

The Impact of Regulatory Changes on Foreign Investment in the Transition from Contracts of Work and Coal Mining Venture Agreements to Special Mining Business Licenses

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ARTICLE INFO	ABSTRACT
Keywords: Investment, Foreign Investors, Mineral and Coal Mining	Foreign investment plays a crucial role in supporting Indonesia's economic growth, especially in strategic sectors such as mineral and coal mining, which contribute extensively to state revenues and job creation. As a sector with a high dependence on capital and technology, the presence of foreign investors is a primary factor in driving the exploration, production, and processing of natural resources. This study seeks to evaluate the extent to which legislative protection is provided to foreign investment in the mining sector, especially in the transition from the <i>Work Contract (KK)</i> and <i>Coal Mining Business Work Agreement (PKP2B)</i> to the <i>Special Mining Business License (IUPK)</i> . By using normative legal research methods through a literature approach, this study examines various key regulations governing foreign investment in the mining sector, including the cooperation required between foreign investors and domestic capital. The research findings show that the regulatory transition policy has changed the dynamics of foreign investment in this sector, especially with the divestment obligations and cooperation requirements with national business entities, which aim to increase government control and encourage the independence of the domestic mining industry. However, the existing regulations that serve as basic guidelines for foreign investment remain challenging, as legal uncertainty, dynamic policy changes, and advanced fiscal burdens continue to be core issues for foreign investors in maintaining the stability and sustainability of their businesses in Indonesia.

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Introduction

Mineral and coal mining is one of the strategic sectors that makes a major contribution to the national economy (Yanto, 2023). This sector not only plays a role in providing energy resources and industrial raw materials but also becomes a source of state revenue through taxes, royalties, and export foreign exchange. The mining industry creates jobs and drives economic growth in areas that have potential mineral and coal

resources (Podungge, 2024). However, to optimize the potential of this sector, large investments are needed in exploration, exploitation, and processing, which often exceed domestic financial capacity.

Foreign investors play a significant role in the management and development of the mineral and coal mining sector in Indonesia (Redi, 2021). They not only bring large capital but also the latest technology that can increase the efficiency and sustainability of mining operations (Masagala et al., 2021). Foreign investors often have experts with specific expertise in the exploration and processing of mineral resources that can increase the productivity and competitiveness of the Indonesian mining industry in the global market. The presence of foreign investors also encourages the transfer of knowledge and technology to the local workforce, which can ultimately strengthen the national mining industry (Arliman, 2018).

Collaboration with foreign investors is an important strategy in advancing the Indonesian mining industry. Through various cooperation schemes, such as the *Work Contract (KK)* and the *Coal Mining Business Work Agreement (PKP2B)*, foreign companies can operate in Indonesia while still complying with applicable regulations (Jufrida, 2016). The Indonesian government continues to update its investment policies to balance national interests and legal certainty for foreign investors. With clear and stable policies, as well as strict supervision, foreign investment can provide maximum benefits for economic growth, environmental sustainability, and the welfare of communities around mining areas (Wartono, 2024).

Clear and stable regulations are the main factors in creating a conducive investment climate for foreign investors in the mineral and coal mining sector (Hartana, 2017). Legal certainty is the main consideration for investors before investing their capital, because regulatory uncertainty can increase investment risks, both in terms of finance and operations. The Indonesian government realizes the importance of providing legal protection and certainty for investors so that incoming investments can run smoothly and provide economic benefits to the country (Anfasa, 2023). Therefore, transparent and predictable policies are needed to increase the attractiveness of foreign investment.

As the prime legal basis for foreign investment, Law Number 25 of 2007 concerning Investment (hereinafter referred to as the *Investment Law*) stipulates that foreign investment can be carried out either with foreign capital or in cooperation with domestic investors (Sari, 2020). This regulation provides certainty to investors regarding the investment mechanisms that can be carried out as well as their rights and obligations in running a business in Indonesia. Law Number 3 of 2020 concerning Amendments to Law Number 4 of 2009 concerning Mineral and Coal Mining (hereinafter referred to as the *Mining Law*) also stipulates limits on investment value and share ownership for foreign investors. This aims to maintain a balance between national interests and foreign investment needs in the mining sector (Tapada, 2022).

Stable regulations not only provide clarity for investors but also increase their confidence in the legal system and investment policies in Indonesia (Triana, 2024). With clear limitations on share ownership and investment mechanisms, legal risks in

investment agreements can be minimized. Good regulation also allows the government to supervise investment activities to ensure they remain aligned with national interests, including in the sustainable use of natural resources (Amir, 2018). Therefore, consistent and comprehensive policies are needed to attract quality foreign investment and ensure that the mining industry can develop while paying attention to environmental aspects and community welfare.

Exploration and exploitation of mineral and coal resources require huge investments, in the form of capital, technology, and skilled labor (Pardede, 2018). The exploration process requires in-depth geological research, surveys, and infrastructure development to support mining operations. Mining exploitation also faces various risks, ranging from uncertainty of exploration results to complex environmental challenges (Rianty, 2024). Therefore, strong financial support is needed so that the mining industry can develop optimally and sustainably.

The Indonesian government faces obstacles in funding large-scale mining projects. The limited state budget and the many development needs in other sectors make it difficult for the government to allocate sufficient funds for direct investment in this sector. In addition, national companies engaged in mining often face limited capital and access to sophisticated technology needed to increase efficiency and productivity (Damayanthi, 2008). In this condition, foreign investment is a strategic solution to overcome financial limitations and support the development of the Indonesian mining sector.

The role of foreign investment is very crucial in supporting mining activities and driving national economic growth (Suryahani, 2024). Through cooperation with foreign investors, Indonesia can gain access to modern technology, increased workforce capacity, and more efficient resource management. In addition, the entry of foreign capital also contributes to increasing state revenues through taxes, royalties, and indirect economic impacts such as job creation (Simatupang, 2024). Therefore, regulations that support foreign investment while maintaining national interests are key to optimizing the potential of the mining sector for Indonesia's economic growth.

This analysis has high relevance in the management of foreign investment in the mineral and coal mining sector in Indonesia, considering the strategic role of this sector in the national economy and the need for capital and technology that cannot be fully met by the government and domestic business actors. By analyzing policies and regulations governing foreign investment, this study provides an overview of the level of legal protection for investors and the challenges faced in its implementation. In addition, this study can be a reference for policymakers in formulating more adaptive and conducive regulations to attract foreign investment, so that it can support the growth of the mining industry in a sustainable manner and increase its contribution to state revenues and community welfare.

Two key studies on foreign investment in Indonesia's mining sector have contributed significantly to understanding the sector's dynamics. For example, Redi (2021) analyzed the importance of foreign investments in the mineral and coal mining sectors, highlighting how these investments lead to technological transfers and boost

national productivity. Sudrajat (2025) examined the role of legal frameworks in facilitating foreign investments, emphasizing the need for clear, stable regulations to reduce investment risks. While both studies address the role of foreign investment, they largely focus on regulatory and economic aspects without delving into the deeper impact of legal frameworks on sustainability and social welfare in the mining sector. This research bridges this gap by incorporating not only the economic benefits but also the long-term environmental and social considerations that are pivotal for sustainable mining practices. It expands the discussion by focusing on regulatory frameworks, emphasizing the relationship between legal certainty, foreign investments, and sustainable development in the Indonesian mining industry.

The objective of this research is to analyze the role of foreign investment in the Indonesian mineral and coal mining sector and the effectiveness of existing regulations in attracting these investments. The findings are expected to offer practical recommendations to policymakers for enhancing the regulatory environment to attract high-quality foreign investment, thereby boosting the mining industry's contribution to Indonesia's economic growth. Moreover, the study's insights will help ensure that foreign investments contribute to sustainable development, improve environmental management, and increase local welfare.

Research Methods

This study used a normative legal approach to investigate applicable legal norms regulating foreign investment in the mineral and coal mining sector in Indonesia. The data sources were secondary data obtained through library research by reviewing various laws and regulations, legal documents, and relevant scientific literature. The data analysis was qualitative, with the data analyzed systematically to understand and evaluate the implementation of legal policies governing foreign investment in the mining sector. This approach provided a deep understanding of legal protection for foreign investors and the effectiveness of existing regulations in creating a conducive investment climate.

Results and Discussion

Policies Governing Foreign Investors in the Mineral and Coal Mining Sector

The legal basis for foreign investment in the mining sector in Indonesia is based on the Investment Law and the Mining Law. These two laws regulate investment mechanisms, investor rights and obligations, and provisions related to foreign share ownership in the mining industry. This regulation aims to provide legal certainty for foreign investors while ensuring that national interests remain protected in the management of natural resources.

Article 5 paragraph (2) states that foreign investment in Indonesia must be in the form of a limited liability company based on Indonesian law and domiciled in the country. This emphasizes that foreign investment cannot be carried out individually or in the form of a foreign business entity that is not an Indonesian legal entity. Besides, Article 5 paragraph (3) stipulates that share ownership in a limited liability company can be

obtained in various ways, such as establishing a new company, purchasing shares, or other legitimate mechanisms based on laws and regulations. This provision provides flexibility for investors in investing their capital in Indonesia.

The Investment Law also provides legal certainty for foreign investors in financial aspects (Rosmayanti, 2023). Article 8 paragraph (3) regulates the rights of investors to transfer and repatriate funds in foreign currency, including capital, profits, loan payments, royalties, and compensation in the event of a company takeover or liquidation. This protection aims to maintain a conducive and attractive investment climate for foreign investors, by ensuring reclaiming their profits and funds by applicable regulations. Article 33 paragraph (1) emphasizes that shareholders are prohibited from making agreements stating that share ownership is carried out for and on behalf of another person. If there is such an agreement, then based on paragraph (2), the agreement will be null and void.

The Mining Law provides further restrictions on foreign investment in the mining sector. Article 112 paragraph (1) requires a gradual divestment of 51% of shares for business entities whose shares are owned by foreigners. These shares must be transferred to the Central Government, Regional Government, BUMN, BUMD, or national private business entities. This divestment policy aims to increase state and national entity control over the strategic mining industry so resources can be better utilized for national interests (Yanto, 2023).

Article 124 paragraph (2) states that holders of Mining Business Permits (IUP) or Special Mining Business Permits (IUPK) are required to use mining services from companies incorporated in Indonesia. If there is no national mining service company that meets the requirements, foreign investors can use companies incorporated in Indonesia for foreign investment (Sukananda, 2020). The provision desires to increase the role of national companies in the mining sector and reduce dependence on foreign entities in mining operations.

Legal certainty and regulatory stability are key factors in creating a conducive investment environment for foreign investors in the mining sector (Fuad, 2024). The Investment Law and the Mining Law provide legal guarantees for investors by regulating clear investment rights, obligations, and mechanisms. One form of legal certainty provided is the right of foreign investors to transfer and repatriate funds as regulated in Article 8 of the Investment Law, which guarantees that profits, capital, and other funds can be returned to the investor's country of origin without any unlawful obstacles. In addition, the 51% share divestment policy stipulated in the Mining Law shows that although there are restrictions on foreign ownership, the process is carried out gradually and has been stipulated in the regulations, so that investors can prepare their business strategies well.

In the event of a dispute between a foreign investor and the government or other parties, Indonesia provides various dispute resolution mechanisms that can be used (Ekleisia, 2022). One of the main options is resolution through international arbitration, which is often the choice of foreign investors because it is considered more neutral than national courts. Indonesia has also ratified various bilateral and multilateral investment

treaties that include Investor-State Dispute Settlement (ISDS) clauses, allowing foreign investors to submit disputes to institutions such as ICSID (International Center for Settlement of Investment Disputes) (Soemarto, 2023). Furthermore, arbitration in dispute resolution can also be done through national courts, especially if the investment agreement does not explicitly choose the arbitration jurisdiction. These mechanisms aim to ensure that disputes can be resolved fairly and by international legal standards.

One of the risks that foreign investors often worry about is expropriation and discriminatory treatment that can threaten the sustainability of their investments. To address this, the Investment Law protects against expropriation by the state, except in certain conditions that have been regulated by law and with the provision of appropriate compensation. In addition, investment regulations in Indonesia also emphasize the principle of non-discrimination, where foreign investors have the same rights as domestic investors, except in certain sectors that are considered strategic for national interests. With this guarantee, foreign investors can invest more confidently, without worrying about arbitrary actions by the government that could harm their interests.

Foreign investors who invest in the mining sector in Indonesia have several rights guaranteed by laws and regulations. One of the main rights is the right to explore and exploit mineral and coal resources, which is granted through a Mining Business Permit (IUP) or a Special Mining Business Permit (IUPK). In addition, foreign investors also have the right to own shares in mining business entities, although there are restrictions that must be adhered to by the divestment policy. Other rights include legal certainty in cooperation contracts, which means that agreements made between investors and the government or domestic business entities must be respected and cannot be changed unilaterally without a clear legal basis. Not only that, foreign investors also have the right to obtain legal protection for their assets and investments, including the right to transfer profits to their country of origin as stipulated in Article 8 of the Investment Law.

However, in these rights, foreign investors also have several obligations that must be fulfilled. One of the main obligations is compliance with environmental regulations, which includes the obligation to carry out reclamation and post-mining to prevent environmental damage. In addition, foreign investors should pay taxes, royalties, and various other levies stipulated in laws and regulations. To support the national economy, foreign investors are also required to cooperate with domestic business entities, either in the form of joint ventures or other forms of partnerships, to encourage technology transfer and increase the capacity of the domestic mining industry. Compliance with labor regulations, including the obligation to employ local workers and provide training for Indonesian workers, is also part of the obligations of foreign investors in this sector.

The Indonesian government applies requirements and limits on foreign share ownership in the mining industry. Under Article 112 of Law Number 3 of 2020, foreign investors who own shares in mining business entities must gradually divest 51% of their shares to the central government, regional governments, or domestic business entities. This requirement aims to increase national control over natural resources and ensure that the benefits of the mining sector can be enjoyed by the state and the community. In

addition, under certain conditions, foreign investors must also meet other requirements such as the use of domestic mining service companies, as stipulated in Article 124 of the Mining Law.

Two core schemes are often used, namely the Work Contract (KK) and the Coal Mining Business Work Agreement (PKP2B). The Work Contract is a form of cooperation between the government and foreign mining companies that provides legal and fiscal certainty for investors for a certain time. Meanwhile, PKP2B is more commonly used in the coal mining sector and has a similar mechanism to KK. However, after the regulatory changes, the government began to reduce the use of KK and PKP2B, replacing them with IUPK, which gives the state greater control in regulating the mining industry. In this cooperation contract, foreign investors must fulfill various obligations, including royalty payments, investment in mineral processing and refining (smelters), and ensuring that mining operations are run by standards set by the Indonesian government.

Cooperation Forms Between Foreign Investors and National Investors

The Work Contract (KK) and the Coal Mining Business Work Agreement (PKP2B) are forms of agreements between the Indonesian government and legal entities engaged in the mineral and coal mining sector. Based on Article 1 numbers 6a and 6b of Law No. 3 of 2020, KK is an agreement between the government and an Indonesian legal entity to conduct mining business activities, while PKP2B is a similar agreement that applies specifically to coal mining. Both contracts give companies the right to explore, exploit, and produce, but also require them to comply with licensing provisions, tax payments, and compliance with environmental regulations.

Along with changes in policy in the mining sector, the Indonesian government has begun to shift the KK and PKP2B contract system to a Special Mining Business Permit (IUPK). This is regulated in Article 169A of Law No. 3 of 2020, which guarantees companies holding KK and PKP2B to obtain a permit extension in the form of an IUPK. This extension is granted twice, each with a maximum period of 10 years, after meeting certain requirements, including efforts to increase state revenue. This shift aims to increase government control over the mining industry while ensuring a profound contribution to the country from this sector.

This regulatory change provides legal certainty for mining companies, especially regarding the extension of operating permits. However, the transition from KK and PKP2B to IUPK also brings challenges, especially in compliance with stricter regulations, more profitable profit sharing for the state, and the obligation for companies to adjust their operations to new policies. For foreign investors, this change requires an adaptation strategy, especially in share ownership, cooperation with national entities, and transparency in mine management to continue to comply with applicable licensing provisions.

The Indonesian government has taken a strategic step in reforming mining sector regulations by eliminating the Work Contract (KK) and Coal Mining Business Work Agreement (PKP2B) systems, replacing them with Special Mining Business Permits

(IUPK). The change is regulated in Article 169A of Law No. 3 of 2020, which provides a guarantee for the extension of KK and PKP2B to IUPK with a maximum validity period of two times 10 years. This policy aims to increase state revenue, tighten supervision of natural resource exploitation, and ensure that national interests remain protected in mining management by foreign and domestic investors.

The change has impacted the stability of foreign investment because investors must adjust their business models to the new regulations. The transition to the IUPK system provides long-term legal certainty but also brings stricter provisions, including requirements for increased state revenue and greater involvement of national business entities. Some foreign investors may see this change as a risk due to increased financial and administrative obligations. However, with the guarantee of IUPK extension, investors still have a strong legal basis to continue their mining activities in Indonesia.

For foreign companies, adjusting to this policy means that they must adapt their investment and operational strategies to continue to meet the new licensing requirements. This includes compliance with divestment policies, increasing contributions to state revenue, and cooperation with local companies. In addition, stricter oversight mechanisms in IUPK require companies to be more transparent in their production and financial reporting. While these changes bring challenges, the new regulations also provide opportunities for foreign companies to build strategic partnerships with national entities and strengthen their position in the Indonesian mining industry.

Policy Impact on Foreign Investment and National Legal Entities

The transition from Contract of Work (KK) and Coal Mining Business Work Agreement (PKP2B) to Special Mining Business License (IUPK) has had a significant impact on the foreign investment climate in Indonesia. This policy aims to increase government control over natural resources and increase state revenues. However, for foreign investors, this regulatory change can create uncertainty, especially in contract extension guarantees and long-term stability. Investors previously operating under the KK or PKP2B system must adjust to the new licensing mechanism that may require them to meet additional requirements, such as cooperation with national business entities or compliance with stricter environmental provisions.

Legal certainty is a key factor in assessing the sustainability of foreign investment in the mining sector. Although the government has guaranteed the extension of permits in the form of IUPK for companies that previously had KK or PKP2B, this transition process still leaves various legal and administrative challenges. Continuously evolving regulations often cause uncertainty, especially related to ownership rights, investment guarantees, and fiscal policies that can change at any time. Foreign investors tend to be more cautious in investing their capital if the applicable regulations do not provide sufficient guarantees of stability, thus potentially reducing investment flows to the mining sector.

Investment constraints and risks are increasing with the existence of mandatory divestment policies, increased royalties, and taxes that can burden the operations of

foreign mining companies. The obligation for foreign investors to release some of their shares to national business entities or the government can be considered as a reduction in control over their investments. Meanwhile, the increasing burden of taxes and royalties can reduce the profitability of investments in Indonesia compared to other countries that offer more competitive incentives. Thus, although this change aims to increase national independence in managing natural resources, foreign investors face significant challenges in maintaining and developing their operations in Indonesia.

The policy of transitioning from Contracts of Work (KK) and Coal Mining Business Work Agreements (PKP2B) to Special Mining Business Permits (IUPK) opens up great opportunities for national legal entities, especially domestic mining companies. With the mandatory divestment for foreign investors, national business entities, both private and BUMN/BUMD, have the opportunity to take over shares and assets of mining companies previously controlled by foreigners. In addition, policies that require partnerships or joint ventures between foreign investors and national companies can encourage technology transfer and increase human resource capacity in the mining sector. It is expected to strengthen the competitiveness of domestic companies in the long term.

Increasing the role of national legal entities in the mining sector also faces major challenges, especially in competition and industrial independence. Although this policy provides opportunities for national companies to manage mines previously controlled by foreigners, they need to face challenges in terms of capital, technology, and operational efficiency. BUMN and BUMD, which are expected to play a bigger role, must be able to compete with multinational companies that have more experience and more sophisticated technology. Without adequate preparation, there is a risk that mine management by national business entities may experience obstacles, both in terms of operations and business sustainability.

From an economic and social perspective, this policy has the potential to increase state revenues through taxes, royalties, and profits from mine management by national companies. Additionally, increasing the role of domestic companies can open up more jobs for local workers, especially in mining projects managed directly by BUMN and BUMD. However, it is also necessary to be aware of the impact on the environment and communities around the mine, especially if national companies do not yet have an optimal environmental management system. Therefore, the success of this policy depends not only on the nationalization of the mining industry but also on improving governance, transparency, and social responsibility of national companies in the mining sector.

Conclusion

Foreign investment regulations in Indonesia's mining sector were governed by the *Investment Law* and the *Mineral and Coal Mining Law*, which established mechanisms for investment, investor rights and obligations, and restrictions on foreign ownership to protect national interests. Foreign investors were required to be registered as limited liability companies and to obtain exploration and exploitation rights through a *Mining Business License (IUP)* or *Special Mining Business License (IUPK)*. They also had to comply with environmental regulations, taxes, royalties, and share divestment

requirements. The government provided dispute resolution and protection against expropriation to ensure legal certainty. The transition from *Work Contracts (KK)* and *Coal Mining Business Work Agreements (PKP2B)* to *IUPK*, as outlined in Law No. 3 of 2020, aimed to strengthen state control, increase revenue, and optimize the role of national companies. While this shift increased government control and transparency, it also presented challenges for foreign investors, such as regulatory uncertainty, divestment obligations, and higher tax burdens. National companies had the opportunity to expand, but faced challenges in capital and technology. The success of this policy depended on effective governance, regulatory transparency, and the commitment of national companies to balance economic growth and environmental sustainability. Thus, future research could examine the long-term economic and social impacts of these regulatory changes on both foreign investors and national companies, focusing on how these policies impact sustainable mining practices and the broader economy.

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