

**Research Article**

**Communal Rights vs Regional Development: Pursuing Justice for Comunal Customary Land**

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**ABSTRACT**

This study is motivated by conflicts of authority in the management of natural resources, particularly *Tanah Ulayat* of indigenous communities, which are often inadequately protected in the course of development and resource exploitation, including illegal mining. The primary objective of this research is to examine the position and authority of the state in managing *Tanah Ulayat*, to identify the legal implications of illegal mining practices on *Tanah Ulayat*, and to formulate a legal framework that is both just and constitutional. The study employs a normative juridical method combined with a constitutional approach and an indigenous peoples' rights perspective. The findings reveal a legal vacuum in the protection of *Tanah Ulayat*, particularly when mining activities are carried out with customary approval but without state authorization. In conclusion, there is an urgent need for a legal framework that is responsive, participatory, and grounded in the principles of simultaneous development and the recognition of communal rights.

**Keywords:** Comunal Customary Land (*Tanah Ulayat*) ; State Authority; Regional Development; Justice.

**A. INTRODUCTION**

The Constitution of the Republic of Indonesia explicitly stipulates that the earth, water, and all natural resources contained therein shall be controlled by the state and utilized for the greatest prosperity of the people (Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia) (MD, 2009). This constitutional provision provides strong legitimacy for the state to regulate, manage, and supervise the utilization of natural resources (Wicaksono, 2019). However, state authority over natural resources does not operate in a legal vacuum

(Maladi, 2011). The state also recognizes the existence of indigenous communal rights (*hak ulayat*), as affirmed in Article 3 of Law No. 5 of 1960 on the Basic Agrarian Principles (UUPA), which declares that the exercise of *hak ulayat* is acknowledged insofar as it continues to exist in practice and does not conflict with national interests or other statutory regulations (Deda & Mofu, 2014).

Socio-legal realities demonstrate that the relationship between state authority and the *hak ulayat* of indigenous communities often gives rise to tensions, particularly when *Tanah Ulayat* is



exploited for mining activities without formal authorization from the government (Pulungan, 2023). This phenomenon becomes even more complex when the *Tanah Ulayat* in question lies within protected forest areas, as in several regions of West Papua, such as the Masni and Warmare Districts, Manokwari Regency (Hendrik, 2024). In these areas, illegal gold mining has been conducted with the consent of the holders of *hak ulayat* but in contravention of statutory provisions in the fields of mining, environmental protection, and forestry. Under positive law, such activities are categorized as Unauthorized Mining (Pertambangan Tanpa Izin or PETI), in violation of Law No. 2 of 2025 on the Fourth Amendment to Law No. 4 of 2009 on Mineral and Coal Mining, as well as Law No. 41 of 1999 on Forestry.

From the perspective of indigenous communities, however, the use of *Tanah Ulayat* by local groups or third parties based on the consent of the holders of *hak ulayat* constitutes a legitimate exercise of traditional rights guaranteed under Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia (Danil, 2012). This perspective is further reinforced by international principles enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) of 2007, which affirms the rights of indigenous peoples to the lands, territories, and resources that they have traditionally owned, occupied, or otherwise used and maintained, both spiritually and ecologically (Alting, 2011). In this respect, the state faces a

constitutional and juridical dilemma in balancing its authority over natural resource management with the protection of the constitutional rights of indigenous peoples (Salinding, 2019).

The urgency of this study lies in the pressing need to examine the disharmony between state law and customary law in the governance of natural resources, particularly in the context of illegal mining activities on *Tanah Ulayat* (Sukirno, 2014).

Several prior studies have examined agrarian and mining conflicts involving *Tanah Ulayat* of indigenous law communities within the framework of national regulations. The first study analyzed mining practices conducted by PT Trubaindo Coal Mining in West Kutai, which were deemed unlawful due to the absence of formal and legitimate consent from the indigenous community. This study emphasized the lack of clarity in Article 135 of Law No. 4 of 2009 as the main cause of conflict between license holders and *hak ulayat* (Budhaeri et al., 2025). The distinction from the present research lies in its focus on examining the position and authority of the state in the management of *Tanah Ulayat*, identifying the legal implications of illegal mining practices on *Tanah Ulayat*, and formulating a fair and constitutional legal framework for resolution.

Another study discussed the legal regulation of illegal mining conducted without official permits, highlighting that approximately 90% of small-scale mining activities in Indonesia remain illegal despite numerous revisions to



normative regulations. The difference between that study and the present research is that the former only addressed the phenomenon of illegal mining without analyzing its implications on *hak ulayat*, which is the central concern of this study (Ruy, 2024). A further study examined the reconstruction of the legal relationship between land tenure and the utilization of agrarian resources through regulatory reform in the Draft Land Law (Sitorus, 2016). In contrast, the present research places greater emphasis on the protection of the communal rights of indigenous peoples in relation to the exploitation of agrarian resources.

In addition to the aforementioned studies, there are also other works that examine the utilization and development of customary land within the framework of legal policy (Antonio & Charles, 2019). The distinction from the present research lies in its focus, namely the protection of communal rights of indigenous peoples over agrarian resources, particularly in the context of mining governance. Similarly, the study on communal rights as a form of hegemony in the Third World Regime from the Indonesian perspective (Putri, Putri & Tisnanta, 2022) also differs from this research, as the latter specifically emphasizes the protection of indigenous communal rights in relation to the management of agrarian resources, with special attention to mining activities in Indonesia.

Based on the review of previous literature, it appears that the majority of studies have

concentrated on legal conflicts arising from a lack of clarity in regulations, licensing violations, and imbalances of power among the state, corporations, and indigenous communities. However, there remains a paucity of research that explicitly and comprehensively examines illegal mining carried out by, or with the consent of, indigenous communities themselves on customary land, particularly when such practices take place within areas that are legally designated as protected forests. This situation blurs the boundary between formal legal violations and social legitimacy under customary law, thereby creating a dilemma in law enforcement (Putrijanti & Sulistyawan, 2023).

Moreover, most existing studies remain normative in nature or concentrate on a single aspect, such as legal vacuum, without incorporating constitutional approaches and the recognition of indigenous peoples' rights within the broader framework of natural resource governance. To date, there has been no comprehensive study that analyzes the interrelation between state authority (Article 33 paragraph (3) of the 1945 Constitution), the recognition of *hak ulayat* (Article 3 of the Basic Agrarian Law and Article 18B paragraph (2) of the 1945 Constitution), and the prohibition of mining in protected areas within a unified legal framework.

The originality of this research lies in its integrative approach, which seeks to map the legal power relations between the state and



indigenous communities concerning illegal mining on customary land, particularly in ecologically protected areas. Furthermore, this research aims to formulate constitutional legal principles that are both equitable and solution-oriented in addressing similar conflicts in the future.

Based on the problem identification outlined above, this research focuses on three central questions. First, how do land law and constitutional perspectives define the position and authority of the state in the management of natural resources, including *tanah ulayat*? Second, what are the legal implications of illegal mining practices conducted on *tanah ulayat* belonging to indigenous legal communities? Third, what form of legal framework can be developed to ensure a just and constitutional approach to addressing such practices, while simultaneously respecting the rights of indigenous peoples, ensuring sustainable development, protecting the environment, and safeguarding communal land rights?

## B. RESEARCH METHODS

This research employs a normative juridical approach with a library-based orientation to examine legal principles, statutory norms, and relevant legal doctrines (Irwansyah & Yunus, 2020). This approach is chosen because the issue under study focuses on the disharmony between positive law and customary law in relation to the management of *tanah ulayat* of indigenous communities in West Papua within the

context of unlicensed mining activities (Pertambangan Tanpa Izin/PETI) in protected forest areas. The study aims to elucidate the normative basis and legal framework underlying the inconsistencies between state authority over natural resources and the recognition of indigenous peoples' rights (Cahyaningrum, 2012).

The material object of this research comprises Indonesian positive law instruments, including the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), the Basic Agrarian Law (Law No. 5 of 1960), the Job Creation Law (Law No. 2 of 2025), the Forestry Law (Law No. 41 of 1999), and the Environmental Protection and Management Law (Law No. 32 of 2009). The study also refers to international norms, particularly the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007, which provides a normative foundation for the collective rights of indigenous peoples over land and natural resources. The formal object of the study is the process of *rechtsvinding* through legal interpretation aimed at formulating a framework for harmonizing state law with *hak ulayat*.

Legal materials are collected through literature review, encompassing primary sources (statutes and international instruments), secondary sources (scholarly literature and court decisions), and tertiary sources (legal dictionaries and encyclopedias). The analysis is conducted qualitatively and deductively, employing statutory and conceptual approaches to systematically and critically examine legal norms (Sonata, 2014).



This method enables the formulation of a legal framework that ensures legal certainty, the protection of constitutional rights, as well as ecological and social justice for indigenous communities.

### C. RESULTS AND DISCUSSION

#### 1. The Perspective of Land Law and Constitutional Law in the Management of Natural Resources, Particularly *Tanah Ulayat*

The management of natural resources in Indonesia, including *tanah ulayat* by indigenous communities (*masyarakat hukum adat*), is situated within the framework of state sovereignty oriented toward the welfare of the people (Satria, 2016). Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia stipulates that “The land, the waters, and the natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people.” In this regard, the State functions as the holder of a constitutional mandate to administer natural resources in a just and sustainable manner. Accordingly, the State bears the obligation to protect its citizens, including indigenous communities, in the management and exercise of *hak ulayat* (Veronika & Winanti, 2021).

On the other hand, Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia stipulates that “The State recognizes and respects units of indigenous communities

along with their traditional rights, insofar as they remain in existence and are in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia.” This provision demonstrates that the Constitution conditionally acknowledges the existence of indigenous communities and their *hak ulayat*, provided that such communities “remain in existence” and are “not in conflict with the principles of the unitary state.” The norm thus guarantees the existence of indigenous peoples in Indonesia while simultaneously serving as the legal basis for their recognition (Rohman & Syafruddin, 2021).

With respect to land law, the Basic Agrarian Law (Undang-Undang Pokok Agraria, UUPA) integrates *hak ulayat* into the national legal system through Articles 3 and 5. Article 3 provides that the implementation of *hak ulayat* and similar rights of indigenous communities shall be recognized to the extent that such rights still exist in practice, and that their exercise shall not conflict with national interests or statutory regulations (Mahfud, Indarti, & Sukirno, 2019). This implies that the State does not abolish *hak ulayat* but instead regulates and limits its exercise in accordance with the principles of the rule of law (Sahetapy, Makaruku, & Sahetapy, 2023). The State’s recognition of indigenous communities and their *hak ulayat* is thus subject to three conditions: the indigenous community must still exist, *hak ulayat* must remain in force, and neither



the community's existence nor its *hak ulayat* may conflict with statutory regulations.

Although *tanah ulayat* constitutes both the identity and the collective right of indigenous peoples, its utilization must adhere to formal legal mechanisms, including licensing requirements when used for commercial purposes such as mining. The State possesses the constitutional legitimacy to supervise and enforce the law against activities that contravene regulatory provisions, including illegal mining practices on *tanah ulayat* (Damaitu & Wada, 2017).

There exists a normative balance between the recognition of indigenous peoples' rights over *tanah ulayat* and the authority of the State to regulate the use of natural resources for the public interest. This balance is grounded in the principles of the rule of law, popular sovereignty, and social justice as enshrined in the Constitution (Maulana, 2018). *Hak ulayat* does not constitute an absolute right; rather, it is a right subject to the national legal system and the broader public interest (Setiawati, 2018).

As the holder of state authority, the government must act as a facilitator capable of mediating the interests of economic development while respecting the continued existence of indigenous communities (Hutama, 2021). This role cannot be limited to the enactment of regulations but must also be manifested through concrete actions, including the involvement of indigenous peoples in policymaking processes,

the provision of legal education, and the empowerment of indigenous institutions.

This study reinforces the findings of several prior works, such as that of Rizki (2024), which demonstrate that recognition of *hak ulayat* has often been merely declaratory in nature, lacking substantive legal protection. In practice, the management of *tanah ulayat* frequently generates conflict between indigenous communities and investors, particularly in the mining and plantation sectors. In light of these conditions, a new perspective is needed one that incorporates the theory of collective rights, the doctrine of state sovereignty over natural resources, and the theory of legal pluralism as interpretive foundations for understanding the relationship between the State and indigenous communities. Such a theoretical approach strengthens the argument that the resolution of conflicts over *tanah ulayat* cannot be confined solely to law enforcement, but must also encompass the harmonization of customary law with the national legal system (Mustaghfirin, 2011).

Based on the theory of collective rights, indigenous peoples possess inherent rights over *tanah ulayat* as an integral part of their collective identity. Such rights cannot be arbitrarily diminished by the State without a consultative and participatory process (Hsieh, 2006). Indeed, *tanah ulayat* holds profound spiritual and social meaning for indigenous communities, serving as the center of their spiritual and social life as well as a symbol of identity and communal pride (Syafiq et al.,



2015). Nevertheless, the doctrine of state sovereignty over natural resources provides the foundation that the State retains ultimate authority in determining the utilization of land and natural resources, insofar as it is directed toward the prosperity of the people (Wijaya & Mubin, 2024). From the perspective of legal pluralism, the overlap between customary law and national law should be regarded as a potential to be wisely managed rather than as a conflict to be eliminated (Grenfell, 2013). Accordingly, dialogue between customary institutions and state institutions ought to be formalized within inclusive public policy-making mechanisms. Thus, constitutional interpretation of Article 18B paragraph (2) and Article 33 paragraph (3) must be understood in an integrative and progressive manner, rather than in a dichotomous fashion.

The State possesses constitutional authority to manage natural resources, including *tanah ulayat*. However, this authority must be exercised within the framework of respect for the rights of indigenous communities (Abubakar, 2013). The State must not employ such authority as a tool of legitimacy to disregard *hak ulayat*; rather, collaborative and cross-boundary approaches are essential to enhancing the effectiveness of natural resource governance, including indigenous land rights (Vaughan, Thompson, & Ayers, 2016). Conversely, the State must integrate customary values into the formal legal system through participatory regulation. In particular, Article 18B paragraph (2) of the 1945

Constitution of the Republic of Indonesia affirms that the State recognizes and respects the existence of indigenous communities and their traditional rights, insofar as such communities remain viable and are consistent with societal development and the principles of the unitary state.

Specifically, Article 3 of the Basic Agrarian Law (BAL) No. 5 of 1960 stipulates that: “The implementation of *hak ulayat* and similar rights of indigenous communities, insofar as they continue to exist in reality, must be carried out in a manner consistent with the national and state interests, based on national unity, and shall not be in conflict with laws and higher regulations.” This provision does not abolish *hak ulayat*. Rather, the State recognizes its existence where it remains viable and actively practiced by indigenous communities, while regulating its utilization to align with national interests, such as development and the use of land for the prosperity of the people. Furthermore, the State bears the responsibility of protecting indigenous peoples from external parties seeking to arbitrarily control *tanah ulayat*.

Recognition of *hak ulayat* by the State is based on administrative processes in accordance with procedures for acquiring land rights. Juridically, for the government and the National Land Agency (BPN), land that has not been officially registered and mapped with the BPN cannot be recognized as *tanah ulayat*. Consequently, unregistered customary land is



often treated as state land (pseudo domain verklaring). It is important to note that prior to the registration of land, indigenous communities themselves must first be formally recognized by the government, as stipulated in Minister of Home Affairs Regulation No. 52 of 2014 concerning Guidelines for the Recognition and Protection of Indigenous Peoples.

## **2. Legal Implications of Illegal Mining Practices on *Tanah Ulayat* of Indigenous Peoples**

Illegal mining practices not only damage the environmental order but also disrupt the integrity of indigenous peoples, including the destruction of *tanah ulayat* rights (Febrianto, 2018). Such degradation results in the loss of natural resources essential for the livelihood of indigenous communities (Jinger et al., 2024). Law enforcement against illegal activities, such as mining without permits on *tanah ulayat*, constitutes a manifestation of the rule of law. However, enforcement must be accompanied by legal education and capacity-building to ensure that indigenous peoples understand the legal consequences of every economic activity carried out within their customary territories (Redi, 2016). The state is also obliged to ensure that even lawful economic activities comply with the principles of environmental sustainability and social balance (Puluhulawa, 2011).

A partnership framework among the state, investors, and indigenous communities can serve as an alternative model for natural resource

governance based on distributive justice. The state must guarantee that the benefits of natural resource exploitation on *tanah ulayat* are not monopolized by a few parties but rather provide genuine socio-economic benefits to the indigenous communities as the legitimate custodians of the territory (Sulaiman et al., 2025). Moreover, strengthening indigenous institutions is a prerequisite for building transparent and accountable governance of *tanah ulayat*. The state should support the legal recognition of indigenous institutions and provide them with adequate space and capacity to exercise supervisory and managerial roles over *tanah ulayat* in accordance with customary principles, insofar as they do not contravene national law.

The legal implications of illegal mining on *tanah ulayat* become more complex when such activities are conducted with the consent of the *ulayat* right-holders but without formal authorization from the state, particularly when they occur in areas designated as protected forests. Another dimension is the need to analyze the socio-economic, environmental, and legal conflicts that emerge from the disharmony between customary law and national law in natural resource management. In most cases, illegal mining arises due to the economic needs of indigenous peoples and the absence of the state in providing legal protection or alternative livelihoods (Kridasakti et al., 2025).

Article 5(1) of the Basic Agrarian Law (UUPA) recognizes the existence of *hak ulayat* of



indigenous peoples as long as they can be demonstrated in practice. Nevertheless, illegal mining on *tanah ulayat* without official government permits violates Article 158 of the Mining Law (UU Minerba) and Article 109 of the Environmental Law, while also causing damage to protected forests as regulated under national forestry law. On the other hand, indigenous peoples often feel they possess legitimate authority to manage their *tanah ulayat*, including granting customary consent to third parties. This situation gives rise to a complex legal dilemma, as *hak ulayat* are normatively recognized, yet the state simultaneously holds constitutional authority in governing natural resources. The resulting disharmony produces a legal grey area that triggers vertical disputes between indigenous communities and the state, as well as horizontal conflicts within indigenous groups.

Furthermore, it was found that environmental degradation resulting from illegal mining activities threatens the ecosystem of protected forests and diminishes the quality of life of surrounding communities. This practice also generates the risk of criminalization against indigenous leaders who traditionally grant permission to mining actors. The legal implications extend not only to criminal sanctions but also to the protection of the collective rights of indigenous peoples and the sustainability of the environment.

*Tanah ulayat* constitutes an integral part of the social identity of indigenous communities, and

its use without adherence to formal legal procedures creates vulnerabilities to legal exclusion (Zulkarnain, 2023). Conflicts between customary law and state law are frequently exacerbated by the absence of the state in accommodating community-based decision-making mechanisms. The ecological consequences of illegal mining in protected forests, including water pollution, deforestation, and threats to biodiversity, were also observed in this study. These findings further reinforce the recommendations of the UNDRIP regarding the necessity of Free, Prior, and Informed Consent (FPIC) as a standard mechanism in the exploitation of natural resources on customary lands (Obeng et al., 2019).

The root cause of illegal mining practices on *tanah ulayat* lies in the asymmetry between the national legal system, which is based on formal licensing, and the customary legal system, which derives its legitimacy from collective consent. When indigenous communities grant mining permission according to customary norms, such acts are interpreted as an exercise of sovereignty over *hak ulayat*. However, the state regards these acts as violations, as they fall outside the framework of formal law (Putrijanti, 2021).

This conflict is compounded by the reality that not all indigenous communities possess the legal and economic capacity to access official licensing processes (Nggoro, Samekto & Sukirno,



2020). In many cases, the lack of knowledge of positive law and limited resources drives indigenous peoples to act outside the formal system, actions that are subsequently criminalized. The legal implications therefore extend not only to the mining actors but also to the indigenous communities who grant permission, despite receiving minimal or no economic benefit. In this regard, the state must not only act as a regulator but also serve as a facilitator of social justice by establishing mechanisms to harmonize customary and national law.

Illegal mining on *tanah ulayat* of indigenous peoples located within protected forest areas constitutes a violation of law with complex dimensions legal, social, and environmental. Customary approval granted by the holders of *hak ulayat* cannot serve as a valid legal basis unless accompanied by formal authorization from the state. Nevertheless, criminalizing indigenous peoples without providing participatory dialogue and formal recognition mechanisms for *hak ulayat* will only deepen structural injustice.

Law enforcement against perpetrators of illegal mining must continue to be carried out firmly; however, the state also bears the obligation to provide legal protection for the rights of indigenous peoples, as guaranteed under Article 18B paragraph (2) of the 1945 Constitution and various international instruments such as the ICESCR and UNDRIP. Harmonization between state law and customary law is imperative to

safeguard *tanah ulayat* while simultaneously ensuring ecological sustainability and social justice (Nur, Fatih & Intania, 2024). Accordingly, policy reformulation is required that goes beyond a purely repressive legal orientation and is instead grounded in community participation, the involvement of indigenous leaders in the formulation of natural resource management plans, and the provision of access to mechanisms for the legalization of *hak ulayat*. Only through a collaborative and equitable approach can the state address illegal mining practices in a sustainable manner and prevent greater harm to indigenous communities and the environment.

### **3. A Legal Framework that is Fair, Constitutional, and Respectful of the Rights of Indigenous Peoples**

A fair and constitutional legal framework that respects the rights of indigenous peoples over *tanah ulayat* is essential (Iqbal & Sukirno, 2017). Such a framework is directed toward sustainable development and environmental protection, while taking into account the principles of national law and international standards such as those articulated in UNDRIP 2007. The primary focus lies on addressing the problem of illegal mining within indigenous territories, which has triggered various social conflicts, environmental degradation, and violations of collective rights.

From the analysis, several key findings emerge:

- 1) The limited involvement of indigenous communities in the mining licensing process



- has resulted in numerous mining activities being carried out without the legitimate consent of the holders of *tanah ulayat*.
- 2) Illegal mining frequently occurs within *tanah ulayat* territories that have been identified and recognized through generations, yet remain unregistered in the state's administrative system, rendering them vulnerable to land dispossession and resource exploitation.
  - 3) The absence of conflict resolution mechanisms grounded in customary law, coupled with the limited recognition of local value systems, has led to disputes between indigenous communities and mining actors failing to achieve substantive justice.
  - 4) The lack of effective coordination among central government, regional authorities, and indigenous communities in monitoring and rehabilitating the environment has exacerbated the socio-ecological impacts of illegal mining.

The conceptual legal framework for addressing *tanah ulayat* issues in the context of illegal mining rests on three main pillars: collective justice, pluralistic legal recognition, and sustainable management. This framework seeks to harmonize the recognition of indigenous rights over land with the state's sovereignty in governing natural resources for the common good. The framework encompasses several measures:

- 1) Establishment of an indigenous–state consultative forum as a platform for dialogue and conflict resolution.

- 2) Development of derivative regulations at the local government level that formally accommodate customary law systems in natural resource management.
- 3) The imposition of strict sanctions against illegal mining, accompanied by mandatory environmental restoration and restitution for affected communities.

The formal recognition of *tanah ulayat* and the role of customary law are essential in safeguarding the rights of indigenous communities. However, this study goes beyond the normative approach by offering an integrative framework that not only affirms such recognition, but also incorporates mechanisms of participation, environmental rehabilitation schemes, and equitable collaboration in the management of mining outcomes. The prevalence of illegal mining further underscores the urgency of oversight and strict enforcement (Sa'Adah, 2018). Yet, such approaches have not sufficiently addressed the dimension of indigenous rights as an integral component of ecological justice. In this regard, the findings of this research contribute a novel perspective by fostering a synergy between ecological, cultural, and juridical dimensions (Sulaiman, Adli, & Mansur, 2019).

The development of *hak ulayat* as a form of collective rights (Collective Rights Theory) vis-à-vis the state's sovereign authority over natural resources (State Sovereignty Theory) raises a constitutional obligation for the state to manage



resources for the welfare of the people, without neglecting the principle of recognition of indigenous communities. This principle is guaranteed under Article 18B paragraph (2) of the 1945 Constitution as well as the Basic Agrarian Law (UUPA).

From the perspective of Legal Pluralism Theory, addressing illegal mining on *tanah ulayat* cannot rely solely on a formal legalistic approach, but must incorporate customary law as a living source of law (Sistyawan et al., 2024). This corresponds with the principle of “living law within society” as enshrined in Article 2 of the Indonesian Penal Code (KUHP) 2023. Accordingly, the protection of *tanah ulayat* must extend beyond formal land administration and encompass the recognition of the normative existence of indigenous peoples (Harum, 2013).

Furthermore, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) 2007 provides a universal framework affirming that indigenous peoples possess rights over lands and resources they have traditionally occupied, including the right to grant or withhold consent for development activities within their territories. The principle of Free, Prior, and Informed Consent (FPIC) thus constitutes a fundamental pillar in shaping a fair and ethical licensing process.

The state’s efforts to eradicate illegal mining cannot be separated from its obligations to:

- 1) substantively recognize and protect *hak ulayat* rather than merely providing administrative acknowledgment;
- 2) guarantee the participation of indigenous communities in licensing processes, monitoring, and decision-making;
- 3) establish legal mechanisms that integrate local values with national legal norms, including the harmonization of the Mining Law (UU Minerba), the Environmental Protection and Management Law (UU Lingkungan Hidup), and the Basic Agrarian Law (UUPA); and
- 4) develop a policy framework that unifies principles of distributive justice, ecological protection, and restorative justice in addressing mining conflicts on indigenous lands.

The enforcement of laws against illegal mining must, in practice, be accompanied by obligations of social and ecological restoration. It is insufficient for the state to impose criminal sanctions alone; it must also ensure restitution and environmental rehabilitation within affected *ulayat* territories. Such a restorative approach embodies the transformative justice that indigenous communities aspire to achieve.

#### D. CONCLUSION

Based on the findings and discussion of this study, it is evident that, from a juridical perspective, the state formally guarantees the existence of indigenous peoples (*masyarakat hukum adat*) together with the rights inherent to



them, including the right to *tanah ulayat*. However, the state imposes formal requirements for such *hak ulayat* to be legally protected. These include: the continuing de facto existence of the indigenous community; the condition that the existence of the community and its *hak ulayat* must not conflict with the principles of the Unitary State of the Republic of Indonesia; and the requirement that indigenous communities or their representatives register their *hak ulayat* over land in accordance with procedures prescribed by statutory regulations through the National Land Agency. Once registered and certified as *hak ulayat*, the state is legally bound to protect the rights of indigenous communities over their communal lands.

Nevertheless, in practice, there remains a legal vacuum regarding the protection of *tanah ulayat*, particularly when mining activities are carried out with the approval of customary authorities but without state authorization. This legal gap highlights the urgent need for a responsive, participatory legal framework grounded in the principles of simultaneous development and the recognition of communal rights.

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