

Legal Validity Of Butonese Customary Collective Agreement Agreement On Land Use As Limestone Mine (Case Study Of PT. Diamond Alfa Propertindo With The Indigenous People Of Gumanano Village, Central Buton Regency)

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Abstract : Indonesia is one of the countries that has thousands of islands, so each region has its own tribe and culture. The customary law of each region is different but still one under the auspices of the Indonesian state. Customary law is recognized, respected and protected by the state as long as it is still in accordance with the times as stated in articles 18B paragraph (2) and 28I paragraph (3) of the 1945 NRI Constitution. The purpose of this study is first To describe and analyze the legal validity of the Butonese customary agreement on land use as a limestone mine by PT. Diamond Alfa Propertindo second, To describe and analyze the legal consequences of customary buton agreements on the use of land as limestone mines by PT. Diamond Alfa Propertindo. The research method used is juridical Sociology with an approach to concepts and laws and regulations. The results of research and discussion show that first the validity of the agreement according to the western legal system based on the Civil Code Article 1320 which states that for the validity of the agreement 4 conditions are needed, namely, Agree they bind themselves, Ability to make an agreement, A certain thing, A lawful cause. while the validity of the contract according to Islamic Law must fulfill the pillars of the pillars, namely, Sighat al-aqad (declaration to bind oneself), Al-ma'qud alaih or Mahal alaqd (object of contract), Al-muta'qidain or al-aqidain (contracting parties), Maudhu' al-aqd (purpose of contract). And the Validity of the Agreement according to Customary Law, namely, Adult or capable, the Principle of Agreement, the provisions that accompany the agreement but are not the validity of the agreement according to customary law. So it can be concluded that the customary agreement on the use of land as a limestone mine by PT. Diamond Alfa Propertindo i.e. legitimate. Both in review of customary law, Islam and the Civil Code. Both lands used for limestone mining are customary lands. To protect land rights in mining, there is an MoU and CSR. If in mining 86 there are irregularities committed by business actors, then the business license from the mining will be revoked.

Keywords: Legal validity, Customary Agreement, and Land Use

1. Introduction

A. Background

The life of the Indonesian Customary Law Peoples belongs to different ethnic groups from each other, although the basis and nature are one, namely to Indonesia. The customs of the Indonesian nation are said to be a "Bhinneka" but "Tunggal Ika" is the nature of Indonesia, and the customs of the Indonesian nation that are Bhinneka Tunggal Ika are not dead (static) but always develop and always move based on the necessity of evolutionary demands following the process of development of civilization of nations in the world. The living and evolving

customs are an amazing source of our customary law as the original law of the people and nation of Indonesia anywhere and at any time.¹

Based on the Constitution of the Republic of Indonesia Article 18B paragraph (2) "The State recognizes and respects the unity of Indigenous Peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are stipulated in law", and based on the Constitution of the Republic of Indonesia Article 28I paragraph (3) "Cultural identity and rights of traditional communities are respected in accordance with the times and civilization". This statutory provision constitutes constitutional recognition and protection of Customary Law Peoples in the Unitary State of the Republic of Indonesia.

Customary Law Communities are units that have the necessary equipment to be able to stand independently, namely having legal unity, unity of authority, and environmental unity based on collective rights to land and water for all their members.² Customary Law Peoples in Central Buton Regency, Southeast Sulawesi Province, Especially Mawasangka and Mawasangka Tengah Districts still have strong ties with customary law in the region, this is because customary law still has an existence and guidelines for people to behave, live, habit and is a positive value for those who live in Central Buton Regency.

With the mining development by PT. Diamond Alfa Propertindo then needs an agreement between PT. Diamond Alfa Propertindo with local area. Agreement in Civil Law Perspective is an event where one person promises to another or where two people promise each other to do something.³ Furthermore, from the event of the agreement arises a relationship between one party and another called Bonding. Thus the relationship between a covenant and an engagement is that the covenant publishes the engagement. Engagement is an abstract sense while agreement is a concrete thing or an event. The engagement that was born and the agreement was indeed formed because it was desired by each party while the engagement born from the Law was held by the Law itself outside the agreement of each party.⁴

According to Article 1313 of the Civil Code, an agreement is an act by which one or more persons bind themselves to one or more other persons. In the Law of Treaties in the perspective of Civil Law, the validity of the agreement is required in accordance with Article 1320 of the Civil Code, namely for the validity of consents, four conditions are needed:

- 1) Agree those who bind themselves,

¹ Tolib Setiyadi, 2013, *The Essence of Indonesian Customary Law in Literature Studies*, Alfabeta Cv, Bandung, Pg. 2.

² Geovanni Villarba Gamas, *Settlement of Disputes on Agreements to Borrow to Use Magical Objects of the Dayak Traditional Law Community Through Large Traditional Institutions in West Kutai Regency, East Kalimantan Province*, (Yogyakarta, Atma Jaya University Yogyakarta 2020). Pg 2

³ Subekti, 1994, *Contract Law*, Print VI, PT Intermedia, Pg 1

⁴ Syamsul Munirdan Soesilo, 2022, *Comparative Study of the Validity of Civil Code Perspective Agreements, Islamic Law, Customary Law*, *Ius Journal* Vol. 2

- 2) Ability to make an Engagement,
- 3) A certain thing,
- 4) A lawful cause

The Customary Law System is jointed on the basis of the mind of the Indonesian Nation. To be able to understand and master Customary Law one must dive into the basics of the mind that lives in Indonesian society.⁵ Based on the background of the problem above, the author is interested in researching "The Legal Validity of the Buton Traditional Collective Agreement on the Use of Land as a Limestone Quarry (Case Study of Pt. Diamond Alfa Propertindo with the Indigenous Community of Gumanano Village, Central Buton Regency)."

B. Problem Formulation

- 1) How is the legal validity of the customary buton agreement on the use of land as a limestone mine by PT. Diamond Alfa Propertindo?
- 2) What is the legal effect of the customary buton agreement on the use of land as a limestone mine by PT. Diamond Alfa Propertindo?

C. Research Methods

This research method is prepared using a type of sociological juridical research. Sociological juridical research examines law with an interdisciplinary approach, which combines law and social sciences in a single approach. Sociological juridical research has the character of study, namely; First, the discussion of law implementation in society (law in action), not only on the law written in the book or law (law in the book). Second, the use of logic in sociological juridical legal research is posteriori (knowledge that relies on empirical evidence). Third, its validity is based on the facts of legal reality. Fourth, the emphasis of the data is on understanding (verstehen) the meaning (meaning) in the mind / idea tineliti, which relates to legal action by individual human beings. The approach used by the author is the Community Culture approach, by means of a case study (Case Study). research locations in Southeast Sulawesi Province, Central Buton Regency, Mawasangka District, Gumanano Village and in the Limestone Company in the area.

The data used in this study are primary data and secondary data. Primary data is data obtained from the main source in solving this problem while secondary data is information obtained from the second party in the form of interviews and records. Data collection techniques use interviews, observation and documentation. Data collection techniques, Legal materials that have been collected are analyzed based on qualitative methods, namely a way of research that produces analytical descriptive information, and collected to then describe the facts that already exist in this thesis then drawn conclusions and suggestions by utilizing deductive thinking, namely drawing conclusions that depart from general things to specific things.⁶

⁵ Syamsul Munirdan Soesilo, 2020, comparative study of the validity of perspective agreements, Civil Code, Islamic Law, Customary Law. IUS Journal Vol.X No.02. Pg. 2

⁶ Jonaedi Efeendi, Jhonny Ibrahim. 2016. Legal Research Methods (Normative and Empirical). Depok; Prenada Media Group. P.236.

2. Discussion

A. The legal validity of the Butonese customary agreement on the use of land as a limestone mine by PT. Diamond Alfa Propertindo

a. Introduction to Customary Treaty Law

Customary treaty law is the branch of law that governs agreements or agreements made in the context of the culture or customs of a particular society. This is an important legal aspect in many countries, especially Indonesia which has a rich cultural diversity and diverse ethnic community. Customary treaty law reflects respect for cultural norms and traditions that have existed for centuries in Indonesian society. Customary law in Indonesia is recognized by the state and is still valid today. Based on Article 18B paragraph (2) of the Constitution of the Republic of Indonesia, "The State recognizes and respects the unity of Indigenous Peoples and their traditional rights as long as they are alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are stipulated in law."

Customary law in Gumanano Village, Mawasangka District, Central Buton Regency when conducting pogau (Discussion) discussing/determining matters related to the village or community benefit is always carried out in kaompu (Traditional House). This pogau (discussion) activity has been carried out for generations and has become a cultural heritage for generations for the gumanok community. The decisions that have been decided in this kaompu which are led directly by Botoho (traditional leaders) and witnessed by other customary officials are believed to be fair as fair as possible and cannot be contested over the results of this decision. If the decision is deemed inappropriate and wants to change it back, it can be done but must be decided in the Kaompu (traditional house) and led directly by Botoho (traditional leader).⁷

Prior to the agreement between PT. Diamond Alfa Propertindo and the indigenous people of Gundu-Gundu and Gumanano villages were implemented, PT. Diamond Alfa Propertindo conducted socialization first to the indigenous people of Gundu-Gundu village and Gumanano village. After socialization was carried out by PT. Diamond alfa propertindo to the indigenous people of Gundu-Gundu and Gumanano villages with the lure of indigenous people will be assisted both in terms of education in the form of scholarships and in terms of developments in the form of assistance in the construction of mosques, roads and so on until the opening of job vacancies for the people of Gundu-Gundu village and Gumanano village. After the socialization carried out by PT. Diamond Alfa Propertindo to the Indigenous Peoples of Gundu-Gundu village and Gumanano village was carried out pogau (discussion) in kaompu (Traditional House) led directly by Botoho (Traditional leader) attended by traditional officials, village heads, youth leaders and PT. Diamond alfa propertindo. After conducting pogau (discussion) in Kaompu (Traditional House) came 12 (twelve) points of mutual agreement between PT. Diamond

⁷ Halidun (Head of Gumanano Village/Traditional Figure), 9 May 2023

alfa propertindo and indigenous peoples of Gundu-Gundu village and Gumanano village.⁸

b. Terms of validity of agreements in Islamic Law, Civil Law and Customary Law

In Islamic Law there are principles of a covenant. If the principles are not fulfilled, it can result in the cancellation or invalidity of the engagement or agreement made. These principles include the following:⁹

- 1) Al-Hurriyah (Freedom) In Islamic Law this principle is the basic principle of treaty law, that is, the contracting parties have the freedom to make agreements. This principle of freedom applies as long as it does not contradict Islamic Sharia.
- 2) Al-Musawah (Equality or Equality) In this principle of equality, both parties to the agreement have the same position so that their respective rights and obligations are based on the principle of equality and equality.
- 3) Al-Is (Justice) The principle of justice means that the implementation of this principle in the contract, that is, the parties are required to act fairly and correctly in expressing their will, in good faith in fulfilling all their rights and obligations, as proposed.
- 4) Al-Rida (Willingness) This principle states that the form of the content of the contract is made on a voluntary basis and each party. Thus, the voluntary principle in this contract requires that there is no element of fraud, in making a contract made by each party.
- 5) Ash-Shidq (Honesty and Truth) In this principle there is a value of truth that must be upheld by each party in making a contract so that lies, coercion or fraud are not carried out. This principle highly upholds the efficiency of honesty from each party in expressing their will in the contract.
- 6) Al-Kitabah (written). This principle implies the existence of a written form in the contract. This is based on the purpose of kindness in making a contract so that there is evidence for each party. In addition, sanctions (shahadah) are also needed to further strengthen the existence of this evidence.

The scholars differ in determining this pillar of the contract, because of the review of the problem, the essence of the contract itself. According to Jumhun said that the elements of Rukun Akad are as follows:¹⁰

- 1) Sighat al-aqad (declaration to bind oneself);
- 2) Al-ma'qud alaih or mahal al-'aqd (object of contract);
- 3) Al-muta'qidain or al-'aqidain (contracting parties);
- 4) Maudhu' al-aqd (purpose of contract);

⁸ Halidun (Head of Gumanano Village/Community Figure), 9 May 2023

⁹ Badrul Zaman MD, Opcit, pp. 249-251, In Syamsul Munir's journal, 2022, Comparative Study of the Validity of Agreements Perspective of the Civil Code, Islamic Law, Customary Law, IUS Journal Vol.X No.02 p. 162

¹⁰ Badrul Zaman MD, Opcit, pp. 249-251, In Syamsul Munir's journal, 2022, Comparative Study of the Validity of Agreements Perspective of the Civil Code, Islamic Law, Customary Law, IUS Journal Vol.X No.02 p. 162

While in Article 1320 of the Civil Code states that for the validity of an Agreement, 4 conditions are needed, namely as follows:

- 1) Agree those who resulted in him.
- 2) The ability to make an Engagement.
- 3) A certain thing.
- 4) A lawful cause.

In customary law, the validity of a treaty, as in both Civil Law and Islamic Law can be constructed must meet the following conditions:¹¹

1. Adult or competent
2. Principle of Agreement
3. Terms accompanying the Validity of the Agreement

Furthermore, it is not a condition for the validity of the agreement, that is, the making of the agreement is carried out in front of the Customary Elders, the Head of the People or the Head of the Guild, but it is a provision that accompanies the making of the agreement. If it is done then the agreement will be strong, but if it is not done, then the agreement remains valid and not null and void because of it.¹²

- B. The legal consequences of the Butonese customary agreement on the use of land as a limestone mine by PT. Diamond Alfa Propertindo
- a. Land Rights in Gundu-Gundu and Gumanano Villages Before Mining Management

The land that is the location of mining is customary land. This land is a joint land of the community concerned, with customary law tenure rights related to the land located within the territory of the residents of Gumanano Village.

Procurement of mining business by PT. Diamond Alfa Propertindo in Gumanano Village, Mawasangka District, Central Buton District, can only be done if it is based on the approval of the person in charge of the land rights itself. The distance of limestone mining is from residential areas as far as 500-700 Km. Previously, the issue of procurement of limestone mines was previously there were pros and cons between students and residents on behalf of the community front originating from Central Buton Regency with the Regional Government of Central Buton Regency. The action contained rejection of mining activities located in Gundu-Gundu Village, Central Mawasangka District, Central Buton Regency. According to their study, PT. Diamond Alfa Propertindo, will carry out mining activities in areas classified as customary land. According to him, disasters that occur in the future are considered to disrupt environmental stability or land carrying capacity.

Based on information revealed by respondent Mr. Halidun (Head of Gumanano Village/Mayarakat Figure), to researchers through an interview on May 9, 2023, that the land used as a limestone mining location by PT. Diamond

¹¹ Badrul Zaman MD, Opcit, pp. 249-251, In Syamsul Munir's journal, 2022, Comparative Study of the Validity of Agreements Perspective of the Civil Code, Islamic Law, Customary Law, IUS Journal Vol.X No.02 p. 162

¹² *Ibid.* hlm. 168

Alfa Propertindo, the land is customary land, with an area of 4,905 Ha Mining Business License Area (WIUP). Based on WIUP, the land has a variety of natural wealth, one of which is limestone, and there are rights that must be protected, such as cultural sites, forts, and springs. So, from this it shows that there are historical traces that on the land there has been a previous civilization life.¹³

Related to this, previously socialization or deliberation had been held by the company to those responsible for the mining location, attended by the Central Mawasangka Sub-District, Central Buton Regency Government, the police, Danramil, and local traditional leaders. So the result of the deliberations made all parties agree, an MoU (memorandum of understanding) was made, by local customary stakeholders, related to the mining activity. Some of the contents of the agreement are business actors, in this case the company provides initial compensation in the form of money in the amount of 350 million to the customary forum, in the mining process the mining party does not carry out mining that can damage but with cliff leveling techniques, and if there are irregularities, the business license will be revoked, and the company is required to make compensation in accordance with existing losses.

b. Forms of Land Rights Protection at Limestone Mining Sites

Legal protection is all forms of efforts in fulfilling rights and providing a sense of security to rights owners. So related to limestone mining activities, it is recognized that it has the potential to damage existing natural wealth so that it is not uncommon for various rejections from the community around the mine. In this case, all parties are responsible for this, especially the company and the government.

Previously, in land acquisition, a land acquisition committee was formed by the government. The land used as a mining site is no intimidation, there are no binding rights that the community has over the land that will be used as a mining site, even if there are plants, the plants are not managed properly. However, if there are irregularities such as if there are community crops that are considered to have been damaged by mining, the company must compensate for the damage according to the amount of loss incurred. The results of the interview to the respondent Mr. Aswani, (Head of Mining Engineering, PT. Diamond Alfa Propertindo, May 10, 2023)

Based on information received by researchers from respondents, Mr. Aswani, (Head of Mining Engineering, PT. Diamond Alfa Propertindo, May 10, 2023) to researchers that, the form of protection of land rights for limestone mine management is compensation from the mining company to community members and customary/community leaders around the mining site, including initial compensation in the form of money of 350 million to customary forums. Furthermore, the real contribution from the company at this time is by employing local and preferably local workers who are addressed and domiciled in Central Buton Regency, more specifically Mawasangka District, and the company promises that if the mining operation is successful, the mining company will contribute to Gumanano Village around the mine, such as the

¹³ Halidun (Head of Gumanano Village/Community Figure), 9 May 2023

construction of public facilities, contributing to public activities and youth activities.¹⁴

At the start of activities for the mining plan in Gumanano Village, Mawasangka District, Central Buton Regency, there was an agreement made by the mining party with community residents and community leaders around the mine, namely in the mining process did not cross mutually agreed boundaries, did not interfere with protected rights, such as not mining around possible water sources that could cause polluted water due to mining activities, do not damage cultural sites and the like. And does not limit the activities of community residents who previously made a living which is now a limestone mining location.

Speaking of limestone mining activities, it is related to dust due to mining, environmental damage due to mining. However, based on information received from the informant Mr. Aswani, (Head of Mining Engineering, PT. Diamond Alfa Propertindo, May 10, 2023) to researchers, in this limestone mining to minimize and avoid adverse effects that will occur, based on a mutually agreed agreement that if there are plants damaged by mining, reforestation will be carried out, then if mining carries out blasting or drilling activities, the company will reclaim from the blasting / drilling. Mining is done by leveling techniques.¹⁵

Obviously, if there are deviant mining activities, there will be compensation from the mining party. That is why a CSR (Corporate Social Responsibility) document was made, in this document it has been regulated and formed how the company's social responsibility will be in the future. The agreed amount of CSR will be adjusted to the compensation that must be met. "And if there are irregularities related to limestone mining, the business license from the mining will be revoked". Said Mr. Marwan (Head of limestone mining superintendent PT. Diamond Alfa Propertindo). However, based on the results of research seen in the field conducted by researchers until now there has been no deviant limestone mining activity, both in terms of law and in terms of agreements with customary forums and community members even though.¹⁶

3. Conclusion

- A. The validity of the agreement according to the western legal system based on the Civil Code Article 1320 which states that for the validity of the agreement 4 conditions are needed, namely, Agree they bind themselves, Ability to make an agreement, A certain thing, A lawful cause. while the validity of the contract according to Islamic Law must fulfill the pillars of the pillars, namely, Sighat al-aqad (declaration to bind oneself), Al-ma'qud alaih or Mahal alaqd (object of contract), Al-muta'qidain or al-aqidain (contracting parties), Maudhu' al-aqd

¹⁴ Aswani, (Head of Mining Engineering, PT. Diamond Alfa Propertindo), 10 May 2023

¹⁵ Aswani, (Head of Mining Engineering, PT. Diamond Alfa Propertindo), 10 May 2023

¹⁶ Marwan (Chief supervisor of limestone mining implementation PT. Diamond Alfa Propertindo), 10 May 2023

(purpose of contract). And the Validity of the Agreement according to Customary Law, namely, Adult or capable, the Principle of Agreement, the provisions that accompany the agreement but are not the validity of the agreement according to customary law. So it can be concluded that the customary agreement on the use of land as a limestone mine by PT. Diamond Alfa Propertindo is legitimate. Both in review of customary law, Islam and the Civil Code.

- B. The land used for limestone mining is customary land. To protect land rights in mining, there is an MoU and CSR. If there are irregularities committed by business actors in the mining, the business license from the mining will be revoked.

4. Advice

Researchers hope that what is done in limestone mining must be in accordance with the rules and provisions that have been agreed, one of which is by not damaging existing cultural sites, in the mining process does not affect existing springs. And also the author hopes that this mining has a social function, meaning that its use must be in accordance with the circumstances and nature of its rights, so that it can be beneficial both for the welfare and happiness that it has and also benefit the community, the company and the state. And between parties must respect each other's rights and obligations

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Legislation

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Burgerlijk Wetboek Law Code