownership of customary law communities that have oil and gas resources, not only based on permits from the government, but must obtain approval from the local customary law community. The community also has knowledge and understanding of corporate responsibility in the form of implementing GCG and CSR as a corporate obligation for the community and the local environment.

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