

## **Strategic Model For Land Dispute Due To Nickel Mining Business In North Maluku Province**

**Rusdin Alauddin<sup>1</sup>, Husen Alting<sup>2</sup>, Andi Sumar Karman<sup>3</sup>**

Faculty of Law, Universitas Khairun, Ternate, Indonesia

e-mail: <sup>1</sup>rusdinalauddin@gmail.com

**Abstract.** The phenomenon of land disputes as the result of the nickel mining business is widespread across Indonesia. Identification of the root problems underlying the land disputes is due to the inappropriate amount of land compensation given by business actors to the community as the owner of the land, which potentially leads to a wider conflict between nickel mining actors and the people that will, therefore, affect the regional development. Non-litigation, resolving or settling any dispute without bringing in a lawsuit or without the intervention of the court is considered as a strategic model. Consensus decision-making ‘musyawarah’ together with formulation of agreement/lease between businessmen and the community as the owner of the land in a certain period of time is the right choice. By doing so, the relationship of land ownership will not be interrupted and after the agreement expires, the land will be returned to society.

### **Introduction**

Indonesia is endowed with abundant natural and mineral resources spreading over in 437 locations; Papua with copper and gold, Nusa Tenggara with gold, Sulawesi Island and Eastern Indonesia nickel [1]. There are about 328 Exploration Mining Business Permits (IUP) and 280 IUP nickel production operations across Indonesia. In North Maluku, small islands where nickel mining companies operate are Gee Island, Gebe Island, Doi Island, and Bacan Island. A total of 18 companies with nickel export licenses operate on Gebe Island [2].

The abundant natural resources, especially mining products, give benefit for the people. However, various problems also come along involving the community, government, and private companies (investment companies) mining prospectors. Horizontal conflicts arise among the landowners, and vertical conflicts arise between the central government and regional governments [1].

The disputes between the communities surrounding the mining site and the mining companies also relate to the fulfillment of the community rights as part of the company's responsibilities. Mining companies are irresponsible in realizing their responsibilities to improve the welfare of the communities [3].

The number of mining cases is also triggered by the disharmony of regulations, which regulate the natural resources where mining activities take place. The dynamics of the Mining Law in forestry areas are very dynamic. The early days of independence were the hard times for coal mineral mining activities. In the New Order era, the exploitation of coal mineral mining penetrated into the forestry areas. With the ambition to improve the country's economy, the regime would rather prioritize the mining if there are overlapping regulations [4]. The overlapping licenses have led to the deforestation over time. These overlaps involve the parties in mining, HPH, HTI, and communities' plantations [5].

The phenomenon of land dispute[6] due to the mining businesses massively occurs in Indonesia. The limited lands for mining businesses often become the main factor of the dispute. Founding Fathers have actually formulated ideally the management of natural resources, as stipulated in the formulation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia "The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people". However, the phrase "to the greatest benefit of the people" still needs to be questioned at the level of implementation. Communities around the area of natural resources that are exploited by mining entrepreneurs suffer physical and economical losses. The losses have been taking place from generation to generation [7]. The most dominant problem between mining business actors and community landowners is closely related to the land disputes.

The emergence of land disputes above is partly triggered by State policies relating to the natural resource management. The State is likely to prioritize the interests of the government and investors rather than the welfare of the people. The paradigm of the natural resource management by mining businesses is merely assessed from the economic aspect on the basis of the capitalist-liberal model. As the result, State policy with this paradigm has led to disputes between the community and mining business actors because the State is considered to be more favorable to the interests of investors rather than to fulfill community rights first as a form of concession from the existence of a mining business in an area[8].

The management of natural resource in the era of decentralization is the cause of the emergence of disputes in the community.<sup>10</sup> The agrarian problems that have occurred until now is regarded as a set of the problems that have occurred since the New Order era. During the regime, local people were not involved in terms of ownership or management of land resources. With its authority, the State provided compensation to local communities for plants and trees in their land. This is considered inappropriate in maintaining the sustainability of the bond between the land and the owner [9]. Also, the phenomenon of land disputes often occurs because it is a bias from the phenomenon of conflict as the result of discriminatory regulations and government treatment of the people in the region by ignoring the values and norms of customary law with the dominance of state law [10].

The typology of land dispute that often occurs involves the government and investors against the community. This dispute is motivated by the support of regional government in encouraging the utilization or management of mining potential through the policy of granting Mining Business Permits (IUP) to the investors resulting in a shift in the function of agricultural land and reduction of land access for the people [10]. The practice of acquiring land for the benefit of the mining businesses benefits the business actors more than the communities. Transactions between the two parties are not based on the principle of alignment. By using the pretext of land acquisition for the public welfare, non-legal variables are often ignored. The legal variables are mostly influenced by non-legal variables in order to achieve justice and the maximum benefit for the community [11]. The emergence of land acquisition issues in the community is also caused by conflicting interests between the parties involved with the acquisition or release of land rights [12].

North Maluku with its mining resources is prone to problems related to the management of these resources. The issue of land disputes due to the nickel mining business involves the community and mining business actors. The community involved is the community around the mining area, while business actors include State-Owned Enterprises (BUMN) and Private-Owned Enterprises. The analysis in this article is based on the data obtained from the three districts in North Maluku Province, namely Central Halmahera Regency, East Halmahera Regency, and South Halmahera Regency. The high potential of nickel mining resources in the region together with land disputes require strategic solutions so that resource management can benefit all the people. The main issue of this article is land disputes due to the nickel mining business between the community and mining businesses. The increasing cases of land disputes that occur from time to time require a strategic model that is considered appropriate in resolving land disputes due to the nickel mining business in North Maluku Province.

## **Research Methods**

This research is an empirical legal research (juridical empirical). This type of legal research looks into the application of law in the field (law in action) or the effective operation of the law in the midst of the

community, especially legal issues regarding land disputes between communities and businesses due to the nickel mining business. This research is conducted in the North Maluku region by comparing primary and secondary data obtained from three districts, namely: South Halmahera Regency, East Halmahera Regency, and Central Halmahera Regency. Primary data obtained through interviews with parties related to the object of research, observation, and questionnaires.

### *2.1. The Main Causes of Land Dispute Due to the Nickel Mining Business*

The result of research indicates that the main causes of land dispute due to nickel mining in North Maluku are inappropriate amount of land compensation (49.33%), improper crop compensation (10%), overlapping land ownership (20.67%), boundary disputes between regions (6%), lack of communication (6%), and the presence of third parties who take advantage of the situation (8%). The data shows the problem of the inappropriate amount of land compensation becomes the main problem. Then it is followed by overlapping land ownership by the community that in a plot of land two or more parties claim to be the owners. Another problem is related to the amount of crop compensation from damaged or dead garden products of community due to nickel mining activities in their area. The next problems are the presence of the third party who takes advantage of the existence of a nickel mining industry that is detrimental to the interests of the community, boundary disputes between regions, and lack of communication between the community and nickel mining business officer which results in a dispute.

The important thing to be achieved by all parties (the community, mining business officers, and the government) is an agreement for a solution to ensure business certainty, safety, and comfort for the community and mining business officers to do business. If it is achieved then there will be harmonious interaction with mutual benefit by all parties.

It is reported that there are several responses of respondents regarding the best solution of land dispute due to the nickel mining business. The given solutions are deliberation (56.67%), negotiation (25.33%), mediation (11.33%) and court (6.67%). To reach an agreement about a way out of the problem of land dispute, deliberation was chosen by most respondents as a model of land dispute resolution without having to go through court or non-litigation dispute resolution paths such as mediation or negotiation.

### *2.2. The Deliberation as a Media for Land Dispute Settlement Process*

The term dispute resolution is defined by Richard L. Abel as "public statement about inconsistent claims on something worthwhile [13]. Steven Rosenberg describes "conflict as a competitive behavior between two people or groups. Conflicts occur when two or more people compete to achieve the same goal or to obtain a limited amount of resources " [14].

By paying attention to the various terms of conflict and the definition of disputes above, it seems that all definitions have the same meaning. Conflict and dispute both indicate problems between two or more parties. Furthermore, Coser and Nader said that disputes are a universal social phenomenon which is inherent in people's lives, social relations between individuals and groups, so it is impossible for a society to avoid conflicts in the dynamics of social life. What can be done is how the dispute must be managed, controlled, and settled together wisely and peacefully, so it is not changed to violence, anarchy, and, destructive which cause disintegration of social relations in people's lives [15].

Conflict or dispute is one of the important barometers to see the dynamics of society. Conflict for most people is still considered as a form of negative, destructive, or counterproductive relations. Whereas in a society that is developing towards strengthening civil society, conflict is always seen as an inherent part of the development of modern society [16].

Dispute resolution can be done in two ways, through the court, and outside the court. the effort to resolve disputes that are commonly done is through the courts. Along with the development of human civilization, dispute resolution began outside the court. The process of resolving disputes through the court will result in a win-lose decision that ultimately cannot embrace the common interest because it results in a win-lose solution. At the end of the dispute resolution, there are winners and losers. A new problem arises among the disputing parties because some are satisfied, but some feel dissatisfied [17]. On the contrary, the process of resolving disputes outside the court produces a win-win solution because it is done through agreement and deliberation between the parties. A joint decision will be accepted by

both parties. It can guarantee confidentiality because there is no trial process which is not opened to the public. Out-of-court dispute resolution is commonly known as Alternative Dispute Resolution (ADR) [18].

The above description is in line with the dispute / conflict resolution approach regulated in several laws including in Article 6 paragraph (1) of Law Number 30 Year 1999 concerning Arbitration and Alternative Dispute Resolution [8]. In Indonesia, the dispute resolution process through ADR is not something new. This mechanism has been strongly integrated with national cultural values. The soul and nature of Indonesian society are known as family and cooperative nature in solving problems [19]. Various ethnic groups in Indonesia usually use the method of settlement "deliberation with a consensus" to make decisions. Therefore, the inclusion of the ADR concept in Indonesia can certainly be easily accepted by the people of Indonesia.

The mechanism of resolving land disputes through deliberation involves community leaders, indigenous peoples, and non-governmental organizations as community facilitators. However, the settlement model adopted so far has not been able to formulate a solution that can be accepted by all parties. The climax is when some residents do an anarchist action the company takes criminal law as part of the dispute resolution mechanism. However, residents accused were not proven guilty and were released by the court. This condition also causes the community to dislike the company especially to the police officers who were considered to be very pro-company by arresting the residents and imprisoning them for some time, even though they were released later.

In general, an effective model has not yet been found to resolve dispute problems in the study area. A precise and wise model is needed to accommodate the interests of all parties. It is not only deliberation and land compensation, but also a plenary model that answers the various problems encountered. The efforts to deal with land acquisition issues require support from all parties. Besides, it is also necessary to find ways related to how to establish good communication and coordination with all stakeholders so that they can avoid conflicts and negative impacts that may arise in the future both between the community and the company and between the community and the government.

Referring to the results of this study, it is clear that several identified problems result in land disputes due to the nickel mining business. All problems that occur lead to the dissatisfaction of residents, especially those whose land is used for nickel mining activities. Therefore, it is necessary to have an effective deliberation model for the parties to achieve the resolution of the land dispute. Effective deliberation requires an appropriate method of resolving land disputes that have occurred so far. This method is related to the mechanism of public opinion submission that is considered to be suitable with the characteristics of the community and those considered competent to be directly involved in deliberations. The fulfillment of these elements in a deliberation process is expected to obtain a decision as to the results of an effective deliberation in resolving land dispute problems due to the nickel mining business.

### *2.3. Right of Use / Right of Lease as a Formula of the Model of Land Dispute Settlement Due to the Nickel Mining Business in North Maluku Province*

Right of use and right of lease are known in national land law as regulated in Article 16 of Act Number 5 of 1960 concerning Basic Provisions on Basic Agrarian Affairs in conjunction with Government Regulation Number 40 of 1996 concerning right to cultivate, right to build, and right to use. Right of use and right of lease are the main rights based on the provisions above, but they have not been used in the use of land for the benefit of the mining business.

In general, either right of use or right of lease may be granted from the state land, both the land of the management and the proprietor for a certain period time or as long as the land is used for a certain purpose and at no cost with payment or service of any kind. Subjective conditions for the parties to which the rights may be granted include (1) Indonesian citizens, (2) foreigners resident in Indonesia, (3) legal entities established under Indonesian law and domiciled in Indonesia, or (4) a foreign legal entity that has a representative in Indonesia.

In practice, both the right of use and right of lease emphasize the prohibition of extortion. The occurrence of the right to use on state land is granted by the minister or a designated official. As with the right to use, the management right is given by the minister or a designated official based on the

proposal of the holder of Management Rights. Whereas from the right of ownership can be given if it has been through an agreement of the holder of the right of ownership with the deed drawn up by the land deed official and it also must be registered in the land office.

Right of use and right of lease are rights that can be used by nickel mining businesses to obtain land owned by community members, either private ownership or ownership of customary community land. Right of use and right of lease can be used by nickel mining officer which can be given by the landowner for a certain period time or as long as the land is required for mining activities with the amount of payment or service provision is based on a letter of agreement/contract. The said agreement/contract is in the form of a certificate of ownership of the owner with a deed made by the Land Deed Making Official and must be registered in the land book at the local land office.

For right of use and right of lease over land whose ownership of land is owned by the community members, it is given for a period time of no more than 25 years and cannot be extended again. However, based on the agreement between right of use holder (nickel mining business officer) and the landowner (community member), the land title can be renewed by giving a new right of use through a deed made by the land deed official. The rights are then re-registered to the land office.

## Conclusion

It can be concluded from the research that firstly, the management of nickel mining businesses often disrespect the value of land rights of the community. Land tenure disputes[8] occur in almost all parts of the country in which the investments take place. The fundamental issues that are the root problems are the low appreciation of community land rights and the inappropriate compensation. Although various efforts and approaches to resolve the land tenure have been carried out, the disputes still take place, resulting in fatalities on the side of the community. State as an organization of power is expected to facilitate dispute resolution. However, in this case, it seems that the government does not play much of its role.

The intention to obtain foreign exchange through investments on one hand and the claim on land ownership by the community, on the other hand, has caused a dilemma for the government. Therefore, a reconciliation of land tenure relations is needed in the context of investment without relinquishment of land rights. The legal relationship between land complaints must be done through a model of right of use / right of lease agreement between the company and the land owner for a certain period followed by granting compensation to the community. Thus, the relationship of ownership rights to community land will not end, and after the term of the usage agreement ends, the land is then returned to the owner.

Secondly, prior to the implementation of right of use agreement or right of lease, the landowners and nickel mining business actors. Musyawarah, consensus decision making, is chosen as the right method when compared to the process of dispute resolution through the court (litigation) which has unlimited impact and potential conflict. Musyawarah as a method to find the formula for resolving land disputes is also chosen because this method is in accordance with the values of local wisdom adopted by the people of North Maluku Province.

## Reference

- [1] Hadi, Supriyanto., Saleng, Abrar., Irwansyah, Sumardi, Juajir. 2015. "Analyzing the Perspective of Indonesia Mining Conflict Regulation", *Journal of Law, Policy and Globalization*. Vol.38, 2015. hlm.: 189-194.
- [2] Naim, Abdullah., Saini, Ahmad., Syahbanu, Alwiya., Kusuma, Ki Bagus Hadi., Johansyah, Merah., Jamil, Muh., dan Apriando, Tommy. 2019. *Pulau Kecil Indonesia, Tanah Air Tambang. Laporan Penghancuran Sekujur Tubuh Pulau Kecil oleh Tambang Mineral dan batu Bara*, Jakarta: Jaringan Advokasi Tambang.
- [3] Berlianty, Teng. 2015. "Corporate Responsibility on the Fulfillment of Community's Rights around a Mining Site Post Mining Activities", *Journal of Law, Policy and Globalization* Vol. 41. Hlm: 194-201.

- [4] Susmiyati, Haris Retno., Saleng, Abrar., Noor, S.M., dan Ashri, Muhammad. 2016. "Model of Law Harmonization on Coal Mining in the Forest Area: The Law of Natural Resources's Perspective", *Journal of Law, Policy and Globalization*. Vol. 51. Hlm: 89-108.
- [5] Forest Watch Indonesia (FWI). 2018. *Deforestasi Tanpa Henti. "Potret Deforestasi di Sumatera Utara, Kalimantan Timur, dan Maluku Utara."* Bogor: Forest Watch Indonesia (FWI).
- [6] Mudjiono, "Alternatif Penyelesaian Sengketa Pertanahan di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan", *Jurnal Hukum*, Vol. 14 No. 3, 14 Juli 2007, Yogyakarta: FH UII.
- [7] Rusdin Alauddin, "Perlindungan Hak-Hak Masyarakat Lingkar Tambang Berdasarkan Konstitusi di Provinsi Maluku Utara", *Jurnal Konstitusi*, Vol. II No. 2, November 2011, Ternate: Pusat Kajian Konstitusi Fakultas Hukum Unkhair.
- [8] Husen Alting, "Penguasaan Tanah Masyarakat Hukum Adat (Suatu Kajian Terhadap Masyarakat Hukum Adat Ternate)", *Jurnal Dinamika Hukum*, Vol. 11 No. 1 Februari 2011, Purwokerto: FH Unsoed.
- [9] Sakai, Minako. 2002. "Land Dispute Resolution in the Political Reform at the time of Decentralization in Indonesia", *Jurnal Antropologi Indonesia*. Special Volume. Hlm. 15-32.
- [10] Johny Najwan, "Konflik antar Budaya dan antar Etnis di Indonesia serta Alternatif Penyelesaiannya", *Jurnal Hukum, Edisi Khusus*, Vol.16, Oktober 2009, Yogyakarta: FH UII.
- [11] Imam Koeswahyono, "Melacak Dasar Konstitusional Pengadaan Tanah untuk Kepentingan Pembangunan Bagi Umum", *Jurnal Konstitusi*, Vol. I No 1 Agustus 2008, Malang: Pusat Kajian Konstitusi Fakultas Hukum Unibraw.
- [12] Akh. Munif, "Perlindungan Hukum Terhadap Hak-Hak Rayat Atas Tanah dalam Pembangunan (Kajian atas Perpres No. 65 Tahun 2006)", *Jurnal Yustisia*, Vol. 11 No. 1 Mei 2011, Pamekasan: Unira.
- [13] Lawrence M. Friedman, 1975, *The Legal System: A Social Science Perspective*, Rusel Sage Foundation: New York.
- [14] Salim, 2003, *Hukum Kontrak (Teori dan Teknik Penyusunan Kontrak)*, Sinar Grafika: Jakarta.
- [15] Laura & Harry F. Tood Jr, Nader, 1978, *The Disputing Process-Law in Ten Societies*, Columbia University Press: New York, dalam I Nyoman Nurjaya, Makalah: "Proses Pemiskinan di Sektor Kehutanan dan Sumber Daya Alam Perspektif Politik Hukum".
- [16] Mahrudin, "Konflik Kebijakan Pertambangan antar Pemerintah dan Masyarakat di Kabupaten Buton", *Jurnal Studi Pemerintahan*, Vol. 1 No. 1, Agustus 2010, Yogyakarta: FH UMY
- [17] Nirwan Yunus, "Konsep Pembaharuan Hukum Agraria Sesuai Amanat UUD 1945", *Jurnal Legalitas*, Vol. 2 No. 1, Februari 2009, Gorontalo: Universitas Negeri Gorontalo .
- [18] Rachmadi Usman, *Pilihan Penyelesaian Sengketa di Luar Pengadilan*, PT. Citra Aditya Bakti: Bandung.
- [19] Sujud Margono, 2004, *ADR (Alternative Dispute Resolution) dan Arbitrasi Proses Pelembagaan dan Aspek Hukum*, Ghlmia Indonesia: Bogor.