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The International Law Perspective of Welfare against Indigenous People in the Omnibus Law on Job Creation

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Abstract

Introduction: *Indigenous peoples attach customary rights to themselves, namely rights owned by a legal alliance (such as Lipu, Boya, Ngata, Banua, etc.), where the citizens of the community (the legal alliance) have the right to control the land, the implementation of which is regulated by the head of the guild (the chief/village head concerned). Based on this right, the customary rights of indigenous peoples are basic rights inherent in the life of these people that are not a gift from the state. It is the same with the basic rights inherent in every human being, for example the right to life, which is not a gift of the state.*
Purposes of the Research: *Review and analyze international law relating to the welfare of Indigenous Peoples in the Omnibus Law on Job Creation.*
Methods of the Research: *Its legal position in the Job Creation Law which has the character of omnibus law through juridical studies with a philosophical approach, conceptual approach, and a statutory approach.*
Results of the Research: *The right of indigenous peoples which is essentially the right to the value of justice and welfare value to the use of natural resources of indigenous peoples who not yet the maximum expected in the job creation law can provide justice and welfare for indigenous peoples over exploited customary territories.*

1. INTRODUCTION

The Existence of indigenous peoples (MHA) has received a constitutional guarantee in the form of conditional recognition, as affirmed in Article 18B Paragraph (2)[1] then also emphasized in Article 28I[2] of the Constitution State of the Republic of Indonesia in 1945

[1] Article 18B Paragraph (2) of the 1945 NRI Constitution explain in a clear that "Country confess and Respect unity community law custom together rights Traditional along still live and appropriate with development community and principle Country Unity Republic Indonesia's Set deep law".

[2] Article 28I NRI Constitution 1945 Formulated that: (1) Rights to live, rights to not Tortured, rights independence thought and liver Conscience, rights Religious, rights to not Enslaved, rights to Recognized as personal Before lawand rights to not Required above basis law that pretend low tide be rights asasi human that not get Reduced deep condition Any. (2) Every person Reserves free from Treatment that Is Discriminatory above basis apaun and Reserves get protection towards Treatment that Is Discriminatory that. (3) Identity culture and rights community traditional respected Aligned with development epoch and civilization. (4) Protection, Promotion, Enforcement and Fulfillment rights asasi human be bear answer country most important government. (5) To Enforce and protect rights asasi human appropriate with principle

(1945 NRI Constitution). Such constitutional guarantees must be viewed as the constitutional right of indigenous peoples, in expressing all their cultural wealth and traditional rights to resource management its customary realm.[3]

The constitutional guarantee of the rights[4] of the MHA, then conceptualized the MHA as (1) a group of citizens who have a common ancestor (geneological), (2) live somewhere (geographical), (3) have a common purpose of life to maintain and preserve customary values and norms and property, (4) a system of customary law that is obeyed and binding (5) is established by customary chiefs, (6) the availability of a place where the administration of power can be coordinated, and (7) there are dispute resolution agencies both between indigenous peoples and fellow tribes of different nationalities. On the other hand, MHA has several other terms used by several authors, including indigenous peoples, indigenous peoples, and men' earth. [5] MHA also translated as *Adatrechts-gemeenschap* is a term from Dutch. In addition to the term *Adatrechts-gemeenschap* there is also *Indigenous Peoples* is a term agreed upon in international law for the reference of a community entity that has its own characteristics due to its historical, social and cultural background.[6]

The study of the term MHA, received attention and opinions from experts, including Hazairin who explained that MHA is a community unit that has the completeness to be able to stands alone which has the unity of law, the unity of the ruler, and the unity of the environment based on the common right to land and water for all its members. [7] This expert opinion is also reinforced by the opinion of Ade Saptomo who states that the MHA is a unitary autonomous society, that is, they regulate their living system (law, political, economic, etc.). Born and developed together, and guarded by society itself. [8] The expert opinion shows the normative juridical relationship with Article 18B Paragraph (2) of the 1945 NRI Constitution which expressly indicates the existence of the MHA is recognized by the enactment of such conditional recognition.

The existence of MHA which is respected and recognized based on Article 18B Paragraph (2) of the 1945 NRI Constitution is a guideline for recognition as well as a form

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country law that democratization, so implementation rights asasi human Guaranteed, Set and Poured deep regulation legislation.

[3] Declaration Federalism Nations (UN) year 2007 about Rights Indigenous Peoples explain that confession above rights community custom will useful Increase Harmony and relationship collaborate between country and community customthat Based at principle justice, democracy, Respect towards Rights Asasi Human, without discrimination and get Trusted, rights ulayat be part from region community law custom that be at once lebensraum community aforementioned, as lebensraum community law custom, Rights ulayat not only limited at soil ulayat just but also Include forest custom, sources water pool and included also vegetation and animal that exist and live at above soil ulayatthat get Utilized in a Communal by community law custom.

[4] Rights Constitutional (*constitutional right*) according to Jimly Asshiddiqie be rights that Guaranteed at deep and by the 1945 NRI Constitution. After Amendment The 1945 NRI Constitution be constitution country Indonesia so principle-pinsip Ham already Listed deep consitution Indonesian as characteristic distinctive principle constitution modern. By because that Principles Human rights that Listed deep 1945 NRI Constitution be Rights Constitutional Citizen The country of Indonesia. See Jimly Asshiddiqie, Constitution And Constitutionalism Indonesian Edition RevisionJakarta: Constitution Press, 2005, Pp. 152.

[5] Zainul Daulay, Knowledge Traditional, Concept Legal Basis and PracticePT. King Grafindo, Jakarta, 2011, Pp. 40.

[6] Ibid. Pp. 39.

[7] Rikardo Simarmata, Confession Law Towards Indigenous Peoples in Indonesia, Jakarta: UNDP Regional Centre in Bangkok, 2006, Pp. 23.

[8] Ade Saptomo, Legal & Wisdom Local-Revitalization Customary Law of the Archipelago. Jakarta: Grasindo, 2010, Pp. 13.

of legal protection for the existence of MHA in Indonesia. The recognition in question is that indigenous peoples are recognized and protected as subjects of law and their traditional rights. Factually, this form of recognition is found in various government activities, especially activities related to the existence of MHA, including MHA rights in the use of resources nature in terms of customary forest management to obtain optimal benefits from forests and forest areas for the welfare of the community. In the context of the management and utilization of natural resources by indigenous peoples, it is inseparable from the role of the State that regulates such management as regulated in Article 33 Paragraph (3) of the Constitution NRI 1945 which affirms the position of the State as a Legal Entity that regulates the allocation and management of forests by citizens including MHA. Through the authority of the Right to Control the State, the goal to be achieved is as much as possible for the prosperity of the people, in a smaller way, namely MHA.[9] The existence of Article 33 Paragraph (3) and Article 18B Paragraph (2) of the 1945 NRI Constitution confirms that the MHA has the power of customary territories including customary forests as part of the existence of the MHA. Therefore, through Law No. 41 of 1999 concerning forestry (Forestry Law) which is emphasized by the Decision of the Constitutional Court No. 35/PUU-X/2012 which regulates customary forests. Therefore, the rights owned by MHA to land, customary forests and natural resources located in their customary territories, their existence that must be respected and protected by the state. The Constitutional Court's ruling has had a major influence that shifts the status of customary forests as rights forests and not state forests, changes in the status of customary forests should be able to present good implications for MHA in its management system and utilization of customary forests. The Constitutional Court's decision is a correction to the errors in the Forestry Law and as an effort to restore the status of the MHA.[10] Indigenous peoples have attached to themselves customary rights which are rights owned by a legal alliance[11] (such as *Lipu, Boya, Ngata,* etc.),[12] where the

[9] Rights Constitutional citizen country must at guarantee deep constitution as shape confession Ham and the presence of Judicial that independent not Affected by ruler and all action government must Based above law. Rights asasi human (HUMAN RIGHTS) be a set of rights that cling at nature and existence every human as creature God That Great Single and be GraceHis who Mandatory respected, upheld talland Protected by State, Law, Governmentand every people, for the sake of Honor and protection dignity and dignity human. Meansthat Intended as rights asasi human be rights that cling at self every personal human. Because that, rights asasi human (the human rights) that different from understanding rights citizen state (the citizen's rights). Rights citizen country be Rights that born from regulation at outside law basis called rights law (legal rights), not rights Constitutional (constitutional rights). While Rights asasi Human that Contained deep constitution get called as rights Constitutional citizen country. To description Principles "*The Rule Of Law*" in English see A.V. Dicey, *Introduction to the Study of the Law of the Constitution*, Tenth Edition, (London; Machmillan Education LTD,19590)

[10] Noer Fauzi Rachman, "Law Society CustomsIs Not Persons Rights, Not Subject Law, and Not Owner Region The custom" Discourse: Journal Sciences Social Transformative 33 (16) 2014, Pp. 30. See anyway, Ni Luh Made Salya Nirmala Pravita, "Implication Verdict Court Constitution Number 35 Year 2012 Towards Forest Customs Dan Existence Indigenous Peoples," Journal Kertha Speech Vol.10 (4) Year 2021, Pp. 241. (file:///C:/Users/user/Downloads/ 67564-1045-199811-1-10-20210226.pdf)

[11] 1945 NRI Constitution era first, where on part Explanation exist explanation about "fellowship law people" that is community law custom that Its existence already exist before Proclamation Republic Indonesian. Deep Explanation Written that: "Deep territories Country of Indonesia exist more less 250 *zelfbesturendelandchappen* and *volksgemenschappen*, like Village at Javanese & Bali, Nageri in Minangkabau, Hamlet & Narga in Palembang, Lipu, Boya, & Ngata in Central Sulawesi and Etc. Area-area that have Order original, and by Therefore get Considered as area that Is special. Country Republic Indonesian Respect position areas special aforementioned and all regulation the country that about areas that will Remember rights origins area aforementioned."

[12] Time Colonial, existence Mha deep shape units authority local Isn't part from government Colonial, like Lipu, Boya, Ngata, Banua (Central Sulawesi) Nagari Huta, Clan, Winua, Mukim/Gampong, Lembang,

citizens of the community (the legal alliance) has the right to control the land, the implementation of which is regulated by the head of the guild (the chief/village head concerned). Based on this right, the customary rights of indigenous peoples are basic rights inherent in the life of these people that are not a gift from the state. It is the same with the basic rights inherent in every human being, for example the right to life, which is not a gift of the state.[13]

The existence of the Job Creation Law (UU Cipta Kerja) which is part of the norm in the dynamics of regulatory politics in Parliament as part of indonesia's constitutional system. The *omnibus law* method used in the Job Creation Law is still a very hot discussion and discourse in various circles. By reviewing and analyzing from different aspects from before, namely by examining the dynamics of the relationship and relationship between the Job Creation Law and the existing legal position of the MHA before this nation became independent and had the rights of management and development of natural resources in its customary territory.

The formation of a good and acceptable legal product by the public must of course go through a phasing process and various legal principles that provide restrictions as stipulated in Law Number 12 of 2011 as amended by Law Number 15 of 2019[14]. The establishment of a good rule of law according to Lon Luvois Fuller meets at least 8 (eight) principles called principles of legality, namely: 1). *A failler to achieve rules at all, so that every issue must be decided on an ad hoc basis.* 2*). A failure to publicize, or at least to make available to the affected party, the rules he is expected to observe*. 3). *The abuse of retroactive legislation, which not only cannot itself guide action, but under cuts the integrity of rules prospective in effect, since it puts them under the threat of retrospective change*. 4). *A failure to make rules understandable. 5). The enactment of contradictory rules*. 6). *Rules that require conduct beyond the powers of the affected party*. 7). *Introducing such frequent changes in the rules that the subject cannot orient his action by them*. 8). *A failure of congruence between the rules as announced and their actual administration*. [15] In the context of indonesia's establishment of laws and regulations, a good one must meet the following criteria: 1). Idil transforms the value of pancasila; 2). Sourced from the 1945 NRI Constitution; 3). Its formation is carried out on the basis of the principles of the formation of laws and regulations; 4). The content material contains principles; 5). Responsive to people's aspirations; 6. Harmony with the above laws and regulations; 7). Understandable; 8). Complete; 9). Published; 10). Using good and correct legal language.

The Land and designations Other be fellowships or community law that not be at deep structure government Colonial Dutch. Step different taken by Government Republic Indonesia at the time President Sukarno, most important at era democracy Guided that Wants simplification make Mha as Desapraja. Attempt Ini visible deep Law No. 1 Yrs 1957 ttg The main points Government Regions and Law No. 19 Yrs 1965 ttg Desapraja, as Shape Transition To Reach Realization Tier III regions in Entire Region Republic Indonesian. But not yet until attempt aforementioned Done, happen Turmoil politics and change government, so that Act Desapraja not Implemented As Should. As Instead, government Order New Issued Law No. 5 Yrs 1974 ttg The Points Government in Regions and Law No. 5 Yrs 1979 ttg Government Village. See Djamanat Samosir, Indonesian Customary Law, Bandung Nuance Aulia, 2013.

[13] G. Kertasapoetra, R. G. Kartasapoetra, A. G. Kartasapoetra, A. Setiady, The Law of the Land, Guarantee Law Base Agrarian For Success Utilization Land, Jakarta: Bina Script, 1985, Pp, 88.

[14] Some Law that Potentially diverge from prosper people, Potentially Marginalize rights MHA limit access Public, propemodaland not Fully carry on head Ham. As in Law No. 11 Yrs 1967 about Conditions Base Mining, Law No. 41 Yrs 1999 about Forestry, Law No. 22 Yrs 2001 about Oil and Gas Earth, and Law No. 31 Yrs 2004 about Fishing. Settings Management source power nature deep regulation legislation aforementioned Cause conflict Agrarian that moment Ini happen almost at entire area.

[15] Yuliandari, Principles Formation Regulation Legislation That Good, Jakarta: Pt. King Grafindo Persada, 2009, Pp. 130.

Legal products formed by this authorized institution can have binding power and practice in society in accordance with the needs of society and the government needs to prosper the community, especially the MHA in customary lands and their customary territories.

The problem of the Job Creation Law , which has an *Omnibus law* method, is the ease of licensing, deleting and changing several articles and paragraphs in Law No. 26 of 2007 concerning Structuring Space, Law No. 27 Yr 2007 on Management of Coastal Areas and Small Islands, Law No. 32 Yr 2014 on Marine affairs and Law No. 4 Yr 2011 on Geospatial Information which in essence is a transfer most of the authority of local governments both Provincial, Regency and City at one door is the central government. The Job Creation Law, which has an *Omnibus Law* code, has 1028 pages after it was automatically passed by Law No. 26 Yr. 2007 concerning Spatial Planning. Article 1 number 23, number 24, number 29, and number 30 are no longer valid or declared the Article has been deleted so that there are no more strategic areas Rural, District or Provincial related to strategic economic, social, cultural, or environmental areas. What is even more essential about this Job Creation Law is that the rights of the MHA are related to the right to manage natural resources and their traditional rights at all not accommodated in the context of its recognition and protection.

The national regulation has the potential to deviate from prospering the people, has the potential to marginalize the rights of the MHA, restricts public access, prop modal, and does not fully uphold human rights. The regulation of natural resource management in the legislation resulted in agrarian conflicts that currently occur in almost all regions. In fact, the regulation regarding the use of the earth, water, and space as well as natural wealth is utilized as much as possible for the prosperity of the people is a constitutional mandate that must be carried out in order realizing the goals of the country. Law No. 26 of 2007 on Spatial Planning states that the state organizes spatial planning, the exercise of authority is carried out by the Government and Local Governments while respecting the rights of which is owned by everyone.

The Job Creation Law philosophically explains that it is to realize the purpose of forming the Indonesian State Government and realizing a prosperous, just, and prosperous Indonesian society based on Pancasila and the 1945 NRI Constitution. Therefore, the state urgently needs to make various efforts to fulfill the rights of citizens to work and a decent livelihood for humanity through job creation. The Job Creation Law, which has the *omnibus law*, is essentially the transfer of most of the authority of local governments, both provincial, as well as districts and cities to one the door is the central government which can provide a positive position for the MHA located in the Customary territory and its customary matters. [16]

However, it is the MHA that is the victim of agrarian conflicts and the use of natural resources by the state and the private sector on the one hand and the legal society of the state that is on the other. The state with the right to control it over the earth, water and space and the natural wealth contained therein has the power to determine its use and the private sector as the owner of capital can collaborate in utilizing it by ignoring the people especially the MHA. The essence of law is the protection[17] of the interests of the people by

[16] Dolfreis J. Neununy, *Urgency Omnibus Law (Law Copyright Work) towards Rights Indigenous Peoples in the Territory Shore*, Balobe Law Journal Vol. 1 No. 2 October 2021, Pp. 130

[17] Protection be process or action protect, so that meaning protection law get interpreted be all attempt government to Guarantee the presence of Certainty law to give protection to citizen Country in order to his rights as A citizen Country not Violated. Protection law as one picture from function law, that is concept where

providing justice, freedom of choice, fair treatment, humane treatment, and providing rights communities to obtain welfare and decent work, including law enforcement. The implementation of the Job Creation Law with the *Omnibus Law* method may provide solutions for MHA in managing natural resources in a sustainable manner.

The people in their position as the main element in a country are not involved as subjects of the development process but the people, especially the MHA, are positioned as objects of development. It is this condition that provokes various conflicts as a result of the neglect of the state towards the people and the MHA in the implementation of development both at the planning, utilization, supervision stages and evaluation of development. Legal politics in the formation of the revision of the Mineral and Coal Law and the Job Creation Law which are very thick for the ease of investing, there are various potential threats that loom over the MHA and deprivation its customary territory through such investment activities. On the one hand, the problem of marginalizing MHA from its land requires a solution by the state in the form of recognition and protection by the state to the MHA through the passage of the PP MHA Bill which is up to now still in the confines of his fate.[18]

Departing from the reality that has been described above, the rights of the MHA in the Job Creation Law are believed to have not provided civilized and dignified recognition and protection. Which is equitable in certainty and prosperity in welfare to the MHA.

2. METHOD

This method is written in descriptive and should provide a statement regarding the methodology of the research, include the type of research, research approach, a source of data and analysis method. The author should explain the mechanism to analyze the legal issue. This method as much as possible to give an idea to the reader through the method used, this method is optional, only for an original research article.

3. RESULTS AND DISCUSSION

3.1 The Nature of Indigenous Peoples

The conceptional MHA (indigenous peoples) is derived from the translation of the phrase "*Indigenous and tribal peoples*" as per the Convention concerning Indigenous and Tribal Peoples in Independent Countries (*ILO Convention 169 of June 27, 1989*). [19] Other commonly used concepts are indigenous peoples and traditional societies. In article 1 letter a covens it is formulated that: "*tribal peoples in independent countries whose social, cultural and*

law get give one justice, Order, Certainty, Benefits and peace Charged penalty appropriate regulation that pretend, so that if happen violation towards Conditions norm law that exist will Charged penalty appropriate regulation that pretend. Satjipto Rahardjo, The Other Sides from Law in Indonesia, Jakarta: Kompas, 2003, Pp. 121. See anyway, Rico Septian Noor, *Attempt Protection Law Towards Existence Indigenous Peoples at Central Kalimantan*, Journal Morality, Vol. 4 (2) December 2018, Pp. 118. (https://jurnal.upgriplk.ac.id/index.php/morality/article/view/98/78)

[18] Ria Maya Sari, *Potential Deprivation Territories of Indigenous Peoples Deep Law Number 11 Year 2020 About Copyright Work*, Mulawarman Law Riview,Vo.6 (1) June 2021, Pp. 13.

[19] Convention about Indigenous Peoples in the State Country Independent be Conference Common Organization Labor International (*International Labour Organization*) the Set deep meeting conference the 76th. *International Labour Organisation Convention No. 169 concerning Indigeneous and Tribal Peoples in Independent Countries, 27 June 1989; 28I. L.M.1382*, (Convention ILO 169). Convention Ini in a official Accepted and Set after year 1985, pretend and Applied Date. September 5, 1991. See Rafael Edy Bosko, *Rights Indigenous deep Context Management Source Power Nature*, Jakarta: ELSAM, 2006, Pp. 50.

economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or tradition or by special laws or regulations. "[20]

The convention uses two terms, indigenous *peoples* and *tribal peoples*. Based on the context, for the term Indigenous Peoples, it translates "Indigenous Peoples", while *Tribal Peoples translates* "Indigenous Peoples". Pursuant to article 1 (1.b), Indigenous Peoples are formulated as "societies in independent states that are considered indigenous peoples whose designation is based on their origins (descendants) among other residents inhabiting a country, or a geographical area in which a country is located, at the time of the conquest or colonization or the establishment of new state boundaries, without looking at their legal status, and still having some or all of their social, economic, cultural and political institutional forms".

Meanwhile, *Tribal Peoples*, based on article 1 (1.a.) formulated as "those who dwell in independent states where the social, cultural and economic conditions in distinguishing them from the rest of society in the State, and whose status is regulated in whole or by the customs and traditions of the community or by special arrangements". And, therefore, it is appropriately translated Indigenous Peoples. [21]

The addition of the term "*people*" ("nation") in this Convention is not intended as a term that has implications relating to the rights that may be inherent in terms that used in international law. It is this boundary line that may be unsatisfactory for the defenders of the rights of Indigenous Peoples and Indigenous Peoples. So rather than talking about "*rights to self-determination*", this convention prioritizes "self-identification" as the basis for determining a community as an Indigenous Nation or Indigenous People (Article 1 (2)). And guarantee the fulfillment of human rights and basic freedoms without constraints and discrimination (Article 3).[22]

The use of the term "*indigenous people*" already universally means the same as the term indigenous peoples, including in international treaties such as ILO Convention Number 169 of 1989 using the term "*indigenous people*." In addition, international statements also use the term "*indigenous people*" as stated in *the Declaration on the Rights of Indigenous Peoples*, New York, 2007 (Declaration of the Rights of Indigenous Peoples). ILO Convention No. 169 of 1989 provides for limitations on the meaning of the term "*indigenous people*" 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 colonialisation or the stablishmentof present state boundaries and who,*

[20] Convention ILO 169 be Instruments law international that first that bind in a law that organize about rights community custom. Convention ILO 169 Determine principle basis about indigenous peoples and tribal peoples. Convention Ini pretend for community law custom in countries independent that condition social, cultureand Economic differentiate they from elements other community national and the Status Set in a sum or some by custom or tradition they alone or by law or regulations special. Muazzin, Rights Indigenous Peoples above Source Power Nature: Perspecf Law International, Padjadjaran Journal Science Law, Vol. 1 (2) 2014, Pp. 331.(file:///C:/Users/user/Downloads/7072-11289-1-PB.pdf)

[21] Ifdhal Eunuch, Convention ILO 169: Relevance and The urgency deep Attempt Protection Indigenous Peoples in Indonesia, Paper Advanced Training For Lecturer Teacher Ham in Indonesia, Yogyakarta, 21-24 August 2007, Pp. 5.

[22] Ibid. Pp. 5-6.

irrespective of their legal status, retain or all of their own social, economic, cultural, and political institutions.[23]

ILO Convention 169, Durning mentions several criteria of indigenous people, namely that at least dak has 5 (five) basic elements as follows:[24]

a) The descendants of the natives of an area were then inhabited by a group of peoples from outside who were more powerful;
b) A group of people who have different languages, traditions, cultures, and religions than the more dominant group;
c) It has always been associated with some of the economic conditions of the community;
d) Descendants of hunter, nomadic, and migratory societies;
e) A society with social relations that emphasizes group relations, decision making through agreement, as well as group management of resources.

According to Cobo, the definition of *indigenous peoples* is as follows: "*Indigenous peoples, communies and naons are those which, having a historical connuity with pre-invasion and pre-colonial sociees that developed on their territories considers themselves disnct from other sectors of the sociees now prevailing in those territories, or part of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generaons their ancestral territories, and their ethnic identy, as the basis of their connued existence as peoples, in accordance with their own cultural paerns, social instuons and legal system*."[25]

The conception of MHA as formulated in the provisions of Law No. 11 of 2020 concerning Job Creation whose formulation is in CHAPTER III on Improving the Investment Ecosystem and Business Activities, Part Three on Simplification of the Basic Requirements for Business Licensing, in Paragraph 2 of the Suitability of Space Utilization Activities, in Article 18 it is formulated that some provisions in Law No. 27 of 2007 concerning Management Coastal Areas and Small Islands as amended by Law No. 1 Yr. 2014 concerning Amendments to Law No. 27 Yr. 2007 concerning Management of Coastal Areas and Small Islands. The formulation amended in the provisions of Article 1 number 14, number 40, and number 4l is changed, between the number 14 and the number 15 inserted one number, namely the number 14A, and the number 17, the number 18, and the number 18A are deleted, so that Article 1 number 33 is that an indigenous people is a group of people who have traditionally settled in certain geographical areas in the Unitary State of the Republic of Indonesia due to the presence of ties to ancestral origins, strong relations with land, territory, natural resources , has customary governance institutions , and the customary law order in its customary territory is in accordance with the provisions of laws and regulations.

So the formulation of the provisions of Article 18 in the Job Creation Law , that related to the conception of MHA still follows the provisions in Law No. 27 of 2007

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[23] Office Labor International, Convention Ilo about Indigenous Peoples: A Guide, Dumas. Titoulet Imprimeurs, France, 2003, Pp. 12-13.

[24] Bruce Mitchell, B. Seawanand Dwita Hadi Rahmi, Management Source Power and Milieu, Yogyakarta: Gadjah Mad University Press, 2000, Pp. 299.

[25] Nico Schijver, Sovereignty Over Natural Resource, Cambridge: Cambridge University Press, 1997, Pp. 312. Concept community custom that Comes from Alliance Indigenous Peoples of the Archipelago (AMAN) sound community custom as communities that live By origins ancestors in a hereditary at above one region geographic certainthat have sovereignty above soil and wealth nature, have values social culture that distinctiveand Take care sustainability Life with law and Institutional custom.

concerning the Management of Coastal Areas and Small Islands as has amended by Law No. 1 Yr 2014 concerning Amendments to Law No. 27 Yr 2007 on Management of Coastal Areas and Small Islands. The most important substance in the elements of MHA is social, cultural and economic values and a status that is different from other community groups in a State. So as to allow for inequality between these community groups in a State policy. Thus, the presence of the MHA must be regulated separately either in whole or in part by customary law or the local wisdom system itself or by the law or special regulations.

Customary law is a law that lives in a society, grows and develops with the community and throughout the history of the community concerned. Therefore, *the living law* no longer demands the observance of the law, but the feeling of the law (*filing law*) because the customary law has been consciously obeyed by his people. According to Soepomo in Soerjono Soekanto and Soleman B. Taneko, indigenous [26] peoples can be divided into 2 (two) groups according to the basis of their arrangement, namely based on the relationship of ancestry (genealogical) and those based on the environment, territory or area (territorial); and an arrangement based on both of the aforementioned (mixed) bases i.e. genealogical-territorial or otherwise. The foundation that unites the members of this society is the bond between the person who is a member of the customary law community and the land inhabited for generations and the bond is at the heart of the territorial principle.[27]

3.2 The Nature of the Rights of Indigenous Peoples

The conceptional MHA (indigenous peoples) is derived from the translation of the phrase "*Indigenous and tribal peoples*" as per the Convention concerning Indigenous and Tribal Peoples in Independent Countries (*ILO Convention 169 of June 27, 1989*). [28] Other commonly used concepts are indigenous peoples and traditional societies. In article 1 letter a kovensi it is formulated that: "*tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or tradition or by special laws or regulations.*"[29]

The convention uses two terms, indigenous *peoples* and *tribal peoples*. Based on the context, for the term Indigenous Peoples, it translates "Indigenous Peoples", while *Tribal Peoples translates* "Indigenous Peoples". Pursuant to article 1 (1.b), Indigenous Peoples are formulated as "societies in independent states that are considered indigenous peoples whose designation is based on their origins (descendants) among other residents inhabiting a country, or a geographical area in which a country is located, at the time of

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[26] Soerjono Soekanto, and S. Taneko, Indonesian Customary Law, CV. Hawk, Jakarta, 1983, Pp. 95

[27] Ibid.

[28] Convention about Indigenous Peoples in the State Country Independent be Conference Common Organization Labor International (*International Labour Organization*) the Set deep meeting conference the 76th. *International Labour Organisation Convention No. 169 concerning Indigeneous and Tribal Peoples in Independent Countries, 27 June 1989; 28I. L.M.1382*, (Convention ILO 169). Convention Ini in a official Accepted and Set after year 1985, pretend and Applied Date. September 5, 1991. See Rafael Edy Bosko, *Rights Indigenous deep Context Management Source Power Nature*, Jakarta: ELSAM, 2006, Pp. 50.

[29] Convention ILO 169 be Instruments law international that first that bind in a law that organize about rights community custom. Convention ILO 169 Determine principle basis about indigenous peoples and tribal peoples. Convention Ini pretend for community law custom in countries independent that condition social, cultureand Economic differentiate they from elements other community national and the Status Set in a sum or some by custom or tradition they alone or by law or regulations special. Muazzin, Rights Indigenous Peoples above Source Power Nature: Perspecf Law International, Padjadjaran Journal Science Law, Vol. 1 (2) 2014, Pp. 331.(file:///C:/Users/user/Downloads/7072-11289-1-PB.pdf)

the conquest or colonization or the establishment of new state boundaries, without looking at their legal status, and still having some or all of their social, economic, cultural and political institutional forms".

Meanwhile, *Tribal Peoples*, based on article 1 (1.a.) formulated as "those who dwell in independent states where the social, cultural and economic conditions in distinguishing them from the rest of society in the State, and whose status is regulated in whole or by the customs and traditions of the community or by special arrangements". And, therefore, it is appropriately translated Indigenous Peoples. [30]

The addition of the term "*people*" ("nation") in this Convention is not intended as a term that has implications relating to the rights that may be inherent in terms that used in international law. It is this boundary line that may be unsatisfactory for the defenders of the rights of Indigenous Peoples and Indigenous Peoples. So rather than talking about "*rights to self-determination*", this convention prioritizes "self-identification" as the basis for determining a community as an Indigenous Nation or Indigenous People (Article 1 (2)). And guarantee the fulfillment of human rights and basic freedoms without constraints and discrimination (Article 3).[31]

The use of the term "*indigenous people*" already universally means the same as the term indigenous peoples, including in international treaties such as ILO Convention Number 169 of 1989 using the term "*indigenous people*." In addition, international statements also use the term "*indigenous people*" as stated in *the Declaration on the Rights of Indigenous Peoples*, New York, 2007 (Declaration of the Rights of Indigenous Peoples). ILO Convention No. 169 of 1989 provides for limitations on the meaning of the term "*indigenous people*" 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 colonialization or the establishment present state boundaries and who, irrespective of their legal status, retain or all of their own social, economic, cultural, and political institutions*.[32]

ILO Convention 169, during mentions several criteria of indigenous people, namely that at least dak has 5 (five) basic elements as follows:[33]

a) The descendants of the natives of an area were then inhabited by a group of peoples from outside who were more powerful;
b) A group of people who have different languages, traditions, cultures, and religions than the more dominant group;
c) It has always been associated with some of the economic conditions of the community;
d) Descendants of hunter, nomadic, and migratory societies;
e) A society with social relations that emphasizes group relations, decision making through agreement, as well as group management of resources.

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[30] Ifdhal Eunuch, Convention ILO 169: Relevance and The urgency deep Attempt Protection Indigenous Peoples in Indonesia, Paper Advanced Training For Lecturer Teacher Ham in Indonesia, Yogyakarta, 21-24 August 2007, Pp. 5.

[31] Ibid. Pp. 5-6.

[32] Office Labor International, Convention Ilo about Indigenous Peoples: A Guide, Dumas. Titoulet Imprimeurs, France, 2003, Pp. 12-13.

[33] Bruce Mitchell, B. Seawan and Dwita Hadi Rahmi, Management Source Power and Milieu, Yogyakarta: Gadjah Mad University Press, 2000, Pp. 299.

According to Cobo, the definition of *indigenous peoples* is as follows: "*Indigenous peoples, communies and naons are those which, having a historical connuity with pre-invasion and pre-colonial sociees that developed on their territories considers themselves disnct from other sectors of the sociees now prevailing in those territories, or part of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generaons their ancestral territories, and their ethnic identy, as the basis of their connued existence as peoples, in accordance with their own cultural paerns, social instuons and legal system.*"[34]

The conception of MHA as formulated in the provisions of Law No. 11 of 2020 concerning Job Creation whose formulation is in CHAPTER III on Improving the Investment Ecosystem and Business Activities, Part Three on Simplification of the Basic Requirements for Business Licensing, in Paragraph 2 of the Suitability of Space Utilization Activities, in Article 18 it is formulated that some provisions in Law No. 27 of 2007 concerning Management Coastal Areas and Small Islands as amended by Law No. 1 Yr. 2014 concerning Amendments to Law No. 27 Yr. 2007 concerning Management of Coastal Areas and Small Islands. The formulation amended in the provisions of Article 1 number 14, number 40, and number 4l is changed, between the number 14 and the number 15 inserted one number, namely the number 14A, and the number 17, the number 18, and the number 18A are deleted, so that Article 1 number 33 is that an indigenous people is a group of people who have traditionally settled in certain geographical areas in the Unitary State of the Republic of Indonesia due to the presence of ties to ancestral origins, strong relations with land, territory, natural resources , has customary governance institutions , and the customary law order in its customary territory is in accordance with the provisions of laws and regulations.

So the formulation of the provisions of Article 18 in the Job Creation Law , that related to the conception of MHA still follows the provisions in Law No. 27 of 2007 concerning the Management of Coastal Areas and Small Islands as has amended by Law No. 1 Yr 2014 concerning Amendments to Law No. 27 Yr 2007 on Management of Coastal Areas and Small Islands. The most important substance in the elements of MHA is social, cultural and economic values and a status that is different from other community groups in a State. So as to allow for inequality between these community groups in a State policy. Thus, the presence of the MHA must be regulated separately either in whole or in part by customary law or the local wisdom system itself or by the law or special regulations.

Customary law is a law that lives in a society, grows and develops with the community and throughout the history of the community concerned. Therefore, *the living law* no longer demands the observance of the law, but the feeling of the law (*filing law*) because the customary law has been consciously obeyed by his people. According to Soepomo in Soerjono Soekanto and Soleman B. Taneko, indigenous [35] peoples can be divided into 2 (two) groups according to the basis of their arrangement, namely based on the relationship of ancestry (genealogical) and those based on the environment, territory or area (territorial); and an arrangement based on both of the aforementioned (mixed) bases i.e. genealogical-territorial or otherwise. The foundation that unites the members of this society is the bond

[34] Nico Schijver, Sovereignty Over Natural Resource, Cambridge: Cambridge University Press, 1997, Pp. 312. Concept community custom that Comes from Alliance Indigenous Peoples of the Archipelago (AMAN) sound community custom as communities that live By origins ancestors in a hereditary at above one region geographic certainthat have sovereignty above soil and wealth nature, have values social culture that distinctiveand Take care sustainability Life with law and Institutional custom.

[35] Soerjono Soekanto, and S. Taneko, Indonesian Customary Law, CV. Hawk, Jakarta, 1983, Pp. 95

between the person who is a member of the customary law community and the land inhabited for generations and the bond is at the heart of the territorial principle.[36]

The protection, promotion, fulfillment and respect for Human Rights (HAM), according to Safroeddin Bahar, is a concern for the whole world today, which is the concept of the modern world after the War Second World. [37] The increasing need for land for development purposes, makes the issue of the existence of customary rights need to be considered proportionately. Maria S.W. Sumardjono, determined two views or attitudes on the issue, namely on the one hand there was a concern that the customary rights that originally did not exist were then declared life again, and on the other hand, there are concerns that with the increasing need for land, there will be more and more urgency of customary rights whose existence is guaranteed by the UUPA.[38]

Maria S. W. Sumardjono,[39] emphasized that technically juridical, customary rights are rights that are inherent as a typical competence in indigenous peoples, in the form of authority / power to administering and regulating the land and its contents, with the power of practice into and out of that indigenous people. These distinctive traits, such as non-transferable or deflated, make customary rights a privilege.

MHA *Tau Taa Wana*,[40] in his daily life has rules of customary law that are obeyed as guidelines in life in his customary territory. These rules regulate the relationship between fellow citizens of the customary law community in the field of customary land law, customary marriage law and others as well as relations with ancestors who who inhabit places considered sacred (*kapali or pamali*). One of the things that characterizes an MHA is the expression of traditional culture because it has characteristics in the form of traditional cultural works that contain the identity of traditional cultural heritage and the values of local wisdom until they become a reflection of knowledge and skills which are then transformed from fundamental values and beliefs.[41]

Referring to the various criteria for the existence of indigenous peoples put forward by customary law experts, then as stated by A. Suriyaman M. P. [42] Customary land is a piece of land on which there are customary rights from certain customary law communities. Indigenous peoples have other rights, namely: Rights to Land and Natural Resources

[36] Ibid.

[37] Saafroedin Bahar, Context State Rights Asasi HumanBook Light Hope, Jakarta, 2002, Pp. 4. See also Istiqamah, 2011, *Enforcement Rights Asasi Human In Indonesia*, Journal Law Faculty Sharia and Law of the State Islamic University Alauddin Makassar, Vol. 11 (1), May 2011, Pp. 22.

[38] Mary Sumardjono, Policy Land between Regulation and Implementation, Kompas, Jakarta, 2007, Pp. 54.

[39] Ibid. h. 55.

[40] M. Hatta Rome Tampubolo, *Givu as Criminal Sanctions Tau Taa Forest Indigenous People and its Relevance to The National Criminal Justice Reform*, Journal of Law, Policy and Globalization, Vol. 23 2014, p. 41.

[41] Inspiration Yulis Isdiyanto, Deslaely Putranti, Protection Upper Law Expression Culture Traditional And Existence Village Customary Law Community Pitu (Legal Protection of Traditional Cultural Expression and The Existence of Customary Law Society of Kampung Pitu), JIKH Vol. 15 No. 2, June 2021, Pp. 232.

[42] A. Suriyaman Mustari Pide, Customary Law First, Now And Will Come, Edition First, Gold, Jakarta, 2014, Pp. 121.

(Customary Forests), [43] Rights to Culture, Rights[44] to Self-Determination, Rights to Self-Determination, Rights [45] Top Free, Prior, Informed, Consend (FPIC).[46]

Customary rights (customary rights) are communal rights and social rights in the system and authority according to customary law owned by MHA *Tau Taa Wana* based on *Tana nTau Tu'a* over its customary territory which is the living environment of its citizens to benefit from natural resources including land, water, air, plants, animals, sacred places and buildings the ancient legacy, for its survival and life, arising from outwardly and inwardly connected, descended and uninterrupted between MHA *Tau Taa Wana* and its customary territory or all natural resources in its customary territory.[47]

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[43] Adonijah Ivone Laturette, *Settlement Dispute Rights Ulayat in the Region Forest*, Journal Chassis Vol. 27, (1), 2021, Pp. 104 (https://fhukum.unpatti.ac.id/jurnal/sasi/article/view/504/pdf). See also M. A. Lakburlawal, *Access Justice for Indigenous deep Settlement Dispute Soil Ulayat that Given Rights Business Use*, ADHAPER: Journal Procedural Law Civil, 2 (1), 2016, Pp. 64. (http://doi.org/10.36913/jhaper.v2i1.24)

[44] Characteristic Mha be the presence of values that live as Existed from Copyright taste and karsa. Values-value Ini become a culture that then deep context Rights Above Wealth Inteletual called as Expression Culture Traditional. Expression Culture Traditional have characteristic Form work expression. Protection towards Expression Culture Traditional Set deep Article 38 Law Number 28 year 20214 about Rights Copyright. Expression Culture Traditional Owned by community local in a immediately, culture inheritance wisdom traditional, pregnant identity culture traditional and values local until become reflection most important community that hold above knowledge and Skills that then Transformed from values Fundamental and belief. Ida Ayu Sukihana and I Large Agus Kurniawan, "Work Copyright Expression Culture Traditional: Study Empirical Protection Dance Traditional Bali In Regency Bangli," Udayana Master's Law Journal, Vol. 7 (1), 2018, Pp. 51. See also, Sekhar Chandra Pawana, "Optimization Promotion Culture Area Through Indication Geographic," Justicia Science: Journal Science Law, Vol. 06 (02) 2022, Pp 239-240. (https://jurnal.saburai.id/index.php/hkm)

[45] According to UNDRIP, rights asasi the most fundamental ones Owned by community law custom be rights to Determine his fate alone (self determination). Thing Ini because rights to Determine his fate alone will Tangent with rights asasi Other, Especially rights EKOSOB. Organizing countries in Indonesia not Escape from existence and Involvement community law custom at It. So that, important to Lists rights what just that must Protected that Later will Made Benchmark deep organizing country. Deep Chapter Rights Asasi Human deep 1945 Constitution, Phrases that Used be "every person Reserves....", but often not Involves community law custom as part from person aforementioned. Accommodated self identification and state recognition Ini will become reference and Foundation Constitutional entire stake holders organizing the country that Involves community law custom at It. See Margo E. Salomon, Economic, Social, and Cultural Right: A Guide for Minorities and Indigenous People, United Kingdom, MRG International, 2005, Pp. 20. See also Yando Zakaria Meaning Amendment Article 18 1945 Constitution for Confession and Protection Indigenous Peoples in Indonesia, Jakarta: Foundation Heirloom, 2010, Pp. 6-8.

[46] Law No. 39 Yrs 1999 about Rights Asasi Human that be Ratification from Instruments Rights Asasi Human internationalwrong Only UN Declaration on The Rights of The Indigenous Peoples. Declaration United Nations about Rights Indigenous Ini Load Conditions about Free Prior Informed Consent (FPIC)-Assent Free Without Coercion. She Set standard Minimum above rights confession and Respect towards rights community custom as part from Instruments rights asasi human internationalthat pregnant articles Related with FPIC, that is Article 10, 11, 19, 28, 29 and 32. Deep FPIC, community custom Given freedom time and room to take decision internal and Collective they without mix hand party other. Decision Collective community custom to agree or not agree must Recognized and respected with documentation decision in a true and accurate. Because that, decision assent that Generated from threat, manipulation and wrong information Considered not legitimate. FPIC in Central Sulawesi, already Applied through Regulation Governor Central Sulawesi Number 37 Year 2012 about Guidelines Common Implementation *Free, Prior and Informed Consent on Reducing Emissions From Deforestation and Forest Degradation Plus* Province Central Sulawesi. Regulation Ini Set by Governor Central Sulawesi Longki Djanggola at 25 October 2012. See Pact Indigenous Peoples of Asia (AIPP), Rights deep Act, Assent Free Without Coercion (FPIC) Indigenous Peoples, Jakarta: Alliance Indigenous Peoples of the Archipelago, 2013.

[47] See Article 1 Grain (4) Regulation Area Regency Tojo Una-Una Number 11 Year 2017 About Inaugural Indigenous Peoples *Know Taa Forest* (Sheet Area Regency Tojo Una-Una Year 2017 Number 11; Addition Sheet

According to the MHR. Tampubolon, customary rights (customary rights) are the basis for the claim of MHA *Tau Taa Wana*, as customary rights in its customary legal system are called *Vaka ntau tu'a* and *Pinamuya ntau tu'a* . *Vaka ntau tu'a*, is a legacy of parents in the form of a former farm and garden that has been managed by their masters for a long time, and is the basis of one's claim family family (*ntina*) over family ownership (*ntina*) for generations. *Pinamuya ntau tu'a*, meanwhile, is intended as a legacy of parents in the form of a long-term plant that has remained today even though it has been long-lived, and has is managed by the master's person from time immemorial, and is the basis of the claim of a single family family (*ntina*) to the ownership of the family (*ntina*) for generations [48]

Satjipto Raharjo stated that legal protection is to provide protection for human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all rights granted by law. [49] The law protects a person's delinquency by allocating a power to him to act in the context of that interest. This allocation of power is carried out in a measured manner, in the sense that it is determined its breadth and depth. Such power is what is referred to as a right. [50] The essence contained in the right is the existence of a claim (*claim*) and in relation to legal protection for the people imagines the existence of a claim from the people.[51]

Indigenous peoples in enjoying their rights in the form of material natural resource wealth and immaterial rights related to inner bonds to natural resources and his environment always values that live and are believed in his community as a belief and belief that is hereditary in nature. The values that live in a society that are closely related to the job creation law that will be dominant in this study consist of two values, namely the value of justice and welfare value. The two values can be deciphered as follows.

3.3 The Rights of Indigenous Peoples as Values of Justice

The conception of justice cannot be separated from the issue of law, as an element of the ideal, a mind or an idea, which is contained in all laws. In the field of law in general justice is seen as a goal to be achieved in legal relations between individuals, individuals and governments, and among countries that sovereign. The purpose of achieving justice gives birth to the concept of justice as a result (*result*) or decision (*decision*) obtained from the application or implementation of legal principles and equipment. This notion of justice can be called *procedural justice* and it is this concept that is symbolized by the goddess of justice, swords, scales, and blindfolds to guarantee impartial considerations and not looking at people. [52]

The rights of indigenous peoples must contain the meaning of justice for every use of the natural resources of the community around the exploitation of the sember, so that the exploitation of natural resources owned providing a sense of justice for indigenous peoples,

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Area Regency Tojo Una-Una Year 2017 Number 11), (No.Reg. Regulation Area Regency Tojo Una-Una, Province Central Sulawesi: 56, 11/2017).

[48] M. Hatta Rome Tampubolon, Givu As Penalty Indigenous Peoples' Customary Law Tau Taa Forest And Relevance With Updates Law Punishment National Dissertation Doctor on the Program Postgraduate University BrawijayaHapless 2014, Pp. 241.

[49] Satjipto Raharjo, Organizing Justice deep A Moderate Society Change, Journal Problem Law, No. 1-6 Yrs. X/10, 1993.

[50] Satjipto Raharjo, Science Law Mold Sixth, Image of Aditya Filial piety, Bandung, 2006, Pp. 53.

[51] P. M. Hadjon, Protection Law For People in Indonesia, Bina Science, Surabaya, 1987, Pp. 39.

[52] Glenn R. Negley, "Justice", deep Louis Shores, cd., Collier's Encyclopedia, Volume 13, Crowell-Collier, 1970, p. 682.

especially periority in the pursuit of labor. According to Plato that in order to realize justice in society must be returned to its original structure, sheep become sheep, herders become herders and the state to make changes . Justice is not about the relationship between individuals but rather the relationship of the individual with the State. Justice is also metaphysically understood, its existence as a quality or function of a superhuman being whose nature cannot be observed by humans. The consequence is that the realization of justice is shifted to another world, beyond human experience, and the human sense essential to justice is subject to the ways of God that are not can be changed or god's decisions are unforeseen.[53]

The natural resources of indigenous peoples that God gives to those controlled by the State and used for the greatest prosperity of the people must[54] meet the sense of justice of the local community. Therefore, the form of State control must provide fair policies for the community, the State and entrepreneurs must be in accordance with the essence of the Job Creation Law. So that various developments carried out by the central and local governments, of course, are very beneficial and benefit indigenous peoples if they are involved. According to Ulfianus that "*iustitia est constans et perpetua voluntas/us suum cuique tribuendl*"[55] (justice is a fixed and continuous will to give to each man what he should be for).) Meanwhile, according to Hans Kelsen justice is "*Justice is social happiness guaranteed by a social ordef*[56] (Justice is social happiness, that is, happiness that can only be obtained in the social order).

The government should , in issuing laws and regulations and policies in exploiting natural resources, should be based on the principle of equitable efficiency, [57] for example, regulations and policies in the form of corporate social responsibility (CSR), because the CSR program aims to provide provision and capacity for the community to be economically independent, environmental preservation and social justice, but during these indigenous peoples have not obtained their rights to the fullest.

The more general context of utilitarianism teaches that the right wrongness of a regulation or human action depends on the direct consequences of a particular regulation or action performed. Thus the good and bad of human action is morally dependent on the good or bad consequences of such actions for man. Strictly speaking, if the consequences are good, then a rule or action by itself will be good. Similarly, if the consequences are bad, then a rule or action becomes bad. Whereas intuitionism does not give adequate place to

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[53] Wolfgang Friedmann, Legal Theory, Steven and sons, Ltd. London, (1953), Translation Mohammad Arifin, Theory and Philosophy Law, PT. King Grafindo Persada, Jakarta, 1993, Pp. 117.

[54] Foundation philosophy Management source power nature in Indonesia be Article 33 Paragraph (3) of the 1945 NRI Constitution, which explain that earth, water and wealth nature that Contained at It Controlled by country and Used to as much as possible prosperity people. Article aforementioned have meaning that Deep that fitting Followed by the Organizers country deep do Management source power nature, included Management Mining minerals and Coal. Exist some the word necessary Elaborated Meaning more next to implementation deep regulation legislation, that is: said "Controlled by the state" and the word "to as much as possible prosperity people". Tri Biological, "Rights Mastery Country Towards Source Power Nature And Implication Towards Shape Business Mining," Journal Law & Development 49 No. 3 (2019), Pp. 769.

[55] Satjipto Rahardjo, Science Law, Image of Aditya Filial piety, Bandung, 2000, Pp. 163.

[56] Hans Kelsen, What Justice? : Justice, Politics, and Law in the Mirror of Science, University of California Press, 1957, p. 2

[57] Article 33 Paragraph (4) of the 1945 NRI Constitution.

ratio or reason, but rather relies on the ability of human intuition, so it is inadequate when used as a handle in make decisions especially at the time of conflict between moral norms.[58]

According to Jeremy Bentham in interpreting justice as equality, if the interests of two people clash with each other, the correct decision is based on which one can produce the totality of happiness that greater, regardless of which of the two people will enjoy it or how the happiness is shared between them. [59] However, the condition seen on the ground is that indigenous peoples in Indonesia are generally not ready to be economically independent which can provide convenience for them. The value of Pancasila can be studied from two points of view, namely objectively and subjectively. Pancasila values that are objective mean in accordance with their objects, are subjective in the sense that the existence of these values depends on the Indonesian nation itself.[60]

The Rights of Indigenous Peoples as Welfare Values perspective United Nations. The United Nations has long regulated social welfare issues. The UN defines social welfare as organized activities aimed at helping individuals or communities to meet their basic needs and improve welfare in harmony with the interests of the family and society. [61] The concept of welfare in the formulation of social welfare laws is as a condition for meeting the material, spiritual, and social needs of citizens in order to live a decent life and be able to develop themselves, so as to be able to carry out its social functions.[62]

Article 33 on the economic system and Article 34 on the State's concern for the weak, place the State as the party most responsible for realizing social welfare, according to Spicker: "*stand for a developed ideal in which welfare is provided comprehensively by the state to the best possible standards*"[63] (a position for the ideal developed where welfare is provided comprehensively by the state for the best standards). Specker added that: "*The welfare state is an attempt to break away from the stigma of the Poor Law. It was not designed for the poor; it was supposed to offer social protection for everyone, to prevent people from becoming poor. The best way to help the poor within the welfare state is not to target programmes more carefully on the poor, but the converse: to ensure that there is a general framework of resources, services and opprotunities which are adequate for people's needs, and can be used by everyone. That is what welfare state was meant to do. That is what we have forgotten*."[64]

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[58] Andre Ata Ujan, Justice and Democracy, Study Philosophy Politics John Rawls, famswxs, Yogyakarta, 2001, Pp. 21.

[59] Bertrand Russell, History of Western Philosophy and is Conection with Political and Social Circumstances from the Earliest Times to the Present Day, Georgie Allen and UNWIN LTD., London, 1946. Translation Sigit Jatmiko, et alHistory Philosophy West and Relation with Condition Socio Politics from Ancient until NowBook Student, Yogyakarta, 2007, Pp. 247.

[60] Dardji Darmodiharjo and Shidarta, The main points Philosophy Law: What and How Philosophy Indonesian Law, Gramedia Pustaka Utama, Jakarta, 2006, Pp. 237.

[61] Anonym (Person Academic), Theory Welfare State According to J.M Keynes "Thought and The Role of J. M. Keynes deep Theory Welfare Country, (blogspot.com/2011/10/theory-welfare-state-according to -jm-keynes.html) (Accessed date 8 June 2022).

[62] Rudi Haryanto, Welfare Social Community Economy Thorn Amid Social Distancing Pandemic Covid-19, Al Qolam Journal Proselytizing and Empowerment Society Vol.3 (2) 2019, Pp. 137(https://www.researchgate.net/publication/351606214_Kesejahteraan_Sosial_Ekonomi_Masyarakat_Duri_Di_Tengah_Social_Distancing_Pandemi_Covid-19). See also, Adi Fahrudin, Introduction Welfare Social, Bandung: PT. Refika Aditama, 2014, Pp. 10.

[63] Paul Spicker deep Bernhard Limbong, Procurement Soil To Development; Regulation, Compensation, Enforcement Law Margaretha Pustaka, Jakarta, 2012, Pp. 37.

[64] Paul Spicker, Poverty and the Welfare State, Dispelling The Myths, 2002.

The 1945 NRI Constitution in Article 33 Paragraph 3 formulated that "The earth and water and the natural wealth contained therein are controlled by the state and used for the greatest prosperity of the people". Furthermore, it is formulated in paragraph 4 that "The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, self-reliance, as well as by maintaining the balance of progress and unity of the national economy. Therefore, the mining sector has become a prima donna sector in a number of regions because it is faster to increase the REGIONAL BUDGET and PAD (Regional Original Income), this is so that a number of local governments , especially local governments boosting and campaigning for the potential of existing natural resources, to attract a number of entrepreneurs/coorporates to plant his investment.

The practice of omnibus law can threaten the agrarian and environmental sectors, the rule is the absence of participation of indigenous peoples and communities in the management of the environment and natural resources , while the existing ones are investors in the process of using their land rights related to the land of the community and or indigenous peoples, it must and must be resolved first.[65]

Therefore, the Job Creation Law was formulated to realize a society, especially a just and prosperous indigenous law society as in the formulation of the Omnibus Law that the essence of the copyright law work to realize the goal of the establishment of the Government of the State of Indonesia and realize a prosperous, just, and prosperous Indonesian society based on Pancasila and the 1945 Constitution of the Republic of Indonesia , the State it is necessary to make various efforts to fulfill the rights of citizens to work and a decent livelihood for humanity through job creation.

The job creation law is expected to be able to absorb the widest possible Indonesian workforce in the midst of increasingly competitive competition and the demands of economic globalization, so as to support job creation, adjustment of various regulatory aspects related to the convenience, protection, and empowerment of cooperatives and micro, small, and medium enterprises, improvement of the investment ecosystem, and acceleration of national strategic projects, including improving the protection and welfare of workers.

In this concept of the Welfare State, the state is required to extend its responsibility to the socioeconomic problems facing the masses. It was this development that provided legalization for the "interventionis State" of the 20th century. The state needs and even has to intervene in various social and economic issues to ensure the creation of a common welfare in society. State functions also include those activities that were previously beyond the scope of state functions, such as extending the provision of social services to individuals and families in special matters, such as social security, health, social welfare, education and training, and housing.[66]

However, the condition that occurs as a logical consequence of the global turmoil and the strengthening of the ideology of neo-liberalism today is the emergence of criticism of the state welfare system that is seen as not appropriately again applied as an approach in the development of a country. The state welfare system is undergoing reformulation and

[65] Andhika Yuli Foresters, Omnibus Law and Impact At Agrarian and Milieu Live, Journal RectmatigVol. 6 (2) December 2020, Pp. 7.

[66] Jimly Asshiddiqie, Idea Sovereignty People Deep Constitution And Implementation At Indonesia, PT. Ichtiar New Van Hoeve, Jakarta, 1994.

adjustment in line with the demands of change, but it is very wrong to assume that the welfare of the state has met the end of its history.[67] Therefore, the central government and local governments together with indigenous peoples to be able to open up and work hard to invite investors to invest in the regions and its territory, as the spirit of the job creation law, because the existence of investment strongly supports the running of the economy.

The economic turnover of indigenous peoples when investors do business and activities are so massive, the certainty of marketing community products will also increase. Nevertheless, the state plays an active role in fulfilling the welfare of the community. Adam Smith stated that the scope of State (government) activities is very limited, only carrying out activities that are generally not carried out by the private sector and covering only 3 (three) areas only, namely the judiciary, security defense, and public works. The duties and roles of the state are not only limited to ensuring the implementation of order based on the power that exists in it, but also play a role as one of the economic actors by playing the role of a production state. This is in line with Friedmann's view of the functioning of the state, namely the state as provider, the state as regulator, the state as entrepreneur, and the state as umpire (State as referee).[68]

The idea of the Omnibus Law concept is expected to resolve regulatory conflicts in the land sector and is expected to effectively resolve regulatory conflicts that have been chastening for a long time and as a result can lead to criminalization of officials. For this reason, in applying this concept, a strong legal foundation must be given so that it does not conflict with the principles and norms of the formation of laws and regulations. Technically, it is biased by issuing a Government Regulation in Lieu of Law (Perppu).[69]

In its development, the concept of a welfare state received a lot of sharp criticism. The responsibility of the State in the concept of a welfare state which is only limited to the fulfillment of minimum living needs or basic welfare, in some countries is felt to be irrelevant. According to critics of the welfare state, the concept of a welfare state expressed in the middle of the 20th century is no longer in accordance with the conditions of the early 21st century or the millennium era third. The third millennium society is not enough with only the fulfillment of basic needs, but more than that , the demands of society in the third millennium era are the changes in the *life world* from the fulfillment of welfare at least to the level of fulfilling sustainable *welfare*. [70]

The principle weakness of the concept of the welfare state is the intensity of state intervention or intervention in all aspects of people's lives, while the expected output in the form of improving general welfare is not significant and unbalanced by the magnitude of state interference given in the concept of the welfare state. Therefore, although the vision and mission of the concept of the welfare state , namely improving general welfare and social justice, needs to be maintained, the approach or method must be changed and

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[67] Edi Suharto, Peta and Dynamics Welfare State in Some State; Lesson What What You Can Picked To Build Indonesian? Paper Delivered at the Seminar "Study Repeat Relevance Welfare State and Breakthrough through Decentralization-Autonomy in Indonesia", Institute for Research and Empowerment (IRE) Yogyakarta and Association Jakarta Initiative, Housed at Wisma MM Universitas Gadjah Mad, Yogyakarta 25 July 2006.

[68] Aminuddin Ilmar, Rights Control Country Deep Privatization SOEs, Gold; Jakarta, 2012.

[69] Word Freaddy Busroh, Conceptulization Omnibus Law Deep Finish Problems Regulation Land, Journal Arena Law, Vol. 10 (2) August 2017, Pp. 248

[70] See Richard A. Slaughter deep Muh. Thunder Settings Law and Implementation System Trade Agriculture, DissertationProgram Postgraduate University Airlangga, Surabaya, 2002.

adapted to the conditions of society that is entering the third millennium era.[71] As is the case with some indigenous peoples whose natural resources are exploited into a 'nightmare' that drags indigenous peoples into the pit of backwardness because the surrender of the investors and the negligence of the state in policing.

4. CONCLUSION

International Perspective was explant concept the of welfare in the formulation of social welfare laws is as a condition for meeting the material, spiritual, and social needs of citizens in order to live a decent life and be able to develop themselves, so as to be able to carry out its social functions. The Job Creation Law philosophically explains that it is to realize the purpose of forming the Indonesian State Government and realizing a prosperous, just, and prosperous Indonesian society based on Pancasila and the 1945 NRI Constitution. Various efforts to fulfill the right of citizens to work and a decent livelihood for humanity through job creation, which in essence is the transfer of most of the authority local governments, both provincial, as well as districts and cities at one door to the central government which can provide a positive position for MHA located in Indigenous territories and the customary thing MHA in enjoying its rights in the form of material natural resource wealth and immaterial rights related to inner bonds to natural resources and his environment always values the values that live and are believed in his community as a belief and belief that is hereditary. The values that live in a society that are closely related to the job creation law that will be dominant consist of two values, namely the value of justice and the value of welfare. So the nature of MHA rights in omnibus law in Indonesia is the right to the value of justice and welfare value to the use of natural resources of indigenous peoples that have not been maximized, it is hoped that the job creation law can provide justice and welfare for indigenous peoples. The logical consequence of the global trend and the strengthening of the ideology of neo-liberalism today is the emergence of a critique of the state welfare system that is seen as no longer appropriately applied as an approach in development of a country. The state welfare system is undergoing reformulation and adjustment in line with the demands of change, but it is very wrong to assume that the welfare of the state has met the end of its history. Therefore, the central government and local governments together with indigenous peoples to be able to open up and work hard to invite investors to invest in the regions and its territory, as the spirit of the job creation law, because the existence of investment strongly supports the running of the economy, but still pays attention to the rights of the MHA, namely: Rights on Land and Natural Resources (Customary Forests), The Right to Culture, The Right To Self-Determination, The Right To Free, Prior, Informed (FPIC). And The United Nations has long regulated social welfare issues. The UN defines social welfare as organized activities aimed at helping individuals or communities to meet their basic needs and improve welfare in harmony with the interests of the family and society.

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