

## Implementation Of The Principle Of Public Participation In The Licensing Of The Bukit Sanggul Seluma Gold Mining

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### Abstrak

This study examines the implementation of public participation in the gold mining licensing process in Bukit Sanggul, Seluma Regency, Bengkulu Province, from a legal perspective based on Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 3 of 2020 concerning Amendments to the Mineral and Coal Law (Minerba Law). The background of this study is an indication of violations of public participation procedures in the licensing process, which led to social conflict and environmental damage. This study uses a normative juridical method with a case study approach and analysis of relevant laws and regulations. The results of the study indicate that public participation has not been implemented optimally as mandated by law. Therefore, it is necessary to strengthen public participation mechanisms, increase transparency in the licensing process, and stricter law enforcement to realize sustainable environmental protection and social justice.

**Keywords:** Public participation, Mining licensing, Environment, Environmental law

### INTRODUCTION

The gold mining industry plays a vital role in supporting national economic growth, but on the other hand, it also creates the potential for environmental damage and social conflict if it is not managed responsibly. A number of regulations have been issued to address this, including Law Number 32 of 2009 concerning Environmental Protection and Management, which regulates the mechanism for community participation. However, the implementation of these regulations in the field still faces various obstacles. In fact, the Indonesian constitution expressly guarantees the community's right to a good and healthy living environment, as stipulated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that "everyone has the right to live in physical and spiritual prosperity, to have a home, and to have a good and healthy living environment, and the right to receive health services."<sup>1</sup> This constitutional mandate is the primary responsibility of the government as the implementing party. However, to date, the realization of this mandate still faces various obstacles and has not been fully implemented as expected.

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<sup>1</sup> UUD NRI tahun 1945 Pasal 28 H ayat (1)

According to Jimry Asshiddiqie, environmentally conscious sustainable development is a conscious effort and can be formulated as a planned effort.<sup>2</sup>

In reality, the implementation of the principle of public participation in mining permits is often still weak. One relevant example is the gold mining activity in Bukit Sanggul, Seluma Regency, Bengkulu Province. This can be seen, despite the many objections from local residents to the mining activity, the Mining Business Permit (IUP) for production operations at the Ministry of Energy and Mineral Resources has been issued since January 17, 2025. However, the mining activity has not received a recommendation for approval for the release of Forest Areas (PPKH) from the Governor of Bengkulu. This raises concerns from the surrounding community because if the mining activity is carried out, it is considered to have an impact on environmental sustainability and the sustainability of natural resources. Moreover, in the permit issuance process there is still minimal community involvement.<sup>3</sup>

In this context, it is important to normatively examine whether the principle of public participation has been implemented properly in the gold mining licensing process in Bukit Sanggul. This study was conducted through a library approach to related regulations and legal documents, to assess the suitability of field practices with the mandate of Law No. 32 of 2009. This is important because public participation is a social control mechanism that can prevent environmental damage and violations of community rights.<sup>4</sup>

Thus, this study aims to provide a legal overview of the extent to which the principle of public participation has been implemented in gold mining licensing, as well as to identify inhibiting factors that cause less than optimal public participation.

## METHOD

The research method used is normative juridical. The research is based on literature studies to examine applicable legal norms and legal principles related to public participation in mining licensing. This research is descriptive-analytical, with the aim of describing and analyzing legal provisions and their application in the context of gold mining in Bukit Sanggul, Seluma Regency.<sup>5</sup>

## RESEARCH RESULTS

Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH) explicitly regulates the community's right to participate in environmental protection. Article 70 paragraph (1) states that "The community has the same rights and opportunities to play an active role in environmental protection and management."<sup>6</sup>

This principle of public participation is not merely a formality, but is a substantial element in the principles of good environmental governance, which includes: transparency, accountability, justice, and active community involvement in the decision-making process.<sup>7</sup>

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<sup>2</sup> Jimly Asshiddiqie, *Green Constitution, Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta: Rajawali Pers, 2010, hlm. 135.

<sup>3</sup> Laporan Wahana Lingkungan Hidup Indonesia (WALHI) Bengkulu, *Tambang dan Ancaman Lingkungan di Bukit Sanggul*, 2023.

<sup>4</sup> Hadi, Sutarmam. *Partisipasi Masyarakat dalam Hukum Lingkungan di Indonesia*. Yogyakarta: Genta Publishing, 2018, hlm. 45.

<sup>5</sup> Marzuki, Peter Mahmud. *Penelitian Hukum (Edisi Revisi)*, Jakarta, Prenada Media Group, 2016, hlm, 56.

<sup>6</sup> UU Nomor 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, Pasal 70 ayat (1).

<sup>7</sup> Maria SW Sumardjono, *Hukum Tata Ruang dan Pengelolaan Lingkungan Hidup*, Gadjah Mada University Press, 2017. H.121

Public participation in the context of environmental licensing must be interpreted as meaningful involvement (meaningful participation), namely community involvement from the start of planning to evaluation of activities. This is emphasized through the provisions in Article 26 paragraph (2), which requires the preparation of an Environmental Impact Analysis (AMDAL) to be carried out by involving the community directly affected.<sup>8</sup>

Change of function of Bukit Sanggul Protected Forest (HL) to Production Forest (HP) covering an area of 19,223.73 hectares, through Decree (SK) of the Minister of Environment and Forestry (LHK) Number SK.533/Menlhk/Setjen/PLA.2/5/2023 in the context of review Plan The Bengkulu Province Regional Spatial Planning (RTRW) has sparked controversy among civil society. This is because the reduction in the functional status of the Bukit Sanggul HL is not for the benefit of the surrounding community; it is motivated by improving the investment climate.<sup>9</sup>

The investment climate in question relates to two gold mining permits (IUPs), which, based on analysis, are located within the Bukit Sanggul protected forest (HL) area, which has been converted into a production forest (HP). If these mining activities were to actually operate, the potential for significant environmental damage to the Bukit Sanggul area can be imagined. This area serves as the headwaters for three major rivers: the Alas Kanan, Alas Tengah, and Alas Kiri, which converge and flow into Muara Dua Village. The river flowing from Bukit Sanggul is known as the Alas River, which also serves as a natural boundary between Seluma Regency and South Bengkulu Regency.

Genesis Bengkulu Director, Egi Ade Saputra, emphasized that the plan to open a gold mine in the Bukit Sanggul area is a serious threat that has the potential to impact more than 80 villages in the Seluma Regency area. Around 4,000 hectares of traditional rice fields owned by the community are threatened by drought, heavy metal pollution such as iron, and other environmental impacts. In addition, the potential for natural disasters such as landslides and soil movement is also a major concern, considering the topography of Bukit Sanggul which is dominated by steep slopes that can at any time cause disasters for the surrounding population.<sup>10</sup>

Initially, in 2019, Bengkulu Governor Rohidin Mersyah forwarded proposals from several regencies and cities in Bengkulu to change the designation and function of forest areas to the Ministry of Environment and Forestry (KLHK). By early 2022, or the end of the provincial proposal period, more than 123,000 hectares of forest areas had been proposed for designation changes. Of this total, approximately 33 percent was allocated for forest investment purposes, while the remaining 67 percent was allocated for community needs.

Of that total, 62.7 thousand hectares are proposed for release or change of designation, and the remaining 60.8 thousand hectares will have their forest area function changed. All of this is listed in the document Regional Regulation No. 2 of 2012 concerning the Bengkulu Province Spatial Planning Plan 2012-2023. The Governor of Bengkulu did not anticipate that the proposal could also accommodate extractive business interests, such as coal or other minerals. However, he claimed, it would still be subject to stricter prerequisites and review.

The Seluma Regency Government initially proposed only 4,644 hectares of forest area (2019), due to the primary need for 3,375 hectares to connect four enclaved villages: Sinar Pagi, Sekalak, Talang Empat, and Lubuk Resam in North Seluma District. However, nearing the

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<sup>8</sup> UU Nomor 32 Tahun 2009.....Pasal 26 ayat (2)

<sup>9</sup> Raden Aryo Wicaksono, Tak Relah Tambang di Bukit Sanggul, Betahita. 18 Agustus 2023. <https://betahita.id/news/detail/9123/tak-rela-tambang-di-bukit-sanggul.html?v=1692347689> diakses pada 30 Juli 2025

<sup>10</sup> Geesis, Usulan Revisi Kawasan Hutan Seluma Tidak Masuk Akal. <https://yayasangenesisbengkulu.or.id/2023/07/06/genesis-usulan-revisi-kawasan-hutan-seluma-tidak-masuk-akal/> diakses pada tanggal 1 Juli 2025

end of the proposal period (2021), the Regency surprisingly revised its proposal several times over.<sup>11</sup>

Referring to the Decree of the Minister of Environment and Forestry Number: 533/MenLHK/Setjen/PLA.2/5/2023, overall, the proposed plan of Bengkulu Province that has been sent to the Ministry of Environment and Forestry, seems to have only been approved for around 19 percent of the more than 123 thousand hectares of proposed forest. There is two mining concession holders benefited from the downgrading of the Bukit Sanggul HL status: PT Energi Swa Dinamika Muda (ESDM) and PT Perisai Prima Utama (PPU). The names of these two companies emerged when the Bukit Sanggul HL function change map was overlaid with the IUP distribution map.<sup>12</sup>

The author disagrees with the above information because, as we know, the change in the functional status of the Bukit Sanggul Protected Forest has significant legal and social implications. This decision has the potential to violate environmental protection principles and the rights of indigenous peoples, and is contrary to the provisions stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 6 of 2014 concerning Villages.

First, this forest conversion fails to consider the extensive ecological impacts, including the risk of contamination of water resources flowing from Sanggul Hill, a source of livelihood for more than 80 villages in the Seluma area. The planned mining activities could cause severe environmental damage, including soil and water pollution, as well as potential landslides that could threaten community safety.

Second, this decision has the potential to violate the rights of indigenous peoples as stipulated in Law Number 6 of 2016 concerning the Recognition and Protection of Indigenous Peoples. Indigenous communities around Bukit Sanggul, who have long depended on forest resources for their livelihoods, have not received adequate recognition of their customary territories. This creates injustice and the potential for greater social conflict.

Third, despite claims that this change in forest function will improve the investment climate and economic well-being, there has been no transparent and comprehensive study of the environmental and social impacts of the plan. The precautionary principle (precautionary principle) stipulated in international environmental law should be implemented to prevent irreparable environmental damage.

Fourth, there are indications that the decision-making process is not transparent and does not involve active public participation, a fundamental principle of good environmental management. This contradicts the provisions of Law Number 32 of 2009, which emphasizes the importance of public participation in environmental decision-making.

Therefore, the decision to convert the Bukit Sanggul Protected Forest into a Production Forest must be reviewed, taking into account environmental law, indigenous peoples' rights, and broader ecological impacts. The government needs to conduct a more in-depth evaluation and involve all stakeholders to achieve a sustainable and equitable solution.

## DISCUSSION

### Regulation of Public Participation Principles in UUPPLH

The regulation of the principle of public participation in Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH) is a normative foundation that confirms the community's right to play an active role in environmental management,

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<sup>11</sup> Geesis, Usulan Rvisi Kawasan Huktan Seluma Tidak Masuk Akal. <https://yayasangenesisbengkulu.or.id/2023/07/06/genesis-usulan-revisi-kawasan-hutan-seluma-tidak-masuk-akal/> diakses pada tanggal 1 Juli 2025

<sup>12</sup> Raden Ariyo Wicaksono, Tak Relat Tambang di Bukit Sanggul. <https://betahita.id/news/detail/9123/tak-rela-tambang-di-bukit-sanggul.html?v=1692347689> diakses pada 1 Juli 2025

particularly in the context of licensing activities that have an environmental impact such as gold mining.

Article 65 paragraph (2) of the Environmental Management Law explicitly states that everyone has the right to obtain environmental education, access to information, access to participation, and access to justice in fulfilling the right to a good and healthy environment.<sup>13</sup> This provision emphasizes that public participation is not just a normative right, but also an obligation of the state to guarantee broad and meaningful community involvement in environmental decision-making.<sup>14</sup>

Public participation is concretely realized through the mechanism for preparing the Environmental Impact Analysis (AMDAL) document as stipulated in Article 22 of the PPLH Law. This process requires activity initiators to involve the community from the initial stage, namely before the preparation of the AMDAL reference framework document, through announcements of activity plans and public consultations. The community that has the right to participate is not only limited to individuals directly affected, but also includes community groups, environmental organizations, and other interested parties. This is in accordance with the principle of environmental democracy that positions the community as an active subject in environmental management, not just as an impacted object.<sup>15</sup>

Furthermore, Article 70 paragraph (1) of the Environmental Management Law emphasizes that the community has the same and broadest rights and opportunities to play an active role in environmental protection and management. This participation can take the form of social supervision, conveying opinions, suggestions, objections, complaints, and reporting environmental violations.<sup>16</sup> In practice, this mechanism is an effective social control instrument to prevent and mitigate potential environmental damage due to mining activities. The state is obliged to provide transparent and accurate access to information so that the community can exercise its right to participate meaningfully, as emphasized in Article 65 paragraph (2) and Article 70 paragraph (1).

In addition, the Environmental Management Law provides legal protection for communities actively participating in environmental management through Article 66, which prohibits criminal prosecution or civil lawsuits against individuals who advocate for the right to a good and healthy environment. This provision is part of the Anti-SLAPP (Anti-Strategic Lawsuit Against Public Participation), which aims to protect the rights of public participation from intimidation or legal action that hinders public participation in the environment.<sup>17</sup>

However, in its implementation, the principle of public participation as stipulated in Law No. 32 of 2009 faces a number of challenges. For example, regulatory changes following the Job Creation Law and Government Regulation No. 22 of 2021, which revised the AMDAL preparation mechanism, have limited public participation to those directly affected, while environmental groups and the wider community are no longer formally involved in the AMDAL assessment process.<sup>18</sup> This has the potential to reduce transparency and accountability in environmental licensing decision-making. Furthermore, limited public capacity, lack of adequate access to information, and minimal oversight and law enforcement mechanisms also contribute to obstacles to realizing effective public participation.

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<sup>13</sup> Pasal 65 ayat (2) UU PPLH

<sup>14</sup> Hardjosoemantri, Koesnadi. *Hukum Tata Lingkungan*. (Yogyakarta: Gadjah Mada University Press 2000) h. 46.

<sup>15</sup> Joko Soebagyo, *Hukum Lingkungan, Masalah dan Penanggulangan* (Cetakan II), (Jakarta: Rineka Cipta, 1999) h. 47.

<sup>16</sup> Pasal 70 ayat (1) UU PPLH

<sup>17</sup> I Made Arya Utama, *Hukum Lingkungan Sistem Hukum Perizinan Berwawasan Lingkungan Untuk Pembangunan Daerah Berkelanjutan*, (Bandung: Pustaka Sutra, 2007) h. 26.

<sup>18</sup> UU Cipta Kerja dan Peraturan Pemerintah No. 22 Tahun 2021

The principle of public participation stipulated in the Environmental Management Law not only serves as an instrument of environmental democracy, but also as a preventive and corrective mechanism in the management of natural resources and the environment. Active and meaningful community involvement in the gold mining licensing process can increase the legitimacy of decisions, strengthen social oversight, and reduce the potential for social conflict and environmental damage.<sup>19</sup> Therefore, the implementation of this principle must be supported by policies that guarantee information transparency, increase community capacity, and provide effective legal protection for participants, so that the goals of sustainable environmental protection and management can be optimally achieved.

## CONCLUSION

The legal provisions regarding the principle of public participation in Law Number 32 of 2009 concerning Environmental Protection and Management explicitly place public participation as a fundamental right and obligation in the decision-making process that impacts the environment. Article 70 paragraph (1) states that the public has the same and broadest rights and opportunities to play an active role in environmental protection and management. In the context of gold mining licensing in Bukit Sanggul, public participation should be implemented through a public consultation mechanism during the preparation of the Environmental Impact Analysis (EIA) document as stipulated in Article 26 paragraph (2). Communities directly affected must be actively and meaningfully involved in this process. However, based on secondary studies and data, the implementation of the principle of public participation in the region has not been carried out in accordance with applicable regulations. Many people do not have adequate access to information, are not involved in substantial public consultations, and their aspirations are not taken into account in the decision-making process. This indicates a violation of the principles of environmental law and good environmental governance. Therefore, normatively, the gold mining permit in Bukit Sanggul which is not based on legitimate and meaningful public involvement is contrary to the spirit and content of Law No. 32 of 2009. Therefore, strict law enforcement and strengthening of public participation mechanisms are needed as an instrument of procedural justice and environmental protection.

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<sup>19</sup> Mumpuni, N. W. R. Peran Serta Masyarakat Dalam Pengendalian Dampak Lingkungan Hidup dalam Mewujudkan Sustainable Development. *Amnesti Jurnal Hukum*, 3.2. (2021). h. 76

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