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The Principle of Freedom of Contract in Natural Resource Management Contracts: Key Points and Impacts

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Abstract:- This study explores and utilizes the principle of freedom of contract in natural resource management contracts. By elaborating on the basic principles, key points, and their impact, this study is intended to provide insight into the importance of interpreting the principle of freedom of contract in the formation and execution of contracts in the field of natural resource management. A conceptual, statutory, and case approach is used in this research. This study was conducted by inventorizing, systematizing, and interpreting the relevant norms. This research argues that agreements made by the government with the private sector with the object of natural resources influence the application of the principle of freedom of contract. The theories used are agreement theory, authority theory, and responsibility theory. The results show that in the civil context, agreements are very private. Still, for natural resource objects, the principle of freedom of contract cannot be implemented freely in the contract, even though the agreement is made notarially. The practice of this principle is expected to be interpreted alongside the principle of good faith related to the object of the management agreement, which applies locally as part of the implementation of regional autonomy, nationally or internationally.

Keywords:- *Agreement; Management; Natural Resources; The Principle of Freedom of Contract.*

I. INTRODUCTION

Natural resources are concerned with the environment and sustainability. It is an issue in almost all developing countries. The environmental and natural resource issues have a domino effect on economic issues, such as in Asia, Africa, and Latin America. According to Effendi & Ristriadi (2020) fluctuations in the financial benefits of natural resources cause economic problems. It happened around the beginning of the 1970s until now. As Siswanto in Nugroho's revelation (2022), implementing environmental protection and management in the context of environmentally sustainable development must pay attention to the level of public awareness and the development of the global environment, as well as international legal instruments relating to the environment. Deforestation, forest burning, *legal/illegal logging*, and unlicensed mining cause global warming, flooding, and ozone depletion. The development of technology also causes positive and negative impacts on the environment, while a sustainable climate must continue to be pursued. A sustainable environment can be referred to as everything that surrounds living beings that affects their existence with conditions maintained naturally or with the intervention of human hands without any time constraints Effendi & Ristriadi (2020). The activities that focus on the environment must refer to international agreements that aim to defend the environment. For instance, the International *Organization of Supreme Audit Institutions Working Group on Environmental Auditing (INTOSAI WGEA*) is an international organization that aims to improve audit capabilities in environmental protection policies.

The state's management of natural resources has been guaranteed in the Constitution of the Republic of Indonesia. The management impact should not cause damage and failure of the sustainable environment since a good and healthy environment is the human right of Indonesian citizens by the mandate of Article 28H of the Constitution. Many natural resource sectors, such as coal management, have unfavorable impacts in Jambi Province.

Concerning Syarif (2020), there are both non-juridical and legal reasons why coal mining management in the context of environmental law enforcement does not work well in the province of Jambi. This is also the case with slag waste management at PT Antam. Currently, the sea is used as a dumping ground for slag waste. As mentioned by Dewa et al. (2022) this activity has an impact on the activities of surrounding fishermen. Related conflicts between local governments and the private sector also occurred between PT CNSC and the Bolaang Mongondow Regency Government. It started with licensing and cooperation in the management of limestone, which was then processed into cement. Based on

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Nayoan & Justica (2022) the legal perspective, the conflict occurred due to disagreement in construing the contract.

Both public and private enterprises can have successful business ventures in managing natural resources. In practice, some norms may exist that may not fully accommodate every journey to be designated as a base. For studies, infrastructure research can be used as *Build and Transfer, Built operator Transfer (BOT), Build, Operate, Leasehold, and Transfer (BOLT), Build, Transfer, and Operate (BO), Renovate, Operate, and Transfer*, *Renovate, Operate, Leasehold, and Transfer (ROLT*), *Build, Transfer, Leasehold (BTL*). Based on the implementation of these agreements, there is still a lot of norm ambiguity and even norm conflicts, so it is necessary to improve the rules related to the subject and object of the agreement, procedures, liability, rights and obligations, and dispute resolution. A strategy related to supervision, environmental management, law enforcement, and economic utilization needs to be developed. It could start with appropriate planning, license granting, business actors' obligations, and supervision. As mentioned by Tresya et al. (2020) tt is necessary to establish a basis for planning through a strategic environmental assessment (KLHS) on managing natural resources in the forestry, plantation, mining, marine, and fisheries sectors. Law No. 23 of 2014, as amended by Law No. 9 of 2015, concerns the regional government, and the mineral and coal mining sector should be given authority in mineral and coal mining licensing in regencies/cities. The unavailability of the local government's position results in the absence of the functions of supervision, guidance, and control of negative post-mining impacts, such as the destruction of mining area ecosystems. Satoto & Nasution (2019) explained that it can increase the value of district/city regional tax revenues and improve the community's welfare.

The legal framework states that the government may control agreements and consensus as the custodian of authority over the organization, modification, utilization, supply, and upkeep of coal reserves. In general, the Civil Code's Third Book governs agreements. Legislation and agreements serve as the source of the duty. Government agreements are governed by both public and private law. The state or government is a legal subject with rights and obligations that might connect to third parties in the norms of public law. However, from a private law perspective, the parties' accomplishments are primarily determined by their rights and obligations. As per Haryana, contracts or agreements may also incorporate aspects of public law.

According to Hartna (2016) one cause of termination of an agreement under public law is by later agreement in a separate agreement due to certain events. In the law of the accords, generally accepted principles are judged as the basis for making agreements. These principles are always reflected in the agreement. This study applies the principle of freedom of contract known in treaty law. Article 1340 of the Civil Code states that an agreement is only valid between the parties who make it. This means that every legal subject can create and perform agreements that are not absolute, as they contain restrictions adjusted to the laws and regulations. In this context, namely, those related to managing natural resources.

In 2020, Minerba Law number 3 was issued to replace the 2009 Minerba Law. This regulation has caused various polemics arising from different circles of society regarding the addition of articles in the current Minerba Law. As an illustration, in Article 169A of the Minerba Law, the phrase “given a guarantee” relates to continuing the contract without auction. Meanwhile Asilah & Sugiyono (2020) said this phrase in the science of agreement law has a meaning that must be properly explained. Licenses or the realization of a contract can have a domino effect on society. For instance, severe road congestion in several regencies and cities in Jambi Province is caused by coal transportation from mining sites to destination ports/docks. This has a disruptive impact on many sectors. It is not impossible due to the realization of contracts and permits that are not based on a sustainable environment. In a Focus Group Discussion (FGD), the Jambi Provincial Energy and Mineral Resources (ESDM) Office argued that harmonization between the Minerba Law, the Local Government Law, and the Central and Regional Financial Balance Law is needed (as cited in PUSHEP Jambi Provice 2021). For example, a cooperation agreement exists between PT SSKB and PBP as investors in constructing a special coal transportation road in Jambi Province. In the contract, it is agreed that one party provides a quota for using coal transportation road facilities, and the other uses the road. Until this article was written, conflicts over coal management in Jambi Province were still ongoing. This means two parties and another third party are in the agreement. This needs to be studied in the context of private law and public law. This is just one example of a form of agreement related to natural resources and their management in Jambi Province that has caused problems. Many contracts in other areas still have similar impacts and consequences. Even related to the dominant effects, the contract has lost its adaptation at the level of implementation and the risk of implementing the contract itself. It can be viewed in several aspects in the study of treaty law.

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This background guides how this study formulates how the principle of freedom of contract applies to a natural resource management agreement based on a sustainable environment.

II. RESEARCH METHOD

This study utilized the Normative Juridical Type. By using this study method, the study's issue will be answered by the steps of law study. The approach is based on the main legal material by examining the theories, concepts, legal principles, laws, and regulations related to the study. The investigation is called legal research since it focuses on legal content, enabling it to be classified as *library-based, concentrate on reading analysis of the primary and secondary materials.* This method is adopted by the author with a system of reviewing several archives of related legislation, books, books, and other scientific works that can be used as a reference source by first inventorying and then systematizing by interpreting the legal materials. The main theories used in this research are the theory of authority, the theory of agreement, and the theory of responsibility.

III. DISCUSSION

A. *The Principle of Contractual Freedom in Natural Resource Management and Commerce*

➢ *Basic Principles of Freedom of Contract*

The principle of freedom of contract emerged along with classical economics, which was born from the development of individualism starting from the Greek era, continued by the Epicureans. Based on the explanation from Chayono (2024) it developed rapidly during the *Renaissance (*and increasingly developed in the *Aufklarung era*) through, among others, the teachings of Hugo de Groot, Thomas Hobbes, John Locke, and Rousseau. The principle of freedom of contract is a central principle in agreements that emphasizes the independence and autonomy of the parties involved in the agreement. Some principles must be considered to implement the principle of freedom of contract. The first principle is the ability of the parties to exercise free decisions, including drawing up contracts, negotiating, and determining the contract terms without unauthorized interference from other parties. Negotiation, for example, includes price, period, rights and obligations, and potential risks.

The second is the legal certainty principle. It suggests that the purpose of contracts is to avert future ambiguity and conflict. A contract ensures voluntary obedience free from threats and compulsion. Each party knows the agreement's implications and holds the same position. The third is the idea of fairness and proportion. A fair and balanced contract is required, and each party's rights and obligations are regarded and acknowledged equally. The fourth is the ability of the law to bind. Conveys the idea that the parties can legally draft and carry out agreements. This indicates that each party's mental capacity is sufficient. Being able to influence the other party's decision-making is not what adequate means. Contract enforcement comes in at number five.

The principle of freedom of contract often causes injustice because it can only achieve its goal if the parties have balanced *bargaining power*. In its development, this principle creates problems in society. Hence, Remy (1993) stated if the state needs to intervene in limiting the implementation of the principle of freedom of contract to protect the weaker party. The underlying principles need to be implemented to ensure that the principle of contract can function as intended in the spirit of the principle. Indeed, no single rule limits the freedom of contract, yet it does not mean that it is absolute. However, the principle of freedom of contract becomes the commander of the free market.

The central idea of freedom of contract relates to emphasizing the parties' intentions, with the view that contracts result from free choice. Thus, there is an understanding that no one is bound by a contract as long as it is not made based on a free choice to do something. This paradigm continues to develop in line with the development of liberal and industrial economies. Potentially, the meaning of freedom of contract could be confused when it is applied in an agreement, especially when the parties' position can be considered unbalanced.

➢ *The Relevance of the Principle of Freedom of Contract and Natural Resource Management*

In natural resource management, agreements involving the rights to use and manage natural resources are formed and implemented. There are several aspects related to the principle of freedom in natural resources, namely: 1) natural resource exploitation agreements, 2) aspects of innovation and partnership, 3) aspects of the distribution of rights and obligations, 3) aspects of risk sharing, 4) aspects of justice and community empowerment, 5) aspects of contract enforcement and compliance. The utilization and management of natural resources is closely related to conservation activities.

According to (Christanto 2014) environmental and natural resource conservation is a shared responsibility of all people on earth, hence the need to consider the establishment of regional, national, and even international institutional networks. The agreement on natural resource management needs serious attention because it is related to the state's presence in providing social welfare for its people. Therefore, Zulfirman (2017) explained that agreements made concerning social welfare focus on political and legal policies on government economics that relate to the government's perspective on freedom of contract. Regarding natural resource exploitation agreements, the parties are allowed to conclude agreements that regulate the exploitation of natural resources such as mines, water, land, and others. The

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exploitation agreement must pay attention to innovation and partnership so that the benefits directly favor the community.

Article 33, paragraph (3) of the Indonesian Constitution is the spirit for natural resource management. Four components in the meaning of the article are management by the nation's people, technology made by the nation's people, funding of own capital, and all results of natural resource management are used maximally for domestic interests (as cited from Deputy Minister of Energy and Mineral Resources (ESDM)). Contractual agreements can create incentives for the private and government parties to benefit the community's welfare. Besides, the principle of freedom of contract can make it possible to include clauses related to environmental protection, land restoration, other related aspects, and contributions to local development. It is important because it is also associated with the risk aspect, where every agreement has the risk potential. However, such risks must be minimized fairly.

For instance, risks to environmental changes, social risks, economic risks, price changes, and operational risks can be taken into account and overcome through agreements. Justice and community empowerment must also be considered when implementing the principle of freedom of contract. In the agreement, clauses on the involvement of local communities need to be considered in decision-making and sharing the utilization of economic rights. The final aspect is contract enforcement and compliance. Article 1338 of the Civil Code means that agreements made legally apply as law to those who make them. Agreements made legally refer to Article 1320, namely the conditions for the validity of an agreement, which includes agreement, capability, a certain thing, and a legitimate cause. That freedom of contract must show that the agreement is made legally, both procedurally and substantially. Generally, natural resource management agreements are related to the public sector, and one of the parties is the government. The last thing to note is contract enforcement and compliance. Therefore, the contract enforcement mechanism is important in ensuring the parties' commitment.

B. The Key Point of the Contractual Freedom Principle in Natural Resources Management Agreements

- *The Role of Contracts and the Flexibility of Contract Terms*

A contract is an agreement between two or more people that creates an obligation to do or not do something specific. A contract, according to Khairandy (2013), is a written document containing the parties' wishes to achieve their commercial goals and how the parties benefit, are protected, or are limited in their responsibilities in achieving these goals. The contract has juridical, economic, and political functions. Contract drafting must be clear and detailed. In the contract, the relationship between the parties can be known. The distribution of rights and obligations provides certainty. Economically, it organizes business operations, even for relationships with third parties. All aspects of payment and finance become guidelines for the parties. This includes the protection of intellectual property and the utilization of economic rights. The contract also regulates dispute resolution, which can be done through litigation or non-litigation, such as mediation or arbitration.

In the case of contracts related to natural resources, especially those in contact with local communities, the contract must consider local communities' wisdom and pay attention to harmony. This is where the principle of freedom of contract plays a role in paying attention to this point. The freedom of contract is barreled. Natural resources that are exploited and empowered must pay attention to the empowerment of the community. In the agreement, clauses are needed that provide economic benefits and pay attention to the local community's culture.

The contract is the crystallization of the law that the parties want, so if the government acts as one of the parties, this point is the main one to be considered. Civil law, customary law, and even international customary law may apply in a contract. The implementation of the contract goes through three stages: pre-contract, contract, and post-contract. Freedom of contract can already be seen from the pre-contract process. The freedom to determine the terms of the agreement is also limited to the applicable law in Indonesia. This means that if you design a contract related to natural resource management, it is necessary to refer to laws and regulations pertaining to natural resources and the environment, licensing, and other things. For example, contracts in the mining or plantation sectors must comply with certain laws governing these sectors.

The agreement of the contract can also be seen from the making and acceptance of the offer. Good intentions in binding themselves must be shown in the offer. Meanwhile, acceptance must be by the terms proposed in the offer. In contract law, there is no prohibition of oral agreements. However, to comfort the parties, the contract is written in writing, which is even better with a notarial deed. It aims to strengthen the function of the agreement itself, which can function juridically, economically, and politically. By being made in writing, the transparency of the contract can be maintained. In the event of a violation, a detailed contract provides written evidence that can be used in legal proceedings. In contracts related to managing natural resources, it is necessary to detail the rights and obligations. Alternative steps should even be provided in the contra contract to overcome certain events.

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➢ *Law Certainty*

Contracts provide legal certainty, as seen in the agreement documentation. Legal certainty is defined as a situation that has been confirmed by law because of the concrete strength of a particular matter. This certainty is a form of protection for justices (justice seekers). It is in line with van Apeldoorn's opinion that mentioned by Julyano (2019) that certainty has two aspects: determining the law in concrete matters and containing legal security. The legal certainty of this is obtained from the contract.

Who are the parties that play a role in documenting contracts, whether they are directly related to the company or government or indirectly. Notarial or not, it does not matter if the documentation is done responsibly. Documentation is important to have a common perception not to give birth to multiple interpretations. Thus, a written contract becomes the upstream for the parties to clarify any ambiguities or differences in interpretation in the stages of contract implementation. A clear contract helps ensure that the implementation and administration of the agreement can take place effectively. By detailing the duties and responsibilities of each party, the contract creates a strong foundation for the smooth implementation of the agreement. As such, contracts provide legal certainty by providing a written basis that regulates and documents the relationship between the parties. This certainty is important to prevent disputes, provide guidance, and provide a strong legal basis for executing the agreement.

➢ *The Presence of Relevant Parties in Natural Resource Management Agreements*

The parties' involvement in natural resource management agreements is essential to create sustainable, fair, and beneficial agreements for all parties involved. This involves various parties with interests and rights related to the natural resources being managed. Some of the related parties involved in natural resource management contracts can be seen in terms of the government, private companies/businesses, local communities/stakeholders, non-governmental organizations (NGOs), community organizations, or organizations related to the environment. The government has an important role in natural resource management. They can be the owners of natural resources or regulators who set environmental policies and requirements that must be adhered to by the parties involved. They may also be involved in law enforcement and management of contractual rights. The government implements Public policies, including making contracts with private parties. Private companies or entrepreneurs are engaged in natural resource management contracts, especially in mining, plantations, or other industries that exploit natural resources.

The contract may provide for the rights of exploration, extraction, and utilization of natural resources in compliance with established regulations and requirements. The involvement of local communities and other stakeholders is a key element in sustainable natural resource management contracts. Contracts may include obligations to dialog with communities, provide direct economic benefits to local communities, and involve them in decision-making processes. This community involvement should not be left out; therefore, during pre-contracting, community involvement needs to be accommodated. NGOs and environmental organizations can monitor and ensure environmental sustainability in natural resource management contracts. Contracts can include provisions related to sustainable environmental practices and provide space for NGOs to participate in monitoring and evaluation.

In some cases, the involvement of both public and private parties requires a public-private partnership approach. Where governments, private companies, and local communities work together to achieve the goal of sustainable natural resource management. Contracts should ensure that the rights and obligations of all parties involved are fairly regulated. This includes sharing economic benefits, protecting indigenous peoples' rights, and managing natural resources with due regard for sustainability and environmental sustainability. Contracts may consist of consultation and participation mechanisms that ensure relevant parties have the opportunity to provide their input and opinions in the decision-making process. More sustainable, equitable, and empowering relationships can be created by involving pertinent parties of natural resource management contracts. This engagement creates agreements that consider various interests and reduce potential conflicts during natural resource management.

C. The Contractual Freedom In Natural Resource Management

Implementing the principle of freedom of contract in natural resource management agreements provides important benefits. Some of these reasons are related to the parties' autonomy in the agreement. The principle of freedom of contract gives autonomy to the parties involved in the agreement. They have the freedom to determine the terms of the agreement, including their respective rights and obligations, based on negotiation and mutual agreement. Flexibility in designing agreements is one of the implementations of the principle of freedom of contract. The principle of freedom of contract can meet the unique needs of each natural resource management situation or project. By allowing freedom, natural resource management agreements can encourage innovation and development. Parties can create new solutions to natural resource management challenges that enable efficiency, sustainability, and social responsibility.

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In utilizing local community empowerment in natural resource management, adapted communities are involved in contract negotiations to protect their traditional rights, including decision-making. Natural resource management agreements based on the principle of freedom of contract must be able to adjust to changes. If the contract can manage change, then sustainability and balance can be addressed in law. In the end, it ensures effectiveness and efficiency. Comprehensive contracts also avoid excessive bureaucracy.

The challenges in making and implementing natural resource management agreements are environmental violations, inequality of benefits, legal uncertainty, and climate change. Environmental violations mean the risk of violating the principles of ensuring environmental sustainability, deforestation, water pollution, and destruction of natural habitats. Climate change, for instance, can bring new risks, such as extreme weather and changing conditions. Although the contract has been designed in such a way, this potential is a challenge, so the contract must be able to see sustainability according to the contract period. The community has participated in preparing the contract, but if the economic benefits are not distributed appropriately, there will be injustice in the future. Another challenge related to law enforcement is that it is inconsistent.

To anticipate and minimize constraints, the government must consider improvement and settlement efforts. In pre-contracting, for example, independent environmental auditors who can help monitor and assess the ecological impacts of natural resource management activities are needed. Education and training also need to be conducted for parties related to environmental management to increase understanding of environmentally sustainable natural resource management practices.

D. The Form Of Contract That Realizes Justice

The objective to be achieved in the agreement is the content of the agreement itself. In determining the contents of the agreement, despite being based on freedom of contract, it must not conflict with public order decency and is not prohibited by law. The promised thing is in the form of giving something, doing something, not doing something. Each side is entitled to receive what is promised by the other side. Suppose a party fails to perform something promised. In that case, the other party can use the authority of different institutions, such as courts or dispute resolution institutions, to enforce the contract and even to obtain compensation or other remedies allowed by law.

The conception and meaning of justice as the purpose of making agreements used in this study is to emphasize the role of the principles contained in the law of the accords, including the principle of freedom of contract, the principle of consensual, the principle of legal certainty (*pacta sunt servanda*), which means the principle of binding, the principle of good faith, the principle of personality, the principle of trust, the principle of legal equality, the principle of balance, the principle of legal certainty, the moral principle, the principle of etiquette, and the principle of protection. These principles are interrelated, cannot be separated, are applied simultaneously, take place proportionally and fairly, and serve as a frame to bind the agreement's contents.

The values of justice must reflect the characteristic life attitudes of the Indonesian people, as stated in Pancasila and UUD 45, which are based on proportional value, balance value, propriety value, good faith, and protection. Humanitarian values are based on the second principle of Pancasila, namely fair and civilized humanity. Therefore, all parties respect and protect each other when realizing common goals. However, the making and implementation of the agreement often do not go well, cause conflict, and do not reflect justice for the parties, especially in standard contracts.

This is certainly contrary to the purpose of agreeing. This kind of thing required legal facilities to resolve it. The existence of law is very necessary to be respected and legal principles upheld. The principles in law serve to protect the interests of society. The expectation to obey the law in practice should go well. Therefore, the principle of freedom of contract must be able to prepare for business continuity. Additionally Muhtarom (2014) describe if all contractual knots related to natural resource agreements must not be interrupted. Hence, business should be correlated with the legal process.

IV. CONCLUSION AND SUGGESTION

The principle of freedom of contract allows the parties concerned to adjust the contract following the evolving environmental conditions. It includes adjusting natural resource management practices to make them more sustainable over time. The principle of freedom of contract provides space for stakeholder involvement, including local communities and environmental groups, in the agreement process so that the agreement is more responsive to environmental issues. The applicability of the principle of freedom of contract can be measured by applying the principles of environmental sustainability, such as sustainable resource management, ecological restoration, and preservation of biodiversity. The principle of freedom of contract must create a fair balance. It allows the parties involved to develop transparent agreements by setting out clear obligations and responsibilities related to environmental sustainability. The enforceability of the freedom of contract principle is reflected in the agreement's ability to adapt to changing environmental conditions and external factors, including new regulations and changes in government policy. The enforceability of the principle of freedom of contract can be strengthened by integrating sustainability principles based on local values and wisdom to make the agreement more rooted and relevant to

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the local social and environmental context. Hence, the contract not only covers aspects of freedom of contract but also supports the sustainability and welfare of the local community.

Advanced efforts in community education and engagement are required to ensure a better understanding of natural resource management contracts. It can create awareness about the importance of freedom of contract and involve communities in decision-making.

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