Research Article

Revitalising Indigenous Rights Participation in Mining Lawmaking Process: Evaluation and Proposal for Indonesia

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ABSTRACT

Indonesia's climate ambition, particularly in developing an electric vehicle ecosystem, has made significant progress since 2019 through the adoption of various legal instruments leading to mining law reform. These initiatives include establishing an electric vehicle battery industry supported by downstream mining policies. This policy ensures the availability of metal ores, such as nickel, which is a key raw material for the battery industry. However, Indigenous communities living near mining areas designated as National Strategic Projects have experienced negative impacts, including environmental damage.This study posits that environmental damage is a consequence of excluding Indigenous communities from mining policy reforms, as they traditionally serve as protectors of the environment. The primary aim of this study is to analyze the importance of Indigenous peoples' meaningful participation and to examine the tendency of Indonesia's mining law reforms to overlook Indigenous involvement in environmental preservation. This paper employs a doctrinal and normative approach to statutory laws.The research underscores the urgency of ensuring meaningful participation of Indigenous peoples in mining law reforms and suggests methods for restoring their right to participate through available forums and legal instruments. The paper proposes several steps to accommodate Indigenous peoples' aspirations in legislation: first, addressing the loss of identity experienced by Indigenous peoples; second, optimizing the use of existing representative offices in each province; and third, implementing a system that allows Indigenous peoples to easily express their aspirations and complaints.

Keywords: Indigenous Rights; Indonesia; Mining Law Reform; Meaningful Participation.

A. INTRODUCTION

Mining, as a form of extractive industry, poses significant environmental risks, particularly in terms of its adverse social effects on local communities (Zanini et al., 2023). However, mining activities play a crucial role in the Indonesian economy, contributing at least 12.22% to the Gross Domestic Product (Taufikurahman et al., 2023). Indonesia has ambitious plans to increase the added value of its mining industry. According to data published by the Ministry of Energy and Mineral Resources, by 2022, 80% of tin and 19% of nickel were processed domestically (Direktorat Jenderal Mineral dan Batubara, 2022). The downstream development of the mining industry became a top priority program during President Joko Widodo's second term. The policy is characterized by a ban on the export of raw mining products, which must be processed in Indonesia before being exported to

another country (Schröder & Iwasaki, 2023). Mining law reform is both intensive and ambitious, amending Law Number 4 of 2009 on Mineral and Coal Mining and adopting the Omnibus Law on Job Creation. This policy is also part of Indonesia's ambition to become a global center for the electric vehicle industry, particularly in the production of batteries made from metal minerals sourced from Indonesian mines (Tritto, 2023).

However, the downstream development of the mining industry through mining law reform in Indonesia has been criticized by various parties for its lack of transparency and insufficient public participation (Lumbantoruan, Nugroho, & Adiputro, 2020). Indigenous peoples are the communities most affected by intensive mineral mining. Various studies indicate that pollution and environmental damage are inevitable consequences of metal mining activities geared towards the electric vehicle battery industry. Ecological disasters resulting from nickel mining have occurred in regions such as Morowali, where 16,000 hectares of forested land experienced sudden floods and landslides between 2019 and 2020 (Mining Advocacy Network & People Coalition for the Right to Water, 2022). The exclusion of Indigenous peoples from mining law reform in Indonesia is a major factor contributing to environmental degradation around mining areas. Furthermore, mining activities have encroached on the habitats of indigenous populations. In Weda, North Maluku, for instance, mining companies have taken control of 4,200 hectares of land previously managed by local communities (Mining Advocacy Network & People Coalition for the Right to Water, 2022). Therefore, revitalizing meaningful community participation in mining law reform in Indonesia is essential.

The right to participation for indigenous peoples is recognized in various international legal instruments, such as the Indigenous and Tribal Peoples Convention, 1989 (No. 169, ILO Convention 169) adopted by the International Labour Organization (ILO). Additionally, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007 (Barelli, 2012). The concept of free, prior, and informed consent (FPIC) was developed as a framework to ensure the participation of indigenous peoples in extractive industries, including mining (Klein, Muñoz-Torres, & Fernández-Izquierdo, 2023).

Scholars of indigenous rights argue that FPIC and other participation rights are rooted in the fundamental principle of self-determination, which is considered the cornerstone of indigenous peoples' rights (Ward, 2011). Consequently, FPIC is particularly significant in efforts to involve indigenous communities in the process of reforming mining laws, as in Indonesia.

Another important concept for measuring the meaningful participation of indigenous people is the classic theory of the ladder of participation, proposed by Arnstein (1969) and Connor (1988).

This theory aims to measure and explain the degree of community participation.

Several scholars have studied the involvement of indigenous peoples in mining law reform in Indonesia. A study by Bedner and Huis (2008) highlighted the return of Indigenous peoples' rights in legislation related to natural resource management in Indonesia, particularly in mining, forestry, and water. They noted that while natural resource management legislation in Indonesia acknowledges the rights of indigenous peoples, it does so in a limited way. Another study by Jamin et al. (2023) discusses the benefits and protections afforded to indigenous peoples in mining activities, which often tend to harm the environment. The study recommended improvements in mining management and standardization of post-mining reclamation processes. Additionally, Irsan and Utama (2019) conducted research on the politics of mining law, particularly focusing on coal and its impact on the welfare of the Indonesian people.

Rahayu et al. (2023) examined the involvement of local communities in mining activities and their economic consequences. While Indonesian legislation allows for community-based mining, some mining activities are conducted unlawfully, falling outside the legal framework. Community mining refers to the direct involvement of people in extraction activities, which not only have social and economic consequences but also influence the policy-making process.

Ruwhiu and Carter (2016) conducted a study focusing on the meaningful involvement of the Maori community in New Zealand. A key finding from this study emphasized the need for egalitarian negotiations between local communities, the state, and corporations. Additionally, it is crucial to incorporate the perspectives of indigenous people in the mining law-making process.

This study seeks to fill the research gap identified in the five previous studies on indigenous peoples' participation in Indonesia's mining law reform process. Methodologically, this study will also analyze the debates surrounding the amendments to the Law on Mineral and Coal Mining that took place between 2018 and 2020. The goal of this research is to contribute to the academic discourse on the role and position of indigenous peoples in mining law legislation in a global south country like Indonesia.

Traditionally, legal scholars in doctrinal research use sources such as laws, case laws, legal histories, and adopted regulations (Gawas, 2017). This study analyzed legal instruments adopted by the Indonesian government, including laws (Indonesian: undang-undang), government regulations, and presidential regulations. The analysis was conducted both descriptively and analytically, focusing on aspects of indigenous people's participation rights within the Indonesian legal framework. The analysis and discussion are situated within the context of indigenous people's participation rights in the legal instruments that

form the basis of Indonesia's mining law reform. Therefore, this research methodologically incorporates more than just legal instruments and literature from legal disciplines in its analysis. References from other fields of study are also employed to support the arguments. Thus, although this study adopts a doctrinal legal research approach, insights from other disciplines are necessary to fully explain the legal phenomena analyzed and to reach sound conclusions.

This paper is organized into four sections: the introduction, research methods, results and discussion, and, finally, the conclusion.

B. RESEARCH METHOD

This study adopted doctrinal legal research with both a statutory and conceptual approach. The article seeks to build a theoretical framework and analyze the consequences of legal implementation (Davies, 2020). As a result of employing doctrinal legal research methods, this study has discussed and analyzed the proper application of legal doctrines through the examination of authoritative texts, doctrines, and legal cases (Pradeep, 2019).

Conventionally, the sources used by legal scholars in doctrinal research include laws, case laws, legal histories, and adopted regulations (Gawas, 2017). This study analyzed the legal instruments adopted by the Indonesian government, which consist of Law (Indonesian: undang-undang), Government Regulation, and Presidential Regulation. The analysis was conducted descriptively and analytically by elaborating on aspects of indigenous people's participation rights within the Indonesian legal framework.

The analysis and discussion are situated within the context of indigenous people's participation rights in the legal instruments that form the basis of Indonesian mining law reform. References from other fields of science are also employed to support the arguments. Thus, although this study adopted doctrinal legal research, insights from other disciplines are necessary to explain the legal phenomena observed in the analysis and conclusions.

C. RESULTS AND DISCUSSION

1. Mining Law Reform Framework In Indonesia

Mining law has been a significant issue over the past decades due to its ongoing development. This section will first explain the history of mining law and its regulations in Indonesian history. Before independence, Dutch colonials controlled Indonesia's natural resources, including minerals and mining. The Indische Mijnwet (hereinafter referred to as IMW), also known as Mijnordonantie, was promulgated in 1899 through Staatblad 1899, Number 214, and took effect on May 1, 1907. It addressed mining job safety as outlined in Articles 365 to 612. Mijnordonantie was later revised and recast into Mijnordonantie 1930, which came into force on

July 1, 1930. This new version no longer supervised mining work safety but was regulated under Mijn Politie Reglement with Staatblad 1930, Number 314 (Listiyani, Said, & Khalid, 2023).

Following Indonesia's independence, the new administration adopted Government Regulations in Lieu of Law (Perppu) Number 37 of 1960 on Mining, effectively ending the Mijn Politie Reglement of 1930. The government also adopted Perppu Number 44 of 1960 on Oil and Natural Gas in the same year. Additionally, Law Number 5 of 1960, which pertains to the Fundamental Agrarian Regulations (UUPA), governs mining indirectly. During this period, the mining industry established a concession system that granted mining rights and land ownership to private companies. To accelerate economic development, Perppu Number 37 of 1960 was repealed and replaced by a new fundamental mining law, Law Number 11 of 1967 on Fundamental Mining Provisions, which took effect on December 2, 1967 (Kosim et al., 2023).

On January 12, 2009, the Indonesian Government and Parliament adopted Law Number 4 of 2009 on Mineral and Coal Mining (hereinafter referred to as the Indonesia Mining Law 2009). This law marked a significant shift in mining law by altering three fundamental elements: the rule of law, state control, and the legal relationship between the state and private companies (Puspitawati, 2018). Since the adoption of this law, mining concessions have been granted only through permits, such as the Mining Business License (Izin Usaha Pertambangan, IUP), Special Mining Business License (Izin Usaha Pertambangan Khusus, IUPK), and Community Mining License (Izin Pertambangan Rakyat, IPR). This licensing system is significant because it places the government in charge, unlike contracts or agreements, which place the government on an equal footing with mining companies. Furthermore, the licensing function is restrictive and can address environmental issues by requiring businesses that receive environmental permits to remediate pollution or damage caused by their activities.

Following the adoption of the Indonesia Mining Law 2009, in January 2017, the Indonesian government introduced Government Regulation Number 1 of 2017, which allowed the export of raw nickel, bauxite, and copper. To implement this regulation, licenses would be issued by the Ministry of Energy and Mineral Resources (Warburton, 2018). Ironically, on May 12, 2020, the House of Representatives unanimously agreed to revise the Indonesia Mining Law 2009. At the beginning of his second term, Joko Widodo signed and introduced Law Number 3 of 2020 on June 10 (hereinafter referred to as the New Mining Law), an amendment to the Indonesia Mining Law 2009. Rather than addressing the shortcomings of the previous law, the New Mining Law removes the size limit for mining operations and allows for two automatic license extensions of 20 years each.

Moreover, Indonesia's latest policy promoting Ease of Doing Business (EODB) effectively provides mining companies with more extensive concessions and longer contracts while imposing fewer environmental obligations. Thus, the New Mining Law and Law Number 11 of 2020 (the Job Creation Law and its amendment) were adopted to loosen the requirements and obligations for business licenses, including for mining companies, despite opposition from civil society and environmental activists (Fernando et al., 2023). As a counterpoint, despite new regulations, the New Mining Law reform still needs to address existing legal difficulties concerning licenses, reclamation, community protection (including meaningful participation of indigenous peoples), and sanctions (Harun et al., 2023).

There are three essential arguments for why local communities need legal protection and involvement in formulating policies regarding mining management. First, it relates to nature conservation. Local communities, especially indigenous ones, have lived in these areas for a long time and possess extensive knowledge about preserving and protecting nature. Some local communities, such as the Osing, Tengger, and Baduy communities, use their local wisdom, which is based on their religious traditions and beliefs, to protect and preserve nature (Jayasinghe et al., 2020). Thus, involving local communities in formulating mining management policies is crucial for environmental sustainability.

Second, involving local communities guarantees the fulfillment of their rights and obligations. By participating in the policy formulation process, local communities can have their rights protected, particularly regarding land and property ownership around mining areas. Conversely, fulfilling these rights also entails an obligation to protect the environment from damage caused by irresponsible exploration or exploitation (Harada et al., 2022).

Third, the principle of meaningful participation is fulfilled in the preparation of statutory regulations. Involving local communities in policy formulation upholds the principle of meaningful participation, a key principle in the formation of laws and regulations in Indonesia. By engaging local communities, the government ensures that regulations are developed according to established rules and have greater effectiveness, marketability, and binding power (Haridison, 2024).

The New Mining Law shifts the pattern from decentralization to centralization, returning mining licenses to the central government rather than to local governments, as was the case under the previous law. This policy contradicts the needs of regional communities, particularly concerning the legal protection of the participation rights of indigenous communities in areas where natural resources are explored and exploited (Sibarani et al., 2023). The table below outlines the significant changes in the mining law reform of 2020:

Table 1. Mining Law Reform 2020

No.	Law 3/2020	Law 11/2020 and its amendment
1.	Article 4 paragraph (3) states that ownership and control of minerals and coals under the authority of the Central Government	Similiar. The only difference lies in the delegated legislation in the form of Government Regulations.
2.	Article 5 paragraph (2) and (3) regulates the production of metallic minerals, including prohibitions on their export. This regulation is essential to limit the export of metal ore such as nickel, the raw material for batteries for electric vehicles.	There is no specific regulation regarding the amount of metallic minerals production and export prohibitions.
3.	The authority of the Regional/Local Government (Province and Regency/City) is removed in Article 7 and Article 8.	The authority of the Regional/Local Government is stated in Article 7 and removed in Article 8.
4.	Article 35 stated that the mining business is carried out based on Business Licensing from the Central Government and further regulated through Government Regulations	Article 35 does not explain who issues the permit
5.	There are no articles or paragraphs that specifically protect the rights of indigenous peoples, even though many mining areas are included in the territory of indigenous peoples.	

Source: Summarise and analyse from Law No. 3/2020 and Law No. 11/2020.

The mining law reform generally reflects the government's intention to nationalize and integrate foreign and private ownership of mineral and coal resources in Indonesia (Warburton, 2017). Mining law reforms are often driven by the need to address environmental concerns, social impacts, economic development, and to attract investment in the mining sector. However, the drive to protect the environment from the damage caused by excessive exploitation and exploration is often overshadowed by investors' desire to maximize profits from the mining sector. Evidence of the government's pro-investor stance is seen in its neglect of the aspirations of communities affected by mining, which Commission VII of the DPR has not considered in drafting regulatory updates on mining. The principle of transparency was also compromised, as the Mining Law was passed behind closed doors without involving the communities impacted by environmental disasters (Juaningsih, 2020). Moreover, Constitutional Court Decision Number 37/PUU-XIX/2022 clearly favors investors, with the Constitutional Court Panel rejecting three of the four requests for a judicial review of the Mining Law. These requests were related to (1) the distance from access to participation and services of relevant mining institutions due to the centralization of regional government mining authority; (2) the potential criminalization of communities rejecting mining in Article 162 of the Minerba Law; and (3) the automatic extension guarantee for KK and PKP2B. The Panel of Judges did agree that some key points of the case concerning the utilization of space granted to WIUP, WIUPK, and WPR holders remained unchanged, with the interpretation "as long as it is in accordance with applicable laws and regulations" (Rusdiana, Fitri, & Divia, 2023). However, achieving this is challenging and differs from how palm oil is

regulated, with the integration of private companies from Indonesia, Malaysia, and Singapore (Warburton, 2017). The combination of nationalist persistence and variations in the boom era may lead Indonesia toward unmanageable and confusing management of mineral resources (Warburton, 2023).

2. Lack of Meaningful Participation in Mining Law Reform

FPIC is a legal concept widely recognized in international legal instruments, particularly ILO Convention 169 and UNDRIP. FPIC comprises four interconnected and indivisible concepts.

Firstly, "free" refers to the condition where indigenous peoples are not subjected to pressure, intimidation, or manipulation in both the mining law and its execution. The notion of "prior" signifies that agreement must be obtained before the initiation of extractive activities such as mining. Thus, it is crucial to allocate sufficient time to ensure that indigenous communities have given their informed consent and possess comprehensive knowledge. Furthermore, "informed" denotes that indigenous peoples should be provided with clear and reliable information about the extractive operations that will affect them. Finally, "consent" refers to an agreement reached through equitable discussions and serves as the fundamental safeguard against the infringement of indigenous peoples' rights (Barelli, 2012).

In the context of the lawmaking process, the basic principles of public participation should be reflected in the legislative process. In Indonesian legislation, several principles need to be fulfilled. According to Article 5 of Law Number 12 of 2011 on the Formation of Legislation, as amended by Law Number 15 of 2019 and Law Number 13 of 2022 (the Formation of Legislation Law), seven principles must be applied: clarity of purpose, appropriate institution or officials, type, hierarchy, material suitability, implementability, usefulness and efficiency, formulation clarity, and openness. The principle of transparency in the Formation of Legislation Law requires that four elements be met: (1) participation at the stages of planning, preparation, discussion, ratification, stipulation, and promulgation, including monitoring and reviewing; (2) providing access to the public who have an interest and are directly affected; (3) obtaining information or providing input at every stage of the formation of laws and regulations; and (4) offering opportunities for input both orally and in writing, online and offline.

Meaningful participation is reflected in the third element of transparency: the ability to obtain information or provide input at every stage of lawmaking. According to the principle of transparency, the public has the right to be involved in every stage. Article 96(6) of the Formation of Legislation Law (Law Number 13 of 2022) allows legislators to gather public aspirations through public consultations, including public hearings (Rapat Dengar Pendapat Umum, RDPU), working visits, seminars, workshops, discussions, and other consultation activities.

Paragraph (7) states that the results of these consultations will be considered in the planning, preparation, and discussion of draft laws and regulations. However, this provision makes community aspirations only an optional consideration for lawmakers and does not mandate that affected communities receive valid and accurate information regarding the impact of the proposed laws.

Public hearings are one of the most recorded methods for gathering public aspirations. The time and materials from these meetings are typically documented in the official record of the bill-making process. However, not everyone can attend these hearings. Only appointed representatives from government institutions, non-governmental organizations, business groups, industry associations, professional associations, academics, and other relevant parties are invited. These representatives may also come from regional organizations, not just national ones. For example, the Mining Bill Drafting Chronology document published on May 15, 2020, lists a diverse array of participants, including the East Kalimantan Forestry Department, the Engineering Faculty of Mulawarman University, South Sulawesi WALHI (Wahana Lingkungan Indonesia), MIFA Brothers, LLC, Nickel Association of Indonesia, and others (Dewan Perwakilan Rakyat Republik Indonesia, 2020). This illustrates the diversity of participants involved in bill drafting.

In addition to public hearing meetings and other previously mentioned methods, parliament members can visit specific regions to gather aspirations. For example, in the context of the current Mining Law, members of Commission VII of the House of Representatives visited provinces including Riau Islands, West Kalimantan, North Sulawesi, and South Kalimantan (Dewan Perwakilan Rakyat Republik Indonesia, 2020). These direct visits, when conducted effectively, can be a very effective way to connect with people in the regions and observe the actual conditions that might significantly influence the provisions of the bill.

However, not all documentation of regional visit activities is recorded in the official records accessible to the public. As a result, the effectiveness of aspiration gathering during regional visits cannot be fully assessed or monitored by the public.

Based on an exploration of the deliberation documents for the mining law bill, there are at least three issues that warrant criticism. First, public participation is often interpreted as representative participation through certain organizational channels rather than direct engagement with affected communities. Second, public participation instruments such as public hearings, working visits, seminars, and consultations tend to be elitist, focusing primarily on parliamentary agendas that are often politically motivated. Third, indigenous peoples, who are directly affected by mining activities, have not

been afforded a clear and significant role; their input is often merely discussed rather than actively considered. Indigenous communities have historical, social, and economic ties to the land designated for mining (Amiq et al., 2024). Therefore, these communities should be given a special and more substantial space for participation based on the concept of FPIC, which is recognized internationally as a fundamental element for fulfilling indigenous rights (Papillon, Leclair, & Leydet, 2020).

Political agendas frequently deviate from the concerns and priorities of indigenous communities. In the context of mining, there is a tendency to prioritize the interests of the state and corporations, often at the expense of indigenous rights. These communities have historically held inherent rights to mining locations that are crucial for their subsistence (Klein, Muñoz-Torres, & Fernández-Izquierdo, 2023).

Some theories explain participation, including Arnstein's ladder of citizen participation from 1969 (Arnstein, 1969). Arnstein's ladder of participation generally consists of three levels: non-participation, pseudo-participation, and people power. Non-participation includes manipulation and therapy, while pseudo-participation, or tokenism, comprises informing, consultation, and placation. The highest level, people power, includes partnership, delegated power, and citizen control.

Arnstein's theory was further developed by Connor in 1988 (Connor, 1988). According to this updated perspective, higher levels on the ladder correspond to greater levels of citizen participation. Connor critiqued Arnstein's ladder, noting that it had limitations: the citizens depicted in Arnstein's paper were not diverse, and the eight steps were insufficient to represent the levels of participation in real-life society. Connor's revised ladder introduces a systemic approach to preventing and resolving public controversies regarding specific policies and their implementation.

According to Connor's updated model, actions should be taken by both the public and leaders to create effective policies. The actions can vary based on the actual situation and be selected according to their suitability. Additionally, there is a cumulative relationship between the public and leaders across different stages of action, where various approaches are used simultaneously to meet the needs of all involved parties (Connor, 1988).

Turning to the current Indonesian Mining Law, many parliamentary meetings are closed, even though Law Number 17 of 2014 by the People's Consultative Assembly, House of Representatives, Regional Representative Council, and Regional Legislative Council, as well as the House of Representatives Code of Conduct, stipulates that closed meetings are allowed only when discussing bills related to state secrets or decency (Simabura, Rofiandri, & Nurtjahyo, 2021). Reports and articles from civil organizations, compiled by Cakra Wikara

Indonesia, indicate that discussions of the Mining Law Bill occurred over only 10 days and did not involve public participation (Simabura, Rofiandri, & Nurtjahyo, 2021). This contrasts sharply with the earlier-mentioned bill chronology document, which indicated a broad invitation to relevant parties for public hearings. Reviewing the official Mining Law archive on the House of Representatives website, the interactive timeline does not match the chronology in the Mining Bill Drafting Chronology published on May 15, 2020. According to the official archive, a public hearing was held only once on April 7, 2020, with participation from the Law Faculty of the University of Indonesia.

The discrepancies between the Mining Bill Drafting Chronology, the report from Cakra Wikara Indonesia, and the official archive interactive timeline reveal a lack of consistent information regarding the actual public participation process in drafting the current Mining Law. This highlights significant issues with transparency and accountability in the 2020 lawmaking process. Neither Arnstein's nor Connor's ladders can be accurately applied due to the lack of a clear and consistent depiction of the process. Therefore, public participation in the creation of the Mining Law cannot be effectively assessed because of insufficient transparency and accountability.

One example of effective participation in legislation is the European Union (EU). The EU, through the European Parliament, the Council of the European Union, and the European Commission, has initiated the "Better Regulation" program, as outlined in the Interinstitutional Agreement on Better Law-Making of April 13, 2016, further implementing Article 295 of the Treaty on the Functioning of the European Union. As of 2021, the Better Law-Making initiative has evolved to include various methods of enhancing participation in legislation by providing platforms such as: a) public consultations and calls for evidence involving the public and stakeholders; b) 'Have Your Say', a portal for public consultation and feedback that allows individuals to digitally provide input on proposed legislation; and c) feedback on proposals and evaluations of existing legislation. These methods offer broader opportunities for EU citizens to engage in the legislative process.

Meaningful participation was addressed in Indonesia in Constitutional Court Decision Number 91/PUU-XVIII/2020, which examined the formality of Law Number 11 of 2020 concerning Job Creation. According to the Constitutional Court's considerations, three conditions must be met to achieve meaningful participation: the right to be heard, the right to be considered, and the right to be explained. Meaningful participation is especially necessary for "groups of people who are directly affected or have concerns about the draft law being discussed." These three elements should be implemented in the drafting process, including the joint discussions between the House of Representatives (DPR) and the president, as

well as joint debates involving the DPR, the president, and the Regional Representative Council (DPD), as outlined in Article 22D, paragraphs (1) and (2) of the 1945 Constitution; and joint approval between the DPR and the president.

In conclusion, reflecting on both Arnstein's ladder of participation and Connor's updated model, the Indonesian approach to meaningful involvement introduced in the Constitutional Court Decision has not yet progressed beyond the level of tokenism described in early participation theories. It does not address the actions required by leaders according to Connor's updated ladder. Additionally, compared to the EU's model of youth participation, which includes more comprehensive indicators for ensuring participation, Indonesia's approach remains at the level of dialogues between citizens and the government, rather than achieving the synergy required at the upper levels of early participation theories and the actions required by leaders in newer models. The Indonesian participation indicators need to be more comprehensive, reflecting the thoroughness of the EU's model.

Meaningful participation applies to all levels of society throughout Indonesia, including indigenous peoples, who are protected under Article 28D, paragraph (1) of the 1945 Indonesian Constitution. As one of the affected groups, especially concerning environmental issues, land, infrastructure, and the participation of 35 indigenous peoples, their involvement must be considered (Arlinta, 2023). In the mining sector, issues related to land grabs, human rights violations, pollution, health concerns, and deteriorating livelihoods are expected (Putri, 2023). Besides being affected, indigenous peoples play a crucial role in environmental conservation (BBC News Indonesia, 2023). According to a 2019 statement from the Director-General of the International Union for Conservation of Nature, approximately 80% of the world's forest biodiversity is found in territories managed by indigenous peoples, and these areas produce 73% less carbon than lands managed by other groups (International Union for Conservation of Nature, 2019). Therefore, it is essential to involve indigenous peoples in environmental protection efforts.

Participation initiated by the parliament and government to include indigenous peoples should be prioritized, as they are a marginalized group with limited resources to advocate for their interests. Indigenous peoples depend on their ability to voice their needs and demands, which can be empowering for groups with limited resources, according to Diana Voerman-Tam, Arthur Grimes, and Nicholas Watson (2023). By proactively including indigenous peoples in dialogues, the parliament and government can affirmatively support their participation.

According to the official bill drafting chronology published by the House of Representatives of the Republic of Indonesia, the hearings involved numerous stakeholders from

the regional level, including experts in engineering, industry representatives, government institutions working in the field of energy, and an environmental non-governmental organization (Dewan Perwakilan Rakyat Republik Indonesia, 2020). However, based on the minutes of meetings between the House of Representatives working group and the relevant ministries dated 18 July 2019, 12 September 2019, 25 September 2019, and 27 November 2019, as well as the official records of the bill published on the House of Representatives' official website, there were no discussions that involved indigenous peoples or their organizations, nor were there any topics related to indigenous peoples (Dewan Perwakilan Rakyat Republik Indonesia, 2020). The closest assumption regarding indigenous peoples' participation is through WALHI from the South Sulawesi chapter, the only environmental non-governmental organization invited to the hearing. This study could not find any official records published by the House of Representatives indicating that indigenous peoples or their organizations were invited or involved. Therefore, it can be concluded that indigenous peoples and their aspirations were not considered during the drafting of the 2020 Mining Law, resulting in their lack of participation.

3. Defining and Restoring Indigenous People's Rights in Indonesia's Mining Law Reform

Mining practices in Southeast Asian countries often neglect the interests and communal rights of indigenous peoples (Ardhyanti & Basuki, 2014). Indonesia, as one of the countries with the largest mining industry in the world, frequently overlooks the rights of indigenous peoples in both the licensing process and legislation related to mining. Indigenous peoples, known as adat communities in Indonesia, are recognized as subjects of rights within the Indonesian legal system (Mulyani, 2022). There are at least three rights acknowledged by the Indonesian legal system that provide legitimacy for their involvement in the legislative process.

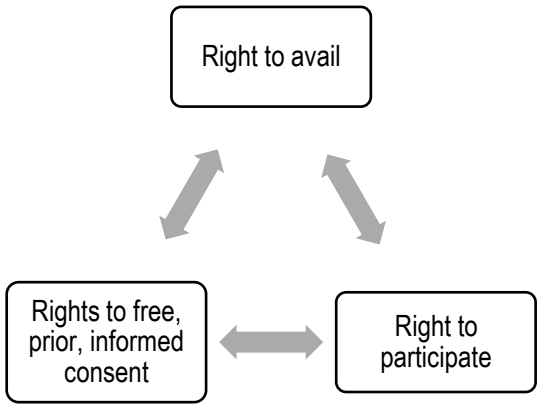
First, Article 3 of Law Number 5 of 1960 on the Basic Agrarian Law and Constitutional Court decisions recognize land and territorial ownership rights (Case Number 35/PUU-X/2012 on the Judicial Review of Law Number 41 of 1999 on Forestry, 2013, para. 3.12.2). This right, often referred to as ulayat rights or rights to avail, is one of the primary rights held by indigenous peoples (Bedner & Arizona, 2019). Although the Basic Agrarian Law does not specifically define it, this right is still recognized by the state (Mulyani, 2022). The existence of rights to avail allows indigenous peoples to manage and benefit from natural resources on their land (Widiyono & Khan, 2023). However, there are inconsistencies between the recognition of this right and its implementation. The Indonesian government often neglects it in various legal instruments,

leading to conflicts and agrarian injustice (Van Der Muur, 2018). In the context of extractive industry investment, this neglect becomes even more evident. Recognizing and implementing the right to avail is crucial for engaging indigenous peoples in legislation that affects their land.

Another right of indigenous peoples is to be consulted and to give free, prior, and informed consent (FPIC). Although the recognition of indigenous peoples' rights is not explicitly outlined in Indonesia's national legal framework, a Constitutional Court decision implicitly acknowledges this right as a legal principle (Case Number 32/PUU-VIII/2010 on the Judicial Review of Law Number 4 of 2009 on Mineral and Coal Mining, 2012). The FPIC principle emerged in the 1980s through the International Labor Organization (ILO) Convention Concerning Indigenous and Tribal Peoples in Independent Countries (C169/1989) (Hanna & Vanclay, 2013). Implementing this principle is fundamental, as ideally, any activity, including the granting of licenses or legislation affecting indigenous peoples, should obtain prior consent (Prihandono, Widiati, & Valčiukas, 2023).

The final right is the right to participate in public policy-making, including legislation. Public participation in the formation of legislation in Indonesia has been regulated since 2004 through Law Number 10 of 2004 on the Formation of Laws and Regulations. The terms and mechanisms for public participation were further developed in the Formation of Legislation Law 2011 but experienced regression after the adoption of the Job Creation Law in 2020, which neglected public involvement in its legislative procedures (Sjarif, 2023). This situation led to a judicial review by the Constitutional Court, which recognized the right to be heard, the right to be considered, and the right to be explained for community groups directly affected or concerned about the draft law under discussion (Case Number 91/PUU-XVIII/2020 on the Judicial Review of Law Number 11 of 2020 on Job Creation, 2020).

Figure 1. Indigenous Rights in Mining Law Reform



Source: The author's analysis (2024)

The indigenous people living in mining areas are among those most affected by the negative impacts of environmental degradation. Cases from nickel mining areas in Sorowako, Pomala, and Morowali show that open-pit mining leads to significant environmental damage, such as loss of biodiversity, vegetation, sedimentation, and soil erosion (Sangadji, Ngoyo, & Ginting, 2020). These conditions directly impact the quality

of life of indigenous communities, who have no other place to live (Muhdar, Simarmata, & Nasir, 2023). The root of this problem lies in the need for indigenous involvement in the legislative process to reform mining law. This argument is reflected in Constitutional Court Decision Number 59/PUU-XVIII/2020, which examined the procedure for establishing the New Mining Law.

The government's statement submitted to the court mentioned that the bill was drafted with public participation from various elements, including non-governmental organizations. However, this public participation was merely a formality, as it did not include indigenous communities, who are directly affected by mining activities. Meaningful involvement of indigenous people in public participation mechanisms is essential to making them the subject of policy decisions (Chandra Sy & Irawan, 2022). In 2021, Constitutional Court Decision Number 91/PUU-XVIII/2020 emphasized that to achieve meaningful public participation, at least three community rights must be acknowledged: the right to be heard, the right to be considered, and the right to be explained. However, our investigation into the minutes of the deliberation meetings on the Mining Law Amendment Bill reveals that the bill was not consulted with the public (Dewan Perwakilan Rakyat Republik Indonesia, 2019). This indicates that meaningful public participation, especially from indigenous communities, is lacking.

The neglect of the FPIC concept in Indonesia's mining law reform will result in the disregard of indigenous peoples as historical custodians of the land and resources (Townsend & Townsend, 2020). The absence or inadequacy of meaningful participation by indigenous peoples will lead to at least three future consequences:

First, the lack of participation will cause the substance of mining law to focus solely on the interests of the state and corporations. This condition will force indigenous peoples to resist through legal or other means, leading to inevitable vertical and horizontal conflicts.

Second, the non-implementation of the FPIC concept will result in indigenous peoples feeling marginalized and excluded from extractive activities. Their land will be taken without consent, while the state, which should protect their rights, legitimizes corporate actions through licensing. This situation can also create conflicts between indigenous peoples, the state, and corporations.

Third, FPIC is an internationally recognized standard closely related to sustainable mining. In the context of climate change and energy transition issues, sustainable mining is crucial for Indonesia. It is also important for attracting investors, especially foreign investors, to the Indonesian extractive sector.

Therefore, efforts are needed to restore the rights of indigenous peoples in mining areas to participate in mining law reform legislation in Indonesia. Three steps must be taken to implement this restoration. First, any bill aimed at

reforming mining law should include an assessment of the potential losses that indigenous peoples may experience. A special task force should be formed, consisting of representatives from the Central Government, DPR, DPD, and Regional Government, to gather and address the aspirations and complaints of indigenous peoples regarding the impacts of mining activities. Additionally, to fulfill the right to be considered, the DPD should enhance the effectiveness of its representative offices in provinces with mining areas. The DPD can serve as a bridge between the interests of indigenous peoples in mining areas and the central government and DPR.

Meanwhile, to fulfill the right to be explained, both central and local governments should facilitate the creation of a monitoring system for aspirations and complaints that is easily accessible to indigenous peoples. This system should be developed with consideration for infrastructure and accompanied by ongoing education. Transparency regarding the status of submitted aspirations and complaints will improve the governance of public participation and positively impact the quality of legislation (Kosack & Fung, 2014).

Table 2. Restoration of Indigenous People's Participation Rights

Rights	Action	Actor	Subject	Goals
Right to be heard	Establish special task force	national government, DPR, DPD, and local government	Indigineous people	to identify impacts or disadvantages faced by indigenous communities from mining activities
Right to be considered	Optimizing the role of the Office of Energy and Mineral Resources in the local level and DPD Representative Office in the region	national government, DPR, DPD, and local government		Establishing the Office of Energy and Mineral Resources in the local level and DPD Representative Office in the region as a liaison between indigenous people and legislators
Right to be explained	Establish an aspiration and complaints monitoring system for indigenous people	national government, DPR, DPD, and local government		Ensure that the aspirations and complaints of indigenous people can be monitored for progress and follow-up.

Source: The author's analysis (2024)

Restoring indigenous peoples' participation rights requires considering the impacts and improvements in social, educational, and economic aspects. Increasing meaningful public participation must also enhance the quality of legislation and ultimately improve the welfare of indigenous peoples living in mining areas. Mining activities that extract natural resources will inevitably affect the environment and surrounding communities (Jamin et al., 2023). Therefore, legal instruments are needed to accommodate indigenous peoples' interests by providing channels for them to voice their aspirations. Without the participation of indigenous peoples, mining legislation risks addressing only the interests of industrial elements that extract natural

resources, neglecting the social, economic, and environmental impacts experienced by these communities.

D. CONCLUSION

Indonesian mining law has its roots in the pre-independence era and, therefore, carries the influence of colonialism. Over time, it has evolved to keep pace with the development of the Indonesian mining industry. The current mining law reform of 2020 introduced several changes, such as a shift from decentralization to centralization, which has proven difficult to implement. On the other hand, indigenous peoples, who are directly affected by mining activities, have not been adequately included in the drafting of the 2020 mining laws, according to official records. This lack of inclusion fails to reflect the meaningful participation elements that should be fulfilled in the legislative process.

Therefore, indigenous peoples need greater recognition in mining legislation. This paper has proposed steps to better accommodate indigenous peoples' aspirations in the legislative process. First, identify the losses experienced by indigenous peoples. Second, optimize the existing representative offices in each province. Third, establish a system for accommodating aspirations and complaints that is accessible to indigenous peoples. By implementing these measures, mining legislation can become more inclusive and balanced, benefiting industry, the environment, and the communities surrounding mining areas.

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