

Reconstructing Legal Protection of Mining-Affected Communities' Rights through Participatory Justice in Indonesia

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Abstract

Mining activities in Indonesia have contributed significantly to economic development, but have also generated adverse impacts on communities living in mining-affected areas. The existing legal framework predominantly emphasizes compensation for losses while providing limited protection of community rights through meaningful participation in mining governance. This study aims to reconstruct the legal protection of mining-affected communities' rights through a participatory justice approach within Indonesia's mining governance system. The main problem addressed in this research is the inadequacy of current regulations in ensuring substantive and procedural rights for communities affected by mining operations. This research employs a normative legal method, drawing on statutory, conceptual, and comparative approaches, to analyze mining regulations, legal doctrines, and relevant governance principles. The findings reveal that current regulations tend to position mining-affected communities as beneficiaries of compensation rather than as rights

holders with the capacity to participate in decision-making processes. As a result, community involvement remains limited, legal protection is fragmented, and social conflicts frequently arise due to unequal power relations between mining companies and local communities. The study further finds that the absence of effective mechanisms for participation, transparency, accountability, and equitable benefit-sharing weakens the realization of justice in mining governance. This research concludes that the reconstruction of legal protection should be based on participatory justice by strengthening community participation, recognizing both substantive and procedural rights, and establishing inclusive governance mechanisms. Such reconstruction is expected to enhance legal certainty, reduce conflicts, and promote a more equitable and sustainable mining governance system in Indonesia.

Keywords

Legal Protection, Mining-Affected Communities, Participatory Justice, Mining Governance, Community Rights.

HOW TO CITE:

Chicago Manual of Style Footnote:

- ¹ Riezka Eka Mayasari, Syamsul Bachri, Muhammad Basri, and Nizamuddin Alias, “Reconstructing Legal Protection of Mining-Affected Communities’ Rights through Participatory Justice in Indonesia,” *Journal of Law and Legal Reform* 7, no 3 (2026): 1819–1856, <https://doi.org/10.15294/jllr.v7i3.53936>.

Chicago Manual of Style for Reference:

Mayasari, Riezka Eka, Syamsul Bachri, Muhammad Basri, and Nizamuddin Alias. “Reconstructing Legal Protection of Mining-Affected Communities’ Rights through Participatory Justice in Indonesia.” *Journal of Law and Legal Reform* 7, no 3 (2026): 1819–1856. <https://doi.org/10.15294/jllr.v7i3.53936>.

Introduction

Mining activities play a strategic role in supporting economic growth, industrial development, and state revenue generation in many resource-rich countries, including Indonesia. As one of the world's leading producers of coal and nickel, Indonesia increasingly relies on the mining sector to stimulate economic development and attract investment. However, the expansion of mining activities has also generated significant social, environmental, and legal challenges for communities residing in mining areas. Environmental degradation, land disputes, displacement, unequal distribution of economic benefits, and limited participation in decision-making processes remain persistent concerns. These conditions demonstrate that substantial burdens borne by local communities often accompany the benefits of mining development.

The legal framework governing mining activities in Indonesia has undergone several reforms, particularly following the enactment of Law Number 3 of 2020 concerning Mineral and Coal Mining.¹ Nevertheless, the protection of communities affected by mining activities remains insufficient. Existing regulations continue to emphasize licensing, investment certainty, and compensation mechanisms, while paying limited attention to procedural rights, including access to information, participation, and effective remedies. Consequently, mining-affected communities frequently occupy a vulnerable position in relation to both mining corporations and state authorities.

Previous studies have examined various dimensions of community rights within the mining sector. Rahayu Subekti argues that legal protection for indigenous communities in mining areas requires meaningful consent before mining activities are conducted on customary lands.² Similarly, Ma'rifah, Hariyasin, and Khairi emphasize that the

¹ Indah Sri Utari et al., "Illegal Nickel Mining in Protected Forests: Challenges in Whistleblower and Justice Collaborator Protection in Indonesia," *Indonesian Journal of Environmental Law and Sustainable Development* 4, no. 2 (2025): 341–74, <https://doi.org/10.15294/ijel.v4i2.38220>.

² Rahayu Subekti, "Legal Protection of Indigenous Communities in Mining Law Perspective in Indonesia," *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 148–160, <https://doi.org/10.23887/jkh.v6i1.23466>.

pursuit of economic benefits from mineral extraction often neglects the rights of communities residing within mining areas.³ Sorik and Dwiattmoko further demonstrate that human rights violations frequently occur in mining regions due to inadequate protection of indigenous peoples and weak recognition of their rights over natural resources.⁴

Other studies focus on community participation in mining governance. Syofiarti finds that recent amendments to Indonesia's mining legislation have narrowed opportunities for public involvement in decision-making processes, thereby weakening the implementation of sustainable development principles.⁵ Likewise, Pelengkahu observes that Indonesian mining law has historically adopted a centralized and authoritative approach.⁶ However, recent developments indicate a gradual transition toward participatory governance.⁷ Comparative research on Free, Prior, and Informed Consent (FPIC) further reveals that Indonesia lacks explicit legal mechanisms that guarantee meaningful community involvement in mining licensing processes, compared with jurisdictions such as Canada and Norway.⁸

³ Ma'rifah, Hariyasin, and Saadilah Khairi, "Perlindungan Hak-Hak Masyarakat Adat dalam Pengelolaan Sumber Daya Mineral dan Batubara Menurut Hukum Pertambangan," *Wasaka Hukum* 11, no. 2 (2023): 160–175.

⁴ Sutan Sorik and Anang Dwiattmoko, "Pengaturan Hak Asasi Manusia dan Pelindungan Hukum Masyarakat Adat di Sektor Usaha Pertambangan," *Mimbar Hukum* 35, no. 1 (2023): 158–191, <https://doi.org/10.22146/mh.v35i1.6461>.

⁵ Syofiarti, "Peran Serta Masyarakat dalam Pengambilan Keputusan pada Kegiatan Pertambangan untuk Mewujudkan Pembangunan Berkelanjutan," *Refleksi Hukum: Jurnal Ilmu Hukum* 7, no. 1 (2022): 19–36, <https://doi.org/10.24246/jrh.2022.v7.i1.p19-36>.

⁶ Indah Sri Utari et al., "A Criminological Perspective on Corruption as a Catalyst of Economic Breakdown: Socio-Legal Challenges in Indonesian Environmental Governance," *Jambe Law Journal* 9, no. 1 (2026): 205–47, <https://doi.org/10.22437/jmj4ac47>.

⁷ Muhamad Pelengkahu, "From Authoritarianism to Participatory Governance? A Legal and Constitutional Review of Public Participation in Indonesia's Mineral and Coal Mining Laws," *Law Research Review Quarterly* 12, no. 1 (2026): 1–30, <https://doi.org/10.15294/llrq.v12i1.41546>.

⁸ La Ode Dedihasriadi, Adhe Ismail Ananda, and Zico Junius Fernando, "Free, Prior, and Informed Consent in Indonesia's Mining Law: Comparative Lessons from Canada and Norway," *Indonesian Comparative Law Review* 8, no. 1 (2025): 1–15, <https://doi.org/10.18196/iclr.v8i1.27659>.

Although previous studies provide valuable insights, significant gaps remain. Most existing research focuses on indigenous peoples' rights, environmental protection, corporate social responsibility, or public participation as separate subjects of inquiry. Limited attention has been given to reconstructing a comprehensive legal framework that integrates both substantive and procedural rights of mining-affected communities through the perspective of participatory justice. Existing scholarship predominantly positions local communities as recipients of compensation rather than as rights holders entitled to influence decisions affecting their livelihoods, environment, and social welfare.

The novelty of this research lies in its development of a participatory justice-based framework for legal protection in mining governance. Unlike previous studies that examine compensation mechanisms or participation in isolation, this research integrates both dimensions into a unified legal model. Participatory justice is employed as a normative framework that recognizes mining-affected communities as rights-bearing subjects entitled to information, consultation, representation, accountability, and equitable benefit-sharing. Accordingly, this study proposes a shift from compensation-based protection toward rights-based governance.

The disparity between the ideal constitutional and normative framework and the realities of implementation constitutes the central problem of this research. In practice, this condition reflects a systemic failure to adequately protect the rights of mining-affected communities, as evidenced by a range of socio-environmental phenomena. Behind the influx of investment and promises of economic growth lies a development paradox that threatens environmental sustainability and social well-being. In Southeast Sulawesi, the rapid expansion of the nickel mining industry has resulted in significant deforestation and ecosystem degradation, particularly in the Pomalaa area. Forest and vegetation cover declined from 17,207.9 hectares in 2014 to 16,110.1 hectares in 2023, representing a total loss of 1,097 hectares over nine years, with an average annual deforestation rate of approximately 121.89 hectares. During the same period, mining concession areas continued to expand, highlighting

the environmental costs associated with the growth of the extractive industry.⁹

A similar trend has also been observed in Molawe District, where the extent of non-vegetated areas and open land increased significantly between 2001 and 2020. Environmental degradation resulting from nickel mining activities, including land conversion and the disposal of mining waste, has become a serious concern in the Tinanggea District.¹⁰ These conditions indicate that although Law No. 32 of 2009 on Environmental Protection and Management guarantees public participation in environmental governance, mining-affected communities are often not meaningfully involved in decision-making processes. Their participation is frequently limited throughout various stages of mining governance, including mining licensing procedures, the preparation of Environmental Impact Assessments (AMDAL), and the development of post-mining plans.

Moreover, information concerning environmental impacts, corporate operational plans, and potential environmental hazards is often not disclosed transparently or fails to reach affected communities. This lack of transparency creates significant information asymmetry, preventing residents from fully understanding the risks and implications of mining activities. Consequently, mining-affected communities possess insufficient bargaining power to effectively protect their rights and interests, particularly when interacting with mining corporations and governmental authorities responsible for regulating and overseeing mining operations.¹¹

⁹ Andi Baso Sofyan A. P., Feri Fadlin, Dawamul Arifin, Radik Khairil Insanu, and Ahmad Aris Mundir Sutaji, "Pemetaan Deforestasi dan Perubahan Tutupan Lahan di Wilayah Pertambangan Nikel Kecamatan Pomalaa Memanfaatkan Teknologi Penginderaan Jauh," *Journal of Geomatics Engineering, Technology, and Science* 2, no. 2 (2024): 50–55, <https://doi.org/10.51967/gets.v2i2.35>.

¹⁰ La Maga, Ahyar Ismail, and Ahmad Faroby Falatehan, "Merumuskan Kebijakan dalam Mengatasi Kerusakan Lingkungan Akibat Aktivitas Tambang Nikel di Kecamatan Tinanggea Kabupaten Konawe Selatan," *Risalah Kebijakan Pertanian dan Lingkungan: Rumusan Kajian Strategis Bidang Pertanian dan Lingkungan* 4, no. 2 (2017): 125–142, <https://doi.org/10.20957/jkebijakan.v4i2.22031>.

¹¹ Wahana Lingkungan Hidup Indonesia (WALHI), *Laporan Tahunan Kondisi Lingkungan Hidup Indonesia 2023* (Jakarta: WALHI, 2023),

Another phenomenon is that agrarian conflicts related to mining constitute a serious issue in Southeast Sulawesi. For example, in Bombana Regency, there is a high level of conflict between mining companies and local communities concerning natural resource control and utilization.¹² Agrarian conflicts are also found in various regions across Indonesia, not only in Southeast Sulawesi. The factors contributing to these conflicts include differences in interests, violations of rights, territorial disputes, as well as economic and social issues.¹³

Given these conditions, agrarian conflicts arising from land acquisition for mining have become increasingly prevalent.¹⁴ Although the Land Acquisition Law has established mechanisms for compensation, communities frequently complain about inadequate compensation amounts,¹⁵ non-transparent consultation processes, and intimidation that ultimately result in forced evictions without fair compensation. Numerous cases demonstrate that affected communities lose their primary sources of livelihood without receiving adequate economic alternatives from either mining companies or the government. This situation persists because the technical provisions in the current regulatory framework have not fully accommodated an ideal mechanism for the land acquisition process in the mining sector, including the harmonization of relevant legislation.

https://www.walhi.or.id/uploads/buku/TINJAUAN_LINGKUNGAN_HIDUP_2023_2.pdf.

¹² Sapar Sapor and Syafruddin Syafruddin, "Conflict Resolution in Mining Area: An Alternative Strategy of Community Empowerment," *Jurnal Ilmu Lingkungan* 19, no. 3 (2021): 612–619, <https://doi.org/10.14710/jil.19.3.612-619>.

¹³ Randi Preslei, Dasmin Sidu, and Mardin Mardin, "Analisis Resolusi Konflik Lahan Pertanian di Sekitar Pertambangan Nikel di Kecamatan Wawonii Tenggara Kabupaten Konawe Kepulauan," *Jurnal Ilmiah Inovasi dan Komunikasi Pembangunan Pertanian* 3, no. 3 (2024): 181–188, <https://doi.org/10.56189/jiikpp.v3i3.48841>.

¹⁴ Indra Ardiansyah et al., "Taking Restitution Seriously?: Victim-Oriented Gaps in the Criminal Justice System," *IJCLS (Indonesian Journal of Criminal Law Studies)* 10, no. 1 (2025), <https://doi.org/10.15294/ijcls.v10i1.19636>.

¹⁵ Konsorsium Pembaruan Agraria, "Konflik Agraria Meningkat Sepanjang 2022, Kemauan Politik Kunci Penyelesaian," January 10, 2023, accessed June 4, 2026, <https://www.kpa.or.id/2023/01/10/konflik-agraria-meningkat-sepanjang-2022-kemauan-politik-kunci-penyelesaian/>

Other evidence indicates that water, air, and soil pollution resulting from mining waste, chemical spills, and ecosystem degradation frequently occur in mining-affected areas.¹⁶ These environmental impacts directly affect public health, contributing to the prevalence of respiratory diseases, skin disorders, and digestive illnesses. Upper respiratory tract infections (URTIs) rank as the most common health problem in Southeast Sulawesi, with a reported total of 119,626 cases. Data from the Tapunggaya Community Health Center (Puskesmas) further show an increase in URTI cases among children under five over the past three years. One of the villages with the highest incidence of URTIs is located within a mining area. Weak enforcement of environmental laws against violators has resulted in many pollution cases not being addressed seriously, thereby fostering a climate of impunity for mining corporations.

Various studies have shown that in Southeast Sulawesi and other regions of Indonesia, community participation in the mining licensing process faces numerous challenges.¹⁷ Although existing regulations mandate public participation at various stages of the mining licensing process, the effectiveness of such participation remains limited. This issue is further reinforced by the concept of Regulatory Capture Theory, which posits that corporate interests may influence governmental legislative and regulatory processes, resulting in policies that favor business interests over the public interest.¹⁸ In the context of the mining sector, this phenomenon helps explain why regulations that are intended to protect local communities often appear imbalanced and inadequately responsive to their needs.

¹⁶ Hasnawati, Sunarsih, and Sri Mulyani, "Hubungan Sanitasi Lingkungan dengan Kejadian ISPA pada Balita di Wilayah Pertambangan," *Jurnal Healthy Mandala Waluya* 1, no. 3 (2022): 173–181, <https://doi.org/10.54883/jhmw.v1i3.81>.

¹⁷ Indah Sri Utari et al., "The Digital Sanctuary: Forging Legal And Ethical Frameworks For Interfaith Coexistence Online," *Contemporary Issues on Interfaith Law and Society* 4, no. 2 (2025), <https://doi.org/10.15294/ciils.v4i2.35309>.

¹⁸ Ibnu Sina Chandranegara and Luthfi Marfungah, "Regulatory Capture on Emergency Due Process of Law-Making," *Cogent Social Sciences* 10, no. 1 (2024): Article 2322458, <https://doi.org/10.1080/23311886.2024.2322458>.

The institutional complexity of mining sector governance in Indonesia has generated serious coordination problems and systemic impacts on the protection of communities affected by mining activities.¹⁹ Various institutions, including the Ministry of Energy and Mineral Resources, the Ministry of Environment and Forestry, and regional governments, operate under overlapping regulatory frameworks and weak coordination mechanisms. The centralization of authority by the national government was intended to streamline licensing procedures and strengthen regulatory control; however, it has also diminished the role of regional governments in mining governance.²⁰

Weaknesses in institutional coordination have direct consequences for the erosion of the fundamental rights of mining-affected communities in three significant respects. First, systemic legal uncertainty arises from conflicting decisions issued by different institutions, creating confusion among community members regarding their rights and obligations as well as the appropriate legal forums through which they may seek justice. Second, access to justice is impeded by the absence of a single point of contact, forcing communities to navigate complex and multilayered bureaucratic processes without certainty of resolution. Moreover, the practice of shifting responsibility among institutions contributes to inconsistent law enforcement and, in many cases, results in outcomes that are biased toward corporate interests.²¹ Third, community participation remains fragmented and largely ineffective, as public consultations are conducted separately by different institutions without adequate coordination. Consequently, final decisions often fail to reflect the aspirations and interests of affected

¹⁹ Najwa Nurain Hadju, “Penegakan Hukum Lingkungan dalam Pengelolaan Pertambangan,” *Arus Jurnal Sosial dan Humaniora* 5, no. 1 (2025): 594–598, <https://doi.org/10.57250/ajsh.v5i1.1024>.

²⁰ Farhan Setyo Oetomo, “Sentralisasi Kewenangan dalam Pengelolaan Pertambangan atas Penurunan Peran Pemerintah Daerah dalam Pembaharuan Hukum Pertambangan,” *Jurnal Riset Multidisiplin Edukasi* 2, no. 5 (2025): 380–396, <https://doi.org/10.71282/jurmie.v2i5.340>.

²¹ Indah Sri Utari, Ridwan Arifin, and Ahmad Zaharuddin Sani Ahmad Sabri, “Why Did a Five-Year-Old Toddler Become a Victim of Murder? A Criminological and Legal Perspective,” *Indonesian Journal of Criminal Law Studies* 8, no. 2 (2023), <https://doi.org/10.15294/ijcls.v8i2.48591>.

communities, thereby perpetuating power asymmetries in decision-making processes that directly influence their livelihoods and well-being.

Considering the gap between normative ideals and empirical realities, as well as the complexity of issues arising from policy inconsistencies and multiple interpretations of legal norms, there is an urgent need to reconstruct a legal framework that is more comprehensive, participatory, and equitable for communities residing in mining-affected areas. Such a reconstruction should not only ensure legal certainty and institutional coherence but also strengthen the protection of community rights, improve access to justice, and promote meaningful public participation in mining governance.

Against this background, the central legal question of this study is not merely whether Indonesian law recognizes the rights of mining-affected communities, but whether the existing legal protection is capable of effectively securing those rights in mining governance. This question requires an examination of three interrelated issues: the regulatory construction of legal protection for mining-affected communities, the weaknesses that prevent such protection from operating effectively, and the normative basis for reconstructing the existing framework. Particular attention is given to the gap between the formal recognition of community participation and its substantive capacity to influence decisions concerning land, environmental management, mining operations, and the distribution of mining-related benefits.

This study, therefore, examines participatory justice as a normative basis for addressing these weaknesses. Participatory justice is relevant not simply because it promotes public involvement, but because it repositions affected communities as rights-holders with a legitimate role in decisions that directly determine their livelihoods, environment, and social conditions. It provides a framework for connecting substantive protection of community rights with procedural guarantees of recognition, meaningful participation, transparency, accountability, and access to remedies. In this sense, participation is treated as an element of legal protection rather than merely an administrative requirement.

Based on this perspective, the study proposes a reconstruction of legal protection through a participatory model of mining governance. The proposed reconstruction seeks to move beyond a compensation-

oriented approach toward an integrated system in which community rights are protected throughout the mining governance process. It emphasizes: (1) recognition of affected communities as rights-holders; (2) early and meaningful participation before decisions are finalized; (3) access to relevant information and independent legal or technical assistance; (4) institutional mechanisms for community representation and oversight; (5) accountability and effective remedies; and (6) fair participation in the distribution of mining-related benefits. Accordingly, the reconstruction proposed in this article aims to transform community participation from a formal procedural requirement into a substantive component of legal protection and mining governance.

Accordingly, this study addresses the following legal questions: first, how is the legal protection of mining-affected communities' rights regulated under Indonesian law, and what weaknesses characterize the existing framework? Second, why is participatory justice an appropriate normative basis for reconstructing such protection? Third, what model of legal protection can be reconstructed to ensure meaningful participation and more effective protection of mining-affected communities' rights?

This study employs a normative legal research method drawing on statutory, conceptual, and case-based approaches. The statutory approach is used to examine the legal framework governing mining activities and the protection of the rights of mining-affected communities, including laws and regulations related to mineral and coal mining, environmental protection and management, land acquisition, and other relevant regulatory instruments. The conceptual approach is applied to analyze legal concepts and theories concerning legal protection, social justice, public participation, human rights, and good mining governance, which serve as the theoretical foundation for developing a more responsive and equitable legal framework for communities residing in mining-affected areas. In addition, the case approach is employed to examine legal disputes, policy implementation, and empirical issues arising from mining activities in Indonesia.

The legal materials used in this research consist of primary, secondary, and tertiary legal sources. Primary legal materials include legislation, judicial decisions, and policy documents relevant to mining governance and the protection of community rights. Secondary legal

materials comprise scholarly books, journal articles, research reports, and legal doctrines addressing mining law, environmental law, agrarian law, human rights, and the protection of indigenous peoples and mining-affected communities. These legal materials are analyzed qualitatively using a prescriptive analytical method to identify regulatory weaknesses, examine inconsistencies between legal norms and their implementation, and formulate a more comprehensive, participatory, and just reconstruction of the legal framework. The ultimate objective is to strengthen the protection of the rights of mining-affected communities and to promote greater legal certainty, access to justice, and meaningful public participation in mining governance.

A. Reconstructing the Legal Framework for the Protection of Mining-Affected Communities' Rights through Participatory Justice in Indonesia

Indonesia possesses a comprehensive legal framework governing the management of mineral and coal resources, which is fundamentally grounded in the constitutional mandate that natural resources shall be controlled by the state and utilized for the greatest benefit of the people. Within this framework, the protection of the rights of mining-affected communities is embedded in various legal instruments, including constitutional provisions, mining legislation, environmental laws, land acquisition regulations, and human rights norms. These legal instruments collectively establish the rights of communities to a healthy environment, access to information, public participation, legal remedies, and protection against arbitrary deprivation of land and livelihoods resulting from mining activities.

Despite these legal safeguards, the effectiveness of the current framework in protecting mining-affected communities remains a significant concern. The rapid expansion of mining operations has generated complex social, environmental, and economic impacts, particularly for communities residing in and around mining areas. While the legal framework formally recognizes various community rights, its implementation is often hindered by overlapping regulations, fragmented institutional responsibilities, weak enforcement

mechanisms, and limited opportunities for meaningful public participation. Consequently, a gap frequently emerges between the normative guarantees provided by law and the realities experienced by affected communities.

1. Constitutional Foundations of Community Rights in Natural Resource Governance

The constitutional foundation for the protection of community rights in natural resource governance in Indonesia is primarily derived from the 1945 Constitution of the Republic of Indonesia. The Constitution establishes a normative framework that seeks to balance state control over natural resources with the protection of human rights, social justice, environmental sustainability, and public welfare. Article 33, paragraph (3) provides that “*the earth, water, and natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people.*” This provision reflects the principle that natural resource governance must serve public interests rather than merely facilitate economic exploitation. The Constitutional Court has consistently interpreted the state’s right to control not as private ownership, but as a public trust obligation requiring the state to regulate, manage, supervise, and ensure that natural resources are utilized in a manner that maximizes social welfare and protects the rights of affected communities.

The constitutional protection of community rights is further reinforced by the human rights provisions introduced through the constitutional amendments. Article 28H paragraph (1) guarantees every person’s right to live in physical and spiritual prosperity, to reside in a good and healthy environment, and to obtain health services. Likewise, Article 28D paragraph (1) guarantees the right to legal certainty and equal protection before the law, while Article 28I paragraph (3) recognizes the cultural identities and traditional rights of indigenous peoples. These provisions collectively establish a constitutional basis for protecting communities affected by mining activities, particularly with respect to environmental rights, land rights, cultural rights, and access to justice. Consequently, mining policies and regulations must be interpreted and implemented in a manner that respects and fulfills these constitutionally guaranteed rights.

The Constitution also recognizes the existence and rights of indigenous peoples through Article 18B paragraph (2), which states that the State recognizes and respects traditional communities and their customary rights insofar as they remain alive and are consistent with societal development and the principles of the Unitary State of the Republic of Indonesia. This constitutional recognition is particularly relevant in the mining sector because many mining concessions overlap with the customary territories of indigenous communities. Nevertheless, despite constitutional guarantees, indigenous peoples often face difficulties obtaining formal recognition of their customary territories and securing meaningful participation in decisions about mining operations on their traditional lands. The concentration of regulatory authority within central government institutions has further reduced local communities' opportunities to influence decisions that directly affect their livelihoods and environments. Consequently, constitutional principles intended to ensure equitable resource governance often remain unrealized in practice.²²

The constitutional guarantees are further elaborated through Law No. 39 of 1999 concerning Human Rights. This legislation recognizes the rights of indigenous peoples, property rights, environmental rights, and the right to participate in public affairs. Several provisions are particularly relevant to mining governance because they require the State to prevent violations of community rights arising from development projects and the exploitation of natural resources. The Human Rights Law also establishes the legal basis for state responsibility in protecting vulnerable communities affected by extractive industries.

Environmental rights are implemented through Law No. 32 of 2009 concerning Environmental Protection and Management. This law introduces procedural environmental rights, including the right to environmental information, the right to participate in environmental decision-making, the right to submit objections to environmentally harmful activities, and the right to access environmental justice. The law

²² Muhamad Pelengkahu, "From Authoritarianism to Participatory Governance? A Legal and Constitutional Review of Public Participation in Indonesia's Mineral and Coal Mining Laws," *Law Research Review Quarterly* 12, no. 1 (2026): 1–30, <https://doi.org/10.15294/llrq.v12i1.41546>.

further requires Environmental Impact Assessments (AMDAL), environmental permits, public consultations, and environmental monitoring mechanisms. These instruments are intended to prevent environmental degradation and protect communities living in mining areas.

The principal sectoral regulation is Law No. 3 of 2020 concerning Amendments to Law No. 4 of 2009 on Mineral and Coal Mining. This law governs licensing procedures, mining business activities, reclamation obligations, post-mining responsibilities, and community development programs. Community protection under the Mining Law is reflected in provisions concerning community empowerment programs, compensation and land acquisition mechanisms, environmental management obligations, reclamation and mine closure requirements, and dispute resolution procedures. However, the law primarily focuses on resource exploitation and investment facilitation, resulting in limited explicit recognition of participatory rights compared to environmental legislation. These regulations recognize public consultation, information disclosure, and community involvement in environmental decision-making. However, participation often remains procedural rather than substantive, limiting communities' actual influence over mining-related decisions.

2. Structural Weaknesses in the Legal Protection of Mining-Affected Communities

The findings of this study indicate that the legal protection of mining-affected communities in Indonesia remains structurally fragile despite numerous constitutional and statutory provisions intended to safeguard community rights. The legal framework governing mining activities formally recognizes environmental rights, land rights, indigenous peoples' rights, public participation, and access to justice. However, the practical implementation of these protections has failed to adequately address the complex realities faced by communities living in and around mining areas. This condition demonstrates that the primary challenge lies not in the absence of legal norms but in the structural

weaknesses embedded within the governance system itself.²³ The following table summarizes the principal types of problems experienced by mining-affected communities in Indonesia. It illustrates how these problems relate to different dimensions of rights protection.

Table 1. Classification of Problems Experienced by Mining-Affected Communities in Indonesia

No.	Type of Problem	Examples of Affected Regions
1.	Land and Agrarian Conflicts	Bombana (Southeast Sulawesi), Wawonii (Southeast Sulawesi), North Konawe (Southeast Sulawesi), East Kalimantan, North Maluku, West Sumatra
2.	Environmental Degradation	Pomalaa (Southeast Sulawesi), Morowali (Central Sulawesi), Halmahera (North Maluku), East Luwu (South Sulawesi), East Kalimantan
3.	Livelihood Loss	Pomalaa (Southeast Sulawesi), Kabaena (Southeast Sulawesi), Morowali (Central Sulawesi), East Kalimantan, Bangka Belitung
4.	Public Health Problems	North Konawe (Southeast Sulawesi), Bombana (Southeast Sulawesi), Morowali (Central Sulawesi), East Kalimantan
5.	Indigenous Peoples' Rights Violations	Moronene Territory (Bombana, Southeast Sulawesi), Dayak Territories (East Kalimantan), Amungme Territory (Papua), Indigenous Communities in Halmahera (North Maluku)
6.	Limited Public Participation	Wawonii (Southeast Sulawesi), North Konawe (Southeast Sulawesi), Halmahera (North Maluku), Morowali (Central Sulawesi)
7.	Unequal Benefit Distribution	Morowali (Central Sulawesi), Pomala (Southeast Sulawesi), East Kalimantan, North Maluku

²³ Jimly Asshiddiqie, *Konstitusi Ekonomi* (Jakarta: Kompas, 2010), 267–295; Takdir Rahmadi, *Hukum Lingkungan di Indonesia*, 4th ed. (Jakarta: Rajawali Pers, 2015), 115–148.

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- | | |
|-------------------------------------|---|
| 8. Barriers to Access
to Justice | Southeast Sulawesi, Central Sulawesi, East
Kalimantan, Papua, North Maluku |
|-------------------------------------|---|
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Source: Compiled by the author

The impacts of mining activities are not confined to a single sector or geographical area. Across various mining regions in Indonesia, communities experience diverse forms of rights violations that affect their economic, environmental, social, cultural, and procedural interests. These problems frequently occur simultaneously and reinforce one another, creating complex challenges for legal protection mechanisms. To illustrate the multidimensional nature of these impacts, the following table classifies the principal problems experienced by mining-affected communities and identifies representative regions where such issues have been documented. The table demonstrates that the challenges faced by mining-affected communities are systemic and widespread, thereby necessitating a more comprehensive and participatory legal protection framework.

One of the most significant weaknesses identified by this study is the persistent dominance of an economic-development orientation within mining governance. The state's authority to control natural resources, as mandated by Article 33 of the 1945 Constitution, has frequently been interpreted through a developmentalist perspective that prioritizes investment growth, industrial expansion, and resource extraction. While economic development remains an important national objective, the emphasis on maximizing resource utilization has often reduced community protection to a secondary concern. Consequently, legal instruments that are intended to protect affected communities tend to function as complementary safeguards rather than as central principles guiding mining governance. This imbalance has contributed to recurring conflicts involving land acquisition, environmental degradation,²⁴ and unequal distribution of benefits derived from mining activities.

The research further reveals that legal protection is weakened by unequal power relations among stakeholders involved in mining governance. Mining corporations generally possess greater financial

²⁴ Abrar Saleng, *Hukum Pertambangan* (Yogyakarta: UII Press, 2004), 157–189; Jimly Asshiddiqie, *Konstitusi Ekonomi*, 281–295.

resources, technical expertise, access to information, and political influence than local communities. In contrast, communities affected by mining activities frequently face limitations in legal literacy, institutional support, and economic capacity. These disparities create structural inequalities that undermine the effectiveness of legal protections even when formal participation mechanisms are available. In many cases, affected communities are unable to engage on equal terms during licensing processes, environmental assessments, or negotiations concerning compensation and community development programs.²⁵

Regulatory institutions responsible for supervising mining activities often operate within complex bureaucratic structures characterized by overlapping mandates and limited coordination. Such conditions create opportunities for regulatory capture, whereby policy-making and regulatory enforcement become increasingly influenced by powerful economic interests. Regulatory capture does not necessarily occur through overt corruption; it may also emerge through more subtle processes in which government institutions gradually adopt perspectives and priorities that align more closely with industry interests than with public welfare objectives.²⁶ In the context of mining governance, this phenomenon can contribute to the marginalization of community concerns and weaken the effectiveness of legal safeguards designed to protect affected populations.

These findings collectively suggest that the structural weaknesses of Indonesia's mining governance framework cannot be resolved solely through incremental regulatory amendments. Rather, they require a more fundamental transformation in the way community rights are conceptualized and protected within the legal system. A shift toward participatory justice is therefore necessary to ensure that mining-affected communities are recognized not merely as stakeholders but as rights-holders whose voices, interests, and welfare must be integrated into every stage of resource governance. Such an approach would strengthen democratic legitimacy, improve institutional accountability, and

²⁵ Syofiarti, "Peran Serta Masyarakat dalam Pengambilan Keputusan pada Kegiatan Pertambangan untuk Mewujudkan Pembangunan Berkelanjutan," *Refleksi Hukum* 7, no. 1 (2022): 19–36.

²⁶ Sina Chandranegara and Luthfi Marfugah, "Regulatory Capture on Emergency Due Process of Law-Making," *Cogent Social Sciences* 10, no. 1 (2024): 1–18.

promote a more equitable balance between economic development and the protection of community rights.²⁷

The structural weaknesses identified in this study are clearly reflected in several mining regions in Southeast Sulawesi, where the gap between legal protection and social reality remains evident. In Pomalaa, Kolaka Regency, the rapid expansion of nickel mining has generated significant socio-environmental consequences for local communities, particularly the Bajo people who depend heavily on coastal ecosystems for their livelihoods.²⁸ Research shows that mining activities have contributed to coastal pollution, declining marine resources, and the marginalization of fishing communities. More importantly, affected communities have experienced limited access to decision-making processes concerning mining development, indicating that participation rights remain largely procedural rather than substantive. The inability of local communities to influence policies that directly affect their livelihoods illustrates the persistence of power asymmetries between corporations, government authorities, and mining-affected populations.

A similar pattern can be observed in Bombana Regency, where mining activities have generated recurring conflicts between local communities and mining companies. Empirical studies reveal that disputes frequently arise over land control, access to natural resources, environmental impacts, and the perceived dominance of corporations in determining resource utilization.²⁹ Conflict levels in mining areas have been categorized as relatively high, reflecting widespread dissatisfaction among communities regarding the management of mining-related impacts. The persistence of such conflicts suggests that existing legal mechanisms have not adequately fulfilled their preventive function.

²⁷ David Szablowski, "Community Rights and Corporate Accountability in Extractive Industries: Emerging Global Governance Trends," *The Extractive Industries and Society* 17 (2024): 101453.

²⁸ Irawati, "The Expansion of Nickel Mining, Environmental Damage and Determinants' of the Bajo Community Marginalization in Pomalaa Regency, Southeast Sulawesi," *Jurnal Pemikiran Sosiologi* 7, no. 2 (2020): 291–312, <https://doi.org/10.22146/jps.v7i2.62529>.

²⁹ Sapar Sapar and Syafruddin Syafruddin, "Conflict Resolution in Mining Area: An Alternative Strategy of Community Empowerment," *Jurnal Ilmu Lingkungan* 19, no. 3 (2021): 629–638, <https://doi.org/10.14710/jil.19.3.629-638>.

Instead of serving as instruments for balancing competing interests, legal protections often become reactive tools employed only after disputes have escalated.

Another important example emerges from the experiences of indigenous Moronene communities in Bombana.³⁰ The expansion of mining activities has intensified disputes concerning customary territories, resource control, and community access to traditional lands. The conflict illustrates the continuing gap between the constitutional recognition of indigenous peoples and the practical protection of their rights within the mining sector. Although indigenous communities are formally acknowledged within Indonesia's constitutional framework, administrative and regulatory barriers frequently limit their ability to secure effective legal recognition and protection. As a result, customary rights often remain vulnerable when confronted with mining concessions and investment interests.

The environmental dimension of these structural weaknesses is equally visible across Southeast Sulawesi. In Pomalaa,³¹ studies have documented the degradation of coastal ecosystems resulting from open-pit nickel mining, including sedimentation, declining water quality, and disruptions to fisheries, which constitute the primary livelihood of many coastal residents. Environmental impacts extend beyond ecological damage and directly affect economic security, food availability, and social stability within mining-affected communities. These findings demonstrate that environmental protection failures simultaneously constitute failures to protect economic and social rights.

Furthermore, evidence from Bombana's gold mining sector illustrates how environmental degradation often accompanies governance failures and contestation among political, economic, and social actors. The struggle for control over mining resources has often overshadowed environmental considerations and community interests, resulting in weak enforcement of environmental obligations and

³⁰ Taufik Ahmad, "Masyarakat Adat dan Konflik-Konflik Pertambangan: Kasus Pertambangan Emas di Moronene, Bombana, Sulawesi Tenggara," *Pangadereng: Jurnal Hasil Penelitian Ilmu Sosial dan Humaniora* 5, no. 2 (2019): 255–270, <https://doi.org/10.36869/pjhpish.v4i2.45>.

³¹ Hamzah et al., *Pengembangan Masyarakat Pesisir di Kawasan Tambang Nikel Pomalaa Sulawesi Tenggara* (Bogor: Institut Pertanian Bogor, 2016), 97–128.

increased risks for local populations.³² Such conditions reinforce concerns regarding regulatory capture, where regulatory institutions become more responsive to economic interests than to the rights and welfare of affected communities.

Taken together, the experiences of the customary communities of Pomalaa, Bombana, and Moronene demonstrate that the structural weaknesses of Indonesia's mining governance framework are not merely theoretical concerns. They manifest concretely through environmental degradation, social marginalization, unequal participation, conflicts over land and resources, and limited access to justice. These empirical realities strengthen the argument that existing legal protection mechanisms remain insufficient to address the complex challenges faced by mining-affected communities. Consequently, a reconstruction of legal protection grounded in participatory justice is necessary to ensure that community rights are effectively recognized, protected, and integrated at every stage of mining governance.

B. Participatory Justice as a Theoretical Foundation for Reconstructing Community Rights Protection

Participatory justice emerged as a response to the limitations of conventional theories of justice that primarily focus on the distribution of rights, resources, and benefits.³³ Traditional legal approaches generally assess justice through the fairness of outcomes, such as whether compensation is provided, whether economic benefits are distributed, or whether legal remedies are available. However, contemporary legal and governance scholarship increasingly recognizes that justice cannot be evaluated solely by outcomes. Equally important is the manner in which decisions are made, who participates in those decisions, and whether affected individuals possess meaningful opportunities to influence

³² Ulil Amri, "Power Contestation and Environmental Degradation: Evidence from Bombana's Gold Mining Site, Southeast Sulawesi Province, Indonesia," *Politika: Jurnal Ilmu Politik* 1, no. 2 (2010): 59–70, <https://doi.org/10.14710/politika.1.2.2010.59-70>.

³³ Frank Fischer, *Democracy and Expertise: Reorienting Policy Inquiry* (Oxford: Oxford University Press, 2009), 67–89.

outcomes. From this perspective, participation is not merely a procedural requirement but an essential component of justice itself.

Participatory justice, therefore, departs from the assumption that citizens are passive recipients of public policy. Instead, it views individuals and communities as active rights-holders whose participation constitutes an integral element of democratic governance. The central premise of participatory justice is that those who bear the consequences of a decision should have a meaningful role in shaping that decision.³⁴ Participation thus becomes both a right and a mechanism for achieving more equitable governance outcomes. In this sense, justice is not merely concerned with what is distributed but also with who participates in determining how resources, opportunities, and burdens are allocated.

An important contribution of participatory justice is its integration of three interconnected dimensions of justice: recognition, participation, and accountability. Recognition requires acknowledgment of the identities, interests, knowledge systems, and rights of affected communities. Participation requires that communities possess genuine opportunities to influence decisions rather than merely being informed of predetermined outcomes. Accountability requires institutions and decision-makers to justify their actions and remain responsive to community concerns. These dimensions are mutually reinforcing. Participation without recognition risks becoming tokenistic, while participation without accountability may fail to produce meaningful changes in governance practices.³⁵

The concept also recognizes that formal opportunities for participation do not automatically create justice. Communities frequently encounter structural barriers such as unequal access to information, limited technical expertise, economic dependency, and political marginalization. As a result, participatory justice emphasizes the need to address power imbalances that prevent meaningful engagement. Effective participation requires not only legal rights but also practical

³⁴ Janet McIntyre-Mills, *Critical Systemic Praxis for Social and Environmental Justice: Participatory Policy Design and Governance for a Global Age* (New York: Springer, 2004), 21–47.

³⁵ Nicola Harvey and Ahjond Garmestani, “Identifying Untapped Legal Capacity to Promote Multi-Level and Cross-Sectoral Coordination of Natural Resource Governance,” *Sustainability Science* 19 (2024): 325–346.

capacities that enable communities to exercise those rights. This includes access to information, legal assistance, education, institutional support, and mechanisms that ensure community voices carry genuine weight in decision-making processes.³⁶

The relevance of participatory justice to mining governance is particularly significant because mining activities profoundly transform land, livelihoods, ecosystems, and social structures. Communities living in mining areas frequently bear environmental and social risks while possessing limited influence over decisions regarding resource extraction. Under these circumstances, distributive protections alone are insufficient. Even when compensation mechanisms exist, communities may continue to perceive governance processes as unjust if they are excluded from decisions affecting their future. Participatory justice, therefore, complements the protection of substantive rights by ensuring that affected populations possess agency within governance processes.³⁷

1. The Relevance of Participatory Justice in the Protection of Mining-Affected Communities

As demonstrated in the previous discussion, the central premise of participatory justice is that individuals and communities who bear the consequences of public decisions must be afforded meaningful opportunities to influence those decisions. This principle is especially important in the mining sector, where decisions concerning licensing, land acquisition, environmental management, and resource utilization directly affect the social, economic, cultural, and environmental conditions of local communities. Consequently, the effectiveness of legal protection cannot be assessed solely by the existence of statutory safeguards. However, it must also be evaluated based on the extent to which affected communities are genuinely involved in governance processes.

³⁶ Carolyn G. Palmer et al., “Stepping Stones to Transformative Participatory Governance Capabilities in a Rural Landscape Restoration Project,” *Sustainability, Place and People* (2024).

³⁷ Johanis Lukas Siegfried Sebril Polii et al., “Entangled Legal Pluralism: An Inclusive Model for Resolving Indigenous Natural-Resource Disputes Based on the SDGs and Social Justice,” *Sosioedukasi: Jurnal Ilmiah Ilmu Pendidikan dan Sosial* 14, no. 4 (2025): 95–112.

The findings of this study indicate that many of the legal problems experienced by mining-affected communities stem from the absence of meaningful participation during critical stages of mining governance. Although Indonesian mining and environmental legislation formally recognizes public participation, the implementation of these provisions often remains procedural and administrative. Community involvement is frequently limited to consultation forums held after strategic decisions have already been made, reducing participation to a mechanism for information dissemination rather than a process of shared decision-making. As a result, affected communities have limited influence over mining projects that fundamentally alter their access to land, natural resources, and traditional livelihoods. This condition is inconsistent with the principles of participatory justice, which require participation to function as a mechanism of empowerment rather than mere compliance.

From the perspective of participatory justice, this situation reflects a deeper structural problem concerning the distribution of decision-making power. Communities frequently bear the environmental and social risks associated with mining development while possessing limited authority to influence decisions regarding resource extraction. Conversely, state institutions and corporate actors generally retain substantial control over licensing processes, environmental assessments, and investment decisions. Such asymmetrical power relations undermine the legitimacy of governance processes and contribute to recurring social conflicts. Participatory justice addresses this imbalance by recognizing that procedural inclusion is a prerequisite for substantive fairness. Decisions are more likely to be perceived as legitimate when affected communities possess meaningful opportunities to participate in their formulation.

Participatory justice is also closely connected to the constitutional principles underlying natural resource governance in Indonesia. Article 33 paragraph (3) of the 1945 Constitution provides that natural resources shall be controlled by the state and utilized for the greatest prosperity of the people.³⁸ Traditionally, discussions surrounding this provision have focused on the state's authority to regulate and manage

³⁸ Jimly Asshiddiqie, *Konstitusi Ekonomi* (Jakarta: Kompas, 2010), 267–295.

natural resources.³⁹ However, contemporary constitutional interpretation increasingly emphasizes that state control entails corresponding obligations to protect community rights, ensure social welfare, and facilitate democratic participation in governance processes. Accordingly, participatory justice provides a mechanism for operationalizing the constitutional mandate of public welfare in the mining sector. Rather than viewing communities merely as beneficiaries of state policies, participatory justice recognizes them as active participants in determining how natural resources should be managed and distributed.

The relevance of participatory justice is further reinforced by the increasing recognition of community rights within international natural resource governance frameworks.⁴⁰ Contemporary approaches to environmental governance, indigenous rights protection, and sustainable development emphasize the importance of participation, transparency, accountability, and access to information. These developments reflect a broader shift away from hierarchical governance models toward collaborative and inclusive forms of decision-making. The reconstruction of legal protection for mining-affected communities in Indonesia, therefore, aligns not only with domestic constitutional principles but also with evolving international standards concerning human rights and natural resource governance.

Based on these considerations, this study argues that participatory justice provides the most appropriate theoretical foundation for reconstructing the legal protection of mining-affected communities. The theory addresses the core weaknesses identified in Indonesia's mining governance system, including exclusion from decision-making, unequal power relations, limited accountability, and fragmented protection mechanisms. More importantly, participatory justice offers a framework that integrates the protection of substantive rights with democratic governance principles. Through this approach, communities are no longer treated merely as objects of development policies but as rights-

³⁹ Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya* (Jakarta: Kompas, 2008), 63–72.

⁴⁰ Carolyn G. Palmer et al., "Stepping Stones to Transformative Participatory Governance Capabilities in a Rural Landscape Restoration Project," *Sustainability, Place and People* (2024).

holders whose participation constitutes an essential condition for achieving social justice, environmental sustainability, and constitutional welfare objectives.

2. Transforming Community Rights Protection Through Participatory Justice

Within the Indonesian legal system, the concept of participatory justice can be derived from the constitutional principles of democracy, the rule of law, and popular sovereignty. Although the term *participatory justice* is not expressly mentioned in the 1945 Constitution, its normative foundations are reflected in Article 1 paragraph (2), which establishes that sovereignty resides in the people, and Article 1 paragraph (3), which affirms Indonesia as a state governed by law. These constitutional principles require that legal and policy decisions affecting citizens be formulated through processes that ensure public involvement and democratic legitimacy. Consequently, justice in a constitutional democracy is concerned not only with the substantive outcomes of governmental action but also with the fairness and inclusiveness of the decision-making process itself.

The development of participatory justice in Indonesia has gained significant momentum with the emergence of the doctrine of *Meaningful Participation*, particularly following the Constitutional Court's landmark Decision Number 91/PUU-XVIII/2020 on the formal review of the Job Creation Law. In this decision, the Court emphasized that public participation cannot be reduced to a procedural formality but must constitute genuine involvement capable of influencing legislative outcomes. The Court formulated three essential elements of meaningful participation: the *right to be heard*, the *right to be considered*, and the *right to be explained*. These principles establish that affected citizens must not only be given opportunities to express their views but must also receive assurance that their views will be taken into consideration and that decision-makers will provide reasons regarding how those views are addressed. This doctrine represents a significant shift

from formal participation toward participatory justice as a substantive constitutional requirement.⁴¹

The concept is also closely related to the theory of responsive law, which argues that law should remain sensitive to social aspirations and capable of adapting to changing societal needs. Under this perspective, legal legitimacy is strengthened when law functions as an instrument for accommodating public interests rather than merely expressing state authority. In the Indonesian context, this idea resonates strongly with the progressive legal thought of Satjipto Rahardjo, who argued that law exists for human beings rather than human beings for law.⁴² Consequently, public participation should not be viewed as a supplementary procedural step but as a central mechanism for ensuring that legal norms reflect social realities and promote substantive justice.

The relevance of participatory justice becomes particularly apparent in the governance of natural resources. Article 33, paragraph (3) of the 1945 Constitution stipulates that land, water, and natural resources shall be controlled by the state and utilized for the greatest prosperity of the people. Historically, this provision has often been interpreted as conferring broad regulatory authority upon the state. However, contemporary constitutional scholarship increasingly emphasizes that state control carries corresponding obligations to ensure public welfare, environmental sustainability, and democratic participation. Accordingly, resource governance cannot be regarded as constitutionally legitimate if communities directly affected by resource exploitation are excluded from decisions regarding the access, use, and management of natural resources.

In the mining sector, participatory justice provides a particularly relevant framework for addressing the recurring disconnect between legal protection and social reality. Existing mining regulations formally recognize public participation in environmental impact assessments, licensing procedures, and spatial planning processes. Nevertheless, empirical evidence from various mining regions indicates that

⁴¹ Entol Zaenal Muttaqin and Sahrul Hikam, "Konsep Meaningful Participation dalam Proses Legislasi di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 91/PUU-XVIII/2020," *Amnesti: Jurnal Hukum* 6, no. 1 (2024): 62–80.

⁴² Satjipto Rahardjo, *Hukum Progresif: Sebuah Sintesa Hukum Indonesia* (Yogyakarta: Genta Publishing, 2009), 23–41.

participation frequently occurs after strategic decisions have already been made. Communities are often informed about projects rather than genuinely involved in shaping them. As a result, participation functions primarily as an administrative requirement rather than a mechanism for influencing outcomes. This condition demonstrates the persistence of procedural participation without substantive participation, thereby undermining the constitutional ideals embodied in meaningful participation.

The experiences of mining communities in Southeast Sulawesi provide a compelling illustration of this problem. In Pomalaa, Kolaka Regency, nickel mining expansion has generated concerns regarding environmental degradation, declining fisheries productivity, and the marginalization of coastal communities, particularly among traditional fishing groups. Similarly, conflicts over land access, resource control, and environmental impacts in Bombana have shown that communities often struggle to influence decisions that directly affect their livelihoods. These experiences reveal that legal protection mechanisms remain predominantly reactive, addressing disputes after they arise rather than ensuring community involvement before critical decisions are taken. Consequently, the absence of participatory justice contributes to recurring social conflicts and weakens the legitimacy of mining governance.

Based on these considerations, this study conceptualizes participatory justice as a legal principle that requires the active involvement of mining-affected communities at all stages of natural resource governance. The principle extends beyond consultation to encompass the recognition of communities as rights-holders, meaningful participation in decision-making, institutional accountability, and the equitable distribution of the benefits and burdens of resource exploitation. Through this framework, legal protection is no longer limited to compensating communities after harm occurs. However, it is reconstructed as a preventive and democratic mechanism that enables communities to influence decisions before impacts arise. Such an approach is consistent with Indonesia's constitutional commitment to popular sovereignty, social justice, and the greatest prosperity of the people, thereby providing a normative foundation for the reconstruction of the legal protection of mining-affected communities.

3. Mechanisms toward Inclusive Participation, Substantive Remedies, and Legal Legitimacy

To operationalize participatory justice in the context of mining governance, it is necessary to identify the institutional and legal mechanisms by which this principle can be put into practice. Participatory justice cannot be achieved solely through normative recognition of community rights; rather, it requires procedural arrangements that facilitate meaningful participation, remedial frameworks capable of addressing actual harms, and legal institutions that command public trust and acceptance.⁴³ Accordingly, this study adopts three interconnected dimensions as the analytical components of participatory justice: inclusive participation, substantive remedies, and legal legitimacy. These dimensions provide a practical framework for evaluating whether existing mining regulations effectively accommodate the interests and rights of affected communities while ensuring accountability on the part of both the state and mining corporations.⁴⁴

Inclusive participation represents the procedural dimension of participatory justice by ensuring that affected communities have genuine opportunities to engage in decision-making processes before, during, and after mining activities. Substantive remedies constitute the corrective dimension by providing effective mechanisms to prevent, mitigate, and redress social, economic, cultural, and environmental harms. Legal legitimacy, in turn, reflects the normative dimension, referring to the degree to which legal rules and institutional decisions are perceived as fair, justified, and worthy of compliance by affected stakeholders.⁴⁵ Together, these dimensions establish a comprehensive framework through which participatory justice may be assessed and implemented in natural resource governance.

Contemporary natural resource governance, particularly in the mining sector, increasingly demonstrates that legal compliance alone is

⁴³ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Cambridge: Polity Press, 2008), 65–89.

⁴⁴ United Nations Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework* (2011) Principles 25–31.

⁴⁵ Richard H. Fallon Jr., ‘Legitimacy and the Constitution’ (2005) 118 *Harvard Law Review* 1787, 1794–1801.

insufficient to ensure social justice, sustainable development, and conflict prevention. Across many jurisdictions, mining-related disputes emerge not only from unequal distribution of economic benefits but also from the exclusion of affected communities from decision-making processes, inadequate remedies for social and environmental harms, and declining public trust in legal and governmental institutions. The persistence of such conflicts indicates that formal legality does not automatically translate into social acceptance or normative legitimacy. Instead, governance frameworks must incorporate mechanisms that enable meaningful participation, provide effective remedies, and foster public confidence in legal institutions.⁴⁶

From the perspective of participatory justice, individuals and communities affected by governmental or corporate decisions should be afforded genuine opportunities to influence outcomes that shape their livelihoods, cultural identity, and environment. Participation is therefore not merely a procedural requirement but a substantive democratic value that enhances the quality, accountability, and legitimacy of decision-making. Scholars such as Habermas argue that legitimacy is strengthened when those affected by decisions can participate in deliberative processes under conditions of equality and mutual recognition.

In the context of mining governance, substantive remedies are particularly important because extractive activities frequently generate impacts that extend beyond economic loss. Communities may experience environmental degradation, loss of traditional livelihoods, displacement, deterioration of public health, destruction of cultural heritage, and restrictions on access to natural resources. Consequently, remedies must be designed not merely to compensate measurable financial losses but also to restore affected communities to the fullest extent possible and address the broader consequences of rights violations. This approach aligns with contemporary human rights principles, which recognize that effective remedies should be accessible, adequate, timely,

⁴⁶ Stephen P. Osborne, ed., *The New Public Governance? Emerging Perspectives on the Theory and Practice of Public Governance* (London: Routledge, 2010), 1–12.

and capable of producing tangible improvements in the conditions of affected rights-holders.⁴⁷

The ultimate objective of participatory justice is not merely to establish procedures for participation or mechanisms for redress, but to foster a legal order that is perceived as fair, trustworthy, and worthy of compliance by those subject to its authority. In this regard, legal legitimacy constitutes the normative dimension of participatory justice, reflecting the extent to which legal rules, institutions, and decisions are accepted as justified by affected stakeholders. Legitimacy is particularly significant in the governance of natural resources because decisions concerning land use, environmental protection, and resource extraction frequently involve competing interests and unequal power distributions. Under such circumstances, the effectiveness of legal regulation depends not only on its formal validity but also on its social acceptance among those whose rights and livelihoods are affected.

Traditional legal positivism tends to associate legitimacy with legality, emphasizing compliance with established procedures and formal sources of authority. However, contemporary legal and political theory increasingly recognizes that legality alone is insufficient to secure public acceptance. A decision may be legally valid yet lack legitimacy if affected communities perceive the decision-making process as exclusionary, unfair, or unresponsive to their concerns. Consequently, legitimacy is understood not only as a product of lawful authority but also as an outcome of participatory, transparent, and accountable governance processes.

From a deliberative perspective, legitimacy emerges when individuals affected by collective decisions have meaningful opportunities to participate in the processes through which those decisions are formed. This perspective is particularly relevant to mining governance, where decisions concerning licensing, land acquisition, environmental management, and community development directly affect local populations. Procedural fairness enhances trust in

⁴⁷ United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (New York: United Nations, 2005), paras. 18–23.

institutions and encourages voluntary compliance, thereby reducing the need for coercive enforcement. In the context of mining activities, communities are more likely to recognize the authority of regulatory decisions when they have been afforded opportunities to voice concerns, receive adequate information, and participate in meaningful consultations throughout the decision-making process.

Legal legitimacy is also closely connected to the availability of substantive remedies. The existence of accessible and effective mechanisms for addressing grievances demonstrates institutional responsiveness and accountability, reinforcing public confidence in the legal system. Conversely, where communities experience environmental harm, loss of livelihoods, or violations of land rights without meaningful avenues for redress, perceptions of injustice may undermine the legitimacy of both legal institutions and regulatory frameworks. As a result, legitimacy should be understood as a dynamic relationship between institutions and the communities they govern, continuously shaped by experiences of participation, accountability, and fairness.

Within the framework of participatory justice, legal legitimacy therefore serves as both an indicator and an outcome of effective governance. It is strengthened when affected communities are recognized as rights-holders, provided with meaningful opportunities to participate in decision-making, and granted access to remedies that can address harms and protect their interests. Accordingly, this study conceptualizes legal legitimacy as the degree to which mining-related legal arrangements are perceived as fair, accountable, and worthy of compliance by mining-affected communities. Such legitimacy is essential for ensuring not only the effectiveness of legal protection but also the sustainability and social acceptance of natural resource governance.

The foregoing discussion demonstrates that participatory justice cannot be realized solely through the formal recognition of rights or the procedural compliance of legal institutions. Rather, it requires an integrated framework that combines inclusive participation, substantive remedies, and legal legitimacy as mutually reinforcing dimensions of governance. Each dimension performs a distinct yet interconnected function in ensuring that affected communities are not merely passive recipients of legal protection but active participants in shaping decisions that affect their rights, livelihoods, and environments.

Conclusion

This study demonstrates that the existing legal framework for protecting the rights of mining-affected communities in Indonesia remains predominantly administrative and compensatory, emphasizing regulatory compliance and post-harm dispute resolution rather than meaningful participation and preventive protection. The persistence of mining-related conflicts indicates that formal recognition of community rights is insufficient where affected communities have limited influence over decisions concerning mining activities. Drawing upon progressive law, responsive law, and participatory justice, this study therefore proposes reconstructing the legal framework from a reactive and compensation-oriented mechanism into a preventive, participatory, and accountable framework that recognizes mining-affected communities as rights-holders throughout the mining governance process.

The proposed reconstruction requires strengthening community rights at the pre-permitting stage, making meaningful community participation a legally binding obligation throughout the mining lifecycle, and guaranteeing timely and accessible access to information. The framework should also establish effective complaint and grievance mechanisms, strengthen preventive, corrective, restorative, and compensatory remedies, ensure corporate and government accountability for mining-related impacts and supervisory failures, and clarify the division and coordination of institutional responsibilities. These reforms operationalize participatory justice through inclusive participation, substantive remedies, and legal legitimacy, transforming affected communities from passive recipients of compensation into rights-holders with meaningful decision-making and enforcement capacities. Accordingly, the reconstruction proposed in this study provides a normative basis for a more legitimate, equitable, and sustainable mining governance framework consistent with Indonesia's constitutional commitment to social justice and the greatest prosperity of the people.

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- Wahana Lingkungan Hidup Indonesia (WALHI). *Laporan Tahunan Kondisi Lingkungan Hidup Indonesia 2023*. Jakarta: WALHI, 2023.

Acknowledgment

None.

Funding Information

None.

Conflicting Interest Statement

The authors state that there is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

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