

Justice For Mining In Bond Custom Public In Indonesia(Study To Some Mine Company Explorations Having Problem Related Of Custom Public Rights)

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Abstract: *Position of custom public and customary law becomes of vital importance in Indonesia law system. Custom public having land right and natural resources must be respected according to section 18 UUD 1945 result of amendment. That thing also applies in activity of invesment is exploration of natural resources property of Indonesia custom public. In practice of the management of invesment in Indonesia collisions happened, because uncared of custom public rights. Even have been specified [code/law] No. 25 The year 2007 about capital investment but in reality still happened pengabayan of custom public. Case PT. Newmoon, case PT. Freeport Papua, and case PT. Lapindo Berantas is form of neglecting of invesment rights masterpiece in bond custom public rights. Result of the research shows the happening of neglecting to customary law and custom public rights in activity of invesment is problem in materialization of justice for custom public in invesment sector of mining.*

Keywords: *Customary Law, Custom Public, Management of Invesment*

I. Antecedent

Reasoning Of Problem

Protection to custom public rights has been confessed internationally in Convention on Biological Diversity 1992 in of custom public has owned natural resources that is hereditarily mastered as effect than rightses opens forest. Form of ownership of custom public that is : (1) natural resources , concerning farm resource, forest, river, sea, mineral content, water, wind and others related to environment area; (2) human resource , in the form of traditional knowledge which has been applied hereditary. resources the customary law public is in the form of local wisdom must be respected and developed.

Conception of Customary law public initially developed by van Vollenhoven during colonization of Dutch to affirm existence member of aborigines that is people Indonesia original. This thing relates to its the exit policy of the Government politics of Dutch based on Section 131 IS (Indische Staatregeling) 1939 dividing resident, into member of aborigines (Irlander), Europe and Foreign East. Confession to difference of the citizen brings consequence incidence of legal Pluralistic of systems. Customary law is punishing Indonesian nation original that is is not come from regulations made by by the Government of Dutch Indies As one of element from public unity, hence customary law an independent branch of law inseparable from public structure.

Constitution of Republic of indonesia State 1945 Section 18B sentence (2) explained that state confess and respects unity of customary law public along with his(its traditional rights. Section 29 sentence (1) until (3) increasingly assures confession of state to customary law, cultural identity and traditional public rights. This thing also related to economic value than ownership of custom public must be respected by whom just using it. Custom public rights applied either in the form of exploitation and also exploration must get in kind return ' revenue ' for its the usage and exploiting. In preserving ownership of construction custom public and observation in continue and consistent based on mutual profitting cooperation must be placed forward. Related to exploiting ofresourcesnature either through invesment and position contract of work " take and give" must be placed forward causing can give real contribution and not solely at royalty and tax but also cost for expansion of custom public. So activity of invesment of mining is exploration kepemilikan of custom will lift degree of public prosperity.

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Custom public rights as federation of law has relationship to soil; land; ground , water, forest, mine and sea so-called with ' sir rights ' or customary right for land rights that by van Vollenhoven called as beschikingsrecht. This customary right for land rights in the form of the base is a belonging of federation done by federation of itself or by federation head and on behalf of federation. In conceptioning customary law ownership of custom public traditionally happened because they to open forest and occupies a certain region. This thing is strenghtened with ownership of in geneologis and teritorial. Fundamental law agraria confession given to customary right for land rights in faktual still taking place and the execution must pay attention to importance of nation as a whole. Customary law public customary right for land rights to soil; land; ground , water territory, crop, and animal in the region becomes source of life and livelihood is confessed, respected, and protected according to development dynamics of customary law public, national importance and state according to unity state principle . Execution ownership of custom may not be against higher level law and regulation.

Exploiting of custom public rights for activity of invesment and mining of through?via contract of work must profit custom public, because practically various contract of works which is made not to entangle custom public. In practice of agreement of investor contract of work only relate to central government and local government. The situation generates resistance when project will be executed. Resistance relates to rejection of public around project. Doesn't respect of masterpiece in bond custom public rights becomes problems of law related to activity of exploration ownership of custom public rights in Indonesia.

Formulation of Problem

1. How implementation of contract of work related to ownership of custom public?
2. How materialization of justice for custom public to enjoy maximum exploiting from an activity of exploiting contract of work and exploration of ownership (custom public rights)?
3. How custom legal status related to exploiting of property which is custom public rights?

II. Research Method

This research applies research method of law normatif, where in of writer checks and studies customary law especially customary right for land rights as public rights which must be respected by whom just doing exploration and exploitation in customary law public region. The respect must be realized by giving maximum return and advantage for customary law public in areal done by the exploitation and exploration.

To complement and supports and clarifies analysis to customary law related to justice for mining masterpiece in bond custom public, hence research method focussed at primary law material study and secondary. Primary law material that is customary law literatures which has become standard literature in writing of scientific masterpiece of customary law like literature from Ter Haar Bzn, Van Vollenhoven, Prof Soepomo, Prof. Soekamto, Busar Muhammad, etc. While material is punishing secondary consisted of study supporter material or analysis to customary law like governmental regulations about customary law, contract of work, customary law articles and various other scientific articles.

Analyses for this scientific writing done according to research procedure of law that is descriptive analysis of yuridis focussed at law doctrines analysis, law principles related to customary law and custom public so do masterpiece contracts analysis which is made is party to publicpeople or not and other supporter analysiss.

III. Result And Solition

Execution of Contract of work related to Custom Public

Management of contract of work in exploration resources natura owned by custom public in Indonesia many generating problem related to justice for custom public. Problems arising related to exploration in custom public region done by investor neglectfully custom public and did exploration only rely on contract of work and disregards other orders applied. exploitation of material in protected forest according to the regulation may not be done surface mining and have never been touched possibility that doing of mining model under surface (underground mining). Dig of coal-mine in Bukit Asam, Sawahlunto, Sumatera (PT. Acid Hill) does mining

model in (underground mining), without getting permission and approval of local public causing resistance having tip of in justice. Other case that is exploration of mine in custom public region Papua in komplek Pegunungan Gresberg in Jayapura, Papua by (PT. Freeport Indonesia), underground mining gives inspiration to mine belowunder surface but residing in protected forest region. Way done is shaft mouth made of outside protected forest, while mining activity under surface resides in protected forest region.

Does mine company doing mining activity under liable surface of sanction? Entirety of the mining process doesn't entangle good masterpiece in bond custom public in phase pra-contrac, signing of contract and execution of contract. Differs from invesment of coal mining in Kalimantan activity is done above soil;land; stripping mining for example, PT. Kalimantan Prima Coal, PT. Adaro and PT. Paradise souece having youCoal. Masterpiece contracts always contact with custom public rights especially cases like contract of work PT. Freeport, contract of work PT. Newmont Minahasa Raya, etc. Studies contract of work given to PT. Newmont either PT. Newmont Minahasa Raya and also PT. Newmont Tenggara Timur indicates that contract has not placed forward justice for public as purpose of state. Inconsistent of implementation of contract of work with a purpose to state causes many problemses arising in field like rejection of public to exploitation of mining because assumed to harms, demand to call it quits mining and demand to be done law process through?via justice. This proven situation when case PT. Newmont Minahasa Raya with the Government of Sub-Province Minahasa is processed in district court Tondano and Manado starts the year 2003 and broken in the year 2006. Government suing Minahasa to PT. Newmont Minahasa Raya shows contract of work specified not with justice and inclines harms public especially public around project of bay Buyat.

Objection of public with existence of exploration PT. Newmont Minahasa Raya as according to durationof contract of work which during 20 years to 30 years. The duration is assumed not with justice because harming public because doubted with exploration which too properties stripper of public will be cleansed and offspring future will annoyed. Contract of work that is with justice shouldn't too old is given time to alien corporation of exploration of properties of mine but within limited so that justice aspect for public will be realized. Execution of nonalignment contract of work at public especially include;covers prosperity. This thing seen in so many activity of exploration coming into contact with custom public rights. Exploration coming into contact with custom public rights that is exploration of mining and forestry. This exploration usually done by investor to work along with government. Uncared of custom public rights is against commendation of constitution.

Section 33 sentences (33)Constitution the Year 1945in principle every activity of exploration must secure and prosperous of public people. Words " the sebesar-besar public people prosperity".

- a. Benefit Ground
Benefit ground is ground, wherein mining enterpasing can be exploited for the sebesar-besar prosperity of Indonesia publicpeople.
- b. Partisipative Ground and Justice
Partisipative ground and justice is ground, where every citizen either private sector legal body and also alone is given the same opportunity down alley its to labour dig material which there is in territory of jurisdiction of Indonesia mining. And in giving of downstream business permission and cooperation contract must be prevented the happening of practice of monopolies, monopsoni, oligopoly, and oligopsoni.
- c. Balance Ground
Balance ground is ground, where the parties has parallel or equivalent position in determining form and cooperation contract substance in effort for mining.
- d. Generalization ground
Generalization ground is ground, where result of effort for mining can be enjoyed equally by all Indonesia public people.
- e. Security And Safety Ground and Safety
Security And Safety ground and safety is ground, where guaranteed existence of security and peaceful, there is no trouble to all party performing cooperation contract in effort for mining.
- f. Rule of law Ground
Rule of law ground is ground, where guaranteed existence of certainty of the parties rights and obligations performing cooperation contract in effort for mining.
- g. Ground With Vision Of Area of
Ground with vision of area of is ground, where in effort for mining must pay attention to continuity of environment ins order not to invite damage and contamination of environment.
- h. Deliberation Ground and General consensus
Deliberation ground and general consensus is ground, where convidential of clerk Pertamina, what applies land right property of having to compensates to owner of land right, level and its the payment procedures is upon mutual consensus and agreed with by the parties.

Result of research about document of dispute PT. Newmont and contract of work PT. Newmont with central government involves that there are still disregard aspects which implied in arrangement of legislation especially UUD 1945, Mining act and Mineral and Batubara No. 4 the year 2009 especially concerning partisipative benefit ground and ground and justice. Neglecting of masterpiece in bond public rights PT. this Newmont become cause various resistances in public so that public refuses existence of exploration PT. Newmont either in Minahasa and in West Nusa Tenggara. The rejection resulted from by neglecting of in bond justice principles by mining company receiving management concession of mining region.

Salim HS tells that understanding of above contract of work need to be equipped and made perfect so that interpreted with contract of work is: an agreement bolt between the Government Indonesia Local government province/district/town with foreign contractor solely and/or is statue between foreign legal bodies with domestic legal body to do activity of exploration and also exploitation in the field of public mining, as according to duration agreed on by both parties. Contract of work implemented by PT Newmont Minahasa Raya to disregard applicable law orders related to corporate social responsibility that is company responsibility to public. In Code/Law 40 the year 2007 has affirmed that peripatetic strangersforeigners legal body in the field of contract of work must do cooperation with Indonesia legal body using national capital. But, in law and regulation doesn't oblige cooperation with Indonesia legal body in execution of contract of work must do cooperation with Indonesia legal body using national capital. But, in law and regulation doesn't oblige cooperation with Indonesia legal body in execution of contract of work. Contract of work ought to that is with justice assertive in applying of contractual law especially agreement of company with public. This thing is as one of form of involvement of in bond public with foreign investor. According To Salim HS, 129-130 expressing that Contract of work that is with justice must place forward elements that is is sticking at the contract of work that is:

1. Existence of contractual, that is agreement bolt by the parties;
2. Existence of law subject, that is the Government Indonesia provinsi/kabupaten /town with foreign contractor solely and/or aliance between the side of strangers foreigners with the side of Indonesia.
3. Existence of object, that is exploration and exploitation.
4. In the field of public mining, and
5. Existence of duration in contract.

In formal yuridis ownership of custom public confessed in Section 18 Constitution 1945, but practically custom public doesn't enjoy result of exploration ownership of they. Many member of publics residing in around location areal invesment of mining exactly below poorness line. Doesn't entangle of masterpiece in bond custom public between investors with government causes marginalist custom public in exploiting to increase life prosperity.

If the problem was not handled seriously, hence the problem would having continuation. If that thing remained to happen, hence imaginable how execution wt. of the development in area PAPUA in general and town Timika especially. Referring to the execution from customary right for land rights that is may not be against national importance and state and with code/law and regulation of higher level other penmdangan, AP. Parlindungan arises, that:materialization of Justice and protection to custom public rights will be implementation if government to stand is maximum in protection of in bond custom public rights. In principle custom public rights will be protected by depends on in the effort policy with the role of government and local government. On the happening of agreement of masterpiece in bond between mining investors and central government and also state that thing ought to pass mechanism in the form of agreement with custom public beforehand.

Properly acceptable customary law sepperi told by Boedi Harsono, " Customary law which disaner", or by Sudargo Gautama is mentioned it as customary law which " diretool". In any case like the one is touched is customary law which has been eliminated its the special characters of area and given to be national. (Frans Reumi, 1979:52) Thereby, hence customary law according to version "Undang-Undang Politik Agraria" (UUPA), is not customary law as depicted by van Vollenhoven, however customary law which has been adapted for philosophy, the understandings and institutions its the equality in all Indonesia.

Justice for Mining In Bond custom Public

Masterpiece in bond justice ought to side custom public as owner of natural resources hereditarily. Justice in principle is condition of ideal truth morally related to something object or thing which will be made. According To Wisdom Suranta (2011:52) land use of customary right for land rights in activity of invesment of mining natural resources has not partied to custom public. According To John Rawis (1999:3) justice is main policy in institution of social. Every contract of work which is made must be given direct contribution at custom public so-called local community development . Lukman Sutrisno 1997:19 Based on the thing hence ought to every contract which is made, what majored that is local people importance. Generally nonalignment contract of work at public. Contract of work in Indonesia law dimension actually must be based on UUD 1945.

Of course still there is arrangement dimness of public people rights in UUD 1945 beginning from debate taking place at the time of compilation of UUD 1945. Debate predominated constituted and is argument having the character of ideological and political unable to give understanding juridis. Differs in the things of with Konstitusi RIS which successfully formulates rights and man basic freedom in Section 7 up to Section 33. Constitution RIS as result of consensus various element of importance of course broader its the law rasioality.

Prosperity concept of public based on UUD 1945 in principle emphasizes that all development activities of economics must place forward public people prosperity. Public people as boundarys law subject about the rights and obligations is be clear. Because rights and obligations is a requirement and demand in life framework is having state as an unity. In here law must stand to formulate in such a manner public people rights and obligations boundary as citizen and also importances of public people as individual. This thing is important to prevent incidence of various conflicts as as result of common conflict on interest and individual importance. (Abar Saleng 2011:39) In making of its the sebaik contract the side of alien corporation and central government must study and places meaning than the contract related to prosperity and public prosperity. Its the sebesar-besar meaning prosperity of public people in in perpective punished is existence of law guarantee to public people economics social rights, causing can live is competent as member of negra. In The Relation With HPN to mining, hence the meaning can be interpreted involvement of public people judicially in enterpasing and enjoys exploiting all dig material potencies especially the in the area.

Ought to every contract of work which is made investor and central government must pay attention to contractual terms between custom publics with soil; land; ground given mining region concession. The importance of contractual terms paid attention by investor and governmental because in principle contract of work which is exploits properties of customary law public. About contractual terms arising as result of deed of civil done by government, Bagir Manan (1986:23) has a notion that: a deed of civil legal body can only be done by civil law subject that *natuurlijkpersoon* or *rechtspersoon*, while in public field, action of governmental law solely is based on authority of public attached at one particular body or goverment organ or functionary without seeing the position as a law subject according to civil understanding. Ought to every activity of exploitation contract and exploration of mining in Indonesia must be addressed for public prosperity. About word " public people", besides relating to word " prosperity and social justice", also relates to sovereignty ism and representative institute, like: democracy.

Etymologically, " public people" means " whole resident a state (on balance government, rank and file, people biasa" dictionary Indonesian 1999 : 812) Then according to Black's Law Dictionary, public people understanding (citizen) be each and everyone (one who) that by law and regulation by rights and certain obligation, all persons is bearing and obtains civic (American) (Henry Campbell 1991:166. Based on the understanding, state in doing deed of civil like performing agreement contract with other party, importance represented by the Government. So a kind of with position *Direksi* in a Limited liability (Henry Campbell 1991:166).

Foreign Capital Investment, what does exploration of mining in Indonesia many constituted by an agreement of contract with Republic Indonesian state. Because Of State is *rechtspersoon* is earning *melakuka* civil bolt, hence *perjanjian/kontrak* done with foreign investor in the form of Mining Contract Of Work, in principle state do not authorize to contractor but together with contractor realizes public prosperity. Position of state in this contractual relationship in the capacities as owner of dig material, hence called as to be principal and the contract opponent as enterpasing executor of dig material called as contractor. State Status or the Government of in bond as one of the parties, hence its the position is parallel with other party. Such a position in in perpective of civil law, State or the Government of difficulty will be able to position x'self if later happened dispute.

In Opening of constitution the year 1945 at Aline to (Henry Campbell 1991:166) which has been mentioned upper, there is *bebreapa* mind punch line, especially related to public welfare and social justice . Based on above formulas, hence inferential that elements which there is in prosperity dimension basically referred to form of government of prosperity. Thereby, prosperity state for Indonesia is not only as nation and state concept only, but rather far again was *rechtsidee* and goal is *staatidee* for Indonesian nation. (Henry Campbell 1991:11) Theoretically, Friedmann arises four function of state in the field of economics (W. W. Friedmann, 1991:3) :

- a. Function of state as provider (guarantor)
This function, with reference to welfare state, that is state responsible and guarantees a standard a minimum of life as a whole and form of other social securities.
- b. Function of state as regulator (regulator)
Power of state to arrange is presentation of from function of as regulator. Its form all kinds, something in the form of law and regulation, but also has the character of regulation of wisdom. Sectorally for example arrangement about investment in mining industrial sector, ekspor-impor, observation and others.
- c. Function of state as entrepreneur (does effort for economics)

This function of vital importance and the development is very dynamic. State in position that way, implements certain sector in the field of economics through body effort for publik ownrship (state owned corporations). The dynamic relates to business that is continuously done to create adjacent balance and life (co-existence) between the role of private sectors and public sector.

d. Function of state as umpire (referee, supervisor)

In position that way, state claimed to formulate fair standards about different sectors performance in the field of economics, among others about state company.

This last function confessed very difficult, because in one sides, state through state company as entrepreneur, but other side, determined to hold the scales even his own performance compared to with private sector the other materialization of Justice and protection to custom public rights will be implementation if government to stand is maximum in protection of in bond custom public rights. In principle custom public rights will be protected by depends on in the effort policy with the role of government and local government. On the happening of agreement of masterpiece in bond between mining investors and central government and also state that thing ought to pass mechanism in the form of agreement with custom public beforehand.

Custom Legal Status related to ownership of custom

Confession to customary law related to custom soil; land; ground and ownership of custom public has been put down by invitores base Agraria Nomor 5 the year 1960. code/law : 5 the year 1960 about Regulation of fundamental agraria which is brief with invitores base Agraria on 24 Septembers 1960, hence happened change basally at Agrarian law in Indonesia, especially in law area land related to confession to customary law. Called as fundamental or has the character of basic, along of good about the law peripheral structure is about conception constituting it, and also its contents, as expressed in konsiderans part to have a notion letter (b), that Regulation of fundamental agraria must as according to importance of Indonesia public people and fulfills also the need according to request of epoch in all the agraria. Boedi Harsono, 1994:1) Hereinafter in Konsiderans letter expressed, that : needs existence of agrarian law Nasional, which by virtue of Customary law about soil; land; ground , simple and guarantees rule of law for all Indonesia public people without disregarding elements relying on religion law.

Confession of customary law as legal fundament Agl'aria Nasional, expressly expressed or formulated also in a few Section Regulation of fundamental agraria , namely as follows: Section 3 says : By considering rules in Section 1 and 2 execution of the customary right for land rights and similar rights from customary law publics, along the length of according to in reality there are still, must in such a manner, so that as according to national importance and state which by virtue of association of nation and may not be unconstitutional and higher level other regulations.

In Section 5 expressed also, that : Agrarian law applied to earth, water and space is customary law, along the length of not be against national importance and state, which by virtue of association of nation, with socialism of Indonesia and with regulations which written in this code/law and with other regulations, all something by bothering elements relying on religion law. Thereby, hence explains that Regulation of fundamental agraria creates national agrarian law which azygos that is customary law about soil; land; ground, as original law for the most part Indonesia public people.

If it is corrected reading again above mentioned Section second-sound mainly Section 3, hence inferential that customary right for land rights accepted by Regulation of fundamental agraria, be confession accompanied with two conditions that is first about the cksistensi and second about its the peiaksanaan. Evaluated and its the existence facet the customary right for land rights is confessed along the length of according to in reality there are still. In areas which the customary right for land rights have been no more, hence the customary right for land rights will not be reanimated, and areas which the customary right for land rights have never is will not be given new customary right for land rights. Evaluated from the angle of its the peiaksanaan, hence the customary right for land rights may not be against national importance from state and code/law and higher level other regulations (Boedi Harsono, 1994:1) . According To Maria SW. Sumardjono, that UUPA doesn't give or explains criterion about the customary right for land rights existence. But by referring to above mentioned basal understandings, it can be told, that determinant criterion there are still or not of customary right for land rights must seen three things, namely :

1. Existence of customary law public fulfilling certain ciri-ciri as customary right for land rights subject;
2. Existence of tanah/wilayah with certain boundarys as Lebensraium the environment which is customary right for land rights object; and
3. Existence of authority of customary law public to do certain actions as elaborated to be above. Additional again that is as criterion which to 4 four be existence of rules of customary law which still applying and still also adhered by member of itself customary law public.

Besides Section 3 and above mentioned 5, earns we to find also the arrangement customary law about the soil;land;ground in other sections as which will be told following.

1. Section 2 sentence (4) says : Rights masters from the execution state can be enforced to areas Swatantra and customary law publics, simply required and not be against national importance according to regulation rules of government.
2. Section 22 sentence (1) says : the happening of property according to customary law is arranged with regulation of government.
3. Section 26 sentence (1) says : Conversion sales, benefaction, gift with escrow, gift according to other customary law and deeds intended to remove property and the observation is arranged with regulation of government.
4. Section 56 mentioning : during code/law about property as the in Section 50 sentences (1) has not been formed, hence applied is rules of local customary law and other regulations about rights to soil; land; ground giving authority as or looks like intended in Section 20, along the length of not be against soul and code/law rules.
5. In Section 58 mentioned, that: during execution regulations of this [code/law] has not been formed, hence regulations of either written and also unwritten about earth and water and natural resources consisting in in it and rights to soil;land;ground, of the starting implementaion of this code/law, remain valid along the length of not be against soul from rules in this code/law and is given interpretation matching with that.

From rules of Regultion of fundamental agraria and criterion about there are still or not of customary right for land rights from a customary law public and if it is related to condition of objective from customary law public Papua. In practice is found also some main problems that is often emerges and has not is complete, surrounded by :

1. Existence of difference of perception between government (the Government Provinsi), with customary law public about customary right for land rights either maigenai its the existence and also position or the legal status. the Government assumes that is goverment land, while customary law public assumes that is public custom soil;land;ground.
2. Confession overlap by some tribes as right owner to customary right for land soil;land;ground, to customary right for land soil;land;ground the same.
3. Ill defined customary right for land rights boundarys.

Confession to land right according to customary law express that customary law as forming base of national soil; land; ground law must be respected by whoever. So do concerning custom public rights to earth, water, and various natural resourceses consisting in in it must be confessed and respected by any person who to cope exploration ownership of custom public. The happening of various conflicts in exploiting area of custom public rights shows how custom public rights had not been respected especially by sides which only make account of advantage solely in exploration to properties of custom public. Properties of custom public is property of public hereditaryly. That is why any person who copes exploration of custom public rights to with neglecting to custom public rights will experience resistance. Indemnation case processed in District Court Dumai Riau and High Court Riau in Pekanbaru is concerning civil dispute is case to custom public soil; land; ground rights Suku Sakai Melayu. Ujang Sonik and kith as sued customary right for land right owner and is not represented by lawyer and/or law adviser because doesn't have cost, fights against the side of Pertamina as plaintiff I and PT. Chevron Pacific Indonesia (CPI) as plaintiff II on 28 Februaries 2002. This case has been registered in District court fiscL clerk Dumai belowunder number case. 95/SK/2002/PNDUM and No. 96/SK/2002/PN.

DUM does deed to fight against law (onrecht matige oherheids daad) with Letter evidence Ownership Of Soil; land; ground sued released by illegal contyside office judicially and not with power of law. (Wisdom Suranta 2011:52)

From various above cases still seen neglecting to customary law and custom public rights related to contract of work and exploration of mining and various propertieses of other custom public. Neglecting to custom public rights in business and also contract is serious problems related to activity of exploration of properties of custom public in Indonesia. Problem which shouldn't would have ever happened if existence of respect and confession to custom public rights which has owned and inherits sumberdaya nature hereditaryly.

In Opening of UUD 1945 at Aline to (Henry Campbell 1991:166)which has been mentioned upper, there is bebreapa mind punch line, especially related to public welfare and social justice. Based on above formulas, hence inferential that elements which there is in prosperity dimension basically referred to form of government of prosperity. Thereby, prosperity state for Indonesia is not only as nation and state concept only, but rather far again was rechtsidee and goal is having staatidee for Indonesian nation. ((Henry Campbell 1991:11) Theoretically, Friedmann arises four function of state in the field of economics (W.W. Friedmann, 1991:3) :

- a. Function of state as provider (guarantor). This function, with reference to welfare state, that is state responsible and guarantees a standard a minimum of life as a whole and form of other social securities.
- b. Function of state as regulator. Power of state to arrange is presentation of from function of as regulator. Its form all kinds, something in the form of law and regulation, but also has the character of regulation of wisdom. Sectorally for example arrangement about invesment in mining industrial sector, ekspor-impor, observation and others.
- c. Function of state as entrepreneur (does effort for economics). This function of vital importance and its the development is very dynamic. State in position that way, implements certain sector in the field of economics through body effort for state owned corporations. The dynamic relates to business that is continuously done to create adjacent balance and co-existence between the role of private sectors and public sector.
- d. Function of state as referee, supervisor. In position that way, state claimed to formulate fair standards about different sectors performance in the field of economics, among others about state company. This last function confessed very difficult, because in one party sides, state through state company as entrepreneur, but other by party side, determined to hold the scales even his own performance compared to with private sector the other.

Materialization of Justice and protection to custom public rights will be implementation if government to stand is maximum in protection of in bond custom public rights. In principle custom public rights will be protected by depends on in the effort policy with the role of government and local government. On the happening of agreement of masterpiece in bond between mining investors and central government and also state that thing ought to pass mechanism in the form of agreement with custom public beforehand.

Custom Legal Status related to Ownership of custom public

Confession to customary law related to custom soil; land; ground and ownership of custom public has been put down by invitores fundamental agraria Nomor 5 the year 1960. Number law : 5 the year 1960 aboutrules of Regulation of fundamental agrariawhich is brief with invitores base agraria or regulation of specific base agraria on 24 Septembers 1960, hence happened change basally at Agrarian law in Indonesia, especially in law area land related to confession to customary law. Called as fundamental or has the character of basic, along of good about its the law peripheral structure is about conception constituting it, and also its contents, as expressed in konsiderans part to have a notion letter (b), thatregulation of specific base agrariamust as according to importance of Indonesia public people and fulfills also its the need according to request of epoch in all the agraria. Boedi Harsono,1994:1) Hereinafter in Konsiderans letter (a) expressed, that : needs existence of agrarian law Nasional, which by virtue of Customary law about soil; land; ground , simple and guarantees rule of law for all Indonesia public people without disregarding elements relying on religion law.

Confession of customary law as legal fundament Agraria Nasional, expressly expressed or formulated also in a few Section regulation of specific base agraria, namely as follows: Section 3 says : By considering rules in Section 1 and 2 execution of the customary right for land rights and similar rights from customary law publics, along the length of according to in reality there are still, must in such a manner, so that as according to national importance and state which by virtue of association of nation and may not be unconstitutional and higher level other regulations.

In Section 5 expressed also, that : Agrarian law applied to earth, water and space is customary law, along the length of not be against national importance and state, which by virtue of association of nation, with socialism of Indonesia and with regulations which written in this [code/law] and with other regulations, all something by bothering elements relying on religion law. Thereby, hence explains that regulation of specific base agrariacreates national agrarian law which azygos that is customary law about soil; land; ground , as original law for the most part Indonesia public people.

If it is corrected reading again above mentioned Section second-sound mainly Section 3, hence inferential that customary right for land rights accepted by regulation of specific base agraria, be confession accompanied with two conditions that is first about its the cksistensi and second about its theused. Evaluated and the existence facet the customary right for land rights is confessed along the length of according to in reality there are still. In areas which its the customary right for land rights have been no more, hence the customary right for land rights will not be reanimated, and areas which the customary right for land rights have never is will not be given new customary right for land rights. Evaluated from the angle of the used, hence the customary right for land rights may not be against national importance from state and law and higher level other regulations (Boedi Harsono, 1994:1). According To Maria SW. Sumardjono, that regulation of specific base agraria doesn't give or explains criterion about the customary right for land rights existence. But by referring to above mentioned basal understandings, it can be told, that determinant criterion there are still or not of customary right for land rights must seen three things, namely :

1. Existence of customary law public fulfilling certain as customary right for land rights subject;
2. Existence of Regional soil, land with certain boundaries as Lebensraiu the environment which is customary right for land rights object; and
3. Existence of authority of customary law public to do certain actions as elaborated to be above. Additional again that is as criterion which to 4 (four) be existence of rules of customary law which still applying and still also adhered by member of itself customary law public.

Besides Section 3 and above mentioned 5, earns we to find also the arrangement customary law about the soil; land; ground in other sections as which will be told following.

1. Section 2 sentence (4) says : Rights masters from the execution state can be enforced to areas Swatantra and customary law publics, simply required and not be against national importance according to regulation rules of government.
2. Section 22 sentence (1) says : the happening of property according to customary law is arranged with regulation of government.
3. Section 26 sentence (1) says : Conversion sales, benefaction, gift with escrow, gift according to other customary law and deeds intended to remove property and its the observation is arranged with regulation of government.
4. Section 56 mentioning : during [code/law] about property as the in Section 50 sentences (1) has not been formed, hence applied is rules of local customary law and other regulations about rights to soil; land; ground giving authority as or looks like intended in Section 20, along the length of not be against soul and law rules.
5. In Section 58 mentioned, that: during execution regulations of this law has not been formed, hence regulations of either written and also unwritten about earth and water and natural resources consisting in in it and rights to soil; land; ground , of the starting implementaion of this law, remain valid along the length of not be against soul from rules in this law and is given interpretation matching with that.

From rules of regulation of specific base agraria and criterion about there are still or not of customary right for land rights from a customary law public and if it is related to condition of objective from customary law public Papua. In practice is found also some main problems that is often emerges and has not is complete, surrounded by :

1. Existence of difference of perception between government, with customary law public about customary right for land rights either maigenai the existence and also position or the legal status. the Government assumes that is government land, while customary law public assumes that is public soil; land; ground hukurn custom (custom soil;land;ground).
2. Confession overlap by some tribes as right owner to customary right for land soil; land; ground , to customary right for land rights (customary right for land soil; land; ground) the same.
3. Ill defined customary right for land rights boundaries.Confession to land right according to customary law express that customary law as forming base of national soil; land; ground law must be respected by whoever.

So do concerning custom public rights to earth, water, and various natural resourceses consisting in in it must be confessed and respected by any person who to cope exploration ownership of custom public. The happening of various conflicts in exploiting area of custom public rights shows how custom public rights had not been respected especially by party(sides which only make account of advantage solely in exploration to properties of custom public. Properties of custom public is property of public hereditarily. That is why any person who copes exploration of custom public rights to with neglecting to custom public rights will experience resistance. Indemnation case processed in District Court Dumai Riau and High Court Riau in Pekanbaru is concerning civil dispute is case to custom public soil; land; ground rights Suku Sakai Melayu. Ujang Sonik and kith as sued by customary right for land right owner and is not represented by lawyer and/or law adviser because doesn't have cost, fights against the side of Pertamina as plaintiff I and PT. Chevron Pacific Indonesia (CPI) as plaintiff II on 28 Februaries 2002. This case has been registered in District court fiscal clerki Dumai below No. 95/SK/2002/PNDUM and No. 96/SK/2002/PN.DUM does deed to fight against law onrecht matige oherheids daad) with Letter evidence Ownership Of Soil; land; ground sued released by illegal contryside office judicially and not with power of law. (Wisdom Suranta 2011:52).

From various above cases still seen neglecting to customary law and custom public rights related to contract of work and exploration of mining and various propertiees of other custom public. Neglecting to custom public rights in business and also contract is serious problems related to activity of exploration of properties of custom public in Indonesia. Problem which shouldn't would have ever happened if existence of respect and confession to custom public rights which has owned and inherits Recource nature hereditarily.

IV. Conclusion

1. Exploration contract of Mining that is with justice for custom public in Indonesia still difficult to be implementation caused by involvement neglecting of in bond. Involvement neglecting of public figures masterpiece in bond causes many contract of works to have problem, like contract of work PT. Newmont Great Minahasa, PT. Freeport which exploration of custom public rights without in kind return (revenue) causing resistance. Un-justice for custom public seen where custom public is around project of exploration above the ground and below poorness line.
2. Materialization of Justice for custom public to enjoy and exploits maximum result of masterpiece in bond still difficult to be realized. Company un-consistency of mining to boost up custom public life level residing in around project of exploration of mining still seen. Poor custom public and rearward to be counter with life and mining activity done by investor which result ought to best enjoyed by local public. Economic un-justice and un-justice of this law become challenge in execution of contract of work.
3. Custom legal status and custom public rights to soil; land; ground and various sumberdaya nature has been confessed and respected by either in constitution and also invitores Pokok Agraria Nomor 5 the year 1960. Confession and respect to customary law and custom public rights must be followed with improvement of prosperity and prosperity for custom public as owner of has not been realized.

V. Suggestion

1. To realize justice for custom public in every contract of work, government must entangle custom public so that execution of exploration contract of work of mining profits public. Way of presenting masterpiece in bond custom public related to approval of all masterpiece in bond clausals.
2. Economic justice and punished only can be realized if format and mechanism of contract of work is altered by enlarging custom public rights to give in bond approval. For the purpose every contract of work executed obliges custom public taking part in and custom elite figure.
3. With confession to customary law as source and basis Indonesia law hence ought to every activity of invesment entangling custom public must be based on customary law. With based on customary law, the side of oreigners investor will confess that Indonesia has basis unique law that is customary law which there is no in other state.

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