



The Principle of People's Authoritative Manifestation in Mining Management: An Inclusive Legal Perspective

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Abstract

Introduction: Principle of the people's authoritative manifestation in mining activities must be a reference and guide by the state in formulating policies related to mining management.

Purposes of the Research: This study aims to construct the people's authoritative manifestation principle in mining management. In addition, this study also focuses on an inclusive legal perspective and uses comparisons with Brazil and the United States.

Methods of the Research: This research is normative legal research with the approaches used conceptual, comparative, and statutory approaches.

Results of the Research: The study results confirm that the efforts to actualize the principle of authoritative manifestation of the people in an inclusive legal perspective can be carried out with an integrated mining licensing system that takes into account the aspirations and input of the community, the need for community participation and involvement in every mining management activity, and the need for protection and empowerment, especially for communities around mining and in particular again to customary law communities who have local wisdom to manage local resources in their area so that their existence is maintained even though there is mining activity.

1. INTRODUCTION

Management of natural resources is one of the functions of the state as a social-community institution that was born from a social contract between the community and the authorities.¹ In managing natural resources, each country has certain principles, characteristics and orientations in which the management of natural resources is an integrated part of an effort to realize the country's goals. One of the management of natural resources that requires an important role in the management of the state is the management of mining practices.² That is because mining as an effort to extract natural resources requires the role of the state as a means of control as well as a means of managing mining

¹ Setia Untung Arimuladi, "The Ecocracy Of Water Resources On Water Cultivation Rights In Realizing Soil And Water Conservation," *Pembaruan Hukum* 9, no. 2 (2022): 175.

² Nathalie Barbosa Reis Monteiro et al., "Mining Law: In Search of Sustainable Mining," *Sustainability (Switzerland)* 13, no. 2 (2021): 1-16, <https://doi.org/10.3390/su13020867>.

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management so that it is in line with efforts to improve the welfare of society.³ Mining management in Indonesia is based on Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia (*Undang-Undang Dasar Negara Republik Indonesia 1945* or UUD NRI 1945), which mandates that the optimization of natural resource management, including mining, is oriented to the maximum possible for the welfare of the people. From a constitutional perspective, the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (*Mahkamah Konstitusi Republik Indonesia* or MK) have seen developments in the interpretation by the Constitutional Court, one of which is in the Constitutional Court Decision No. 001-021-022/PUU-I/2003 which constructs the interpretation of "management by the state" by balancing political democracy and economic democracy.⁴ The Constitutional Court's interpretation in the a quo decision emphasized that controlled by the state means the public so that the state must carry out certain formulations to manage natural resources through the formulation of policies, acts of administration, regulation, management and supervision.⁵ The development of the interpretation of the meaning controlled by the state was also emphasized by the Constitutional Court in the Constitutional Court Decision No. 3/PUU-VIII/2010 and Constitutional Court Decision No. 36/PUU-X/2012, which provides parameters for natural resource management; which include: utilization of natural resources for the community, distribution of benefits for the community, community participation in managing natural resources, and the existence of traditional community rights that must be respected

The development of the interpretation of the Constitutional Court's decision in managing natural resources, including mining management, actually implies a simple view that the people as "bearers" of the highest sovereignty in a country must be the subject of managing natural resources, including mining. That is to emphasize that good mining must involve optimal participation from the people as the holder of sovereignty.⁶ That simultaneously emphasizes that people's sovereignty is not only a jargon in political democracy but also must be the main orientation in economic democracy, especially in managing natural resources, in this case, mining.⁷ This study aims to construct the people's authoritative manifestation principle in mining management. This principle is an abstraction from Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, whose principle is that the management of natural resources must be aimed at realizing people's prosperity in which the state becomes the facilitator in realizing people's prosperity and welfare as the main goal of managing natural resources. This research focuses on constructing the principle of the people's authoritative manifestation in the aspect of its essence and actualization in mining regulations in Indonesia using an inclusive legal perspective. Inclusive law is used as material for analysis because inclusive law implies the value of empowering and strengthening people's sovereignty and rights as the main

³ Danang Wahyuhono, Suryo Purwono, and Dyah Mutiarin, "Kontrol Pemuda Terhadap Tata Kelola Migas Dan Implikasinya Pada Ketahanan Wilayah Di Kawasan Migas Blok Cepu Kabupaten Bojonegoro," *Jurnal Ketahanan Nasional* 25, no. 1 (2019): 1, <https://doi.org/10.22146/jkn.38265>.

⁴ Yance Arizona, *Konstitusionalisme Agraria*, 1st ed. (Yogyakarta: STPN Press, 2014).

⁵ PUSHEP, "Perkembangan Tafsir 'Penguasaan Oleh Negara' Pada Pasal 33 UUD 1945" (pushep.or.id, 2019).

⁶ Febri Adi Prasetyo Popi Amaria Simatupang, Pricilia Fanesha Pinangkaan, "Upaya Pemerintah Kota Balikpapan Dalam Mengatasi Praktik Pertambangan Batubara Ilegal," *Lex Suprema* 4, no. 1 (2022): 1051.

⁷ Muhammad Sabri Lia Kian, "Internalisasi Dan Institusionalisasi Kebijakan Ekonomi Pancasila," *Pancasila : Jurnal Keindonesiaan* 1, no. 1 (2021): 47.

essence of a rule of law. In addition, this study also uses a comparative approach by comparing mining law policies in the United States and Brazil.

Research on mining and people's welfare in the legal aspect has been discussed by several researchers before, such as (i) Derita Prapti Rahayu, M. Shidqon Prabowo, Faisal (2021), which focuses on the study of MK Decision No. 25/PUU-VIII/2010 which is considered more profitable for mining entrepreneurs than the community or people in general.⁸ Furthermore, research conducted by (ii) Szyva Silviana Putri (2022) focuses on studying state control and management of mineral and coal mining where the state should empower and prosper the surrounding community.⁹ Subsequent research conducted by (iii) Nur Fadilah Al Idrus (2022) focused on the pros and cons of the reform of the *Minerba* Law.¹⁰ Of the three previous studies, the research conducted by the authors is original research because the novelty oriented in this research is the construction of the principles of people's authoritative manifestations in terms of their essence and actualization in mining regulations in Indonesia which have not been studied and researched by the three previous studies. This study aims to answer two problem formulations. First, what is the essence of the people's authoritative manifestation principle in mining management? Second, how is the actualization of the principle of the people's authoritative manifestation in mining management from an inclusive legal perspective?

2. METHOD

This type of research with legal issues of the construction of the principle of people's authoritative manifestation in the aspect of its essence and actualization in mining regulations in Indonesia is normative legal research. *The core or essence of normative legal research is an analysis of the authoritative texts formed by the state, in this context are statutory regulations and court decisions.*¹¹ The primary legal material in this study is the 1945 Constitution of the Republic of Indonesia, Law no. 4 of 2009 concerning Mineral and Coal Mining (UU Minerba), and Law no. 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (Minerba Amendment Law). Secondary legal material includes recent journal articles, relevant books, as well as various studies on mining and its regulation in Indonesia. Non-legal materials are language dictionaries. The approaches used are conceptual, comparative, and statutory approaches.

3. RESULTS AND DISCUSSION

3.1 The Essence of the People's Authoritative Manifestation Principle in Mining Management

The people's sovereignty is one of the essential elements of the Indonesian legal state. In the Preamble of the 1945 Constitution of the Republic of Indonesia, the term and essence of people's sovereignty are imprinted in the fourth paragraph of the Preamble of the 1945

⁸ Faisal Derita Prapti Rahayu, M. Shidqon Prabowo, "Negara: Antara Pengusaha Tambang Dan Tambang Rakyat Kajian Putusan Mahkamah Konstitusi Nomor 25/PUU-VIII/2010," *Yudisial* 14, no. 2 (2021): 189.

⁹ Szyva Silviana Putri, "Penguasaan Negara Dan Peran Masyarakat Atas Sektor Pertambangan Mineral Dan Batubara," *Sibatik* 1, no. 7 (2022): 1124.

¹⁰ Nur Fadilah Al Idrus, "Dampak Politik Hukum Dan Respon Masyarakat Atas Pembaharuan Undang-Undang Minerba," *Penegakan Hukum Dan Keadilan* 3, no. 2 (2022): 117.

¹¹ Emad Mohammad Al Amaren et al., "An Introduction to the Legal Research Method: To Clear the Blurred Image on How Students Understand the Method of the Legal Science Research," *International Journal of Multidisciplinary Sciences and Advanced Technology* 1, no. 9 (2020): 50-55.

Constitution of the Republic of Indonesia twice, namely in the first phrase, namely before the formulation of Pancasila which states that "...the sovereignty of the people is based on...".¹²

Furthermore, the essence of people's sovereignty is also stated in the formulation of the fourth precept of Pancasila, which is also listed in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia, which emphasizes that "...the people are led...". He repeated twice that the essence of people's sovereignty in the Preamble to the 1945 Constitution of the Republic of Indonesia contains the simple substance that the Indonesian state is a people-sovereign country, which means that the people are the subject as well as the object of realizing prosperity for the people of Indonesia.¹³

From a constitutional perspective, people's sovereignty is an unamendable constitutional provision because, for Indonesia, people's sovereignty is the "spirit" of state administration.¹⁴ That means that if people's sovereignty is not manifested in running and managing the state, then the management of the state can be said to have deviated from the path of the constitution. As mandated by the constitution, the sovereignty of the people must be interpreted broadly. That means that people's sovereignty is often identified with political sovereignty, in which one of its manifestations is public participation in general elections. Of course, this understanding of people's sovereignty is not wrong in the political aspect, but only identifying people's sovereignty in the political realm needs to be corrected.¹⁵ The people's sovereignty should be manifested in various aspects of state administration. One aspect of popular sovereignty that is important as a basic value and guiding value is in the field of natural resource management, particularly in mining practices.

The sovereignty of the people as a philosophical value in mining management is a constitutional mandate, as stated in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia.¹⁶ The *a quo* article philosophically mandates the existence of an element of people's prosperity as the highest goal in mining activities. It does not stop there; the editorial of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia also mandates "to the maximum extent possible" for the prosperity of the people where the term "as much as possible" is an oriented term that for the state mining management must be optimized for the people. Even if it is to generate surplus profits, the people must get the maximum benefit from the profits resulting from the mining process. The importance of the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia in mining management is relevant to Mubyarto's view that to run the wheels of the national

¹² Fradhana Putra Disantara, "Perspektif Keadilan Bermartabat Dalam Paradoks Etika Dan Hukum," *JURNAL LITIGASI (e-Journal)* 22, no. 2 (2021): 205-29, <https://doi.org/http://dx.doi.org/10.23969/litigasi.v22i2.4211>.

¹³ Garcia Nathanael Nathanael, "Industri Batubara Dari Sisi Ekonomi, Politik, Dan Lingkungan," *Parapolitika: Journal of Politics and Democracy Studies*, 2, no. 1 (2021): 2021.

¹⁴ I Gede Agus Kurniawan, "The Reconstruction of Subjectum Litis in Term of Reflections on Constitutional Dissolution of Political Parties," *Jurnal Akta* 9, no. 1 (2022): 104-19, <https://doi.org/http://dx.doi.org/10.30659/akta.v9i1.20970>.

¹⁵ Fradhana Putra Disantara, Bayu Dwi Anggono, and A'An Efendi, "Mendudukkan Norma Etika: Perspektif Teori Keadilan Bermartabat Terhadap Relasi Etika Dan Hukum," *Rechtsidee* 10, no. 2 (2022): 1-13, <https://doi.org/10.21070/jihr.v10i0.773>.

¹⁶ Athari Farhani and Ibnu Sina Chandranegara, "Penguasaan Negara Terhadap Pemanfaatan Sumber Daya Alam Ruang Angkasa Menurut Undang-Undang Dasar Negara Republik Indonesia Tahun 1945," *Jurnal Konstitusi* 16, no. 2 (2019): 235, <https://doi.org/10.31078/jk1622>.

economy, the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia are like an "ideology" in the national economy.¹⁷ *Mutatis-mutandis* with these economic aspects, then in actual mining management Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia also becomes an "ideology" in determining mining policies initiated by the state.¹⁸

Although philosophically, the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia determine the orientation of pro-people mining management, theoretically, the provisions of the constitution still lead to ambiguity, especially in the term "controlled by the state". In its journey, the Constitutional Court as the final interpreter of constitutional values through MK Decision No. 001-021-022/PUU-I/2003, MK Decision No. 3/PUU-VIII/2010, and the Constitutional Court Decision No. 36/PUU-X/2012 provides a theoretical contribution in the form of how mining is managed in Indonesia and the nature of people's prosperity as the highest goal of mining activities.¹⁹ Paradigmatically, the three Constitutional Court Decisions above have clarified the essence of people's sovereignty in the mining sector in which the people must be involved as the "heart" of mining activities. In providing an interpretation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court's decision at least places the strong position of the people in the process of mining management with three orientation. *First*, people's sovereignty is positioned holistically not only in the field of politics and government but also as the basic implementation of various fields related to the people. That includes placing the paradigm of people's sovereignty in mining management.²⁰ In this context, the state ensures people's sovereignty is protected in the mining business through policy-making, management, regulation and management by SOEs. Furthermore, the state also needs to supervise mining practices with the people so that the mining that is carried out is truly oriented towards realizing people's prosperity..

Second, people's sovereignty is placed not only as a guarantee but also includes empowering the people in various mining processes. In this context, people's sovereignty to empower the people has four parameters, namely: (i) the aspect of benefit for the people, (ii) fair and proportional distribution of the benefits obtained for the people, (iii) guarantees for people's participation in managing and utilize various aspects in mining activities, as well as (iv) respect for the rights and traditional aspects and local wisdom of the community in mining management.²¹ When referring to the orientation of people's sovereignty to empower, it can be concluded that the four parameters are cumulative. In law, especially in legal drafting, cumulative means that all elements or aspects must be fulfilled.²² That means

¹⁷ Faisal Faisal, Derita Prapti Rahayu, and Yokotani Yokotani, "Criminal Sanctions' Reformulation in the Reclamation of the Mining Community," *Fiat Justisia: Jurnal Ilmu Hukum* 16, no. 1 (2022): 11-30, <https://doi.org/10.25041/fiatjustisia.v16no1.2222>.

¹⁸ Dawam Rahardjo, "Ekonomi Pancasila Dalam Tinjauan Filsafat Ilmu" (Yogyakarta: ekonomikerakyatan.ugm.ac.id, 2021).

¹⁹ Ahmad Redi et al., "Konstitusionalitas Hak Masyarakat Hukum Adat Atas Hak Ulayat Rumpon Di Provinsi Lampung," *Jurnal Konstitusi* 14, no. 3 (2018): 463, <https://doi.org/10.31078/jk1431>.

²⁰ Moses Asori et al., "Is Illegal Mining Socio-Politically Entrenched? An Opinion Piece of the Interaction between Formal Politics and Chief Dominance in Mineral Governance, and Its Influence on Fighting Galamsey in Ghana," *GeoJournal*, no. 0123456789 (2022), <https://doi.org/10.1007/s10708-022-10725-1>.

²¹ Absori Absori et al., "Environmental Health-Based Post-Coal Mine Policy in East Borneo," *Open Access Macedonian Journal of Medical Sciences* 9 (2021): 740-44, <https://doi.org/10.3889/oamjms.2021.6431>.

²² Emily Grabham, "The Crafty Power of Text: Methods for a Sociology of Legislative Drafting," *Supplement: Socio-Legal Methodologies* 49, no. 1 (2022): 6.

that if one aspect is not fulfilled, it is considered that the cumulative provisions still need to be implemented. In the context of the parameters of community empowerment in mining management, the four parameters above must be fulfilled because only one parameter is not fulfilled. It can be said that mining management does not have an orientation to empower the community.

Third, people's sovereignty is a "guiding conception" in mining practices, especially in establishing proportional relations between the state, the people, and the private sector in mining management. In mining management, the relationship between the people, the state and the private sector is important and from these three parties, the people occupy a more "inferior" position, so in mining management, the essence of sovereignty and people empowerment is sometimes neglected by the "inferior" position of the people.²³ Therefore, the state has an important role in ensuring that the people have control and a strong position in mining practices. Of the three orientations related to the interpretation of management by the state in mining activities, the people and people's sovereignty are the most important aspects at the philosophical, conceptual, practical, and application levels. People's sovereignty guides the three interpretation orientations of management by the state in the field of mine management (economic sovereignty), people's sovereignty in empowering communities in the mining process, and people's sovereignty to have an equal position with the state and the private sector in mining management. That is what the author means as the principle of the authoritative manifestation of the people

The principle of the people's authoritative manifestation in mining management must action three aspects: the philosophical aspect, the conceptual aspect, and the application aspect. From a philosophical aspect, mining management must be based on and grounded in the ideals of state law, namely Pancasila. At this philosophical level, mining management must be based on five values, namely: religious values, human values, national unity values, people's values, as well as social justice values. Furthermore, at the conceptual level, this principle of people's authoritative manifestation puts forward three orientations of interpretation of management by the state. That's include: people's sovereignty in the field of mine management (economic sovereignty), people's sovereignty in empowering people in the mining process, and people's sovereignty to have a position that equal to the state and the private sector in mining management.²⁴ Furthermore, in the application aspect, mining management must be based on three aspects: participation, empowerment, and protection of people's rights. At the level of participation, the application of mining management must guarantee the widest possible participation of the community..²⁵ That is intended so that the people can obtain optimal prosperity in mining management. From the aspect of empowerment, the state must empower the community, especially the people around the mine, who need to be educated and given an orientation. In addition to obtaining prosperity as an implication of mining practices, they also need to gain an understanding of the orientation of environmental sustainability and sustainable development in mining

²³ Marthen B. Salinding, "Prinsip Hukum Pertambangan Mineral Dan Batubara Yang Berpihak Kepada Masyarakat Hukum Adat," *Jurnal Konstitusi* 16, no. 1 (2019): 148, <https://doi.org/10.31078/jk1618>.

²⁴ Dhea Meila Fitriani, Fenty U Puluhulawa, and Dolot Alhasni Bakung, "Normative Review Of Indigenous Community Rights In Mining Areas," *Etudiante Law Journal* 3, no. 2 (2021): 295-309.

²⁵ Sinta Ana Pramita, I Gusti Ayu Ketut Rachmi Handayani, and Legu Karjoko, "Constitutional Development on Mineral and Coal Governance in Indonesia," *Proceedings of the International Conference on Environmental and Energy Policy (ICEEP 2021)* 583, no. Iceep (2021): 141-45, <https://doi.org/10.2991/assehr.k.211014.031>.

practices.²⁶ From the aspect of protecting people's rights, in this case, the state must be able to provide legal policies that can facilitate and protect indigenous peoples or traditional communities, whereby mining activities aspects of local wisdom and traditional rights are threatened and can be anticipated.²⁷

Based on the description above, the principle of people's authoritative manifestation in mining activities must be a reference and guide by the state in formulating policies related to mining management. That is so that the orientation of the principle of authoritative manifestation of the people can be applied in mining practices, which include: *First*, on a philosophical aspect, proper mining management must be based on and grounded in the ideals of state law, namely Pancasila based on five values, namely: religious values, humanity, the value of national unity, the value of democracy, as well as the value of social justice. *Second*, on the conception aspect which is based on people's sovereignty in the field of mining management (economic sovereignty), people's sovereignty in empowering communities in the mining process, and people's sovereignty to have a position that is equal to the state and the private sector in mining management. *Third*, in terms of implementation, mining management must be based on three aspects, namely: participation, empowerment, and protection of people's rights. By fulfilling the orientation of the principle of authoritative manifestation of the people, mining management practices in Indonesia can achieve the ideals of managing natural resources as mandated by Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

3.2 Inclusive Legal Perspective Regarding Actualization of the People's Authoritative Manifestation Principle in Mining Management

The urgency of the principle of people's authoritative manifestation in mining activities is important concerning the orientation of mining management in Indonesia. That is because even though mining practices normatively emphasize the importance of people's rights and participation, it is not uncommon in practice that people often become "victims" of mining activities.²⁸ The marginalization of the common people, especially indigenous peoples, is an individual portrait in mining practices. The marginalization of the people as an implication of mining portraits has been described by Amartya Sen, who describes the existence of a resource curse or the curse of natural resources. The natural resource curse is a "vicious circle" in which even though there is a guarantee in mining management to involve people's participation, in reality, the people around the mining industry can be said to be far from being "powerful".²⁹ Besides that, in the terminology of the resource curse, the curse of natural resources is an anti-nomic phenomenon where when; the abundance of natural resources does not bring prosperity to the local community. One aspect of this phenomenon is the need for the state to manage and empower communities in the mining

²⁶ Adimas Ardhiyoko, Jamal Wiwoho, and Yudho Taruno Muryanto, "The Justice System in Indonesia with the Application of the Green Constitution in Mining Dispute Resolution," *Proceedings of the International Conference on Environmental and Energy Policy (ICEEP 2021)* 583, no. Iceep (2021): 234-37, <https://doi.org/10.2991/assehr.k.211014.050>.

²⁷ Harliansyah Harliansyah et al., "Free, Prior and Informed Consent in Fulfilling the Constitutional Rights of Citizens in the Mining Sector," *International Journal of Law, Environment, and Natural Resources* 1, no. 1 (2021): 11-21, <https://doi.org/10.51749/injurlens.v1i1.2>.

²⁸ Megawati Barthos Hesti Lestari, "Pertanggungjawaban Pidana Korporasi Dalam Tindak Pidana Lingkungan Hidup Berkaitan Dengan Dumping Limbah Tanpa Izin Pada Perusahaan Tambang PT. Indominco Mandiri Di Kalimantan," *ONSTITUTUM Jurnal Ilmiah Hukum* 1, no. 1 (2022): 48.

²⁹ Antonio Savoia and Kunal Sen, "The Political Economy of The 'Resource Curse'" (Helsinki: UNU-WIDER, 2020).

process.³⁰ Therefore, one of the important aspects is the need to strengthen and empower the community so that the principle of people's authoritative manifestation in mining activities can be optimally applied

The need to strengthen the people in mining management to realize optimization on the principle of the people's authoritative manifestations in mining activities requires an assessment of inclusive legal aspects. Inclusive law is relevant concerning efforts to optimise the principle of people's authoritative manifestations and to empower communities in mining activities.³¹ In the author's opinion, there are three arguments why inclusive law is relevant to efforts to empower communities in mining activities. *First*, inclusive law developed by Jawahir Thontowi is the antithesis of legal developments that increasingly marginalize the poor and weak. One of the orientations of inclusive law is to provide affirmative action to the poor and weak so that legal values can be applied optimally. Concerning optimizing the principle of the people's authoritative manifestation in mining activities, the notion of inclusive law is especially relevant in relation to efforts to provide a proportional position for the people in mining activities.

Second, inclusive law has a discourse related to the "non-linearization" of law so that all legal issues are reviewed and studied from various perspectives holistically so that relevant legal policies are obtained and in accordance with the real problems faced by society. Referring to the optimization of the principle of the people's authoritative manifestation in mining activities, it can be seen that even though the provisions in the 1945 Constitution of the Republic of Indonesia, the Minerba Law, and the provisions of the Minerba Amendment Law have guaranteed orientation for the people in the mining process, there are problems in the Minerba Amendment Law and its implementation which making people not yet feel the essence of empowerment as an implication of the existence of a mining business. This can be seen by the fact that there are still "fuzzy" provisions in the Minerba Amendment Law, particularly the substance of punishment for parties who obstruct the mining process. This provision is brief in nature and has the potential to criminalize the community around the mine, further to the customary law community. This shows that inclusive law has relevance for comprehensively looking at mining problems in society as well as formulating appropriate legal policies..

Third, inclusive law has a paradigm of sustainable development based on environmental sustainability, so inclusive law has an orientation to maintain the relationship of natural sustainability in mining activities.³² This, at the same time, guarantees the community's right to environmental sustainability while at the same time giving future generations the right to enjoy environmental sustainability. From the three arguments for the relevance of inclusive law in mining activities, inclusive law has relevance to efforts to provide legal protection while empowering communities related to mining practices. Related to mining practices and the orientation of the community around the mine, it is necessary to look at practices in Brazil and the United States. A comparison with Brazil was made because Brazil is a country that has abundant natural wealth, so it is relevant to Indonesia. Comparisons in the United States were made because natural

³⁰ Sen.

³¹ Asriadi Zainuddin, "Eksistensi Teori Hukum Inklusif Dalam Sistem Hukum Nasional," *Al-Himayah* 2, no. 1 (2018): 17-30.

³² Aulia Rahmat, "Kebebasan Berpikir Hukum Kreatif: Sebuah Kerangka Interpretasi Untuk Hukum (Yang) Inklusif," 2020, <https://doi.org/10.13140/RG.2.2.19177.93289>.

resource management practices in the United States (especially mining) also involve and strengthen traditional communities and indigenous and tribal peoples.

Mining practices in Brazil have similarities in Indonesia, especially with administrative and legal efforts to unify mining permits, as was done in Indonesia with the Minerba Amendment Law. One of the policies implemented by Brazil is the birth of Law no. PL191/2020 which tries to rearrange customary forests so that mining exploration and exploitation can be carried out.³³ Although administratively, mining permits in Brazil are relatively good with the establishment of the National Mining Agency (Agência Nacional de Mineração), the establishment of this agency often grants permits to mining around the Amazon river, many of which are indigenous forests.³⁴ Mining practices in the United States place more emphasis on the role of the federal state in mining permits. Even so, what is interesting about the United States is the policy towards traditional Indian communities or indigenous peoples to regulate, manage, and make separate mining agreements with investors. This can be seen from the existence of 255 traditional Indian communities or customary law communities commonly referred to as Indian Villages who have full authority to manage natural resources, especially mining.³⁵ One example is the Navajo Indian Village, which has independently managed and determined communal land with the mine manager so that the Indian Village community determines which areas are permitted to be mined and which are not.³⁶

From the comparison with Brazil and the United States above, it can be seen that even though Indonesia can imitate Brazil in efforts to simplify mining permits, the simplification of mining permits in Brazil has yet to guarantee the rights of local communities. When referring to the practice in the United States, efforts to empower Indian Villages with authority to regulate and manage natural resources deserve to be used as a reference for Indonesia in empowering indigenous and tribal peoples, particularly regarding the ratification of the Customary Law Community Bill so that it can adopt several important aspects in practice in the United States of America. From an inclusive legal perspective, efforts to actualize the principle of authoritative manifestation of the people can be carried out with an integrated mining licensing system that takes into account the aspirations and input of the community, the need for community participation and involvement in every mining management activity, and the need for protection and empowerment. Especially for communities around mining and especially to customary law communities who have local wisdom to manage local resources in their area so that their existence is maintained even though there is mining activity.

4. CONCLUSION

The principle of people's authoritative manifestation in mining activities must be a reference and guide by the state in formulating policies related to mining management. That is so that the orientation of the principle of authoritative manifestation of the people can be applied in mining practices, which include: (i) on a philosophical aspect, proper mining

³³ Philip M. Fearnside Rodrigo Machado Vilani, Lucas Ferrante, "Amazonia Threatened by Brazilian President Bolsonaro ' s Mining Agenda," *Journal of the Geographical Society of Berlin* 153, no. 4 (2022): 3, <https://doi.org/10.12854/erde-2022-622>.

³⁴ Rodrigo Machado Vilani, Lucas Ferrante.

³⁵ Jimly Asshiddiqie, *Konstitusi Kebudayaan Dan Kebudayaan Konstitusi*, 1st ed. (Malang: Intrans Publishing, 2017).

³⁶ Jasardi Gunawan, "Studi Rekognisi Masyarakat Adat Di Amerika Dan Indonesia," *JISIP (Jurnal Ilmu Sosial Dan Pendidikan)* 5, no. 2 (2021): 220–31, <https://doi.org/10.36312/jisip.v5i2.1953>.

management must be based on and grounded in the ideals of state law, namely Pancasila based on five values, namely: religious values, humanity, the value of national unity, the value of democracy, as well as the value of social justice, (ii) on the conception aspect which is based on people's sovereignty in the field of mining management (economic sovereignty), people's sovereignty in empowering communities in the mining process, and people's sovereignty to have a position that is equal to the state and the private sector in mining management, and (iii) in terms of implementation, mining management must be based on three aspects, namely: participation, empowerment, and protection of people's rights. By fulfilling the orientation of the principle of authoritative manifestation of the people, it is hoped that mining management practices in Indonesia can achieve the ideals of managing natural resources as mandated by Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Efforts to actualize the principle of authoritative manifestation of the people in an inclusive legal perspective can be carried out with an integrated mining licensing system that takes into account the aspirations and input of the community, the need for community participation and involvement in every mining management activity, and the need for protection and empowerment, especially for communities around mining and in particular again to customary law communities who have local wisdom to manage local resources in their area so that their existence is maintained even though there is mining activity.

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