

Mining Work Contract and the Environment: A Philosophical Approach Hengki Firmanda^{*1} & Mahmud Hibatul Wafi²

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ABSTRACT: This study aims to critically describe the mining contract of work using the perspective of environmental philosophy, as well as to formulate a reflective mining contract of work oriented to the eco-humanist paradigm. This study uses a qualitative approach through a literature study of the contract of work of PT. Freeport and PT. Newmont, as well as other related literature. Data analysis in this study used Nvivo 12 analysis and a hermeneutic approach. The results of this study show that nature, the environment, and local (customary) communities have not been positioned as subjects in the mining contract of work. Overall, the contract of work tends to emphasize the interests of the company and the state. In other words, the philosophical basis for the formulation of the contract of work is very anthropocentric rather than eco-humanist, which places all elements involved in mining activities in balance. In addition, the mining contract of work of PT. Freeport and PT. Newmont has not included or accommodated religious principles as a principle in contracting. This religious principle is representation of the values of Pancasila, especially the first principle, which is the ideological and philosophical foundation of the nation and state.

1. INTRODUCTION

The existing Contracts of Work (CoW) have not taken full attention of the impacts of mining activities, such as pollution and environmental destruction. Poor regulatory policies and anthropocentric fanaticism are the reasons why mining contracts of work are alienated from ecological orientation (Dutu, 2016) and Pancasila principles. Thus, the main problem lies in the paradigm used by policy makers and mining business actors in formulating a Contract of Work (CoW).

According to James Fox (2005) the right policy begins with a complete understanding of resources. Pollution and environmental destruction are the concrete impacts of neglecting the ecological orientation, which not only poses risks to the contracting parties, but is also felt by many people (Erb et al., 2021). Several cases of environmental pollution and destruction that are based on contracts include the cases of Rio Tinto, Newcrest, PT Newmont, PT Freeport, PT Indo Muro, PT Meares Soputan Meaning, PT Nusa Halmahera Mineral and other companies.

The study of mining contracts of work that was never completed has two important meanings. First, the study of mining contracts of work is an evaluation of the "policy map" that has not been able to resolve environmental problems which are the direct impacts of mining activities. In other words, the regulations and policies that have been formulated have not been able to represent partiality to nature and the environment. Second, this study is also important to show the "problem map" that is still on the research and policy agenda. This research opens up new space for better understanding and management of natural resources. In general, this study aims to describe critically and exploratory mining contracts of work in the perspective of environmental philosophy, and reflectively formulate the contribution of ideas to the mining contract of work in Indonesia.

Existing research has not analyzed the root causes that cause the environmental impact of mining activities to be preserved. Previous studies can be mapped into 2 categories. First, a study of mining regulations that focuses on its implications for company activities (Raharjo & Rokhim, 2020; Riyadi, 2021) and mining company taxation (Budiyono & Yulianti, 2021). Second, the study of mining contracts of work related to state sovereignty and conflicts in society (Erb, 2016; Zada et al., 2018; Hidayana et al., 2020). From these two trends, not much attention is paid to ecological

considerations in the formulation of mining contracts of work which have serious impacts on the sustainability of nature and local communities.

2. LITERATURE REVIEW

Increasing ecological sensitivity at the global level has made companies operating in the extractive sector, especially mining, pay great attention to environmental and health issues. Currently, issues related to mining have become the focus of attention of various authors with diverse perspectives, such as threats to the environment and health (Gautam et al., 2018; Schrecker, et al., 2018), community resistance to mining activities (Conde, 2017), economic development (Banks, 2002), and corporate social responsibility (Selmier, 2015; Adebayo & Werker, 2021).

The impact of large-scale mining activities is closely related to policy formulation. Mining Contracts of Work between the company and the state are the product of policies regulated by the state through law. Riyadi (2021) points out that Law no. 3 of 2020 concerning Mineral and Coal Mining greatly determines the formulation of Contract of Work which also directly affects mining business actors.

On the community side, efforts to negotiate with companies in making decisions for mining companies continue to be carried out. The existence of the community that tends to be ignored encourages a space for dialogue and negotiation. The community's collective awareness emerged after realizing that the benefits of mining were not commensurate with the destructive impacts that arise (Rosyida et al., 2018). Research by Knizhnikov (2021) shows that the insistence on environmental transparency from mining companies is one of the reasons for increasing public attention and space for dialogue.

Over the past decade, there has been a global shift towards recognizing the rights of local communities. However, at the same time, natural resource extraction which violates people's rights continues with increasing attention from the international public (Lawrence & Moritz, 2018). Recognition of local communities is shown by their participation in mining activity decision-making, and this must be stated in writing in the contract of work (Th'eriault et al., 2021).. Thus, sustainable development through mining does not discredit the rights of local communities (Selmier & Newenham-kahindi, 2021). This research examines reflectively and critically on the mining contract of work of PT. Freeport and PT. Newmont in relation to environmental issues, religious principles (based on the first principle of Pancasila), and local communities.

3. METHODS

Contract of Work Mining PT. Freeport Indonesia and PT. Newmont Minahasa is the focus of this research. This is a qualitative research in which primary data is collected from library sources related to the research topic. The mining contract of work as the object of research material is analyzed from the perspective of environmental philosophy. This research was conducted in several stages. The first stage is to formulate the main research questions related to the fundamental issues of the mining contract of work in the perspective of environmental philosophy. The second stage, data collection is done by collecting primary data sources, namely literature and documents related to the object of research material, and secondary data sources are literature that supports the formal object of research. Furthermore, the data analysis in this study used Nvivo 12 analysis and a hermeneutic approach. This approach is applied to find the meaning contained in the research data. Schleiermacher in Kaelan (2005) states that the working principle of hermeneutics is to reveal the *objective geist* contained in the object of research.

Mining Contracts of Work: Environmental Philosophy

Mining management in Indonesia was also recorded during the Srivijaya and Majapahit kingdoms, namely with the existence of metal tool craftsmen. At that time the management obtained permission from the king, both orally and in writing, which was sometimes written on the midrib of palm leaves. Mining management usually uses customary law with the *Maro* concept or profit sharing (Hayati, 2015: 17).

In Indonesia, human relations with mining management have started since before Indonesia's independence until now. Considering the potential for mining resources in Indonesia is high, because as mentioned by Sujono (2004), Indonesia is located on the Pacific plate in the north and the

Australian plate in the south. The two plates often collide and cause natural disasters, but not infrequently also bring grace that results in a complete tectonic order.

Basically, humans and their entire existence, including their cultural development, will be threatened when separated from their habitat and environment, even the entire universe, including the ecosystems of the planet Earth, is a tightly knitted network in a dynamic pattern of interaction between biotic and abiotic organisms (Keraf, 2016: 81). This shows that the interaction between humans and nature has been bound since the existence of the universe. This understanding is more often closer to the needs of one-sided humans, so it is as if nature exists only to satisfy human desires.

Responsible environmental management has not become a culture. Without respect for the right to life of other created beings, humans are competing to drain the bowels of the earth for the sake of life. This crisis demands serious thought and action for a better future. Humans should limit themselves in order to avoid situations that afflict themselves and nature as well as for future generations (Chang, 2005: 29).

Mining management was initially regulated based on Law Number 11 of 1967 with a mining Contract of Work (CoW) mechanism for mineral mining, and a Coal Mining Concession Work Agreement (PKP2B), as well as using a mining business permit (IUP) mechanism for domestic management. Since the enactment of Law Number 4 of 2009 the management mechanism has been standardized into IUP, except for contracts that are still valid, they still use a Contract of Work or PKP2B. Furthermore, the government ratified Law Number 3 of 2020, which mechanism is almost the same as the previous law. The most controversial aspects of this law are the divestment requirements for foreign companies and the replacement of Contracts of Work with exploration permit system and dual exploitation (Dutu, 2016).

Table 1. Indonesian Mining Management Law

Law	Mechanism	Annotation
Law Number 11/1967 concerning Basic Mining Provisions	Contractual	-
Law Number 4/2009 concerning Mineral and Coal Mining	Contractual and licensing (<i>vergunning verhoudingen</i>)	Include IUP (Mining Business Permit)
Law Number 3/2020 concerning Mineral and Coal Mining	Contractual and licensing (<i>vergunning verhoudingen</i>)	Include IUP (Mining Business Permit)

Since mining resources have been managed by means of a Contract of Work, PKP2B, or IUP, there have been several significant impacts in Indonesia, both positive and negative. The positive impact is that the results of the management of mining resources provide an adequate contribution to the Indonesian State Budget, so that Indonesia can increase development, both physical and non-physical. In addition, it also helps open new job opportunities for people in Indonesia. The positive impacts of mining management in Indonesia, would be out of balance with the negative impacts arising from Contracts of Work, PKP2B, and IUP, namely resulting in pollution and natural destruction, either in the short, medium or long term. Poor enforcement of regulations has led to many adverse impacts on the environment and social structures (Erb et al., 2021). The social impacts that occur are in the form of communal conflicts and violence between the state and mining companies, mining companies and communities in mining areas, conflicts between mining companies, conflicts between government agencies in terms of mining operations, and conflicts between communities themselves (Redi, 2017: 23; Hidayana et al., 2020).

The larger context as stated by Keraf (2010) implicitly mentions the interests of multinational companies from developed countries. Both creditor institutions and international institutions actually work to secure the economic and business interests of developed countries, especially the economic and business interests of multinational companies. The political and economic power of developed countries has been used intensely as a tool to suppress developing countries.

Keraf (2010) further mentions that the most obvious example of politics being used as a tool to protect the operations of multinational companies in environmental issues is the case of Freeport Indonesia and Newmont. From the very beginning its operations, especially Freeport, were supported by political power based on the American government's political concessions, in order to provide convenience in their favor, at the expense of Indonesia's interests. Pressure is in the form of easing environmental issues for American companies, especially Freeport, which has implications for Indonesia's economic interests, trade relations, and investment with America.

Mining business activities that change nature will cause changes in the water system in the surrounding area, due to the addition of surface water flow (Trihastuti, 2013: 125), so the possibility of landslides is quite large. The water often flows into rivers and carries chemicals that are harmful to river biota and the people who use the river water. Mercury waste from mining activities has an impact on the lives of surrounding creatures and communities in the mining area, such as in 2004 there were residents who were positively contaminated with mercury above the normal limit, this was due to environmental pollution carried out by PT. Newmont Minahasa (Salim, 2007: 30).

The extent of the impact resulting from mining activities, therefore mining management is not solely made by one party or group. Mining management so far with a contract of work mechanism has emphasized the anthropocentrism aspect too much. Humans become complete subjects who manage nature for their own interests and benefits. The nuances of anthropocentrism in the contract of work can also be seen in its clauses, especially in the contract of work of PT. Newmont and PT. Freeport. The affirmation of nature as a subject is not stated in the contract of work. Articles on the environment are only listed in one article and seem to be just a formality. The contract of work as a whole only focuses on the interests of the company and the state.

Based on the search results with the Word Frequency Query feature QSR Nvivo 12 from Work Contract of PT. Freeport and PT. Newmont, the word "company" is the word with the most frequency, followed by the word "government". The word "environment" is not included in the Word Cloud of the dominant 100 words as shown in figure 2 below.



Figure 1. Word Cloud pada Nvivo 12 Plus

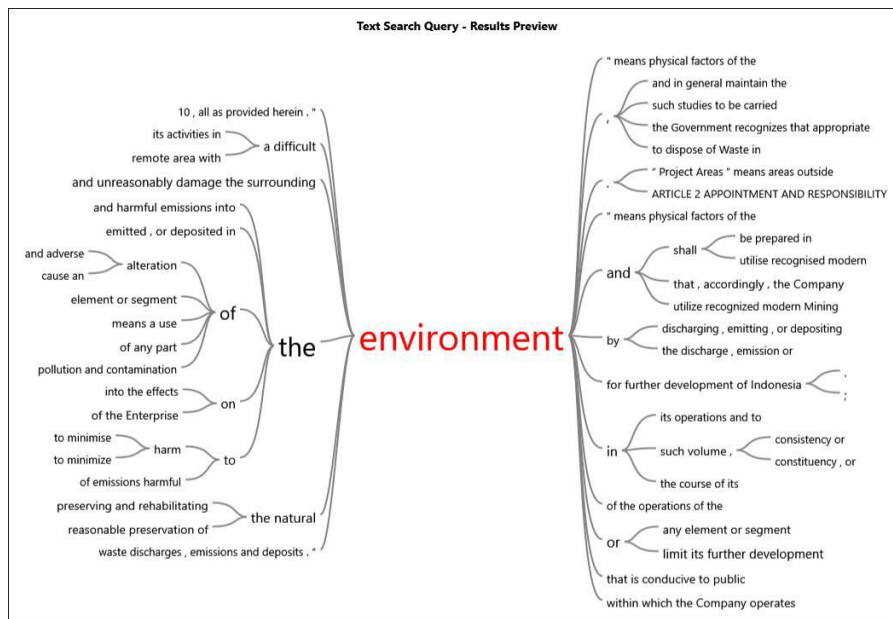


Figure 2. Word Tree – Topic of Environment in Contract of Work
 Source: Primary Data, Nvivo 12 Plus Data Processing

Figure 2. above shows the context and sub-theme of “environment” in the contract of work from PT. Newmont and PT. Freeport, which indicate the extent of attention and consideration of environmental aspects in mining contracts of work. The figure above also provides information that attention to the environment is focused on impacts rather than preventing or treating the environment as a subject. In other words, natural resource management contracts must provide an equal footing between the company and the environment in the contract, including when there are fundamental changes (Firmanda, 2020).

The mining contract of work undergoes 3 (three) contract phases, namely the pre-contract period, the contract period, and the post-contract period (Salim, 2008; Parmitasari, 2019). In the pre-contract period, or before the contract was made or a contract was to be made, the role of reason and conscience had to have a place. Reason and conscience are positioned as seekers of knowledge about nature, assessing proportionally how the goals are to be achieved.

The ideal mining contract of work is life-oriented. The life in question is living together, and obtaining proportional rights. Skolimowski (1981) mentions that all philosophies have only one justification, namely improving the quality of life. Mining work contracts are also expected to be oriented towards improving the quality of life. During the pre-contract period, people are expected to have an understanding that this mining contract of work is made to improve the quality of life. At the stage of the contract period, the first step is to position nature as the subject. The mining contract of work is a multidimensional contract, meaning that this contract is a link to existing contracts, namely social contracts, private contracts, and ecological contracts. The parties or the subjects in the contract are humans, the state, the company and nature itself. The position of all the parties is proportional before the contract, so their rights and obligations must also be treated proportionally.

In the post-contract period, namely during the execution of the contract. This period is a very important period because the parties often default, and sacrifice nature and society itself. At this time the position of reason and conscience also get significant role, positioned as a compass of wisdom and virtue in managing natural resources. Nature and its contents such as animals and plants also have reason, as Capra said that the cognitive and emotional life of animals and humans are only different in degree (Keraf, 2016: 121). Thus, nature is no longer positioned as an object, but as a partner of humans, because nature is basically a subject, as stated by Bakker (2005) that nature must be positioned as a human partner. If humans make nature a partner, then there is a space for dialogue between humans and nature itself. Human relations with other humans, parties relationships with social communities, and human relationships with nature can be seen in the image below:

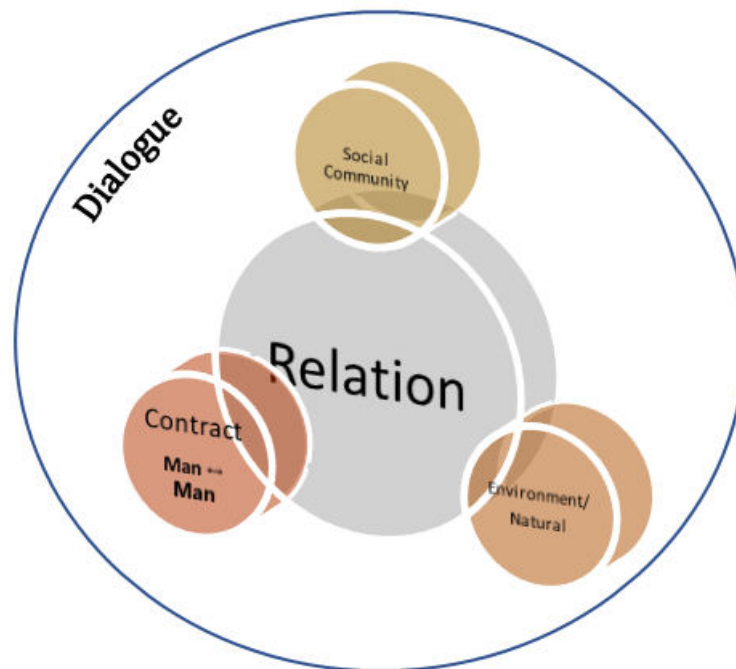


Figure 3. Map of Relationships between Nature, Humans, Social Communities, and Contracts

Religious Principles in Mining Contracts of Work

The mining work contract of PT. Newmont and PT. Freeport have not included or made religious principles as principle in making contracts. The fact can be seen in the articles on the contract of work of PT. Newmont and PT. Freeport still does not contain an understanding of religious principles. This religious principle is also by consensus (Pancasila in the collective general sense), since the Newmont's contract and the renewal of Freeport's contract until now, there has been no regulation that regulates this principle.

The importance of this religious principle as the spirit of all existing principles, because the religious principle is a derivative of the first precept, namely "Belief in the One Supreme God". This religious principle is also the identity of the Indonesian nation, which in the context of customary law the main principle is the religious-magical principle. This means that the entire context of customary law in Indonesia contains religious principles. Erwin (2015) mentions that one of the cultural values of customary law that can be used as a guide for the formation and implementation of law in Indonesia is religious principles. Religious magical nature means that legal behavior or legal rules are related to belief in the metaphysical and teachings of the One Supreme God.

Religious principle is very important to be used for managing the relationship between humans and nature in Indonesia, because this principle is the spirit and at the same time the identity of the nation. It is said to be national identity, because religious principles are internalized within individuals, so that in acting and behaving, indigenous peoples in Indonesia always present their religious atmosphere. Notonagoro (1980) states that we have Pancasila in tri-prakara, in three types, which we have together, so there is no conflict between Pancasila-State, Pancasila-customs-culture, and Pancasila-religious.

Sudjito (2014) mentions that religious principles always present a purpose and purpose for the creation of something. Religious principles can also be said as an effort to bring God into the subject, so that the subject acts according to his "good nature". Religious subjects are subjects who affirm themselves to obey God. Obedience to God Almighty can be learned through religion. Religion teaches that the subject must respect other subjects, so that religion can raise the degree of the subject. Respect for these other subjects can improve the quality of life, as stated by Skolimowski (1981) who states that religion is a phenomenon that improves the quality of life. Respect for other subjects makes the subject's egoism and greed fade, so the subject always tries to help other

subjects. In this context, the main essence of religion can develop, namely transforming reality with the intention of forming a humanist and altruistic human (Skolimowski, 1981).

This religious principle needs to be used as a spirit in the manufacture or renegotiation of mining contracts of work, because this principle comes from the derivatives of the First Precepts of Pancasila and the philosophy of the Indonesian indigenous peoples. This principle has also existed before other principles in natural resource management. Kusumaatmadja (2013) mentions that it is better to develop national law, prioritizing principles that are generally accepted by nations without leaving the original legal principles or customary law that are still valid and relevant to modern world life. The religious principle is a principle that is often used by indigenous peoples from the past until now, and is still relevant to the context of the theistic modern world.

Indigenous Law Communities as Contract Subjects

The subject of the contract is the parties who have a role in the contract, whether it is the parties or outside the parties who make the contract directly. The parties who make the contract directly are the parties that are written with direct confirmation in the contract itself. The other parties are the parties who have a relationship or who will receive the impact of the contract.

In modern law, the subject of the contract can be divided into a person or *natuurlijk persoon*, and a legal entity or *recht persoon*. *Natuurlijk person* is a legal subject that is formed naturally and stands by itself, so that there are rights and obligations that exist within the subject itself. *Recht person* is a legal subject from the results of the formation. *Recht persoon* are usually more institutionalized and get ratification, and have inherent rights and obligations (Black, 2000). Examples of *recht persoons* are Civil Partnership, Firm, CV, Limited Liability Company, Foundation, Cooperation, Association, and Community Organization.

Customary law communities are the oldest legal subjects in Indonesia, considering that indigenous peoples live in an atmosphere of togetherness and kinship. Individuals are not the main concern for customary law communities, but are bound in groups, such as tribes, clans, and other customary law community groups. The people who are in the indigenous community are family, so the existence of the individual is tied to the existence of the community. If an individual of the customary law community has a relationship with another individual of the customary law community, the first thing to be introduced is the community. Likewise, if there is an individual who commits a crime, then the settlement is through the traditional leader (Soetoto et al., 2021).

It can be said that the involvement of indigenous peoples in making mining contracts for Newmont and Freeport has not been positioned as subject in the contract. They are even treated as barrier and often discriminated against because they interfere with mining activities (Spiegel, 2012). Referring to the mining contract of work of PT. Newmont and PT. Freeport and the Government of Indonesia, in its articles, not contain the rights and obligations of the indigenous peoples in the area where the contract operates. The absence of this involvement indicates that the mining contract of work is not yet pro-indigenous and closes the negotiation space, so that the community do not know the types of benefits that can be received from mining activities (Adebayo and Werker, 2021).

Basically, indigenous peoples must be involved in every phase of the contract, namely in the pre, period, and post-contract phases, because the contract operation area is the area of the customary law community, and the place where indigenous peoples seek life, and interact with nature. So far, indigenous peoples have not been involved in contracts. Indigenous peoples only get a role in the company's program called Corporate Social Responsibility (CSR).

In making the mining contract of work for the Newmont Nusa Tenggara Company, customary law communities have not been positioned as subjects in the contract. In fact, the customary law community lived in the contract area, even before the existence of the Unitary State of the Republic of Indonesia. The customary law community whose territory is adjacent to the Newmont mining contract of work area is Cek Bocek Selesek Reen Suri. Customary law communities are communities with rights, legal subjects and owners of their customary territories. The reality is that customary law communities are often not considered to exist. This experience was also shared by the indigenous people of Cek Bocek, who had lost access to their customary lands after the mining exploration of PT.

Newmont Nusa Tenggara in the 80s (Anindita, 2015). The impact is that the Cek Bocek customary law community cannot enter their customary land, which used to be where they sought their daily lives.

Concrete evidence that the area is the territory of the Cek Bocek customary law community is the existence of hundreds of years old burial complexes in the areas of Dodo Aho, Bakal Bila, Sury, Bera, Kesek, Langir, Lawang Sasi, and Pengu. The complex is the ancestral grave of the Cek Bocek customary law community. Indigenous peoples always hold various cultural-religious rituals related to the graves of their ancestors as a sign of respect. The annual ritual carried out is the traditional Jango Kuber (grave pilgrimage) ritual, which is an annual religious tradition before the month of Ramadan to honor ancestors (Anindita 2015; Gunawan 2018).

State recognition of customary law communities is still considered selective. Puri & Pujiriyani (2015) mentioned that the Cek Bocek Selesek Rensury community is recognized by the Sumbawa Regency government as a native Sumbawa community, but not as a customary law community. The government only recognizes the Tanah Samawa Customary Institution (a new form of the Sumbawa Sultanate) as the only customary institution in Sumbawa Regency, so that the Cek Bocek indigenous people are considered not to own customary land.

The same thing also happened to the contract of work between the Government of the Republic of Indonesia and PT. Freeport Indonesia Company, where there are two major tribes affected by the contract of work. The two tribes are the Amungme Tribe and the Kamoro Tribe. Both tribes are located in the central mountainous area. The Amungme live in mountainous areas and the Kamoro live in watersheds to the coast. The area of the Amungme Tribe is the Sudirman Mountains area (also known as Cartenz Toppen), whose peak is called Nemangkawi Ninggok (the peak of eternal snow). The Amungme make the area a sacred area. Kafiar (2013) said that this central mountainous area is used by Freeport to explore and exploit gold, silver and copper mining.

Freeport's Contract of Work, like Newmont's Contract of Work, does not yet place customary law communities as subjects. In fact, the Amungme and Kamoro tribes were not involved in making and renewing the contract of work. Ronny Nakiaya as Representative of the Kamoro Tribe said that since entering Timika Papua in 1967, Freeport and the Government of Indonesia have never involved and respected the rights of indigenous peoples in any negotiation process. The customary land rights in the name of investment and contract were taken by Freeport without any discussion with the customary law community. Freeport has only contributed to indigenous peoples since 1996 through its CSR (Corporate Social Responsibility) program (Ariyanti, 2017).

Odizeus Benal as Chairman of the Amungme Indigenous Peoples in the Timika Papua area said that they were not involved in making decisions regarding the use of natural resources in their territory, including Freeport. The neglect of the rights of indigenous peoples has occurred since the Contract of Work I in 1967. The government and Freeport have unilaterally exploited mountains and lands belonging to indigenous peoples. The impact is pollution, destruction of land and the environment due to the dredging of the mine, as well as indigenous peoples suffering from health problems due to chemical waste from rivers and air (Sutari, 2017).

The facts show that the contract of work between the Government of the Republic of Indonesia with Newmont and Freeport has not treated indigenous peoples as subjects in the contract. The proof is that since the time of making the contract of work until now, indigenous peoples are not involved in making decisions, even though the impact of the contract of work is felt directly by the community, such as environmental pollution, the impact on public health, and the emergence of vertical and horizontal conflicts in the community.

4. CONCLUSION

The mining contract of work in the perspective of environmental philosophy is a balanced trust relationship between fellow subjects, which prioritizes eco-humanism and the values of Pancasila (the Indonesian context), so that it can affect social life, individual, spiritual, ecological, and political. A philosophical understanding of mining contracts of work provides the basis for the development of eco-contracts based on Pancasila values and respect for local communities. Mining activities that

ignore ecological and humanitarian aspects start from the stage of inappropriate policy formulation and decision making. In addition, existing policies should be accompanied by implementation efforts that are supported by various parties.

Because of the crucial importance of the findings of this research, policy makers need to prioritize environmental issues in mining contracts of work in the midst of a global ecological crisis that has the potential to threaten the balance of the world. Therefore, the old paradigm that places the environment, nature, and local communities as objects is no longer relevant, if the main orientation is to conserve nature and environment.

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