

ABSTRACT

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The Legal Standing of Indigenous People in Terms of Coal Mining

This research analyzes on the legal standing indigenous people in coal mining, key issues arise in this research is the protection and management of the environment through preventive and repressive legal mechanism. The legal standing of indigenous people concept is a part of society's repressive legal protection which can be used by indigenous people to undertake legal action.

Society that directly affected by the negative impact of the mining activities has the right to achieve claim and compensation as set in Article 145 of the Mining Law, and the mechanism of legal standing by people as governed in Article 91 UUPPLH.

This research is a normative legal research. It use several approaches namely the approach of legislation, the concept approach, case approach, and the comparison approach with Philippines.

Philosophical existence of the indigenous people has been accommodated in the constitution and legislation. The society's legal standing (Article 91 UUPPLH) is not the same as the legal standing of indigenous people. The society's legal standing is a class action procedure with an individu as its subject, whereas the legal standing of indigenous people uses people/society as its subject, as defined in Article 50 paragraph (1) letter b Law Court and the Constitutional Court's decision No.010 / PUU-1 / 2003, 31 / PUU-V / 2007, 6 / PUU-VI / 2008, 35 / PUU-X / 2012. Ius constituendum formed in rechtsverfijning law construction becomes the legal standing of indigenous people. Characteristics of indigenous people who can do the legal standing of indigenous communities in coal mining are: a) a group of people, b) has its own property either in the form of material and immaterial, c) has a region, d) there is no intention to disband, and e) has a holistic relationship with their environment. Implementation of the rights of indigenous people to sue after the Constitutional Court decision is not maximized, the State has not maximized the application of the principle of free and prior informed concern, such as in Philippines.

It is suggested to immediately make a civil right protection constitution draft and Minerba constitution revision.

Key Word: The legal standing of indigenous people, the Constitutional Court's Decision.

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