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From Authoritarianism to Participatory Governance? A Legal and Constitutional Review of Public Participation in Indonesia's Mineral and Coal Mining Laws

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Abstract

This article critically examines the evolution of public participation in Indonesia's mineral and coal mining legislation from the post-independence era through the 2023 reforms. Drawing on a normative-doctrinal methodology, it analyses four principal statutes (Law No. 11/1967, Law No. 4/2009, Law No. 3/2020 (as amended by the Law No. 6/2023)) alongside their derivative regulations. The study deploys Arnstein's ladder of participation to assess the degree of meaningful engagement granted to affected communities, and integrates the Constitutional Court's five-function model of state resource control (beleid, bestuursdaad, regelendaad, beheersdaad, toezichthoudensdaad) and Ostrom's collective-action theory to contextualize normative shifts. Findings reveal that under the 1967 regime, public involvement was effectively absent, amounting to non-participation. The 2009 Mining Act introduced tokenistic consultation and information-sharing mechanisms without substantive influence. The 2020 amendments marked a shift toward partnership—granting formal channels for complaints, community development obligations, and limited consent procedures—yet persisted in privileging state and corporate prerogatives. The 2023 reforms further codified participatory requirements in area designation and social-and-environmental funding, but enforcement and procedural clarity remain uneven. The article concludes

that while Indonesia's mining laws reflect progressive normative commitments to public participation, significant gaps in implementation, transparency, and community empowerment persist. It recommends targeted regulatory guidance and stronger monitoring mechanisms to align statutory provisions with constitutional and international participatory standards.

KEYWORDS
Mineral and Coal Mining; Indonesia Mining Act; Public Participation; Mining Governance

Introduction

The abundance of natural resources is widely acknowledged as a strategic asset, particularly when governed in a manner that is legally sound, ethically responsible, and environmentally sustainable. However, the potential benefit of such resources is contingent upon the frameworks through which they are managed. For decades, scholars, policymakers, and practitioners have consistently pursued reforms in natural resource governance to promote long-term sustainability, economic equity, and social justice.[1] Diverse theoretical models from legal, economic, environmental, and political perspectives have sought to explain how state and non-state actors can optimally regulate access to, and control over, extractive resources. [2]

Historically, the late 19th and early 20th centuries saw the consolidation of state-centric control over natural resources. Across many jurisdictions, natural wealth was framed as a tool for national development, with the state acting as the custodian of resources in the name of the

[1] Mahdi Ghaemi Asl, Mohammad Nasr Isfahani, and Mahsa Mohammadi, "How Does the Mineral Resource Exploitation Sector Interact with Islamic and Traditional Ventures? Insights amidst the Impact of Green Reforms and State-of-the-Art Technological Advancements," *Resources Policy* 98, no. 43 (2024): 105287, https://doi.org/10.1016/j.resourpol.2024.105287.
[2] Arnold Binder, Daniel Stokols, and Ralph Catalano, "Social Ecology: An Emerging Multidiscipline," *Journal of Environmental Education* 7, no. 2 (1975): 32–43, https://doi.org/10.1080/00958964.1975.9941525; Brian E. Green, "A General Model of Natural Resource Conflicts: The Case of International Freshwater Disputes," *Sociologia* 37, no. 3 (2005): 227–48; Freya A.V. St. John, Gareth Edwards-Jones, and Julia P.G. Jones, "Conservation and Human Behaviour: Lessons from Social Psychology," *Wildlife Research* 37, no. 8 (2010): 658–67, https://doi.org/10.1071/WR10032; Mikhail Slipenchuk et al., "Multifaceted Approach to Natural Resource Management: Ethnology, Geography, Culture," *Journal of the Geographical Institute Jovan Cvijic, SASA* 66, no. 3 (2016): 449–55, https://doi.org/10.2298/ijgi1603449s.

public interest. [3] By the mid-20th century, the expansion of mining activities, particularly in minerals and coal, prompted widespread global concern over their social and environmental externalities. [4] These concerns were met with institutional reforms that many spearheaded by the World Bank and international donors was calling for the transformation of national legal systems, fiscal structures, and mining institutions to integrate sustainability standards and ensure compliance with broader development goals.[5]

In parallel, the concept of community development particularly in mining-affected regions gained prominence.[6] Local communities, often those most vulnerable to the adverse impacts of extractive activities, began to demand greater agency. [7] This included the right to information, access to justice, and the opportunity to influence decision-making processes. Consequently, the idea of public participation emerged as a critical component of good governance in the extractive sector, not merely as a procedural formality, but as a substantive legal and democratic imperative.

This article specifically interrogates the legal construction of public participation in the governance of mineral and coal resources in Indonesia. It analyzes how participation has been regulated and operationalized across three legal regimes namely; Law No. 11 of 1967, Law No. 4 of 2009, and Law No. 3 of 2020 (as amended by Law No. 6 of 2023 on Job Creation). Anchored in a doctrinal legal methodology, the study draws upon statutory interpretation, constitutional analysis, and public participation theory to evaluate whether and how the right to participate has evolved in substance, form, and effect.

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[3] Gro Harlem Brundtland, "Our Common Future World Commission on Environment and Developement," 1987.

[4] Joanie Caron, Suzanne Durand, and Hugo Asselin, "Principles and Criteria of Sustainable Development for the Mineral Exploration Industry," *Journal of Cleaner Production* 119 (2016): 215–22, https://doi.org/10.1016/j.jclepro.2016.01.073.

[5] George Pring, James Otto, and Koh Naito, "Trends in International Environmental Law Affecting the Minerals Industry," *Journal of Energy & Natural Resources Law* 17, no. 1 (1999): 39–55.

[6] Naqib Ullah Khan et al., "A Comprehensive Evaluation of Sustainable Mineral Resources Governance in Pakistan: An Analysis of Challenges and Reforms," *Resources Policy* 88, no. August 2023 (2024): 104383, https://doi.org/10.1016/j.resourpol.2023.104383.

[7] John R. Owen and Deanna Kemp, "'Free Prior and Informed Consent', Social Complexity and the Mining Industry: Establishing a Knowledge Base," *Resources Policy* 41, no. 1 (2014): 91–100, https://doi.org/10.1016/j.resourpol.2014.03.006.

Mining continues to play a central role in Indonesia's national development, serving as a primary generator of foreign exchange, state revenue, and economic multiplier effects.[8] Worlanyo & Jiangfeng argue that the mining sector contributes significantly to national development by creating employment opportunities and facilitating infrastructure expansion, particularly in underdeveloped areas.[9] Bernadetta et al. similarly emphasize the fiscal importance of the mineral and coal sectors in state budgeting and public investment strategies.[10]

However, these benefits are accompanied by complex socio-legal challenges. The so-called resource curse, as articulated by Auty and later expanded by Sachs & Warner, suggests that countries endowed with abundant natural wealth often experience economic stagnation, institutional fragility, and social inequality.[11] Nations such as Venezuela, Congo, and Nigeria illustrate the perils of over-reliance on volatile commodities and centralized control. Conversely, countries with limited resource endowments such as Singapore, South Korea, and Taiwan, have achieved robust economic growth through institutional resilience and diversified policy strategies.[12]

Indonesia's own trajectory underscores the ambivalence of resource-led development. The tension between economic exploitation and ecological preservation remains palpable, with mineral and coal mining often catalyzing conflict between the state, corporations, and affected communities.[13] The International Council on Mining and Metals (ICMM) has emphasized that

[8] Gary Mcmahon and Susana Moreira, "The Contribution of the Mining Sector to Socioeconomic and Human Development," Extractive Industries for Development Series, 2014, https://documents1.worldbank.org/curated/ru/713161468184136844/pdf/872980NWP0Mini00Box385186B00PUBLIC0.pdf.

[9] Adator Stephanie Worlanyo and Li Jiangfeng, "Evaluating the Environmental and Economic Impact of Mining for Post-Mined Land Restoration and Land-Use: A Review," *Journal of Environmental Management* 279, no. September 2020 (2021): 111623, https://doi.org/10.1016/j.jenvman.2020.111623.

[10] Bernadetta Devi and Dody Prayogo, "Mining and Development in Indonesia: An Overview of the Regulatory Framework and Policies," *International Mining for Development Centre*, 2013, 1–60.

[11] Jeffrey Sachs and Andrew Warner, "Natural Reaource Abundance and Econmic Growth," *National Bureau of Economic Research*, vol. 3, 1995; Richard M Auty, *Sustaining Development in Mineral Economies: The Resources Curse Thesis* (New York: Routledge, 1993).

[12] Joseph E. Stiglitz, "Some Lessons from the East Asian Miracle," *World Bank Research Observer* 11, no. 2 (1996): 151–77, https://doi.org/10.1093/wbro/11.2.151.

[13] Ganeshan Wignaraja, *Competitive Strategy in Developing Country*, *Routledge Studies in Development Economics*, 2003; Ian Bannon and Paul Collier, "Natural Resources and Conflict: What We Can Do?," in

extractive industries have an obligation to engage in meaningful community participation, particularly with Indigenous and vulnerable groups.[14] This entails recognizing community rights, facilitating informed consent, and embedding participatory practices into project design, implementation, and oversight.

Mining conflicts in Indonesia continue to be widespread. Between 2019 and 2024 itself, over 1,900 legally adjudicated mining disputes were recorded, in addition to unreported cases in remote regions.[15] These conflicts frequently arise from the denial of substantive rights, inadequate access to information, and the failure to recognize communities as legitimate stakeholders.[16] Such patterns indicate a structural imbalance in the relationship between the state, corporations, and communities despite the constitutional mandate articulated in Article 33(3) of the 1945 Constitution, which states that natural resources are to be controlled by the state and used for the greatest welfare of the people. [17]

Further clarification from the Constitutional Court, notably in Decision No. 36/PUU-X/2012 reaffirmed the multi-dimensional nature of state control (penguasaan negara), including policymaking (beleid), regulatory authority (regelendaad), administrative action (bestuursdaad), managerial oversight (beheersdaad), and supervisory functions (toezichthoudensdaad). [18] However, the practical realization of these functions often excludes

Natural Resources and Violent Conflict: Options and Actions, vol. 87, 2005, 806–8, https://doi.org/10.1111/j.1467-8276.2005.00767_3.x.

[14] International Council on Mining and Metals, "ICMM's Mining Principles Respond to Evolving Societal Expectations of the Mining and Metals Industry," www.icmm.com, 2024, https://www.icmm.com/en-gb/our-principles.

[15] Mahkamah Agung Republik Indonesia, "Putusan," mahkamahagung.go.id, 2024, https://putusan3.mahkamahagung.go.id/search.html?q=Pertambangan&jenis_doc=putusan&cat=d92c02366ae91966e4cdbe6279fc36eb%7C9a49acde4116f41729db232e7979515b.

[16] Asrul Ibrahim Nur, Sholahuddin Al Fatih, and Christina Clarissa Intania, "Revitalising Indigenous Rights Participation in Mining Lawmaking Process: Evaluation and Proposal for Indonesia," *Law Reform: Jurnal Pembaharuan Hukum* 20, no. 1 (2024): 188–210, https://doi.org/10.14710/lr.v20i1.63684.

[17] Kementerian Energi dan Smber Daya Mineral Republik Indonesia, "Kebijakan Mineral & Batubara Indonesia," *Direktorat Jenderal Mineral Dan Batubara*, 2021, 48.

[18] Lego Karjoko, I Gusti Ayu Ketut Rachmi Handayani, and Willy Naresta Hanum, "Legal Policy of Old Wells Petroleum Mining Management Based on Social Justice in Realising Energy Sovereignty," *Sriwijaya Law Review* 6, no. 2 (2022): 300, https://doi.org/10.28946/slrev.Vol6.Iss2. 1745.pp286-303.

meaningful community involvement, resulting in continued socio-environmental conflict and legal uncertainty. [19]

As public awareness regarding environmental rights increases, so too does civil society's demand for more transparent, accountable, and inclusive governance of extractive activities. Kurniawan have argued that rising environmental consciousness intensifies the demand for democratization in resource management, from the pre-exploration phase to post-mining rehabilitation. [20] Nonetheless, in practice, public participation in mining governance remains largely formalistic. Neto & Pedro also observed that participation mechanisms, such as public hearings and consultations are often deployed to legitimize pre-determined decisions rather than to foster genuine dialogue or consent. [21] As a result, communities increasingly resort to informal strategies, such as demonstrations and legal mobilization to assert their rights and challenge exclusionary policies. [22]

In light of these dynamics, the demand for a holistic governance framework becomes evident, one that fosters synergistic collaboration among the state, corporations, civil society organizations, and affected communities. Such a framework must move beyond procedural formalities toward a model of transformative participation, grounded in human rights, environmental sustainability, and democratic legitimacy.

Accordingly, this research seeks to comprehensively assess the extent to which public participation has been recognized, institutionalized, and practiced in Indonesia's mining legal regimes. By examining the evolution of participatory norms from the 1967 Mining Law to the post-Omnibus Law era, the article contributes to both national legal development and the broader scholarly discourse on participatory democracy in natural

[19] Muhammad Rahjay Pelengkahu, "One Map Policy: Digital Administration Method as an Effort to Solve Land Overlaps in Indonesia," *Journal of Social Sciences and Cultural Studies* 5, no. 1 (2022): 1–8.
[20] Nanang Indra Kurniawan et al., "The Role of Local Participation in the Governance of Natural Resource Extraction," *Extractive Industries and Society* 9, no. September 2021 (2022): 26–29, https://doi.org/10.1016/j.exis.2021.101029.
[21] Pedro Bigolin Neto and Alexandra Mallett, "Public Participation in Environmental Impact Assessment Processes through Various Channels – Can You Listen to Us Now? Lessons from a Brazilian Mining Case," *Extractive Industries and Society* 13, no. November 2022 (2023): 101186, https://doi.org/10.1016/j.exis.2022.101186.
[22] Mariana Galvão Lyra, "Challenging Extractivism: Activism over the Aftermath of the Fundão Disaster," *Extractive Industries and Society* 6, no. 3 (2019): 897–905, https://doi.org/10.1016/j.exis.2019.05.010.

resource governance. The findings are intended to inform future legislative reform, regulatory implementation, and judicial interpretation in order to better align extractive governance with constitutional values, environmental justice, and people-centered development.

Methods

This study employs a normative-doctrinal legal research method, which focuses on analyzing laws as written texts, interpreted through their internal logic, constitutional foundations, and normative coherence. The central object of analysis comprises the formal provisions governing public participation in the management of mineral and coal resources as regulated under Law No. 11 of 1967, Law No. 4 of 2009, and Law No. 3 of 2020 in conjunction with Law No. 6 of 2023 on Job Creation, including their respective implementing regulations. The research applies a statute-based approach (statute approach), a historical approach (tracing the evolution of participation norms across legal-political regimes), and a conceptual approach (drawing upon public participation theories and constitutional interpretation). These approaches are employed to evaluate the legitimacy, structure, and operational capacity of participation norms within the Indonesian mining law regime.

Doctrinal analysis is supplemented by the application of Arnstein's Ladder of Participation, which provides a conceptual framework for classifying the levels of public involvement in governance; the interpretation of Article 33 of the 1945 Constitution, reinforced by relevant Constitutional Court decisions, particularly Decision No. 36/PUU-X/2012, Decision No. 45/PUU-VIII/2010, and Decision No. 37/PUU-XI/2021; and Critical reflection on the philosophical underpinnings of Indonesian law, namely Pancasila, and the legislative formation principles as regulated under the Law on the Formation of Laws and Regulations (Law No. 12 of 2011 jo. Law No. 13 of 2022).

Legal materials were collected through documentary analysis of statutes, court decisions, scholarly writings, and official legislative records. The analysis was conducted using qualitative-interpretive techniques, particularly syllogistic reasoning supported by deductive logic, to draw conclusions about the normative strength and practical viability of public participation provisions in each legal regime

Result and Discussion

1. Ideological Foundations and the Constitutional Mandate in the Formation of Legislation in Indonesia

In every legal system, legislation functions as a tangible manifestation of law and as a structural tool through which the state exercises its normative authority.[23] It regulates not only the vertical relationship between state and citizen but also horizontal relations within society. Given its constitutional significance, every legislative product must reflect Indonesia's foundational legal (*rechtsidee*) and philosophical ideals (*staatsidee*) which are enshrined in Pancasila and the 1945 Constitution.[24] As the philosophical basis (*philosophische grondslag*) of the state, Pancasila does not merely serve a symbolic function; it underpins the normative orientation of all legal development and governance.[25]

[23] Joseph Raz, "Legal Principles and the Limits of Law," *The Yale Law Journal* 81, no. 5 (1972): 823, https://doi.org/10.2307/795152; Miro Cerar, "The Relationship Between Law and Politics," *Annual Survey of International & Comparative Law* 15, no. 1 (2010): 24, https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1001&context=facultyworkingpapers.

[24] Esmi Warassih, "Peran Politik Hukum Dalam Pembangunan Nasional," *Gema Keadilan* 5, no. 1 (2018): 1–15, https://doi.org/10.14710/gk.2018.3592.

[25] Kaelan, *Filsafat Pancasila: Pandangan Hidup Bangsa Indonesia* (Yogyakarta: Paradigma, 2009).

Kaelan and Soeprapto have emphasized that Pancasila constitutes both a constitutive ideal and a regulatory compass for the Indonesian state.[26] As an open ideology, Pancasila is designed to be responsive to societal transformation while preserving national identity. Its normative function is particularly salient in the realm of lawmaking, where it serves as a source of values, interpretive guidance, and a benchmark for evaluating legal legitimacy.[27] In this sense, ideology understood as a structured body of values and normative concepts becomes essential to the legislative process. The distinction between open and closed ideologies is particularly relevant.[28] An open ideology, such as Pancasila, derives its content from the living values of society and cultural experiences, and is capable of adaptation and evolution. By contrast, a closed ideology imposes a fixed vision of social engineering, often alien to organic societal development.[29] In the context of Indonesia's constitutional framework, legislation must reflect the open and living character of Pancasila, harmonized with the principles enshrined in the 1945 Constitution, which serves as the supreme legal norm (*grundnorm*).[30]

a. Pancasila and Public Participation in the Legislative Process

The fourth principle of Pancasila, emphasizing deliberation and popular sovereignty, provides an explicit ideological foundation for the concept of public participation in governance. In legislative theory, participation represents not only a democratic virtue but a legal requirement that affirms the state's accountability to

[26] Soeprapto, "Implementasi Pancasila Dalam Kehidupan Ber Masyarakat Berbangsa Dan Bernegara," *Jurnal Ketahanan Nasional*, 2005, https://jurnal.ugm.ac.id/jkn/article/view/22960; H Kaelan, *Negara Kebangsaan Pancasila: Kultural, Historis, Filosofis, Yuridis, Dan Aktualisasinya* (Yogyakarta: Paradigma, 2013).

[27] Kaelan, *Negara Kebangsaan Pancasila: Kultural, Historis, Filosofis, Yuridis, Dan Aktualisasinya*.

[28] H Kaelan., Op., Cit., p. 63.

[29] Abdulkadir B.Nambo and Muhamad Rusdiyanto puluhuluwa, "Memahami Tentang Beberapa Konsep Politik," *MIMBAR : Jurnal Sosial Dan Pembangunan* 21, no. 2 (2005): 262–85.

[30] Haposan Siallagan and Otong Syuhada, "The Role of Pancasila in the Formation of National and Regional Regulations," *Journal of Law and Sustainable Development* 11, no. 3 (2023): 1–18, https://doi.org/10.55908/SDGS.V11I3.711.

the people. Participation exists on a spectrum—from merely informative to consultative, and ultimately to full empowerment, where the public exercises decisive influence in policy formulation. In a democratic state governed by the rule of law (*rechtsstaat*), participation serves four critical functions: (1) it prevents authoritarianism and abuse of power, (2) channels public aspirations into policy, (3) promotes shared ownership of decisions, and (4) upholds constitutional sovereignty. Legislation, as the institutional outcome of law-making processes, must be the result of deliberative, inclusive, and transparent procedures, thus aligning legal validity with democratic legitimacy. [31]

According to Attamimi, the formation of legislation in Indonesia must fulfill three primary principles: [32] (a) the ideals of Indonesian law (Pancasila), (b) the principles of a constitutional democratic state, and (c) derivative guiding principles such as proportionality, justice, and legal certainty. These principles demand that Pancasila not only act as a guiding ideal (idee) but also function as a normative directive (norm) that permeates legal policy, institutional design, and public governance.[33] Participation is inextricably linked to the constitutional principle of openness (*openheid* and *openbaarheid*), which requires that the people not only have access to information but are meaningfully involved in public decision-making.[34] As Couwenberg asserts, openness and participation constitute fundamental elements of democratic governance within the rechtsstaat tradition.[35] These principles are

[31] Michael Johnston, "Good Governance: Rule of Law, Transparency, and Accountability," *United Nations Public Administration Network*, 2006, 1–32.
[32] Hamid Attamimi, "Teori Perundang-Undangan Indonesia, Makalah Pada Pidato Upacara Pengukuhan Jabatan Guru Besar Tetap Di Fakultas Hukum Universitas Indonesia" (Jakarta: Tanpa penerbit, 1992).
[33] Darmini Roza and Gokma Toni Parlindungan S, "Partisipasi Masyarakat Dalam Pembentukan Perundang-Undangan Untuk Mewujudkan Indonesia Sejahtera Dalam Pandangan Teori Negara Kesejahteraan," *JCH (Jurnal Cendekia Hukum)* 5, no. 1 (2019): 131, https://doi.org/10.33760/jch.v5i1.185.
[34] Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* (Yogyakarta: Gadjah Mada University Press, 2005).
[35] SW Couwenberg, *Liberale Democratie Als Eerste Emancipatiemodel* (Arnhem: Van Gorcum, 1981).

reflected in mechanisms that promote accountability, representation, transparency, and responsiveness. [36]

Franz Magnis-Suseno echoes this sentiment, arguing that democratic sovereignty is realized through both direct mechanisms, such as elections, and indirect channels, such as access to deliberative processes and policy scrutiny.[37] Citizens, as the sovereign holders of political power, have both the right to know what their government is doing and the right to shape what the government ought to do. This aligns with broader international governance discourse advanced by the World Bank and UNDP, both of which identify participation as a core both of which identify participation as a core pillar of good governance.[38] The World Bank and United Nations Development Programme (UNDP) assert that inclusive governance is inseparable from the existence of participatory mechanisms that enable communities to engage substantively in policymaking processes. According to UNDP, good governance is characterized by features such as participation, transparency, accountability, effectiveness, and equity—with participation serving as the foundation upon which the legitimacy and responsiveness of state institutions rest.[39]

In this context, public participation is not merely a procedural formality, but a substantive right that shapes the content and legitimacy of legal norms. The expectation is that citizens are actively involved—not only in electoral cycles—but also in continuous dialogue with policymakers, especially in areas where state decisions have a profound and lasting impact on communities, such as environmental policy and natural resource management. Particularly in resource-rich countries like Indonesia, where

[36] Riza Multazam Luthfy, "Hubungan Antara Partisipasi Masyarakat, Pembentukan Undang-Undang Dan Judicial Review," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 9, no. 1 (2019): 168–93.
[37] Franz Magnis-Suseno, *Etika Dasar: Masalah-Masalah Pokok Filsafat Moral* (Yogyakarta: Kanisius (Anggota IKAPI), 1987).
[38] UNDP, "Governance for Sustainable Human Development: A UNDP Policy Document" (UNDP, 1997); UNDP, "Governance Principles, Institutional Capacity and Quality. Towards Human Resilience: Sustaining MDG Progress in an Age of Economic Uncertainty," 2011.
[39] Ibid

extractive industries often operate in close proximity to indigenous or rural communities, the demand for deliberative inclusion becomes a constitutional and moral imperative. This principle has been formally enshrined in Indonesia's legal system through legislative mandates that seek to expand access to participation. The enactment of Law No. 13 of 2022, amending Law No. 12 of 2011 on the Formation of Laws and Regulations, institutionalizes the participatory principle by requiring public input in the legislative process. Article 96 explicitly states that community members have the right to submit oral or written opinions on draft laws and regulations. Furthermore, this legal obligation extends to both central and regional legislative processes, ensuring that public involvement is embedded at all levels of governance.

Despite this formal recognition, the quality and depth of participation remain contested. As Arnstein's theory of participatory typologies illustrates, not all forms of participation are equal. Arnstein categorizes participation into a hierarchical ladder, ranging from non-participation (e.g., manipulation, therapy), to tokenism (e.g., informing, consultation, placation), and finally to citizen power (e.g., partnership, delegated power, citizen control).[40] In the Indonesian context, while participatory channels exist on paper, they often reflect tokenistic models that limit the public to reactive roles rather than enabling them to proactively shape outcomes. Accordingly, there is a critical need to move from procedural compliance to substantive engagement, whereby participatory rights are not merely acknowledged but operationalized through enforceable legal standards, institutional reforms, and cultural shifts in governance. Only then can Indonesia's legal development be said to align fully with its constitutional mandate, its philosophical commitment to Pancasila, and the global principles of democratic governance and sustainable development.

[40] Sherry R. Arnstein, "A Ladder Of Citizen Participation," *Journal of the American Planning Association* 35, no. 4 (1969): 216–24, https://doi.org/10.1080/01944366908977225.

2. The Public Participation in Mineral and Coal Mining Management Regulation Post-Independence

a. The Regime of Law No. 11 of 1967 on Basic Provisions on Mining (Mining Act 1967)

The Mining Act of 1967 was promulgated under the New Order regime led by President Soeharto, a period characterized by centralized authority and a corporatist model of governance. As law is inherently a product of prevailing political configurations, the legislative process during this era was tightly controlled by the ruling elite, with little regard for public inclusivity. Legal and political scholars, such as Lubis (as cited by Sutrisna), have described the New Order as an authoritarian system that effectively institutionalized state control over the populace, reducing citizens to mere objects of development. [41] Agustino similarly argues that this era marked a significant departure from democratic ideals, replacing participatory governance with bureaucratic dominance and coercive social regulation. [42]

In this era, the formulation and implementation of the Mining Act 1967 occurred in a political environment that was inherently resistant to public input. Participation during the New Order was shaped by three main patterns:[43]

1. Controlled and Limited Participation, in which the Government orchestrated public involvement through top-down mechanisms while excluding genuine dissent or criticism;

[41] I Wayan Sutrisna, "Partisipasi Masyarakat Dalam Kebijakan Anggaran Daerah," *Jurnal Ilmiah Cakrawarti* 1, no. 2 (2020): 30–37, https://doi.org/10.47532/jic.v1i2.14.
[42] Leo Agustino, "Partisipasi Publik Dalam Proses Menuju Indonesia Baru Evaluasi Terhadap Perkembangan Pemerintahan," *Unisia* 28, no. 55 (2005): 71–87, https://doi.org/10.20885/unisia.vol28.iss55.art7.
[43] Mirjam Künkler, "Mobilization and Arenas of Opposition in Indonesia's New Order (1966–1998)," *American Behavioral Scientist*, January 30, 2024, https://doi.org/10.1177/00027642231195809.

2. Mobilization, where state power was deployed to compel public compliance and simulate consensus through state-controlled organizations;
3. Formalistic Engagement, where participation existed only in appearance—reduced to ritualistic procedures devoid of meaningful impact on policy content.

These patterns are observable in the broader governance approach of the New Order and were mirrored in the legal structure and legislative history of the Mining Act 1967. While the regime maintained the outward appearance of electoral democracy and community deliberation, these mechanisms were co-opted through state-controlled entities such as *Golongan Karya*, *Karang Taruna*, and *PKK* (Family Welfare Movement), all of which were subordinate to governmental interests.

An analysis of the Mining Act 1967 confirms the absence of any institutionalized mechanism for public participation in the legislative process or the substantive management of mineral resources. No provision required public consultation or consent, and communities were excluded from both the formation and operational oversight of mining regulations. Decision-making was centralized, with the executive maintaining full control over resource allocation and policy direction. The legislative text itself contains no articles that enable public critique, objection, or engagement in mining policy formation.

However, a limited form of participation was permitted through people's mining (pertambangan rakyat), as codified in Article 5(e) of the Act. This provision defined people's mining as small-scale operations conducted by local communities using simple tools for subsistence purposes. While framed as a recognition of traditional practices, the legal scope of people's mining was narrowly confined and did not grant communities substantive legal security or control over resources. Notably, this provision did not recognize the customary rights (*hak ulayat*) of

Indigenous peoples, nor did it protect their autonomy in land and resource governance. Instead, state-issued Mining Rights (Kuasa Pertambangan) were granted to license holders with superior legal standing, even over traditional landowners effectively criminalizing Indigenous mining activities that interfered with formal concessions.

This legal architecture reflects a paternalistic state logic that allowed minimal community engagement only when it served state developmental objectives. In essence, while people's mining appears to offer a space for public participation, it functioned more as a symbolic concession than as a substantive empowerment mechanism. The integration of local communities into mining governance was neither rights-based nor participatory in the democratic sense, but rather instrumental and subordinated to centralized state planning.

Applying Arnstein's Ladder of Participation, the regulatory framework of the 1967 Mining Act falls squarely within the "non-participation" category. Specifically, it aligns with the lowest rungs—manipulation and therapy—where participation is employed as a tool to pacify the population rather than to incorporate their voices into decision-making. The government, acting as the sole initiator of mining policy, treated the public not as rights-holders but as passive beneficiaries of top-down development. Public participation, to the extent that it existed, was used primarily to create an illusion of legitimacy and to reinforce state authority.

Moreover, the government's engagement with the community through mass organizations was fundamentally didactic and therapeutic. Citizens were metaphorically treated as patients in need of political guidance and education, not as autonomous actors entitled to influence governance. Any input or feedback from society was largely disregarded, with policies designed to proceed independently of public opinion. The resulting model of participation was

tokenistic at best, providing procedural optics without affording substantive influence.

In conclusion, the 1967 mining regime exemplified a legal and political framework wherein participation was structurally marginalized. The centralized governance of the New Order regime, coupled with an authoritarian legal culture, ensured that mining laws reflected executive prerogatives rather than popular sovereignty. The implications of this legacy persist, as subsequent reforms continue to grapple with democratizing extractive governance and redressing past exclusions.

b. The Regime of Law No. 4 of 2009 on Mineral and Coal Mining (Mining Act 2009)

The enactment of Law No. 4 of 2009 marked a critical transition in Indonesia's mining governance, particularly in the recognition of public participation as a legal principle. Emerging in the post-Reformasi period, the 2009 Mining Act reflected a broader constitutional and institutional reform movement grounded in democratization, decentralization, and a rights-based approach to governance. Public awareness of environmental rights, legal equality, and social justice had significantly increased since the collapse of the New Order regime, positioning the community not as passive recipients of policy but as essential stakeholders in the formulation, implementation, and oversight of mining governance.

This shift coincided with the adoption of decentralization policies under the Regional Autonomy Law, which granted subnational governments authority over natural resource management. The Mining Act 2009 was thus shaped by a new legal and political configuration—one that emphasized regional empowerment, participatory development, and the constitutional principle of a healthy environment as a human right. The Act acknowledges public participation not merely as an accessory principle but as a substantive component of mining governance. Article 2(c) stipulates that mineral and coal management shall be

conducted on the basis of participation, along with transparency, accountability, and sustainability. The notion of participation is further elaborated in Articles 6 and 7, which promote community empowerment and permit public involvement in mining activities through direct labor, entrepreneurship, and distributorship, particularly for communities in mining-affected areas.

However, critical legal scholarship, such as that of Salinding, raises concerns regarding the vagueness of the participatory framework under the 2009 Act.[44] Salinding argues that while participation is recognized as a legal norm, its operationalization remains "highly normative"—that is, it lacks concrete implementation mechanisms and is relegated to the discretionary authority of provincial governments, as articulated in Article 7(i). This delegation, he contends, dilutes the enforceability of participation and creates inconsistency across jurisdictions. Nonetheless, it should be emphasized that the presence of "normativity" within legal provisions is neither inherently problematic nor legally deficient. As Attamimi explains, legislation is inherently normative, providing evaluative standards (das sollen) that shape and direct state behavior toward socially desirable goals. [45]

Indeed, the recognition of participation as a normative principle in the Mining Act 2009 should be interpreted as the state's commitment to institutionalize participatory governance, even if its concrete enforcement requires further regulatory elaboration. The proper assessment of whether the Act's participatory provisions are effective depends on the depth of citizen involvement in practice and the legal certainty with which participatory rights are safeguarded. To assess the quality of public participation embedded in the Act, this analysis applies Arnstein's

[44] Marthen B Salinding, "Prinsip Hukum Pertambangan Mineral Dan Batubara Yang Berpihak Kepada Masyarakat Hukum Adat The Principle of Coal and Mineral Mining Law Sided with Indigenous People," *Jurnal Konstitusi* 16, no. 1 (2019): 148–69, https://doi.org/: https://doi.org/10.31078/jk1618.
[45] Ibid.

Ladder of Participation, which classifies participation into eight levels, ranging from manipulation to citizen control—clustered into three broad categories: non-participation, tokenism, and citizen power.

1. **Citizen Control/Delegated Power**
   The highest rungs of Arnstein's ladder—citizen control and delegated power—are characterized by the community's ability to make binding decisions and independently govern policy processes. **The 2009 Mining Act does not reach this level**. Nowhere in the Act is the public granted autonomous authority to formulate or veto mining policies. Decision-making power remains centralized within the government and licensed corporations.
2. **Partnership**
   In a partnership model, there exists a power balance between state and community, enabling negotiation and shared governance. Articles 6(1) and 7(1) suggest that communities may be involved in partnerships through employment and empowerment initiatives. However, such involvement remains limited in scope and fails to establish formal mechanisms for co-governance or collective decision-making.
3. **Placation / Consultation**
   More tangible forms of engagement appear under the consultative and placatory provisions of the Act. For instance:
   a. Articles 23 and 24 require mining companies to notify communities about nearby operations;
   b. Articles 38, 46, 51, 57, and 60 encourage the community to express feedback, but do not obligate the state to act upon it;
   c. Article 113(4) allows for temporary suspension of operations based on community requests, but final discretion remains with state officials.

   While these provisions indicate a move toward consultation, they do not guarantee that public input will materially influence decision outcomes. The consultation process remains largely symbolic, fulfilling procedural requirements without creating participatory accountability.
4. **Informing**
   The informative tier of Arnstein's ladder is fulfilled through unidirectional communication. Articles such as 16, 21, 23, and 24 provide that communities

be informed of mining activities. However, these measures are designed to notify rather than to solicit or integrate community views, thus lacking the feedback loops necessary for participatory governance.

5. **Therapy / Manipulation (Non-Participation)**

   The lowest rungs—therapy and manipulation—persist in parts of the Act where the government uses "public engagement" as a means of legitimization rather than actual inclusion. Articles 29, 39, 67, 78, 79, 95, 106, and 125(3) often reflect paternalistic assumptions about community interests, where public concerns are addressed primarily through education or mitigation programs rather than through negotiation or shared authority. These provisions risk creating illusory participation, which Arnstein describes as non-participation disguised as engagement.

Furthermore, the Constitutional Court Decision No. 45/PUU-VIII/2010 clarified the ambiguous formulation in Article 10(b) of the Act, which required policymakers to "pay attention to public opinion." The Court held that this phrase must be interpreted as a binding obligation to protect, respect, and fulfil the rights of communities whose territories would be affected by mining operations. This decision marks an important judicial affirmation of participatory rights, though its full incorporation into regulatory practice remains uncertain.[46] The Mining Act 2009 signifies a substantial normative advancement from the authoritarian framework of the 1967 regime by formally embedding participation into its legal structure. However, a critical application of Arnstein's typology reveals that the participatory mechanisms established under the Act remain predominantly consultative and informative, rather than empowering. Genuine citizen control or shared governance remains absent, and legal obligations to act on community input are weak or non-existent.

[46] Callychya Juanitha Raisha Tuhumena, Jemmy Jefry Pietersz, and Victor Juzuf Sedubun, "Peran Dan Partisipasi Masyarakat Dalam Pembentukan Undang-Undang," *TATOHI: Jurnal Ilmu Hukum* 3, no. 1 (2021): 248–56.

Thus, while the 2009 Act reflects a shift in legal consciousness toward public inclusion, its operational design and enforcement mechanisms require further reform. To align with Indonesia's constitutional principles and its aspirations for democratic natural resource governance, future amendments must transition participation from a procedural formality to a substantive right backed by institutional guarantees and legal accountability

c. The Regime of Law No. 3 of 2020 on Mineral and Coal Mining (Mining Act 2020) *juncto* Law No. 6 of 2023 on Job Creation

The enactment of Law No. 3 of 2020, which amended Law No. 4 of 2009 on Mineral and Coal Mining, represents a critical moment in Indonesia's extractive regulatory regime. Despite aspirations to improve legal certainty and harmonize sectoral governance under the umbrella of Law No. 6 of 2023 on Job Creation (Omnibus Law), the process and substance of these reforms have reignited intense public scrutiny. A central concern raised by civil society, academics, and regional stakeholders is the lack of procedural transparency and genuine public participation in the formulation of the 2020 Mining Act.

a) Prosedural Critiques and Constitutional Challenge

Public concern over the procedural integrity of the legislative process culminated in a judicial review filed with the Constitutional Court (Case No. 60/PUU-XVIII/2020). The petitioners, including members of the Regional Representative Council (DPD), environmental groups, academic institutions, and concerned citizens, argued that the Minerba Bill was drafted and enacted in violation of the principles of openness and participation mandated by the 1945 Constitution and the Law on the Formation of Legislation (P-3 Law). Key arguments included:[47]

[47] Mahkamah Konstitusi, "Putusan Nomor 60/PUU-XVIII/2020," 2020.

1) That legislative discussions occurred behind closed doors, excluding meaningful input from regional governments, stakeholders, and the DPD;
2) That substantive participation—verbal or written—was not accommodated, undermining the legitimacy of the law;
3) That the centralization of authority over mineral resources violated the spirit of decentralization and failed to consider regional aspirations.

In response, the DPR (House of Representatives) and the Government contended that the process complied with Articles 5(g) and 96 of the P-3 Law, asserting that extensive consultations and roadshows were conducted across multiple regions between 2018 and 2020. They provided evidence of public engagement through universities, NGOs, mining associations, and the involvement of provincial ESDM offices and academic experts. The Constitutional Court ultimately rejected the petition, holding that the evidence presented did not prove a breach of legislative procedure or a denial of participatory rights.[48]

While the formal requirements of participation were deemed satisfied, the case illuminated a broader normative tension between procedural compliance and substantive engagement. As Wintgens and Harijanti argue, lawmaking must not rely solely on formal legitimacy (i.e., adherence to voting and procedure) but must also reflect rational justification and public accountability.[49] Laws grounded merely in political authority without meaningful dialogue risk becoming products of power dynamics rather than legal reasoning.

[48] Observing several studies discussing the Mining Act 2020 which emphasize procedural flaws (in the context of public participation) with premises that are not much different from what the author discussed above, with this Constitutional Court decision, these interpretations are refuted. *Read more*, Imas Novita Juaningsih, *Polemik Revisi Undang-Undang Minerba dalam Dinamika Tata Negara Indonesia*, 4 'ADALAH 103 (2020); Ahmad Redi, *Politik Hukum Legislasi Mineral dan Batubara: Watak Law Making Process Problem yang Akrobatik*, *in* INDONESIA THE MINING LAW REVIEW TELAAH ATAS KEBIJAKAN HUKUM PERTAMBANGAN DI INDONESIA PASCA PERUBAHAN UU MINERAL DAN BATUBARA 5 (Ismail Rumadan ed., 2020).

[49] Luc J. Wintgens, "Legisprudence as a New Theory of Legislation," *Ratio Juris* 19, no. 1 (2006): 1–25, https://doi.org/10.1111/j.1467-9337.2006.00315.x.

Notwithstanding procedural controversies, the 2020 Mining Act includes modest yet important revisions to the participatory framework. Most notably, Article 10 now stipulates that the designation of mining areas (*Wilayah Pertambangan/WP*) must be conducted transparently and participatorily, taking into account the views of affected communities, environmental concerns, socio-cultural contexts, and regional aspirations. This marks a doctrinal improvement from the 2009 regime, where community input was often non-binding or limited to information dissemination.

Further, the Constitutional Court, in its interpretation of Article 10(b), affirmed that the phrase "taking into account public opinion" must be interpreted as a binding constitutional obligation to protect, respect, and fulfil the rights of affected communities, both in terms of territorial inclusion and environmental integrity. This imposes a legal duty on the Government to meaningfully engage with communities during the designation of WPs, which are foundational for subsequent licensing processes such as *WUP*, *WPR*, *WPN*, and *WUPK*.

Public participation is also reinforced through obligations to announce the proposed determination of *People's Mining Areas (WPR)* at the village and sub-district level, including spatial mapping and lists of affected land rights. This provision, affirmed in Constitutional Court Decision No. 37/PUU-XI/2021, ensures that communities have legal standing and procedural avenues to provide input and objections prior to the execution of mining operations.

Moreover, the government has developed mechanisms for community monitoring and complaint reporting, enabling informal feedback loops that supplement formal participatory processes. These mechanisms reflect an evolution in legal thinking from tokenism toward functional democratization in environmental and extractive governance.

Applying Arnstein's ladder, the Mining Act 2020's participatory framework may now be classified within the "partnership" tier. In this model, power is redistributed through negotiation and joint decision-making, allowing the public to engage in planning, implementation, monitoring, and evaluation. Although community control or delegated authority is still lacking, the inclusion of regional aspirations and mandatory public consultation represents a marked improvement over earlier regimes.

In particular:

1) Legal mandates for public consultation (e.g., Article 10) and village-level announcements regarding WPRs enable two-way communication and a degree of accountability;
2) Stakeholder inclusion in pre-legislative discussions—albeit contested—demonstrates a shift away from unilateral decision-making;
3) Environmental, social, and cultural assessments embedded in the law's substantive provisions further support the recognition of public concerns in spatial planning.

Nevertheless, challenges persist in implementation consistency, particularly regarding whether public input materially affects final decisions or is merely procedural. The gap between legal text and administrative reality remains a central issue, necessitating stronger regulatory instruments, capacity building, and monitoring mechanisms to ensure participatory promises translate into practice. The Mining Act 2020, as amended by the Job Creation Law, constitutes a transitional legal framework—one that signals progress toward participatory resource governance while still bearing the institutional legacy of centralization and elite-driven policymaking. Although judicial affirmation has validated its procedural legitimacy, ongoing debates over substantive inclusion reveal a fragile equilibrium between state authority and citizen empowerment.

Normatively, the 2020 Mining Act marks an advancement by embedding participation, transparency, and regional input into the legal criteria for mining area designation. Practically, however, its success depends on institutional will, administrative capacity, and continued public vigilance. The degree to which participatory rights are actualized—not merely proclaimed—will determine whether Indonesia's extractive governance evolves toward democratic stewardship or remains subject to instrumental formalism

Conclusion

This article has examined the normative trajectory and regulatory dynamics of public participation in Indonesia's mineral and coal mining law across three key legislative regimes: the Mining Act 1967, the Mining Act 2009, and the Mining Act 2020, including its integration with the Job Creation Law (Law No. 6 of 2023). The analysis has demonstrated that public participation, as a legal and democratic principle, has evolved from being structurally excluded and symbolically manipulated during the New Order era, to being recognized as a formal legal right in the post-reformasi legal landscape—albeit with varying degrees of institutional realization and normative clarity.

Under the 1967 Mining Law, public participation was virtually absent and aligned with Arnstein's classification of non-participation. The New Order regime centralized control, excluded civil society from legislative deliberation, and suppressed community agency in natural resource governance. While 'people's mining' was nominally acknowledged, it functioned as a residual category without legal empowerment or institutional safeguards for Indigenous and local communities. The 2009 Mining Act marked a doctrinal shift by introducing participation as a legal principle, reflecting Indonesia's democratic transition and decentralization agenda. However, as the analysis revealed, the operationalization of participation remained largely tokenistic, dominated

by consultation and information-sharing mechanisms that failed to confer substantive influence on affected communities. Arnstein's framework situates the 2009 regime between placation and consultation, reflecting a procedural, rather than transformative, model of engagement.

The 2020 amendments, through Law No. 3 of 2020 juncto Law No. 6 of 2023, institutionalized a more progressive participatory architecture. Despite initial procedural controversies and Constitutional Court challenges concerning the transparency of its formulation, the legal framework introduced clearer obligations for community involvement in the designation of mining areas, spatial planning, and environmental governance. These revisions, grounded in judicial interpretations, elevate participation from symbolic engagement to a quasi-partnership model—positioned within the "partnership" tier of Arnstein's ladder—where mutual negotiation, transparency, and accountability are recognized as normative imperatives.

However, the article also identifies a persistent disjunction between legal ideals and administrative implementation. The mere codification of participatory norms does not guarantee their material effect. Without robust enforcement mechanisms, institutional capacity, and political commitment, participatory rights risk becoming ritualistic and instrumentalized. Moreover, the asymmetry in power relations between the state, corporate actors, and communities continues to undermine the realization of equitable, inclusive, and sustainable mining governance. In light of these findings, the article concludes that while Indonesia's legal development has progressed toward the constitutionalization of public participation in mineral and coal governance, the effectiveness of this trajectory depends on:

1. The clarity and enforceability of participatory provisions within implementing regulations;
2. The institutional accountability of both central and regional authorities to uphold participatory standards;

3. The strengthening of community legal standing and access to justice in contesting extractive decisions;
4. The promotion of transformative participation, moving beyond procedural consultation toward genuine power-sharing.

Accordingly, future legislative reform and policy implementation must move from formalistic acknowledgment to substantive realization of participatory democracy in extractive governance, consistent with Indonesia's constitutional vision of environmental justice, sustainable development, and people's sovereignty over natural resources.

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