

Implementation of the Right's Management of State Over Natural Resources of Mining in Paniai Regency

Frans Reumi
Kristina Sawen

Faculty of Law, Cendrawasih University, Papua - Indonesia

Abstract

Article 33 paragraph (3) of the Indonesian Constitution 1945 (hereinafter referred to UUD 1945) states that “the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the maximum benefit of the People and the mining products are managed to increase People’s welfare”. The explanatory of Article 33 of UUD 1945 states that State has the authority to control, manage and supervise the management or control of the minerals. Authorization of the State in Article 33 paragraph (3) implicates to the State responsibility to regulate, control and supervise the natural resource management for the prosperity of the people. In the context of the right’s management of state over the mining sector as referred to in Article 33 paragraph (3) of 1945 Constitution, there is no provision in the legislation, whether in the Law Number 11 of 1967 or in the Law Number 4 of 2009 that explains the definition and the scope of the purpose of the right’s management of state. The definition of the right’s management of state is found in the Basic Agrarian Law.

Keywords: The Right of Management of State; Mining; Paniai Regency

1. Introduction

Article 33 paragraph (3) of the Indonesian Constitution 1945 (hereinafter referred to UUD 1945) states that “the land, the waters and the natural resources within shall be under the powers of the State and shall be used to the maximum benefit of the People and the mining products are managed to increase People’s welfare”.¹ The explanatory of Article 33 of UUD 1945 states that State has the authority to control, manage and supervise the management or control of the minerals.² Authorization of the State in Article 33 paragraph (3) implicates to the State responsibility to regulate, control and supervise the natural resource management for the prosperity of the people. It is essentially to state that the state’s power as an institution or community organization is sourced from the social contract which is in nature as a form of unity to defend and protect mutual and personal authority and belongs to each individual.³

The political direction of the new order government in the history of its development in the mining sector generally grouped in 3 periods, which are the *Indische Miiinwet* period (S. 1899-214), period of Government Regulation in lieu of law Number 37 of 1960, and Government Regulation in lieu of law Number 44 of 19670, and Law Number 11 of 1967 on the *Basic Provisions of Mining*.⁴ Departing from the grim face of the natural resource management of mining during the New Order era, the mastery of mining materials held by the state tended to deny the producing regions and the local communities, as well as more oriented towards the capital interest.

In the current reform era, the establishment of the Law Number 4 of 2009 on Mineral and Coal Mining as a replacement of the Law Number 11 of 1967 on the *Basic Provisions of Mining* is expected that the mastery of mineral and coal by State is organized by the government and/or regional government according to the Law Number 4 of 2009.⁵ However the reality does not change, it even raised new problems which are conflicts between company and community around the mine, social conflict between community around the mine and company, and conflict between local community such as indigenous people and local government, as happened in the case of PT. Citra Palu Mineral (CPM) in Poboya, West Palu, Palu, Central Sulawesi

The establishment of the Law Number 4 of 2009 as the consequence of dynamic environmental change including the implementation of regional autonomy as stipulated into the Law Number 32 of 2009 on Environmental Protection and Management in which the regional government is given a greater role in carrying out the development in the region.⁶ The Law Number 32 of 2009 is further confirmed in the Government Regulation in lieu of law Number 25 of 2000 Concerning Central and Provincial Government Authorities as an

¹ Anang Prayitno, et al, 2006, *The Policy of Divestation Laws of Foreign Company in Mining Area* (Kebijakan Pengaturan Divestasi PMA Pertambangan), Research Report of Faculty of Social and Political Science and Faculty of Economics, Yogyakarta State University, p. 17.

² Abrar, 1999, *The State of Management over Mining based on the UUD 1945* (Penguasaan Negara Atas Pertambangan Berdasarkan UUD 1945), Dissertation, Padjajaran University, Bandung, p 178.

³ J.J. Rousseau quoted by R. Wiratno, et al, 1958, *the Great Thought of the Scholars on State and Law* (Ahli-Ahli Pikir Besar Tentang Negara dan Hukum), PT. Pembangunan, Jakarta, p. 176.

⁴ Ari Wahyudi Hertanto, *Contract of Work (Civil Law Perspective) - Kontrak Karya* (Suatu Kajian Hukum Keperdataan), **Law and Construction Journal**, 38th year, Number 2 April-June 2008, p. 203.

⁵ Article 4 of the Law Number 4 of 2009 on Mineral and Coal Mining.

⁶ See the Law Number 32 of 2009 on Environmental Protection and Management.

autonomous region in encouraging democratization, regional autonomy, human rights, living environment, the role of the private sector increasment and society which ultimately creates people's welfare.¹

The right's management of state over mining natural resource further regulated in Article 8 of Law No. 5 of 1960 on Agrarian Principles and TAP MPR No. IX/MPR/2001 on Natural Resource Management. Associated with the right's management of state over mining natural resource, the position of the gold mining area is in Nomouwodide Village, Bogobaida sub-district, Paniai Regency. Through the head of sub-service of General Mining of Mining Regional Office (Dinas Pertambangan) Papua Province, the Governor of Papua on October 23 issued a letter No. 540/767 regarding the granting of People's Mining Permit whose contents prohibit outsiders from carrying out gold panning and local indigenous communities can refuse the presence of miners and traders from outside Paniai.

In order to regulate and control the panning and the sales of gold in Bogobaida sub-district, the Paniai Regent on March 26, 2004 issued a Letter of Recommendation No. 138/24/2004 to the Head of Bogobaida sub-district to control and supervise every company that enters the mining area without having permission from the Paniai Regent. Based on the Regent's Letter, hence on December 2, 2004, the Head of Bogobadia sub-district formed a Gold Panning Supervision Team, but in terms of conduting its duty, it cannot be implemented optimally due to the strength of the officers who assisted the business actors. The business actors in fact can directly and secretly communicate with lucrative promises to the indigenous people who own the ulayat rights over the mining area. The result of it, the business actors can easily enter the gold panning location regardless of restrictions and the regulation from the Head of Bogobaida sub-district and the Paniai Regent.

Painai Customary Council/ Indigenous Community Institution of Mei "GAYA" Tribe, on behalf of the Paniai indigenous people, have told the entrepreneur for several times to stop activities and try to make the community benefit from this activity, but the business actors never gave any response under the argument that they have bought the location and have made a pegging agreement with the community who has the ulayat rights that are still lack of knowledge are easily deceived.

On May 27, 2006, the Paniai Regional Government Team investigated the location of the panning, and after that the Team recommended that regulations concerning the mining should be made immediately, but it could not be realized because at that year the Election was carried out. Only on August 26, 2009, Paniai Regent issued a Regent's Instruction Number 83 Concerning Temporary Closure of the Gold Panning Site. The purpose of the Regent's Instruction is to remind the business actors to arrange the permit and make an agreement with the indigenous people for mutual benefit in accordance with the Law on Special Autonomy of Papua. However, not all the gold panning business actors comply with the Regent's Instruction because the are indications of a business from the Police in that community mining area.

The authority to regulate the allocation, use, supply, maintenance, relationships of people with earth, water and space and legal relations between people and legal actions are aim to achieve the maximum prosperity of the society in the sense of happiness, prosperity and independence, just and prosperous sovereignty.² The regulation on the management and utilization of the natural resources of mining is needed in addition to maintain the wealth of mining resources so as not to run out quickly, and also to provide legal certainty in the conduct of mining business activities in accordance with Article 3 sub-section (f) of the Law Number 4 of 2009 on Mineral and Coal Mining, and articles 47-48 of the Government Regulation Number 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities.³

The mining regulation is the whole rule of law to regulate the authority of the state in the mining management and regulate the legal relations between the state and a person or legal entity in the management and utilization of mining. In this context, then, the role of the government besides having the authority of strategic functions in regulating mining management through various regulations, taking care of mining business by State-owned Enterprises and Regional Owned Enterprises, is also to perform supervisory functions related to management, and to regulate mining business licensing and environmental management in order to prevent pollution and environmental damage.

2. Implementation of the right's management of state over Management of Natural Resources of Mining in Paniai Regency.

The prosecution of the mining law must be more in favor of the interests of the people and the region. It is reasonable and understandable because it is guaranteed by the state constitution, precisely in Article 33

¹ See General Explanatory of the Government Regulation in lieu of law Number 25 of 2000 Concerning Central and Provincial Government Authorities as an autonomous region.

² Regional Representaive Council of Indonesia (DPD RI) and Faculty of Law Haluoleo University, 2010, *Analysis Policy Study of Relationship between the Government and the Regional Government on Sharing Profit on Management of Mining Natural Resources in Southeast Sulawesi* (Studi Analisis Kebijakan Hubungan Pusat dan Daerah tentang Pembagian Hasil Terhadap Pengelolaan Sumber Daya Alam Pertambangan Di Provinsi Sulawesi Tenggara), Research Report, Kendari.

³ See Article 3 sub-section (f) of the Law Number 4 of 2009 on Mineral and Coal Mining.

paragraph (3) of the 1945 Constitution. The Article 33 paragraph (3) contain a spirit who asserted that natural resources contained in Indonesian jurisdiction must be used "only and only" for the maximum prosperity of the People. Furthermore, it can be said that the spirit of Article 33 paragraph (3) is:

- 1) The elements of the earth and natural wealth, both natural wealth on the surface and underground wealth as objects;
- 2) State elements as subjects;
- 3) Elements of the people as objects, subjects, or targets of the utilization of agricultural products and natural resources

The three elements of the definition of Article 33 paragraph (3) of the 1945 Constitution, furthermore, can be described as followings:

1. All of the natural wealth within the Indonesian jurisdiction is controlled by the state. It means that any person, group, institution, and/or business entity, when taking, utilizing and enjoying the results of the natural wealth, without the permission of the state to enter the territory of illegal acts or criminal acts, can be punished according to the provisions of the legislation. With this provision, activities do not obtain legality are classified as illegal activities. From the illegal act, then, some related terms come such as illegal logging, illegal fishing, and illegal mining. It is an act and/or action for activities that takes and utilizes natural wealth without having legality from the state. Those natural resources constitute the potential or basic capital of development that can be utilized for the maximum prosperity of the people. In the point of view of the constitution, the natural wealth is an object of the state to be used for the benefit of the nation and state.
2. Departing from the description of point one above, it is known that natural wealth is an object of a state because natural resources especially mining resources are controlled by the state. Thus, the state is a subject. The state as the subject means the state as the ruler. The ruler is attached to power and authority. Both power and authority are concrete as a symbol of independence and sovereignty or in other word, it can be said as the representation of independence from the people. The state in carrying out its functions of power and authority is carried out through state institutions, and one of it is the executive / government. The government as a representation of state sovereignty also means the representation of the sovereignty of the people in carrying out its functions to take a concrete step to utilize the natural wealth within the Indonesian jurisdiction, for the maximum prosperity of the People.
3. The People in the context of managing natural wealth, especially mineral resources, occupy two positions, namely:
 - a. The People in their position as objects. It means that the people who become the first main target to receive benefits from the results of natural wealth in order to achieve a prosperous standard of living in the broadest sense, which are the people obtain social security, educational facilities, health facilities, etc. One of them is financed from the proceeds of natural wealth that is in the jurisdiction of Indonesia.
 - b. The People in their position as subjects. It means that the people have the same rights as other business institutions, in managing mining materials while utilizing them wisely. The concrete form of the people in utilizing mining material is that the people are given the opportunity to participate in the exploitation of the existing mining materials, while paying attention to the technical aspects of good mining and environmental balance or based on the concept of sustainable development.

In the context of the right's management of state over the mining sector as referred to in Article 33 paragraph (3) of 1945 Constitution, there is no provision in the legislation, whether in the Law Number 11 of 1967 or in the Law Number 4 of 2009 that explains the definition and the scope of the purpose of the right's management of state. The definition of the right's management of state is found in the Basic Agrarian Law. Its definition of "the right's management of state, which are the authority to:

1. Regulate and organize to change, use, supply, and maintain of the earth, water and airspace;
2. Determine and regulate legal relations between people with earth, water and airspace; and
3. Determine and regulate legal relations regarding the earth, water and airspace.

Article 2 paragraph (1) of Basic Agrarian Law furthermore states "Based on the provision Article 33, paragraph (3) of the Constitution and matters meant in Article 1, the earth, water and airspace, including the natural resources, contained therein are in the highest instance controlled by the State being and Authoritative Organization of the whole People."

In line with Article 2 paragraph (1) of Basic Agrarian Law, AP Parlindungan further asserts that conclusions of Article 1, 2, 3, 4, and 9 of the BAL are all in the context of national defence as stated in Article 2 paragraph 4 of the BAL. It states that "authority based on the the right's management of state mentioned in paragraph (2) of this Article is exercised in order, achieved the maximum prosperity of the people in the sense of happiness, welfare and freedom in the society and constitutional State of Indonesia which is independent, sovereign, just and prosperous.

The government in running the right's management of state, thus, will try to make several legal institutions to fulfill the provisions of article 4 in carrying out their duties, whether civil, or statehood, or non-civil or

statehood, which facilitates a person or entity to benefit from one area land, but not as the owner. In line with it, the Government Regulation Number 8 of 1953 affirms that rights to manage contains to:

1. plan, design, use of the land;
2. use the land for carrying out its duties; and
3. receive annual income / compensation and/or annual mandatory money.

The emergence of the formulation of the definition of the right's management of state as referred in the formulation of BAL and according to some experts, it cannot be separated from the historical context that the emergence of the formula is a form of liberation from the concept of the right's management of state applied and/or enforced during the reign of the Dutch East Indies. The argument is that the formulation of the right to control is only a form of concept liberation according to the colonizers, in line with what was stated by Bagir Manan, as followings:

"What is the definition of "managed by the state". There has never been any explanation or official clarity. But one thing agreed. Managed by the state is not the same as that owned by the state. This agreement relates to a form of reaction from the system or concept of the world that was used during the colonial period of the Dutch East Indies. The concept or better known as "basic principle", contains the definition of ownership. The state is the owner of the land because it has all the authority to carry out acts of ownership (*eigensdaad*)".

Understanding the right's management of state is starting from a concept of resistance in the form of liberation of confinement on the concept created by the Dutch East Indies government as an invader. In point of view the author, it is unwise because besides having lost or at least reduced the sovereignty of the country politically and economically in the context of the minerals management, it also tends to sacrifice the interests of the people, even though each tendency will be a sacrifice and loss of the other party. On the other hand, the formulation of the right's management of state in the context of mining, where the state in its position has the task to regulates, is none other than equating it with the concept of State's rights to control over land or rights of land. The existence of equalization of the concept of the right's management of state over minerals material with rights of land is an inaccurate definition, if not mistaken. At least, there are two main reasons for the misrepresentation, as followings:

1. Cultural and customary philosophical reasons. The right to manage in the sense of land ownership rights as the definition should already be as an implementation of respect for basic human rights, customs, and recognition of tribal diversity, and cultures and customs of concrete manifestations of diversity in a big family called the Unitary State of the Republic of Indonesia. It is the right's management of state in the context of land rights, where the state regulates land allotment, can be understood, because the land is directly related to the basic human needs of life concerning the house or housing, which stands on the land. Thus, if the state's "domein principle" on land is not implemented, which means it is a disavowal of the state's respect for the tribes' diversity, cultures, and customs of society. On the other hand, because the land is directly related to the fulfillment of basic needs related to the shelter, which also means that the land is a basic right that must be owned by the people, or in
2. Strategic technical reasons. From a technical-geological point of view, the availability of minerals as described above, are generally in the ground. Although Indonesia is rich in a variety of minerals, but not all of the regions have the minerals potential that can be exploited economically. In the framework of developing the country and the nation equally and justly, it is necessary to have a good management strategy for financing sources, one of which is through the control of mineral resources by the state, in the sense of the state in its position as the controller and regulator. The results of the minerals, then will be distributed proportionally by the state to all Indonesian people evenly.

The definition of the right's management of state in the context of land rights where the regulation can be owned by individuals or legal entities, with the definition of the State's rights to control over the minerals, must be truly distinguished. So far, the existence of obfuscation of the definition of the State's rights of control over the minerals, consciously or not, actually has encouraged the condition of inefficient use of minerals, because of the weak control of the state / government in terms of the mineral's management undertaken by the state. This reason is not excessive, the concrete examples and the problem of weak state control in the context of mining, is how we (read: state / government) have difficulty in obtaining natural gas supplies, as a cheap energy source for the benefit of the power plants, so to get 30% share, for the benefit of PLN alone, the state / government must go through a long negotiation phase with the Kontrak Karya work partners. It states that Kontrak Karya brings an advantage because of its equality in cooperating. It is truly an irony, in the case that when the state wants to obtain cheap energy sources, it must be half begging, even though the state constitution states that the state controls all the natural wealth, but in reality, when the state needs gas for the interests and concerns of the lives of many people, it was not easy.

The control and management of minerals of the State's / government's supervision is very weak and this is the evidence that the doctrine of the right's management of state must be ceased because it is merely to be

regulated. Furthermore, the right's management of state is interpreted by the state is only limited to create regulations it means that the concept violates and betrays the noble intent of the provisions of Article 33 paragraph (3) due to its interpretation is part per part and incomprehensive. Erroneous understanding of the definition has been going on for decades, it concretely implies that the state's economic gains is not maximally acceptable and enjoyed by the people. The incomprehension of understanding the right's management of state is because it is released from the aspect that used for the maximum prosperity of the people from one complete sentence in the provisions of Article 33 paragraph (3). It is a moderate opinion for the definition of the right's management of state, but the correlation is still within the corridor of the right's management of state over land. It is stated by Bagir Manan, as followings:

"The definition of the "right's management of state " should be: first, this right must be seen as the antithesis of the principle of domein (property, absolute) which gives authority to the state to carry out ownership actions that are contrary to the ownership principle according to customs. Ownership rights are based on communal principles and rulers are only as regulators. Second, the State's right of control must not be separated from the goal, which is for the maximum prosperity of the people. The state at first must first give the rights to the people who have been in real good faith using the land."

Recognizing the misrepresentation of the right's management of state that has been generalized between the right's management of state over the minerals and the right's management of state over land, besides have to be ceased. A new interpretation must also be formulated to the minerals management remains in government control, with the intent and purpose of taking as much as possible for the prosperity of the people. Indeed, it is not easy to reformulate a formula that can represent two different interests, which is investment interests that are more concerned only with economic benefits with the essence of the right's management of state for the maximum prosperity of the people. But at the very least, the definition formulation, on one side must be able to be used as a legal instrument that provides certainty of the existence of the factor of state's control over the mining and minerals management, so current reality will not be happen again, where the state from the sovereignty side deprived of his rights by the interests of individual capitalists / investments or a group of individuals, which in turn have to sacrifice the interests of the people. As an example, the case of natural gas supply for the benefit of the State Electricity Company.

The formulation of the right's management of state reflects the country's sovereignty over the control of mining materials better. According the author, it at least must fulfill the following elements:

1. The element of state control over direction, policy and allotment or utilization of minerals, especially the minerals that concern the lives of many people. A concrete example is the government has the authority to control the percentage of the minerals that can be exported and how much the percentage is prioritized to meet domestic needs, especially that is related to national defense, security, and economic stability.
2. The element of state regulation. In this context, the state provides a limitative rule, which includes the right to delegate the management to the third parties, the right to regulate the allocation of the minerals, especially in regard to the interests of supporting the strategic industrial sector, as part of developing the national independence. This means that mining activities are basic industries that must sustain the interests of the people and domestic industries, which must be distributed fairly and proportionally. Fair and proportional distribution is carried out in the context of the interests and integrity of the nation, which is the producing region must obtain a proportionate share, and some others will be distributed fairly to the government and other regions.
3. Elements of state authority. It is the implementation and embodiment to extract the yield and benefits of minerals economically. The concretization of this right is that the state has the right to automatically collect the royalties, taxes, levies, and the right to share ownership as a representation of the state's control over special minerals and other mining assets.
4. Elements of state protection. The state / government supervises the implementation of mining operations, especially the supervision and control in the aspects of a good and correct mining system, by prioritizing the principle of long-term benefits and the carrying capacity of the environment for the benefit of sustainable development.

The elements of the right's management of state as stipulated above are the minimum elements that must be contained in the spirit and in defining the right's management of state over minerals within Indonesian jurisdiction. Thus, the author can formulate the definition of the state's right of control the minerals contained in the Indonesian jurisdiction as follows:

"The right's management of state over the minerals is the right and authority of the state in controlling, regulating, and taking the benefit and proceeds of the management of minerals which in the implementation it must prioritize the national needs and interests in order to maintain the stability of defense, security and the state's economic resilience that distributed fairly and proportionally to achieve the maximum prosperity of the people."

One of fundamental problems as a nation at this time is the strengthening of demands. Some rich regions

have minerals to obtain a decent share because it is considered that the proportion of the distribution carried out today tends to lack a sense of justice. In fact, the negative impact caused by its operation of the mining business activity is the area concerned itself. In the name of the interests of the regional people, it is not uncommon for the regional elites to voice their aspirations that lead to the demands of breaking away from the Unitary State of the Republic of Indonesia. One of the answers to this problem is that there is no other choice that the government must have the political will to reformulate the policy of the minerals management contained within Indonesia. These policies include to:

1. revise various mining policies which have tended to prioritize foreign interests over national interests;
2. re-inventoriate the minerals potential in all regions;
3. create a long-term planning of the management and utilization system of minerals that are harmonized with the design of the policy for developing the national interest-based industries and environmentally sound.
4. calculate proportions along with fair and proportional distribution within the framework of the interests and integrity of the Unitary State of the Republic of Indonesia.

The policy corridor mentioned above is not intended to ask the government to cancel all forms of cooperation that have been running so far. However, through formal authority owned by the government, it is urging the government to revise the proportion of cooperation, with the content and format of cooperation that more reflecting aspects of state sovereignty inside it. Thus, the rearrangement of the cooperation that has been running, it is expected step by step to encourage an increasing in the benefits and results of the mineral material whose cooperation has proceeded. Whereas for the management of new minerals, the IUP given to the private sector must be formulated better than the proportion that has been received at this time. It means that the government through an authority agency in matters of minerals must be able to formulate regulations and policies that favor the interests of the people. The formulation of the policy, then, must be followed by the implementation in a responsible and consistent manner, in order to achieve the goals and objectives as much as possible which is the prosperity of the people. The law is not an aim, but only a bridge, which must lead us to the idealized idea. It needs special attention and affirmation because it often happens that the spirit of legal reform is not followed by the spirit of carrying out and enforcing, or do not let the spirit of legal reform only become an aim and stop at the stage of the legislative project.

a. The Subject of the Right's Management of State

The subject of the right's management of state is a party or institution which is constitutionally and/or by rule is the party that has the most right in the matter of control of a particular object. The subject of the right's management of state over minerals according to Article 33 paragraph (3) is the state. In carrying out its function, the state delegates through the state institutions, which is the executive/government. It means that the government has the power to plan, formulate regulations, carry out steps and actions on the management, utilize and extract of minerals from the Indonesian jurisdiction.

The power held by the government is inherent in the aspects of authority and responsibility, both to implement and to provide liability for the implementation of the authority that has been carried out. As a subject of the right's management of state, the government based on the authority its owned has the following basic functions to:

- a. Rule, authorize, and be responsible for the management, utilization and extraction of minerals;
- b. Conduct legal forced efforts ranging from reprimands, warnings, to termination of mining business activities that violate the rules and ignore the principles of sustainable development.

In the context of the importance of power in guarding the implementation of law in the midst of the nation and state life, Mochtar Kusumaatmadja emphasized that "power is an absolute element in a legal society in the sense of society governed by and based on law. Analytically, it perhaps can be said that power is a function of an organized society.

Looking at the description above, it can be concluded that the subject of the the right's management of state over minerals is the state that implemented by the government as a state institution guaranteed by the state constitution, that is Article 33 paragraph (3) of the 1945 Constitution. If there are other parties or third parties those who carry out mining business activities, the permission is only given by the government for the sake of control, regulation and utilization authority in the hands of the government.

b. The object of the Right's Management of State

The objects of the right's management of state over minerals are the minerals themselves. As the objects, the minerals have functions as an object, the right belongs to, power and authority. The object of the right's management of state in the context of minerals is something or object that is cultivated, where the object or thing is meant to be minerals, which is then sought for the maximum prosperity of the people. Looking at the meaning of the object of the right's management of state in the context of minerals, in authors opinion, it consists of two types, namely the minerals and the people.

The minerals as the main object is a source of state revenue, while the people are the target object of the utilization and yield of minerals, used as a source of livelihood for the nation and state. In addition, besides as an

object, the people can actually act as subjects, that in their position as mining business operators, through permits issued by the government. Placing the people as one of the subjects of the management of minerals is that development is not only limited to economic development, but also includes broader aspects and objectives. In the opinion of the author, the development in the context of the utilization of minerals must aim for:

- a. Increasing the national economic resilience;
- b. Improving the ability or skill of the people who conduct mining activities, as part of the overall human resource development; and
- c. Increasing the independence of the nation, because through the people in its position as a business actor in mining activities, of course there will be no escape from the proceeds of exploitation of minerals, on the contrary it will build savings and the ability of domestic capital.

3. Conclusion

It can be concluded that in the context of the right's management of state over the mining sector as referred to in Article 33 paragraph (3) of 1945 Constitution, there is no specific laws both in the Law Number 11 of 1967 and in the Law Number 4 of 2009. The definition of the right's management of state is found only in the Law. No. 5 of 1960 on the Basic Agrarian Law. In terms of the subject of the the right's management of state over minerals, it is the state as stipulated in Article 33 paragraph (3) of the 1945 Constitution. Regarding to optimalization of mining management in Paniai regency, the regional government creates the Regional Government and the Regent's Instruction to govern the mining matters and to control the ming utilization especially for the business actors.

Bibliography

- Abrar, 1999, *The State of Management over Mining based on the UUD 1945* (Penguasaan Negara Atas Pertambangan Berdasarkan UUD 1945), Dissertation, Padjajaran University, Bandung.
- Anang Prayitno, et al, 2006, *The Policy of Divestation Laws of Foreign Company in Mining Area* (Kebijakan Pengaturan Divestasi PMA Pertambangan), Research Report of Faculty of Social and Political Science and Faculty of Economics, Yogyakarta State University.
- Ari Wahyudi Hertanto, *Contract of Work (Civil Law Perspective) - Kontrak Karya* (Suatu Kajian Hukum Keperdataan), Law and Construction Journal, 38th year, Number 2 April-June 2008.
- J.J. Rousseau quoted by R. Wiratno, et al, 1958, *the Great Thought of the Scholars on State and Law* (Ahli-Ahli Pikir Besar Tentang Negara dan Hukum), PT. Pembangunan, Jakarta.
- Regional Representaive Council of Indonesia (DPD RI) and Faculty of Law Haluoleo University, 2010, *Analysis Policy Study of Relationship between the Government and the Regional Government on Sharing Profit on Management of Mining Natural Resources in Southeast Sulawesi* (Studi Analisis Kebijakan Hubungan Pusat dan Daerah tentang Pembagian Hasil Terhadap Pengelolaan Sumber Daya Alam Pertambangan Di Provinsi Sulawesi Tenggara), Research Report, Kendari.