

The Legal Certainty of Community Participation Related to Mining Activities

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Abstract

Indonesia is rich in mining resources, which constitute one of the crucial sectors for national development. However, mining activities are not without controversy, particularly regarding community participation in decision-making processes and implementation. Despite existing laws guaranteeing the community's right to participate, their implementation still faces obstacles such as legal uncertainties concerning the mechanisms and procedures for participation, which have not been clearly and comprehensively regulated. The purpose of this research is to examine the legal certainty regarding community participation in mining activities in Indonesia and to identify the problems and challenges faced in its implementation. This study employs normative legal research methods with a legislative and conceptual approach. Data collection techniques are conducted through literature studies, analyzed qualitatively with content analysis, and presented descriptively and analytically. The research findings reveal that legal certainty regarding community participation in mining activities in Indonesia is currently regulated by laws such as the Mineral and Coal Mining Law (UU Minerba) and Government Regulation No. 51/2014, which guarantee the community's right to participate. However, these regulations do not clearly define the mechanisms and procedures, leading to legal uncertainty. The main problems and challenges in implementation include unclear mechanisms and procedures for participation, lack of socialization and transparency of information, low community capacity, weak law enforcement and supervision, and potential conflicts of interest that can hinder effective and sustainable community participation in mining activities.

I. Introduction

Indonesia is blessed with abundant natural resources, including mining resources. The mining sector is one of the economic sectors that plays an important role in national development.(Damopoli, 2013) However, mining activities are not free from various polemics and controversies, one of which relates to community participation in the decision-making process and the implementation of mining activities. Community participation in mining activities is a very important aspect to ensure the balance between economic, environmental, and socio-cultural interests. This aligns with the principle of sustainable development, which is one of the foundations in the management of natural resources in Indonesia. Involving the community in the decision-making process and the implementation of mining activities is expected to minimize potential conflicts and negative impacts that may arise.(Mukhlis & Lutfi, 2016)

In the context of Indonesian law, there are a number of regulations governing public participation in mining activities. One of them is Law Number 4 of 2009 on Mineral and Coal Mining (Minerba Law). Article 17, paragraph (1) of the Minerba Law states that "The government and regional governments guarantee the public's right to participate in decision-making processes related to mineral and coal mining activities that affect economic, social, and environmental rights." Furthermore, paragraph (2) states that "Public participation as referred to in paragraph (1) is further regulated by Government Regulation."(Samad et al., 2021)

Next, Government Regulation Number 51 of 2014 concerning the Management of Mineral and Coal Mining Business Activities further regulates the role of the community in mining activities. Article 7, paragraph (1) states that "The community has the right to participate in the decision-making process and provide input, suggestions, opinions, responses, and raise objections to mineral and coal mining activities." Then, paragraph (2) states that "The community's participation as referred to in paragraph (1) is carried out through the expression of opinions, deliberations, the provision of information, and/or other activities in accordance with the provisions of the legislation."(Samad et al., 2021)

Although there are legal frameworks governing public participation in mining activities, there are still various challenges and issues in their implementation. One of the main problems is the legal uncertainty regarding the mechanisms and procedures for public participation, which have not been clearly and comprehensively regulated.(Nugroho, 2022) This has the potential to cause conflicts and disputes between the community and the government or mining companies.

Therefore, it is necessary to conduct more in-depth research to examine the legal certainty regarding community participation in mining activities. This research is expected to provide a clear picture of the existing conditions of community participation in mining activities, as well as identify existing problems and obstacles, so that solutions and recommendations can be formulated to strengthen legal certainty and effectively and sustainably increase community participation. The formulation of the problems in this research is as follows:

- a. How is legal certainty regarding public participation in mining activities in Indonesia currently?
- b. What are the problems and obstacles faced in the implementation of public participation in mining activities?

2. Research Method

This research employs normative legal research methods. The approaches used are the statute approach and the conceptual approach. The statute approach involves examining all legislation related to community participation in mining activities. The primary legal materials for this research include Law Number 4 of 2009 on Mineral and Coal Mining, Government Regulation Number 51 of 2014 on the Management of Mineral and Coal Mining Business Activities, and other relevant implementing regulations.

Meanwhile, the conceptual approach involves studying legal concepts and principles related to community participation in mining activities, such as the concept of legal certainty, the concept of community participation, and the concept of social justice. The secondary legal materials used in this conceptual approach include books, scientific journals, research findings, and other literature discussing related

topics.(Marzuki, 2021) The data collection technique in this research was conducted through literature study (library research).(Sugiyono, 2019) Researchers gather and study relevant primary and secondary legal materials related to the research topic. The obtained data is then inventoried and classified according to the issues discussed.

Once the data is collected, qualitative data analysis is conducted using content analysis techniques. Content analysis is performed by interpreting and constructing statements found within those legal materials.(J. Moleong, 2017) The aim is to obtain a clear and comprehensive understanding of the legal certainty of community participation in mining activities, as well as to identify existing issues and constraints. The results of the data analysis are then presented descriptively and analytically in a systematic and comprehensive narrative form. This narrative explains the legal certainty of community participation in mining activities in Indonesia at present, as well as outlining the problems and constraints faced in its implementation. Based on these analysis results, researchers can provide solutions and recommendations to strengthen legal certainty and enhance community participation effectively and sustainably in mining activities.

3. Results And Discussion

A. Legal Certainty Regarding Community Participation in Mining Activities in Indonesia Today.

The legal certainty regarding community participation in mining activities in Indonesia is currently regulated by various laws and regulations. Generally, these laws and regulations recognize and guarantee the rights of communities to participate in decision-making processes and provide input, suggestions, and responses to mining activities.(Munaf, 2016) However, legal certainty regarding the mechanisms and procedures for community participation is still not clearly and thoroughly regulated.

Law Number 4 of 2009 concerning Mineral and Coal Mining (Mining Law) serves as the main legal basis regulating community participation in mining activities. Article 17 paragraph (1) of the Mining Law stipulates that "the Government and regional governments guarantee the right of the community to participate in the decision-making process regarding mineral and coal mining activities related to economic, social, and environmental rights." Furthermore, paragraph (2)

states that "community participation as referred to in paragraph (1) shall be further regulated by Government Regulation." (Al Idrus, 2022)

Government Regulation Number 51 of 2014 concerning the Management of Mineral and Coal Mining Activities is a implementing regulation of the Mining Law which further regulates the participation of communities in mining activities. Article 7, paragraph (1) states that "Communities have the right to participate in the decision-making process and provide input, suggestions, opinions, responses, and objections to mineral and coal mining activities." Furthermore, paragraph (2) states that "Community participation as referred to in paragraph (1) shall be carried out through the submission of opinions, deliberations, provision of information, and/or other activities in accordance with the provisions of the laws and regulations." (Firmansyah, 2020)

Although the Mining Law and Government Regulation Number 51 of 2014 have guaranteed the rights of the community to participate in mining activities, these regulations have not yet detailed the mechanisms and procedures for community participation. This has created legal uncertainty and the potential for issues in its implementation. (Ahadis, 2023)

One of the more detailed regulations governing community participation is Minister of Environment and Forestry Regulation Number P.69/Menlhk/Setjen/Kum.1/8/2016 concerning Procedures for Community Involvement in the Environmental Impact Analysis Process and Environmental Permit. In this regulation, it is explained that community involvement is carried out through several stages, namely the announcement of business and/or activity plans, the announcement of the summary of Environmental Impact Analysis (Andal) and Environmental Management Plan (RKL-RPL), public consultations, and the resolution of community objections. However, this regulation only regulates community participation in the environmental impact assessment process, while community participation in other stages of mining activities is not detailed. (Ni'mah, 2022)

Besides regulations at the central level, several regions also have local regulations governing community participation in mining activities. For example, Regional Regulation of West Java Province Number 7 of 2012 concerning the Management of Mineral and Coal Mining. Article 33 of this regional regulation states that "the Regional Government guarantees the right of the community to participate in the decision-

making process regarding mining business activities related to economic, social, and environmental rights." However, this regional regulation also does not yet detail the mechanisms and procedures for community participation.(Nalle, 2016)

Based on the description above, it can be concluded that the legal certainty regarding public participation in mining activities in Indonesia is still not optimal. Although the legislation has guaranteed the rights of the public to participate, the existing regulations do not clearly and comprehensively regulate the mechanisms and procedures for public participation in each stage of mining activities. This can create legal uncertainty and potentially lead to issues in its implementation.

To strengthen the legal certainty of public participation in mining activities, it is necessary to establish more detailed and comprehensive regulations that clearly regulate the mechanisms and procedures for public participation, including the stages of mining activities that must involve the public, the forms of participation that can be undertaken, as well as the rights and obligations of the public in the participation process. It is hoped that these clear and detailed regulations can improve legal certainty and minimize potential conflicts and issues in the implementation of public participation in the field.(Ridwan, 2013)

B. Problems and Constraints Encountered in the Implementation of Community Participation in Mining Activities

The implementation of community participation in mining activities in Indonesia still faces various problems and obstacles. Some of the main issues and obstacles encountered are as follows:

1. Uncertainty in the mechanism and procedures of community participation.
2. Although the legislation has ensured the rights of the community to participate in mining activities, the existing regulations have not clearly and comprehensively addressed the mechanisms and procedures for community participation. This could lead to legal uncertainties and potentially create issues in its implementation.(Syofiarti, 2022)

Government Regulation Number 51 of 2014 concerning the Management of Mineral and Coal Mining Activities only generally mentions that community participation can be carried out through the submission of opinions, consultations, the provision of

information, and/or other activities in accordance with the provisions of the laws and regulations. However, this regulation does not specifically regulate the stages of mining activities that must involve the community, forms of participation that can be undertaken, as well as the rights and obligations of the community in the participation process.(Samad et al., 2021)

3. Lack of socialization and openness of information.

One obstacle in implementing community participation is the lack of socialization and transparency of information from the government and mining companies to the community. Often, the community does not receive sufficient information about mining activities planned for their area, thus they cannot participate effectively.(Samad et al., 2021)

In Article 7 paragraph (3) of Government Regulation Number 51 of 2014, it is stated that "Mining Business License holders are obliged to provide information on the plan of production operation activities to the community." However, this regulation does not specify in detail the form of information to be provided, the timing of information dissemination, and the mechanism for providing information to the community.

4. Low capacity of society in participating.

Another obstacle faced is the low capacity of the community to participate in mining activities. Often, the community lacks sufficient knowledge and understanding regarding their rights, the mining licensing process, and the potential impacts of mining activities. This hinders their ability to participate effectively and provide quality input.(Hanim & Noorman, 2018) The existing legislation does not yet regulate efforts to enhance community capacity to participate in mining activities. However, increasing community capacity is crucial to ensuring quality and sustainable participation.(Sampurna, 2006)

5. Weak law enforcement and supervision

Another issue faced is the weak enforcement of laws and supervision of community participation implementation in mining activities. Often, there are violations of community participation provisions, yet there is no firm action from the government to follow up.(Charisma, 2021) In Article 151 of the Mining Law, it is stated that "Any person who violates the provisions as referred to in Article 17 paragraph (1) shall be subject to administrative sanctions in the form of

a fine of up to Rp5,000,000,000.00 (five billion Indonesian Rupiah)." However, in practice, the enforcement of these administrative sanctions is still not optimal.

6. Potential conflict of interest

The implementation of community participation also has the potential to generate conflicts of interest between the community, government, and mining companies. Communities often have different interests from the government and mining companies, especially regarding environmental and socio-cultural issues.(Fauzi & Nulhaqim, 2024) The existing legislation does not clearly regulate the mechanism for resolving conflicts of interest that may arise in the process of community participation. This can create legal uncertainty and potentially trigger prolonged conflicts.(Aksnudin, 2023)

Based on the description above, it can be concluded that the main problems and obstacles in implementing community participation in mining activities in Indonesia are the lack of clarity in the mechanisms and procedures of participation, inadequate socialization and transparency of information, low community capacity to participate, weak law enforcement and supervision, and the potential for conflicts of interest.

To address these problems and obstacles, improvements in regulations governing community participation in mining activities are needed, detailing them comprehensively. Additionally, efforts to enhance community capacity, improve information dissemination systems, and strengthen law enforcement and supervision of community participation implementation are necessary. These efforts are expected to enhance effective and sustainable community participation in mining activities in Indonesia.(Wijaya, 2017)

7. Conclusion

The legal certainty regarding community participation in mining activities in Indonesia is currently regulated by various laws and regulations such as Law Number 4 of 2009 concerning Mineral and Coal Mining (Mining Law) and Government Regulation Number 51 of 2014 concerning the Management of Mineral and Coal Mining Business Activities. Generally, these regulations acknowledge and guarantee the rights of the community to participate in decision-making processes and

provide input, suggestions, and responses to mining activities. However, legal certainty regarding the mechanisms and procedures for community participation is still not clearly and detailedly regulated in existing regulations. The current regulations do not specifically outline the stages of mining activities that must involve the community, forms of participation that can be undertaken, and the rights and obligations of the community in the participation process. This creates legal uncertainty and has the potential to cause problems in the implementation of community participation in the field.

The main problems and obstacles faced in implementing community participation in mining activities are the lack of clarity in the mechanisms and procedures for community participation. Although legislation guarantees the right of communities to participate, existing regulations do not clearly and specifically regulate the stages of mining activities that must involve the community, forms of participation that can be undertaken, and the rights and obligations of the community in the participation process. In addition, the lack of socialization and transparency of information from the government and mining companies to the community is also a constraint in implementing community participation. Another challenge is the low capacity of communities to participate effectively in mining activities. Communities often lack sufficient knowledge and understanding of their rights, the mining licensing process, and the potential impacts. Weak law enforcement and supervision of the implementation of community participation are also issues that need to be addressed. Additionally, the potential conflicts of interest between communities, the government, and mining companies can hinder effective and sustainable community participation in mining activities.

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